

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

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the Clerk's Office at Charleston on
JAN 19 2016
TERESA L. DEPPNER, CLE.AK
U.S. District Court
Southern District of West Virginia

TERESA L. STEVENS,
Plaintiff

v.

CIVIL ACTION NO. 2:16-cv-0265

BOSTON SCIENTIFIC CORPORATION, EMAI
PLASTIC RAW MATERIAL CO, LTD.,
PROXY BIOMEDICAL LIMITED, AND
LUXILON INDUSTRIES NV,
Defendants.

PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION AND REQUEST FOR EXPEDITED
HEARING ON PRELIMINARY INJUNCTION

Plaintiff, Teresa Stevens, respectfully files this her *Plaintiff's Reply In Support of Plaintiff's Motion for Preliminary Injunction and Request for Expedited Hearing on Preliminary Injunction*.

I. Overview

Ms. Stephens filed (under seal) a motion, supported almost entirely by Boston Scientific Corporation's ("BSC's") own internal documents, alleging that:

- The true maker of Marlex, Phillips/Sumika from La Porte, Texas, cut off BSC from its mesh resin, and BSC ran precariously low in 2011;
- BSC's own documents reveal BSC's failure to use Phillips / Sumika Marlex would jeopardize its ability to continue marketing mesh and making approximately \$120,000,000 every year;
- BSC determined that using an alternate plastic to make its mesh would likely require FDA approval;
- Desperate for Marlex, BSC traveled all the way to China to buy counterfeit "Marlex" made from a company, EMAI, already known to BSC as a confirmed counterfeiter;
- BSC illegally smuggled the counterfeit "Marlex" out of China and into the United States through an "overbagging" procedure;

- BSC transported the counterfeit Marlex in four separate shipments to reduce the chances of getting caught;
- BSC is currently using this counterfeit, smuggled, Chinese "Marlex" to make adulterated mesh products, including the mesh inserted into Teresa Stevens; and
- BSC is selling these adulterated mesh products with the intention of permanently implanting them into women causing them economic harm and personal injury.

BSC's response to these allegations-which Ms. Stephens supported with BSC's own documents-is not a denial. Instead, BSC asks for more time, complains about notice, complains Ms. Stephens used BSC's documents to prove her case, and complains that the allegations are so detailed that the combined Motion for Temporary Restraining Order and Preliminary Injunction violates a local rule. Nowhere-nowhere-does BSC even once refute the allegations.¹ BSC can't. The uncontested fact is that BSC's counterfeit, adulterated, Chinese products are being implanted into women at the rate of about two hundred women every work day. Respectfully, an expedited hearing on the preliminary injunction will address both parties' concerns-Plaintiff can move as urgently as possible to stop the further distribution of BSC's counterfeit, adulterated mesh, and BSC can have the forum to disprove the allegations based on their very own documents they improperly marked confidential.

II. Analysis

1. There was no "ambush" here.

BSC's first evasion of the facts has them wandering into a discussion about how Plaintiff's counsel "ambushed" BSC with the combined motion. The emails and phone calls between counsel in the days leading up to the filing require a much different conclusion. The undersigned sent a litany of emails to opposing counsel during the week of January 4th and January 11th, 2016. The

¹ Why not just say, at least in a footnote, that all this BSC mesh is indeed *not* from China? That this BSC mesh was *not* bought from a Chinese counterfeiter BSC already confirmed as a counterfeiter? That this BSC mesh was *not* "overbagged" to avoid customs? BSC can't, which, respectfully, begets the urgency in Plaintiff's request for Court intervention.

emails specifically referenced seeking a TRO (in California) *See January 10, 2016 and January 11, 2016 Emails from the Undersigned to Opposing Counsel*, attached as *Exhibit 1*. The emails discuss at substantial length the smuggling and counterfeit operations of the defendant. The emails describe the harm caused to the plaintiff and numerous women across America. The emails identify BSC documents (by Bates Number, no less) that openly discuss the counterfeit goods and BSC's plans to smuggle them out of China. The emails specifically ask BSC to stop selling its mesh products. *See January 7, 2016 and January 12, 2016 Emails from the Undersigned to Opposing Counsel*, attached as *Exhibits 2 and 3*. These are just a few of the many emails sent by the undersigned to BSC's counsel.

