

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

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| IN RE: WRIGHT MEDICAL |) | MDL DOCKET NO. 2329 |
| TECHNOLOGY, INC., |) | |
| CONSERVE HIP IMPLANT |) | |
| PRODUCTS LIABILITY |) | 1:12-MD-2329-WSD |
| LITIGATION |) | |
| |) | |
| |) | |
| This Document Relates To: |) | |
| ALL CASES |) | |

CASE MANAGEMENT ORDER 3

During the monthly teleconference on September 10, 2012, the Court noted that the parties raised two discovery dispute issues in a late-filed letter that was submitted by email to the Court just hours before the teleconference was scheduled to begin. The parties' letter was titled "Joint Submission of Parties re: Discovery," focused on Plaintiffs' concerns regarding discovery in this action, and stated:

1. **Defendants Proposed Discovery Schedule**: Plaintiffs are concerned with the Defendants' Proposed Schedule of Production, submitted September 7, 2012, in that among other things, ESI is not scheduled to begin until October 1, 2012, and continues until just a day or two before the scheduled close of production. It is Defendants' position that its production is proceeding as expeditiously as possible.

Plaintiffs are concerned that with production scheduled up to the last minute, Plaintiffs will not have the time to review, analyze and test the production. Plaintiffs cannot test the validity of the search terms or whether additional search terms or searches are appropriate given the

template. Furthermore, Plaintiffs believe they are entitled to searches of additional custodians beyond those determined by the Defendants.

2. **List of Custodians:** With regard to custodians, Plaintiffs are concerned that, although determined and identified by Defendants on July 9, 2012, we have not received any ESI production to see if additional custodians are necessary and appropriate. Plaintiffs have requested an additional 17 custodians. Defendants have agreed to add 1 of the 17, but have refused to add any additional custodians based on burden (\$7,000 per custodian for data collection and processing only, before attorney review time). We will need to discuss with the Court the Defendant's burden and timing associated with this issue.

During the teleconference, Plaintiffs repeated these unspecific concerns and intimated that Defendants might not fulfill their production responsibilities under the Federal Rules of Civil Procedure and the discovery schedule ordered by the Court. Plaintiffs suggested that they may later seek to enlarge the search terms agreed upon by the parties to search electronically stored documents, based on the results of the search conducted on these agreed terms.

In resolving the issues presented, the Court noted that Plaintiffs' concerns were speculative and that the discovery plan did not contemplate an enlargement of agreed-upon search terms based on the search results. The Court also stated its expectation that Defendants understood and would comply with their discovery obligations.

In light of the fact that the parties' Joint Submission was submitted to the Court hours before the teleconference, the submission did not provide sufficient

context of the issues in dispute, and the respective positions of each of the parties were not sufficiently articulated, the Court ordered that:

1. No later than three (3) business days before monthly teleconference, an agenda must be submitted to the Court regarding the issues to be discussed.
2. A submission must accompany the agenda that states the respective positions of the parties on the issues in dispute.
3. No issue shall be presented to the Court unless it constitutes a real dispute between the parties.
4. No issue shall be presented to the Court unless the parties have in good faith sought to resolve the dispute.

These requirements shall be complied with for future scheduled teleconferences.

SO ORDERED this 11th day of September, 2012.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE