

1 **THE COURT:** Good morning.

2 This is our Cause Number 3:12MD2391, MDL Docket
3 Number 2391, **In Re: Biomet M2a-Magnum Hip Implant Products**
4 **Liability Litigation.** We are gathered, partly in person and
5 partly by telephone, for a status conference.

6 Let me start with the folks on the phone. If you
7 could, please, state your appearances for the record.

8 **MR. DIAB:** Good morning, Your Honor.

9 Ahmed Diab on behalf of the Plaintiffs' Steering
10 Committee.

11 **THE COURT:** Mr. Diab.

12 **MR. WARD:** Good morning, Your Honor.

13 This is Navan Ward on behalf of the Plaintiffs'
14 Steering Committee.

15 **THE COURT:** Mr. Ward.

16 **MR. PRESNAL:** Good morning, Judge.

17 Justin Presnal on behalf of the Plaintiffs' Steering
18 Committee.

19 **THE COURT:** Mr. Presnal.

20 **MR. PRESNAL:** I think Ms. Fulmer is actually
21 listening in, but she says she's in a place where it's noisy,
22 so she's muted her phone, I believe, to avoid disrupting the
23 call.

24 **THE COURT:** Okay. All right. And those in court for
25 the Defense?

1 **MS. HANIG:** Erin Hanig on behalf of the Defendants.

2 **THE COURT:** Ms. Hanig.

3 **MR. WINTER:** John Winter on behalf of the Defendants.

4 Good morning, Your Honor.

5 **THE COURT:** Mr. Winter.

6 Good morning.

7 **MR. LaDUE:** John LaDue for the Defendants,

8 Your Honor.

9 **THE COURT:** Mr. LaDue.

10 I have looked at the agenda that was submitted, and I
11 have a couple of things to take up, as well. I don't know. We
12 may have other things that you folks have to take up, but let's
13 move our way down through the agenda, first, and the first
14 topic is the active case count.

15 Ms. Hanig, ordinarily, I look to you.

16 **MS. HANIG:** Yes, Your Honor.

17 We are just short of --

18 **COURT REPORTER:** Ms. Hanig --

19 **THE COURT:** Ms. Hanig, hold on just a moment.

20 **COURT REPORTER:** The microphone, please.

21 **MS. HANIG:** Oh. My apologies.

22 **THE COURT:** And let me ask that Defense counsel
23 remain seated. I normally prefer that you stand but for the
24 sake of the microphones for those who are on the phone.

25 Ms. Hanig.

1 **MS. HANIG:** So, we are just short of 250 cases that
2 are active. Given my conversation with the Clerk's Office last
3 week, I think we're around a little bit over 450 cases that are
4 pending on the docket, and we believe that a good portion of
5 those cases are actually already funded, and that actually -- I
6 don't want to skip ahead to Number 4, but that would be the
7 topic, Number 4 on the proposed agenda, that we are prepared to
8 do another show-cause order where we could dismiss a chunk of
9 those cases and get the numbers closer to one another.

10 **THE COURT:** Okay. I'm assuming that the Steering
11 Committee doesn't have anything to add on the numbers on the
12 actual case count?

13 **(No response.)**

14 **THE COURT:** Okay. Discovery update.

15 **MR. WARD:** No, Your Honor.

16 **THE COURT:** I'm sorry. Yes, Mr. Ward.

17 **MR. WARD:** Yes. Yes, this is Navan Ward.

18 No, we have nothing further to add with that.

19 **THE COURT:** I'm sorry, sir. I lost you toward the
20 end.

21 **MR. WARD:** No, we have nothing -- the PSC has nothing
22 to add to Ms. Hanig's report.

23 **THE COURT:** Okay. Discovery update. We have three
24 subtopics.

25 Who wants to -- shall we start with the Defense on

1 that? I don't know who placed this on the agenda.

2 **MS. HANIG:** Yeah, I can give you an update on that,
3 as well.

4 **THE COURT:** Okay.

