IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

NATURALOCK SOLUTIONS, LLC, Plaintiff, v. BAXTER HEALTHCARE CORPORATION, a Delaware Corporation; BAXTER INTERNATIONAL, INC., BAXTER HEALTHCARE S.A., Defendants,	)	Case No.: CIV-2014-751-F Judge Stephen P. Friot

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO TRANSFER TO THE NORTHERN DISTRICT OF ILLINOIS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. INTRODUCTION

The locus of this lawsuit is the Chicagoland area; its venue should lie there, too, in the District Court for the Northern District of Illinois.

Plaintiff Naturalock Solutions, LLC's claims arise out of Defendant Baxter Healthcare Corporation's ("BHC") development of Plaintiff's invention pursuant to their agreement. BHC conducted these activities in and from its offices in the northern suburbs of Chicago. It is there that the most important witness reside, including several key third-party witnesses who are not subject to the compulsory process of this Court. It is there that the vast majority of documents and records are located. And it is a court there, in the Northern District of Illinois, that is best situated to monitor discovery and entertain a trial, to enforce any award of injunctive relief enjoining BHC's future conduct, and to regulate BHC's conduct by applying Illinois law to an Illinois-based company.

The only factor that favors Plaintiff's chosen district, the Western District of Oklahoma, is that Plaintiff chose that district and resides there. But even the importance of this factor is diminished because of the Western District of Oklahoma's attenuated connection to the facts giving rise to Plaintiff's lawsuit. While Plaintiff's choice of the Western District of Oklahoma might be convenient for one of the principals of the entity that owns Plaintiff, it is in almost all other respects ill considered. Delaware or Illinois law, not Oklahoma law, applies. The Oklahoma forum would impose burdens on the vast majority of the witnesses, who live and work in or near Chicago, including key third-party witnesses; it would unnecessarily disrupt the Chicagoland area-based businesses of

BHC and other third parties, whose employees and records will provide almost all of the material evidence; it would impose significant expense on Baxter to ensure potential witnesses were present at trial; and it is otherwise inconvenient and impractical. For the convenience of the parties and witnesses, and in the interest of justice, this lawsuit should be transferred to the Northern District of Illinois.

II. BACKGROUND

This lawsuit arises out of a December 2010 License and Development Agreement (the "Agreement") between Plaintiff and BHC.[1] Plaintiff is a Delaware limited liability company whose principal place of business is in Norman, Oklahoma. (Notice Stmt. of Facts Supp'g Diversity Jurisdiction [Dkt. No. 7] ("Notice") ¶1). Plaintiff's sole member is a Delaware limited liability company that is based in Nebraska and owned by natural persons "domiciled in and citizens of the states of Florida, Oklahoma, Mississippi, Nebraska, New Jersey and Texas." (*Id*. ¶¶2-3.) Plaintiff initially named as Defendants three Baxter-related entities: BHC, a Delaware corporation based in Deerfield, Illinois; Baxter International, Inc., also a Delaware corporation based in Deerfield, Illinois; and

[1] The Agreement is not attached because it contains a confidentiality provision. (Decl. of Sarah Padgitt ("Padgitt Decl.") ¶2.) Should the Court so desire, BHC is willing to provide the Court with a copy of the Agreement or, with the agreement of Plaintiff, file the Agreement separately. BHC will provide citations supporting any reference to the Agreement in case that happens.

Baxter Healthcare, S.A., a Swiss company based in Switzerland. (*Id*. ¶4-5; Complaint [Dkt. No. 1] ("Compl.") ¶2.)[2]

Plaintiff claims that the individual members of its sole member, the Delaware LLC, developed "a solution that is intended to replace animal (pig) derived Heparin" for use with catheters. (Compl. ¶22.)[3] In exchange for exclusive licensing rights, BHC agreed to pursue the development of Plaintiff's invention, and, if the invention proved to be commercially feasible, its commercialization. (Agreement §§ 2.01, 3.01, Article 4, § 8.02(b).) The Agreement provides that it "will in all events and for all purposes be deemed to have been executed in, and shall be governed and construed according to, the laws of the State of Delaware…." (*Id*. ¶10.08.) BHC fulfilled its obligations under the Agreement by, among other things, conducting testing and feasibility studies, prosecuting Plaintiff's patent applications in the United States, applying for patent protection in numerous foreign countries, and investigating regulatory approval from the FDA. (Compl. ¶¶26-29, 30-41, 42-46, 50, 113.) On March 25, 2014, after determining that Plaintiff's invention was not commercially feasible, BHC exercised its right to terminate

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[2] Plaintiff attempted to voluntarily dismiss Baxter International, Inc. and Baxter Healthcare, S.A. rather than confront a motion to dismiss the two entities because they are not subject to jurisdiction in Oklahoma. The Court struck the agreed stipulation of dismissal. On September 16, 2014, Plaintiff filed a second Stipulation of Dismissal of Baxter International, Inc. and Baxter Healthcare, S.A. [Dkt. No. 26]. BHC notes for the record that both Baxter International, Inc. and Baxter Healthcare, S.A. are subject to jurisdiction in the Northern District of Illinois.

[3] There is no allegation that this development activity occurred in the Western District of Oklahoma.

the Agreement. (*Id*. ¶¶47, 49.) These activities by BHC all took place in the Northern District of Illinois. (Padgitt Decl. ¶5.)

The gravamen of Plaintiff's Complaint is that despite paying more than a million dollars to Plaintiff, (Agreement § 3.01), and devoting the time of more than 100 employees to testing, development, patent prosecutions, and other matters, (Padgitt Decl. ¶3), BHC sabotaged its own deal in a fit of pique and to prevent competition from an invention whose exclusive licensing rights it owned. Thus Plaintiff complains that BHC only appeared to be fulfilling its obligations under the contract in a timely and diligent manner, (Compl. ¶49, 104, 111-14); in reality, and largely unbeknownst to Plaintiff, BHC was dragging its feet on the patent applications, acting unilaterally and to Plaintiff's detriment by failing to pursue patent protection in certain foreign countries, and doing nothing toward securing FDA approval, (*id*. ¶¶30-46, 111-13, 115, 121). BHC did so, Plaintiff alleges, for two reasons: to punish Plaintiff for complaining to certain BHC managers about BHC's sluggishness, and to prevent Plaintiff's emergence "as a competitor to Baxter's lucrative heparin product market share" – even though BHC owned the exclusive rights to sell Plaintiff's product. (*Id*. ¶¶47, 56, 101 120-121.) Plaintiff further claims that BHC abruptly and wrongly terminated the Agreement, and subsequently refused to return certain information, thereby leaving Plaintiff "no opportunity" to develop and commercialize its invention itself. (*Id*. ¶¶50, 53, 56-57.) The cornerstone of all these allegations, however, is BHC's conduct, all of which occurred in the Northern District of Illinois.

BHC performed its obligations under the Agreement in and from its offices in Deerfield and Round Lake, Illinois. (Padgitt Decl. ¶¶4-5.) To prosecute Plaintiff's patent applications, BHC retained patent attorneys from the Chicago office of the law firm K&L Gates. (*Id*. ¶6; Compl. ¶30.) It was almost entirely by telephone or email from BHC's Deerfield offices that BHC personnel communicated with Plaintiff about the development process. (*Id*. ¶5.g.; Compl. ¶¶27-28, 36, 46-47.)

On July 16, 2014, Plaintiff filed its Complaint in the Federal District Court for the Western District of Oklahoma. Plaintiff asserts claims for the declaration of certain rights under the Agreement, breach of contract, negligence, antitrust violations, and tortious breach and interference. (Compl. ¶¶60-126.) In addition to monetary damages, Plaintiff's Complaint seeks an injunction enjoining BHC from further interfering with Plaintiff's invention. (*Id*. ¶126.)

III. LEGAL STANDARD

28 U.S.C. 1404(a) allows a district court to "transfer any civil action to any other district where it might have been brought" "[f]or the convenience of parties and witnesses [and] in the interest of justice." Congress enacted section 1404(a) to "allow[] easy change of venue within a unified federal system." *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1515 (10th Cir. 1991) (internal quotation marks omitted).

BHC, as the party moving to transfer, "bears the burden of establishing that the existing forum is inconvenient." *Id*. "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an individualized, case-

by-case consideration of convenience and fairness." *Id*. at 1516 (internal quotation marks omitted).

IV. ARGUMENT

BHC must make two showings for a transfer to the Northern District of Illinois: (1) that this action "might have been brought" in the Northern District of Illinois, and (2) that the "convenience of the parties and witnesses [and the] interest of justice" favor transfer to the Northern District of Illinois. 28 U.S.C. § 1404(a). Because BHC makes both showings below, this action should be transferred to the Northern District of Illinois.

A. Venue for this action is proper in the Northern District of Illinois.

This action "might have been brought" in the Northern District of Illinois under 28 U.S.C. § 1391(b)(2). That provision allows an action to be brought in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred…." *Id*. In this case, venue is proper in the Northern District of Illinois because all or nearly all of the events or omissions giving rise to Plaintiff's claim occurred in the Northern suburbs of Chicago or Chicago itself, both of which are within the Northern District of Illinois.

Plaintiff's claims stem from BHC's performance of its obligations under their Agreement to pursue the development and, if feasible, the commercialization of Plaintiff's invention. Despite the variety of legal theories advanced in Plaintiff's Complaint, Plaintiff focuses on a common core of BHC conduct: BHC's prosecution of Plaintiff's patent applications in the United States, BHC's filings for international patents, BHC's pursuit of regulatory approval with the FDA, BHC's post-termination

refusal to return certain information to Plaintiff, and BHC's general business practices in a purported national market for heparin.

Thus, Plaintiff purports to state the following claims:

- A claim for a declaratory judgment stating "the rights of parties in regards to the licensing agreement and accumulated data" that Plaintiff requested after the termination of the Agreement, (Compl., First Cause of Action & ¶67);

- A claim for a declaratory judgment of fraud in the inducement to enter the Agreement, premised on BHC's alleged false promises that "it would always act in good faith and deal fairly with Naturalock in regards to the timely pursuing the patent [sic] and commercialization for Plaintiff's invention," (*id*., Second Cause of Action & ¶107);

- Claims for breach of the Agreement, premised on BHC's (a) alleged "fail[ure] to timely pursue the commercialization and prosecution of Plaintiff's patent application," (*id*., Third Cause of Action & ¶83), and (b) alleged "fail[ure] and refus[al] to consult with Naturalock in a timely manner regarding what countries to file for patent protection," (*id*., Fourth Cause of Action & ¶89);

- A claim for negligence, premised on BHC's alleged breach of purported common law duties "to timely pursue Naturalock's pending patent application," to timely pursue "approval from the Federal Drug Administration for clinical trials, commercialization and manufacture of Plaintiff's invention," and "to protect Naturalock's invention as well as its ability to file for protection in foreign countries," (*id*., Fifth Cause of Action & ¶¶94-96.)

- A claim for fraud and violation of the Sherman and Clayton Antitrust Acts and provisions of the Federal Trade Commission Act, premised on the theory that BHC's alleged failings in connection with the pursuit of domestic and international patents and FDA approval constituted "anticompetitive actions," that these anticompetitive actions "raised a substantial barrier to Naturalock's product to enter into the heparin market," and that BHC "thereby protect[ed its] controlling market share in violation" of the antitrust laws, (*id*., Sixth Cause of Action & ¶¶112-115, 117); and

- A claim for tortious breach of agreement and intentional interference with Plaintiff's business relations, premised on allegations that BHC (a) "in retaliation for Plaintiff's identification of failures and potential violations of the license agreement did intentionally refuse to pursue its obligations under the licensure

> agreements and terminate[d] the agreement," and (b) "attempt[ed] to and did infringe upon Plaintiff's patent application contrary to the written license agreement" "to block development of Plaintiff's product in order to maintain an adequate market share of its heparin production." (*id*., Seventh Cause of Action & ¶¶121-22.)

BHC performed its obligations under the Agreement, and conducted its general business activities, in and from its offices in Deerfield and Round Lake, Illinois, two suburbs of Chicago that are within the Northern District of Illinois. *See* 28 U.S.C. § 98(a) (dividing Illinois into a Northern District that includes Lake county, in which Round Lake and Deerfield are located). Indeed, in its supplementary allegations in support of diversity jurisdiction, Plaintiff alleged that BHC has its "principal place[] of business located in Deerfield, Illinois," and that is "where the corporation['s] officers direct, control, and coordinate the corporation[']s activities." (Notice ¶5.) It was in and from BHC's offices located within the Northern District of Illinois that BHC undertook the following activities:

- the prosecution, with the assistance of Chicago-based patent counsel K&L Gates, of Plaintiff's domestic patent applications, (Padgitt Decl. ¶5.a..);
- the decision to apply and the applications for international patents for Plaintiff's invention, (*id*. ¶5.b.);
- the coordination and pursuit of other regulatory matters, including those involving the FDA, necessary to bring Plaintiff's invention to market, (*id*. ¶5.c.);
- the determination that Plaintiff's invention was not commercially feasible, (*id*. ¶5.d.);
- the exercise of BHC's right to terminate the Agreement, (*id*. ¶5.e.);
- the decision to either return or retain certain information and documents after termination, (*id*. ¶5.f.);

- most communications, by telephone and email, between BHC and its patent counsel, on the one hand, and plaintiff, on the other, (*id*. ¶¶5.g.; Compl. ¶¶27-28, 36, 46-47); and

- the direction of BHC's general business activities, including the manufacture and sale of heparin products, (*id*. ¶¶5.h.)

Because all, or at least the overwhelming majority, of the events and omissions underlying Plaintiff's claims took place within the Northern District of Illinois, venue is proper in that district.

B. Venue in the Northern District of Illinois would be fairer and more convenient.

In determining the most fair and convenient venue for a lawsuit, the Tenth Circuit has identified the following factors:

> [1] the plaintiff's choice of forum; [2] the accessibility of witnesses and other sources of proof, including the availability of compulsory process to insure attendance of witnesses; [3] the cost of making the necessary proof; [4] questions as to the enforceability of a judgment if one is obtained; [5] relative advantages and obstacles to a fair trial; [6] difficulties that may arise from congested dockets; [7] the possibility of the existence of questions arising in the area of conflict of laws; [8] the advantage of having a local court determine questions of local law; and, [9] all other considerations of a practical nature that make a trial easy, expeditious and economical.

Chrysler Credit Corp., 928 F.2d at 1516 (internal quotation marks omitted).

In this case, the most important factor – the convenience of the witnesses – favors the Northern District of Illinois; for it is within that district that almost all of the witnesses with material testimony, including certain third-party witnesses, reside. The Northern District of Illinois is likewise favored by several other factors – [2], [3], [4], [7], [8], [9] – that highlight the relative inconvenience, impracticality, and additional costs

that would result from litigating this action in the Western District of Oklahoma rather than the Northern District of Illinois. Indeed, the only factor that favors the Western District of Oklahoma is that Plaintiff chose the venue and, for purposes of venue at least, is deemed to reside there. But this factor is entitled to little weight because of the attenuated connection of this action to its current venue. Thus the balance of factors overwhelmingly favors the transfer of this action to the Northern District of Illinois.

1. The balance of factors, including the most important factor, overwhelmingly favors transfer to the Northern District of Illinois.

a. The most important factor, the convenience of the witnesses, favors the Northern District of Illinois.

"[I]n this Circuit, the convenience of witnesses is the most important factor in deciding a motion under § 1404(a)." *Iron Cross Automotive, Inc. v. Rampage Prods., LLC*, No. 11-CV-535, 2013 WL 5466660 at *3 (N.D. Okla. Sept. 30, 2013) (internal quotation marks omitted). "[T]o show inconvenience [of witnesses], the party seeking transfer must (1) identify the witnesses and their locations; (2) indicate the quality or materiality of their testimony; and (3) show that any such witnesses were unwilling to come to trial, that deposition testimony would be unsatisfactory, or that the use of compulsory process would be necessary." *Quorum Health Resources v. Lexington Ins. Co.*, Civ. No. 11-374, 2012 WL 769744, *3 (D.N.M. Mar. 7, 2012) (internal quotation marks omitted).

Here, all of BHC's employees who are most likely to be called as witnesses live and work within the Northern District of Illinois. These witnesses include the inside

counsel responsible for patent matters, the business unit leader responsible for deciding that Plaintiff's product was not commercially viable, who then terminated the agreement. (Padgitt Decl. ¶ 7.) Other witnesses in the Northern District of Illinois include the scientists who studied the feasibility of the product, the project managers who oversaw the various work performed to test the product, and many others. (*Id*.) All told, BHC has identified more than 100 employees who were involved to one degree or another in the work related to the Agreement. (*Id*. ¶3.) It does not matter which employees BHC or Plaintiff believes are most important: any combination satisfies the requirement that the transferee district be the most convenient for the witnesses. The third-party witnesses likely to testify certainly include the outside patent lawyers from K & L Gates, who are referred to repeatedly in the Complaint. These lawyers worked, and with one exception, continue to work in the firm's Chicago office. (*Id*. ¶8.)

The convenience of the witnesses – the most important factor – thus overwhelmingly favors transfer to the Northern District of Illinois. *See Quorum Health Resources*, 2012 WL 769744, at *3 (convenience of witnesses favors transfer where out of 24 potential witnesses, 11 were in potential transferee venue, only 2 were in current venue, and 4 would require compulsory service to secure appearance).

b. Most of the records and documents relevant to this case are located in the Northern District of Illinois.

The other element of factor [2], the "accessibility of other sources of proof," also favors the Northern District of Illinois. This case will turn on BHC records located in its offices in Deerfield and Round Lake, Illinois. The records related to the patent

prosecution were generated by Baxter's in-house counsel in Deerfield, Illinois and its outside counsel in Chicago. It is in these locations that BHC and its counsel generated and keep the records relating to BHC's testing and development of Plaintiff's invention, pursuit of domestic and international patent protection, pursuit of FDA approval, decision to terminate the Agreement, decision to refuse to return certain materials to Plaintiff post-termination, and general business practices with respect to Heparin. (Padgitt Decl. ¶9.) Plaintiff will have to subpoena K&L Gates's Chicago office to get its records.

c. Litigating this case in the Western District of Oklahoma would impose additional, unnecessary costs and burdens on BHC and third parties.

Factors [3] and [9], the "cost of making the necessary proof" and "other considerations of a practical nature that make a trial easy, expeditious and economical," likewise favor the Northern District of Illinois. Given the location of the vast majority of material witnesses and documents, the Northern District of Illinois would be better situated to oversee discovery and conduct any trial. As noted above, almost all the material witnesses and documents, including those of third parties' such as BHC's patent counsel, are located within the Northern District of Illinois. It would, therefore, be less expensive and less disruptive to BHC and K&L Gates to hold the depositions of their employees and any trial in the Chicagoland area; indeed, BHC estimates that it would lose an additional day to one-and-a-half days of time per witness to transport and house

its employees and records in the Western District of Oklahoma for depositions.[4] (Padgitt Decl. ¶10.) The cost of keeping witnesses available in the Western District during trial to be ready to go and ready if needed would add to the cost and disruption. (*Id*.) And, as mentioned above, any subpoena of K&L Gates will have to go through the Northern District of Illinois. These costs and disruption are less of a factor for Plaintiff; due to its relative lack of involvement in the underlying events, few of its personnel and documents will be material to Plaintiff's lawsuit.

d. Any award of injunctive relief would be better supervised and enforced by the Northern District of Illinois.

