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

HOSPIRA, INC.,)	
Plaintiff,)	Docket Nos. 16 C 651
vs.)	17 C 7903
FRESENIUS KABI USA, LLC,)	Chicago, Illinois
Defendant.)	July 16, 2018
)	1:30 p.m.

VOLUME 1B
TRANSCRIPT OF PROCEEDINGS - Bench Trial
BEFORE THE HONORABLE REBECCA R. PALLMEYER

APPEARANCES:

For the Plaintiff:	JENNER & BLOCK LLP BY: MR. BRADFORD P. LYERLA MR. YUSUF ESAT MR. AARON A. BARLOW MR. REN-HOW H. HARN MS. SARA T. HORTON 353 North Clark Street Chicago, Illinois 60654
For the Defendant:	SCHIFF HARDIN LLP BY: MR. IMRON T. ALY MR. JOEL M. WALLACE MS. TARA L. KURTIS MR. KEVIN M. NELSON 233 South Wacker Drive, Suite 6600 Chicago, Illinois 60606
	SCHIFF HARDIN LLP BY: MR. AHMED M.T. RIAZ 666 Fifth Avenue, 17th Floor New York, New York 10103
Also Present:	Mr. Michael P. Bauer, Hospira Mr. Ryan Daniel, Fresenius Kabi Mr. Ali Ahmed, Fresenius Kabi
Court Reporter:	CHARLES R. ZANDI, CSR, RPR, FCRR Official Court Reporter 219 S. Dearborn Street, Suite 2138 Chicago, Illinois 60604

1 (Proceedings heard in open court:

2 MS. HORTON: Your Honor, before we recall Mr. Lankau,
3 I had a matter to address with the Court.

4 THE COURT: Okay.

5 MS. HORTON: I've spoken or asked Mr. Aly over break
6 if we could perhaps call Dr. Roychowdhury now, given the time
7 constraints, and do Mr. Lankau's cross later, the issue being
8 this: Long ago, Dr. Roychowdhury, who's the inventor, who is
9 no longer an employee, actually works for a competitor, told
10 us she was available on July 16th. They wanted to call her in
11 their case. They're planning to and calling her adversely.

12 Counsel committed to her getting on and off the stand
13 today. Given the time of day it is already, I'm worried that
14 that won't happen, so I've asked Mr. Aly if it would be okay
15 to call her out of order. Given that it's a bench trial, I
16 think it would be okay.

17 MR. ALY: And, your Honor, it's only two witnesses,
18 Lankau's cross and Roychowdhury. That's all that's left. So
19 I don't see the time issue. It's kind of unfair for
20 Mr. Lankau to be waiting for his cross overnight and then
21 having that finished. And that's also in their control
22 however long that's going to be. Whatever their cross is, I
23 don't know how long it is, and they could still have plenty of
24 time left for Roychowdhury adverse and the redirect.

25 MR. NELSON: Your Honor, on a related point there,

1 we've done something to actually expedite this issue. We
2 actually took -- your Honor heard something about an
3 offer-for-sale issue. I think the characterization of that
4 was a little bit unfair. We took that issue off the plate.
5 We want to streamline this case. We think that the IND sale
6 issue is something that the Court benefited from Mr. Lankau's
7 testimony as somebody who is in the pharmaceutical industry
8 and deals with these agreements all the time.

9 We took the offer-for-sale issue off to streamline
10 this issue. We think that gets rid of not only one issue in
11 the case. We think it gets rid of this UCC issue as well that
12 the Court heard about during the pretrial conference. There's
13 no reason to talk about the UCC. There's no reason for
14 Professor White to testify.

15 So, that's why we think, again, Mr. Aly's point,
16 Mr. Imron Aly's point, we think we can get this done today.
17 That's what we're trying to do.

18 THE COURT: If we can't get them both done in a day,
19 then we're inconveniencing either one witness or the other;
20 and I don't know why one witness's inconvenience is greater
21 than the other's.

22 MS. HORTON: The one witness is a non-employee
23 witness, not an expert, not a paid expert, which is
24 Mr. Lankau. The witness that I'm talking about is
25 Dr. Roychowdhury, who's a non-party witness, who's agreeing to

1 be here to testify in their case in chief and for us. She
2 works at Amgen in Massachusetts, and --

3 THE COURT: But presumably --

4 MR. LYERLA: Could I say something, your Honor?

5 THE COURT: Sure.

6 MR. LYERLA: So, Mr. Lankau is a compensated witness.

7 THE COURT: And you're not compensating this witness,
8 is that what you're saying?

9 MS. HORTON: Right.

10 MR. LYERLA: Yeah, that's what we're saying. But
11 more than that, we fronted this and asked them to take
12 Roychowdhury first. Lankau could have testified at any time
13 during the trial. He's available -- he's under contract with
14 them. He's engaged by them. He's available at any time.
15 It's really not an inconvenience for him in any genuine sense.
16 And Miss Roychowdhury, who is --

17 THE COURT: How do we know what he's got scheduled
18 for tomorrow? Let's put Mr. Lankau on the stand.

19 Mr. Lankau, you may resume the witness stand. I'll
20 remind you, sir, that you're under oath.

21 THE WITNESS: Yes.

22 PETER A. LANKAU, DEFENDANT'S WITNESS, DULY SWORN.

23 CROSS-EXAMINATION

24 BY MR. LYERLA:

25 Q. Mr. Lankau, you have next to you some notebooks that

1 contain documents that I may ask you about. Feel free to
2 refer to them as you wish. We'll also be pulling things up on
3 the screen, and maybe that will help this go a little faster.
4 And as you may now be aware, speed all of a sudden has become
5 more important than it was before.

6 MS. KURTIS: Excuse me. We don't have any cross
7 binders.

8 MR. LYERLA: Oh, you don't have the binders? I'm
9 sorry.

10 (Bench conference, not reported.)

11 THE COURT: Go ahead.

12 MR. LYERLA: All right. Sorry for that, Mr. Lankau.

13 BY MR. LYERLA:

14 Q. So, you don't claim to have any UCC expertise, is that
15 correct?

16 A. That's correct.

17 Q. And you're not contending that the transaction involving
18 the IND in the '94 agreement is a transaction that would fall
19 within the purview of the Uniform Commercial Code?

20 A. No, I'm not.

21 Q. Same for the sale, in quotes, of the IND in 2004?

22 A. Can you rephrase the question, please?

23 Q. Are you contending that the sale in 2004 that you say
24 involved the IND is a sale that would fall within the purview
25 of the Uniform Commercial Code?

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