UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

GLEN GORE and ANGELA GORE,	)	
Plaintiffs,	)	
	)	
vs.	)	3:10-cv-00137-RLY-WGH
	)	
STRYKER CORPORATION,	)	
STRYKER INSTRUMENTS, AND	)	
STRYKER SALES CORPORATION,,	)	
Defendants.	)	

**ENTRY ON DEFENDANTS' MOTION TO DISMISS THIRD AMENDED
COMPLAINT**

On December 17, 2002, Glen Gore ("Mr. Gore") underwent shoulder surgery at

Surgicare Outpatient Surgical Hospital in Evansville, Indiana. (Am. Compl. ¶ 9). At the

conclusion of his surgery, a Stryker pain pump was filled with medication and implanted

into Mr. Gore's shoulder. (*Id.* ¶ 10). Plaintiffs' claim that following implantation of the

Stryker pain pump, Mr. Gore experienced, *inter alia,* "pain, [an] inability to raise his arm

above shoulder level, severe degeneration in the anterior inferior humeral head,

cartilaginous loss about the humeral head, and arthritis/chondrolysis." (*Id.* ¶ 11).

This case originated in the Eastern District of Pennsylvania in July 2009 and was

transferred to the Southern District of Indiana in August 2010. Shortly thereafter,

Defendants filed their motion to dismiss the Plaintiffs' Amended Complaint. At that

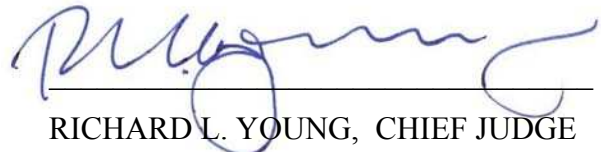time, the Amended Complaint consisted of six counts; a strict liability claim under the

1

Indiana Products Liability Act, and various state common law claims for fraudulent

concealment, negligent failure to warn, negligence, negligent misrepresentation, and loss

of consortium. On January 20, 2011, the court granted the motion without prejudice, and

gave the Plaintiffs the option of filing a Second Amended Complaint within thirty (30)

days of the date of the Entry.

After Plaintiffs timely filed their Second Amended Complaint, counsel for the

Defendants notified Plaintiffs' counsel of their concerns that the Second Amended

Complaint did not cure the defects of the Amended Complaint. Plaintiffs, with the

agreement of the Defendants, filed the present Third Amended Complaint. In their Third

Amended Complaint, Plaintiffs bring claims for design defect, failure to warn, and failure

to disclose defects under the Indiana Products Liability Act (Count I). Plaintiff also

brings a claim for loss of consortium (Count II). Defendants' motion to dismiss is based

upon the same legal arguments as those raised in its successful motion to dismiss the

Amended Complaint.

Rather than respond to the substantive arguments raised by the Defendants,

Plaintiffs ask the court to instead consider their Fourth Amended Complaint, attached to

their Response Brief. Plaintiffs contend that the Fourth Amended Complaint "cures, if

warranted, the issues raised in Defendants' argument that Plaintiffs failed to plead with

sufficient specificity and that Plaintiffs' product liability claim fails under Indiana law."

(Plaintiffs' Response at 3-4). It is not the job of the court to read the Fourth Amended

Complaint to determine whether or not it states a claim upon which relief can be granted.

See Little v. Cox's Supermarkets, 71 F.3d 637, 641 (7th Cir. 1995) ("[The court] is not required to scour the party's various submissions to piece together appropriate arguments. A court need not make the lawyer's case."). Because Plaintiffs' failed to respond to the substantive arguments raised in Defendants' Motion to Dismiss the Third Amended Complaint, Defendants' motion is **GRANTED** with prejudice. (Docket # 70). Plaintiffs' request that the court consider its Fourth Amended Complaint is **DENIED**. *See Airborne Beepers & Video, Inc. v. AT&T Mobility LLC,* 499 F.3d 663, 666 (7th Cir. 2007) (affirming the district court's dismissal of a fourth amended complaint because of "repeated failure to cure deficiencies by amendments previously allowed").

SO ORDERED this 29th day of July 2011.

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RICHARD L. YOUNG, CHIEF JUDGE
United States District Court
Southern District of Indiana

Electronic copies to:

Douglas B. Bates
dbates@stites.com

Charles L. Berger
cberger@bergerlaw.com

Robert M. Connolly
rconnolly@stites.com

Kevin Costello
kevin.costello@sdma.com

Matthew R. Lopez
mlopez@lopezmchugh.com

Bruce B. Paul
bpaul@stites.com