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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TRACY ROSS, as Guardian ad Litem)
of MAGGIE CHRISTINE ROSS; INA)
PATE,)
Plaintiffs,)
v.)
ATICO INTERNATIONAL USA, INC.;)
WALGREEN COMPANY; and DOES 1 to)
50, inclusive,)
Defendants.)

1:09-cv-1732 OWW SMS
SCHEDULING CONFERENCE ORDER
Discovery Cut-Off: 2/10/11
Non-Dispositive Motion
Filing Deadline: 2/25/11
Non-Dispositive Motion
Hearing Date: 4/1/11 9:00
Ctrm. 7
Dispositive Motion Filing
Deadline: 3/10/11
Dispositive Motion Hearing
Date: 4/11/11 10:00 Ctrm. 3
Settlement Conference Date:
2/8/11 10:00 Ctrm. 7
Pre-Trial Conference Date:
5/16/11 11:00 Ctrm. 3
Trial Date: 6/28/11 9:00
Ctrm. 3 (JT-7 days)

I. Date of Scheduling Conference.
February 18, 2010.

II. Appearances Of Counsel.

Cornwell & Sample, LLP by Judith M. Harless, Esq., appeared
on behalf of Plaintiffs.

1 Peel, Garcia & Stamper LLP by R. Marc Stamper, Esq.,
2 appeared on behalf of Defendants Atico International USA, Inc.,
3 and Walgreen Company.

4 Arnstein and Lehr LLP by Jeffrey B. Shapiro, Esq., appeared
5 on behalf of Defendant Atico International USA, Inc.

6 III. Summary of Pleadings.

7 A. Plaintiffs' Factual Contentions.

8 1. Plaintiff Maggie Ross was 3 1/2 years old when a
9 child's folding chair she sat in collapsed due to a defective
10 locking mechanism. Her finger caught in the hinge of the chair
11 and she suffered a serious smashing injury requiring extensive
12 medical treatment. The injuries are permanent and include both
13 function loss and disfigurement.

14 2. The chair was manufactured and/or distributed by
15 Defendant Atico International. It was purchased as part of a
16 children's table and chair set by Maggie's grandmother, Plaintiff
17 Ina Pate, from Defendant Walgreen Company.

18 B. Plaintiffs' Legal Contentions.

19 1. The child's chair was defective. As both
20 Defendants were in the chain of distribution of the chair to
21 ultimate consumers they have exposure for products liability and
22 general negligence. Plaintiffs also pleaded a *Dillon v. Legg*
23 claim on behalf of Plaintiff, Ina Pate, grandmother to injured
24 Plaintiff, Maggie Ross, who purchased the chair and witnessed the
25 child's injury and extensive medical treatment thereafter.

26 C. Defendants' Factual Contentions.

27 1. Defendant, Atico, sources products, including
28 folding chairs similar to the chair at issue in this litigation.

1 With respect to the specific product at issue in this litigation,
2 the folding chair, Atico does not design or manufacture the
3 chair. Some of the products sourced by Atico, including folding
4 chairs, are sold by Atico to Defendant, Walgreen; and Walgreen,
5 in turn, sells those products to its own customers. It is not
6 currently known if the subject chair was a chair sourced by
7 Atico, or if it was a chair actually sold by Walgreen.

8 D. Defendants' Legal Contentions.

9 1. It is currently unknown whether or not either
10 Defendant was in the chain of distribution or sale of the subject
11 chair. Further, the cause of the injury alleged by Plaintiffs is
12 not known, and the nature and extent of any injury suffered by
13 Plaintiffs are not known. The nature and extent of any
14 comparative fault on the part of Plaintiffs or any third parties
15 to the litigation is also unknown.

16 IV. Orders Re Amendments To Pleadings.

17 1. The parties do not anticipate amending the pleadings at
18 this time.

19 V. Factual Summary.

20 A. Admitted Facts Which Are Deemed Proven Without Further
21 Proceedings.

22 1. Tracy Ross is the duly appointed and acting
23 Guardian ad Litem for Maggie Christina Ross.

24 2. Atico International USA, Inc. is a corporation
25 organized and existing under the laws of the State of Delaware.

26 3. Walgreen Co. is a corporation organized and
27 existing under the laws of the State of Illinois.

28 4. That Defendant Atico sourced chairs similar to the

1 one at issue here from suppliers in China and distributed these
2 similar chairs to Walgreen for sale to the public.

3 5. That Plaintiff Maggie Ross was injured.

4 B. Contested Facts.

5 1. Whether Atico and Walgreen were in the chain of
6 distribution of the chair that collapsed.

7 2. Whether the injury Maggie suffered was from the
8 collapse of the chair.

9 3. The extent of Maggie's injuries.

10 4. The extent of Ina Pate's emotional distress
11 damages and the existence of the elements of a *Dillon v. Legg*
12 claim.

13 VI. Legal Issues.

14 A. Uncontested.

15 1. Jurisdiction exists under 28 U.S.C. § 1332 and 28
16 U.S.C. § 1367.

17 2. Venue is proper under 28 U.S.C. § 1391.

18 3. The parties agree that the substantive law of the
19 State of California provides the rule of decision in this case.

20 B. Contested.

21 1. Whether there is contributing fault of third
22 persons or of Plaintiffs themselves.

23 2. Whether joint or several liability for damages, if
24 any, applies.

25 3. Whether Plaintiffs assumed any risks which led to
26 the injuries about which they are complaining.

27 4. Causation for the injuries claimed by Plaintiffs.

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1 VII. Consent to Magistrate Judge Jurisdiction.

2 1. The parties have not consented to transfer the
3 case to the Magistrate Judge for all purposes, including trial.

4 VIII. Corporate Identification Statement.

5 1. Any nongovernmental corporate party to any action in
6 this court shall file a statement identifying all its parent
7 corporations and listing any entity that owns 10% or more of the
8 party's equity securities. A party shall file the statement with
9 its initial pleading filed in this court and shall supplement the
10 statement within a reasonable time of any change in the
11 information.

12 IX. Discovery Plan and Cut-Off Date.

13 1. The parties are ordered to complete all discovery on or
14 before February 10, 2011.

15 2. The parties are directed to disclose all expert
16 witnesses, in writing, on or before December 10, 2010. Any
17 rebuttal or supplemental expert disclosures will be made on or
18 before January 10, 2011. The parties will comply with the
19 provisions of Federal Rule of Civil Procedure 26(a)(2) regarding
20 their expert designations. Local Rule 16-240(a) notwithstanding,
21 the written designation of experts shall be made pursuant to F.
22 R. Civ. P. Rule 26(a)(2), (A) and (B) and shall include all
23 information required thereunder. Failure to designate experts in
24 compliance with this order may result in the Court excluding the
25 testimony or other evidence offered through such experts that are
26 not disclosed pursuant to this order.

27 3. The provisions of F. R. Civ. P. 26(b)(4) shall
28 apply to all discovery relating to experts and their opinions.

1 Experts may be fully prepared to be examined on all subjects and
2 opinions included in the designation. Failure to comply will
3 result in the imposition of sanctions.

4 X. Pre-Trial Motion Schedule.

5 1. All Non-Dispositive Pre-Trial Motions, including any
6 discovery motions, will be filed on or before February 25, 2011,
7 and heard on April 1, 2011, at 9:00 a.m. before Magistrate Judge
8 Sandra S. Snyder in Courtroom 7.

9 2. In scheduling such motions, the Magistrate
10 Judge may grant applications for an order shortening time
11 pursuant to Local Rule 142(d). However, if counsel does not
12 obtain an order shortening time, the notice of motion must comply
13 with Local Rule 251.

14 3. All Dispositive Pre-Trial Motions are to be
15 filed no later than March 10, 2011, and will be heard on April
16 11, 2011, at 10:00 a.m. before the Honorable Oliver W. Wanger,
17 United States District Judge, in Courtroom 3, 7th Floor. In
18 scheduling such motions, counsel shall comply with Local Rule
19 230.

20 XI. Pre-Trial Conference Date.

21 1. May 16, 2011, at 11:00 a.m. in Courtroom 3, 7th Floor,
22 before the Honorable Oliver W. Wanger, United States District
23 Judge.

24 2. The parties are ordered to file a Joint Pre-
25 Trial Statement pursuant to Local Rule 281(a)(2).

26 3. Counsel's attention is directed to Rules 281
27 and 282 of the Local Rules of Practice for the Eastern District
28 of California, as to the obligations of counsel in preparing for

1 the pre-trial conference. The Court will insist upon strict
2 compliance with those rules.

3 XII. Motions - Hard Copy.

4 1. The parties shall submit one (1) courtesy paper copy to
5 the Court of any motions filed. Exhibits shall be marked with
6 protruding numbered or lettered tabs so that the Court can easily
7 identify such exhibits.

8 XIII. Trial Date.

9 1. June 28, 2011, at the hour of 9:00 a.m. in
10 Courtroom 3, 7th Floor, before the Honorable Oliver W. Wanger,
11 United States District Judge.

12 2. This is a jury trial.

13 3. Counsels' Estimate Of Trial Time:

14 a. 5-7 days.

