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U.S. DISTRICT COURT
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LORETTA G. WHITE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID : MDL NO. 1355
PRODUCTS LIABILITY LITIGATION : SECTION: L
: JUDGE FALLON
: MAG. JUDGE AFRICK
THIS DOCUMENT RELATES TO ALL CASES:
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JOHNSON & JOHNSON'S MOTION FOR THE ENTRY OF A PROTECTIVE ORDER

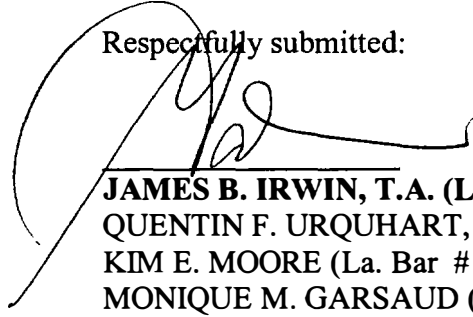
NOW INTO COURT, through undersigned counsel, comes Defendant, Johnson & Johnson, which submits this Motion for Protective Order as to the Federal Rule of Civil Procedure 30(b)(6) Corporate Deposition, noticed by the Plaintiffs' Steering Committee, regarding the defendants' responses to the Plaintiffs' Steering Committee Requests for Admission concerning multiple business records of defendants.

Johnson & Johnson contends that this deposition is impermissible as it pertains solely to legal matters, seeks the disclosure of attorney work product and is unduly burdensome.

Fee _____
Process _____
X Dep _____
CtRmDep _____
Doc. No. 1427

For these reasons, and for the reasons more fully set forth in the accompanying memorandum, Johnson & Johnson seeks the entry of a Protective Order under Federal Rule of Civil Procedure 26(c) as to this deposition.

Respectfully submitted:



JAMES B. IRWIN, T.A. (La. Bar. #7172)
QUENTIN F. URQUHART, JR. (La. Bar #14475)
KIM E. MOORE (La. Bar #18653)
MONIQUE M. GARSAUD (La. Bar #25393)
IRWIN FRITCHIE URQUHART & MOORE LLC
400 Poydras Street, Suite 2700
New Orleans, Louisiana 70130
Phone: (504) 310-2100
Fax: (504) 310-2101
**LIAISON COUNSEL FOR DEFENDANTS,
JANSSEN PHARMACEUTICA INC. AND
JOHNSON & JOHNSON**

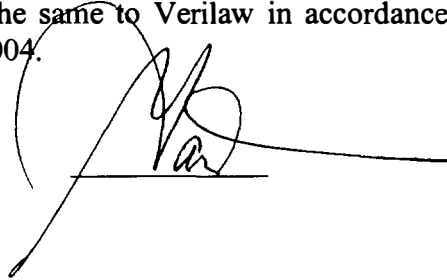
DRINKER, BIDDLE & REATH LLP
THOMAS F. CAMPION
SUSAN M. SHARKO
500 Campus Drive
Florham Park, NJ 07932-1047
Phone: (973) 549-7300
Fax: (973) 360-9831

and

DRINKER BIDDLE & REATH LLP
CHARLES F. PREUSS
DONALD F. ZIMMER, JR.
50 Fremont Street
San Francisco, CA 94105-2235
Phone: (415) 591-7500
Fax: (415) 591-7510
**CO-LEAD COUNSEL FOR DEFENDANTS,
JANSSEN PHARMACEUTICA INC. AND
JOHNSON & JOHNSON**

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing pleading has been served on Plaintiffs' Liaison Counsel, Russ M. Herman, by U.S. Mail and e-mail or by hand delivery and e-mail and upon all parties electronically by uploading the same to Verilaw in accordance with Pre-Trial Order No. 4, on this 14th day of JANUARY, 2004.

