

**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 February 14, 2019, the court held a monthly status conference with the parties. In their joint agenda for the conference, the parties described nine issues to be addressed:

- Status of depositions;
- Proposal Concerning Hearing on Getinge AB's Motion to Dismiss;
- Motion to Clarify the Court's Standard for Evaluating the Motion to Dismiss;
- Amendment to Case Management Order No. 2;
- Extension of the Deadline for the Selection of Trial Pool Cases;
- Order of Questioning in Treating Physicians' Depositions;
- Amendments to Section 3 of Case Management Order 3G;
- Plaintiffs' Request for Production of Data Room;
- Plaintiffs' Request for Production of Tax Returns.

With regard to the first item, the status of depositions, the parties merely advised the court as to the progress of scheduling depositions. With regard to the second item, the proposal concerning the hearing on Getinge AB's motion to dismiss, the parties stated that they were making progress on proposed dates and parameters for the hearing and would notify the court's case manager when they reached an agreement. They did not request court intervention on either item. The

court summarizes its informal rulings during the conference on each of the disputed issues below:

1. Motion to Clarify the Court's Standard for Evaluating the Motion to Dismiss

The court notified the parties during the status conference that it would deny plaintiffs' motion to clarify the court's standard for evaluating Getinge AB's motion to dismiss for lack of personal jurisdiction (doc. no. 1048). Following the conference, the court issued an endorsed order denying the motion. The court will apply the likelihood standard to Getinge AB's motion to dismiss.

2. Amendment to Case Management Order No. 2

The parties agreed that the court should amend Section III of Case Management Order No. 2 to remove Hugh Turner, who has withdrawn as defendants' counsel in this litigation, and add mesh@akerman.com and katherine.ungerdavis@dechert.com as defendants' counsel. The parties included with their agenda a proposed revised order. See doc. no. 1073-1. The court approved the parties' proposed revised order and it will be entered on the docket as an amended version of Case Management Order No. 2.

3. Extension of the Deadline for the Selection of Trial Pool Cases

The parties requested an extension of the deadline for selection of Trial Pool Cases until April 1, 2019. For the reasons stated during the status conference, the court grants that request and the deadline is so extended.

4. Order of Questioning in Treating Physicians' Depositions

The parties were unable to reach an agreement before the conference about the order of questioning of plaintiffs' treating physicians during upcoming Discovery Pool depositions. Based on the parties' submissions and their positions as stated during the status conference, the court's inclination is to hold that plaintiffs' counsel shall question plaintiffs' treating physicians first during the physicians' depositions.

To the extent defendants wish to pursue formal litigation on the issue, they may file a notice with the court on or before 5:00 p.m. on February 19, 2019. Counsel shall thereafter propose a jointly-agreed-to briefing schedule.

5. Amendments to Section 3 of Case Management Order 3G

The parties were unable to reach an agreement before the conference about whether Case Management Order 3G should be amended to suspend the production of new Defendant Profile Forms pending the litigation of the current Initial Discovery and Trial Pool cases. Based on the parties' submissions and their positions as stated during the status conference, the court's inclination is to find that suspension of the requirement that defendants produce Defendant Profile Forms as stated in Case Management Order 3G is not warranted at this time.

To the extent defendants wish to pursue formal litigation on the issue, they may file a notice with the court on or before 5:00 p.m. on February 19, 2019. Counsel shall thereafter propose a jointly-agreed-to briefing schedule.

6. Plaintiffs' Request for Production of Data Room

The parties were unable to reach an agreement before the conference about plaintiffs'

request for production of documents related to the sale of Atrium, and specifically documents maintained in a “Virtual Data Room.” Based on the parties’ submissions and their positions as stated during the status conference, the court’s inclination is to hold that defendants shall produce all non-privileged documents maintained in the Virtual Data Room that have not been produced previously and are responsive to a) any of plaintiffs’ jurisdictional discovery requests; and b) any of the five topics listed in plaintiffs’ February 4, 2019 letter (doc. no. 1073-6 at 1).

The parties shall meet and confer regarding a protocol and schedule for production of such documents. To the extent the parties cannot reach an agreement as to the universe of documents to be produced or the protocol for such a production, plaintiffs shall file a motion to compel on or before February 28, 2019. Defendants shall respond to such motion within seven days of filing. The court shall rule expeditiously on any such motion to compel.

7. Plaintiffs’ Request for Production of Tax Returns

The parties were unable to reach an agreement before the conference about whether defendants would produce Getinge AB’s United States federal and state tax returns for the past 10 years. The parties stated that they will continue to meet and confer regarding the issue and did not seek court intervention.

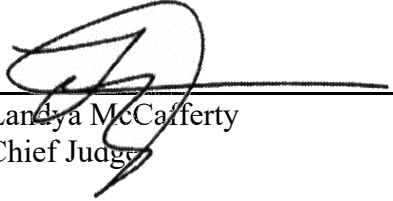
8. Plaintiffs’ Motion to Compel

Although not listed in the parties’ joint agenda, the court raised during the conference the issue of plaintiffs’ pending motion to compel Getinge AB’s responses to plaintiffs’ amended first set of Requests for Production. See doc. no. 545. The motion was filed on March 20, 2018 and the court noted in its April 20, 2018 procedural order, see doc. no. 597, that the parties had

informed the court that they had reached an agreement that “may moot the motion to compel.” The court indicated in that order that it would hold in abeyance its ruling on the motion until the parties advised the court on whether they have resolved the motion to compel.

The court directed the parties to confer and notify the court’s case manager as to the status of their discussions regarding the motion to compel.

SO ORDERED.


Landya McCafferty
Chief Judge

February 15, 2019

cc: Counsel of Record