To the extent that factor [4], "questions as to the enforceability of a judgment if one is obtained," is relevant, it favors the Northern District of Illinois.[5] It would appear that both fora under consideration would be equally well situated to enforce any monetary award to Plaintiff. Plaintiff also seeks an injunction "enjoin[ing BHC] from further interference with or infringement of Plaintiff's invention and its commercialization." (Compl. ¶126(g).) To a large extent, if not entirely, Plaintiff's prayer for injunctive relief is moot; as BHC stated in its Answer, it no longer manufactures or sells heparin vial products. (Answer [Dkt. No. 23] ¶16.) To the extent

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[4] While the normal practice is that such depositions would be taken in the Northern District, where BHC's principal place of business is located, no rule requires this outcome. If Plaintiff chose to notice the depositions in Norman, Oklahoma or elsewhere in the Western District, the inconvenience for BHC and its witnesses would be substantial. Alternatively, BHC would face the uncertainty of moving for a protective order against holding the depositions in the Western District. Ease and simplicity in this regard favor the Northern District of Illinois

[5] BHC believes no such judgment or injunction is likely.

that BHC's future conduct might nonetheless interfere with or infringe Plaintiff's invention, any such conduct would be directed from BHC's headquarters in Deerfield, Illinois. (Padgitt Decl. ¶5.h.; Notice ¶5.) Therefore, a court in the Northern District of Illinois would be best situated to monitor and enforce any award of injunctive relief to Plaintiff. *See Law Bulletin Publ'g, Co. v LRP Publications, Inc.*, 992 F. Supp. 1014, 1021 (N.D. Ill. 1998) ("[Forum in which defendant was located and overwhelming majority of conduct occurred] is the better forum to enforce and monitor any injunctive relief awarded because [that] court would be 'closer to the action.'")

e. Plaintiff's tort claims should be decided under Illinois law as applied by an Illinois court.

An Illinois court is best situated to regulate BHC's alleged tortious misconduct by applying Illinois law to Plaintiff's tort claims. For this reason factors [7] and [8], "the possibility of the existence of questions arising in the area of conflict of laws" and "the advantage of having a local court determine questions of local law," favor the Northern District of Illinois.

"In a diversity action, courts prefer the action to be adjudicated by a court sitting in the state that provides the governing substantive law." *Quorum Health Resources*, 2012 WL 769744, at *4. For several of Plaintiff's claims, this factor is irrelevant. Plaintiff's antitrust claim is subject to federal law. The parties' Agreement provides for the application of Delaware law to Plaintiff's three claims that require interpretation of their Agreement: Plaintiff's two breach of contract claims and its claim for a declaratory judgment concerning the parties' rights to and obligations regarding the return of

information after the termination of the Agreement. (Agreement § 10.08 ("This Agreement … shall be governed by, and construed according to, the laws of the State of Delaware….).)

But Plaintiff's two tort claims, for negligence and tortious breach and interference, are beyond the Agreement's choice of law clause and subject to state law. With respect to these state-law claims, "the court's choice of law determinations are governed by Oklahoma's conflicts of laws rules." *CRST Van Expedited, Inc. v. J.B. Hunt Transport, Inc.*, No. CIV-04-651, 2006 WL 335765, *9 (W.D. Okla. Feb. 14, 2006). For tort claims, Oklahoma's choice of law rules require the application of "the local law of the state which has the most significant relationship to the occurrence and the parties." *Id*. (internal quotation marks).

That determination is guided by the factors set forth in sections 145 and 6 of the Restatement (Second) of Conflict of Laws. *Id*. The section 145 factors are (1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation, and place of business of the parties; and (4) the place where the relationship, if any, between the parties occurred. *Id*. The section 6 factors are (1) the needs of the interstate and international systems; (2) the relevant policies of the forum; (3) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue; (4) the protection of justified expectations; (5) the basic policies underlying the particular field of law; (6) certainty, predictability, and uniformity of result; and (7) ease in the determination and application of the law to be applied. *Id*. at *9-10. In applying these

factors, courts should not mechanically count factual contacts; the court's determination should instead be guided by the "significance of the contacts." *Id*. at *10 (internal quotation marks omitted).