5 **MS. HANIG:** Group 3, case-specific discovery is about
6 to close in approximately a month, on August 25th. I believe
7 the majority of Plaintiff depositions are concluded. We are
8 wrapping up some surgeon depositions. Everything is on track.

9 For Group 4, the deadline for Plaintiffs to submit
10 updated authorizations just passed. We are scheduling and
11 beginning to take the Plaintiff depositions in those cases.

12 As far as general expert discovery, Biomet and the
13 PSC have conducted the depositions of each side's designated
14 experts.

15 We requested supplemental time to continue the
16 deposition of Dr. Kantor. The Court granted that, so that
17 deposition will be occurring on July 18th.

18 We plan to submit **Daubert** motions and summary
19 judgments motions, pursuant to the case management order, on
20 July 18th, with the extension for Dr. Kantor's motion until
21 July 31st.

22 **THE COURT:** Okay. Anything to add from the
23 Plaintiffs' Steering Committee on that status report?

24 **MR. WARD:** Your Honor, this is Navan Ward.

25 There's nothing further to add on those two items.

1 I can say this: I know Brenda has been going back
2 and forth with the Defendants, and, for whatever reason, she's
3 not able to speak on the call here.

4 And it's my understanding, as far as Group 4, that
5 there is -- we're still working out -- I'm sorry. That might
6 be Group 5, so I apologize.

7 So, yes, there should be nothing further on the
8 Group 3 and 4 portion of that update.

9 **THE COURT:** Let me ask this, just so I know what to
10 watch for: Do the Plaintiffs intend to file any **Daubert**
11 motions or will I be seeing them only from the Defense?

12 **MR. WARD:** Yes, Your Honor, the Plaintiffs will be
13 filing **Daubert** motions, as well, on the 18th.

14 **THE COURT:** Okay. All right. Thank you.

15 **MR. WARD:** We were able to --

16 **THE COURT:** Go ahead.

17 **MR. WARD:** No, we were able to finish all the
18 depositions. There are no -- it's not necessary for any
19 extensions, such as Kantor, so we're in a position to be able
20 to file whatever **Daubert** motions that we have on the 18th.

21 **THE COURT:** Okay. Just so I know how big a desk to
22 clear, how many motions do you presently anticipate, Mr. Ward?

23 **MR. WARD:** We anticipate four **Daubert** motions.

24 **THE COURT:** Okay. And, Ms. Hanig, how many does the
25 Defense anticipate, at this point?

1 **MS. HANIG:** We anticipate three, Your Honor.

2 **THE COURT:** Three, okay. I need to clear a big desk.

3 We also have the topic of Biomet's request to depose
4 Jamie Williams of Robson Engineering.

5 **MS. HANIG:** Yes, Your Honor.

6 One of Plaintiffs' disclosed experts, Mari Truman, is
7 affiliated with Robson Engineering. And during her deposition,
8 Biomet learned that one of the engineers from Robson, Jamie
9 Williams, was instrumental in helping Ms. Truman prepare her
10 report, so we would request leave to take her deposition, as
11 well.

12 **THE COURT:** All right. Is there an objection from
13 the Steering Committee to that?

14 **MR. WARD:** Yes, Your Honor.

15 Navan Ward, again.

16 Ms. Mari Truman created her own report. Jamie
17 Williams had no substantive or important part in producing
18 and/or creating Ms. Mari Truman's expert report. In Mari's
19 deposition, she testified that Jamie Williams is head of
20 Robson's Engineering Department, and, as such, there may have
21 been a review for typographical errors or very benign issues
22 with regards to the report, but there was no substantive part
23 of Mari Truman's report that Jamie Williams was involved with,
24 and so we would object, to the extent that there is nothing
25 that she would have added. There's nothing that is pertinent

1 with regards to her deposition she would be able to add to this
2 particular case, so we would object to her being deposed.

3 **THE COURT:** Well, obviously, both sides have
4 different understandings --

5 **MR. PRESNAL:** Judge --

6 **THE COURT:** I'm sorry. Mr. Winter.

