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May 07, 2015

By U.S. Mail and ECF

The Honorable Robert L. Miller, Jr.
United States District Court
Northern District of Indiana
204 South Main Street
South Bend, IN 46601

**Re: Diana Fitzpatrick v. Biomet, Inc., et al., Civil Case No. 13-cv-00283
Biomet M2A Magnum Products Liab. Litig. 12-md-2391**

Dear Judge Miller:

We represent plaintiff Diana Fitzpatrick in the Biomet M2A Magnum MDL.

We write to amplify concerns recently raised by other attorneys regarding Biomet's treatment of plaintiffs who have sought enhancement of the base award under the Master Settlement Agreement.

Our client was treated in a similar manner. Our client had met every criterion of the MSA for a full base award as well as for enhancement. On the portal, Biomet did not contest her categorization nor her claim for enhancement. All looked well to this point.

Looking back, the first sign of trouble was the difficulty in obtaining a mediation date. As to our first request for a mediation date, we were told it was "premature"; subsequent requests did not get a response. When we finally obtained a date, it was nearing the end of the mediation period.

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Only days before the scheduled mediation, we received a shocking surprise. We learned for the first time Biomet was not only refusing enhancement, but denying the full base award. We learned that Biomet would be offering only a small fraction of the base award. The stated reason: Biomet was of the opinion that our client's injury was caused by the revising surgeon. This was total news to us, and came at a very, very late date.

We then had informal settlement discussions with Biomet's counsel. Though it was uncontroverted that our client met every criterion for the full base award, ultimately, Biomet confirmed to us that there was nothing we could do at the mediation that would increase the original offer of a small fraction of the full base award. Based on this representation from Biomet, we canceled the mediation.

Thus, we join in the request of Mr. Borri, Mr. Perlmutter, Mr. Dow, and Mr. Lowe.

We thank the Court for its consideration of these requests, and welcome any questions the Court may have.

Respectfully submitted,

SULLIVAN PAPAIN BLOCK
McGRATH & CANNAVO P.C.

By: 

Wendell Y. Tong

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