
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

C.R. BARD, INC., and BARD
PERIPHERAL VASCULAR, INC.,

Plaintiffs,

v.

MEDICAL COMPONENTS, INC.,

Defendant.

**ORDER DENYING DEFENDANT’S
MOTION TO REOPEN DISCOVERY
FOR A LIMITED TIME AND TO AMEND
SCHEDULING ORDER (DOC. NO. 446)**

Case No. 2:12-cv-00032-RJS-DAO

Judge Robert J. Shelby

Magistrate Judge Daphne A. Oberg

Before the court is Defendant Medical Components, Inc.’s (“MedComp”) Motion to Reopen Discovery for a Limited Time and to Amend Scheduling Order (Doc. No. 446). MedComp seeks to reopen fact discovery and extend deadlines. (*Id.*) MedComp claims there is good cause to amend the scheduling order because Plaintiffs C.R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively, “Bard”) failed to timely or completely respond to MedComp’s diligent requests for discovery. MedComp alleges Bard either waited until the end of the discovery deadline to make its productions or refused to respond, forcing MedComp to file motions to compel. (*Id.* at 1.) For example, MedComp contends Bard produced more than a thousand pages of documents near, or after, the discovery deadline, which prevented MedComp from reviewing the documents and questioning Bard witnesses about them before the close of discovery. (Doc. No. 485, at 4.)

Bard opposes MedComp’s motion, arguing MedComp has not satisfied the standards for amending a scheduling order, has disregarded the current scheduling order, and continues to seek discovery despite having received a “staggering amount.” (Doc. No. 474, at 1–3.) Moreover, Bard asserts it timely responded to MedComp’s discovery requests, but the problem arises

because MedComp made the requests at the end of fact discovery. (*Id.* at 7.)

LEGAL STANDARD

The court has “broad discretion” in deciding discovery and scheduling matters. *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1310 (10th Cir. 2010). Under the federal rules, a scheduling order “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4); *see also* Fed. R. Civ. P. 6(b)(1)(A) (“When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.”). When a motion for extension is made after the deadline has passed, the court must also determine “if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). Good cause “requires the moving party to show the deadline ‘cannot be met despite the movant’s diligent efforts.’” *Utah Republican Party v. Herbert*, 678 F. App’x 697, 701 (10th Cir. 2017) (unpublished) (quoting *Gorsuch, Ltd., B.C. v. Wells Fargo Nat’l Bank Ass’n*, 771 F.3d 1230, 1240 (10th Cir. 2014)). “Excusable neglect requires ‘some showing of good faith on the part of the party seeking the enlargement and some reasonable basis for noncompliance within the time specified.’” *Id.* at 700 (quoting *Broitman v. Kirkland (In re Kirkland)*, 86 F.3d 172, 175 (10th Cir. 1996)).

ANALYSIS

MedComp bases its motion on the assertions that Bard failed to produce discovery which MedComp sought to compel and that Bard produced much discovery at the last minute. MedComp proposes a discovery plan which includes its additional discovery requests, tying all but one to MedComp’s motions to compel. (Doc. No. 446-2.) However, MedComp’s motions to compel do not give good cause to reopen discovery. A majority of these motions were denied in

full or part. For any motion granted in full or part, the court specified the scope and allowance of the limited area of discovery. In other words, MedComp's requests are largely mooted or were otherwise addressed in other orders in this case. Nonetheless, MedComp's specific requests are addressed below.

First, MedComp contends it needs to continue the Rule 30(b)(6) depositions of Matt Draper and Annemarie Boswell regarding documents improperly clawed back, citing its motions to compel at docket numbers 231 and 249. (Doc. No. 446-2, at 1.) However, the court denied MedComp's motion at docket number 249, which sought production of a clawed-back document relating to a meeting about which Mr. Draper testified. (Doc. No. 454.) The court granted MedComp's motion at docket number 231, requiring production of a clawed-back, twelve-page document with a single bullet-point redaction. (Doc. No. 455; Doc. No. 279, at 49.) However, with respect to the motion at docket number 231 there is no mention of Matt Draper or Annemarie Boswell in the underlying discovery motion, the hearing transcript, or the motion to reopen discovery. Because MedComp does not establish why the requested Rule 30(b)(6) deposition testimony is needed as to this single document, there is not good cause to reopen discovery on these grounds.

