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RECEIVED

APR 27 2015

U.S. District Court  
Judge Miller's Chambers  
SOUTH BEND, INDIANA

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April 27, 2015

The Honorable Robert Miller  
United States District Court Northern District of Indiana

RE: **In Re: Biomet M2a Magnum Hip Implant Products Liability Litigation, MDL 2391**

Dear Judge Miller:

In my capacity as co-lead counsel in Re Biomet (MDL-2391), I received a copy of a letter attached hereto and addressed to Your Honor from attorney Greg Borri requesting the Court direct current Plaintiff's MDL leadership to examine and report on the issue of whether Biomet fulfilled its obligations in carrying out the terms of the Master Settlement Agreement, particularly as it relates to those cases where plaintiffs sought enhancement through mediation. As Mr. Borri elected to informally write to Your Honor, I thought it necessary to briefly respond.

Without getting into too much detail, the Court should know that from leadership's perspective, Mr. Borri has misunderstood the terms of the settlement, misunderstood Biomet's specific case challenge rights consistent with the terms of the settlement agreement, mischaracterized leadership's statements about the process and is now demanding a report on the settlement process far beyond his individual clients' interests.

In addition, the Court recently entered an Order, also attached hereto, denying Plaintiff Gregory's Motion to Enforce Settlement in that case. As in the Gregory case, there simply was no 'meeting of the minds' on settlement between Mr. Borri and Biomet.

Should the Court seek additional clarification from leadership, I would ask that Mr. Borri be directed to file an appropriate Motion to be heard at the next Case Management Conference in South Bend. I would also request oral argument and request that he attend the hearing in person.

Respectfully,

THOMAS R. ANAPOL

TRA: jc  
Cc Borri, Winter, Lanier

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

MARJORIE R. GREGORY,	)	
	)	
Plaintiff	)	
	)	
vs.	)	CAUSE NO. 3:14-CV-1112 RLM
	)	
BIOMET, INC., et al.,	)	
	)	
Defendants	)	

OPINION and ORDER

This cause is before the court on plaintiff Marjorie Gregory’s motion to enforce what she believes to have been a settlement agreement. Ms. Gregory says the facts of her case establish that she qualifies for a settlement award: she had a Magnum implanted on March 4, 2008; she underwent revision surgery on January 8, 2014 to remove the Magnum; and she filed her complaint on April 14, 2014, before the April 15 deadline set forth in paragraph 1 of the Settlement Agreement. Ms. Gregory maintains those facts confirm that she qualifies under paragraph 2(a) of the Settlement Agreement for a base compensation award, subject to a discount under paragraph 2(b)(1). Ms. Gregory claims Biomet has wrongfully refused to pay her and has no “good cause” for contesting her claim. She asks that the court order Biomet to pay her the sum to which she is entitled.

Biomet says the parties never reached a meeting of the minds on the settlement value of Ms. Gregory’s case. Noting that the first step under paragraph

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have proceeded to mediation; a motion asking this court to enforce settlement isn't the proper vehicle for resolving this dispute.

Biomet's interpretation is the same as mine in other cases in this MDL: a dispute over the amount a plaintiff is to receive must go to mediation before it comes before me. Paragraph 3(b) of the Settlement Agreement gives Biomet the right to contest any case if the company "believes that there is good cause to reduce the amounts to be paid on cases that qualify for payments." MSA, ¶ 3(b). While Ms. Gregory claims Biomet lacked good cause to challenge her case and reduce the amount she was to be paid, "good cause" under paragraph 3(b) is subjective, rather than objective, and isn't limited to the examples set out in that paragraph.

Under the terms of the Settlement Agreement, Ms. Gregory's case fell in the "contested cases" category once Biomet disagreed with her categorization of her claim. Ms. Gregory then had two options – mediate her claim or proceed to trial on the merits. The court DENIES Marjorie Gregory's motion to enforce settlement [docket # 26] and strongly encourages the parties to determine which option is best for all involved, *i.e.*, mediation or agreeing to a settlement award.

SO ORDERED.

