

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 the)	
Cases Listed on Exhibit A)	
_____)	

ORDER REGARDING PRO SE CASES

This order is being sent to plaintiffs who have a case in this multidistrict litigation, but no lawyer. It explains what you must do to prosecute your case – in other words, to keep it from being dismissed.

Since 2012, cases involving alleged defects in Biomet's M2a Magnum system of hip implant products have been consolidated in this court as part of the multidistrict litigation to allow for consolidated and efficient pretrial proceedings. During these pretrial proceedings, and following the approval of a Master Settlement Agreement, this court has granted numerous motions to withdraw as counsel in cases in this MDL, causing the plaintiffs in those cases to be *pro se* (that is, representing themselves without an attorney). A list of cases in which the plaintiffs are currently not represented by attorneys is attached to this order as "Exhibit A." Your case should be on that list.

As the multidistrict portion of this litigation draws to a close and preparations are made for remand of pending cases back to local courts for further

proceedings and individual trials, this court needs to determine which of the plaintiffs without attorneys want to pursue their claims to trial. To accomplish this purpose, the court will use the **Declaration of Intent for Pro Se Plaintiffs** form attached to this order as “Exhibit B.” The Declaration of Intent requires you to indicate whether you intend to pursue his or her claim, or whether you would like the court to dismiss your lawsuit. **If you either indicate that you would like your individual lawsuit to be dismissed or don’t return the Declaration of Intent by January 13, 2017, the court will dismiss your case *without prejudice*, meaning that you might be able to file your case again.**

If you submit a Declaration of Intent within the time limit set in this order, you will also be required to do one of the following:

(1) You may have the **Plaintiff’s Expert Declaration of Causation** form (attached as “Exhibit C” to this order) completed by an orthopedic surgeon *and* sent to the Plaintiffs’ Steering Committee by **April 17, 2017**.

OR

(2) You may attend a hearing in person on **Monday, April 24, 2017, at 1:30 p.m. (E.D.T.)** before United States District Court Judge Robert L. Miller, Jr., at the United States District Court for the Northern District of Indiana, Robert A. Grant Federal Building, 204 S. Main Street, South Bend, Indiana 46601. At this time the court will address the activation of the individual case for discovery and entry of a scheduling order, as well as the

obligations of unrepresented litigants in prosecuting claims before the court.

If you do not:

- **complete and return the Declaration of Intent by January 13, 2017,**

AND

- **either:**

- **return a completed and signed Expert Declaration of Causation by April 17, 2017**

OR

- **attend the in-court hearing on April 24, 2017**

your case will be dismissed *with prejudice*, meaning that it cannot be filed again.

Based on the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that:

1. All *pro se* plaintiffs listed in Exhibit A to this order must complete and return a signed **Declaration of Intent for Pro Se Plaintiffs (Exhibit B)** to the Clerk, United States District Court, 204 S. Main Street, South Bend, IN 46601, **postmarked no later than January 13, 2017** indicating whether they wish to continue litigating their lawsuit or have their lawsuit dismissed. **Failure to return a signed Declaration of Intent by the January 13 deadline will result in dismissal of your case *without prejudice*.**

2. *Pro se* plaintiffs who have submitted a timely Declaration of Intent must also:

a. return a completed and signed **Plaintiff's Expert Declaration of Causation (Exhibit C)**, postmarked no later than **April 17, 2017**, to:

Biomet MDL Plaintiffs' Steering Committee
c/o Brenda S. Fulmer, Esquire
Searcy Denney Scarola Barnhart & Shipley
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33409

OR

b. attend the hearing on **Monday, April 24, 2017, at 1:30 p.m. (E.D.T.)**, in South Bend, Indiana.

Failure to return a completed and signed Expert Declaration of Causation by the April 17 deadline OR to attend the April 24, 2017 hearing will result in dismissal of your case *with prejudice*.

4. The Plaintiffs' Steering Committee shall immediately forward to Biomet's counsel the Expert Declarations of Causation as they are received.

SO ORDERED.

