

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

**In Re: Atrium Medical Corp. C-Qur Mesh
Products Liability Litigation (MDL No. 2753)**

**MDL Docket No. 16-md-2753-LM
ALL CASES**

PROCEDURAL ORDER

On March 8, 2018, the court held a monthly status conference with the parties. In their joint agenda for the conference, the parties described five issues to be addressed:

- Plaintiffs' jurisdictional discovery requests: The parties listed six of plaintiffs' requests for production of documents (Nos. 16, 24, 26, 27, 35, and 36) on which they were unable to agree. Pursuant to Case Management Order No. 3, the parties filed position letters concerning these requests in advance of the conference.
- Deposition dates for plaintiffs' requested Rule 30(b)(6) deponent.
- Location of the deposition of Reinhard Mayer.
- Defendants' privilege log. The parties were unable to agree on defendants' obligations concerning production of a privilege log for communications involving defendants' outside counsel after the commencement of mesh litigation in May 2012. Pursuant to Case Management Order No. 3, the parties filed position letters concerning these requests in advance of the conference.
- Bellweather case management order.

The court summarizes its rulings during the conference on each of the disputed issues below.

1. Plaintiffs' Jurisdictional Discovery Requests

1.a. **Plaintiffs' Request for Production ("RFP") No. 16:** Based on the parties' submissions and the court's review of the relevant case law, the court's inclination is to require defendants to produce the documents requested in RFP No. 16. To the extent defendants wish to pursue a formal litigation on the issue, as is allowed under Case Management Order No. 3, they

may file a notice with the court on or before 5:00 p.m. on March 12, 2018. Counsel shall thereafter propose a jointly-agreed-to briefing schedule.

1.b. Plaintiffs' RFP No. 24: The parties shall meet and confer regarding RFP No. 24. If the parties are unable to reach an agreement, plaintiffs shall file a motion to compel on or before March 15, 2018, and defendants may file an objection thereto on or before March 22, 2018. The court will not permit reply/surreply practice.

1.c. Plaintiffs' RFP No 26: The parties reached an agreement concerning RFP No. 26 prior to the status conference, and stated the terms of the agreement on the record.

1.d. Plaintiffs' RFP No. 27: The parties did not provide the court with enough information to allow it to make an informed decision on the dispute over RFP No. 27. The parties shall meet and confer regarding this RFP. If the parties are unable to reach an agreement, plaintiffs shall file a motion to compel on or before March 15, 2018, and defendants may file an objection thereto on or before March 22, 2018. The court will not permit reply/surreply practice.

1.e. & 1.f. Plaintiffs' RFP Nos. 35 & 36: The parties did not provide the court with enough information to allow it to make an informed decision on the dispute over RFP Nos. 35 & 36. The parties shall meet and confer regarding these RFPs. If the parties are unable to reach an agreement, plaintiffs shall file a motion to compel on or before March 15, 2018, and defendants may file an objection thereto on or before March 22, 2018. The court will not permit reply/surreply practice.

2. & 3. Disputes Regarding Depositions

The parties were able to reach an agreement before the conference concerning their disputes regarding depositions set forth in items 2 and 3. However, plaintiffs requested that the

court issue a global ruling concerning defendants' requirement to provide deposition dates in a timely manner after receiving a deposition notice. After considering the parties' positions as stated during the status conference, the court orders that, provided there are no disputes concerning the scope of a deposition notice, defendants shall provide plaintiffs with proposed deposition dates **within one week** after receipt of a deposition notice. To the extent defendants dispute the scope of a deposition notice, defendants shall provide plaintiffs with proposed deposition dates **within three weeks** after receipt of a deposition notice. The parties may meet and confer and extend these deadlines without seeking approval from the court.

4. Privilege Log

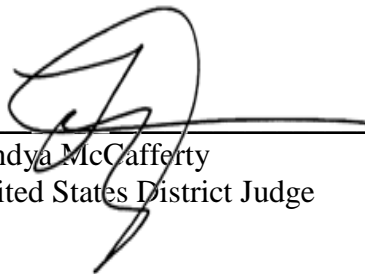
Based on the parties' submissions and the court's review of the relevant case law, the court's inclination is to require defendants to produce a privilege log in the manner proposed by plaintiffs during the status conference. Specifically, defendants would produce an excel spreadsheet (or similar type of document) that includes an item-by-item list of documents withheld as privileged. The log must include the type of document, the names of any authors or recipients, the date, the bates number (if bates stamped), and the type of privilege asserted. To the extent defendants wish to pursue formal litigation on the issue, as is allowed under Case Management Order No. 3, they may file a notice with the court on or before 5:00 p.m. on March 12, 2018. Counsel shall thereafter propose a jointly-agreed-to briefing schedule.

5. Bellwether Case Management Order

The parties are continuing to work together on the issue. They do not require court guidance at this time.

The court orders counsel to meet and confer and propose **within the next thirty days** a new letter-briefing process for resolving informal discovery disputes that will provide the court (in advance of the conference) with a more meaningful and substantive discussion of both the scope of the dispute and the legal questions at issue.

SO ORDERED.



Landya McCafferty
United States District Judge

March 9, 2018

cc: All Counsel of Record