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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

HEPARIN PLAINTIFFS,	-	Case No. 1:08-hc-60000
	-	
Plaintiffs,	-	Toledo, Ohio
	-	July 23, 2012
v.	-	Telephone Conference
	-	
BAXTER HEALTHCARE CORP.,	-	
et al.,	-	
	-	
Defendants.	-	

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE JAMES G. CARR
UNITED STATES DISTRICT CHIEF JUDGE.

APPEARANCES:

For the Plaintiffs: Specter, Specter, Evans & Manogue
By: John C. Evans
The 26th loor
Koppers Building
Pittsburgh, PA 15219
(412) 642-2300

Zoll, Kranz & Borgess
By: David W. Zoll
 Pamela A. Borgess
6620 West Central Ave.
Suite 200
Toledo, OH 43617
(419) 841-9623

Arlene Sokolowski-Craft
7425 Royalton Road
North Royalton, OH 44133
(440) 237-1900

O'Quinn, Laminack & Pirtle
By: Michael J. Lowenberg
2300 Lyric Centre Bldg.
440 Louisiana
Houston, TX 77002
(713) 223-1000

1 For the Defendant: Kirkland & Ellis
Baxter By: Leslie M. Smith
2 Suite 5400
200 East Randolph Dr.
3 Chicago, IL 60601
(312) 861-2141

4
5 Spengler Nathanson
By: James P. Silk, Jr.
6 Suite 400
Four SeaGate
7 Toledo, OH 43604
(419) 252-6210

8 For the Defendant: Seeley, Savidge, Ebert & Gourash
Medefil, Inc. By: Daniel F. Gourash
9 26600 Detroit Road
Westlake, OH 44145
10 (216) 566-8200

11 For the Defendant: Hinshaw & Culbertson - Boston
B. Braun Medical, By: Daniel E. Tranen
12 Inc. 24th Floor
28 State Street
13 Boston, MA 02109
(617) 213-7000

14 For the Defendants: Laura Lawson
15 Covidien and Tyco (no address on file)
Healthcare
16

17 Court Reporter: Tracy L. Spore, RMR, CRR
18 1716 Spielbusch Avenue
Toledo, Ohio 43624
19 (419) 243-3607

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21

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24 Proceedings recorded by mechanical stenography,
transcript produced by notereading.

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1 (Commenced at 10:07 a.m.)

2 THE COURT: Let's start with plaintiff's
00:00:02 3 counsel. Who do I have?

00:00:04 4 MS. BORGESS: Good morning, Your Honor.
00:00:05 5 Pamela Borgess and David Zoll.

00:00:07 6 THE COURT: I know there's a matter you want
00:00:09 7 to talk about at the end of this conference, which is
00:00:11 8 fine.

00:00:12 9 MR. EVANS: John Evans is here, Judge.

00:00:12 10 THE COURT: Hi, John. How are you?

00:00:12 11 MR. EVANS: I'm well. How are you?

00:00:12 12 THE COURT: Good.

00:00:22 13 MS. CRAFT: Arlene Craft and Bob Candello
00:00:26 14 [phonetically] are here for plaintiff's counsel, Connie
00:00:27 15 Bailey also, Your Honor.

00:00:28 16 THE COURT: And on the defense -- is that
00:00:29 17 all the plaintiff's attorneys?

00:00:32 18 MS. POLLACHECK: This is Brittany Pollacheck
00:00:35 19 [phonetically].

00:00:35 20 MR. LOWENBERG: And Mike Lowenberg from the
00:00:38 21 O'Quinn law firm down in Houston.

00:00:40 22 THE COURT: Anybody else?

00:00:43 23 Okay. On the defense side?

00:00:46 24 MS. SMITH: Leslie Smith and Sarah Donnell
00:00:50 25 on behalf of Baxter and SPL.

00:00:54 1 MR. SILK: And Jim Silk, Your Honor.

00:00:56 2 MR. TRANEN: Daniel Tranen for B. Braun
00:01:00 3 Medical, Inc.

00:01:01 4 MS. LAWSON: Laura Lawson for Covidien and
00:01:01 5 Tyco Healthcare.

00:01:04 6 MR. GOURASH: And Dan Gourash on behalf of
00:01:07 7 Medefil. Good morning, Your Honor.

00:01:10 8 THE COURT: Dan, how are you?

00:01:12 9 MR. GOURASH: Good, thank you.

00:01:13 10 THE COURT: Anybody else?

