

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In Re: FRANCK’S LAB, INC.	*	MDL NO. 2454
PRODUCTS LIABILITY	*	
LITIGATION	*	SECTION “N” (4)
	*	
	*	JUDGE ENGELHARDT
THIS DOCUMENT RELATES TO	*	MAGISTRATE ROBY
<i>ALL CASES</i>	*	

JOINT REPORT NO. 5 OF LIAISON COUNSEL

Plaintiffs’ Liaison Counsel (“PLC”) and Defendants’ Liaison Counsel (“DLC”), subject to a full reservation of rights and defenses, respectfully submit this Joint Report No. 5.

I. REPORT OF CLAIMS AND CASE INVENTORY:

Since the inception of this MDL, 31 cases involving 36 plaintiffs have been transferred, pursuant to MDL panel orders. The attached appendix lists the complaints that were filed or transferred into the MDL, along with their original jurisdiction docket number and MDL docket number.

II. RELATED FEDERAL COURT MATTERS

Counsel for Evanston and Franck’s in the declaratory judgment action in the Middle District of Florida have advised the court of the pending settlement, which will moot that action. That court has been asked to take no action regarding the submitted motions in anticipation of dismissal due to settlement.

MDL plaintiffs injured by Brilliant Blue G compounded at Franck’s Lab, Inc. have filed, or will file, a new suit in the Middle District of Florida against former Franck’s Lab employee and pharmacist-in-charge, James Kilbride, and his professional liability carrier. MDL plaintiffs injured by Avastin/Triamcinolone compounded at Franck’s Lab, Inc. have filed, or will file, a

new suit in the Middle District of Florida against Mr. Kilbride and his professional liability carrier. MDL plaintiffs injured by Triamcinolone compounded at Franck's Lab, Inc. have filed, or will file, a new suit in the Middle District of Florida against Mr. Kilbride, and his professional liability carrier.

III. RELATED STATE COURT MATTERS

The parties are aware of the following state court matters involving the same general facts and allegations of plaintiffs herein:

Arnulfo Gonzalez v. Franck's Lab, Inc., et al., C.A. No. BC526716 (Superior Court of the State of California, County of Los Angeles, Northeast Division)

Julian James Hendrix v. Franck's Lab, Inc., et al., C.A. No. 2012-281 (19th Judicial Circuit, Okeechobee County, Florida)

Nicholas Scunziano v. Franck's Lab, Inc., et al., C.A. No. 13-004968 (6th Judicial Circuit, Pasco County, Florida)

Although unrelated to the facts and allegations of plaintiffs herein, the parties are aware of the following state court actions, which are identified because coverage is allegedly provided under the same Evanston policy of insurance that provides coverage for the claims of plaintiffs herein:

Stephen Fulsom, et al v. Franck's Lab, Inc., C.A. No. 12-21051 (17th Judicial Circuit, Broward County, Florida)

IV. STATE/FEDERAL COORDINATION

The PSC is in contact with plaintiffs' counsel in the related state court matters for the purposes of coordinating discovery and discussing the prospects of eventual global resolution.

Defendants' Liaison Counsel is in contact with counsel for defendants in the related state court matters for the purposes of coordinating discovery and minimizing the burden on certain eroding insurance policies involved in this litigation.

V. PRETRIAL ORDERS

The Court has issued the following Pretrial Orders:

Pretrial Order No. 1 entered August 16, 2013 – Initial Matters

Pretrial Order No. 2 entered September 13, 2013 (R. Doc. 8) – Case Management, Motion Practice and Discovery Deadlines

Pretrial Order No. 3 entered September 20, 2013 (R. Doc. 17) – Appointing Liaison Counsel and Plaintiffs' Steering Committee

Bellwether Trial Scheduling Order entered May 20, 2014 (R. Doc. 107) – Scheduling Bellwether Trial on March 2, 2015 and Related Deadlines

VI. DISCOVERY

A. Related to Plaintiffs

The deadline (January 3, 2014) for counsel representing plaintiffs to comply with the provisions of this Court's Order of October 21, 2013 (Rec. Doc. 32) has passed. Accordingly, plaintiffs have produced documentation to Liaison Counsel regarding proof of exposure, pre-morbid condition of affected eye(s), medical documentation (records and bills) of care received as a consequence of exposure, documentation of wage loss and/or other special damages, and documents that will allow defendants to comply with the Medicare, Medicaid and SCHIP Extension Act of 2007. Plaintiffs who joined the MDL on or after the deadline in the Court's Order of October 21, 2013 (Rec. Doc. 32) are urged to submit the aforesaid documentation to Liaison Counsel as soon as practicable.