Next, MedComp argues it needs a continued Rule 30(b)(6) deposition regarding Topic 5. It seeks one hour of deposition time, citing its motion to compel at docket number 392. (Doc. No. 446-2, at 1.) The court granted in part and denied in part that motion, ordering Bard to supplement its response to Interrogatory 23. (*See* Doc. No. 650). In a later order regarding Topic 5, the court granted MedComp recoupment of one hour of deposition time regarding Figures 52A and 52B. (*See* Doc. No. 653.) As a practical matter, this means MedComp has already received more than it requested in its proposed discovery plan. Not only did the court

grant MedComp an hour of continued Rule 30(b)(6) deposition time, it permitted recoupment of that time from the original Rule 30(b)(6) deposition. Because of this, there is no good cause to reopen discovery on this issue.

Third, MedComp seeks additional Rule 30(b)(6) deposition testimony regarding Topics 9, 14, 15, 17, 18, and 19. (Doc. 466-2, at 1–2.) In support, MedComp cites its motions at docket numbers 372, 375, 379, 382, and 388. (*Id.*) However, the court denied MedComp’s motions at docket numbers 372 and 382. (*See* Doc. Nos. 526 & 624.) Likewise, MedComp’s motion at docket number 375 was denied as moot after the parties stipulated that a supplemental interrogatory response by Bard resolved the issue. (Doc. No. 633.) Based on the resolution of these motions, there is not good cause to reopen discovery.

Although the court granted in part and denied in part MedComp’s motions at docket numbers 379 and 388, this does not warrant additional Rule 30(b)(6) deposition testimony. With regard to MedComp’s motion at docket number 379, the only relief granted was the requirement that Bard affirmatively state whether its responses to MedComp’s Requests for Production 41, 41, and 43 were complete and final. (Doc. No. 660.) The court also ordered Bard to produce any outstanding documents responsive to these requests for proposals, recognizing Bard’s assertion that it had already done so. (*Id.*) Based on the limited relief granted in the order on docket number 379, there is not good cause to reopen fact discovery. As to MedComp’s motion at docket number 388, the court granted MedComp’s motion only as to the remaining fifty-three documents underlying a valuation report by PricewaterhouseCoopers (“PwC”) not already produced, but denied MedComp’s request for an additional Rule 30(b)(6) deposition as untimely.¹ (*See* Doc. No. 547, at 3–4.) The production of an additional fifty-three documents of

¹ While the denial was without prejudice, MedComp has not provided any additional information

only “conceivabl[e] relevan[ce]” to MedComp does not warrant reopening discovery to permit an otherwise untimely deposition. (*See id.* at 2.)

The fourth category of discovery MedComp seeks is a subpoena for documents and testimony of Mark Criddle. (Doc. No. 446-2, at 2.) However, the court has already granted this relief in a separate order. (Doc. No. 650.) Specifically, the court found MedComp was entitled to serve Mr. Criddle with a subpoena for documents and/or testimony regarding Figures 52A and 52B. (*Id.*) Because the court has already granted MedComp the relief it seeks, there is not good cause to reopen fact discovery based on this topic.

Fifth, MedComp seeks to reopen discovery to enforce further subpoena production from PwC and issue a subpoena for Rule 30(b)(6) deposition testimony regarding the valuation and transfer price analysis it performed. (Doc. No. 446-2, at 2.) MedComp suggests this discovery is necessary because Bard belatedly produced documents related to intercompany sales and transfer pricing. MedComp filed a motion to compel on January 12, 2021, seeking production of documents and Rule 30(b)(6) testimony from Bard relating to Bard’s transfer pricing and intercompany sales. (Doc. No. 326.) MedComp alleged Bard first produced documents related to this issue in January 2021, but should have produced them in response to earlier requests for production. (*Id.*) The court granted MedComp’s motion and ordered Bard to produce all responsive documents, recognizing Bard’s assertion that it had already done so, and permitted MedComp to continue its Rule 30(b)(6) deposition as to this topic. (*See* Doc. No. 478.) On January 15, 2021, MedComp served a subpoena on PwC, seeking document production. (Doc. 485, at 5; Doc. 474-2.) MedComp suggests it now seeks additional discovery from PwC as normal follow-up to this document production. (Doc. 485, at 5–6.) However, MedComp does

establishing its notice of deposition was timely. (*See* Doc. No. 547, at 3–4.)

