R.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

THE JOHNS HOPKINS UNIVERSITY, a Maryland corporation, BAXTER HEALTHCARE CORPORATION, a Delaware corporation, and BECTON DICKINSON AND COMPANY, a New Jersey corporation,	:	Case No. 94-105 RRM
Plaintiffs,	:	
v.	:	
CELLPRO, INC., a Delaware corporation,	:	
Defendant.	:	

DECLARATION OF DR. FRED LeMAISTRE

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I, Fred LeMaistre, M.D., do hereby declare:

1. I am the Medical Director of the South Texas Cancer Institute, located in San Antonio, Texas. A copy of my curriculum vitae is attached hereto as **EXHIBIT A.**

2. I have been using the CellPro CEPRATE® SC stem cell concentrator since about 1991, when I became involved in the pivotal breast cancer trial that resulted in CellPro's FDA approval. I would estimate that the number of transplants I have performed using the CellPro device is in the range of 20 to 25.

3. In addition to using the CellPro device to treat breast cancer according to the FDA indication, I have also been involved in two clinical trials in which we are using the CellPro device to treat other malignancies. One is a phase III multiple myeloma trial; the other is a haploidentical

transplant trial for hematologic malignancies.

4. The multiple myeloma phase III clinical trial in which I was involved is a CellPro-sponsored trial. Its aim is to develop a new therapy for multiple myeloma wherein mobilized donor peripheral blood is processed with the CellPro device and infused into myeloablated patients to eradicate multiple myeloma.

5. The haploidentical trial in which I was involved is also a CellPro-sponsored trial. It involves allogeneic transplants from half-matched (haploidentical) donors to treat hematologic malignancies. The CellPro CEPRATE® SC stem cell concentrator is used to prepare the transplant suspension from the mobilized peripheral blood of the donor, who is a parent or child of the recipient. Prior to the advent of the CellPro device, such haploidentical transplants had yielded extremely disappointing results, with patients failing to survive because of failure of engraftment or severe graft-versus-host disease ("GVHD"). The CellPro device, unlike prior technology, affords a clinically practical means to prepare a

transplant suspension that is not only highly enriched for stem cells, but also greatly depleted in T-lymphocytes, which are the cells that mediate GVHD and are also believed to play a role in graft failure. The patients involved in these studies are patients who have no potentially curative treatment options besides transplantation, and for whom no better-than-half-matched donor was available. Without access to the haploidentical transplant study made possible by the availability of the CellPro device, these patients would not be transplant candidates and their prognosis would be terminal.

6. In addition to the trials described above, I am now beginning a new clinical trial using CellPro's second-generation device, the CEPRATE® TCD column, which performs a stem- and progenitor-cell enrichment step using positive selection of those cells with the 12.8 antibody, followed by a further T-cell depletion step using a CD2 antibody for positive selection of T-lymphocytes. Patients in the new study will also be patients with potentially fatal hematologic malignancies who are without non-transplant therapeutic

options and for whom no better-than-half-matched donors are available. The goal of the study is to further reduce morbidity from GVHD and improve speed and reliability of engraftment through further T-cell depletion.

7. In addition to my own clinical research activities described above, one of my colleagues at the South Texas Cancer Institute, Dr. Carlos Bachier, is using the CellPro CEPRATE® SC stem cell concentrator in NIH-sponsored molecular marker studies in cooperation with a colleague at Yale University. The approach being used in this study is to isolate stem cells using the CellPro device and transfect the cells with genetic markers that will, it is hoped, elucidate the mechanism and locate the genetic origin of relapse. This basic cancer research aims to broaden the usefulness of gene-therapy approaches that depend on the isolation and transfection of stem cells. The number of life-threatening conditions whose treatment might ultimately be facilitated by this research is potentially very large.

8. I believe that if the CellPro clinical stem cell concentrator (SC and TCD) columns were for any reason to become unavailable in the United States, the public interest and the public health would be negatively impacted in at least the following important ways:

(a) Patients would be deprived of access to treatment by the device for its indicated application. As the pivotal trials on breast cancer patients demonstrated, use of the CellPro CEPRATE® SC device to prepare bone marrow transplant suspensions for the treatment of breast cancer lowers infusional toxicity without compromise to speed or reliability of engraftment. The device is the only FDA-approved device for this indication, and removing the device from the market would withdraw from cancer patients in this country a safe and effective therapy against a widespread, and lethal, disease. Although the pivotal study utilized bone-marrow-derived stem cells rather than peripheral-blood-derived stem cells, it is now clear that the CellPro device's toxicity-lowering benefits are of even greater importance in

the peripheral-blood transplant setting than in the marrow-transplant setting.