Plaintiffs, through Liaison Counsel, have responded to discovery requests and requests for admission propounded Counsel for Underwriters on the plaintiffs.

B. Related to Defendants

Plaintiffs' Liaison Counsel has issued written discovery requests to counsel for Franck's Pharmacy, Inc. and to counsel for Lloyd's and Lloyd's insureds. Fact depositions of certain Franck's Lab employees were conducted on January 28th and 29th, and fact depositions of insurance brokers and agents of Franck's Lab were conducted on February 25th and 26th. The deposition of Paul W. Franck was conducted on March 19th.

As a result of facts discovered in the above-mentioned depositions, the PSC plans to conduct both additional fact depositions of former Franck's Lab employees. Also as a result of facts discovered in the above-mentioned depositions, and in actions where relevant statutes permit, plaintiffs have amended their complaints to add the professional liability carrier of former Franck's Lab employee and pharmacist-in-charge, James Kilbride, and/or Mr. Kilbride as named defendants.

Paul Franck and Anthony Campbell have responded to discovery propounded by Counsel for Underwriters. Franck's Pharmacy has responded to the discovery propounded by plaintiffs.

C. Pending Discovery Deadlines

See R. Doc. 107.

VII. MOTION PRACTICE

The following Motions are pending:

None

VIII. SETTLEMENT

Plaintiffs and Evanston Insurance Company, as primary general liability carrier for Franck's Lab, Inc., have come to an agreement-in-principle regarding a policy-limits settlement for the remainder of the Evanston policy. Plaintiffs and Evanston have executed a Memorandum of Understanding to memorialize the agreement.

Plaintiffs and Underwriters, as professional liability carrier for Paul Franck and Anthony Campbell, have come to an agreement-in-principle to resolve all claims against Underwriters, Mr. Franck and Mr. Campbell. As such, Plaintiffs and Underwriters have agreed to suspend the ongoing discovery and motion practice between the parties. Plaintiffs and Underwriters are in the process of drafting a Memorandum of Understanding that will memorialize the agreement.

The Court recently granted a motion for appointment of Magistrate Judge Roby as Special Master for the purposes of allocation of the settlement funds and for appointment of Dr. Turkish as a Court-appointed expert to assist with formulation of an allocation protocol.

Plaintiffs, Evanston, and Underwriters intend to proceed with the above-referenced settlements in a manner that does not negatively impact the viability or progress of plaintiffs' claims against all other defendants in the MDL.

Plaintiffs, Franck's Pharmacy, and Cincinnati Insurance participated in a settlement conference with Magistrate Judge Roby on June 9, 2014, which resulted in substantial progress towards resolution of the claims of plaintiffs against Franck's Pharmacy/Cincinnati. Plaintiffs, Franck's Pharmacy, and Cincinnati are optimistic that this progress will ultimately result in resolution.

IX. NEXT STATUS CONFERENCE

The Court has scheduled the next status conference on August 7, 2014 at 9:00 a.m.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2014, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record who are CM/ECF participants. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to all counsel of record who are non-CM/ECF participants.