7 **MR. WINTER:** No, Your Honor.

8 **THE COURT:** You're leaning.

9 Both sides have different understandings of
10 Ms. Williams' role in the preparation of Ms. Truman's report.
11 And rather than discover partway through the **Daubert**
12 proceedings that we do need another deposition, I'm going to go
13 ahead and allow it. If the Plaintiffs' understanding of
14 Ms. Williams' role is correct, it may be a very brief
15 deposition. But if the Defendant's understanding is correct,
16 there may be stuff there to learn. And, obviously, I'm not in
17 a position to know who's correct here, so I will allow the
18 deposition, the Defendant to take the deposition of Jamie
19 Williams of Robson Engineering.

20 Next is pro se cases ripe for dismissal, and we have
21 two of them, the **Pendlebury** case and the -- I knew how to
22 pronounce this last time -- **Jarquio** case, **Jarquio**.

23 And I gather that Biomet is the one who put this on?

24 **MS. HANIG:** Correct, Your Honor.

25 From what I can tell from the docket, it looks as if

1 in both of those cases -- I know you previously ordered some
2 supplementation or declarations to be filed. I haven't seen
3 those come across the docket. That is the reason why we
4 included those.

5 **THE COURT:** Okay. I think with the order that either
6 of those Plaintiffs was allowed to submit their declaration to
7 Ms. Fulmer.

8 Is the Steering Committee aware of any declarations
9 that either of those Plaintiffs submitted?

10 Nothing appeared on the docket sheet, obviously.

11 **MR. WARD:** Your Honor, this is Navan Ward.

12 I'm personally not aware of it. I don't know if
13 Justin, Ahmed, or Brenda is, but I'm personally not aware of
14 it.

15 **THE COURT:** Okay.

16 **MR. DIAB:** Same here, Your Honor. This is Ahmed.
17 I'm not aware of that either.

18 **THE COURT:** Okay. We'll go ahead and enter the order
19 of dismissal.

20 And, Ms. Fulmer, I understand you're listening. If
21 you have gotten that, get word to us with a motion to set aside
22 as quickly as possible, and we'll move on from there.

23 But, I'm assuming, since nothing was forwarded to
24 Biomet, that Ms. Fulmer never received anything from those
25 Plaintiffs.

1 **MS. PRESNAL:** Your Honor, we just got a message from
2 Ms. Fulmer that she's okay with those dismissals.

3 **THE COURT:** Oh, okay.

4 **MR. PRESNAL:** She's weighed in, at least to us, that
5 that appears to be okay. But if there is some problem, we'll
6 chime in as soon as we can.

7 **THE COURT:** Okay. All right. Thank you.

8 We have a couple of leftover cases from the -- well,
9 let's go ahead and address Item Number 4.

10 **Pendlebury** and **Jarquio** were part of a list that I
11 have, but I'll address that in a moment.

12 Item 4, is that placed there by Biomet?

13 **MS. HANIG:** Yes, Judge.

14 We would propose that Biomet submits to you a list of
15 cases that are included on funding reports that have been
16 funded that have not yet agreed to dismissal. And, as we've
17 done in the past, we would send those to you, and you could do
18 a show-cause order to dismiss those cases.

19 **THE COURT:** And just remind me.

20 Would these be cases in which Biomet has paid into
21 the administrator and hasn't heard anything back or cases where
22 the administrator has paid the Plaintiff?

23 **MR. WINTER:** Your Honor, it would be cases where,
24 months ago, we funded to Garretson, and Garretson had done the
25 lien resolution process that Garretson does and then issued

1 reports to both Plaintiffs and to Biomet that their lien
2 process is done, and our understanding would be the money then
3 would have moved either to pay liens and/or to counsel, so
4 that's the group of cases that we believe have been funded for
5 more than 90 days and would like to have them closed out.

6 **THE COURT:** Okay. And so by "funded," you mean has
7 moved through Garretson?

