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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TODD and ANNE ERICKSON, individually  
and the marital community comprised thereof,  
  
Plaintiffs,  
  
v.  
  
MICROAIRE SURGICAL INSTRUMENTS,  
LLC, a Virginia limited liability company  
doing business in the State of Washington,  
  
Defendant.

Case No. C08-5745 BHS  
  
ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANT’S MOTION TO  
COMPEL PRODUCTION OF  
DOCUMENTS AND  
SUPPLEMENTATION OF  
INTERROGATORIES

This matter comes before the Court on Defendant MicroAire Surgical Instruments, LLC’s Motion to Compel Plaintiffs’ Production of Documents and Supplementation of Interrogatories. Dkt. 36. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and grants in part and denies in part the motion as discussed herein.

**I. INTRODUCTION AND BACKGROUND**

This lawsuit involves a product liability claim brought by Dr. Todd Erickson and his wife Anne Erickson (the “Ericksons”). Dr. Erickson is a former oral and maxillofacial surgeon. During the entirety of his practice at Sound Oral and Maxillofacial Surgery, P.S. (“SOMS”), Dr. Erickson utilized pneumatic surgical drills manufactured by MicroAire

1 Surgical Instruments, LLC (“MicroAire”) to perform oral surgery. It is alleged that as a  
2 result of the use of MicroAire surgical drills, Dr. Erickson now suffers from permanent  
3 hearing loss, tinnitus and hyperacusis. The Ericksons claim that MicroAire’s product was  
4 unsafe as designed, and that MicroAire failed to provide adequate warnings of the danger  
5 that the product could cause permanent hearing loss. The Ericksons were damaged because  
6 Dr. Erickson’s impairments forced him to sell his medical practice in 2007.

7 On March 19, 2010, MicroAire served the Ericksons with MicroAire’s First Set of  
8 Interrogatories and Requests for Production to Anne Erickson, and MicroAire’s Second Set  
9 of Interrogatories and Requests for Production to Todd Erickson. The Ericksons served their  
10 responses on April 12, 2010. On April 20, 2010, MicroAire’s counsel sent a letter detailing  
11 the deficiencies in the Ericksons’ production. The parties met and conferred on April 22,  
12 2010, and were unable to resolve their disagreements.

13 MicroAire filed the instant motion seeking the production of documents and  
14 supplementation of answers to interrogatories in the following areas: (1) documents from  
15 prior litigation entitled *Jennifer Forshey v. Sound Oral and Maxillofacial Surgery P.S.*, Case  
16 No. C06-5335. ( Request for Production Nos. 10-12); (2) information regarding the golf  
17 training received by the Ericksons’ minor son (Request for Production No. 16); (3) the  
18 Ericksons’ financial documents, personal spending, and travel habits (Request for  
19 Production Nos. 18-19, Interrogatory Nos. 4-5 to Dr. Erickson, and Interrogatory Nos. 6-7 to  
20 Mrs. Erickson); (4) the Ericksons’ insurance policies (Request for Production Nos. 15, 21,  
21 46, and 47); (5) healthcare information for Dr. Erickson dating back to 1987 (Interrogatory  
22 No. 3, Request for Production No. 25); (6) list of the Ericksons’ mental healthcare providers  
23 treating them prior to the injury to Dr. Erickson (Interrogatory No. 5); and (7) amount of loss  
24 of consortium damages sought and the method of computation (Interrogatory No. 1).

1 The Ericksons objected to these discovery requests as overbroad and unduly  
2 burdensome and beyond the scope of proper discovery because the information sought is  
3 neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.  
4 In addition, the Ericksons assert these requests are improper because they are interposed for  
5 an improper purpose such as to harass them.

## 6 II. RULE 26 DISCOVERY

7 The Federal Rules of Civil Procedure permit a party to obtain discovery on any  
8 non-privileged matter that is “relevant to the claim or defense of any party,” while  
9 permitting the Court to constrain even relevant discovery if it is either redundant or unduly  
10 burdensome. Parties may obtain discovery regarding any relevant information or  
11 information which is reasonably calculated to lead to the discovery of admissible evidence.  
12 Fed. R. Civ. P. 26(b)(1) and (2). “Relevant” evidence is that which has “any tendency to  
13 make the existence of any fact that is of consequence to the determination of the action more  
14 probable or less probable than it would be without the evidence.” Fed. R. Evid. 401.

15 Overbroad discovery requests are uniformly denied. Where the requests involve  
16 information which bears no relationship to the subject matter of the complaint, courts  
17 appropriately deny enforcement. *See American LegalNet, Inc. v. Davis*, 673 F. Supp. 2d  
18 1063, 1069 (C.D. Cal. 2009); *Bartholomew v. Unum Life Ins. Co.*, 579 F. Supp. 2d 1339,  
19 1342 (W.D. Wash. 2008).

### 20 **A. *Jennifer Forshey v. Sound Oral and Maxillofacial Surgery P.S., Case No. 06-5335***

21 The question of whether materials contained in the *Forshey* litigation are subject to  
22 discovery has been addressed by this Court. See Dkts. 45, 57.

