

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. 1 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. 1.

**I. REPORT OF CLAIMS AND CASE INVENTORY:**

Since the inception of this MDL, 23 cases involving 28 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. EVANSTON DECLARATORY JUDGMENT ACTION**

Counsel for Evanston and Franck’s in the declaratory judgment action in the Middle District of Florida have advised the Court of pending settlement discussions. That court has not ruled on the submitted motion for summary judgment by Evanston related to its duty to defend.

**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:

*Corrine Child, et al v. Franck’s Lab, Inc.*, C.A. No. GC050678 (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 (19<sup>th</sup> Judicial Circuit, Okeechobee County, Florida)

*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)

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

Although unrelated to the facts and allegations of plaintiffs herein, the parties are aware of the following state court action, which is 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 (17<sup>th</sup> 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 – Case Management, Motion Practice and Discovery Deadlines

Pretrial Order No. 3 entered September 20, 2013 – Appointing Liaison Counsel and Plaintiffs' Steering Committee

## **VI. DISCOVERY**

### **A. Related to Plaintiffs**

Counsel representing plaintiffs are obligated to comply with the provisions of this Court's Order of October 21, 2013 (Rec. Doc. 32), which sets forth mandatory deadlines to produce documentation 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. Plaintiff attorneys are required to forward copies of these documents to Liaison Counsel on or before January 3, 2014.

### **B. Related to Defendants**

Plaintiffs' Liaison Counsel is preparing written discovery requests to be propounded to the various defendant entities. Fact depositions that were previously scheduled for December have been postponed pending discussions between plaintiffs and Evanston Insurance Company regarding prospects for settlement.

### **C. Pending Discovery Deadlines**

December 10, 2013	Deadline for Amendments to Pleadings. Pretrial Order No. 2 (Rec. Doc. 8).
January 3, 2014	Deadline for Plaintiffs to Produce Documentation Regarding Exposure/Injury. Rec. Doc. 32.
April 30, 2014	Deadline for Completing Discovery Related to Insurance Coverage. Pretrial Order No. 2 (Rec. Doc. 8).
June 25, 2014	Deadline for Filing Motions Related to Insurance Coverage (Submission Date). Pretrial Order No. 2 (Rec. Doc. 8).

**VII. MOTION PRACTICE**

The following Motions are pending:

None

**VIII. MISCELLANEOUS**

Plaintiffs and Evanston Insurance Company, as primary general liability carrier for Franck's Lab, Inc., have entered into preliminary discussions regarding settlement in response to plaintiffs' demand correspondence.

Plaintiffs and Evanston have entered into discussions regarding agreement on a Court-appointed expert to assist in any future allocation protocol.

Plaintiffs and Evanston have entered into preliminary discussions regarding the potential benefit of a direct filing order and/or coordination between this Court and the various state courts where related actions are pending.

**IX. NEXT STATUS CONFERENCE**

The Court has scheduled the next status conference on January 30, 2014 at 9:00 a.m.

Respectfully submitted:

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*/s/Craig R. Watson* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2013, this document was forwarded to plaintiffs' liaison counsel and defense counsel via electronic correspondence.

*/s/Craig R. Watson*

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**APPENDIX TO JOINT REPORT NO. 1 OF LIAISON COUNSEL**

LIST OF PENDING CASES IN THE MDL

**I. Central District of California (12)**

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

**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)**

<b>Style of Case</b>	<b>Original Case No.</b>	<b>E.D. La. Case No.</b>
<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)**

<b>Style of Case</b>	<b>Original Case No.</b>	<b>E.D. La. Case No.</b>
<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