

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP)
IMPLANT PRODUCTS LIABILITY) CAUSE NO. 3:12-MD-2391
LITIGATION (MDL 2391))
)
)
_____)
This Document Relates to All Cases)
_____)

ORDER REGARDING APPOINTMENT OF
ESCROW AGENT AND FEE COMMITTEE

I have before me the Plaintiffs Steering Committee's motion to appoint an escrow agent and a fee committee [Doc. No. 2878]. Summarizing brutally, the motion seeks the appointment of Co-Lead Counsel Thomas Anapol and Mark Lanier to serve as the only plaintiffs' attorneys on the fee committee, and the appointment of Jessica Larbes, C.P.A. of the Garretson Resolution Group to serve as escrow agent. For the following reasons, I decline to enter the proposed order, and will give the PSC I three weeks to amend the motion.

The fee committee would make recommendations to me about distribution of the common benefit fund that Biomet bankrolled to compensate common benefit services leading up to, and as part of, the master settlement agreement. I recognize the benefit of having Mr. Anapol and Mr. Lanier on the fee committee. As co-lead counsel, they likely have the best grasp on which attorneys performed which tasks, the general reasonableness of the time spent on those tasks, and how each of those tasks contributed to the settlement. Having them on the fee committee will help minimize the cost of the fee committee. I also recognize that

this motion was filed by the PSC I — not just by Mr. Anapol and Mr. Lanier — and that apart from any reversionary interest Biomet might have in any money left in the common benefit fund, the PSC I members are the attorneys who will have claims to the common benefit fund established under the master settlement agreement.

Still, appointment of no attorneys other than co-lead counsel might give rise to an appearance of impropriety. From where I sit, it seems likely that Mr. Anapol and Mr. Lanier will be among those for whom the fee committee will recommend the greatest compensation. I am confident, especially in light of the motion's proposal that Garretson Resolution Group's chief financial officer and fiduciary serve on the fee committee, that Mr. Anapol and Mr. Lanier don't seek any unfair or underhanded edge. But others could see it differently.

So while I won't grant the motion as it was made, I will be happy to grant an amended motion that would propose three additional PSC I members to be appointed to the fee committee. Expanding the committee will retain the benefit of co-lead counsel's awareness of the overall operation of the PSC I, but will reduce the appearance that co-lead counsel are determining the recommendation of their own compensation without input or approval by others with a financial interest in the fee committee's report. I would also hope that the amended motion will, like the present motion, recommend the appointment of a non-attorney compliance officer to the fee committee, perhaps as a non-voting member.

Similarly, while I have no reason to think that Ms. Larbes and her firm would be anything but scrupulously diligent and honest in the role of escrow, or that their proposed hourly rates are anything but reasonable, an outsider might question the propriety of Mr. Anapol and Mr. Lanier putting forth a single candidate for me to approve. The amended motion should indicate either that all five of the proposed fee committee members agree that Ms. Larbes and her firm should be appointed escrow, or offer me additional options to serve that role. Either is fine with me. I have no concern about Ms. Larbes and her firm; my concern is with the transparency of the process.

Accordingly, PSC I shall have three weeks, to and including June 19, 2015, to file an amended motion to appoint an escrow agent and fee committee.

SO ORDERED.

ENTERED: May 28, 2015

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