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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  
- October 1, 2012  
v. - Telephone Conference  
-  
BAXTER HEALTHCARE CORP., -  
- et al., -  
-  
Defendants. -  
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TRANSCRIPT OF TELEPHONE CONFERENCE  
BEFORE THE HONORABLE JAMES G. CARR  
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

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

Court Reporter: Tracy L. Spore, RMR, CRR  
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Proceedings recorded by mechanical stenography,  
transcript produced by notereading.

1 (Commenced at 11:45 a.m.)

2 MS. BORGESS: This is Pamela Borgess. We  
00:03:01 3 have 13 plaintiff's attorneys on the phone as well as  
00:03:04 4 defense attorneys. Would you like us to go through the  
00:03:06 5 names again?

00:03:07 6 THE COURT: Why don't you just note their  
00:03:09 7 appearance. If they speak up, they can simply say who  
00:03:12 8 they are.

00:03:13 9 MS. BORGESS: Okay.

00:03:13 10 THE COURT: Okay. I'm due in court in about  
00:03:17 11 20 minutes.

00:03:18 12 MS. BORGESS: No problem.

00:03:21 13 THE COURT: For the defense?

00:03:23 14 MS. SMITH: We have Leslie Smith, Jim Silk,  
00:03:30 15 Sarah Donnell, Dan Gourash, and Laura Lawson for the  
00:03:33 16 defense.

00:03:33 17 THE COURT: So the first item of business,  
00:03:34 18 the cases that remain -- I got that very helpful chart.  
00:03:38 19 What's the likelihood on the mediation being successful,  
00:03:41 20 and when are we likely to know the results? Anybody.

00:03:49 21 MS. DONNELL: This is Sarah Donnell from  
00:03:51 22 Kirkland. Mr. Berkman is handling the settlement, of  
00:03:55 23 course, so we don't know all the nuances of it, but my  
00:03:58 24 understanding is that a number of the mediations are  
00:04:00 25 happening within the first half of the month. Actually

00:04:06 1 a number are happening next week. There are some other  
00:04:10 2 cases where mediations have not occurred but settlement  
00:04:12 3 discussions are ongoing, and my understanding is as a  
00:04:17 4 general matter those look promising. So there may be  
00:04:21 5 outliers, but --

00:04:22 6 THE COURT: Do you have an approximate  
00:04:24 7 number on those?

00:04:25 8 MS. DONNELL: I do. I think there is  
00:04:45 9 settlement discussions ongoing actively in approximately  
00:04:53 10 a dozen. And I know Mr. Berkman has talked with other  
00:04:56 11 folks to where we have summary judgment motions pending  
00:04:59 12 right now on those. And while settlement talks may not  
00:05:06 13 actively be going on right now, you know, he's always  
00:05:09 14 open to a phone call from those plaintiffs.

00:05:12 15 THE COURT: Why don't I do this. Why don't  
00:05:14 16 I, consider issuing an order around November 1, in about  
00:05:20 17 a month, and get from you or Mr. Berkman, perhaps Mr.  
00:05:26 18 Berkman, from whatever source, a list of those cases in  
00:05:28 19 which a settlement has not either been approved or is  
00:05:33 20 pending or, you know, sort of in the works where they've  
00:05:38 21 basically agreed on whatever they're going to need to  
00:05:41 22 agree to, and they're just working things out, and  
00:05:43 23 simply issue an order. And the remaining however many  
00:05:47 24 cases, dozen, two dozen, whatever, for counsel,  
00:05:52 25 basically both counsel to show cause why the cases