8 **MR. WINTER:** Correct, Your Honor.

9 **THE COURT:** All right. Obviously, I'd build in time
10 for objections, in case there's something that shouldn't be on
11 that list.

12 If I allow, say, three weeks, is that agreeable with
13 the Steering Committee?

14 **MR. WARD:** Yes, Your Honor. We're fine with that,
15 Your Honor.

16 **THE COURT:** Okay. So, I will look for the motion for
17 a show-cause order and allow three weeks for any objections,
18 whether from the Steering Committee or by originating counsel.

19 I have just a couple of things I wanted to raise, and
20 I'll throw it out to you folks.

21 We had some of the cases we talked about at the April
22 conference. One of them is the **Eastman** case, 15CV585, and
23 Mr. Eastman is representing himself. And I don't know whether
24 he'd be listening in, but, in any event, we need to talk only
25 about procedures.

1 I know Biomet indicated that it was going to file a
2 summary judgment motion. No action was taken. Mr. Eastman
3 filed his yesterday. And I think it would probably be helpful,
4 at least from my standpoint, to set up a schedule, as far as --
5 looking at the look on Defense counsel's face, you have not
6 been served yet.

7 Is that --

8 **MS. HANIG:** No, I did actually receive -- and this
9 was confusing to me yesterday. I did actually receive
10 electronic motion of Mr. Eastman's motion, yesterday evening,
11 and noticed that -- I thought our motion was on file. So, if
12 it's not, that is a technical issue, and I will make sure that
13 happens immediately, but it makes sense, I think, to set a
14 briefing schedule.

15 **THE COURT:** Okay. Let me afford you, then, a week to
16 get yours on file, since, apparently, it's already prepared, so
17 that would be the 19th, and then we'll run the briefing
18 schedule, what the Court's rules would ordinarily allow --
19 we'll start it with that day, so it would be four weeks to
20 respond, with Biomet to respond to Mr. Eastman's motion, and
21 Mr. Eastman to respond to Biomet's motion, and then two weeks
22 after that for replies, and see if a hearing is necessary on
23 that.

24 One we had was an MoP case, or a couple of them, **Just**
25 **versus Biomet.** The parties were given time to finalize this.

1 And these may turn up on Biomet's motion for a show-cause
2 order. But just in case we know, **Just versus Biomet**, the
3 parties were given time to finalize the settlement and file a
4 stipulation for dismissal. That was in April. We don't show
5 any of those, and I know it may have fallen through the crack.

6 **MR. WINTER:** Your Honor, **Just** is resolved. I need to
7 go back and look as to where it is, in terms of the funding.
8 Sometimes it takes a little bit of time for the release to come
9 in, and then we actually -- we group releases so that the
10 process works better. The **Just** case may have either been
11 recently funded or about to be funded.

12 **THE COURT:** Okay. And we're in the same situation
13 with **Nelson**, 14CV1651 on our docket. There's a notice of
14 settlement filed near the end of March.

15 Same thing?

16 **MR. WINTER:** **Nelson** is funded, Your Honor. It's just
17 a question of figuring out where the dismissal is.

18 **THE COURT:** Okay. All right. We have pending --
19 and, Mr. Ward, I think this probably puts you in an unusual
20 spot, but we have the motion to administer the settlements
21 resolving cases and claims of Beasley Allen, which was filed by
22 Mr. Ward.

23 And this is one of the joys of lead counsel. I think
24 I need to ask Mr. Diab or Mr. Presnal whether the Steering
25 Committee has any objection to the motion to set up the

1 administration on those cases.

2 **MR. WARD:** No, Your Honor.

3 **MR. DIAB:** No, Your Honor.

4 **THE COURT:** I'm sorry?

5 **MR. DIAB:** Your Honor, this is Ahmed Diab responding
6 to your question.

7 No objection here.

8 **THE COURT:** Okay. All right.

9 **MR. PRESNAL:** None here, Judge.

