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Legal eagles eye wounded Baxter

**Lawyers scouring globe
to find more filter victims**

By SARAH A. KLEIN

The lawyers are circling Baxter International Inc.

Since the Deerfield-based medical products supplier announced that its kidney dialysis filters were the probable cause of a spate of deaths around the world, U.S. trial lawyers have been hunting for clients whose relatives were allegedly injured by Baxter, which is setting aside up to \$150 million to cover damages and discontinue the product line.

It's not an easy job, since most relatives of victims of the allegedly faulty devices live overseas, don't speak English and have a limited understanding of the U.S. tort system.

But that hasn't stopped enterprising lawyers from San Francisco to Minneapolis to Chicago. Law firms and associations of personal-injury
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Ready for class action: Chicago lawyer Kenneth B. Moll, a veteran of large corporate class-action lawsuits, is targeting Baxter International.

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Lawyers circle wounded Baxter

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lawyers have set up Web sites, some with pages translated into Croatian and Spanish, in hopes of recruiting the families of the 50-plus victims from Croatia, Spain, Taiwan, Germany and Italy.

The Web sites and a lawsuit filed in Chicago in mid-November have drawn equal interest from American dialysis patients who are concerned that they may have been exposed to the filters with residue of a potentially toxic processing fluid used to test for leaks in filters. The chemical, perfluorohydrocarbon, has a very low boiling point, and U.S. Food and Drug Administration scientists theorize that it is heated by the bloodstream, sending deadly gas bubbles into the body.

Traveling to Croatia

The first lawsuit, filed by Chicago-based personal-injury lawyer Kenneth B. Moll on Nov. 13, came shortly after Baxter acknowledged that the manufacturing process at its Ronneby, Sweden, plant may have played a role in the deaths and that it would compensate victims' families.

Last week, the Spanish government announced it plans to sue Baxter in the U.S. for "a considerable sum of money."

Baxter officials said the company will take a fourth-quarter charge of \$100 million to \$150 million to cover the cost of its liability and of closing down the product line. The company also maintains insurance policies to cover product liability, but will not disclose their value, a Baxter spokeswoman says.

Mr. Moll, who has brought class-action lawsuits against Chicago-based Sara Lee Corp. and Nashville, Tenn.-based Bridgestone/Firestone Inc. for alleged product-related injuries, says the amount he will seek per victim could vary between \$2 million and \$15 million, depending on age and health status. As of last Tuesday, his firm had received 100 calls, but expects that total to double by this week.

"We have over 50 deaths (in our database)," says Mr. Moll.

Whether those deaths ultimately are linked to the use of a tainted Baxter filter or another cause must still be determined. In the meantime, Mr. Moll is rattling his saber, getting the word out to reporters in Croatia, where nearly half of the deaths occurred. He's already planning to travel there.

"I have already gotten an invite to meet with some of (the Croat-

ian lawyers') clients," he says. "It would just be a hop over to Spain (from there)."

He insists the idea is not to sign up clients, but to educate foreigners about the U.S. legal system and personal-injury cases. For instance, he'll tell them that lawyers often get high jury verdicts in Texas, but lose them on appeal, he says.

At Lieff Cabraser Heimann & Bernstein LLP in San Francisco, lawyers also are using the Web to reach overseas plaintiffs. And they've tapped a Croatian-speaking staffer to communicate with callers, says Stephen H. Cassidy, a lawyer with the firm.

Like Mr. Moll, Mr. Cassidy's firm is trying to convey the ins and outs of U.S. law to Croatians, who, Mr. Cassidy says, have been misinformed about legal rights by local newspapers. Some families have been told that if they did not request an autopsy or if they had the body of their relative cremat-

ed, they have no legal recourse. "That's not valid," he says.

Carolyn Anderson, who's fielding inquiries from potential clients, says her Minneapolis-based firm, Zimmerman Reed PLLP, has confirmed that only two cases bear any relation to the use of Baxter dialysis filters. "There are a lot of things to investigate," she says.

Baxter is not commenting on the litigation or the threat of it, except to say the company has adequate reserves to cover the claims and is not surprised by the potential suits.

Wall Street analysts are backing the company, but with two caveats.

If the number of deaths under investigation—now pegged at just over 50 by the U.S. Food and Drug Administration—rises substantially, it will change the math and increase Baxter's exposure, says Bruce Cranna, an analyst at ABN AMRO Inc. in Boston.

And if court cases lead to punitive damages, that would also be

troublesome, says Glenn Reicin, an analyst at Morgan Stanley Dean Witter & Co. in New York. "Those (damages) are not covered by insurance," he says.

Admission eases the way

Legal experts are not betting on either side. The only thing they can guarantee is an expanding interest in the case from personal-injury lawyers.

"They (Baxter) have sort of confessed," says Jerold S. Solovy, chair of Chicago-based law firm Jenner & Block.

Says Anthony D'Amato, a professor at Northwestern University School of Law in Chicago, "There are so many firms who are looking for anything in the field of pharmaceuticals and tobacco for possible causes of action." The fact that Baxter has admitted liability, "makes it easier, but also brings in more competing firms."