15 4. Counsels' attention is directed to Local Rules
16 of Practice for the Eastern District of California, Rule 285.

17 A. Prospects Re Trial Date.

18 1. Plaintiffs' counsel wishes to advise the Court,
19 however, that there are several aspects to Maggie's injury and
20 treatment that may give rise to a later need for this date to be
21 continued in order to adequately assess Maggie's long-term
22 damages. In particular, Maggie developed an infection during the
23 course of her earlier treatment that required the administration
24 of strong antibiotics over the course of several months that were
25 delivered directly into her heart through a catheter. There is
26 some medical concern about the long-term impact on Maggie's
27 health of such a prolonged course of medication. In addition,
28 the injury has left Maggie with a serious deformity of the ring

1 finger on her left hand. Because she is still so young and she
2 has so much more growing to do, a determination of whether any
3 surgical repair is possible remains unresolved and the doctors
4 cannot yet project whether the current state of disfigurement is
5 permanent. Finally, Maggie is still at risk of developing a
6 neuroma, a growth of nerve tissue at the end of the injured nerve
7 fibres, that can be very painful.

8 XIV. Settlement Conference.

9 1. A Settlement Conference is scheduled for February 8,
10 2011, at 10:00 a.m. in Courtroom 7 before the Honorable Sandra M.
11 Snyder, United States Magistrate Judge.

12 2. Unless otherwise permitted in advance by the
13 Court, the attorneys who will try the case shall appear at the
14 Settlement Conference with the parties and the person or persons
15 having full authority to negotiate and settle the case on any
16 terms at the conference.

17 3. Permission for a party [not attorney] to attend
18 by telephone may be granted upon request, by letter, with a copy
19 to the other parties, if the party [not attorney] lives and works
20 outside the Eastern District of California, and attendance in
21 person would constitute a hardship. If telephone attendance is
22 allowed, the party must be immediately available throughout the
23 conference until excused regardless of time zone differences.
24 Any other special arrangements desired in cases where settlement
25 authority rests with a governing body, shall also be proposed in
26 advance by letter copied to all other parties.

27 4. Confidential Settlement Conference Statement.
28 At least five (5) days prior to the Settlement Conference the

1 parties shall submit, directly to the Magistrate Judge's
2 chambers, a confidential settlement conference statement. The
3 statement should not be filed with the Clerk of the Court nor
4 served on any other party. Each statement shall be clearly
5 marked "confidential" with the date and time of the Settlement
6 Conference indicated prominently thereon. Counsel are urged to
7 request the return of their statements if settlement is not
8 achieved and if such a request is not made the Court will dispose
9 of the statement.

10 5. The Confidential Settlement Conference

11 Statement shall include the following:

12 a. A brief statement of the facts of the
13 case.

14 b. A brief statement of the claims and
15 defenses, i.e., statutory or other grounds upon which the claims
16 are founded; a forthright evaluation of the parties' likelihood
17 of prevailing on the claims and defenses; and a description of
18 the major issues in dispute.

19 c. A summary of the proceedings to date.

20 d. An estimate of the cost and time to be
21 expended for further discovery, pre-trial and trial.

22 e. The relief sought.

23 f. The parties' position on settlement,
24 including present demands and offers and a history of past
25 settlement discussions, offers and demands.

26 XV. Request For Bifurcation, Appointment Of Special Master,
27 Or Other Techniques To Shorten Trial.

28 1. None at this time.

1 XVI. Related Matters Pending.

2 1. There are no related matters.

3 XVII. Compliance With Federal Procedure.

4 1. The Court requires compliance with the Federal
5 Rules of Civil Procedure and the Local Rules of Practice for the
6 Eastern District of California. To aid the court in the
7 efficient administration of this case, all counsel are directed
8 to familiarize themselves with the Federal Rules of Civil
9 Procedure and the Local Rules of Practice of the Eastern District
10 of California, and keep abreast of any amendments thereto.

11 XVIII. Effect Of This Order.

12 1. The foregoing order represents the best
13 estimate of the court and counsel as to the agenda most suitable
14 to bring this case to resolution. The trial date reserved is
15 specifically reserved for this case. If the parties determine at
16 any time that the schedule outlined in this order cannot be met,
17 counsel are ordered to notify the court immediately of that fact
18 so that adjustments may be made, either by stipulation or by
19 subsequent scheduling conference.

20 2. Stipulations extending the deadlines contained
21 herein will not be considered unless they are accompanied by
22 affidavits or declarations, and where appropriate attached
23 exhibits, which establish good cause for granting the relief
24 requested.

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1 3. Failure to comply with this order may result in
2 the imposition of sanctions.

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4 IT IS SO ORDERED.

5 Dated: February 18, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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