A handwritten signature in black ink, appearing to be "RMH", is written over a horizontal line. A long, thin horizontal line extends to the right from the end of the signature.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE:	PROPULSID	:	MDL NO. 1355
	PRODUCTS LIABILITY LITIGATION	:	SECTION: L
		:	JUDGE FALLON
		:	MAG. WELLS ROBY
THIS DOCUMENT RELATES TO ALL CASES		:	
		:	
		:	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT
JOHNSON & JOHNSON'S MOTION FOR PROTECTIVE ORDER REGARDING
PLAINTIFFS' NOTICE OF FRCP 30(b)(6) CORPORATE DEPOSITION**

INTRODUCTION

Plaintiffs have noticed a deposition that pertains solely to legal matters, seeks disclosure of attorney work product and is otherwise unduly burdensome and harassing. Specifically, plaintiffs seek to depose a Johnson & Johnson representative regarding responses to requests for admissions pertaining to the business records status of more than 220 documents. Although certain of the requests were admitted, many had to be denied on the basis that the subject documents did not meet the criteria of Federal Rule of Evidence 803(6). This determination was made by counsel, based upon a legal analysis of FRE 803(6). Accordingly, the reason for the

denial of the business records status of a document is not something to which a Johnson & Johnson representative should --- or can --- testify.

Should plaintiffs attempt to recast the deposition as somehow involving only factual matters, such an argument would be belied by the content of the notice and the circumstances surrounding it. Beyond that, however, such an argument would emphasize other significant problems with the proposed deposition. Any factual matters that could somehow be implicated by the notice would pertain to the preparation, retention and use of each individual document. There is no single corporate representative who could possibly testify as to the circumstances surrounding the preparation and use of each and every document, including those that were prepared by third parties.

A further concern is that many of the documents were authored (or received or retained) by persons who have already been deposed. Even though many of the witnesses were asked questions about documents appearing on plaintiffs' list, plaintiffs did not ask those witnesses questions germane to the issue of whether the documents could qualify as business records. It is harassing and oppressive for plaintiffs to now require that these same persons be put up for deposition again merely because there was not sufficient diligence in taking the depositions the first time.

BACKGROUND

On December 3, 2003, Defendants served responses to plaintiffs' Sixth Supplemental Requests for Admissions. The requests had sought admissions as to the business records status of approximately 229 separate documents. Most of the documents did not qualify as business

records under FRE 803(6) and, thus, the requests had to be denied.

Shortly thereafter, on December 12, plaintiffs served a notice of deposition, purporting to set a deposition for January 7, 2004.¹ The notice identified six items of examination, all pertaining to the requests for admission responses. The specific items were:

1. *The list of documents attached as Exhibit 1.*
2. *The responses provided in the Sixth Supplemental Response to J&J and/or Janssen to Plaintiffs' Request For Admission and Interrogatory.*
3. *Exhibit A of the Sixth Supplemental List of Admissions/Objections Regarding 803(6) documents.*
4. *Each and every document listed in Exhibit A of the Sixth Supplemental List of Admissions/Objections Regarding 803(6) documents which J&J or Janssen denies is a "Business Record" subject to the FRE 803(6) business record exception to the Hearsay rule.*
5. *The collection, security, storage and creation of "e-mail" in the ordinary course of business within J&J and/or Janssen during the relevant time period.*
6. *The application and relationship of Federal Rules of Evidence 803 which respect to each document identified on Exhibit 1.*

Prior to serving the deposition notice, plaintiffs had not attempted to meet and confer with defendants or otherwise discuss the responses to the requests for admission. Nor had plaintiffs sought to confer with defendants on the subject, timing or location of the deposition.

Defendants advised plaintiffs that the notice pertained solely to legal matters and was objectionable. Plaintiffs replied with a letter dated December 30, 2003. In that letter, plaintiffs

¹ The Notice of Deposition and defendants' responses to Plaintiffs' Request for Admission and Interrogatory are attached as Exhibit "A", en globo.

confirmed that the deposition was being taken off-calendar so that defendants' objections could be addressed by this Court.

DISCUSSION

A. THE DEPOSITION GOES BEYOND THE SCOPE OF FRCP 30(b)(6) AND IMPROPERLY SEEKS DISCOVERY OF PURELY LEGAL MATTERS

Plaintiffs' proposed deposition is not limited to matters properly discoverable in deposition. FRCP 30(b)(6) provides in pertinent part:

A party may in the party's notice and in a subpoena name as the deponent a public or private corporation...and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more . . . persons . . . to testify on its behalf . . . *The persons so designated shall testify as to matters known or reasonably available to the organization.* (Emphasis added).

Plaintiffs' notice of deposition does not pertain to matters known or reasonably knowable to J&J or Janssen. Instead, it seeks discovery of legal analysis provided by counsel in responding to requests for admission. These responses were prepared based upon a legal evaluation of FRE 803(6). There is no J&J person to testify as to the specific reasons for counsel's responses, and a lay witness cannot explain application of the law generally.

Moreover, discovery into the reasons for counsel's decisions would necessarily be prohibited by the attorney work product doctrine. *See e.g. Coleman v. General Electric Company, et al.* (E.D. Pa. 1995) 1995 U.S. Dist. LEXIS 8186, *4. In *Coleman*, plaintiff had sought an FRCP 30(b)(6) deposition regarding the company's efforts to locate documents

responsive to document requests and interrogatories. *Id.* Rejecting the discovery, the *Coleman* court stated that although the work product doctrine “furnishes no shield against discovery, by interrogatories or deposition, of the facts that the adverse party has learned,” the categories sought by that plaintiff “(were) designed to go beyond the . . . underlying facts” and were therefore prohibited. *Id.* The court explained that because counsel directed the internal investigation in connection with preparing the discovery responses, any questions about the investigation or search for documents fell under the category of “mental impressions” and are precluded by the work product doctrine. *Id.*, *6.

Here, too, plaintiffs seek discovery into the mental impressions of J&J’s counsel. For example, item one of the items of examination is, “The list of documents attached as Exhibit 1.” That “list” is the actual response provided to the requests for admissions, setting forth the admissions and denials as to the subject documents. Similarly, item two is “the responses provided [to the requests for admission].” Item 6 is “The application and relationship of Federal Rules of Evidence 803 with respect to each [of the] documents identified on Exhibit 1.” The reasoning for the responses and how counsel applied FRE 803(6) to any particular document is necessarily a legal determination. In asking J&J to provide deposition testimony into that reasoning, plaintiffs go beyond the underlying facts. That is not permissible.

B. DISCOVERY INTO OTHER MATTERS WOULD BE UNDULY BURDENSOME, HARASSING AND UNJUST

Although the deposition notice is plainly limited by its content and context to the legal reasoning behind the denials to plaintiffs’ requests for admission, plaintiffs likely will argue that

the deposition notice, or parts of it, is limited to factual matters. Even if the premise of this argument was accepted, any such deposition would be unduly burdensome, harassing and unjust.

Any discovery of facts pertinent to application of FRE 803(6) would necessarily require an examination of the circumstances of preparation and retention unique to each document. It is not possible that one representative could testify as to the method of preparation and retention of documents authored and retained by dozen of persons.² Many of the persons are no longer employed by Janssen, and many never were but were instead third parties.³

Plaintiffs' approach is particularly troubling under the circumstances of this action. Many of the documents were authored or received by persons who have already been deposed; in many instances, the subject documents were actually used as exhibits to the depositions.⁴ Notwithstanding this, plaintiffs failed to ask the witnesses questions pertinent to the business records status of the documents. It would be unduly burdensome, harassing and unjust to require defendants to make these persons available for deposition once again merely because plaintiffs were not diligent in their initial examination.

