Federal Court Cour fédérale

Date: 20221205

Docket: T-1168-21

Citation: 2022 FC 1672

Ottawa, Ontario, December 5, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

DR. REDDY'S LABORATORIES LTD. and DR. REDDY'S LABORATORIES, INC.

Plaintiffs

and

JANSSEN INC., JANSSEN ONCOLOGY, INC. and BTG INTERNATIONAL LTD.

Defendants

ORDER AND REASONS

I. Overview

[1] This decision relates to a motion by Dr. Reddy's Laboratories Ltd. and Dr. Reddy's Laboratories, Inc. [together, Dr. Reddy's], the Plaintiffs in the within action brought under section 8 of the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-113 [Regulations]. In this action, Dr. Reddy's claims damages for lost sales of abiraterone acetate

against the Defendants, Janssen Inc., Janssen Oncology, Inc., and BTG International Ltd. [together, Janssen].

[2] In this motion, Dr. Reddy's seeks to have what it characterizes as a question of law determined prior to trial pursuant to Rule 220(1)(a) of the *Federal Courts Rules*, SOR/98-106 [Rules]. The question relates to a defence that Janssen has raised in the underlying section 8 action. Dr. Reddy's has articulated the question as follows:

> Under the [Regulations], when a patentee has exercised its right to a section 7 statutory stay against generic entry, and never resolved or renounced that right in relation to certain generics in the real world, does that same obstacle to entry by those generics prevail in the section 8 but-for world (other than the section 8 claimant)?

[3] As explained in greater detail below, the motion is dismissed, because the circumstances of this matter do not favour the Court exercising its discretion to determine the proposed question as a preliminary matter in advance of trial.

II. **Background**

[4] Janssen markets the prostate cancer drug abiraterone acetate in Canada as ZYTIGA and listed Canadian Patent No. 2,661,422 [the 422 Patent] on the Patent Register in respect of ZYTIGA. Dr. Reddy's, along with two other generic pharmaceutical companies (Apotex Inc. [Apotex] and Pharmascience Inc. [PMS]) sought to market a generic abiraterone acetate product, and each challenged the validity of the 422 Patent.

[5] Under the prior version of the Regulations, Janssen commenced an application against Apotex based on the 422 Patent, seeking an order prohibiting Apotex from receiving a notice of compliance [NOC] for its abiraterone product in a 250 mg dosage. Janssen obtained the requested order on October 29, 2019 (see *Janssen Inc v Apotex Inc*, 2019 FC 1355 at paras 9-11, 260, aff'd 2021 FCA 45).

[6] Under the current version of the Regulations, Janssen also commenced actions under section 6 of the Regulations against each of Dr. Reddy's, Apotex, and PMS, seeking a declaration of infringement of the 422 Patent in each instance. The dates of the commencement of the respective section 6 actions were:

A. Against Apotex: January 10, 2019 in respect of its 250 mg and 500 mg abiraterone products;

B. Against PMS: January 25, 2019 in respect of its 250 mg abiraterone product and November 22, 2019 in respect of its 500 mg abiraterone product; and

C. Against Dr. Reddy's: June 14, 2019 in respect of its 250 mg abiraterone product.

[7] Paragraph 7(1)(d) of the Regulations provides for what is often described as a statutory stay. It prohibits the Minister from issuing an NOC to a second person (as defined in the Regulations) before the day after the expiry of the 24-month period that begins on the day on which the action is brought under subsection 6(1) of the Regulations, unless the action is discontinued or dismissed. Subsection 7(5) further provides that paragraph 7(1)(d) does not apply if the relevant action is discontinued or dismissed or if each of the parties that brings the

subsection 6(1) action, when they bring the action, renounces the application of paragraph 7(1)(d).

[8] At the time Janssen initiated its action against Dr. Reddy's, Janssen did not renounce the application of paragraph 7(1)(d) of the Regulations. Nor did Janssen discontinue its actions against Dr. Reddy's, Apotex, or PMS. As such, Dr. Reddy's (as well as Apotex and PMS) were prevented from receiving an NOC pending the outcome of Janssen's subsection 6(1) litigation.