In addition, on January 8 and 12, 2016, Plaintiff's counsel had two phone calls with counsel who represented herself as being the lawyer for BSC. The memory of Plaintiff's counsel is that the subject of a TRO was discussed on the calls. However, rather than burden the Court with a dispute regarding the content of two verbal conversations, Plaintiff refiled the TRO with a corrected certificate of conference and elected to ask the Court to hold an expedited hearing on the temporary injunction to keep more women from being injured by BSC.² That way, BSC can file its response, and Plaintiff can present her evidence-all in open court. Regardless, Plaintiff's counsel repeatedly emailed and called BSC's counsel discussing not only BSC's counterfeit, smuggled, Chinese mesh, but the need to immediately stop selling it through, if necessary, injunctive relief. If this was an "ambush" by Plaintiff's counsel, it was the worst ambush in the history of litigation.

² Besides, the temporary restraining order would only have lasted fourteen days, then BSC's Chinese mesh would once again flow unfettered.

2. *BSC already has the complaint and motion, already knows its own documents, and should be all ready to defend against its own, secret documents.*

BSC's next evasion of the facts finds them claiming, somehow, both it and the "public" will be "prejudiced" if forced to answer these allegations on short order. First, it strains credulity for BSC to suggest the public will be somehow helped if BSC is given more time to sell more counterfeit products to more women while BSC re-reviews its own, internal documents. Some cases are based upon evidence that comes from third parties, from sources other than the defendant. Here, BSC's own documents convict it. It is remarkable that BSC—who concealed thousands of internal documents through bad-faith designations—now seeks to "protect" the very public it hides from. If BSC truly wants to protect the public, then why join Plaintiffs request to release all these improperly concealed documents and hold a public hearing? Regardless, Plaintiff joins BSC's desire not to prejudice the public, and assumes this includes releasing these documents so relevant to the counterfeit, Chinese mesh currently used by this public, and having an open, public hearing so the public isn't "prejudiced" any further.

Second, upon discovering the proof of the counterfeit, adulterated "Marlex" the plaintiff felt an urgent obligation to alert BSC to its own wrongdoing. A company that claims the health of women is its number one priority should desire no less. BSC refused to take do anything about it, so Plaintiff alerted this Honorable Court. Since Plaintiff alerted BSC, more than a thousand women have been harmed by BSC's counterfeit, adulterated mesh. Permanently. Plaintiff s counsel asked BSC, repeatedly, both prior to and after the filing of the TRO, to provide all documents, or even some documents, that show where the detailed allegations in the complaint and motion are in error. BSC refused. Now, BSC asks for more time to study its own documents—despite having litigated, and tried, these cases for years (and read the undersigned's emails for days and days).

Third, and finally, Plaintiff's counsel emailed both the complaint and the injunctive motion immediately after it was filed. BSC's request for more delay because "the questions raised are so serious, substantial, and difficult," misses the mark. BSC feels the analysis is all about BSC's business and lawyers' "difficult" briefing schedules. This isn't about business or lawyer's schedules. This is about the imminent *risk to women's health* that is so serious, substantial, and difficult—a risk that, every day, becomes a real injury to two hundred more women. Respectfully, such serious risk compels an expedited consideration.

3. *Plaintiff does not ask this Court to limit all mesh—just BSC's counterfeit mesh smuggled in from China.*

BSC's next evasion of the facts leads it to suggest the slipperiest of slippery slopes: "...transvaginal mesh remains an integral part of the standard of care within the medical community...The Court should not entertain limiting public access to such vitally important medical devices..." *Defendant Boston Scientific Corporation's Opposition to Plaintiff's Motion for Expedited Hearing on Preliminary Injunction and Request to Shorten Time for Any Opposition* [Dkt. No. 24] ("*BSC's Opposition*"), at p.4. Plaintiff's motion seeks not to take all mesh off the market—only BSC's counterfeit, smuggled, Chinese mesh. Women across this country, for better or worse, can still turn to BSC's competitors for mesh.

BSC's suggestion the U.S. Food and Drug Administration ("FDA") should slow this Court's consideration of these urgent issues is, respectfully, irrelevant to this Court's analysis. Indeed, federal courts issue injunctions not only preventing the sale of medical devices, but even matters relevant to the 510(k) process. *River's Edge Pharms., LLC v. Gorbec Pharm. Servs.*, 2011 U.S. Dist. LEXIS 29486, *9, 2011 WL 1097810 (M.D.N.C. Mar. 22, 2011). Sure, requests for preliminary injunctions are serious requests—but the risks to women each and every day from counterfeit mesh are serious, too. More serious. Preliminary injunctions "protect the status quo

and prevent irreparable harm during the pendency of a lawsuit" that "preserve[s] the court's ability to render a meaningful judgment on the merits of the case." *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 525 (4th Cir. 2003). Tomorrow, and each work day after that, two hundred women will receive, permanently, BSC counterfeit, smuggled mesh permanently implanted into the most intimate parts of their bodies. Plaintiff herself remains at risk for future surgeries including the risk of BSC mesh. The status quo to protect is the health of Plaintiff and these women (and their freedom from BSC's counterfeit, smuggled, Chinese mesh)-not BSC's lucrative mesh market or their attorney's briefing convenience. Besides, if all these women desire mesh, there are plenty of BSC's competitors who did not buy their mesh from a known counterfeiter in China. Transvaginal mesh surgeries, for better or worse, will proceed just fine without BSC's counterfeit, smuggled, Chinese mesh.