00:01:15 11 First, I just saw the memo that Covidien --
00:01:20 12 that you sent for Covidien and Tyco.

00:01:23 13 MS. LAWSON: Yes.

00:01:23 14 THE COURT: Thanks for doing so.

00:01:26 15 MS. LAWSON: Sure.

00:01:26 16 THE COURT: What I'm going to do -- I just
00:01:28 17 reviewed it very quickly when I got online and got done
00:01:35 18 with another conference.

00:01:36 19 I thought I'll simply issue an order as to
00:01:41 20 those as to which there's no response, that's missing
00:01:45 21 those. And I'll simply attach your memo.

00:01:49 22 MS. LAWSON: Okay. That sounds great.

00:01:50 23 THE COURT: Cross reference the memo
00:01:53 24 filed -- whenever it was filed in all those cases. I'll
00:01:56 25 just have a generic Heparin caption and all the cases,

00:02:00 1 and it will be listed.

00:02:03 2 MS. LAWSON: Wonderful.

00:02:04 3 THE COURT: Were there any to which there is
00:02:06 4 a response?

00:02:07 5 MS. LAWSON: There are a few where a
00:02:09 6 response has been filed and a reply has been filed. So
00:02:12 7 those would be ready for a review.

00:02:15 8 THE COURT: About how many of those are
00:02:18 9 there?

00:02:19 10 MS. LAWSON: Three or four.

00:02:20 11 THE COURT: Leslie, what about -- about how
00:02:22 12 many of your cases are there where there have been
00:02:25 13 replies, six or eight?

00:02:27 14 MS. SMITH: I'm going to let Sarah Donnell
00:02:30 15 go into the details.

00:02:32 16 MS. DONNELL: Baxter currently has eight
00:02:36 17 cases with pending motions, and most of them -- six of
00:02:43 18 them have replies or something still outstanding. And
00:02:48 19 there's two, Shoplock, I believe, and Weintraub, that
00:02:52 20 have been fully briefed and are decisional.

00:02:55 21 THE COURT: Okay. I'm on vacation right
00:02:58 22 now. And I suspect at least starting this coming
00:03:04 23 weekend for about a week or ten days my entire family is
00:03:07 24 going to be with me. So I've got a hunch I'm not going
00:03:11 25 to be spending too much time with Heparin. But I should

00:03:15 1 be back mid, laid August, and I will turn to them. I'll
00:03:20 2 try to get decisions out by -- I'd like to say September
00:03:25 3 1. That may be a bit optimistic. Everything's
00:03:28 4 decisional, becomes decisional by then, by September 1.
00:03:32 5 I should have it out, I hope, by September 15, just to
00:03:38 6 give you guys a sense of timetable.

00:03:41 7 How many other motions are pending? Do you
00:03:46 8 know at all?

00:03:50 9 MS. DONNELL: Eight total that Baxter or SPL
00:03:53 10 has filed, not speaking for co-defendants.

00:03:56 11 MS. LAWSON: This is Laura Lawson. I
00:03:58 12 misspoke earlier. The four cases where there was
00:04:00 13 actually a response filed, you issued a ruling on those
00:04:03 14 on Friday. So all of the 56 cases on that chart are
00:04:08 15 ones where no response was timely filed.

00:04:10 16 THE COURT: I knew I'd done a few before I
00:04:12 17 left.

00:04:13 18 MS. LAWSON: Yes.

00:04:19 19 THE COURT: All right. From the plaintiff's
00:04:20 20 side, what remains to be done as far as you can tell
00:04:26 21 that I haven't tended to that I should?

00:04:31 22 MS. BORGESS: Your Honor, I don't believe
00:04:32 23 there's anything on our side.

00:04:34 24 THE COURT: Who's speaking?

00:04:39 25 MS. BORGESS: Pamela Borgess, Your Honor.

00:04:44 1 I don't believe we have the list that
00:04:46 2 Covidien and Medefil are referring to with the cases, So
00:04:51 3 if they wouldn't mind sending it our way --

00:04:54 4 THE COURT: They'll e-mail it to you right
00:04:55 5 now.

00:04:56 6 MS. BORGESS: Other than that, I don't
00:04:58 7 believe there's anything on our side.

00:05:06 8 THE COURT: It seems to me I'm about ready
00:05:08 9 to start sending cases back to their court of origin --
00:05:12 10 or, I mean, what should I be doing in that regard? It
00:05:16 11 seems to me I reached a point where I've done whatever
00:05:19 12 the MDL court in theory is to be doing.

00:05:24 13 MS. SMITH: Your Honor, this is Leslie
00:05:26 14 Smith. The only thing I would add is that pursuant to
00:05:29 15 your order, regarding settlement demands, that your
00:05:32 16 order covered 15 cases. We've received a demand in each
00:05:36 17 of the 15 cases, and we've responded or Richard Berkman
00:05:40 18 has responded to the demands with a written letter. He
00:05:43 19 did that on July 13. We anticipate further discussions
00:05:47 20 occurring in these 15 cases when Rick returns from
00:05:50 21 vacation at the end of next week.

00:05:54 22 MS. DONNELL: This is Sarah Donnell. I
00:05:56 23 believe Mr. Berkman also is speaking with some
00:06:00 24 plaintiffs about setting up dates for mediation if both
00:06:03 25 sides are interested. So that process is ongoing right

00:06:07 1 now.

00:06:08 2 THE COURT: In other words -- go ahead,
00:06:10 3 Leslie.

00:06:10 4 MS. SMITH: I think that those discussions
00:06:12 5 would cover most of the cases, and some of the cases
00:06:16 6 that are subject to a pending motion and some of the
00:06:19 7 cases that were not subject to your order about
00:06:25 8 settlement demand for the 15th. So I do anticipate that
00:06:29 9 in the coming weeks, as soon as he gets back from
00:06:32 10 vacation, there will be some further discussion. So
00:06:34 11 maybe it makes sense to just allow at least a little bit
00:06:37 12 of time to see whether those can work before Your Honor
00:06:39 13 makes a decision with respect to next steps.

00:06:41 14 THE COURT: As I think about it now, maybe
00:06:47 15 obviously perhaps in mid September or the end of
00:06:51 16 September get an update on the current roster of pending
00:06:57 17 cases. Maybe that would be the thing to do, Leslie.
00:07:02 18 Maybe by the end of September?

00:07:04 19 MS. SMITH: I think that makes sense, Your
00:07:05 20 Honor.

00:07:05 21 THE COURT: Just give me a lineup of all the
00:07:10 22 pending cases. And the same for all defense counsel.
00:07:13 23 If there are cases that --

00:07:18 24 MS. SMITH: I think -- apologies for
00:07:20 25 interrupting. And, Tracy, apologies for not saying who

00:07:20 1 it is; it's Leslie Smith.

00:07:23 2 I think that currently kind of we're in the
00:07:25 3 ballpark of 25, 26 cases total. So I think that the
00:07:30 4 timetable you just set up is a good one because maybe we
00:07:33 5 can whittle it down even further. And then you can take
00:07:36 6 your next steps.

00:07:37 7 THE COURT: And my thought is -- and it's
00:07:40 8 just a very tentative thought, would be, depending
00:07:46 9 upon -- maybe September -- let me take a look at the
00:07:51 10 calendar. Maybe shortly after the defendants submit
00:07:55 11 that status report on the cases pending, as to them,
00:08:03 12 have another phone conference, and then -- what I'd like
00:08:07 13 to do is think about simply sending them back or issuing
00:08:11 14 some kind of order to whomever -- whether it's you, the
00:08:14 15 defendants, or the plaintiffs -- show cause why they
00:08:17 16 shouldn't go back. Something, whatever. I'm open to
00:08:22 17 whatever suggestions people have. Why don't you give me
00:08:26 18 a status report on pending cases on the 24th of
00:08:33 19 September. And then -- hold on just a minute. Let me
00:08:39 20 check my calendar. And then perhaps have a status
00:08:50 21 report on October 1st. The only problem -- well, I
00:08:56 22 could do it first thing in the morning. I'm sitting in
00:08:59 23 Tucson that week. But I could do it at, let's say, 8:30
00:09:04 24 Tucson time, which is, I think -- I'll find out. It's
00:09:10 25 either 10:30 or 11:30.

00:09:14 1 MS. SMITH: We can figure it out.

00:09:16 2 THE COURT: Send me the report, and then on
00:09:20 3 the 24th of September -- we'll talk on the 1st, and
00:09:23 4 we'll figure out where we go from there. In the
00:09:26 5 meantime certainly by then at the very latest I will
00:09:29 6 have gotten -- certainly whatever motions currently are
00:09:33 7 pending, I will have resolved one way or the other. And
00:09:37 8 if other things come in, make it decisional by early,
00:09:42 9 mid September. I'll try to get them done as well. So
00:09:45 10 on all three sides, defense, plaintiffs, and me, we all
00:09:51 11 know where we stand in terms of our dockets, so to
00:09:54 12 speak.