not contend PwC failed to respond to its original subpoena, nor does it explain why a Rule 30(b)(6) witness from PwC is needed now but not when MedComp served the original subpoena in January 2021. Further, the court has already granted MedComp a continued Rule 30(b)(6) deposition on this topic, albeit from Bard. (*See* Doc. No. 478.) MedComp has not made clear what information it needs from PwC that it could not get from Bard, especially where MedComp contends it only sought documents from PwC due to Bard’s refusal to produce them. (*See* Doc. No. 485, at 5.)

Lastly, MedComp seeks to reopen testimony to enforce subpoena production and Rule 30(b)(6) testimony from Becton, Dickinson and Company (“BD”) and cites its motion at docket number 383 to support this request. (Doc. No. 446-2, at 3.) The court granted in part and denied in part that motion, ordering BD to produce the remaining documents underlying its valuation report, to the extent they were not already produced. (Doc. No. 548.) However, the court denied MedComp’s request for a Rule 30(b)(6) witness as untimely.² (*Id.* at 3–4.) The production of an additional fifty-three documents of only “conceivabl[e] relevan[ce]” to MedComp does not warrant reopening discovery to permit an otherwise untimely deposition.

Similarly, MedComp’s argument that Bard produced “a flurry of late productions” fails to warrant reopening discovery. (Doc. No. 485, at 4.) The parties characterize differently what was produced toward the end of discovery—more than a thousand pages or approximately twenty documents. (Doc. No. 485, at 4 n.3; Doc. No. 474, at 6.) However, a review of the discovery responses MedComp contends were untimely establishes Bard did not strategically wait until the end of discovery to respond. Indeed, MedComp propounded all but two of the

² While the denial was without prejudice, MedComp has not provided any additional information establishing its notice of deposition was timely. (*See* Doc. No. 548, at 3–4.)

discovery topics in December 2020 or later, just a month before the previous fact-discovery deadline of January 7, 2021.³ (Doc. No. 446-3.) Bard timely responded to the discovery requests, and these responses were followed up by various emails and meetings and conferrals. (*Id.*) It is to be expected that discovery responses in a case like this will require discussion and clarification. This does not reflect gamesmanship.

The only areas of discovery MedComp states it requested earlier than December 2020 relate to Bard's customer level sales, as noted in MedComp's motion to compel at docket number 375. (*See* Doc. No. 446-3, at 2.) However, that motion was mooted by Bard's stipulation that it is not claiming damages based on lost profits or price erosion from sales outside the United States. (Doc. No. 633.) MedComp suffered no harm from not receiving documents pertaining to these damages.

Lastly, MedComp cites generally to the COVID-19 pandemic to establish good cause. The court has granted extensions to account for genuine litigation difficulties traceable to the pandemic. But MedComp provides no specific reason the COVID-19 pandemic warrants extension in this instance. Accordingly, there is no good cause to reopen discovery.

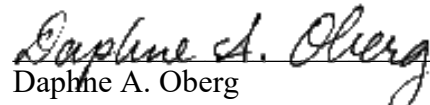
³ The court subsequently granted MedComp's motion to amend the scheduling order and extended the fact discovery deadline from January 7, 2021 to February 8, 2021. (Doc. No. 313.)

CONCLUSION

MedComp's motion is DENIED. The court has previously addressed and allowed specific, additional discovery in its orders on various motions to compel. MedComp has not shown good cause to reopen discovery more broadly.

DATED this 2nd day of June, 2021.

BY THE COURT:


Daphne A. Oberg
United States Magistrate Judge