

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 247-7-20 Wncv

Hayek Medical Devices (North vs. State of Vermont)

AMENDED ENTRY REGARDING MOTION

Title: Motion to Compel; Motion for Sanctions ; or, in the Alternative, for
Reconsideration and to Compel - REDACTED (Motion: 47; 48)
Filer: David A. Boyd; David A. Boyd
Filed Date: April 17, 2026; May 01, 2026

The motion is GRANTED IN PART and DENIED IN PART.

The present motion tests the question of what lengths may a Defendant pursue discovery in search of the source of a Plaintiff's damages. It also raises the question of what damages may be available in the present litigation.¹

Put plainly, the State, at this juncture, believes that Hayek may be seeking damages that exceed the value of the original ventilators . This cost comes from information that the State has received in discovery that Hayek Medical Devices (North America) Ltd. is a distributor for a separately incorporated manufacturer, United Hayek Industries, and that Hayek Medical recently agreed to pay United Hayek a settlement amount in interest each month concerning the ventilators. The State is concerned that given this settlement, Hayek will be turning to the State and seeking these amounts from the State.

The State has reason to challenge this settlement amount. Apart from the fact that both companies are owned by members of the Hayek family, there is publicly available information that is inconsistent with the agreements that the Hayeks have formed and the facts underlying these agreements. There is also the representation from the State that it did not, at the time of the

¹ The Court will not, at this time, either reconsider or grant a sanction as requested by the State as neither its motion nor the history of this case warrant either at this time. If the parties get to trial, and it becomes apparent that Hayek is relying on something that it should have produced, then Rule 37(c)(1) may have to be how remaining disputes get ironed out. See V.R.C.P. 37(c)(1) ("A party that without substantial justification fails to supplement responses as required by Rule 26(e) is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed."). Instead, the Court will focus this decision on the issue of discovery.

agreement, understand that Plaintiff Hayek was the distributor and not the manufacturer of the ventilators or that negotiations with Plaintiff Hayek would involve obligations to a third-party.

At the same time, it is not entirely clear that Hayek can or will be seeking the amount from the State. Hayek has neither confirmed nor denied that this is the amount that it will be seeking. Even if Hayek did, it is not clear to the Court whether such amounts would be permissible under Section 74 of the United Nations Convention on Contracts for the International Sale of Goods that governs the parties' agreement. This section limits a party's damages as follows:

Article 74

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

United Nations Convention on Contracts for the International Sale of Goods, April 11, 1980, S. TREATY DOC. NO. 98-9 (1983), 1489 U.N.T.S. 3, Article 74.

The discovery process in this case has been marked by a variety of issues that the Court has detailed in its prior rulings, including its decision on the parties' cross-motion for summary judgment, and the Court's May 9, 2025 Order.

Coming into this most recent set of discovery disputes, the Court had three understandings. First, that the issue of liability and breach had largely been resolved in favor of Hayek. See Entry at 4–12 (filed Jan. 5, 2026). Second, that the Court had disallowed the 85% penalty term that had not been incorporated into the parties' agreement. See *id.* at 12–18. Third, that the State was entitled to limited but meaningful discovery to both understand and explore the damages that Hayek would be seeking in this case since the 85% figure had been rejected. That last matter was addressed at the January 27, 2026 conference. In this respect, the Court envisioned the parties sharing information and data concerning the fate of the individual ventilators and any mitigation efforts undertaken by Hayek.

On this front, there does appear to have been some exchange of information from Hayek's SugarCRM database, and Hayek has represented to the Court that it will be producing screenshots related to each ventilator by serial number. To the extent that this has not been completed, Hayek is directed to complete this disclosure within the next 30 days.

As well, the Court is persuaded that, given the Court's direction in January and shift in likely damages, that the parties must exchange information on what actual damages Hayek will be seeking in this matter and the basis for them. This brings us back to the question above concerning the settlement agreement Plaintiff Hayek claims to have made with the ventilators' manufacturer. This agreement and its details only become relevant if Hayek will be asserting the agreement as the basis and measure of its damages. In such a case, the State is entitled to kick the tire and inspect the basis for this claim and to understand how the amounts were reached as well as to understand, if Hayek will be asserting it, why these third-party agreements were foreseeable to the State and whether it would qualify under Article 74 as a basis for damages.

To this end, the Court will permit the State to promulgate new, very focused and detailed interrogatories/requests to produce concerning the issue of Hayek's damages and the basis for those damages. The Court will give the State 15 days from the date of this Order to draft and serve these requests and interrogatories on Hayek. Hayek shall have the time permitted under the Rules to reply.

The purpose of this allowance is not to reward or to punish either party. The discovery in this case has been muddled. Hayek makes several valid points in its opposition demonstrating that discovery has followed a consistent pattern. The State's interrogatories have been framed in very broad terms, and the State has sought to interpret its terms expansively. Hayek has treated the requests as vague and appears to have consistently interpreted them narrowly. Rather than following up with subsequent, more specific discovery requests when it is dissatisfied with Hayek's production, the State let the deadline for promulgating new requests lapse, and for the last four years the parties have kept discovery locked into a series of motions to compel, which has created a contentious morass.

In permitting the State an opportunity for limited written discovery on damages, the Court seeks to break out of this cycle and permit the parties to complete the last part of the

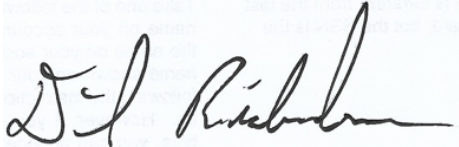
discovery and pre-trial process. It recognizes that the issue of damages is different than some of the prior areas of discovery since the issue of damages is most affected by the Court's summary judgment ruling denying Hayek the right to pursue its 85% penalty clause. It is the Court's understanding that once this written discovery is completed, the parties can complete the remaining Rule 30(b)(6) deposition, and the matter will be ready for trial.

ORDER

Based on the foregoing, the Court **Grants** Defendant's Motion **in Part**. Plaintiff shall complete the disclosure of the remaining screenshots and information promised regarding Plaintiff's SugarCRM systems and review of the ventilators to the extent this disclosure has not already occurred. Defendant's motion for sanctions and motion to reconsider are **Denied**.

The State shall prepare and serve limited, focused, and detailed interrogatories and requests to produce regarding the remaining issue of damages. Hayek shall respond, consistent with their Rule 26 obligations, in the 30 days allotted by the Rules. Following this written discovery, the parties shall complete their remaining depositions, and the Court will set this for a pre-trial conference in the late fall.

Electronically signed on 7/14/2026 1:03 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background.

Daniel Richardson
Superior Court Judge