

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JUN 5 4 03 PM '97

FILED
DISTRICT

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

Plaintiffs, :

v. :

CELLPRO, INC., a Delaware :
corporation, :

Defendant. :

SUPPLEMENTAL DECLARATION OF EDWARD KENNEY
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
PERMANENT INJUNCTION AND IN SUPPORT OF
CELLPRO'S ALTERNATIVE MOTION FOR STAY

I, EDWARD KENNEY, do hereby declare:

1. I am the Vice-President of Marketing and Sales for CellPro, Inc. I have personal knowledge of the matters set forth in this declaration and if called as a witness could competently testify thereto.

2. I am informed and believe that, during an oral argument on April 30, 1997, plaintiffs' counsel suggested that the CellPro CEPRATE® SC stem cell concentrator may already be in place at most, or substantially all, of the transplant sites within the United States. Specifically, I am informed that plaintiffs' counsel remarked to the Court that it was "not clear" to him "that there are even a whole lot more transplant centers in the United States" than those that already had a CEPRATE® SC device.

3. In fact, as of March 12, 1997, there were 54 transplant centers in the United States that possessed at least one CellPro CEPRATE® SC Stem Cell Concentrator. In contrast, the total number of medical institutions in the United States that perform stem cell transplants is estimated to be at least 300. This number is probably conservative, and it is derived from the number of transplant centers that report to the Bone Marrow Transplant Registry. There are known to be other centers that perform transplants but that do not report to the Registry, and that would cause this number to be an undercount. Even if this probably-conservative estimate of 300 as the total number of transplant centers in the U.S. is adopted, the percentage of such

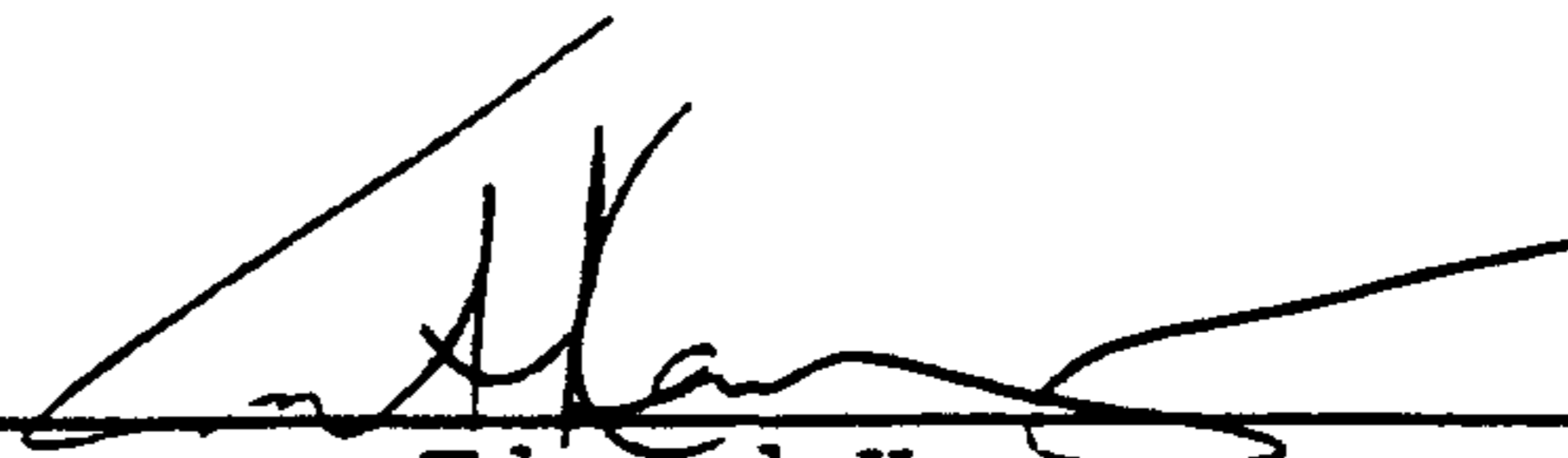
centers which possessed a CellPro device as of March 12, 1997 was only 18% -- that is, 54 of 300. If the number of transplant centers that report to the Registry is indeed an undercount of the total number of centers in the United States, then even this 18% percent figure would of course be an overestimate.