4. *Plaintiffs protected Defendant's "confidentiality."*

BSC next wanders into a factually evasive discussion about confidentiality that has nothing at all to do with the need for an expedited hearing on the preliminary injunction. First, BSC quotes PTO #11 and its provision that sets out a procedure if "any party or attorney wishes to file, or use as an exhibit or as testimonial evidence at a hearing or trial, any CONFIDENTIAL or HIGHLY CONFIDENTIAL material..." *BSC 's Opposition*, at p.5 (emphasis in original). First, BSC literally stamped virtually everything "confidential" in violation of the very PTO #11 it now embraces. However, that is the subject of a separate motion. Second, and more pertinent to this irrelevant discussion BSC raises to avoid facing the facts, Plaintiff complied with PTO #11 (despite BSC violating it). Specifically, the undersigned physically delivered, to the district clerk, these (improperly designated) confidential documents under seal. Plaintiff complied with the very provision cited by BSC in its opposition.

But setting aside Plaintiff's compliance with PTO #11, BSC specifically *told* the undersigned to use these documents in all actions including cases like Stevens-not just the MDL. Plaintiff's counsel and BSC's counsel had a conference call (one of many) where BSC instructed the undersigned that these documents should be used for all actions. No matter where Plaintiff's counsel would file these cases--here, California, Massachusetts, or anywhere--BSC's counsel advised it would produce these documents. Indeed, well before BSC crafted its new position that these documents are restricted to this MDL, both BSC and Plaintiff's counsel were already using them in California and discussing their use in all matters mesh. So, when BSC changed its mind about confidentiality and restriction of these documents to the MDL, the undersigned sent an email in response to BSC's counsel's new-fangled MDL restriction:

As far as your objection regarding the use of our documents in the Steven [sic] matter this contradicts our prior conversation that the Mdl document would be the documents to use in other mesh matters including the one in the California . Is your position that we should have you produce the same documents in this matter, that is absurd and violates the spirit of our conversation and your request that we use these documents in other litigation like California. I look forward to your timely response by 5 today.

See January 14, 2016 Email from Steve Mostyn, attached as Exhibit 4 (emphasis added). Notably, BSC's counsel never contradicted this email, nor the fact the conversation took place. BSC itself instructed the undersigned to use these documents in other litigation like this case and the California cases. BSC cannot now impugn the Plaintiff or her counsel for following its own instruction--that these documents were "the documents to use in other mesh matters" just like this case.

5. *Plaintiff complied with the local rules.*

Plaintiff and her counsel recognize the need to comply with this Honorable Court's local rules, and, respectfully, they did so here. First, BSC describes Plaintiff's motion as a single,

conflated instrument: "Plaintiff's motion for injunctive relief. ." *BSC's Opposition*, at p.6. It's intentional on BSC's part because, in fact, Plaintiff's motion was actually two motions in a single instrument—both a motion for temporary restraining order and a motion for preliminary injunction. See *Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction* [Dkt No. 4]. Local Rule 7.1(a)(2)(18) specifically says "[a] memorandum of not more than 20 pages in length must accompany the following types of motions: ...(18) for injunctive relief or for a temporary restraining order..." L.R. 7.1(a)(2) (emphasis added). Certainly, had Plaintiff filed her request for temporary restraining order first, then later filed her request for a preliminary injunction, Local Rule 7.1(a)(2) would *require* her to file separate memorandums of up to twenty pages each. *Id.* Rather than file two separate instruments, Plaintiff merely combined both motions into a single instrument; and, more pertinent to BSC's dilatory desire to "strike" the motion for page length, the combined length of both motions falls below the twenty-page limit for both motions. Plaintiff's combined motion is merely thirty-five pages, with twenty-seven pages devoted to facts. If BSC sincerely believes "the more deliberate investigation and determination contemplated by the Federal Rules is critically important," then BSC surely can appreciate the need for Plaintiff to fully lay out the facts so that such "deliberate investigation and determination" can come to fruition. Respectfully, Plaintiff complied with Local Rule 7.1 and striking the combined motion would run counter that rule and the serious deliberation BSC demands.