00:05:54 1 should not be remanded to the courts of origin for  
00:05:58 2 purposes of trial and file disposition. At least that  
00:06:04 3 way it might do two things, might get a bit more serious  
00:06:11 4 settlement discussions going, but at least it would  
00:06:15 5 alert everybody that the bell is about to ring, and if  
00:06:17 6 they see any reason to stay in an MDL posture, to let me  
00:06:22 7 know. And if not, that's fine. I'm not sure that there  
00:06:25 8 would be a reason. I think my work is pretty much done  
00:06:29 9 as far as the contested litigation is concerned. And go  
00:06:34 10 from there, and just deal with responses and how many  
00:06:38 11 cases. I assume in some that folks will say, let's go.  
00:06:42 12 There may be some that the people say, not quite so fast  
00:06:46 13 for whatever reason. We'll deal with that. You know,  
00:06:51 14 maybe give them until mid November or late November,  
00:06:57 15 whatever, to respond, or the first of December, and go  
00:07:00 16 from there.

00:07:00 17 Let me ask Pam Borgess. I realize your  
00:07:06 18 cases are settled, but as liaison counsel does that make  
00:07:13 19 sense to you?

00:07:13 20 MS. BORGESS: It does, Your Honor.

00:07:15 21 THE COURT: From the defense side, Leslie  
00:07:18 22 Smith, how's that sound to you?

00:07:21 23 MS. SMITH: That makes sense, Your Honor.

00:07:22 24 And I do anticipate in some of those cases there may be  
00:07:26 25 motions that, if it couldn't get resolved, might have to

00:07:29 1 be decided. But we can advise Your Honor of that in the  
00:07:31 2 context of that report.

00:07:33 3 THE COURT: Right. Good. Okay. I'm just  
00:07:43 4 making a note.

00:08:04 5 Are you likely -- do you have a sense, and  
00:08:07 6 you may, A, not yet have a sense; or, B, at this point  
00:08:10 7 you may not want to disclose it, which would be fine,  
00:08:13 8 but from the defense side what your response is likely  
00:08:17 9 to be to that kind of motion?

00:08:23 10 MS. SMITH: What I would say is if it's a  
00:08:25 11 straightforward product ID or within -- outside 60  
00:08:30 12 minutes motion, we would hope -- that could resolve a  
00:08:34 13 case, we would hope we could get that done in the MDL.  
00:08:38 14 I would say I could envision certain situations, for  
00:08:42 15 example, where a very targeted deposition of a  
00:08:44 16 pharmacist, for example, might clear up the product ID  
00:08:48 17 issue.

00:08:50 18 THE COURT: Sure.

00:08:51 19 MS. SMITH: So very targeted discovery might  
00:08:53 20 be something that I thought might be efficient for both  
00:08:56 21 the plaintiff and the defense; because I'm sure the  
00:08:58 22 plaintiff wouldn't want to proceed if, in fact, it was  
00:09:00 23 the case that they did not get the contaminated heparin  
00:09:05 24 from Baxter, and Baxter might have a different approach  
00:09:10 25 if it turns out our assumption was wrong. So something

00:09:12 1 targeted like that might be useful in a limited number  
00:09:15 2 of cases.

00:09:16 3 THE COURT: We'll wait and see what the  
00:09:18 4 incoming mail brings.

00:09:20 5 What else, aside from that? I notice  
00:09:23 6 there's some pending motions. The ones that are  
00:09:29 7 decisional, I'll try to turn to those this week or next  
00:09:34 8 and decide those one way or the other. Aside from that,  
00:09:38 9 what else remains for me to do from your perspective,  
00:09:41 10 from the defense perspective?

00:09:46 11 MS. SMITH: Sarah, if you could chime in. I  
00:09:48 12 think the plan as outlined makes sense, and I think  
00:09:51 13 things are moving along. But, Sarah, let me know. You  
00:09:54 14 know more than I do.

00:09:56 15 MS. DONNELL: I think that's exactly it. We  
00:09:58 16 have motions pending. There's some settlement talks  
00:10:00 17 pending, and we'll look into where there may be some  
00:10:03 18 targeted discovery that we can take that may clear  
00:10:08 19 something up in the next month. And that's, from  
00:10:10 20 Baxter's perspective, I think where we're at. But I  
00:10:13 21 don't want to speak for co-defendants that may have  
00:10:16 22 something else that they're interested in bringing up.

