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FILED
Los Angeles Superior Court

MAY 21 2010

John A. Blacke, Executive Officer/Clerk
By *[Signature]* Deputy
DOROTHY SWAIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ZOE GRACE QUAID and THOMAS)
BOONE QUAID, Minors, by and through)
their Guardian Ad Litem, DENNIS)
QUAID,)

CASE NO. BC438154

COMPLAINT FOR NEGLIGENCE

Plaintiffs,

vs.

BAXTER HEALTHCARE)
CORPORATION, A Corporation; DOES)
1 Through 25, Inclusive,)

Defendants.

Plaintiffs allege:

1. That the true names and capacities, whether individual, corporate, associate or otherwise, of Defendants Does 1 through 25, inclusive, are unknown to plaintiffs at this time who therefore sue said Defendants by such fictitious names and will ask leave of court to amend this complaint to show their true names and capacities when ascertained. Said Defendants are sued

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1 as principals, and all of the acts performed by them as agents, servants and employees within the
2 course and scope of their authority and employment.

3 2. That plaintiffs Zoe Grace Quaid and Thomas Boone Quaid, twins, are minors 2 ½
4 years of age whose date of birth is November 9, 2007. Plaintiff Dennis Quaid has been
5 appointed Guardian ad Litem of such minors by this court for the purpose of this action.

6 3. Defendant Baxter Healthcare Corporation was and now is a corporation, organized
7 and existing under the laws of the State of California and at all times herein mentioned, has been
8 and is doing business in the State of California and the County of Los Angeles thereof, so as to
9 subject it to the jurisdiction of this court.

10 4. Defendants Baxter Healthcare Corporation and Does 1 through 25 and each of
11 them were and now are in the business of compounding, formulating, producing, marketing and
12 otherwise placing into the stream of commerce various pharmaceuticals, drugs, medications, and
13 related items, including the packaging and labeling thereof, on a nationwide, if not word wide
14 basis, and regularly furnished such to medical facilities and pharmacies in the State of California,
15 including the County of Los Angeles thereof.

16 **FIRST CAUSE OF ACTION**

17 **(For Negligence Against all Defendants)**

18 5. On or before November 18, 2007, defendants Baxter Healthcare corporation and
19 Does 1 through 25 and each of them, furnished two of their products, among other things, either
20 directly or through intermediaries, to the medical facility known as Cedars-Sinai Medical Center,
21 in Los Angeles, California for use by hospital personnel in the care and treatment of infants in
22 their care for various medical conditions. These products both contained Heparin, but in
23 drastically different amounts. The first was "Heparin Sodium," packaged and furnished in vials of
24

1 10,000 units per milliliter. The second, "Hep-Lock," packaged and furnished in vials of only 10
2 units per milliliter. The correct use and purpose, and potential impact on the body, of these two
3 Heparin products were vastly different. Heparin Sodium in this strength was a very powerful
4 anticoagulant, suitable for use only in serious cases where potential life threatening blood clotting
5 and similar situations were a risk. "Hep-Lock" on the other hand, was properly used in what is
6 known as "Heparin flush," which essentially is a very low and mild dose used to clear IV lines.
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8 6. The vials containing each of these drugs, all furnished, designed, manufactured
9 and labeled by Defendants Baxter Healthcare Corporation and Does 1 through 25, were very
10 similar in size, color and appearance, and had no distinguishing markings, color or information on
11 the top of the cover, which would ordinarily be what the hospital personnel attempting to select
12 the correct vial would easily see. In order to determine which was which, a more careful and time
13 consuming inspection would have to be made of the actual label in order to differentiate. In
14 short, the striking similarity of the vials for these two drugs, each with vastly different potential
15 effects on humans, was not at all apparent, and a mix-up in the pressure of treatment of ill
16 individuals and other common hospital situations was totally foreseeable and predictable. In fact,
17 it had happened before, as alleged more fully below.
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19 7. On or about said date of November 18, 2007, the newborn minors Zoe Grace
20 Quaid and Thomas Boone Quaid were both hospitalized in, and under the medical care of
21 Cedars-Sinai personnel in the pediatric unit in connection with a staph infection. In the course of
22 that treatment, it was necessary to flush the infants IV lines, and "Hep--Lock" was appropriately
23 ordered for this. However, in error, a vial of Heparin (sodium) was selected and used
24 inadvertently by hospital personnel and 10,000 units of Heparin instead of 10 were administered
25 to each plaintiff.
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1 8. On or before November 18, 2007, and at the time the vials of Heparin left the
2 control of Defendant Baxter Healthcare Corporation, the Heparin in both forms was in a condition
3 that was dangerous and defective in one or more of the following ways:

4 a. Both the 10 unit/ml vial of Hep-loc and the 10,000 unit/ml of Heparin had a
5 blue background color to its label. This fact made them more difficult to distinguish than if
6 they had different background colors. Since a readily foreseeable error in administration
7 could lead to a dangerous or fatal result, the background colors should have been
8 different;
9

10 b. Both the 10 unit/ml vial of Hep-loc and the 10,000 unit/ml of Heparin had a
11 blue background color to its label. This fact made them more difficult to distinguish than if
12 they had different background colors. Since a readily foreseeable error in administration
13 could lead to a dangerous or fatal result, the vials should have been in completely
14 distinguishable size and shape; and/or the caps of different colors or with other
15 distinguishing marks;
16

17 c. Defendants, knowing of the danger of inadvertent mix-up, with the dire
18 consequences that could follow, should have taken other steps to warn and to distinguish
19 each of these drugs, one from the other.
20

21 9. As a proximate and legal result of being administered full strength 10,000 units per
22 MI Heparin Sodium the newborn infant plaintiffs, Zoe Grace Quaid and Thomas Boon Quaid,
23 both sustained and suffered severe and life threatening reactions, internal injuries, shock and
24 other injuries, which may be permanent in nature and are likely to cause serious complications in
25 the future. Because of the tender age of the plaintiffs, it is not possible now to assert with
26 certainty the specifics of these risks, other than to allege that they are real and will be a source of
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1 great concern and mental anguish to the infants as they become older and fully realize what has
2 happened to them. As of now, each of said plaintiffs' have been injured seriously in their healthy
3 and bodily integrity and suffered and will suffer damages in excess of the jurisdictional minimum
4 of this court.

5 10. In formulating, designing, manufacturing, labeling, bottling, and putting the
6 aforementioned products, Heparin Sodium and "Hep-Lock" into the stream of commerce,
7 defendants Baxter Healthcare Corporation and Does 1 through 25 and each of them were
8 negligent in and about such functions, and more specifically negligent in one or more of the
9 following ways:
10

11 a. Failed to recall the 10,000 units/ml vial of Heparin when it had actual
12 knowledge that prior infant deaths had occurred as a result of medication errors; deaths
13 and other untoward "events" and "foreseeable" after result and in front of administration of
14 medication errors;
15

16 b. Failed to repackage the 10,000 unit/ml vial of Heparin when it knew that fatal
17 medication errors had occurred with children;
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19 c. Designed, marketed and sold 1 ml vials of Heparin Sodium Injection, 10,000
20 units/ml and the Hep-loc U/P 10 unit/ml vial all in shades of blue as the prominent
21 background color on their label when they knew that such packaging could have caused
22 fatal medication errors; foreseeable fatal and other serious medication administration
23 errors;
24

25 d. Failed to issue an adequate and accurate urgent warning to all of the
26 healthcare providers that had purchased the product about the fatal medication errors that
27 had occurred and foreseeably would occur again and require that such providers initiate
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1 mandatory education and also implement safety procedures so a fatal medication error
2 would not occur;

3 e. Failed to provide and implement an adequate after market solution to the
4 existing easily confused vials of Heparin Sodium 10,000 units per m/l, and Hep-Lock 10
5 units per m/l and assure that none of the existing vials were used until the after market
6 solution was implemented;

7
8 f. Failed to take any other necessary steps or measures to insure that the
9 readily foreseeable potential for mix up of these two products in the real life of
10 administration of medications to ill and critically ill patients by medical care providers would
11 not occur.

12
13 11. As a legal and proximate result of the aforesaid product defect and/or negligence,
14 plaintiffs Zoe Grace Quaid and Thomas Boone Quaid both sustained and suffered severe and
15 life threatening reactions, internal injuries, shock and other injuries as set forth above, which is
16 incorporated herein by reference.

17
18 12. Further, the products Heparin Sodium and "Hep-lock" and each of them were in a
19 dangerous and defective condition, as defined by California law, and such condition legally and
20 proximately caused and contributed to the injuries and damages herein set forth.

21 **SECOND CAUSE OF ACTION**

22 **(For Strict Liability Against All Defendants)**

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24 13. Plaintiff hereby realleges and incorporates by reference each and every allegation
25 herein above as if fully set forth in detail therein.