III. **Conclusion**

Plaintiff filed a combined motion for temporary restraining order and preliminary injunction detailing facts that support entry of injunctive relief to protect the Plaintiff and other women. BSC, so anxious to find vindication "on the merits," meanders around irrelevant points about a fanciful "ambush," confidentiality, and a mis-reading of the local rules. Nowhere in BSC's response does

it identify any specific prejudice that would occasion it were this Court to give it what it feigns to want-a chance to prove these allegations wrong. For a litigant so desirous of getting to court and responding to the Plaintiff's allegations, BSC sure races down rabbit trail after rabbit trail to avoid ever getting there. BSC's desire to delay has everything to do with BSC's mesh sales, and nothing to do with women's health. Today, another two hundred women received BSC's counterfeit, Chinese mesh permanently into their bodies. Plaintiff's sense of urgency about this travesty for women's health is not a "publicity stunt" as BSC mocks. It is a devastating fact BSC can't refute, and Plaintiff can't avoid.

DATED: January 19, 2016

THE MOSTYN LAW FIRM

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to all counsel of record on this 19th day of January, 2016, in accordance with the Federal Rules of Civil Procedure.

J. Steve Mostyn
J. Steve Mostyn

From: Steve Mostyn [mailto:jsmostyn@mostynlaw.com]
Sent: Tuesday, January 12, 2016 10:18 AM
To: Weiler, Eva (SHB)
Cc: Mike Hull; Mukherjee, Chrissta (SHB); Caroline L. Maida; aimee.wagstaff@andruswagstaff.com
Subject: Re: Need Photos Today

Call my cell then at 713 882 1303

On Jan 12, 2016, at 11:06 AM, Weiler, Eva (SHB) <EWEILER@shb.com> wrote:

Steve: No need to come to my office, I won't likely be handling our discussion from there. I also need to push back the call by an hour. Can we talk at 11:30 a.m. PT/1:30 p.m. CT?

Thanks,

Eva

From: Steve Mostyn [mailto:jsmostyn@mostynlaw.com]
Sent: Monday, January 11, 2016 3:01 PM
To: Weiler, Eva (SHB)
Cc: Mike Hull; Mukherjee, Chrissta (SHB); Caroline L. Maida; aimee.wagstaff@andruswagstaff.com
Subject: Re: Need Photos Today

You want me to just come by your office ?

On Mon, Jan 11, 2016 at 2:56 PM -0800, "Steve Mostyn" <jsmostyn@mostynlaw.com> wrote:

That works in the meantime you have any documents you wish for me to consider regarding the evidence you says says disproves my allegations. I am here

On Jan 11, 2016, at 4:35 PM, Weiler, Eva (SHB) <EWEILER@shb.com> wrote:

Steve: How about tomorrow at 10:30 a.m. PT? I have other times slots if that one doesn't work for you.

Eva

EXHIBIT

From: Steve Mostyn [mailto:jsmostyn@mostynlaw.com]
Sent: Monday, January 11, 2016 11:12 AM
To: caroline L. Maida
Cc: Weiler, Eva (SHB); Mukherjee, Chrissta (SHB); Mike Hull;
aimee.wagstaff@andruswagstaff.com
Subject: Re: Need Photos Today

Chrissta, We need these color photos set forth below if we do not have them today we will file a motion tomorrow in the Mdl seeking these documents and asking for costs.

I know you are at the office and sending things like down graded privilege documents we need these two photos in color.

Eva I ask need to confer with you on a class action with TRO to be filed in California under the consumer protection laws in California.

On Jan 10, 2016, at 4:42 PM, Steve Mostyn <jsmostyn@mostynlaw.com> wrote:

And Eva maybe an explanation about what this is? Who printed these smuggling instruments? And have any of these people recently packed a bag and disappeared after you spoke with them? My point is should you be alerting them because they may flee before law enforcement can speak with them.

On Jan 10, 2016, at 3:29 PM, Caroline L. Maida <clmaida@mostynlaw.com> wrote:

Eva/Chrissta,

As Mr. Mostyn's previous emails have stated, the production we're wading through is in an unusable format and nearly impossible to locate certain documents (if they were even produced). Bates label BSCM1350000971 references that shipment paperwork for the first 2,000 kilos as well as pictures of the resin in the original and overbags are attached to the email. We need these attachments (photos in color) today. Thank you.