10 **THE COURT:** Okay. And I assume Biomet has no
11 objection?

12 **MR. WINTER:** No objection, Your Honor.

13 **THE COURT:** I will enter it up.

14 Just for my benefit, why do we have a private
15 settlement fund for the Beasley Allen Plaintiffs? And, again,
16 this is just curiosity on my part.

17 Mr. Ward, can I ask you?

18 **MR. WARD:** Yes. Yes, Your Honor.

19 The GSF is for the subgroup of cases that have
20 resolved from my firm. As I understand it, the settlement of
21 the cases since the global settlement is being administered in
22 the same way that it was under the global settlement where
23 there was already a company there to administer the GSF.

24 **THE COURT:** Okay.

25 **MR. WARD:** And, so, therefore, for any law firms

1 needing that type of assistance with the cases they settle,
2 again, it's my understanding that we would need to be able to
3 employ a firm that would be able to create a GSF in order to
4 resolve whatever subgroup of cases that are within -- a part of
5 the subgroup of settlements.

6 So, the cases in this group are cases that have
7 settled throughout the last several months from my firm, even
8 though there are quite a number of other cases from my firm
9 that have not settled yet.

10 **THE COURT:** Okay. Thank you. I understand.

11 The other thing I need to take up, because this fell
12 through the cracks, and that is the reappointment of the
13 Steering Committee, and I guess I would propose to reappoint
14 everybody.

15 But I need to talk to you, Mr. Ward. At this point,
16 as I understand it, all your cases at least will be gone.

17 It has been my practice, thus far, if somebody
18 doesn't have cases, to let them off the Steering Committee.

19 What would you -- and I don't know exactly how you
20 want to handle it, but let me give you a chance to speak as to
21 whether you would want to remain as lead counsel for a time or
22 how you would wish to proceed.

23 **MR. WARD:** You're referring to me, Your Honor, I
24 mean, Navan Ward?

25 **THE COURT:** Yes.

1 **MR. WARD:** I couldn't hear you.

2 **THE COURT:** I'm sorry. Let me restate. I may have
3 wandered from the microphone here.

4 What I have done since the beginning of this case,
5 and it's how we got to a second Steering Committee, is,
6 normally, to participate on the Steering Committee or in a
7 leadership role, I've required counsel to have a case in the
8 docket, preferably cases.

9 And if I understand the submission we just talked
10 about, Mr. Ward, your cases, at least in the near future, will
11 all be gone from the MDL docket. And I haven't had a situation
12 exactly like this in this case or in any other, for that
13 matter, so I wanted to know your preferences, not that they'll
14 necessarily carry the day, but at least to give me some input.

15 Is it your hope to remain as co-lead counsel at least
16 for a time, to remain until your cases are all wrapped up, to
17 ask to step aside now since your days as counsel on one of the
18 cases seem to be numbered? What are your thoughts? How would
19 you like to proceed?

20 **MR. WARD:** Well, to clarify, Your Honor, I still have
21 several cases that are still unresolved in the Biomet
22 litigation.

23 **THE COURT:** Oh, I'm sorry. Okay.

24 **MR. WARD:** I still have cases so I intend to remain
25 until the end of the litigation, whether my cases have been

1 resolved or not. But, as we sit here currently, today, I still
2 have several cases that are unresolved.

3 **THE COURT:** Okay. I misunderstood the submission.

4 **MR. WARD:** So I'm okay --

5 **THE COURT:** That takes care of that.

6 Well, I guess I would propose -- and I'll throw this
7 open to everybody who is on the line now -- to simply
8 reappoint, then, those who are on the Steering Committee in
9 leadership roles, because it appears to me that we are probably
10 winding down on this docket now, once we get past the **Daubert**
11 motions, seven of them. Once we get through that point and the
12 case-specific discovery, it looks like we could proceed with
13 remands, if remand is appropriate, at that point. So, I guess,
14 rather than crank up to try to put together a new Steering
15 Committee, I would propose to reappoint those who are currently
16 on it.