00:10:22 23 THE COURT: Okay. Okeydoke. Pam, again, as  
00:10:25 24 liaison counsel, does that generally sort of make sense  
00:10:28 25 to you?

00:10:28 1 MS. BORGESS: Yes, Your Honor. The only  
00:10:30 2 other items I see are the continued review and approval  
00:10:33 3 of firm settlements which, to date, have been primarily  
00:10:37 4 aggregates. And, of course, the approval and the award  
00:10:41 5 of costs and fees.

00:10:42 6 THE COURT: My thought would be that I would  
00:10:43 7 talk to you shortly about that and determine a timetable  
00:10:48 8 for that.

00:10:48 9 MS. BORGESS: Yes, Your Honor.

00:10:50 10 THE COURT: Okay. I know I approved two  
00:10:54 11 settlements -- proposed settlements last week, so I  
00:10:59 12 think I'm current on those.

00:11:03 13 If there's nothing else of a collective sort  
00:11:07 14 to talk about, perhaps let me just -- it occurs to me,  
00:11:12 15 why don't you talk with the other attorneys on the PEC  
00:11:19 16 and so forth. And why don't you consider coming up with  
00:11:22 17 a proposed timetable of things to do and when they  
00:11:25 18 should be done.

00:11:27 19 MS. BORGESS: Sure.

00:11:28 20 THE COURT: Rather than my trying to cobble  
00:11:31 21 one together now without giving you that opportunity,  
00:11:34 22 unless you're prepared to do so now. Otherwise, my  
00:11:36 23 thought, maybe in a couple weeks we could have  
00:11:39 24 another -- or maybe we should wait until another month.  
00:11:44 25 It's up to you. We can talk in a couple weeks in



00:11:49 1 anticipation that -- within hopefully six to eight weeks  
00:11:56 2 we'll know -- everyone will know what's happening with  
00:11:59 3 the remaining cases. And it would seem to me that that  
00:12:06 4 might be a time at least to consider a timetable to get  
00:12:09 5 underway with resolving the things from the plaintiff's  
00:12:13 6 standpoint, counsel's standpoint that need to get  
00:12:16 7 resolved. So what's your sense in terms of when you  
00:12:19 8 might be able to give me a proposed timetable, and we  
00:12:22 9 can talk about it?

00:12:23 10 MS. BORGESS: I think that we could have a  
00:12:25 11 proposed timetable here in the next few days. Then, of  
00:12:28 12 course, we could amend that accordingly if things change  
00:12:31 13 in the next month or so. But we have a pretty good idea  
00:12:34 14 of what remains to be done.

00:12:36 15 THE COURT: Okay. Fine. Let's -- why don't  
00:12:54 16 you get that to me -- let's do this. Let's have a sort  
00:12:59 17 of status report on pending cases by maybe the 29th,  
00:13:07 18 four weeks, and also a proposed -- and that should  
00:13:12 19 probably be ex parte on sort of an agenda and timetable  
00:13:24 20 for pending matters relating to plaintiff's counsel.  
00:13:29 21 How's that sound?

00:13:33 22 MS. BORGESS: That's great, Your Honor.

00:13:53 23 THE COURT: Okay. Anything else we need to  
00:13:55 24 talk about?

00:14:00 25 MS. SMITH: No, Your Honor.

00:14:01 1 MS. BORGESS: No, Your Honor.

00:14:02 2 THE COURT: I think we're very close to the  
00:14:05 3 last couple laps. Thanks, folks.

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6 C E R T I F I C A T E

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

11

12 /s/ Tracy L. Spore \_\_\_\_\_ 1/4/12 \_\_\_\_\_

13 Tracy L. Spore, RMR, CRR Date

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