[9] On consent, the actions were heard together at a common trial. Ultimately, this Court, by reasons dated January 6, 2021 (*per* Justice Phelan), dismissed Janssen's actions and held the 422 Patent to be invalid (see *Janssen Inc v Apotex Inc*, 2021 FC 7). This decision was recently upheld on appeal (see *Janssen Inc v Apotex Inc*, 2022 FCA 184).

[10] Justice Phelan's dismissal of the section 6 actions crystallized causes of action for the each of Dr. Reddy's, Apotex, and PMS against Janssen pursuant to section 8 of the Regulations. On July 23, 2021, Dr. Reddy's commenced the within action seeking section 8 damages. (Separately, in other Court files, Apotex and PMS are also seeking section 8 damages against Janssen.)

[11] Janssen's Statement of Defence relies on subsections 8(5) and 8(6) of the Regulations to plead that certain factors should be taken into account when assessing the amount of compensation, if any, Dr. Reddy's should be awarded. Specifically, Janssen asserts that such compensation should be reduced because, had Dr. Reddy's entered the market in Canada prior to

February 1, 2021 (the date Dr. Reddy's received its NOC), several other generic pharmaceutical companies would have also entered the market either before, or alternatively on or about the same time as, Dr. Reddy's. During discovery, Janssen identified Apotex and PMS as two of the generic companies that it asserts are relevant under section 8(5) and 8(6) of the Regulations.

[12] As a result of this defence position taken by Janssen, Dr. Reddy's filed this motion under Rule 220(1)(a) of the Rules, seeking an order providing that the question articulated earlier in these Reasons be determined before trial. Janssen opposes the motion.

III. **Issue**

[13] Pursuant to Rule 220(1)(a) of the Rules, a party may bring a motion before trial to request that the Court determine a question of law that may be relevant to an action. A Rule 220 motion is typically conducted in two stages. The Court must first determine whether it is appropriate, in the specific circumstances of the case, for the proposed question to be addressed in a preliminary motion before trial. It is only when the Court answers that question affirmatively that the motion proceeds to the second stage to determine the legal question as set out and approved by the Court at the first stage (see *Google Canada Corporation v Paid Search Engine Tools, LLC*, 2021 FCA 63 [*Google*] at para 6).

[14] The within motion deals only with the first stage. As such, the only issue for the Court to decide is whether it is appropriate for the proposed question to be addressed by way of a motion before trial.

IV. **Analysis**

A. *General principles*

[15] Under Rule 220(1)(a), the proposed question put to the Court must satisfy three requirements: (a) there is no dispute as to any fact material to the question of law to be determined; (b) what is to be determined is a pure question of law; and (c) its determination will be conclusive of a matter in dispute so as to eliminate the necessity of a trial or, at least, shorten or expedite the trial (see *Google* at para 7; *Rogers Communications Partnership v Society of Composers, Authors and Music Publishers of Canada (SOCAN)*, 2016 FCA 28 at para 43). The last of these three requirements is meant to ensure that the proposed question is not purely academic and is likely to dispose, in whole or in part, of the litigation (see *Google* at para 7).

[16] The determination of a question of law prior to the trial is a departure from the general rule according to which the whole of the case is heard and determined at the same time (see *Google* at para 8; *Wolf v Canada*, 2002 FCT 434 [*Wolf*] at para 2). As such, the moving party, here Dr. Reddy's, has the burden of persuading the Court that departure from the general rule is warranted (see *Wolf* at para 2).

[17] Even if the moving party satisfies the three requirements listed above, the Court always retains its discretion not to grant a Rule 220(1)(a) motion, taking into account all the circumstances of the case that militate in favour of or against the granting of the motion (see *Google* at para 8, quoting *Perera v Canada*, [1998] 3 FC 381, 1998 CanLII 9051 (FCA) [*Perera*] at para 15).

[18] I do not understand any of these general principles to be in dispute between the parties.

B. *Whether (1) there is no dispute as to any fact material to the question of law to be determined and (2) what is to be determined is a pure question of law*

[19] In the case at hand, it is efficient and logical to analyze the first two requirements together, as the parties' arguments on these two requirements coalesce.

[20] Both parties' submissions assist the Court in understanding in considerable detail the arguments they would advance in support of their respective positions on the proposed question, in the second stage of the Rule 220 motion, in the event leave is granted under the first stage. I am conscious that, under the first stage of the motion that is presently before the Court, it is not the Court's role to answer the proposed question (see *Google* at paras 11-12), a point to which I will return later in this analysis. However, it is helpful to canvas the parties' positions on the proposed question, as they assist in understanding the nature of the question.