17 I let somebody off yesterday, and I can't remember
18 who had moved to withdraw. I don't have my current docket
19 sheet here.

20 Is that agreeable with everybody from the Steering
21 Committee who is on the line here?

22 Mr. Ward, I think you indicated that was agreeable
23 with you?

24 **MR. WARD:** Yes, Your Honor. Yes, Your Honor, it's
25 agreeable -- it's agreeable with me.

1 Brenda has also agreed to remain until the end of the
2 litigation, as well.

3 **THE COURT:** Okay. Mr. Presnal, is it agreeable with
4 you?

5 **MR. PRESNAL:** It is, Judge.

6 And I would just propose that we, sort of, deal with
7 it as the individual that filed the motion to withdraw did.
8 We'll, kind of, deal with it on a case-by-case basis as it goes
9 on. That's probably the simplest way to deal with it.

10 **THE COURT:** Okay. Mr. Diab, is it agreeable with
11 you?

12 **MR. DIAB:** It is, Your Honor.

13 And just in the interest of full disclosure, my cases
14 have resolved. However, as you stated, Your Honor, you know,
15 it's my perception, as well, that the cases toward the end --
16 and I've spoken to the fellow Steering Committee members and
17 indicated that, you know, I would continue on in this role to
18 see the end of the litigation, if that's acceptable to the
19 Court.

20 **THE COURT:** Okay. It is.

21 I don't know that Biomet has a dog in this hunt, but
22 do you wish to make any comment?

23 **MR. WINTER:** I don't believe we have a dog in this
24 fight, Your Honor.

25 **THE COURT:** Okay. The last thing I wanted to ask,

1 and it kind of flows from what we were just talking about --
2 every so often, the Panel sends a question to a Transferee
3 Judge as to whether they should continue to refer cases. We
4 are continuing to get cases. I think the flow has slowed
5 considerably, but we're still getting a few every month. I
6 think we're up to CTO Number 151.

7 I welcome your thoughts on whether we should continue
8 to accept referrals. You folks know better than I how many are
9 still out there. Obviously, nobody has perfect knowledge of
10 that, but anybody's knowledge is better than mine.

11 Let me start with the Plaintiff.

12 Mr. Ward, any thoughts on whether we should continue
13 to accept referrals into the MDL?

14 **MR. WARD:** Well, Your Honor, I think you're right; we
15 don't have a perfect knowledge of how many people are still
16 filing cases. It is our understanding that there are a good
17 number of cases, from the calls that we've been getting from
18 the Plaintiffs' Steering Committee, unfiled cases that plan to
19 be filed.

20 If it is the Court's intent, which I think we've all
21 been leading toward this, the point in remanding the cases, it
22 does seem as if it would be a futile or a pointless process for
23 people to file an MDL when the cases would, essentially, be
24 going back.

25 And I know we need to, at some point in time, discuss

1 the process for the remand. But if the ultimate goal, as we
2 all understand it, is, after **Daubert**, to remand the cases, and
3 if we're at that point in time in the litigation, which I
4 believe we are, then it probably would make sense for there not
5 to be cases transferred into the MDL and for unfiled cases and
6 firms that are looking to file cases to be able to file
7 wherever they feel necessary, without the expectation that it
8 will end up in the MDL and then return to them shortly
9 thereafter.

10 **THE COURT:** Just to verify my understanding of your
11 position, then, it sounds like you're saying that you think the
12 time to stop is coming up somewhere in the reasonably near
13 future, but we're not quite there? Do I understand?

14 **MR. WARD:** No, I would say either now or in the near
15 future I think it would be appropriate.

16 If the question that you're getting from the MDL
17 Panel is, should they continue to send them in, I think -- and
18 the other Plaintiff Steering Committee members can chime in,
19 since this is a question that you just first brought to us --
20 from our discussions, it seems as if this would be a time for
21 new cases to stop being transferred in, since we are at a point
22 where, in the near future, the cases will be remanded back.