CRST is instructive in the application of these factors to this case. That case, like this one, involved "a dispute between two businesses" in which the plaintiff sought to "regulate" the defendant's conduct. *Id*. at *10. There, the plaintiff sought injunctive relief, premised on a theory of tortious interference, to stop the defendant from recruiting truck drivers who were under contract with the plaintiff. *Id*. at * 1-2. Analogizing the case to an unfair competition case, and noting the nationwide scope of defendant's conduct, the court reasoned that the most significant section-145 factor was the place of the defendant's conduct; it was at the defendant's headquarters where it formulated and directed its recruiting activities. *Id*. *10. The most significant section-6 factors, the court found, likewise favored choosing the law of the state of defendant's residence. *Id*. at *11. As the court stated: "Since the conduct that is the primary focus of this action is the multi-state conduct of an Arkansas company, directly affecting competitors based in numerous states, [the defendant's] recruiting operation can be governed by a consistent set of rules, yielding predictable results, only if the governing law is the law of the state where [the defendant] is headquartered." *Id*.

So too, in this case, Plaintiff's tort claims allege conduct with multi-state effects that should be governed by the local law of the state where BHC is headquartered – Illinois. As Plaintiff states in its tortious interference claim, BHC's alleged tortious conduct was part of a larger scheme whereby it sought "to maintain an adequate market

share of its heparin production." (Compl. ¶122.) The nationwide scope of BHC's alleged misconduct is spelled out in Plaintiff's antitrust claim. There, Plaintiff claims that the heparin market BHC is seeking to dominate is national in scope, and that BHC's alleged misconduct satisfies the in-or-affecting interstate commerce element of the antitrust laws. (Compl. ¶¶109, 106). Given the alleged interstate character of BHC's tortious misconduct, and its characterization by Plaintiff as part of a larger scheme of unfair competition, the most important section-145 factor should be, as in *CRST*, BHC's residence; for it was there that BHC formulated and directed the alleged misconduct. *CRST Van Expedited, Inc.*, 2006 WL 335765, at *10. The most significant section-6 factors point in the same direction. The interstate-scope of BHC's conduct means that it "can be governed by a consistent set of rules, yielding predictable results, only if the governing law is the law of the state where [BHC] is headquartered." *Id*. at *11.

For most of Plaintiff's claims, the "possibility of conflicts" and "questions of local law" are irrelevant; for it is clear that neither Oklahoma nor Illinois law governs Plaintiff's antitrust and three contract-based claims. But because Illinois law, the law of state in which BHC is headquartered, should be applied to Plaintiff's tort claims, these factors, to the extent they are relevant, favor the Northern District of Illinois.[6]

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[6] Plaintiff also asserts what it styles as a "Declaratory Judgment" for "[f]raud in the inducement to enter into the license agreement." (Compl., Second Cause of Action ¶¶68-75.) However, Plaintiff has failed to specify the who, what, where, and when of any fraudulent statements alleged to have been made by BHC, as required by Federal Rule of Civil Procedure 9(b). This deficiency not only renders Plaintiff's fraudulent inducement claim fatally flawed; it also frustrates any choice of law analysis.

2. The other venue factors are insignificant, irrelevant, or neutral.

The most important factor [2], as well as five others, [3], [4], [7], [8], [9], favor transfer to the Northern District of Illinois. The remaining three factors – [1], [5], [6] – are insignificant, irrelevant, or neutral. They are, therefore, of insufficient weight to counterbalance the numerous and substantial factors favoring transfer to the Northern District of Illinois.

a. Plaintiff's choice of forum is entitled to little weight.

