

IN THE STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA

DAWN RANDALL, AS ADMINISTRATOR OF THE  
ESTATE OF BRITTANY REID AND AS  
GUARDIAN OF RAILYNN REID AND RYANN  
REID, SURVIVING MINOR CHILDREN OF  
BRITTANY NICHOLL REID,

PLAINTIFF,

v.

ATLANTA HEART SPECIALISTS, LLC;  
ZOUBIN ALIKHANI, M.D.; BOSTON  
SCIENTIFIC CORPORATION; AND JOHN DOES  
1-50,

DEFENDANTS.

CIVIL ACTION  
FILE NO. 23A05888-4

ORDER

This matter is before the Court on *Plaintiff's Motion for Sanctions against Defendant Boston Scientific Corporation*, filed on October 17, 2024. Plaintiff filed a supplemental brief on October 21, 2024; Defendant Boston Scientific Corporation (“Defendant”) filed a response brief on October 31, 2024; and Plaintiff filed a reply brief on November 1, 2024. The Court has reviewed the law and evidence presented in briefs<sup>1</sup> and all other matters of record.<sup>2</sup>

On June 21, 2024, this Court denied Defendant’s *Motion to Dismiss*, finding that Plaintiff had sufficiently stated her claims for strict liability, negligence, and negligence per se as expressly limited to parallel violations of a litany of federal regulations and the FDA’s Current Good Manufacturing Practice requirements. That order denied Defendant’s motion *in toto*.

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<sup>1</sup> Defendant’s request for oral argument is denied.

<sup>2</sup> The record includes a proposed *Qualified Protective Order* regarding information covered by HIPAA filed on September 9, 2024. No motion regarding that order is before the Court and the proposed order lacks the information required by Rule 36.4. Accordingly, no action has been taken on that proposed order.

Although the Court's *obiter dictum* reference to Plaintiff's future burden did not expressly mention claims parallel to violations of federal rules other than those regarding manufacturing defect and adverse event reporting, such claims remain pending.<sup>3</sup>

On July 8, 2024, Defendant served its responses to Plaintiff's first discovery requests, objecting to thirty-six of forty-three requests for production of documents and one interrogatory with specificity on the basis of purported judicial estoppel, as well as asserting unelaborated "unduly burdensome" objections to five requests for production of documents and two interrogatories. Two days later, counsel for Plaintiff e-mailed correspondence pursuant to Rule 6.4, primarily addressing the assertion of judicial estoppel, to which counsel for Defendant replied regarding that issue only.

Plaintiff filed her *Motion to Compel* on July 29, 2024, attaching her discovery requests, Defendant's responses, and conferral correspondence as exhibits to her motion. She also filed a proposed order that included a finding that Defendant's "discovery responses include a frivolous 'judicial estoppel' objection, fail to produce responsive documents, and otherwise omit substantial amounts of discoverable information" and specifically enumerated the requests to which Defendant should provide "full and complete responses." Included among those requests were Requests for Production Nos. 1, 2, and 41. In her motion, Plaintiff focused on Defendant's judicial estoppel argument, but also broadly addressed the propriety of her requests in the context of product liability medical device defect cases, with specific attention concentrated on Request Nos. 1 and 2.

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<sup>3</sup> Plaintiff claims violations of federal rules including, but not limited to, those associated with manufacturing procedures, process controls, corrective and preventative action procedures, labeling, marketing, and sales. Defendant's continued arguments that Plaintiff's "claims assert just two forms of relief" and "have been 'expressly limited' to manufacturing defect and FDA reporting" are not well taken.

Request No. 1 concerns the design history file for the Emblem Device. Defendant objected to this request only on relevance grounds, specifically asserting judicial estoppel. Request No. 2 concerns all complaint files and investigations and all MDRs for any complaints associated with the Emblem Device. Defendant objected to this request only on grounds of breadth and relevance, but showed that it was searching for and would produce redacted complaint files and MDRs. Defendant did not object to either Request No. 1 or 2 on grounds of burdensome production. That objection was raised as to Request No. 41, regarding data from the Latitude system, along with Defendant's judicial estoppel objection.

Defendant's response to Plaintiff's motion to compel centered on the issue of relevance under its judicial estoppel theory, but also asserted that Plaintiff improperly short-circuited the meet-and-confer process by failing to address Defendant's other objections. Defendant argued that those objections were not properly before the Court, protesting that "Plaintiff suggests. . . she is entitled to expensive, time-consuming and burdensome discovery on anything and everything." While it is true that Plaintiff focused on Requests Nos. 1 and 2 in their motion to compel, Defendant similarly focused only on No. 22, regarding marketing materials that it conceded could be relevant to a generalized failure to warn claim.

Notwithstanding Defendant's assertions to the contrary, the Court was aware of and considered Defendant's arguments regarding Plaintiff's failure to meet and confer. The Court rejected those arguments and signed Plaintiff's proposed order on September 11, 2024,<sup>4</sup> wherein Defendant was expressly ordered to provide "full and complete responses" to specific requests, including Nos. 1, 2, and 41. Defendant supplemented its responses to Plaintiff's discovery

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<sup>4</sup> The Court struck the provision regarding payment of attorney's fees from Plaintiff's proposed order before signing, despite finding Defendant's judicial estoppel argument to have lacked substantial justification. The Court now reconsiders that decision.

requests on October 1, 2024, but failed to provide complete responses. Rather, Defendant produced only an *index* of documents responsive to Request No. 1 and, in response to Request No. 2, produced only those complaints that it *unilaterally identified as similar* to Plaintiff's, without any explanation of how it made the similarity determination. Only data associated with Plaintiff's decedent appear to have been produced in response to Request No. 41.