23 **THE COURT:** Anybody else from the Steering Committee?

24 **MR. PRESNAL:** Judge, this is Justin.

25 **THE COURT:** Yeah.

1 **MR. PRESNAL:** Yeah, this is Justin Presnal,
2 Your Honor.

3 I would, sort, of echo Navan's comment that we
4 probably ought to be given an opportunity to, sort of, discuss
5 this among ourselves really for more procedural reasons than
6 anything else.

7 I agree that it doesn't make sense to transfer cases
8 to you if they're just going to then be quickly transferred
9 back somewhere.

10 But, you know, we're in the process, working through
11 this general phase of the litigation, of putting together a
12 trial package that will be usable in the different courts where
13 cases go to trial, and we're probably going to need some time
14 to get that process complete and make sure that the cases that
15 are filed now aren't put on some sort of a docket control thing
16 that doesn't allow the folks filing them to take advantage of
17 the work that we've done here in the MDL.

18 So, I would propose that you give us until the next
19 case management conference to discuss a procedure for dealing
20 with that among ourselves and then present something to Biomet,
21 and maybe we can come to you with an agreed procedure for how
22 we deal with that, what the schedule looks like going forward.

23 **THE COURT:** Okay.

24 **MR. WARD:** And I would agree with that. I would
25 agree with that, Your Honor.

1 **THE COURT:** All right. Mr. Diab, anything to add
2 before I turn to the Defense?

3 **MR. DIAB:** No, Your Honor.

4 I think what Mr. Presnal and what Navan said makes
5 sense, and I think, as Mr. Presnal said, we should probably
6 discuss it a little bit before that. So nothing to add in that
7 regard, Your Honor.

8 **THE COURT:** I realize I'm kind of springing it on
9 you.

10 Does Biomet have a thought?

11 **MR. WINTER:** Yes, we do, Your Honor, and I have to
12 say it's almost diametrically opposed to what my colleagues are
13 suggesting.

14 Your Honor, we have some summary judgment motions
15 that we think have general applicability that are going to be
16 filed in addition to the **Daubert** motions.

17 I think this docket needs more attention before any
18 remands are considered, and until we get to that point -- the
19 whole purpose of MDLs, you know, there's a balancing on both
20 sides. So if someone wants the advantage of common benefit and
21 working out resolutions for thousands of cases, to have the two
22 percent at the end then start going here, there, and
23 everywhere, which runs contrary to everything that the statute
24 they relied upon brought us here, that's completely, I think,
25 contrary to anything.

1 Now, whether remands occur, obviously, they will.
2 But Your Honor expressed, clearly, that you didn't think
3 bellwethers were necessary. We're past that.

4 But when Mr. Presnal talks about a trial package, I
5 think there is good sense to that.

6 But we believe that it may make sense for you, after
7 the **Daubert** motions, after the summary judgment motions, to
8 maybe try a case or two before we begin remands, not for
9 bellwether purposes, but there are evidentiary rulings that
10 come up in a trial that will greatly benefit the efficient
11 administration of trials on remand for a judge to have the
12 benefit of your expertise and experience handling these matters
13 now for almost five years in terms of how a trial will work.

14 So, I think we have a big meet-and-confer process
15 with our colleague, probably some submissions to you, which may
16 be sometime early in 2018 because we're going to have to get
17 through these summary judgment and **Daubert** motions, and then
18 figure out what the next steps are.

19 So, yes, Your Honor, you have sprung this on us.
20 And, obviously, both sides have very different views. But,
21 clearly, until we've both met and conferred, and you've made
22 the judgments you're going to make as to how the endgame works,
23 to not have cases filed come here, quite candidly, makes no
24 sense, Your Honor. There's no benefit to anyone for that.