4. From the list appearing in the April 28, 1997 Declaration of Kristin F. Houser purporting to show the North American "transplant centers and other facilities" at which a Baxter ISOLEX system was "currently installed," it appears that there were, at most, 37 U.S. transplant centers represented (I did not count three facilities listed by Ms. Houser which are obviously Canadian, nor did I count Systemix, which according to my understanding is a business corporation that has a research facility but not a transplant center). By comparing this list with CellPro's list, I counted an overlap of 21 transplant centers that had both CellPro's and Baxter's device. This would yield a total of $(54 + 37 - 21 =)$ 70 U.S. transplant centers which have at least one (CellPro's or Baxter's, if not both) therapeutic stem cell immunoselection device. Based on the above estimate of 300 as the total number of transplant centers in the U.S., it can be calculated that only some 23% $(= 70/300)$ of such sites possess a therapeutic stem cell immunoselection device. This estimate is approximate not only because the 300-centers estimate is probably conservative but also because CellPro's number is taken at March 12, 1997 and Baxter's at April 28, 1997. Nevertheless, I believe it is fair to conclude, based on the

above estimates and analyses, that the proportion of all transplant centers in the U.S. that possess stem cell immunoselection devices is a small proportion, probably in the neighborhood of one-fourth of all U.S. transplant centers.

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

Executed at Bothell, Washington, this 3rd day of ~~May~~ ^{June} 1997.


Edward Kenney

CERTIFICATE OF SERVICE

I, Gerard M. O'Rourke, do hereby certify that on June 5, 1997, I caused to be served copies of the foregoing SUPPLEMENTAL DECLARATION OF EDWARD KENNEY IN OPPOSITION TO PLAINTIFFS' MOTION FOR PERMANENT INJUNCTION AND IN SUPPORT OF CELLPRO'S ALTERNATIVE MOTION FOR STAY upon the following counsel of record by the means indicated:

BY HAND:

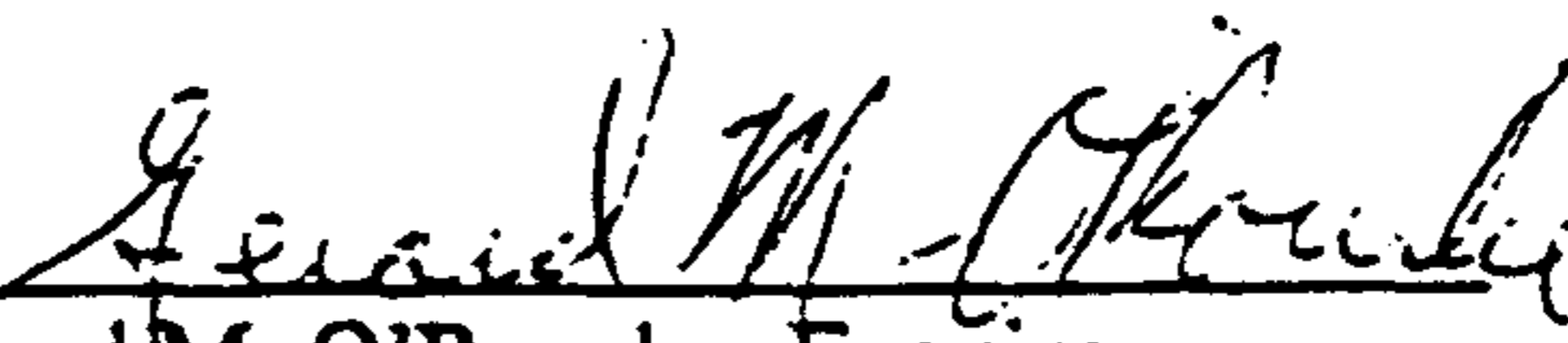
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