ENTERED:   April 23, 2015  

  /s/ Robert L. Miller, Jr.  
Judge, United States District Court

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SO ORDERED.

ENTERED:     April 23, 2015    

    /s/ Robert L. Miller, Jr.  
Judge, United States District Court

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April 24, 2015

*Via Federal Express*

The Honorable Robert L. Miller, U.S.D.J.  
United States District Court  
for the Northern District of Indiana  
204 South Main Street  
South Bend, IN 46601

**Re: Biomet M2a Magnum Products Liability Litigation (MDL-2391)  
Cause No. 3:12-MD-2391-RLM-CAN**

Dear Judge Miller:

My firm represents a plaintiff in the Biomet MDL who sought enhancement of Biomet's offer under the settlement agreement via a mediation, but the mediation never occurred and my client was unable to resolve her case with Biomet.

I write to request that the Court direct the current plaintiffs' MDL leadership to examine and report on the issue whether Biomet fulfilled its obligations in carrying out the terms of the Master Settlement Agreement, particularly as it relates to those cases where plaintiffs sought enhancement through mediation.

**A. Background**

My client sought to mediate an enhancement of her award category under the settlement agreement. We were advised by plaintiffs' leadership that Biomet would contact us to schedule a mediation. However, we were never contacted by Biomet to schedule a mediation.

As the deadline for conducting mediations approached, I contacted Biomet's counsel. I was advised that I would receive the same offer from Biomet via telephone discussions as I would in a mediation. When I spoke to plaintiffs' leadership, I learned that Biomet had challenged every one of the cases where a plaintiff sought an enhancement, that relatively few mediations had taken place, that the mediator had been unable to influence Biomet's

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settlement positions in the mediations that had occurred, and that virtually no enhancements had resulted from the mediations or enhancement discussions that had occurred. I was also led to understand that many or perhaps substantially all of those plaintiffs seeking enhancements had been offered substantially less than the amounts they were initially scheduled to receive under the settlement agreement.

In my own discussions with Biomet, my client was offered a small fraction of the \$200,000 she had originally been categorized to receive under the settlement agreement.

I communicated to plaintiffs' leadership my concerns about Biomet's fulfillment of its obligations under the settlement agreement, but was advised that plaintiffs' leadership did not intend to pursue the issue as they would be resigning their leadership positions.

**B. The Current PEC and PSC Should Examine and Report on the Issue Whether Biomet Fulfilled Its Obligations Under the Settlement Agreement with Respect to Assertion of Challenges and the Mediation Process Under the Settlement Agreement**

The settlement agreement provides in part:

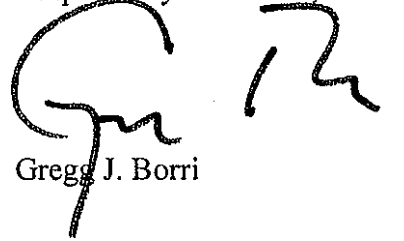
(b) Contested Cases. Biomet also believes that there is good cause to reduce the amount to be paid on cases that qualify for payments, pursuant to Paragraph 2 of this Settlement Agreement. Good cause for Biomet to seek to reduce the amount to be paid to a specific plaintiff, include, but are not limited to, evidence of trauma, infection or other objective explanations for a premature failure of the hip system with the absence of evidence of a MoM injury.

The fact that Biomet contested every case where a plaintiff sought an enhancement, that few mediations took place, and that (I am advised) virtually no plaintiff received an enhancement, but rather plaintiffs received offers substantially less than originally categorized, strongly suggests that Biomet's assertion of good cause challenges and its resulting mediation tactics were not consistent with its obligations under the settlement agreement, including its obligation of good faith and fair dealing.

The current leadership for plaintiffs in the MDL should examine and report on this issue (and pursue relief if appropriate) because current leadership negotiated, administered and participated in the settlement process, and is the only group that has the information necessary to examine and report on this matter.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Borri". The signature is written in a cursive style with a large initial "G" and a stylized "B".

Gregg J. Borri

GJB

cc: Thomas Anapol, Esq. (by email)  
John Winter, Esq. (by email)