

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

In Re: FRANCK'S LAB, INC.,  
PRODUCTS LIABILITY  
LITIGATION

MDL NO. 2454

SECTION "N" (4)

THIS DOCUMENT RELATES TO  
ALL CASES

**PRETRIAL ORDER NO. 2**

A status conference was held in this matter on September 10, 2013. The Court now sets the following rules, procedures, and deadlines to govern this litigation.

**1. Case Management:**

- a. Deadline for Amendments to Pleadings:** Amendments to pleadings, third-party actions, cross-claims and counter-claims shall be filed no later than **December 10, 2013**. Counsel adding new parties subsequent to the issuance of this Order shall provide each new party with a copy of all Pretrial Orders entered in this matter as of the time such new party is served. Responsive pleadings, when required, shall be filed within the applicable delays afforded by law, unless otherwise ordered.
- b. Deadline for Completing Discovery Related to Insurance Coverage:** All discovery related to insurance coverage shall be completed no later than **April 30, 2014**. The Court recognizes, as the parties have noted, that such discovery will, of necessity, involve some merits-related discovery.

- c. **Deadline for Filing Motions Related to Insurance Coverage:** All motions related to insurance coverage shall be filed and served in sufficient time, pursuant to **Local Rule 7.2**, to permit the moving party to obtain a **submission date** thereon no later than **June 25, 2014**. Requests for oral argument shall be submitted and handled in accordance with Local Rule 78.1.
- d. **Mediation:** It is the goal of the parties and the Court to be ready to begin mediation by September 1, 2014.
2. **Motion Practice:** Motion practice shall be governed by the Local Civil Rules of this Court (except where a different rule is stated below) and by the following rules:
- a. **Certificate of Communication with Opposing Counsel:** Before filing any motion, counsel for the moving party shall communicate with opposing counsel to determine whether the motion is opposed. All motions shall include a “**Certificate of Compliance with Pretrial Order No. 2,**” which shall state the outcome of such communication. If the motion is opposed, it shall be filed in accordance with the Local Rule 7.2 and shall include a “**Notice of Submission,**” which shall be filed as an attachment. A list of submission dates can be found at [http://www.laed.uscourts.gov/CASES/motions/MoHear\\_N.htm](http://www.laed.uscourts.gov/CASES/motions/MoHear_N.htm).
- b. **Unopposed Motions:** If after communicating with opposing counsel, the moving party determines that the motion is not opposed, then the motion:
- (i) shall be filed as an “*Ex Parte/Consent Motion*;”
  - (ii) shall contain the word “Unopposed” in its title; and
  - (iii) shall include a proposed order, filed as an attachment.

- c. **Notice of No Opposition:** If, after indicating opposition to a motion, opposing counsel determines that his or her client does not oppose the motion, such counsel shall file into the record a “Notice of No Opposition” on or before the date on which the opposition otherwise would be due.
- d. **Failure to File Timely Opposition:** Where no opposition memorandum has been filed within the time provided by Local Rule 7.5 (or as otherwise ordered by the Court), it is the practice of this Court to grant motions as unopposed where they appear meritorious on their face. No reminder will be provided. If a party requires additional time to respond to a motion, counsel must file a motion seeking such additional time to respond and/or to continue the submission date on the underlying motion. Such motions shall be filed prior to the deadline for filing a response to the underlying motion.
- e. **Oral Argument:** Pursuant to Local Rule 78.1, requests for oral argument must be filed as a separate document (entitled “Request for Oral Argument”), not as an attachment to the underlying motion or opposition memorandum. Proposed orders are not necessary.
- f. **Opposition Memoranda:** All opposition memoranda shall be filed in accordance with Local Rule 7.5 and shall identify the motion addressed by its exact title and record document number.
- g. **Reply Memoranda:** The Court hereby grants leave for reply memoranda to be filed in this litigation without the necessity of filing a separate motion for leave. Reply memoranda shall not exceed ten (10) pages and may be filed not later than

the Monday prior to the submission date. Where oral argument is to be heard, they may be filed not later than 5:00 p.m. on the Friday before the hearing date. Sur-reply memoranda are viewed as exceptional and may be filed only with leave of Court. Such leave should be requested only where a sur-reply is necessary to address a critical point raised for the first time in a reply memorandum.

- h. Exhibits:** Each exhibit or attachment to a motion or memorandum shall be filed as a separate attachment. No *in globo* exhibits or attachments shall be allowed. In other words, each document, deposition, or affidavit shall be a separate attachment. Citations to attachments shall provide page numbers.
- i. Courtesy Copies:** If exhibits to a motion exceed fifty (50) pages in total, counsel shall provide to chambers one hard paper copy of the exhibits, which shall be tabbed and printed from the Court's electronic record. In other words, the CM/ECF header must be printed at the top of each page.
- j. Time Lines:** If a chronology is important to a filing, counsel shall consider preparing and including a separate, itemized chronology or time-line (with citations to the supporting evidence) with such filing.
- k. Local Rules:** A copy of the Local Civil Rules can be found on the Court's website at <http://www.laed.uscourts.gov/LocalRules/LocalRules.htm>. Procedures for using this Court's CM/ECF electronic filing system can be found at <http://www.laed.uscourts.gov/cmecf/ecf.htm>.

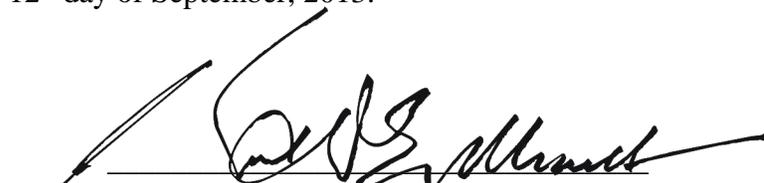
3. **Discovery Disputes:** The Court is hopeful that discovery disputes will be minimal and resolved without the aid of the Court. However, if a dispute cannot be resolved, it shall not be automatically referred to the assigned magistrate judge, but shall be brought promptly to the attention of the undersigned.

4. **Citation to Record Documents:** In every submission to the Court, including every document filed into the record, counsel shall refer to record documents by their exact title and record document number, with the record document number in bold font (*e.g.*, Defendant A's Motion to Dismiss (**Rec. Doc. 28**)).

5. **Civil Action Numbers:** In every submission to the Court, including every document filed into the record, counsel shall refer to member cases by their caption (*i.e.*, first-named plaintiff versus first-named defendant) and the civil action number assigned to such case in this District. Do not use the action number from the originating district. If the case has not been transferred to this Court, counsel shall so state.

6. **Next Status Conference:** A status conference for liaison counsel and committee members shall be held Friday, November 8, 2013 at 9:00 a.m. in the chambers of the undersigned (Room C367). A general status conference open to all counsel shall be held at 10:00 a.m. on the same date in the courtroom of the undersigned (Room C351).

New Orleans, Louisiana, this 12<sup>th</sup> day of September, 2013.

  
KURT D. ENGELHARDT  
UNITED STATES DISTRICT JUDGE