[21] This motion seeks leave for the determination of a question, either as it is formulated or (in the alternative) as it may be reformulated by the Court. Although set out earlier in these Reasons, I repeat for ease of reference its formulation by Dr. Reddy's:

> Under the [Regulations], when a patentee has exercised its right to a section 7 statutory stay against generic entry, and never resolved or renounced that right in relation to certain generics in the real world, does that same obstacle to entry by those generics prevail in the section 8 but-for world (other than the section 8 claimant)?

[22] At a second stage hearing, Dr. Reddy's would argue that this question should be answered in the affirmative. It bases its position on authorities that have interpreted section 8 of

the Regulations and predecessor versions thereof, including in particular analysis from *Apotex Inc v Sanofi-Aventis*, 2014 FCA 68 [*Apotex Ramipril*], aff'd in 2015 SCC 20:

> 161. Since the *NOC Regulations* say that their existence must be disregarded for one specific purpose, it seems to me that to disregard the *NOC Regulations* for some other purpose would be tantamount to judicially amending section 8. I conclude, therefore, that each claim for section 8 damages is intended to be determined on the basis that the hypothetical world is one in which there are *NOC Regulations*.
>
> 162. It follows that in the hypothetical market, the behaviour of competing generic drug manufacturers must be determined on the basis that the *NOC Regulations* exist, and each generic drug manufacturer will conduct itself accordingly.
>
> ….
>
> 186. As explained above, I do not consider it correct to assume that there are no *NOC Regulations* in the hypothetical world, or that the *NOC Regulations* are not binding on the section 8 claimant (except for the purpose of determining the beginning of the section 8 liability period). Therefore, it appears to me that in the hypothetical world as well as in the real world, the prohibition applications against Apotex would have been dismissed just as they were in the real world. Each such dismissal gave Apotex a right to claim damages under section 8 of the *NOC Regulations*. But at the same time, each dismissal based on an invalidity allegation potentially put at risk any other Sanofi prohibition applications based on the same allegation, including the invalidity allegations made by Teva and Riva.
>
> 187. Given that, it seems to me that Riva and Teva would have behaved in the hypothetical world just as they did in the real world, which was to seek summary dismissal as soon as they considered they had a fair chance of success. And in the real world, the last of the prohibition applications against Riva and Teva relating invalidity allegations was not dismissed until after December 16, 2006. I see no reason to conclude that either Riva or Teva could or would have achieved that result in the hypothetical world any earlier than they did in the real world.

[23] In short, Dr. Reddy's reads the jurisprudence as confirming that, if a patentee exercises its right to a section 7 statutory stay against generic entry, and does not resolve or renounce that right in relation to certain generics in the real world, then as a matter of law it is not available to the patentee, when subsequently defending a claim for section 8 damages, to argue that such generics (other than the section 8 claimant) would have entered the market in the but-for world free of that obstacle to entry.

[24] At a second stage hearing, Janssen would argue that the proposed question should be answered in the negative. Like Dr. Reddy's, Janssen relies on section 8 authorities, including *Apotex Ramipril*:

> 158. The Trial Judge rejected the open season methodology, largely because it is inconsistent with the requirement that each claim for section 8 damages must be determined on its own merits based on the evidence presented. She assumed that in the hypothetical world, the competitors of a section 8 damages claimant are bound by the *NOC Regulations*, and that <u>those competitors would act as they did in the real world in relation to the *NOC Regulations* except to the extent that there is evidence upon which the trier of fact can reasonably conclude that they would have acted differently.</u>
>
> [Janssen's emphasis]

[25] Janssen takes the position that *Apotex Ramipril* and other authorities establish that, while there is a legal presumption in a section 8 proceeding that a patentee would have taken the same steps in the but-for world that it did in the real world, it is open to the patentee (or any party) to lead evidence that events in the but-for world would have unfolded differently than they did in the real world.

[26] However, Janssen raises the same authorities, and the same position on the applicable law, in support of its argument that the question proposed by Dr. Reddy's is not a pure question of law and that the answer to the question will turn on disputed material facts. Janssen asserts that it will lead evidence at trial to explain why it would have renounced or otherwise resolved the stay in the section 6 actions against Apotex and PMS in the but-for world.