/s/Scott E. Silbert

Scott E. Silbert

UNITED STATES DISTRICT COURT
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 * * * * *

APPENDIX TO JOINT REPORT NO. 5 OF LIAISON COUNSEL

LIST OF PENDING CASES IN THE MDL

I. Central District of California (13)

Style of Case	Original Case No.	E.D. La. Case No.
<i>Cheryl Avakian v. Franck's Lab, Inc., et al.</i>	2:13-01068	2:13-05303
<i>Roy Romero, et al. v. Franck's Lab, Inc.</i>	2:13-01335	2:13-05304
<i>Joseph Cotugno, et al. v. Franck's Compounding Lab, et al.</i>	2:13-01360	2:13-05305
<i>Migdalia Aguilar, et al. v. Franck's Lab, Inc.</i>	2:13-01371	2:13-05306
<i>Levon Jingoizian v. Franck's Lab, Inc., et al.</i>	2:13-01468	2:13-05307
<i>Sergio Hambav, et al. v. Franck's Lab, Inc., et al.</i>	2:13-02058	2:13-05308
<i>Ester Gonzalez, et al. v. Franck's Lab, Inc., et al.</i>	2:13-02358	2:13-05309
<i>Ema Arakelian v. Franck's Pharmacy, et al.</i>	2:13-02437	2:13-05311
<i>Natividad Lopez v. Franck's Lab, Inc., et al.</i>	2:13-02445	2:13-05312
<i>Jim Hermanson, et al. v. Franck's Lab, Inc., et al.</i>	5:13-00432	2:13-05313
<i>Abraham Antenor, et al. v. Franck's Lab Inc et al.</i>	2:13-03380	2:13-05704
<i>Robert Magnet v. Franck's Lab Inc et al.</i>	2:13-07602	2:13-06350
<i>Corinne Child, et al. v. Michael Davis, et al.</i>	2:14-00318	2:14-330

II. District of Colorado (1)

Style of Case	Original Case No.	E.D. La. Case No.
<i>Randy Brown v. Franck's Lab, Inc., et al.</i>	1:13-00846	2:13-05314

III. Northern District of Indiana (3)

Style of Case	Original Case No.	E.D. La. Case No.
<i>Josephine Bienick v. Franck's Lab, Inc.</i>	1:12-00197	2:13-05315
<i>Eldon Wayne McKinley, et al. v. Franck's Lab, Inc., et al.</i>	1:13-00060	2:13-05316
<i>Bernice Tharp v. Franck's Lab, Inc. et al.</i>	1:13-00061	2:13-05317

IV. Eastern District of Louisiana (4)

Style of Case	Original Case No.	E.D. La. Case No.
<i>Ruth Smith v. Franck's Lab, Inc., et al.</i>	2:12-02398	2:12-02398
<i>Michele Laventhal v. Franck's Lab, Inc., et al.</i>	2:12-02608	2:12-02608
<i>James Johnson, Jr. v. Franck's Lab, Inc., et al.</i>	2:12-02738	2:12-02738
<i>Susan Kappelman, et al. v. Wells Pharmacy Network, L.L.C., et al.</i>	2:12-02838	2:12-02838

V. District of Nevada (3)

Style of Case	Original Case No.	E.D. La. Case No.
<i>Howard McMaster v. Franck's Lab, Inc., et al.</i>	3:13-00100	2:13-05318
<i>Brenda Hess v. Franck's Lab, Inc., et al.</i>	3:13-00121	2:13-05319
<i>Farnsworth v. Franck's Lab, Inc., et al.</i>	3:13-00361	2:13-05705

VI. District of New Jersey (1)

Style of Case	Original Case No.	E.D. La. Case No.
<i>Pedro Ortiz v. Franck's Pharmacy, Inc.</i>	2:14-01871	2:14-00908

VII. Eastern District of New York (3)

Style of Case	Original Case No.	E.D. La. Case No.
<i>Salvatore Ferrante v. Franck, et al</i>	2:14-03043	2:14-01207
<i>Hyacinth Powell v. Franck, et al</i>	1:14-03047	2:14-01357
<i>Mercedes Cabrera v. Franck, et al</i>	1:14-03048	2:14-01358

VIII. Southern District of New York (3)

Style of Case	Original Case No.	E.D. La. Case No.
<i>Christina Caro v. Franck, et al</i>	1:14-03536	2:14-01359
<i>Pamella Hosang v. Franck, et al</i>	1:14-03537	2:14-01360
<i>Ricardo Medina v. Franck, et al</i>	1:14-03538	2:14-01361