Sincerely,

Caroline L. Maida | *Attorney*

<imageOOI.jpg> 3810 W. Alabama Street, Houston,
Texas 77027

Office 713.714.0000 | Fax
713.714.1111
caroline@mostynlaw.com
mostynlaw.com | 1.800.400.4000

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Mail Gate made the following annotations on Mon Jan 11 2016
15:35:17

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Mail Gate made the following annotations on Tue Jan 12 2016 10:06:24

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From: "Weiler, Eva (SHB)" <EWEILER@shb.com>
Date: January 7, 2016 at 11:12:25 PM CST
To: Steve Mostyn ≤jsmostyn@mostynlaw.com>, "Mukherjee, Chrissta (SHB)"
<CMUKHBRJEE@shb.com>
Cc: Mike Hull <mhull@hbm-llp.com>
Subject: RE: Chinese Counterfeit Marlex Resin Motion Need to Confer

I can talk with you tomorrow afternoon. I have calls all morning.

From: Steve Mostyn [mailto:jsmostyn@mostynlaw.com]
Sent: Thursday, January 7, 2016 8:24 PM
To: Mukherjee, Chrissta (SHB); Weiler, Eva (SHB)
Cc: Mike Hull
Subject: Re: Chinese Counterfeit Marlex Resin Motion Need to Confer

I am starting to get the feeling you guys don't like me anymore. According to my rough numbers approximately 225 women will receive a mesh implant with a BSC resin that was most likely manufactured in China or brought in from North Korea, as one of your division heads has stated "God only knows what grade it is"

Let's agree to not let this happen tomorrow.

On Thu, Jan 7, 2016 at 3:12 PM -0800, "Steve Mostyn"
≤jsmostyn@mostynlaw.com> wrote:

Sorry spell check got me on this iPad Left the e off the Chinese

On Thu, Jan 7, 2016 at 3:08 PM -0800, "Steve Mostyn"
≤jsmostyn@mostynlaw.com> wrote:

I need to speak with someone tomorrow about a motion we currently plan on filing on Monday regarding the current sale of all mesh products made from this resin, which we contend was smuggled out of China and bought from a company known to BSC to be a dealer of counterfeit resin. That company is Emi aka Emai. We contend the resin was illegally smuggled out of China by BSC using false documents which falsely indicated it was manufactured in China.

I also need to confer on the previous email I sent about the wholesale marking of all documents as confidential.

EXHIBIT

We also request that the non redacted documents that we are owed that were previously marked privileged be transferred to using our dashboard or the previous ftp site you have used, which either is easiest.

Your prompt response is appreciated. Have a nice day.

Mail Gate made the following annotations on Thu Jan 07 2016 23:12:25

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From: Steve Mostyn [mailto:jsmostyn@mostynlaw.com]
Sent: Tuesday, January 12, 2016 7:43 AM
To: EWEILER@shb.com; Chrissta Mukherjee; aimee.wagstaff@andruswagstaff.com
Cc: TVMLit; Amber Anderson Mostyn
Subject: Medical device makers worse than tobacco

Eva and Chrissta and Mr. Timothy A. Pratt, (care of the lawyers he is hiding behind), I have a story to tell. When I was a young boy I lived for relatively short time in a town called Huffman Texas. We moved there after returning from overseas with my father who had drilled wells all over the world wanting to return to Texas. He decided on Huffman, being relatively close to Houston but still in the country. It turns out that Huffman is about 15 miles from the Chevron/Phillips plant in La Porte Texas, until last week I had never put all that together. I recalled it clearly, my family frequently shopped at the Baytown Mall just a mile from that very Chevron plant. Then I realized that the first time I saw polypropylene made by Chevron in La Porte Texas almost 40 years ago.

It clicked. I have been to that plant several times touring the offices, playing in their halls with my best friend telling me that it was NOT the plant his dad managed that smelt, the smell, we smelt, was the plant down the road. The plant his dad managed made plastics. It now turns out it was Marlex. I never put it together until I saw the picture of the Marlex bags. I have seen those pellets, in the trunk, in my father's car when I was a child, I remember asking him if they were dangerous? He said as long as you don't eat them. He never imagined that someone would put them inside another person's body. He was the executive officer over that plant, I reconnected with my old long time friend from my childhood and it all came shockingly together.

In 2004 Chevron TOLD your client (Boston Scientific fittingly referred to as BS through out this correspondence) about the first and conclusive molecular study done in Italy that showed polypropylene mesh degrades in the body the study was massive in scope and clear. They even gave BS the study. Chevron told your client they would not renew the contract to sell them Marlex in 2005. Chevron strongly and repeatedly warned your client not to use that product, in addition, going as far as to specifically put a warning on the MSDS label "not for permanent use in the human body" because it degrades over time. Your client was angry they insisted going as far as to threaten litigation but Chevron, knew this was a "ticking time bomb" and they would not budge. Then in 2011 your company tried again; Chevron once again refused saying they would not sell it to you at "ANY PRICE" and we all now know that led you to Guangzhou. The counterfeiting Capitol of the world [http://appvl.linktv.org/videos/genuine-pride-for-knockoff-goods-in-guangzhou:](http://appvl.linktv.org/videos/genuine-pride-for-knockoff-goods-in-guangzhou)

Interestingly, your firm in a move, that in tactics, should be praised took the depo of an employee at Chevron, picking a person who knew nothing about the Marlex war with BSC or studies of polypropylene, so they could hopefully bury that line of inquiry. Yes they had learned well in defending Tobacco these tactics.

