IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: WRIGHT MEDICAL TECHNOLOGY, INC., CONSERVE HIP IMPLANT PRODUCTS LIABILITY LITIGATION	**MDL DOCKET NO. 2329** **ALL CASES** **1:12-MD-2329-WSD**

DISCOVERY ORDER

This matter is before the Court on the parties' Joint Submission of Specific Topics of Discovery that was submitted to the Court on August 20, 2012, and following the Court's status conference of August 30, 2012.

I. BACKGROUND

On August 10, 2012, the parties submitted a joint letter to the Court that outlined certain disputed issues that had arisen regarding the scope of discovery in this MDL action.

On August 13, 2012, the Court conducted a telephone conference about the disputes, at the conclusion of which directed the parties to continue to resolve and narrow the discovery issues in dispute and to report to the Court, within seven days, the matters upon which agreement could not be reached.

On August 20, 2012, the parties submitted their Joint Submission of Specific Topics of Discovery that remained in dispute. The Joint Submission of Specific Topics of Discovery presents two disputes regarding the scope of discovery: (1) scope of device design information; and, (2) information regarding agreements Defendants had with physicians and consultants regarding the products at issue in this MDL.

On August 30, 2012, the Court conducted a further telephone conference to discuss these outstanding discovery issues. The Court, as a result of the conference, concluded that certain documents and information are required to be produced by Defendants.

II. DISCUSSION

A. Discovery disputes

A district court has broad discretion to control the pace of litigation and the course of discovery to ensure that cases move to a timely and orderly conclusion. Chrysler Intern. Corp. v. Chemaly, 280 F.3d 1358, 1360 (11th Cir. 2002); Lee v. Etowah Cnty. Bd. of Ed., 963 F.2d 1416, 1420 (11th Cir. 1992); Am. Key Corp. v. Cole Nat'l Corp., 762 F.2d 1569, 1578 (11th Cir. 1985).

Rule 26(b)(1) of the Federal Rules of Civil Procedure provides:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—

> including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1). Thus, the issue is not simply relevance, but whether the information sought regarding device design information and agreements with physicians and consultants is reasonably calculated to lead to the discovery of admissible evidence.

B. Scope of device design discovery issues

Plaintiffs seek information regarding the PROFEMUR neck on the grounds that the design defect alleged in the Baker Complaint involves issues regarding the interaction between the PROFEMUR neck and CONSERVE Wright Cup hip replacement system.

Plaintiff alleges in the Baker Complaint:

> . . . the design that is supposed to make the Wright Cup revolutionary—causing the device neck to be subject to bend—is a feature that has caused it to fail. The bend in the neck of the implant increases the potential for corrosion, fretting and failure, during normal use. (Baker Compl. ¶ 20).
>
> The Wright Cup has a propensity for the acetabular cup to detach, disconnect and/or loosen from the acetabulum, and for some patients to develop adverse reactions to high levels of

> metal debris generated by normal use of the Wright Cup. (Id. ¶ 30(f)).
>
> [T]he Wright Cup was negligently designed and manufactured creating increased metal corrosion particularly at the junction of the femoral head component and the neck of the femoral stem. (Id. ¶ 40(d)).
>
> Wright's design that is supposed to make the Wright Cup revolutionary—causing the device neck to be subject to bend—is a feature that has caused it to fail. The bend in the neck of the implant increases the potential for corrosion, fretting, and failure during normal use. (Id. ¶ 40(g)).

The Baker Complaint specifically alleges that the neck was an integral part of the flawed design. Discovery regarding it is generally appropriate. The question is the reasonable scope of the discovery required.

The Court finds that information regarding the PROFEMUR neck is relevant to the claims in this action and reasonably calculated to lead to the discovery of admissible evidence. Accordingly, Plaintiffs are entitled to information and documents regarding: (i) the neck's function in the implant design; (ii) any benefits, successes, concerns, or risks associated with the neck component alone or as part of the implant design; (iii) notice and investigation of neck corrosion, fretting, and actual or potential failure; (iv) the effect of such corrosion and fretting on the implant's use, effectiveness and efficacy; and, (v) any evaluations of the neck and its function.

C. Discovery regarding agreements with physicians and consultants

Plaintiffs seek discovery on compensation paid to physician and consultants. While discovery from every physician or consultant is overly broad, the Court views Plaintiff's request as seeking financial arrangement information from physicians and consultants who were engaged in certain kinds of activities. The Court concludes that under Rule 26(b)(1), Plaintiffs are entitled to discovery regarding payments made to, and financial arrangements with, physicians and consultants who were involved, on behalf of Defendant, in the design, testing, investigation, evaluation of, and development and implementation of the strategy to market the CONSERVE device that is at issue in the Baker litigation and the other CONSERVE devices at issue in the MDL. Plaintiffs are also entitled to any information regarding payments made to physicians or medical providers to implant Wright's CONSERVE line of products.

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Defendants shall produce to Plaintiffs information and documents regarding: (i) the PROFEMUR neck's function in the implant design; (ii) any benefits, successes, concerns, or risks associated with the neck component alone or as part of the implant design; (iii) notice and

investigation of neck corrosion, fretting, and actual or potential failure; (iv) the effect of such corrosion and fretting on the implant's use, effectiveness and efficacy; and, (v) any evaluations of the neck and its function.

IT IS FURTHER ORDERED that Defendants shall produce to Plaintiffs information and documents regarding payments made to physicians and consultants who were involved, on behalf of Defendant, in the design, testing, investigation, evaluation of, and development and implementation of the strategy to market the CONSERVE device that is at issue in the Baker litigation and the other CONSERVE devices at issue in the MDL, as well as any information regarding payments made to physicians or medical providers for using Wright's CONSERVE line of products.

SO ORDERED this 4th day of September, 2012.

William S. Duffey

WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE