

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. 3 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. 3.

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

Since the inception of this MDL, 24 cases involving 29 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:

*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 (19<sup>th</sup> Judicial Circuit, Okeechobee County, Florida)

*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 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 (17<sup>th</sup> Judicial Circuit, Broward County, Florida)

The parties are also aware of the following action, which has been removed and filed as a tag-along action with the Judicial Panel on Multidistrict Litigation:

*Pedro Ortiz v. Franck's Pharmacy, Inc., et al*, 2:14-cv-01871 (U.S. District of New Jersey, Newark)

The PSC has objected to the inclusion of the *Ortiz* matter being made part of the Memorandum of Understanding which seeks to memorialize a settlement of Evanston's remaining policy limits.

#### **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**

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.

Counsel for Underwriters has propounded discovery requests and requests for admissions on the plaintiffs.

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

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

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 and a 30(b)(6) deposition of defendant Lloyd's. Also as a result of facts discovered in the above-mentioned

depositions, and in actions where relevant statutes permit, plaintiffs are considering amendments to their complaints to add the professional liability carrier of former Franck's Lab employee and pharmacist-in-charge, James Kilbride, as a named defendant.

Counsel for Underwriters has propounded discovery requests to Paul Franck and Anthony Campbell. Additionally, Underwriters has propounded requests for admissions on Anthony Campbell.

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

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:

1. *Ex Parte* Motion to File Quarterly Report Regarding Common Benefit Time and Expense Submissions Under Seal

## **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 are finalizing the terms of a Memorandum of Understanding that will memorialize the agreement.

Plaintiffs and Evanston will submit a joint proposal to the Court for (1) appointment of Magistrate Judge Roby as special master for the purposes of allocation of the settlement funds, (2) appointment of Dr. Turkish as a Court-appointed expert to assist with formulation of an

allocation protocol, and (3) appointment of a lien resolution administrator to assist with lien resolution for all participating plaintiffs.

Plaintiffs and Evanston intend to proceed with this settlement in a manner that does not negatively impact the viability or progress of plaintiffs' claims against all other defendants in the MDL.

As a result of this settlement, the parties anticipate the need for selection of an attorney other than Craig Watson as Defendants' Liaison Counsel. Plaintiffs' Liaison Counsel does not oppose the appointment of Kyle P. Kirsch as the new Defendants' Liaison Counsel.

**IX. NEXT STATUS CONFERENCE**

The Court has scheduled the next status conference (open to all counsel) on May 2, 2014 at 9:45 a.m. The Court will meet with the PSC and counsel for defendants on May 2, 2014 at 9:30 a.m.

Respectfully submitted:

**PLAINTIFFS' LIAISON COUNSEL**

/s/Scott E. Silbert  
Scott E. Silbert (12068)  
Silbert, Garon, Pitre & Friedman  
909 Poydras St., Suite 2130  
New Orleans, Louisiana 70112  
Telephone: (504) 581-6200  
Facsimile: (504) 584-5270  
[scott@sgpflaw.com](mailto:scott@sgpflaw.com)

and

**DEFENDANTS' LIAISON COUNSEL**

/s/Craig R. Watson  
Craig R. Watson  
Blue Williams, L.L.P.  
3421 N. Causeway Blvd., Suite 900

Metairie, Louisiana 70002  
Telephone: (504) 831-4091  
Facsimile: (504) 849-3057  
[cwatson@bluewilliams.com](mailto:cwatson@bluewilliams.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on April 2, 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  
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 \*  
 \* \* \* \* \*

**APPENDIX TO JOINT REPORT NO. 3 OF LIAISON COUNSEL**

LIST OF PENDING CASES IN THE MDL

**I. Central District of California (13)**

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

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

**III. Northern District of Indiana (3)**

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

**VI. District of New Jersey (1) \*Pending**

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