The good and bad thing is that the arch of justice does finally bend but why, **somem**

it take so damn long? Like tobacco your client buried the studies given to them by Chevron and others going further BS actively tried to manipulate other studies. BS knowingly gave false information to the FDA about the MSDS warning and put forth the "rabbit study" a disgraceful "study" where mesh was put in one male rabbits belly for a short period of time with BS declaring mission accomplished. BS specifically withheld known scientific conclusive studies and actively deceived the FDA inquiries every time BSC told its fantastical story about the MSDS labeling and how it came to be not by bending the truth, they annihilated it. Their lawyers at Shook Hardy in trial have gone to the blame the trial lawyers excuse for the clear label their client is violating saying the frivolous lawsuits made Chevron put it there.

Chevron knew this day was coming, they have tried to prevent it but they knew. However, they did not know or could not imagine the use of this counterfeit Marlex inside a person an abuse that could ruin their reputation . They had set up a specific system to prevent counterfeiting, a costly system in comparison to the price of that they were selling they had a a specific lot number system, with each and every bag being stamped with a lot number and logged, tracked and kept in a permanent logging system for verification of its products. If only BS or someone on its behalf had called to check the lot number they would have clearly known. Was BS so callous to not even check the lots numbers, would they be so reckless. Well you all know and have known for some time they did check the lot numbers and Chevron told everyone who asked those are NOT their log numbers. The system used in increasing large part to prevent the use of counterfeit had worked! but BS is no usual bad guy and they used it anyway. You do understand no matter how perfect the copy is, and even if it was perfect, it is still counterfeit because it was not made; not bagged ; not affixed with markings and lots number by Chevron in La Porte Texas as the package claims Test it all you want a even a perfect copy is still counterfeit.

I guess really bad guys have to be really bad so even though you knew it was fake you tested it to get it by QA but hell it FAILED the test and so the BS engineer changed the observations in his report, that the lab had found ,just like I found in Sandy except now we are literally talking about people's suffering and lives. Of course Shook Hardy has known this for years they reviewed, redacted and stamped confidential the same documents I have partial made it through.

Yesterday, I tried to explain it all, to a beautiful person; a mother, a wife and a grandmother watching her granddaughter who felt compelled to explained to me she took her son, his wife and granddaughter in because they fell on hard times. I was in a house small and remote in the mountains very clean and well kept but a place where three extra people would be a lot. That's who she is. She is suffering major complication after a 2014 implant of BS plastic junk. What the doctor told her that this was new mesh (another NEW product from BS), not like the old mesh that had all the problems. She asked me if that was true I told her no it's likely worse and at best the same, hell its all the same plastic from China now. She cried again. She cried when she almost died from being septic 10 days after the surgery, she has constant bladder and UTI infections, she has constant pain and she cried when she said she can't find another doctor to help because they don't want to pick up this. mess.

For a profit of about 1K dollars your client whose general counsel was a former partner of your law firm at Shook Hardy took this ladies quality of life from her. For a thousand dollars

at a time they will do it 200 times again today and the lawyers will help them keep selling it. They are worse than Tobacco; only one piece of plastic ruined this ladies life made from God knows-what and illegally smuggled out China and is counterfeit, those are facts as close to an absolute as you can get in the law. I will now make my seventh request for any evidence you have that is contradictory.

I wrote you both last year the following "When we set all of this down and look back, all we have left of who we are and what we represent is the sum total of what we did not compromise or give away to win a game, despite the demands of others who have no such concerns". That was about discovery today I write to you about a woman's life if I am right the harm that will follow today is unimaginable. Would you let them put this in your mom today?

From: Steve Mostyn

Sent: Thursday, January 14, 2016 2:01 PM

To: Weiler, Eva (SHB) <EWEILER@shb.com>; Karen Beyea-Schroeder <Karen Beyea-Schroeder@flaming-law.com>; aimée.wagstaff@andruswagstaff.com

Cc: Mark C. Sparks <mark@mostynlaw.com>; WOhlemeyer@BSFLLP.com; Strongman, Jon (SHB) <JSTRONGMAN@shb.com>; Caroline L. Maida <clmaida@mostynlaw.com>

Subject: Re: Stevens--Notice of Preliminary Injunction Request and Certificates of Conference

Confidentiality:

Eva our desire is for all documents to be marked properly as confidential but we have pointed you specifically to the docs attached our Rico petition and TRO and Injunction. What is your position on those specific documents.? Please respond by 5 today.