### 23 **B. Information Regarding Golf Training Received by the Ericksons’ Minor Son**

24 The Ericksons’ damages claim stems from an alleged noise-induced hearing loss  
25 suffered as a result of using pneumatic surgical drills manufactured by MicroAire.

1 The request for information relating to the outlay of funds in relation to their son's  
2 golf training bears no relationship to the subject matter of the complaint; nor does it appear  
3 that such information, if provided, would lead to the discovery of any admissible evidence  
4 relating to the Ericksons' claims or defenses. Therefore, the motion is **DENIED** in this  
5 respect.

6 **C. The Ericksons' Financial Documents, Personal Spending, and Travel Habits**

7 MicroAire seeks to obtain the Ericksons' credit card statements, bank statements,  
8 cancelled checks, vacation destinations, and the names of hotels in which the Ericksons were  
9 guests. The Ericksons' damage claim stems from the loss of income resulting from Dr.  
10 Erickson being forced to give up his vocation as an oral surgeon, as well as the  
11 corresponding general damages.

12 The financial standing of a defendant is inadmissible as evidence in determining the  
13 amount of compensatory damages to be awarded. *Geddes v. United Financial Group*, 559  
14 F.2d 557, 560 (9th Cir. 1997). Similarly, evidence of the Ericksons' financial standing is  
15 inadmissible under Fed. R. Evid. 403 for the purpose of establishing damages.

16 The Ericksons' travel expenses appear neither relevant nor reasonably calculated to  
17 lead to the discovery of relevant evidence, and the motion is **DENIED** in this respect

18 MicroAire also seeks production of all documents concerning the Ericksons'  
19 personal investments and assets, as well as a list of all of SOMS' fixed assets. MicroAire  
20 asserts that this information might assist to develop their theory that the Ericksons sold their  
21 practice for reasons other than Dr. Erickson's disability.

22 The Ericksons' financial condition is reasonably calculated to lead to the discovery of  
23 relevant evidence that may bear on the reason for the sale or termination of their medical  
24 practice. Therefore, the motion is **GRANTED** in this respect.

1 **D. The Ericksons' Insurance Policies**

2 MicroAire asks the Court to compel the disclosure of the Ericksons' insurance  
3 policies, including Dr. Erickson's disability insurance policy. MicroAire acknowledges that  
4 the Ericksons have already agreed to produce the policies in their possession, custody and  
5 control, as well as Dr. Erickson's application for disability benefits. MicroAire claims,  
6 however, that it is entitled to receive all information regarding Dr. Erickson's disability  
7 insurance and benefits in order to establish that he had other motivations for selling his  
8 practice.

9 The law is clear that insurance payments received by Dr. Erickson are strictly  
10 excluded from evidence under the "collateral source" rule. See *Cox v. Spangler*, 141 Wn.2d  
11 431, 440, 5 P.3d 1265 (2000). Although insurance payments may be inadmissible, the  
12 information contained in the insurance files are reasonably calculated to lead to relevant  
13 evidence. MicroAire is entitled to supplementation of the responses in regard to the  
14 Ericksons' insurance coverages, and the motion is **GRANTED** in this respect.

15 **E. The Ericksons' Medical and Mental Health Records**

16 MicroAire seeks the Ericksons' medical records from 1987 forward. The Ericksons  
17 assert that this request is overbroad, unduly burdensome and not narrowly tailored to seek  
18 admissible evidence. Dr. Erickson has already provided a list of medical care providers for  
19 the past thirteen years and Mrs. Erickson has provided a list for the past ten years.

20 Requiring that the Ericksons produce all of their medical records dating back to 1987  
21 is intended to determine when Dr. Erickson began suffering a hearing loss and/or whether  
22 other medical conditions may have lead to his termination of his medical practice. This  
23 request is calculated to lead to the discovery of admissible evidence. Therefore, the motion  
24 is **GRANTED** in this respect.

1 **F. Claim for Loss of Consortium**

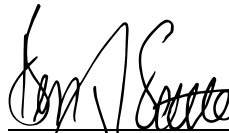
2 MicroAire seeks a response as to the amount of loss of consortium damages suffered  
3 and the method of computation. Damages for loss of consortium are proper when a spouse  
4 suffers loss of love, society, care, services, and assistance due to a tort committed against the  
5 impaired spouse. *Burchfiel v. Boeing Corp.*, 149 Wn. App. 468, 205 P.3d 145 (2009).

6 The Ericksons respond that by their very nature, general damages such as loss of  
7 consortium are not susceptible to mathematical calculation, and cannot be identified by a  
8 “method” for determining the precise numerical value of the loss of consortium claim, and  
9 as such, the determination is ultimately for the jury. Therefore, the motion is **DENIED** in  
10 this respect.

11 **III. ORDER**

12 Accordingly, it is hereby **ORDERED** that MicroAire’s Motion to Compel Plaintiffs’  
13 Production of Documents and Supplementation of Interrogatories (Dkt. 36) is **GRANTED**  
14 **in part** and **DENIED in part** as directed herein.

15 DATED this 27<sup>th</sup> day of May, 2010.

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18 BENJAMIN H. SETTLE  
19 United States District Judge  
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