

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. 10 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. 10.

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

Since the inception of this MDL, 37 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; pursuant to that request, that court issued an order dismissing the case without prejudice on June 13, 2014.

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 (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)

### **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 amended their complaints to add (or filed new complaints against) the professional liability carrier (American Casualty Company of Reading, Pennsylvania, hereinafter referred to as "ACC") of former Franck's Lab employee and pharmacist-in-charge, James Kilbride, and/or Mr. Kilbride as named defendants. Mr. Kilbride has filed Answers and Affirmative Defenses in the *Antenor*, *Aguilar*, and *Mercedes* cases. Counsel for Mr. Kilbride has subpoenaed the files of the plaintiffs' surgeons in those cases.

**C. Pending Discovery Deadlines**

None pending.

**VII. MOTION PRACTICE**

The following Motions are pending:

On January 14, 2015, ACC filed a Motion for Summary Judgment on Applicable Policy Limits. R. Doc. 203. The PSC filed a Memorandum in Opposition on January 28, 2015. R.

Doc. 209. This motion now is moot considering the Plaintiffs' settlement with ACC and Kilbride, discussed in Section VIII, *infra*.

As a result of the settlements with the PSC, Evanston, Cincinnati, and Underwriters have provided the PSC with a release document. The parties anticipate the need for the Court to assist in discussions regarding the release document and structure of the settlement process. Additionally, on March 3, 2015, the PSC filed a Motion for Partial Disbursement of Court-Approved Common Benefit Expense Reserve from Pending Settlements for payment of outstanding invoices of the Court-appointed expert, Dr. Turkish, and the Court-appointed accountant, DeMonte & Falgoust. R. Doc. 220.

#### **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, and Underwriters has deposited settlement funds into the Registry of the Court.

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 designated Dr. Turkish as a Court-appointed expert to assist with formulation of an allocation protocol. The deadlines for plaintiffs participating in the pending settlements to submit medical bills and/or medical records that support their claims have passed. R. Docs. 187, 191.

The PSC anticipates that preliminary settlement allocations will be issued by Special Master Roby in the near future. The PSC is working with Medicare representatives to address lien issues on a global basis with the assistance of this Court's recent Order (R. Doc. 201) compelling production of conditional payment information to the PSC. On February 2, 2015, the PSC's motion to set aside reserves for common benefit fees and expenses from the pending settlements was granted. R. Doc. 214.

Following an unsuccessful mediation with John Perry on December 11, 2014, Plaintiffs and ACC remained engaged in settlement negotiations, and, with the assistance of Mr. Perry, the PSC and ACC came to an agreement-in-principle to resolve all claims against ACC and Mr. Kilbride. As such, Plaintiffs and ACC/Kilbride have agreed to suspend the ongoing discovery and motion practice between the parties. Plaintiffs and counsel for ACC/Kilbride have executed a Memorandum of Understanding to memorialize the agreement.

As a result of these settlements, the parties anticipate the need for continued involvement of the Court to oversee and administer the settlement allocation process and disbursement of settlement funds.

**IX. POTENTIAL TRIAL ISSUES**

All potential trial issues now are moot, considering the Plaintiffs' settlement with ACC and Kilbride, discussed in Section VIII, *supra*.

**X. NEXT STATUS CONFERENCE**

The Court has scheduled the next status conference on May 7, 2015 at 10:00 a.m.

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 30, 2015, 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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 LITIGATION \* SECTION “N” (4)  
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 \* \* \* \* \*

**APPENDIX TO JOINT REPORT NO. 10 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)**

<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 W. 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)**

<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
<i>Ruth Smith v. James Killbride, et al.</i>	2:14-02608	2:14-02608
<i>Michele Laventhal v. James Kilbride, et al.</i>	2:14-02604	2:14-02604
<i>Johnson, et al v. James Kilbride, et al.</i>	2:14-02625	2:14-02625

**VI. 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

**VII. District of New Jersey (1)**

<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	2:14-00908

**VIII. Eastern District of New York (3)**

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

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