And as always I can't speak for what or why other plaintiff lawyers have done however and I can read an order and it says you must have a good faith bases to marketer document confidential and I can read case law from the 4th circuit that is directly on point that says your conduct of wholesale stamping of all documents as confidential is sanctionable conduct.

Privilege:

As to privilege, we will again send you specific documents we need immediately produced unredacted as agreed and I point you to the 5000 pages you recently unredacted; that previously had stood for "6 years" of litigation. Extremely concerning is that many of those document's redactions redact evidence of potential criminal conduct and on going criminal conduct. I need to know who did these redactions

I have include Karen on this email who has done the most extensive job of conferring on the sufficiency of a privilege log I have ever seen dating back to August 2015. Therefore, we specifically confer and ask you at a minimum agree to redo your privilege log per the case law from Magistrate Eifert and agree to in camera inspection of the document that you still stand on the claim of privilege that I sent to you weeks ago. Please let us know by SEST so can complete our certificate of conference

Objections:

Do you agree to remove objection please respond for my certificate of conference by 5EST as well for our motion to strike your objections.

Custodian files:

I have requested on several prior occasions the people listed below custodian files? Are you willing to give me the see custodial files as I requested specifically before or do we need to file a motion to compel please let us know by 5pm today. We will address depositions after we have these key people's files, you may recall, that I attached an email to my prior request showing their involvement in the mesh matters in which all parties were active participant. Once we get these files I think the need to depose them speaks for itself and we will proceed at that time.

EXHIBIT

As far as your objection regarding the use of our documents in the Steven matter this contradicts our prior conversation that the Mdl document would be the documents to use in other mesh matters including the one in the California . Is your position that we should have you produce the same documents in this matter, that is absurd and violates the spirit of our conversation and your request that we use these documents in other litigation like California. I look forward to your timely response by 5 today.

On Jan 14, 2016, at 2:33 PM, Weiler, Eva (SHB) <EWEILER@shb.com> wrote:

Mark: The following responds to Ms. Maida's email of 1/13/16, which appears to summarize your requests:

- ? **Confidentiality:** As indicated in multiple instances, we believe we have and will continue to follow the parameters of the protective order; and, as we have done before, we will consider specific documents or groups of documents that you would like to be downgraded. We have downgraded documents for other counsel, and have resolved these issues in other instances throughout 6+ years of litigation in multiple coordinated proceedings with very limited court intervention. We will not agree to re-review 9 million+ pages of production.
- ? **Privilege:** No one has provided us with specifics regarding the alleged insufficiencies of our privilege logs. Please provide the same. We also have some documents whose redactions have been removed and we will upload these to your FTP site, in addition to some of the native versions of photos you requested from the production.
- ? **Objections to Discovery:** Boston Scientific will not agree to remove all of its objections to discovery requests served in the MDL. Custodians for collection were identified through negotiations with plaintiffs' counsel in the MDL. Boston Scientific performed interviews of custodians to identify potential sources of documents related to the mesh product line. Collections were generally made from email, computers, shared drives, and physical documents. The documents were processed according to the specifications in the MDL ESI protocol and filtered using negotiated search terms. After processing, documents were reviewed for content related to BSC's mesh products. Documents that related to mesh products were produced according to the ESI protocol. The agreed upon and negotiated search terms are attached.
- ? **Custodians:** Numerous custodians have been produced for deposition in the MDL, of which you are a part. We will send you (or upload to your FTP site) these depositions. All are subject to the MDL protective order. Demanding additional depositions of previously deposed individuals is unnecessary, burdensome, and harassing. And we do not believe new custodians are necessary given the status of discovery. Please provide a good faith basis for why you are requesting the depositions of Mr. Moreci, Mr. Tobin, Ms. Charest, and Mr. Nicholas.

- ? **ProteGen Log:** We do not have an Excel version.
- ? Finally, Boston Scientific does not agree and objects to your use of confidential documents from the MDL in the *Stevens* action, as this violates the protective order.

From this point forward, for all communications related to the *Stevens* action filed in the Southern District of West Virginia, please contact Mr. William Ohlemeyer. He is copied above.

