

1           **THE COURT:** Good afternoon.

2           This is Multi-District Litigation Cause Number 2391  
3 and our Cause Number 12MD2391, **In Re: Biomet M2a Magnum Hip**  
4 **Implant Products Liability Litigation.**

5           We are gathered for a status conference. We have  
6 some people in court and others, I understand, on the phone.

7           In court, we have Brenda Fulmer, for the Plaintiffs'  
8 Steering Committee.

9           Are there others on the phone, for the Plaintiffs'  
10 Steering Committee?

11          **MR. DIAB:** Yes, Your Honor. This is Ahmed Diab.

12          **THE COURT:** Mr. Diab.

13          Anyone else?

14          **MR. PRESNAL:** Good afternoon.

15          **THE COURT:** Hello.

16          **MR. PRESNAL:** Justin Presnal, on behalf of the  
17 Plaintiffs, also, Judge. Good afternoon.

18          **THE COURT:** Good afternoon.

19          And for the Defendants, we have in court: John LaDue  
20 and Erin Hanig.

21          Is anybody on the phone for the Defense?

22          **MR. WINTER:** Good afternoon, Your Honor. John  
23 Winter, for Biomet.

24          **THE COURT:** Mr. Winter.

25          First of all, my apologies to you. When we set this,

1 I had anticipated having rulings out on the **Daubert** and the  
2 summary judgment motions, and for a variety of reasons, none of  
3 which -- individually or perhaps collectively, we don't have  
4 it. I will have a ruling for you within a week, one way or  
5 another. And I know that I'm holding up 200-some cases until I  
6 get that ruling out, so I'm very conscious that I have become a  
7 road block. Again, my apologies, and I will have a ruling to  
8 you within a week.

9 Let's turn to the joint status conference.

10 We have active case count.

11 **MS. HANIG:** I can provide that update, Your Honor.

12 We're just over --

13 **COURT REPORTER:** Ms. Hanig, use the microphone,  
14 please.

15 **MS. HANIG:** Sorry about that.

16 Is that better?

17 **COURT REPORTER:** (Nods head.)

18 **MS. HANIG:** Okay. We are just over 300, about 301,  
19 right now, for active cases.

20 **THE COURT:** So, we're up about, what, forty from the  
21 last time we met?

22 **MS. HANIG:** That's right.

23 **THE COURT:** Okay. Discovery update, who wants to  
24 speak to that, first?

25 **MS. HANIG:** Your Honor, I can do that, as well.

1           So, the status of Group 5, recently activated,  
2 Plaintiffs are submitting updated authorizations. Those have  
3 been coming in, and we've begun scheduling Plaintiffs'  
4 depositions for the Plaintiffs in that group, so everything is  
5 moving as expected.

6           As far as the next bullet that lists proposed statute  
7 of limitations and spoliation groups, we have reached out to  
8 the PSC. And I have spoken with Ms. Fulmer about those  
9 proposed groups, which we would envision including less than  
10 ten cases apiece, but proposed language to the Court similar to  
11 the original groups that we did, under the same topics. We  
12 haven't finalized that yet, but I anticipate we would work with  
13 the PSC and submit a proposed order in the next week or so for  
14 you.

15           **THE COURT:** This is to get them back on the discovery  
16 track?

17           **MS. HANIG:** No, to brief summary judgment, in cases  
18 that we believe fall into buckets that would be appropriate,  
19 given your previous rulings.

20           **THE COURT:** Oh, I see.

21           So, these are these other cases for statute of  
22 limitations, spoliation?

23           **MS. HANIG:** Correct.

24           **THE COURT:** All right. And you folks are working on  
25 a timetable for that, then?

1           **MS. FULMER:** Yes, Your Honor. We should be able to  
2 come to an agreement shortly and submit an order to the Court.

3           **THE COURT:** Okay. And anything to add on the status  
4 of Group 5, on discovery, Ms. Fulmer, or anything else on  
5 discovery?

6           **MS. FULMER:** Other than putting together a target  
7 date to identify a Group 6 and, perhaps, even a Group 7 for  
8 activation for discovery. Those are the only things that we  
9 see that are on the horizon. But, obviously, we can address  
10 that at the same time that we talk about the next stage of the  
11 litigation after the orders are entered.

12           **THE COURT:** Okay. Pro se **Pendlebury** case, ripe for  
13 dismissal.

14           **MS. HANIG:** So, we included that, Your Honor, because  
15 I believe you entered an order in the **Pendlebury** case requiring  
16 the Lone Pine type declaration, and Mr. Pendlebury did not  
17 provide that declaration. I filed a motion, and you provided  
18 another extended time period to provide a declaration. I  
19 haven't seen one on the docket that's been filed yet. So we  
20 believe it's ripe for dismissal. We just wanted to -- we can  
21 move for that or just wanted to tee it up to your attention.

22           **THE COURT:** The time has passed, though --

23           **MS. HANIG:** Yes.

24           **THE COURT:** -- for the second extension?

25           All right. And enforcement of agreed settlements.

1 I know **Zepp** was on the rule to show cause, and we're  
2 waiting for a response, I guess, the end of this week.

3 **MS. HANIG:** So, these six cases, letters have gone  
4 out in cases where we believe there has been a settlement  
5 agreement between the parties, but we have yet to receive  
6 signed releases.

7 I know Mr. Winter has some more information on that,  
8 if you would need more details.

9 **THE COURT:** Okay. Mr. Winter.

