

93-7452.0905

October 14, 2004

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re Factor VIII or IX)
Concentrate Blood Products)
Litigation) 93 C 7452
) MDL 986
_____)

**CASE MANAGEMENT ORDER NO. 3
CONCERNING "SECOND GENERATION" CASES**

A status conference was held in open court on October 13, 2004, with counsel for all parties present. The court made the following rulings:

1. The ABAD plaintiffs are given leave to file their first amended complaint *instanter*. The purpose of the amendment is to add Alpha Therapeutic Corporation as a defendant. Alpha may have until November 2, 2004 to plead to the first amended complaint of the ABAD plaintiffs. The other defendants may stand on the pleadings they have filed to the original complaint.

2. The parties will brief plaintiffs' motion for class certification on the following schedule: Plaintiffs will file a supplement to their memorandum in support

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of class certification by November 3, 2004, along with a list of up to ten factual questions they propose for class certification pursuant to Fed. R. Civ. P. 23(c)(4)(A). In their supplemental memorandum, plaintiffs should explain the legal effect they believe a jury's answers to the questions would have in the further conduct of this litigation, either in the MDL or upon remand to the transferor districts.

Defendants may respond to plaintiffs' motion, as supplemented, by November 24 and plaintiffs may reply by December 15, 2004.

3. The primary purpose of the conference was to address a number of discovery disputes the parties had been unable to resolve. During argument it became apparent that much of the parties' disagreement resulted from their differing views as to the relevance of evidence concerning defendants' shipments of factor concentrate to foreign countries and the timing of those shipments in relation to defendants' treatment of their concentrates. The court held that such evidence is relevant to plaintiffs' claims and should be produced as soon as practicable. We rejected defendants' view

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that a causal predicate must be established, by medical records or otherwise, before the evidence would be relevant. Each phase of discovery proceeds independently, and its relevance is to be determined by reference to the pleadings. See Fed. R. Civ. P. 26(b)(1).

The court does recognize that there must be a reasonable relationship between the probative value of evidence and the cost of producing it, and we will be receptive to any specific objection that a particular request is, under that test, unduly burdensome. See Fed.R.Civ.P. 26(b)(2). On the other hand, plaintiffs stated that they have no desire to impose any undue burden, and we do not anticipate a problem in this regard.

The court also heard argument about plaintiffs' alleged failure to provide the necessary medical information concerning the plaintiffs, and it does appear that the production has been incomplete. Plaintiffs will provide translated patient profile forms by December 3, 2004. They will also provide, to the extent possible, complete medical records of all

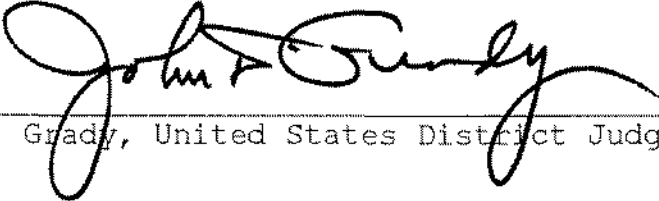
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representative plaintiffs at the earliest practicable time.

4. Any future discovery disputes are likely to be amenable to resolution by telephone conference. Although the court approves of the parties' efforts to resolve their differences without the court's involvement, it is not appropriate to continue such efforts beyond the point of futility. It is desirable for the parties to seek the assistance of the court as soon as an impasse becomes obvious. Therefore, the court directs the parties to request a telephone conference with the court as soon as it becomes clear to any party that a ruling is needed in order to avoid a significant delay in the discovery process.

DATED: October 14, 2004

ENTER:



John F. Grady, United States District Judge