Leah Newstead, Secretary
Tel. 972-3-6944111
Fax. 972-3-6091116
fbc@fbclawyers.com

July 13, 2017

Certification of Translation

I, Leah Newstead hereby declare that I am proficient in the Hebrew and English languages, and the attached translation is, to the best of my knowledge and belief, a true and accurate translation from Hebrew to English of a decision dated August 19, 2002 by the Tel-Aviv Magistrate Court in file number 123/2 Medinol Ltd. V. Boston Scientific Corporation. I declare under penalty of perjury that all statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true.

L Newstead.

Leah Newstead

Free Translation from Hebrew

The Courts

Tel Aviv - Jaffa Magistrates' Court		Dispute 00123/02
Before:	**The Honorable Judge Dorit Reich – Shapira**	**19/08/2002**

The Requesting Judicial Authority: The Federal Court of the Southern District in New York **Court Administration Case No. 4/02-51**

The Judicial Judgments File: 01 CIV. 2881 AKH

The Plaintiff: **MEDINOL LTD.**

The Defendants: **BOSTON SCIENTIFIC CORPORATION**

Decision

In the Federal Court in the Southern District of New York (hereinafter: "**the New York Court**"), a claim and a counterclaim concerning civil commercial disputes are pending. The parties to the reciprocal claims are the companies

MEDINOL LTD. (hereinafter: "**MEDINOL**") and **BOSTON SCIENTIFIC CORPORATION** and **BOSTON SCIENTIFIC LIMITED** (hereinafter: "**BOSTON**")

As part of these claims, BOSTON filed a motion with the New York Court applying that a judicial inquiry will be held in Israel, based on the provisions of the Hague Convention on The Taking of Evidence Abroad in Civil or Commercial Matters (hereinafter: "**the Hague Convention**") and the Legal Aid Between States Law, 5758-1998 (hereinafter: :"**the Law**"). The New York Court applied to the competent judicial authority in Israel to collect the testimonies of Messrs. Uriel Yarkoni and Gershon Peleg (hereinafter: "**the Witnesses**"). According to the argument, each of the Witnesses has important information relevant to the controversial issues between MEDINOL and BOSTON, since Yarkoni was an employee of MEDINOL, while Peleg was an employee of Tzoran Ltd., which had commercial relations with MEDINOL.

The Minister of Justice, the "competent authority" under section 3 (a) of the Law, exercised his authority, and instructed this Court to hear the testimony of the witnesses.

After setting a date for holding the judicial inquiry and instructing the summoning of the Witnesses, the Witnesses submitted their objections to their obligation to testify in front of this Court. As part of the objections, MEDINOL and the Minister of Justice were added as Respondents. Tzoran Company joined the opposition to hearing the testimony of the Witness Peleg. I would like to say here that the inclusion of the other parties is appropriate, as they all have legitimate interests in the process. Each of the parties who joined filed it's written position.

Adv. Rosovsky (on behalf of the witness, Yarkoni) and Heller (on behalf of the witness, Peleg and Tzoran) oppose the proceeding. Their detailed claims can be summed up in "a nutshell" in that there is no application to collect evidence that will serve as evidence in the trial, but rather an application to approve a preliminary gathering of evidence in the way of a Deposition. Such a procedure does not exist in the Israeli legal system, and therefore, in accordance with the provisions of section 8 (b) of the Law, this Court has no authority to uphold the judicial inquiry.

In his objection, **Adv. Rosovsky** emphasized the severe and disproportionate harm that the implementation of the proceeding would violate the constitutional rights of the Witness Yarkoni. He also described the differences, which are essential in his opinion, between the collection of evidence in Court and the Deposition process that exists in the legal system in the United States.

In his objection, **Adv. Heller** argued that the laconic formulation of the application sent by the New York Court is misleading and for this reason in itself, in Adv. Heller's opinion, this application should be rejected. In addition, he emphasized the harm that would be caused by responding to the application to confidential business technology information, that is a trade secret that is subject to the immunity prescribed in the Commercial Wrongs Law. According to this contention, the confidentiality stands for the Witness and his former employer, Tzoran, and it is improper to harm these interests.

Adv. Dr. Leshem, MEDINOL's attorney, did not take a stand, leaving the decision to the discretion of this Court. He only noted that Peleg was not included in the list of witnesses who were summoned to testify before the New York Court.

Adv. Shlomi of the Tel Aviv District Attorney's Office, on behalf of the Minister of Justice, argued that the application is for the purpose of collecting testimony and requested that the judicial inquiry should be carried out. Alternatively, he argued that even if the application is essentially an application for a Deposition proceeding, the assistance granted by the competent authority is in accordance with the provisions of the Law. According to him, the Witnesses must be summoned and their testimonies

collected by virtue of the provisions of Article 1 of the Hague Convention and Article 18 (a) of the Law, without addressing the question whether the evidence is necessary for the Deposition process, and without determining whether the Deposition process is included in the term "Legal Aid."

Adv. Behar, on behalf of BOSTON, requested that the aforementioned objections would be rejected, in his written responses dated June 13, 2002 and July 1, 2002. He referred to the provisions of the Hague Convention and the obligation of this Court to comply with the provisions of the competent authority.

In light of the opposing positions, I held a discussion in the presence of the representatives of all the parties on July 18, 2002, in which, in fact, each party repeated its claims, as evidenced by the protocol, pp. 1-7.

After having reviewed the written arguments and their appendices and heard the oral arguments of the parties' counsel, I decided as follows:

1. The basic rights relied upon by Adv. Rosovsky are not unlimited. These are relative rights, and they are withdrawn before other rights. In this context, the words of the Vice-President, the honorable Justice Barak (as he was then), in the High Court of Justice 2481/93 **Dayan v. Police Commander Yehuda Wilk et al**, are worth quoting:

> **"Here it is, the public interest is that the individual interest will be preserved, and the private interest is that the public interest will be preserved ... in the need to protect between the interests and the following values from colliding. The key lies in the "give and take" approach and the balance between conflicting values. Human rights are not "absolute." They are of a "relative" nature. The public interest is meant to ensure that "areas of life" are worthy of the relative character of the right.**

2. In the case before me stands the public interest on which the law protects, against the rights of the Witness Yarkoni for his dignity which includes his right to be investigated under the law and not be disturbed beyond that, and the right of witnesses Peleg and Tzoran for confidentiality of trade secrets. The Court which will hear the judicial inquiry will be required to address the clash between the interests and to decide on the proper balance between the conflicting values and when one must be withdrawn against the other.

3. The argument that the Court must carry out the judicial inquiry in accordance with the Minister's decision without having to deal with the question of his authority to do so is unacceptable to me. The normative framework is the basis for the validity of the decisions of the Court, in its absence, the decisions held by it are void. Therefore, the Court is attentive to the claim of lack of authority raised before it, it shall address it and adjudicated therein as shall be found to be true and in accordance with the law.

4. It appears that the application is for a procedure of Deposition. The conclusion implied from the aforesaid in Appendix C to the response of Adv. Heller on behalf of the witness Peleg, dated June 10, 2002. Appendix C is a letter written by Adv. Dunham on behalf of BOSTON to Peleg's attorney with an explicit question whether Mr. Peleg intends to agree to a Deposition proceeding or whether BOSTON will have to force him to do so by means of the provisions of the Hague Convention.

   Reinforcement to my conclusion, I find in the clarification filed by Adv. Behar, the Israeli legal representative of BOSTON, with the Court files. Adv. Behar stated that these are testimonies (p. 4, line 6 and p. 5, line 13) but the clarification of August 9, 2002 which is not from the American legal representative of BOSTON, states that the material collected in Israel will serve as evidence in the trial held in New York. The clarification is from the Honorable Judge Halerstein explaining the nature of the procedure according to the law in the United States, according to which the material collected may be used wholly or partially as evidence in the trial, as well as the importance of having a Deposition in this case.

   In addition, Adv. Leshem's claim that Peleg was not included in the list of witnesses summoned to trial before the New York Court was neither contradicted nor denied, and that is also consistent with the conclusion that it is a case of a Deposition.

5. Therefore, I must address the fundamental question of whether a Deposition process is a "legal assistance", and may be taken as part of the judicial inquiry in Israel, although the testimonies of the witnesses may not serve as evidence in the trial being conducted in the applying country.

6. In order to resolve the question, the provisions of the Hague Convention and the relevant provisions of the Law must be examined.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.