25 **THE COURT:** Okay. Let me propose --

1 **MR. PRESNAL:** Judge, just --

2 **THE COURT:** I'm sorry. Rather than argue it today,
3 since I know I've caught everybody flatfooted, let's pick our
4 date for the next -- once we pick our date for the next
5 conference, I'll set a date for about a week before that for
6 parties to file their position statements with respect to
7 whether the docket -- or the Panel should be informed that they
8 should stop referring new cases. I think I've got a grasp on
9 your positions, as they exist now, but, obviously, the Steering
10 Committee needs to discuss it among themselves. And I did
11 catch Biomet equally flatfooted; although, they may require
12 fewer internal discussions.

13 That covers everything on my agenda, other than
14 picking the date for the next conference.

15 Is there anything else from the Steering Committee?

16 **MR. PRESNAL:** Judge, the only comment I wanted to
17 make is: Mr. Winter and us may not be as far apart as you
18 might think. I think what John said makes a lot of sense in
19 terms of the timeline. I don't necessarily agree on the issue
20 of you trying cases, no offense to you, but it would depend on
21 the individual case and whether or not someone would consent to
22 having that case be tried in front of you or whether that
23 case -- that venue was proper in your Court. That's the only
24 comment I wanted to make.

25 As far as the procedure goes, I think what John's

1 saying makes senses in terms of the timeline of dealing with
2 some of the things that you need to deal with at the MDL level
3 before it becomes fractured all over the place.

4 **THE COURT:** Okay. All right. Thank you, sir.

5 Any further matters to raise for the Plaintiffs?

6 **(No response.)**

7 **THE COURT:** Or for Biomet?

8 **MR. WINTER:** No, Your Honor.

9 **THE COURT:** Okay. We've been working in six-week --

10 **MR. WARD:** Not for the Plaintiff, Your Honor.

11 **THE COURT:** I'm sorry, Mr. Ward?

12 **MR. WARD:** None from the Plaintiffs.

13 **THE COURT:** Okay. We've been working in six-week
14 increments or so, and six weeks from now, at least as things
15 stand now, I will be doing a criminal trial in Fort Wayne.
16 Obviously, that could change, but it hasn't yet. So, let me
17 move it up one week, first, to propose August 24th at 9:00.
18 And I know I'm hitting in the times of vacations that might be
19 planned or maybe the beginning of a school year -- I don't know
20 which -- so, if anybody would rather go into September, let me
21 know.

22 So, let me start with the Plaintiffs for 9:00 on
23 August 24th. That's a Thursday.

24 **MR. PRESNAL:** The only comment -- I think the date is
25 fine, Judge. The only comment I would make about the time --

1 and this is, of course, subject to your schedule more than
2 anything else -- Mr. Diab being on the West Coast, 9:00 Eastern
3 is a pretty early day for him and his staff, so, if the time
4 could be later, we would request that, but understand that
5 you've got to continue with your docket and that may be the
6 only time that's available.

7 **THE COURT:** Well, I can do 1:00.

8 Would 1:00 be better, from your standpoint?

9 **MR. PRESNAL:** Yes, it would, Judge.

10 **MR. DIAB:** And thank you for the accommodation,
11 Your Honor.

12 And, you know, for what it's worth, there still are
13 between 25 and 40 people that attend the hearings, as well, all
14 over the country, so I would echo that request.

15 Thank you.

16 **THE COURT:** Does 1:00 on the 24th work for Biomet?

17 **MR. WINTER:** It works for Biomet, Your Honor.

18 **THE COURT:** Okay. Let me write it down here.

19 So, we'll plan -- well, I've give the telephonic
20 option, again -- I don't know if we've reached the point where
21 mandatory personal attendance is needed -- and set August 17th,
22 then, a week before that, as the date for the parties' position
23 statements as to whether we should inform the Panel that the
24 time has come to stop referring -- or stop transferring cases
25 into the MDL.

1 And that covers everything on my agenda.

2 Thanks to those of you on the phone.

3 Thanks to those of you here in court.

4 Have a good rest of the summer, until August.

5 **LAW CLERK POTTS:** All rise.

6 **(All comply; proceedings concluded.)**

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