10 **MR. WINTER:** Yes, Your Honor.

11 Your Honor will recall that, when the master  
12 settlement was put into place, there were two phases and there  
13 were stages in each phase, and there was a stage where the  
14 Plaintiffs' Steering Committee and various Plaintiffs' counsel  
15 and Biomet would look at a case and see if we could agree on  
16 the category and the specific dollar amount that went with  
17 those cases. And once we had that agreement, the MSA had a  
18 ninety percent participation rate for that group for Biomet's  
19 funding obligations to become real, for want of a better term.

20 What has occurred, as the parties have gone back to  
21 what are the cases pending on the MDL docket -- which,  
22 candidly, the parties thought had been settled -- we've  
23 discovered cases where the master agreement between the  
24 Plaintiffs' Steering Committee and Biomet have cases as agreed  
25 to being settled for specific amounts, releases had been sent

1 out to these firms and their clients, but releases never came  
2 back, and, you know, they sort of fell into a bucket of  
3 neglect. Let's say that, Your Honor.

4 So, we've gone back and, for each of these cases,  
5 we've written to the Plaintiffs' counsel, attached the relevant  
6 part of the agreement between the Plaintiffs' Steering  
7 Committee and Biomet that had that particular case as an agreed  
8 case, the category and the amount you can get from the master  
9 settlement agreement, and we've asked these firms to confer  
10 with their client and send us executed releases, I think,  
11 basically, thirty days after the letters were sent, you know.  
12 And if we get back releases, all well and good. If we don't,  
13 we may have to think about a motion to enforce settlements.

14 And there are other cases sort of in various stages,  
15 Your Honor, that are on the Court's docket, but we thought they  
16 were settled and gone, and we're trying to clean things up.

17 **THE COURT:** Okay. Anything to add, from the  
18 Plaintiffs' side, either in person or by phone?

19 **MS. FULMER:** Your Honor, I haven't seen these letters  
20 yet that have been sent out to the individual Plaintiffs'  
21 counsel. The PSC will be happy to assist those Plaintiffs'  
22 counsel in addressing these issues. And I don't know that it's  
23 really ripe for anything until a motion to enforce is actually  
24 filed, but we'll do our best to make certain that everyone's on  
25 the same page as far as what happened with these cases and

1 whether they are, in fact, settled or not.

2 **THE COURT:** Yeah. I understood this to be more of a  
3 heads-up item, that it may be coming down the pike.

4 **MR. WINTER:** That's correct, Your Honor.

5 **THE COURT:** Okay. Pending motions, unless you folks  
6 have something to add to what I've already apologized for.

7 Was there anything to be added, other than to remind  
8 me I need to rule?

9 **MS. HANIG:** No, Your Honor.

10 **MS. FULMER:** Nothing else, from the Plaintiffs,  
11 Your Honor.

12 **THE COURT:** Okay. Well, we've zipped through the  
13 agenda.

14 It seems to me that we're nearing the time for, at  
15 least, some remands. And I guess what I would like to do, as  
16 we head into the next status conference -- and, again, you will  
17 have an order on the dispositive motions well before that -- it  
18 seems like we should be addressing how to go about it, when we  
19 should go about it, what is ready for remand, if anything. I  
20 may not be correct that things are ready for remand. But, I  
21 guess, whatever date we pick, if I could ask each side to file  
22 a brief statement as to those issues, as to the procedure and  
23 timing of remand, because it would seem like Group 1 and maybe  
24 Group 2 might be ripe. And, again, I might be wrong.

25 That's all I have.

1 Is there anything else, Ms. Fulmer, for the  
2 Plaintiffs?

3 **MS. FULMER:** No, Your Honor.

4 **THE COURT:** Anything, for anybody on the phone, for  
5 the Plaintiffs?

6 **MR. DIAB:** No, Your Honor. Thank you.

7 **MR. PRESNAL:** No, Judge. Thank you very much.

8 **THE COURT:** Anything further, for the Defendants in  
9 person?

10 **MR. LaDUE:** (Shakes head.)

11 **MS. HANIG:** No, Your Honor.

12 **THE COURT:** Or by phone?

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

14 **THE COURT:** Okay. Let's pick a date, then, for the  
15 next one.

16 How about March 12th at 1:30?

17 **MS. FULMER:** That's acceptable to the Plaintiffs.  
18 We'll be here.

19 **THE COURT:** Okay. For the Defendants?

20 **MS. HANIG:** That works for the Defendants in person,  
21 pending Mr. Winter's schedule.

22 **THE COURT:** The in person Defendants.

23 **MS. HANIG:** Right.

24 **THE COURT:** Mr. Winter?

25 **MS. HANIG:** That can work for me, Your Honor, and in



1 person would work, as well.

2           **THE COURT:** Okay. I think, maybe, since I do want to  
3 talk about the remand process and, depending on where that  
4 might lead us, the question of whether to cut off incoming  
5 cases, I think, because that might turn on how many cases we're  
6 going to have pending, that would probably be best to do that  
7 in person.

8           Okay. Well, I'll look forward, then, sometime on or  
9 before March 5, to your submissions, as far as the timing and  
10 procedure for beginning the remand process, and see you all --  
11 or some of you anyway -- here on March 12th to talk about it.

12           **MS. FULMER:** Thank you, Your Honor.

13           **MS. HANIG:** Thank you.

14           **LAW CLERK:** All rise.

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

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