

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

CHARLESTON

IN RE: AVAULTA PELVIC SUPPORT SYSTEMS
PRODUCTS LIABILITY LITIGATION

MDL NO. 2187

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 16
(Discovery regarding Insurance Information)

Currently pending before the undersigned is a discovery dispute related to plaintiffs' demand that defendants produce certain insurance information beyond the insurance policies themselves. Defendants filed letter briefs in support of their positions, plaintiffs responded after defendants made their disclosures of the applicable insurance agreements under Rule 26(a)(1)(A)(iv) of the Federal Rules of Civil Procedure, and defendants replied. Those letters are attached hereto as Court's Exhibit A.

In their Rule 26(a) disclosures, defendants produced insurance policies indicating they have a self-insured retention up to certain amounts, depending upon the policy. In addition, defendants produced excess liability insurance policies, and defendant C.R. Bard, Inc. ("Bard") produced a Punitive Damages Excess Liability Policy. The coverage provided under each of the policies produced by defendants is "eroding" in that any amount paid out under the policies decreases the coverage available under

a particular policy. In addition, the excess policies held by defendant Bard and most of the policies held by defendants, Sofradim Production, SAS and Covidien, Inc. (the "Covidien defendants") provide that defense costs are included within coverage limits and that such costs will also erode the coverage limits or aggregate coverage (with some exceptions).

Because of the likelihood that some or all of the coverage provided under any potentially applicable policy may have been eroded, plaintiffs seek information about what coverage remains under the above-referenced policies. Defendants oppose this discovery on the grounds that it (1) contravenes the plain language of Rule 26(a)(1)(A)(iv) and applicable caselaw; (2) is not discoverable under Rule 26(b)(1); (3) is confidential; and (4) would be highly prejudicial and unduly burdensome without any countervailing benefit to plaintiffs.

The court has carefully considered the arguments of the parties, reviewed Rule 26(a)(1)(A)(iv) and the Advisory Committee's notes as well as the caselaw submitted by the parties, and conducted its own research and finds that the discovery which plaintiffs seek, the amount of insurance coverage remaining on the above-referenced policies, is not discoverable for the reasons outlined in the letter briefs filed by the defendants.

Accordingly, it is hereby **ORDERED** that plaintiffs' request for

additional information beyond the insurance agreements which have already been produced is **DENIED**.

The court **DIRECTS** the Clerk to file a copy of this Order in 2-10-md-2187, and it shall apply to each member Avaulta-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 2-11-cv-00501. 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 www.wvsd.uscourts.gov.

ENTER: August 2, 2011



Mary E. Stanley
United States Magistrate Judge