(b) Ongoing clinical research would be severely retarded. In the CellPro CEPRATE® SC stem cell concentrator, we have a stem-cell immunoselection device that is ahead of its field and is in widespread use among clinical researchers in the United States in bone marrow transplant and related fields. I believe that FDA-approved status confers on the CellPro device what we may call a "halo effect," such that researchers are encouraged to explore new therapeutic frontiers through the use of the device because they believe that its already-FDA-approved status will facilitate expanded approval for new applications and because they believe that its widespread acceptance and wide distribution within the American medical community will help assure that any new therapies they develop, if successful, will quickly come into widespread use. The enormity of these incentives to further research should not be underestimated; nor should the enormity of the

setback that would result if the CellPro device were rendered unavailable, or if access to it were significantly restricted, for patent-related reasons.

(c) The emergence of fundamentally new therapeutic approaches would be postponed. Beyond what the CellPro device does to extend and refine the usefulness of more-or-less traditional transplant therapies, the device affords the opportunity to perform further manipulations on immunoselected stem-cell populations. As graft-engineering techniques become more refined, we can expect that therapeutic approaches can become more closely targeted than before. In addition, the CellPro device is, for many clinical researchers, the preferred instrument to isolate stem cells for clinical research in gene therapy. By providing a stem-cell-enriched population that can be infused with low toxicity, it provides a highly practical starting point for techniques in which stem cells are genetically altered to confer medically desirable characteristics such as, for example, virus resistance and

chemotherapy tolerance. Gene therapy based on transfection of hematopoietic cells is a field still in its infancy; but the availability of the CellPro device affords not only a practical starting point but also a sense of encouragement in clinical researchers to believe that as beneficial genes are identified and vectors to carry out their transfection are developed, a practical vehicle for processing the cells and efficaciously infusing them into patients will be at hand.

9. It is, in my opinion, not at all realistic to expect that if the CellPro device were removed from the United States market, another stem-cell immunoselection device, such as the Baxter stem-cell immunoselection device, could quickly and adequately make up the loss. I believe this for three reasons:

(a) First, there is no question in my mind that the field of stem-cell therapy would suffer if the CellPro device were taken away. No one else, including Baxter, has an FDA-approved device.

Moreover, it is a reality of industry-sponsored research that the company producing the device will not necessarily wish to sponsor the research of all investigators who might be interested in research which the company wants done, nor to sponsor research in every field which some investigator, but not necessarily the company, considers promising. There is, therefore, no assurance whatsoever that clinical researchers who are now using the CellPro device would even be given the opportunity to substitute a competitor's device (e.g., the Baxter device) if their access to the CellPro device were cut off.

(b) Secondly, a researcher changing over from the CellPro device to another stem-cell immunoselection device, such as the Baxter device, would need technical lead time for his or her team to achieve the same level of competency in using the device that they now have in using the CellPro device. For many clinical research applications, technical lead time would also be necessary to perform tests to make certain that the substituted device would not impact

negatively on other steps of the process being investigated (e.g., gene insertion, or further immunoselective manipulation of the stem-cell-enriched suspension which the device produced).

(c) Thirdly, even if an alternative device, such as Baxter device, could be obtained by the researcher and even if it were confirmed to be technically suitable for the use to which the researcher wished to make of it, there would inevitably be administrative delays to get the necessary governmental and institutional approvals, and the necessary agreement with the device's supplier, in place. In my experience, the process of clearing the administrative hurdles encountered when setting up a clinical study or trial typically takes up to a year when things go smoothly, and longer when they do not.

10. Many of the patients who potentially stand to benefit from experimental stem-cell therapies are patients with lethal diseases, with no conventional therapeutic options, and with life expectancies too short to stand

substantial delays in treatment. I believe that as a practical matter, withdrawal of the CellPro device from the United States market could harm and even lead to death in a significant number of patients.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Antonio, Texas, this 17 day of April 1997.

Fred LeMaistre M.D.

CURRICULUM VITAE

Charles Frederick LeMaistre, M.D.

I. GENERAL INFORMATION

A. Personal Data:

1. Citizenship Status: United States

2. U.S. Social Security No.: 452-11-3944

B. Education:

1975	B. A.	Biology	The University of Texas at Austin Austin, Texas
1979	M.D.	Medicine	Southwestern Medical School Dallas, Texas

C. Postgraduate Training:

1984	Visiting Fellow	BMT	Fred Hutchinson Cancer Center Seattle, Washington
1982 - 1984	Fellowship	Medical/Oncology	The University of Science Center at San Antonio - San Antonio, Texas
1981 - 1982	Chief Resident	Internal Medicine	Parkland Memorial Hospital and VA Medical Center - Dallas, Texas
1979 - 1982	Internship & Residency	Internal Medicine	Parkland Memorial Hospital and VA Medical Center - Dallas, Texas

D. Academic Appointments:

10/93 - Present	Clinical Assoc. Professor	Division of Hematology, Department of Medicine -- The University of Texas Health Science Center at San Antonio - San Antonio, Texas
9/90 - 10/93	Assoc. Professor	Division of Hematology, Department of Medicine -- The University of Texas Health Science Center at San Antonio - San Antonio, Texas