ENTERED: December 14, 2016

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

EXHIBIT A - PRO SE CASES

1	3:14cv200	Babcock, Marshall and Faye
2	3:13cv1402	Balusek, Maryann
3	3:13cv881	Brandt, John
4	3:14cv1457	Centers, Brenda
5	3:15cv585	Eastman, Donald
6	3:13cv1092	Fiacco, Robert and Carol
7	3:13cv1171	Frovik, Richard
8	3:13cv87	Grenier, Stacy
9	3:14cv516	Gronning, John
10	3:13cv933	Jarquio, Nabileh and Ramon
11	3:13cv472	Oswald, Joseph
12	3:13cv264	Pendlebury, Sean
13	3:13cv916	Peoples, Mary and Hubert
14	3:13cv247	Price, Wiley
15	3:13cv31	Reilly, William
16	3:14cv1065	Simmons, Michelle
17	3:14cv805	Tau, Kimberly Wolf
18	3:14cv890	Watson, Rex Neal

EXHIBIT B

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))

DECLARATION OF INTENT FOR PRO SE PLAINTIFFS

The Court has ordered that I indicate whether I wish to proceed litigating my claims or whether I wish to have my case dismissed. In response to the Court's Order, I would like to do the following: (please initial by your selection)

_____ **I would like to continue litigating my case.** I know that if I do not obtain another attorney, I will be responsible for representing myself in the litigation. I understand that I will be responsible for all the costs of conducting such litigation, but may be able to recover some of these costs if I am successful. I also understand that if I am not successful, I may be required to pay some of the Defendants' costs of litigation. I realize that if I choose to proceed with litigation, my case may be subject to transfer or remand from the Northern District of Indiana to the district where I reside or to a federal court where the events surrounding my implantation of the Biomet hip implant occurred. I also understand that I will be required to appear in person before the Court at an upcoming hearing and comply with all of the Court's orders as well as the Federal Rules of Civil Procedure and Local Rules of the Northern District of Indiana.

_____ **I would like my case to be dismissed without prejudice.** A dismissal without prejudice means that the Court will close my case. My case will not go to trial, and I will have no other obligation or responsibilities regarding the litigation. I understand that I might be able to bring my case again at some time in the future, but only if the statute of limitations period for my claim has not already expired.

Signed: _____

Print name: _____

Address: _____

Phone: _____

Email address: _____

EXHIBIT C

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))

PLAINTIFF'S EXPERT DECLARATION OF CAUSATION

1. Plaintiff's name: _____
2. Plaintiff's Cause No.: _____
3. Name of medical declarant: _____
4. Date(s) of Plaintiff's M2a implant surgeries: _____
5. Date(s) of Plaintiff's M2a revision surgery or surgeries: _____
6. I am an orthopaedic surgeon. I have attached my curriculum vitae to this declaration.
7. I certify that I have reviewed and considered the evidence made available to me, which included Plaintiff's medical records, x-rays and/or x-ray reports, and any tests regarding the level of metal ions in Plaintiff's blood stream.
8. I can state to a reasonable degree of medical certainty that Plaintiff has/had (*specify: metallosis, metal poisoning, tissue and/or bone loss, aseptic lymphocytic vasculitis-associated lesions, implant loosening, and/or early device failure*)
9. I can state to a reasonable degree of medical certainty that Plaintiff's condition(s) identified in paragraph 8 were caused by the Biomet M2a metal-on-metal implant.

10. The basis for my opinions in paragraph 8 is (specify the grounds for your opinion, including specific records reviewed or medical literature; provide an attachment if necessary):

11. The basis for my opinions in paragraph 9 is (specify the grounds for your opinion, including specific records reviewed or medical literature; provide an attachment if necessary):

12. In forming my opinion in paragraph 9, I considered the following possible alternate causes of the injury or injuries listed in paragraph 8:

13. I have ruled out the possible alternate causes listed in paragraph 12 because:

I hereby declare under the penalty of perjury that the foregoing is true and correct.

Executed on: _____

Surgeon Declarant's Signature