26
27 14. On and prior to November 18, 2007, Defendant, Baxter Healthcare Corporation, did
28 design, manufacture and sell and distribute a drug known as Heparin.

1 16. On and before November 18, 2007, 10,000 unit/ml vials of Heparin and 10 unit/ml
2 vials of Hep-lock were designed, manufactured and sold by Defendant, Baxter Healthcare
3 Corporation, to Cedars-Sinai in Los Angeles, California for use by its medical personnel in the
4 treatment of infants in its hospital.

5 17. On November 18, 2007, an order had been given for minor plaintiffs Zoe Grace
6 Quaid and Thomas Boone Quaid to each receive what is known as a Heparin flush, which is the
7 administration of 10 unit/ml of Hep-lock. Instead of receiving the prescribed medication, a medical
8 error was made by personnel of Cedars-Sinai Hospital and 10,000 unit/ml of Heparin were
9 administered instead.
10

11 18. On or before November 18, 2007, and at the time the vials of Heparin left the control
12 of Defendant, Baxter Healthcare Corporation, the Heparin was in a condition that was
13 unreasonably dangerous in one ore more of the following ways:
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15 a. Both the 10 unit/ml vial of Hep-loc and the 10,000 unit/ml of Heparin had a
16 blue background color to its label. This fact made them more difficult to distinguish then if
17 they had different background colors. Since a medical error in administration could lead to a
18 dangerous or fatal result, the background colors should have been different;
19

20 b. Both the 10 unit/ml vial of Hep-loc and the 10,000 unit/ml of Heparin had a
21 blue background color to its label. This fact made them more difficult to distinguish then if
22 they had different background colors. Since a medical error in administration could lead to a
23 dangerous or fatal result, the vials should have been in completely distinguishable size and
24 shape.
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1 19. As a proximate result of one or more of the aforementioned unreasonably dangerous
2 conditions of the aforesaid Heparin, minor plaintiffs, Zoe Grace Quaid and Thomas Boone Quaid,
3 suffered and will continue to suffer injuries of a pecuniary nature.

4 20. Because of the tender age of the minors herein, and other questions involving
5 excess doses of Heparin and its long term effects, it is not possible to allege with specificity at
6 this point what medical, special educational, therapeutic and other similar expenses will be
7 necessary in the future, nor quantify a present sum equivalent thereto. Plaintiffs, therefore allege
8 and pray that at the expense of defendants herein and each of them, a monitoring fund or funds
9 be set up and established by order of this Court, in the form of an annuity, trust, injunctive relief,
10 or similar, so as to provide the funds in the future when and if needed to meet such damages.
11

12 21. In acting as they did, as alleged herein above, in failing to take any reasonably and
13 urgently needed steps and measures to either withdraw and recall the products Heparin Sodium
14 10,000 units per ml and "Hep-Lock," change the coloring, appearance, packing and/or labeling so
15 as to prevent inadvertent mix-up of these products, even after getting a confirmed report of
16 exactly such a prior mix-up in a licensed medical facility, causing three infant deaths some
17 months before the Quaid twins incident, plus ignoring other warnings that were made to them
18 concerning this problem and the likelihood of other incidents, Defendants Baxter Healthcare
19 Corporation and Does 1 through 25 and each of them, acted in pursuit of their own economic
20 interest and aims, as opposed to the welfare of those who would be exposed to their products,
21 and with malice and oppression as to all plaintiffs herein, as well as others who would be similarly
22 situated and endangered, and engaged in despicable conduct, as defined by the laws of the
23 State of California, so as to subject them to the imposition of appropriate punitive and exemplary
24 damages, as determined by the trier of fact.
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WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

1. General damages;
2. Actual medical expenses incurred;
3. Special damages, according to proof;
4. Further special damages in the form of a fund, in the form of an annuity or otherwise, for suitable and complete medical monitoring of the minors Zoe Grace Quaid and Thomas Boon Quaid with respect to any needed diagnosis and treatment necessitated by any long term or presently unknown effects of the massive Heparin overdose alleged;
5. Further special damages in the form of another fund to cover any special training or educational needs of minors, occasioned by said Heparin overdose;
6. For punitive and exemplary damages as alleged;
7. For attorney's fees and prejudgment interest as may be allowed by law;
8. For costs of suit incurred herein;
9. For such other and further relief as may be granted by the Court.

Dated: May 21, 2010

GIRARDI AND KEESE

By:


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Attorneys for Plaintiff