[27] The difficulty with Janssen's argument, in relation to this first stage Rule 220 motion, is that it is circular. To accept it, the Court would be required to answer the proposed question *en route* to deciding whether the question represents a pure question of law that will not turn on any disputed material facts. For the Court to approach the first stage analysis of the Rule 220 motion in that manner would be to commit the error that was identified by the Federal Court of Appeal in *Google* (at paras 11-12).

[28] I appreciate that the language of the proposed question, as articulated by Dr. Reddy's, could be interpreted as seeking an answer informed by both the law and the facts (to the extent that facts matter). On that interpretation, Janssen would take the position that the answer to the question depends on the evidence that might be led at trial. However, it is clear from the written and oral argument in this motion that this is not the correct interpretation of the question to which Dr. Reddy seeks an answer. Rather, Dr. Reddy's seeks to confirm its position that, based on the provisions of the Regulations and applicable authorities, there is a principle of law that operates such that real world conduct translates into findings as to but-for world conduct, regardless of evidence that a party may wish to adduce and any factual conclusions that could be drawn from that evidence. Whether that position is correct is a pure question of law.

[29] The proposed question could perhaps be articulated differently or better. However, in my view, the intended interpretation is clear and there is no particular benefit in the Court reformulating the question.

[30] In summary, I conclude that the proposed question meets the first two requirements of the Rule 220 test.

C. *Whether determination of the proposed question will be conclusive of a matter in dispute so as to eliminate the necessity of a trial or, at least, shorten or expedite the trial*

[31] Dr. Reddy's does not argue that answering this question would eliminate the necessity for a trial. However, it submits that the answer will dispose of a matter in dispute and therefore result in savings of both time and expense for the parties and the Court. It bases this submission on an argument that, if the proposed question is answered in the affirmative, that result would as a matter of law preclude Janssen from introducing evidence to establish that PMS or Apotex would be present as participants in the generic market in Dr. Reddy's but-for world.

[32] In particular, Dr. Reddy's argues that significant savings of time, effort and expense will be realized, because an affirmative answer to the question would eliminate need for the following:

A. motions for discovery and discovery of Apotex or PMS;

B. management of confidentiality restrictions to commercially sensitive issues as among Dr. Reddy's, Apotex and PMS;

C. Janssen and/or Dr. Reddy's calling witnesses from Apotex and PMS at trial to address evidentiary issues as potential participants in the Dr. Reddy's but-for world; and

D. expert witnesses considering, addressing in their reports, and testifying regarding but-for world scenarios that include Apotex and PMS, including the permutations of alternate models and calculations where both, one or neither of Apotex and PMS are on the market.

[33] Dr. Reddy's also makes the point that such savings could apply to the other section 8 proceedings in which Apotex and PMS are the plaintiffs.

[34] In response, Janssen submits that answering the proposed question will not shorten or expedite the trial in any meaningful way. It emphasizes that the Dr. Reddy's claim includes claims for a permanent loss of market share and future losses with no end date. Janssen argues that, in order to address these aspects of the claim, it will still have to call Apotex and PMS at trial to confirm that they would have entered the market at the same time in the but-for world that they did in the real world.

[35] Janssen also submits that, regardless of the answer to the proposed question, it will still have to address issues of generic competition from five other non-parties (i.e. generics other than Apotex and PMS) that it alleges would have launched in the but-for world.

[36] In relation to this third requirement of the Rule 220 test, Dr. Reddy's argues that the burden upon it is low. The Court need not conclude with absolute certainty that the determination of the question will dispose, in whole or in part, of the litigation (see *Perera*). Rather, this requirement is meant to ensure that the proposed question is not purely academic and is likely to dispose, in whole or in part, the litigation (see *Google* at para 7).

[37] In my view, many of the parties' arguments set out immediately above are better considered in the discretionary analysis in the next portion of these Reasons. However, I accept that, if the proposed question were answered through a Rule 220 motion, and that answer were favourable to Dr. Reddy's, then some of Janssen's defence arguments would be eliminated. This would in turn eliminate the need for evidence on those issues, which presumably would shorten the trial to some extent.