Thank you,

Eva

Eva M. Weiler
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<image003.jpg>

From: Mark C. Sparks [mailto:mark@mostynlaw.com]
Sent: Thursday, January 14, 2016 1:38 AM
To: Weiler, Eva (SHB); Ziska, Brian P. (SHB); mbonasso@flahertylegal.com
Cc: Steve Mostyn; Mike Hull; Caroline L. Maida; Cossette Callahan
Subject: Re: Stevens--Notice of Preliminary Injunction Request and Certificates of Conference

Hi Eva, I am grateful for the response. Please let me know when we can have a response on Boston Scientific's over-designation of confidential documents, excessive redactions, and inadequate privilege log.. As you know, we have corresponded many times before regarding Boston Scientific's extensive (almost wholesale) designations of confidentiality, including a conversation last Friday that followed a call the week before and numerous emails stretching back for weeks.

Our prior attempts to resolve the confidentiality designations, redactions, and privilege logs stretches back for many weeks, including a prior, follow-up email that said this last night. I will forward you a small sample of those emails from January 7, January 13, although you have those and the ones from before. To date, we have gotten no response to at all to these requests on confidentiality removal, and will *move* forward with further court intervention in light of no response.

Finally, consistent with our request for expedited relief, we will be asking for the court to shorten the time for any response to our motion for preliminary injunction in light of the urgent need for expeditious relief. I will assume you are opposed to that request, too, unless I hear from you by 9:00 a.m. I suspect you

are opposed.

I am grateful for your response.

sparks

From: "Weiler, Eva (SHB)" <EWEILER@shb.com>

Date: Thursday, January 14, 2016 at 2:58 AM

To: Mark Sparks <mark@mostynlaw.com>

Subject: FW: Stevens--Notice of Preliminary Injunction Request and Certificates of Conference

Mark:

Thank you for your email.

We do oppose a request for an expedited hearing and the preliminary injunction itself. We will assess whether any of the documents you attached to your motion can be downgraded and/or if there are issues regarding authenticity and admissibility, but this analysis will not be able to occur before 9:00 a.m. PT. on Thursday, to the extent you are demanding the same in your email. And we do object to your use of any confidential documents in this new lawsuit or outside of the MDL.

Thanks,

Eva

From: Mark C. Sparks [mailto:mark@mostynlaw.com]

Sent: Wednesday, January 13, 2016 5:19 PM

To: Weiler, Eva (SHB); mbonasso@flahertylegal.com; Ziska, Brian P. (SHB)

Cc: Steve Mostyn; Mike Hull; Caroline L. Maida; Cossette Callahan

Subject: Stevens--Notice of Preliminary Injunction Request and Certificates of Conference

Miss Weiler and Mr. Bonasso:

The Court has ordered us to notify you of our motion for temporary restraining order and preliminary injunction. As you are aware, Steve conferenced with Miss Weiler on Friday and discussed his intention to file a TRO. Additionally, last night Steve sent you a courtesy copy of our Plaintiff's Class Action Complaint and our Plaintiff's Motion for Temporary Restraining Order and a Preliminary Injunction via email at 6:37 p.m., shortly after it was filed late afternoon. I am attaching another courtesy copy of both our Plaintiff's Class Action Complaint and our Plaintiff's Motion for a Temporary Restraining Order and a Preliminary Injunction. The court denied our TRO but reserved ruling on our preliminary injunction. Attached is our motion for preliminary injunction (contained within the request for TRO), upon which we plan to set an expedited

hearing for our previously requested preliminary injunction. Please let this email serve as our effort to confer on an expedited hearing on our injunction request. If we don't hear from you by tomorrow morning at 9:00 a.m., we will assume you are opposed.

Finally, we plan to offer into evidence, inter alia, Exhibits 1-39. Caroline just emailed you access to a complete copy of all these exhibits to the motion and complaint, as well as a password, so you have full access to all our exhibits through our Dashboard document system. If you plan on objecting to the admissibility of any of these exhibits as hearsay (or for any other reason), please identify those specific exhibits. Additionally, if you plan on objecting to any of our exhibits that are records from you or that you produced in the MDL litigation, please confirm you will bring a records custodian to the hearing. If you refuse to bring such a custodian, please advise so we may prepare a subpoena. Finally, we have written you several times about removing the bad faith designation of these exhibits as "confidential," and again note it is your burden to support these designations. We have already filed our motion to de-designate and if you have any support for how these documents qualify as "confidential" under the PTO or relevant law, we kindly ask again for that support. To date, we have received no support despite repeated email requests from Steve. We assume you remain opposed to our request to strike all those confidential designations.

I am grateful for your professional courtesies.

mark sparks

Mail Gate made the following annotations on Thu Jan 14 2016 01:58:33

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Mail Gate made the following annotations on Thu Jan 14 2016 13:32:49

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