The sole factor favoring the Western District of Oklahoma as the venue for Plaintiff's action is this: Plaintiff chose this venue and, because its principal place of business is located within that district, is deemed for venue purposes to reside there. (Compl. ¶1 (Plaintiff's principal place of business in Norman, Oklahoma); 28 U.S.C. § 1391(c)(2) (residency for venue purposes for "a plaintiff [is] only in the judicial district in which it maintains its principal place of business"). However, this factor is of little weight here.

While the plaintiff's choice of a forum is usually accorded substantial deference, "courts accord little weight to a plaintiff's choice of forum where the facts giving rise to the lawsuit have no material relation or significant connection to the plaintiff's chosen forum." *Quorum Health Resources*, 2012 WL 769744, at 3 (internal quotation marks omitted). That is the case here. As shown above, the facts giving rise to this lawsuit occurred almost entirely within the Northern District of Illinois; that is where BHC pursued the development and commercialization of Plaintiff's invention, and directed its "general business activities," (Compl. ¶106), that Plaintiff complains of. To the extent

that Plaintiff complains of BHC's "anticompetitive" and "unfair methods" to maintain its alleged dominant share of the national heparin market, which Plaintiff claims were "in or affecting [interstate] commerce" sufficient to support interstate antitrust jurisdiction, the connection of the Western District of Oklahoma to the facts giving rise to Plaintiff's lawsuit is further attenuated. (Compl. ¶¶106-09.) And even as the site of Plaintiff's injury, the Western District of Oklahoma's relationship with this action is tenuous. For Plaintiff is owned by another limited liability company based in Omaha, Nebraska, and the natural persons who own that company, and indirectly Plaintiff, "are domiciled in and are citizens of the states of Florida, Oklahoma, Mississippi, Nebraska, New Jersey and Texas." (Notice ¶¶2-3.)

Because the vast majority of the facts giving rise to Plaintiff's action occurred in the Northern District of Illinois, and their effects were diffused throughout the nation, Plaintiff's choice of this Court as the forum for this action should be accorded "little weight."

b. The remaining factors are either irrelevant or neutral.

Factors [5] and [6] add little or nothing to counterbalance the weighty factors and interests favoring the Northern District of Illinois.

Factor [5], the "relative advantages and obstacles to a fair trial," is irrelevant or neutral in this action. As shown above, a trial in the Northern District of Illinois is favored for reasons of efficiency and convenience to the parties and witnesses. But courts in either the Western District of Oklahoma or the Northern District of Illinois could offer a trial that is fair.

The final factor, "difficulties that may arise from congested dockets," is a wash or, at best for Plaintiff, insignificant. While the Northern District of Illinois entertains significantly more cases than the Western District of Oklahoma, the Northern District of Illinois also has many more judges and magistrates and a slightly faster median time of disposition for its cases. (Decl. of Patrick J. Lamb ¶¶2-4, Ex. 1, U.S. District Courts – Median Time Intervals from Filing to Disposition of Civil Cases Terminated During the 12-Month Period ending March 31, 2013; Ex. 2, Web page from W.D. Okla. Website listing judges and magistrates; Ex. 3, Web page from N.D. Ill. Website listing judges and magistrates)

Court	Judges/Magistrates	Number of Cases	Median Time Interval in Months from Filing to Disposition
W.D. Oklahoma	8 judges 4 magistrates	1,188	8.7
N.D. Illinois	36 judges 14 magistrates	8,741	6.6

Thus, while the Northern District of Illinois entertains more cases, it disposes of them on average in roughly the same amount of time as the Western District of Oklahoma.

The factor of relative court congestion therefore adds little if any weight to Plaintiff's choice of this Court as forum for its lawsuit. Neither this factor nor Plaintiff's choice of its hometown forum provide any substantial weight to counterbalance the significant factors of witness and party convenience, cost and efficiency, local concerns and Illinois law, that favor transfer to the Northern District of Illinois.

V. CONCLUSION

For the foregoing reasons, this action should be transferred to the Federal District Court for the Northern District of Illinois.

October 15, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2014, a copy of the foregoing Memorandum of Points and Authorities, as well as its supporting declarations, was filed electronically. Service of this filing will be made on the following ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

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