

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOSEPH R. SLIGHTS, III
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Re: *E.I. DuPont de Nemours & Co. v. Medtronic Vascular, Inc.*
C.A. No. N10C-09-058 JRS CCLD
Upon Consideration of DuPont's Motion to Compel Rule 30(b)(6)
Deposition and Production of Documents. GRANTED.

Dear Counsel:

Please allow this letter to serve as the Court's decision regarding plaintiff, E.I. duPont de Nemours & Co.'s ("DuPont"), motion to compel defendant, Medtronic Vascular, Inc. ("Medtronic"), to provide a witness in response to DuPont's Rule 30(b)(6) notice, topic 39, which seeks information relating to "[a]ll medical device

manufacturers to whom you sold any Product, as defined in the PACRA, including but not limited to [Abbott Laboratories] (“Abbott”)” DuPont also seeks an order compelling Medtronic to respond to its requests for production of documents, numbers 67-72. Medtronic has objected to these discovery requests on the grounds that: (1) they are not timely; and (2) DuPont can obtain the information directly from the medical device manufacturers (including Abbott) who are the subject of the discovery requests. In supplemental submissions, Medtronic also argues that the requests seek information that is not reasonably calculated to lead to the discovery of admissible evidence.

After carefully reviewing the parties’ submissions, the Court is satisfied that DuPont’s motion should be granted. First, during the course of the most recent hearing on discovery motions, the Court determined that it was appropriate to amend the Trial Scheduling Order. The Court did so with the expectation that some additional (albeit brief) time for discovery would be permitted. Accordingly, Medtronic’s objections regarding the timing of DuPont’s discovery requests are no longer valid. Medtronic’s argument that these requests are improper because DuPont can obtain the information directly from third parties also misses the mark. DuPont is entitled to discover what information Medtronic may possess regarding sales to medical device manufacturers that may be royalty bearing under the PACRA. The

fact that some or all of this information may also be available from the medical device manufacturers does not diminish DuPont's right to obtain this discovery from its party opponent.¹

Finally, the Court rejects Medtronic's argument that the requested discovery is not reasonably calculated to lead to the discovery of admissible evidence.² Specifically, the Court rejects that notion that simply because DuPont did not expressly identify sales to Abbott in its complaint renders any evidence regarding sales to Abbott irrelevant. DuPont has alleged that Medtronic breached the PACRA by not paying royalties thereunder based on Medtronic's sale of "Products" as defined in the PACRA.³ DuPont alleges that Medtronic sales to Abbott implicate the royalty provisions of the PACRA. Whether *vel non* DuPont will prevail on this point remains to be seen, either on Medtronic's motion for summary judgment or at trial. For now, in accordance with the requisite liberal and broad construction of this Court's rules of civil discovery, the Court must grant DuPont the opportunity to pursue discovery

¹ See *Ginsburg v. Phil. Stock Exch., Inc.*, 2007 WL 1703421, at *2 (Del. Ch. May 30, 2007) ("[T]he fact that plaintiff might have sought to obtain this data from a third party does not obviate defendants' duty to honor the discovery request."); *Cede & Co. v. Penn Eng'g & Mfg. Corp.*, 2007 WL 7076659, at *1 (Del. Ch. July 17, 2007) ("Nothing in our law requires petitioner to chase down this information from third part[ies], especially when [respondent] is the logical source of the information.").

² See *Hoechst Celanese Corp. v. Nat'l Union Fire Ins. Co.*, 623 A.2d 1099, 1105 (Del. Super. 1991).

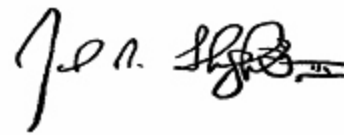
³ See *e.g.* Dupont Complaint, at ¶¶ 31-32, 38-41.

of this information.⁴

Based on the foregoing, DuPont's motion to compel a Medtronic witness to appear for deposition to address item 39 of its Rule 30(b)(6) notice, and responses to numbers 67-72 of its request for production of documents, is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. R. Slights, III". The signature is written in a cursive, somewhat stylized font.

Judge Joseph R. Slights, III

⁴ See *Nat. Union Fire Ins. Co. of Pitts. v. Stauffer Chem. Co.*, 1990 WL 177572, at *3 (Del. Super. Nov. 9, 1990) (“[I]t is not too strong to say that a request for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action.”) (citing C. WRIGHT A. MILLER, *FEDERAL PRACTICE AND PROCEDURE: CIVIL* § 2008 at 45-47 (1970)).