² For example, document J0280547 appears to be minutes of a meeting with the FDA. The author of the document is not identified and the date of the meeting is not identified. The document itself contains marginalia, which indicates it may be a copy in the possession of someone other than the author who made notes while reviewing the document.

³ For example, plaintiffs' list contains documents prepared by third parties, SCIENS Worldwide Public Relations (J0847790) and the North American Society for Pediatric Gastroenterology and Nutrition (J0845555, J0845559, J0845560, J0862131, et al.)

⁴ At least twelve documents from plaintiffs' list have been previously identified as exhibits at the depositions of various defendant employees. Exhibit "B" identifies those documents and the depositions at which they were offered.

Also troubling is plaintiffs' attempt to depose someone regarding the "collection, storage and creation of 'e-mail.'" Very early in the litigation plaintiffs requested and were provided witnesses to testify regarding a variety of corporate computer issues, including policies regarding the creation, sending and retention of e-mails and other electronic documents.⁵ Additionally, many pages specific to e-mail and electronic documents were produced in connection with those depositions. Again, plaintiffs should not be allowed further depositions on matters for which witnesses were already deposed but plaintiffs, apparently, failed to ask the questions they now believe are relevant.

In any event, a deposition regarding corporate e-mail policies and practices would be of no use to plaintiffs in evaluating the appropriateness of the responses to the requests for admissions. In order to establish each e-mail as a business record, plaintiffs would necessarily need to demonstrate matters such as the manner in which the e-mail was prepared, including whether the e-mail was prepared at or near the time of the events referenced, and the knowledge, intent and purpose of the person who prepared the e-mail. Moreover, as plaintiffs already know through discovery, there was no corporate policy that all e-mails had to be retained. Thus, questions concerning the retention of e-mails would also be an individualized inquiry.

⁵ On October 30, 2000, plaintiffs in *Joan M. Connolly v. Johnson & Johnson, et al*, Superior Court of New Jersey, Law Division: Middlesex County, Docket No. Propulsid Litigation MT Case No. 247 issued Notice to take the deposition of the Janssen Pharmaceutica Inc. MIS/IT Designated Representative(s) specifically requesting testimony regarding "maintaining, managing, and enforcing your design, implementation, and maintenance of ... information systems used by your Company." Topics to be covered included: "Use of e-mail by the company", and "Implementation of record retention requirements in computer systems used by the company". The Notice also required production of "All documents relating to e-mail systems in use by the company."

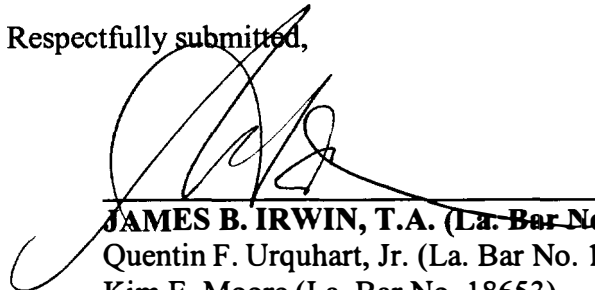
Leonard Davis and David Buchanan appeared and participated on behalf of the Plaintiffs' Liaison Committee and Plaintiffs' Steering Committee, respectively.

CONCLUSION

Defendant is entitled to a protective order precluding the Plaintiffs' Steering Committee from proceeding with this deposition. The items for examination pertain to legal matters, are protected by the attorney work product doctrine and are beyond the scope of FRCP 30(b)(6). Moreover, any examination into matters that might somehow be related to the status of documents as business records would be unduly burdensome, harassing and unjust at this point in the litigation. Plaintiffs have taken this discovery; they should not be allowed to do it all over again just because they were not diligent in their questioning the first time.

For the above reasons, pursuant to Federal Rule of Civil Procedure 26(c), Johnson & Johnson seeks the entry of a Protective Order regarding the 30(b)(6) Corporate Deposition noticed by the Plaintiffs' Steering Committee as to the defendants' responses to the Plaintiffs' Request for Admission and Interrogatory concerning business documents.

