

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: STRYKER REJUVENATE AND
ABG II HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

MDL No. 13-2441 (DWF/FLN)

PRETRIAL ORDER NO. 13

This Document Relates to All Actions

Before the Court is Plaintiffs' Motion to Compel Discovery (Doc. No. [218]). The motion raises three issues, which the Court will address in the same order the parties did in their respective memoranda:

1. Speed and priority of document production;
2. Production and translation of French language documents;
3. Production of electronic documents in "native format."

I. Speed and Priority of Document Production

At the end of December 2013, the parties identified (presumably by name)¹ 26 "meaningfully involved" witnesses, whose documents are at the core of the disputes underlying the claims in this MDL. Defendants concede that the documents of these 26 custodians are relevant and must be produced. The dispute presented in the instant

¹ Although Exhibit A to Ms. Woodward's declaration is a chart detailing productions made to date as well as those that Defendants have scheduled for production over the next eight weeks, all of the files are described only by category and no names are attached to any of the files described therein.

motion centers on the speed with which and order in which the documents of these custodians must be produced.

Defendants contend that their schedule of production, based upon a rough rate of two custodians every two weeks, will have all of the custodians' documents produced by October 1, 2014. Plaintiffs contend that this rate is far too slow and unnecessary.

Plaintiffs also argue that the order in which the custodians' documents are produced should not be in the sole control of Defendants. In particular, Plaintiffs contend that the documents of Pascal Collet are essential to the formulation of a rational discovery plan and should be produced immediately. Under Defendants' revised schedule for production, they have offered to produce Collet's documents by "sometime in early June."

The Court concludes that Defendants' proposal, pursuant to which the documents that the parties agree are at the core of the dispute will not be fully produced until October 1, 2014, is not reasonable.

Based upon the foregoing, and all of the files records and proceedings herein, the parties shall, on or before the May 1, 2014 status conference, agree upon a schedule pursuant to which documents of all 26 custodians will be produced by July 15, 2014. If the parties cannot agree upon an order and a schedule, each side shall submit their last best proposal to Magistrate Judge Noel by May 1, 2014, and the Court will pick one or the other to be the schedule pursuant to which the core documents of the 26 custodians identified in December shall be produced.

II. Production and Translation of French Language Documents

Plaintiffs also seek to compel the immediate production of all of the limited number of French language documents so as to minimize the expenses associated with translation. Defendants contend that the ABG II and Rejuvenate models of hip replacement were independently designed by separate groups of engineers in different countries. The Rejuvenate, Defendants say, was designed in the United States, and the ABG II was designed in France. Plaintiffs contend that the ABG II is the predecessor model to the Rejuvenate. Plaintiffs maintain that they need the French language documents translated into English to better facilitate the depositions of engineers in the United States.

Because there is a small population of translators who have the technical skills necessary to translate the French language documents likely to be produced, Plaintiffs seek to obtain these documents sooner rather than later.

Defendants recognize that some relevant documents are in French, but argue that it would be disruptive and burdensome to require them to identify and produce the relevant French documents now, because their documents are not maintained by the language in which they are written. During the meet and confer in connection with this motion, it appears the parties discussed the possibility of sharing the cost of a single translator for the French language documents.

Based upon the foregoing, and all of the files records and proceedings herein, the parties are ordered to meet and confer before the May 1, 2014 status conference and to submit a proposal for the efficient sharing of translation costs. If the parties are unable to

agree upon a single plan for sharing the document translation costs, the parties shall submit to Magistrate Judge Noel their separate proposals for the cost sharing. The Court will pick one or the other of the proposals to be the Court's order.

III. Production of Electronic Documents in "Native Format"

Several documents have been produced in hard copy only, without the associated metadata that might have once accompanied these hard copy documents. Plaintiffs contend that the production of these documents with their metadata stripped out violates not only the Federal Rules of Civil Procedure, but the Order from the New Jersey Court pursuant to which these documents were originally produced. Defendants maintain that, in several instances, Defendants' "official" files are only hard copy documents. To the extent that any such documents were once electronic, those electronic versions will be produced in the ordinary course of discovery and Plaintiffs will have an opportunity to match up the hard copy documents already produced with electronic versions that may be produced at some time in the future. The yet to be produced electronic versions, according to Defendants, will contain all of the metadata that were originally associated with each document.

The Federal Rules of Civil Procedure provide that a party may specify the form or forms in which electronically stored information is to be produced. In their documents requests, Plaintiffs have requested that all documents that exist in electronic form be produced in their native electronic format.

The Court concludes that Plaintiffs are entitled to the documents that have been produced only as hard copy in their native electronic format. That Defendants may have

stripped out metadata from electronically generated documents before designating them as “official” company files does not relieve Defendants of their obligation to produce the documents in the native electronic format in which they were originally generated. To suggest that Plaintiffs can, at some future date, try to match up each hard copy to its original electronic version is not a reasonable response to the instant motion. Defendants can much more easily and efficiently than Plaintiffs identify where the hard copy came from and produce the document in the native format in which it was generated.

Based upon the foregoing, and all of the files, records and proceedings herein, Plaintiffs’ Motion to compel documents in their native format (Doc. No. [218]) is **GRANTED**. Any documents that have been produced only as hard copy shall, on or before May 1, 2014, be produced to Plaintiffs in the native format in which the documents were originally generated.

Dated: April 15, 2014

s/Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Dated: April 15, 2014

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge