**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SYNTHES (U.S.A.), et al.,	**:**	**CIVIL ACTION**
Plaintiffs	**:**	
	:	
v.	**:**	**NO. 04-1235**
	:	
GLOBUS MEDICAL, INC., et al.,	**:**	
Defendants	**:**	

M E M O R A N D U M

STENGEL, J.   **November   29, 2006**

The defendants in this case have moved for a protective Order relieving them of all

obligation to respond to the plaintiffs' third and fourth sets of requests for admissions, claiming

that the sheer number of requests,[1] their repetitiveness, and remote relevance is grossly

oppressive and abusive. For the following reasons, I will deny the motion in its entirety.

Under the Federal Rules of Civil Procedure, a party may serve upon any other party a

written request for the admission, for purposes of the pending action only, of the truth of any

matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or

opinions of fact or of the application of law to fact, including the genuineness of any documents

described in the request. See FED.R.CIV.P. 36(a). Any matter admitted under this rule is

conclusively established unless the court on motion permits withdrawal or amendment of the

admission. See FED.R.CIV.P. 36(b). An admission of fact made under Rule 36 is an

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[1] The plaintiffs' first set of requests for admissions consisted of 126 requests; its second
set consisted of 64 requests. The plaintiffs' first set of requests for admissions to defendant
Binder had 64 requests. Defendant Globus substantively answered all of these requests. On
September 25, 2006, the plaintiffs served a third set of 250 requests. On September 29, 2006,
they served a fourth set of 118 requests, bringing the total number of requests for admissions to
622, a number far lower than the number of requests found excessive in the cases cited by the
defendants.

"unassailable statement of fact that narrows the triable issues in the case." <u>Airco Industrial</u>

<u>Gases, Inc. v. Teamsters Health & Welfare Pension Fund</u>, 850 F.2d 1028, 1037 (3d Cir. 1988).

Requests for admission typically come late in discovery, or even after discovery has been

completed and trial is imminent. <u>Langer v. Monarch Life Ins. Co.</u>, 966 F.2d 786, 803 (3d Cir.

1992). If at that point a party is served with a request for admission of a fact that it now knows to

be true, it must admit that fact, even if that admission will "gut its case and subject it to summary

judgment." <u>Id.</u> Rule 36 was intended to narrow the issues for trial, or altogether obviate the need

for trial. <u>Id.</u>

 After a careful review of both sets of requests for admissions, I find that the requests,

which span 48 pages, are simple and straightforward recitations of fact which can be readily

admitted or denied, that they relate to the authenticity, possession, or use of 23 documents, and

that they concern seven topics with which the defendants should be quite familiar. The slight

burden or expense of responding to these requests at this late stage in the discovery process is far

outweighed by the benefit of facilitating proof with respect to the issues in the case, and of

narrowing its triable issues.

 An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYNTHES (U.S.A.) and   :   CIVIL ACTION

SYNTHES SPINE COMPANY, L.P.   :

       Plaintiffs   :

                                     :

       v.   :   NO. 04-1235

                                     :

GLOBUS MEDICAL, INC., et al.   :

       Defendants   :

O R D E R

STENGEL, J.

    AND NOW, this 29th day of November, 2006, upon consideration of defendants'

motion for a protective Order regarding the plaintiffs' third and fourth sets of requests for

admissions (Document #161), the plaintiffs' response thereto (Document #164), and after a

hearing on the motion with all parties present, it is hereby ORDERED that the motion is

DENIED in its entirety.

    IT IS FURTHER ORDERED that the defendants shall respond to both sets of requests for

admissions within ten (10) days of the date of this Order.

BY THE COURT:

  /s/ Lawrence F. Stengel

LAWRENCE F. STENGEL, J.