[38] Of course, if the answer to the question is favourable to Janssen, then the benefit of a shorter trial will not have been achieved, and the parties will have been put to the extra efforts associated with the second stage of the Rule 220 motion. However, at the hearing of the first stage of the motion, Janssen's counsel did not take the position that, in order to satisfy the third Rule 220 requirement, the question must serve to shorten the trial regardless of the answer. As such, I will not take this point into account in addressing the third requirement, although I consider it appropriate for consideration in conducting the discretionary analysis in the next portion of these Reasons.

[39] I find that Dr. Reddy's has satisfied the third requirement.

D. *Residual Discretion*

[40] Once the Court finds that the requirements of the first stage of a Rule 220 motion are met, its residual discretion comes into play. The role and nature of that discretion is explained as follows in *Perera* (referencing Rule 474, a predecessor to Rule 220):

> 15. Once these requirements are met, the Court is under no obligation to grant the 474 motion. It must, at that stage, exercise its discretion having in mind that the procedure contemplated by Rule 474 is exceptional and should be resorted to only when the Court is of the view that the adoption of that exceptional course will save time and expense. It is in that light that the Court must take into consideration all the circumstances of the case which, in its view, militate in favour or against the granting of the motion. It is not possible to give a list of all the circumstances. The agreement of the parties is obviously one of them. Less obvious, perhaps, is the fact that the judge may take into account his opinion as to the probability that the question will be answered in a manner that will not dispose of the litigation. He may also consider the complexity of the facts that will have to be proved at the trial and the desirability, for that reason, of avoiding such a trial. He must also take into consideration the difficulty and importance of the proposed questions of law, the desirability that they not be answered in a "vacuum", and the possibility that the determination of the questions before trial might, in the end, save neither time nor expense.

[41] I have considered the parties' arguments on the factors or circumstances identified in *Perera*, which I analyse as follows.

(1) Agreement of the parties

[42] This is obviously not a case where the parties are aligned in proposing that the Court address a preliminary issue before trial. This factor does not favour a preliminary determination.

(2) Probability that the question will be answered in a manner that will not dispose of the litigation

[43] I will not express an opinion as to whether the proposed question would likely be answered in the affirmative or the negative. However, I do take into account the fact that, as noted earlier in these Reasons, only one of those answers would produce a result that has the potential to shorten the trial. This is not a situation where, regardless of the answer to the question, the answer will eliminate a volume of evidence that the parties would be required to adduce if proceeding to trial in the absence of the answer. I therefore consider this a neutral factor.

(3) Complexity of the facts that will have to be proved at trial

[44] Under this factor, I again note the submissions by Dr. Reddy's as to evidence that would not be required at trial if it obtained an earlier affirmative answer to its question. Those submissions focus on evidence of Apotex and PMS as potential participants in the Dr. Reddy's but-for world and related expert evidence including potentially multiple models and calculations.

[45] I have also taken into consideration Janssen's submissions that, regardless of the answer to the proposed question, it will be required to adduce evidence from Apotex and PMS surrounding the timing of their market entry. Dr. Reddy's disputes this contention, arguing based on the presumption explained in *Apotex Ramipril* (at para 158) that it is Dr. Reddy's that will have the burden of proof on this issue. However, it appears to me that regardless of which party bears the burden of proof, there is the potential for evidence to be required from Apotex and

PMS notwithstanding a preliminary determination of the proposed question. Janssen also submits that evidence surrounding market participation of generics other than Apotex and PMS will still be required. Presumably this evidence also has the potential to factor into expert analyses.

[46] Based on the above considerations, an affirmative answer to the proposed question would have the potential to reduce somewhat the complexity of facts at trial. However, it is difficult to assess how material an impact this may be. I find this factor to favour Dr. Reddy's, but not strongly so.

(4) Difficulty and importance of the proposed question

[47] I am not particularly convinced that the proposed question will be a difficult one to answer, either by way of a preliminary determination or at trial. However, I do consider the determination to be an important one, as it may have a significant impact on the calculation of damages in the present action, in the section 8 actions by Apotex and PMS, and in other future section 8 litigation for which the determination may serve as a precedent. I find this factor to militate against making this determination other than in the context of a full trial.

(5) Desirability of answering the question in a vacuum

[48] Related to the last factor, I do have concerns about answering the proposed question in a vacuum.

