IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.
PELVIC REPAIR SYSTEMS
PRODUCT LIABILITY LITIGATION MDL No. 2325

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #59
(Plaintiffs' Motion for Production of AMS's Internal Litigation Database)

At the status conference held before the court on March 27, 2013, Plaintiffs made an oral motion for production of AMS's internal litigation database, arguing that access to the database was the easiest and fastest way to resolve ongoing issues over the adequacy of AMS's document production. The parties were ordered to brief the issue, which they did. (ECF Nos. 574, 575). In addition, at the court's request, AMS supplied for *in camera* review seven power point slides reflecting the coding layout of its database.

On April 18, 2013, the court heard argument from the parties in support of their positions. Having considered the briefs, arguments, and documentation, the court **DENIES** Plaintiffs' motion, finding that the database, in part, contains the mental impressions of AMS's counsel, which are entitled to protection under Fed. R. Civ. P. 26(b)(3)(B). Equally as important, the court finds that production of the database would not effectively resolve the problems encountered by Plaintiffs; thus, to the extent that the remainder of the database constitutes work product subject to disclosure under the

"substantial need" standard contained in Fed. R. Civ. P. 26(b)(3)(A), Plaintiffs have not established the requisite need.

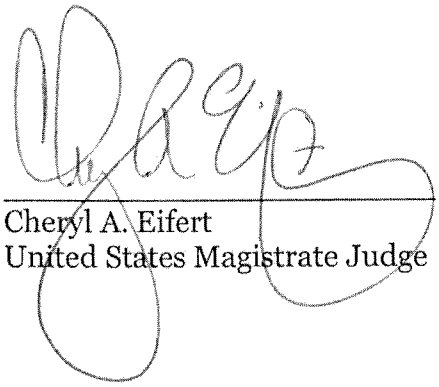
Notwithstanding the denial of the motion, the court recognizes that Plaintiffs have experienced significant difficulty in obtaining what they consider to be a complete and accurate production of documents from AMS. On the other hand, AMS takes the position that the vast majority of its production has fully complied with the requirements of prior court orders and it has responded promptly and reasonably when notified by Plaintiffs of issues with particular documents. In an effort to resolve the current concerns of Plaintiffs, the court **ORDERS** that suitable representatives of Plaintiffs and AMS meet within **fourteen (14) days** of the date of this Order, along with their technical support personnel and vendor personnel, to address and finally correct any outstanding concerns. Plaintiffs shall be prepared for the meeting by collecting samples of documents that reflect the nature and extent of the problems. In addition, AMS shall be prepared for the meeting by analyzing the specific issues raised in Plaintiffs' brief in support of production of the database.

On the issue of Plaintiffs' motion for sanctions, if after conducting the aforementioned meeting, Plaintiffs still contend that AMS has deliberately impeded the discovery process, then Plaintiffs may file a written motion for sanctions that sets forth with reasonable particularity the factual basis for sanctions. AMS shall be given an opportunity to respond, and the court shall conduct an evidentiary hearing on the motion at a time convenient for the parties.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2325 and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action

number 2:13-cv-08245. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at **http://www.wvsd.uscourts.gov**.

ENTERED: April 19, 2013.



Cheryl A. Eifert
United States Magistrate Judge