

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.,
PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION

MDL No. 2325

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 50

(AMS's Objection to and Motion to Stay and Vacate PTO # 47)

Pending are (1) American Medical Systems Inc.'s Objection to, and Motion to Stay and Vacate, Pretrial Order 47, filed March 11, 2013 (ECF 507); and (2) American Medical Systems Inc.'s Motion for Expedited Disposition of its Motion to Stay and Vacate Pretrial Order # 47, filed March 11, 2013 (ECF 509). On March 13, 2013, plaintiffs responded to the Objection. (ECF 522). It is **ORDERED** that American Medical Systems Inc.'s Motion for Expedited Disposition of its Motion to Stay and Vacate Pretrial Order # 47 is **GRANTED**.

By Pretrial Order # 47 (ECF 500), the Magistrate Judge to whom discovery disputes are currently referred, granted the plaintiffs' request to take a Rule 30(b)(6) deposition of AMS concerning the defendant's efforts to locate and produce documents. In the Objection, American Medical Systems, Inc. ("AMS") argues that:

1. The plaintiffs "explicitly intend to . . . force AMS to disclose attorney-client communications and attorney work product . . .";

2. “AMS had no prior opportunity to raise any objections to this deposition before entry of PTO # 47”;
3. Production of Outside the United States documents was not mentioned in the Rule 30(b)(6) deposition notice served by the plaintiffs on March 1, 2013 (ECF 490); and
4. PTO # 47 is procedurally inappropriate and will “eviscerate the attorney work product protection.” (Objection, ECF 507, at 1-2).

The defendant requests that I stay PTO # 47 pending full briefing, vacate PTO # 47, and quash the notice of Rule 30(b)(6) deposition. (*Id.*). The plaintiffs oppose this. (ECF 522).

At the outset, I note that the defendant’s Objection fails to address Fed. R. Civ. P. 72(a), which governs objections to magistrate judges’ orders on nondispositive matters. The standard of review is “clearly erroneous” or “contrary to law,” neither of which standard is mentioned in the Objection.

Some background is appropriate. The plaintiffs have sought production of the defendant’s documents for nearly a year. The plaintiffs have filed more motions to compel in this MDL than in the other four similar MDLs combined. By order entered October 30, 2013, Magistrate Judge Stanley granted the plaintiffs’ motion to compel documents outside the United States, found that the defendant’s position was not substantially justified, and imposed costs and fees. (ECF Nos. 279, 343). The plaintiffs continue to complain that they have not received documents from the defendant’s offices outside the United States, despite the passage of more than four months.

Meanwhile, the plaintiffs have filed a Motion to Compel Depositions, Production of Custodial Files and Additional Discovery (ECF 452), a Motion to Compel Compliance with PTO 24, and for an Order Setting February 28, 2013 as the Date for Final Production of All Outside of

US Documents (ECF 457), and a Motion to Compel AMS to Produce Documents (ECF 466) (which last motion appears to have been resolved). The two pending motions to compel were set for oral argument on March 6, 2013; unfortunately, the hearing was canceled due to inclement weather. The magistrate judges informed me of their intention to question AMS closely on March 6, concerning the extraordinary length of time required by AMS to produce documents, noting the inability of AMS to respond at the last hearing when asked to report the number of attorneys engaged in document production.

If the hearing had been held on March 6, the magistrate judges would have been acting completely within their authority to ask probing and substantive questions of counsel for AMS regarding the procedures employed by AMS to search for, locate, gather, review and produce documents, including those located outside the United States, and such questioning surely would not have been characterized as an intrusion into the attorney-client privilege or a usurpation of work product protection. Judicial officers are required by Fed. R. Civ. P. 37(a) to enforce adherence to the discovery rules and by Fed. R. Civ. P. 37(b) to enforce their discovery orders. Moreover, Fed. R. Civ. P. 26(b)(1) provides that “[f]or good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.”

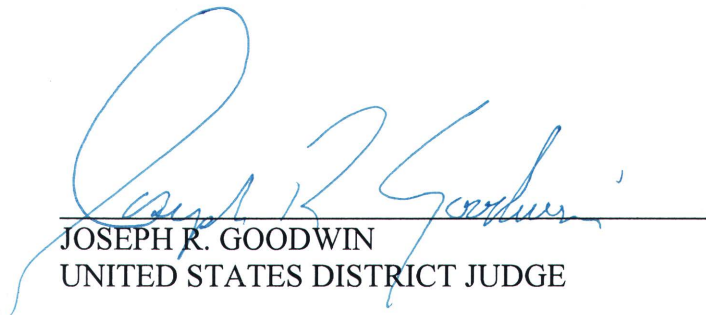
The defendant’s Objection asserts that the plaintiffs will force it to disclose its privileged communications and their attorney’s innermost thoughts. Nothing in PTO # 47 undermines the well-settled principles of the attorney-client privilege, or the work product doctrine, or Fed. R. Civ. P. 30(c)(2). However, it is necessary for AMS to present one or more witnesses who are responsible for complying with the Federal Rules of Civil Procedure in this MDL, who understand the responsibilities set forth in Fed. R. Civ. P. 26(g), who can testify as to actions

taken, overseas trips made, inspections conducted and documents and data gathered as required by the Rules.

After a thorough review of the Objection, I find that PTO # 47 is neither clearly erroneous nor contrary to law. It is hereby **ORDERED** that the defendant's Objection is overruled, the Motion to Stay is denied, and the Motion to Vacate PTO # 47 is denied. The deposition will go forward.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2325 and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:13-cv-04711. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsc.uscourts.gov.

ENTER: March 14, 2013



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE