

(Order, Docket No. 2, p. 3).

Local Rule 11(e)(1) provides:

- (e) Discovery.
 - (1) Stays of Discovery.
Discovery is not stayed unless specifically authorized by Fed. R. Civ. P. 26(d) or ordered by the case management judge.

Local Rule 11(e)(1) (emphasis added).

Fed. R. Civ. P. 26(d), in pertinent part, provides:

- (d) Timing and Sequence of Discovery. Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f).

Fed. R. Civ. P. 26(d) (emphasis added).

The Advisory Committee Notes for the 2000 amendment to Fed. R. Civ. P. 26(d)

provides:

Subdivision(d). The amendments remove the prior authority to exempt cases by local rule from the moratorium on discovery before the subdivision (f) conference, but the categories of proceedings exempted from initial disclosure under subdivision(a)(1)(E) are excluded from subdivision (d). The parties may agree to disregard the moratorium where it applies, and the court may so order in a case, but “standing” orders altering the moratorium are not authorized.

Fed. R. Civ. P. 26(d), Advisory Committee Notes, 2000 Amendment (emphasis added).

To the extent that the Order (Docket No. 2) of May 8, 2001 is ambiguous, the Court will clarify it. The sentence at issue simply means that discovery is not stayed. The Court is

authorized to abolish the Fed. R. Civ. P. 26(d) stay by the terms of Rule 26(d) itself and has done so.

Accordingly, Plaintiffs' discovery is proper in terms of its timing and BMI must respond to it. To the extent that the discovery is otherwise improper, or additional time is needed to respond, BMI may file an appropriate motion for consideration by the Magistrate Judge.

The Clerk is directed to serve this Order on BMI and Plaintiffs and as directed in the Order (Docket No. 2) entered on May 8, 2001.

IT IS SO ORDERED.


TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE