



JUDGE BAYLOR WORTHAM

136th Judicial District Court

Jefferson County Courthouse
1085 Pearl Street, Room 204
Beaumont, Texas 77701
(409) 835-8481 Fax: (409) 784-5814
co.jefferson.tx.us

September 15, 2020

Re: Cause No. D-202,027; Jesse Eugene Kemp vs. Pure Play, et al - In Camera Review of Privilege Log Documents

Dear Counsel,

The Court has finalized its *In Camera* review of the first batch of Smith and Nephew's asserted privileged documents. The Court apologizes for the delay in finalizing its review as a combination of factors, including technical hurdles and school closures, significantly delayed the Court's ability to review these documents in a timely and sufficiently discreet manner. Fortunately, most of these issues should now be in the past, and any future review of privileged material should hopefully not be affected by similar circumstances.

First, in reference to the set of documents submitted for review by Smith and Nephew, the Court finds that each of the claims of legal privilege were properly supported as to each document. However, the Court notes that some communications although privileged, may nevertheless contain non-privileged information that could still be discoverable in other forms other than the privileged document or communication. The parties are admonished as a general principle to ensure that their discovery responses adequately identify or disclose all appropriate relevant non-privileged information.

Next, in reference to the set of documents submitted for review by the Plaintiff, the Court makes the following rulings:

Bates No.	Ruling
SN_Kemp_0045532	Document contains privileged information, however withholding of entire document is not proper. Disclosure with individual redactions is appropriate.
SN_Kemp_0056225, 56314, 56811	Court is seeking additional clarification as to why document is privileged.

Bates No.	Ruling
SN_Kemp_0165849	Court is seeking additional clarification as to why document is privileged.
SN_Kemp_0485371	Court is seeking additional clarification as to why document is privileged.
SN_Kemp_0510584	Court is seeking additional clarification as to why document is privileged.
SN_Kemp_0510586	Court is seeking additional clarification as to why document is privileged.
SN_Kemp_0526003	Page 3 redaction is not privileged, page 27 redaction is privileged
SN_Kemp_0532281	Not privileged
SN_Kemp_0582373	Not privileged
SN_Kemp_0641235	Not privileged
SN_Kemp_0651400	Court is seeking additional clarification as to why document is privileged.
SN_Kemp_0696758	Document contains privileged information, however withholding of entire document is not proper. Disclosure with individual redactions is appropriate.
SN_Kemp_0704129	Page 11 redaction is not privileged. Other redacted portions of the document are appropriate.
SN_Kemp_0719005	Not privileged
SN_Kemp_0935360	Court is seeking additional clarification as to why document is privileged.
SN_Kemp_0935485, 0935487	Court is seeking additional clarification as to why document is privileged.

As to Plaintiff's First Supplemental Submissions, the Court makes the following rulings:

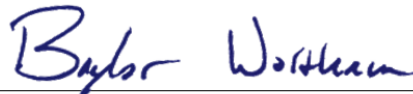
SN_Kemp_0641101, 0689381, 0696342	Not privileged
SN_Kemp_0952343	Document contains privileged information, however withholding of entire document is not proper. Disclosure with individual redactions is appropriate.
SN_Kemp_0598484, 0598488, 0595919, 0595920	If underlying data was created or calculated by legal counsel, then the work product privilege would apply. If data was imported from another source then these documents would not be privileged.

As to Plaintiff's Second Supplemental Submissions, the Court makes the following rulings:

SN_Kemp_0686389	Not Privileged
-----------------	----------------

As to all other documents not expressly listed above, the Court finds that Smith and Nephew's claims of privilege are properly supported and therefore should not be produced in discovery. The Court instructs counsel for Smith and Nephew to confer with regard to the documents identified by the Court that warrant further explanation as to the basis for the asserted privilege, and requests that the information be tendered to the Court by September 25, 2020.

Sincerely,

A handwritten signature in blue ink that reads "Baylor Wortham". The signature is written in a cursive style with a horizontal line underneath it.

BAYLOR WORTHAM
Presiding Judge, 136th District Court
Jefferson County, Texas