

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
ALL CASES	*	

JOINT REPORT NO. 7 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. 7.

I. REPORT OF CLAIMS AND CASE INVENTORY:

Since the inception of this MDL, 34 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.

Plaintiffs in related action number 12-02608 have amended their Complaint on May 8, 2014 to add American Casualty Company of Reading, Pennsylvania (hereinafter “ACC”) as a defendant. Plaintiffs in related action number 12-02738 have amended their Complaint on May 12, 2014 to add ACC as a defendant. Plaintiffs in related action number 12-02398 have amended

their Complaint on May 13, 2014 to add ACC as a defendant. Plaintiffs in related action number 12-02838 have amended their Complaint on September 17, 2014 to add ACC as a defendant.

MDL plaintiffs injured by Brilliant Blue G compounded at Franck's Lab, Inc. filed a new suit in the Middle District of Florida against former Franck's Lab employee and pharmacist-in-charge, James Kilbride (related case number 14-1578). MDL plaintiffs injured by Avastin/Triamcinolone compounded at Franck's Lab, Inc. filed a new suit in the Middle District of Florida against Mr. Kilbride (related case number 14-1579). MDL plaintiffs injured by Triamcinolone compounded at Franck's Lab, Inc. filed a new suit in the Middle District of Florida against Mr. Kilbride (related case number 14-1580). These three actions were transferred on July 9, 2014 to this Court. R. Doc. 133.

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 (Cancelled due to Settlement)

Bellwether Trial Scheduling Order entered September 3, 2014 (R. Doc. 140) – Scheduling Bellwether Trial on June 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 28-29, 2014, and fact depositions of insurance brokers and agents of Franck's Lab were conducted on February 25-26, 2014. The deposition of Paul W. Franck was conducted on March 1, 2014.

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.

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 (or filed new complaints against) the professional liability carrier (ACC) of former Franck's Lab employee and pharmacist-in-charge, James Kilbride, and/or Mr. Kilbride as named defendants. When answers to plaintiffs' amended complaints are received, the PSC, ACC, and/or Mr. Kilbride may conduct additional fact depositions of former Franck's Lab employees and other relevant fact witnesses.

C. Pending Discovery Deadlines

Because defendants, Cincinnati and Franck's Pharmacy, have entered into a settlement agreement with plaintiffs, the deadlines in Record Document 107 now are moot. New discovery deadlines will be necessary once answers are filed by ACC.

VII. MOTION PRACTICE

The following Motions are pending:

ACC and Mr. Kilbride have filed Rule 12(b) Motions to Dismiss and Rule 12(c) Motions for Judgment on the Pleadings. Plaintiffs have filed Oppositions thereto.

ACC, Mr. Kilbride, and the PSC will discuss with the Court motions relating to coverage issues, and will present an outline of issues and joint facts at the Status Conference.

VIII. SETTLEMENTS

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, and Evanston has deposited settlement funds into the Registry of the Court.

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 have executed a Memorandum of Understanding to memorialize the agreement.

Plaintiffs, Franck's Pharmacy, and Cincinnati Insurance participated in a settlement conference with Magistrate Judge Roby on June 9, 2014. Plaintiffs, Franck's Pharmacy, and

Cincinnati Insurance now have executed a Memorandum of Understanding, and Cincinnati has deposited settlement funds into the Registry of the Court.

The Court appointed 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 and settling defendants intend to proceed with the above-referenced settlements in a manner that does not negatively impact the viability or progress of plaintiffs' claims against the remaining defendants (i.e., ACC and Kilbride) in the MDL.

As a result of these settlements, the parties anticipate the need for selection of an attorney other than Kyle Kirsch as Defendants' Liaison Counsel.

IX. NEXT STATUS CONFERENCE

The Court has scheduled the next status conference on December 5, 2014 at 9:00 a.m.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 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/Michael J. Ecuyer

Michael J. Ecuyer

UNITED STATES DISTRICT COURT
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APPENDIX TO JOINT REPORT NO. 7 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 Jingoian 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. Middle District of Florida (3)

Style of Case	Original Case No.	E.D. La. Case No.
<i>Aguilar, et al v. Kilbride</i>	5:14-cv-00368	2:14-cv-01578
<i>Mercedes, et al v. Kilbride</i>	6:14-cv-00998	2:14-cv-01579
<i>Antenor, et al v. Kilbride</i>	6:14-cv-00999	2:14-cv-01580

IV. 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

V. 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

VI. 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

VII. 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

VIII. 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

IX. 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