Plaintiff now seeks sanctions for Defendant's failure to comply with this Court's September 11, 2024, *Order*. Plaintiff argues that Defendant's gamesmanship is delaying and impeding discovery, including the ability to prepare for scheduled depositions. Plaintiff further argues that Defendant failed to object to two of the requests as being unduly burdensome and thus waived such objections by failing to timely invoke them. Plaintiff's proposed order seeks "costs and attorney's fees which were reasonably incurred during the discovery process while attempting to obtain complete responses from Defendant, and those incurred while attempting to ensure compliance by Defendant with this Court's Orders, and in relation to the motion in this matter."

In response, Defendant argues that the bar for imposing sanctions is high and that Plaintiff failed to meet and confer regarding objections other than judicial estoppel. Defendant further argues that prior proceedings did not address the current issues and that Plaintiff's Request Nos. 1, 2, and 41 are unduly burdensome. Defendant further requests appointment of a special master to more expertly and efficiently resolve the parties' disputes.

Defendant cites *Medernix, LLC v. Snowden*, 372 Ga. App. 48 (2024), for the proposition that the Court is "obligated to apply a balancing test to determine whether discovery of the requested sensitive materials would subject the producing party to annoyance, embarrassment, oppression, or undue burden or expense." In that case, however, the party opposing production

raised its objections at the motion to compel stage and, critically, had filed a motion for a protective order. *Id.* at 50. The Court of Appeals expressly noted that the movant seeking to limit certain requested discovery bears the burden. *Id.* at 53. Furthermore, in *Medernix*, the responding non-party detailed the extensive breadth of sensitive financial information that would be contained in the information sought, as well as the names of non-patient payors and sources of patient referrals. *Id.* at 55. In contrast, Defendant is a party to this case and failed to raise its burden concerns regarding Request Nos. 1 and 2 in its initial responses or *any* concerns regarding burden in response to Plaintiff's motion to compel, let alone seek protection from undue burden or expense pursuant to O.C.G.A. § 9-11-26(c) at any time.

The Court finds that Defendant waived any objections regarding the burden or expense of providing complete responses to Plaintiff's Request Nos. 1 and 2. The belated assertion of such objections in the face of this Court's September 11, 2024, *Order* reflects willful noncompliance and sanctions are appropriate. Accordingly, and in the exercise of the Court's discretion,

IT IS HEREBY ORDERED that *Plaintiff's Motion for Sanctions against Defendant Boston Scientific Corporation* is **GRANTED** in part. Plaintiff is awarded her attorney's fees and expenses reasonably incurred in attempting to obtain full and complete responses from Defendant, including the prosecution of both her motion to compel and the instant motion for sanctions. Plaintiff shall submit proof of such fees and expenses within ten (10) days of entry of this order. Should Defendant oppose the reasonableness of such fees, it shall file a response within ten (10) days of Plaintiff's submission.

IT IS FURTHER ORDERED that Defendant shall produce all documents in the Design History File for the Emblem Device within ten (10) days of entry of this order.


In light of protected health information contained in documents responsive to Plaintiff's Request No. 41, the Court finds justification for Defendant's current refusal to produce Latitude data as to patients other than Plaintiff's decedent on that ground. It appearing protected health information is contained within complaint files, investigations, and MDRs, as well, the Court finds that additional time for production will best protect the privacy interests of non-parties to this litigation. Accordingly,

IT IS FURTHER ORDERED that *Plaintiff's Motion for Sanctions against Defendant Boston Scientific Corporation* is otherwise **DENIED with leave to renew**. Within twenty (20) days of entry of this order, the parties shall submit a proposed protective order that (A) prohibits the parties from using or disclosing protected health information for any purpose other than the instant litigation and (B) requires the return to the covered entity or destruction of the protected health information, including all copies made, at the end of the litigation. If the parties cannot agree to a joint proposed order within that time, each party shall submit their own version. Any such order(s) shall comply with Rule 36.4.

IT IS FURTHER ORDERED that Defendant's objection to Plaintiff's Request No. 41 on the grounds that it is unduly burdensome is **OVERRULED**. Defendant shall immediately begin retrieving archived data and restoring records from Lighthouse, retrieving reports and documentation from both GCMS-TW and Lighthouse, and collecting data for Emblem devices from the Latitude system. Such data shall be produced within twenty (20) days of entry of a qualified protective order.

Failure to comply with this order may result in more severe sanctions, up to and including issue preclusion and default.

SO ORDERED, this 12<sup>th</sup> day of November, 2024.



**CHARLES E. BAILEY, JUDGE**  
**STATE COURT OF DEKALB COUNTY**

STATE COURT OF  
DEKALB COUNTY, GA.  
11/12/2024 11:49 AM  
E-FILED  
BY: Mundy Jackson