00:09:55 13 MS. SMITH: That makes sense.

00:09:56 14 MR. ZOLL: Your Honor, Dave Zoll for
00:09:59 15 plaintiff liaison. I guess we agree with that schedule
00:10:05 16 too, that calendar. I think that's a great idea. I
00:10:09 17 just wanted to add one more duty to your list so that
00:10:15 18 you don't forget, because there are going to be some
00:10:21 19 housekeeping things that probably realistically are
00:10:25 20 going to drag on at least another six months.

00:10:28 21 THE COURT: That's fine.

00:10:32 22 MR. ZOLL: We wouldn't want you to deprive
00:10:35 23 yourself of jurisdiction. Because even if Rick gets
00:10:40 24 everything settled and you decide to remand everything
00:10:42 25 else, it's going to be important for us to continue to

00:10:48 1 do the housekeeping.

00:10:49 2 THE COURT: Absolutely.

00:10:51 3 MR. ZOLL: I just wanted to make sure you
00:10:53 4 didn't think you were going to be able to walk away on
00:10:58 5 Thanksgiving day without any more duties.

00:11:01 6 THE COURT: No problem. I had forgotten
00:11:06 7 that, but that's no problem. My real concern is to get
00:11:09 8 the cases that are going to go to trial back to the
00:11:12 9 courts from whence they came and get that going.

00:11:16 10 MR. ZOLL: I would agree, Your Honor. If
00:11:18 11 October 1 comes along and they can't get it settled,
00:11:22 12 then it's time to remand. But we simply need to keep
00:11:27 13 the file open so that we administratively can take care
00:11:32 14 of some of the matters that are going to remain.

00:11:35 15 THE COURT: I think, David, why don't you
00:11:37 16 send me on the 24th your -- sort of plaintiff's PEC
00:11:45 17 housekeeping issues. That, you can submit ex parte.

00:11:50 18 MR. ZOLL: Okay.

00:11:51 19 THE COURT: So that at least -- again, I'm
00:11:53 20 sort of foresight attendance. And I also know what,
00:11:59 21 from your standpoint, needs to be done. Perhaps maybe
00:12:02 22 give me some sense of the timetable and also how I
00:12:05 23 should go about procedurally structuring, getting those
00:12:10 24 things ready to be decided or done or both.

00:12:14 25 MR. ZOLL: Certainly.

00:12:17 1 THE COURT: Rough out in general terms, tell
00:12:18 2 me what I need to do, what you need to do, what others
00:12:21 3 need to do, what I need to do, and a rough sense of the
00:12:24 4 timetable that I can perhaps even set up an order or at
00:12:30 5 least an initial order getting all that stuff going.

00:12:36 6 MR. ZOLL: Yes, sir.

00:12:37 7 THE COURT: From the defense standpoint,
00:12:39 8 I'll be out of their hair, and they'll be out of mine.

00:12:43 9 Okay. Anything else we should talk about
00:12:48 10 today?

00:12:49 11 Let me start with David. Anything else on
00:12:52 12 the plaintiff's side?

00:12:54 13 MS. BORGESS: No, Your Honor. This is
00:12:55 14 Pamela Borgess.

00:12:57 15 MR. ZOLL: No.

00:12:57 16 THE COURT: Any other plaintiff's counsel
00:12:59 17 have anything else you wanted to raise?

00:13:01 18 Okay. Leslie and company, anything on your
00:13:04 19 side that we ought to talk about?

00:13:06 20 MS. SMITH: No, Your Honor. Thank you.

00:13:09 21 THE COURT: Good. Thank you.

00:13:11 22 MS. SMITH: Have a good time with your kids
00:13:14 23 and grand kids.

00:13:15 24 THE COURT: I am already. Okay, folks.
00:13:18 25 Thanks. I'll talk to you October 1. If something comes

00:13:24

1 up, let me know.

2 (Concluded at 10:20 a.m.)

3 - - -

4

5 **C E R T I F I C A T E**

6

7 I certify that the foregoing is a correct transcript
8 from the record of proceedings in the above-entitled
9 matter.

10

11 /s/ Tracy L. Spore _____

_____ 9/6/12 _____

12 Tracy L. Spore, RMR, CRR

Date

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