[49] I emphasize that I am not referring to Janssen's submission that the question should not be answered because it is factually suffused. Consistent with my explanation earlier in these Reasons, the decision on this first stage motion should not be based on a potential answer to the question (in this case, the answer that Janssen would propose, that evidence and facts matter for purposes of the construction of the but-for world).

[50] Rather, it is my view that, even in deciding a pure question of law, the Court could benefit from the full factual context provided by a trial in considering the parties' legal arguments surrounding a question that may have an impact upon not only this litigation but also related and future litigation. This factor favours not proceeding with a preliminary determination.

(6) Possibility that the determination of the question before trial might, in the end, save neither time nor expense

[51] In my view, this factor also militates against a preliminary determination of the proposed question.

[52] The trial in this matter is scheduled to commence on June 5, 2023, a little over six months from now. Based on Janssen's counsel's representations as to the status of some of the principal remaining steps to be taken prior to trial, I understand that second round discoveries have been completed, with refusals motions to be heard on December 20, 2022. Expert reports in chief are to be filed by Dr. Reddy's by December 23, 2022, Janssen's expert reports are due by March 24, 2023, and the deadline for any reply reports from Dr. Reddy's is April 21, 2023. Also, a motion

for non-party production and discovery, related to Apotex and PMS, is being scheduled with a tentative date of January 31, 2023.

[53] Neither party provided the Court with detailed submissions on whether or how this schedule would be affected if the Rule 220 motion moved past the first stage, such that it would be necessary to schedule, hear, and decide a second stage motion for determination of the proposed question of law. However, I agree with Janssen's submission that the moving party under Rule 220 (in this case Dr. Reddy's) must do more than baldly assert savings in time and money and should provide evidence to support the potential savings. It is not sufficient to argue that the savings are self-evident (see *Google* at para 22).

[54] I also share the concern raised by Janssen that, with the parties now approximately six months from trial, the introduction of an as-yet-unscheduled stage two portion of this Rule 220 motion, along with the possibility of a related appeal (see *Google* at para 24), raise a substantial possibility that a pre-trial determination of the proposed question might, in the end, save neither time nor expense. Indeed, this process could end up adding to the work performed by the parties. This would be particularly so in the event that the question is ultimately answered in the negative, in which case the parties would have incurred the time and expense of the second stage Rule 220 process, including the possibility of an appeal, without eliminating any evidence from the subsequent trial process.

[55] In arriving at the conclusion that this factor favours declining to grant the first stage motion, I emphasize that I am directing no criticism towards Dr. Reddy's for their timing in

bringing this motion. I accept its submissions that it initiated the process for bringing this motion earlier this year, after learning the details of Janssen's defence positions through discoveries. The first stage motion was originally scheduled to be heard on September 19, 2022, and was adjourned because of the unexpected federal holiday announced following the death of Queen Elizabeth II. However, as emphasized in *Perera* (at para 15), the early determination of a question of law is an exceptional procedure, and I am not convinced of the wisdom of embarking on this procedure at this juncture in the litigation (see *Windsor Refrigeration Co Ltd v Branch Nominees*, (1961) 1 All ER 277 (CA) at p 283, cited in *Perera* at para 15, fn 7).

(7) Conclusion

[56] In conclusion on the discretionary analysis, taking into account the factors canvassed above, I find that it does not favour granting the first stage Rule 220 motion. The motion will accordingly be dismissed. It will of course remain available to Dr. Reddy's to advance its position on the relevant question of law at trial.

V. **Costs**

[57] Janssen submits that the successful party in this motion should be awarded lump-sum costs of $5000.00. Dr. Reddy's takes the position that costs should be in the cause or, if the Court is inclined to award costs to follow the event, that such costs should be fixed at $2500.00.

[58] I see no reason to depart from the approach to costs that the Court adopted in addressing recent procedural motions of comparable complexity in the related section 8 litigation involving

Apotex (see *Apotex Inc v Janssen Inc*, 2022 FC 1476; *Apotex Inc v Janssen Inc*, 2022 FC 1477). Consistent with those decisions, costs of this motion will follow the event, and I will award Janssen $3000.00.

ORDER IN T-1168-21

THIS COURT ORDERS that:

1. The Plaintiffs' motion is dismissed.

2. The Defendants are awarded costs of this motion in the amount of $3000.00.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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