Respectfully submitted,



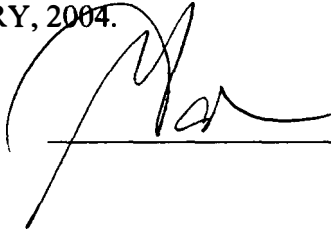
JAMES B. IRWIN, T.A. (La. Bar No. 7172)
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Monique M. Garsaud (La. Bar No. 25393)
Irwin Fritchie Urquhart & Moore LLC
400 Poydras Street, Suite 2700
New Orleans, LA 7013
Phone: (504) 310-2100
Fax: (504) 310-2101
**LIAISON COUNSEL FOR DEFENDANTS,
JANSSEN PHARMACEUTICA INC.
AND JOHNSON & JOHNSON**

DRINKER, BIDDLE & REATH, LLP
Thomas F. Campion
Susan M. Sharko
500 Campus Drive
Florham Park, NJ 07932-1047
Phone: (973) 549-7300
Fax: (973) 360-9831

DRINKER, BIDDLE & REATH, LLP
Charles F. Preuss
Donald F. Zimmer, Jr.
50 Fremont Street
San Francisco, CA 94105-2235
Phone: (415) 591-7500
Fax: (415) 591-7510
**CO-LEAD COUNSEL FOR DEFENDANTS,
JANSSEN PHARMACEUTICA INC. AND
JOHNSON & JOHNSON**

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing pleading has been served on Plaintiffs' Liaison Counsel, Russ M. Herman, by U.S. Mail and e-mail or by hand delivery and e-mail and upon all parties electronically by uploading the same to Verilaw in accordance with Pre-Trial Order No. 4, on this 14th day of JANUARY, 2004.

A handwritten signature in black ink, appearing to be "R. Herman", is written over a horizontal line.

Philadelphia, PA 19103 or at another location mutually agreed upon by the parties. Pursuant to Fed. R. Civ. P. 30(b)(6), J & J shall designate and produce a designated representative or representatives, as may be required, to testify on behalf of J & J concerning the topics identified herein.

Statement of Deposition Procedures - The deposition shall be taken pursuant to Pre-Trial Order No. 7 (Deposition Guidelines) entered December 8, 2000. The terms of such order are incorporated into this Notice.

Primary Examiner:	Julie Jacobs or Mike Gallant
Videotaped Deposition:	Yes
Videographer name and address:	Esquire Deposition Services 1880 John F. Kennedy Blvd., 15 th Floor Philadelphia, PA 19103

The deposition will be taken before a person authorized by law to administer oaths, pursuant to Fed. R. Civ. P. 28, and will continue from day-to-day, excluding Sundays and court-recognized holidays, until the examination is completed.

I. INSTRUCTIONS AND DEFINITIONS

1. “**And**” as well as “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests any matters which might otherwise be construed to be outside of the scope.
2. “**Business Documents**” as used herein shall mean the writings or documents evidencing the formation of each corporate or other business entity, its business purpose and its ongoing organization, including but not limited to articles, by-laws, annual reports, merger agreements, consolidation agreements, share exchange agreements, dissolution agreements,

liquidation agreements, reorganization agreements, receivership agreements, transfer of assets or liability agreements, management agreements, and operating agreements.

3. **“Communication”** means any transmission from one person to another, or in the presence of another, whether by written, oral, telephonic, electronic or by any other means and includes any records of such transmission.
4. **“Computer”** means all devices utilizing microchips to facilitate processing, analysis, or storage of data, including microcomputers (also known as personal computers), laptop computers, portable computers, notebook computers, palmtop computers (also known as personal digital assistants or PDA’s), minicomputers and mainframe computers.
5. **“Computer system,”** when used in reference to any computer, includes the following information: (a) the computer type, brand, and model, and (b) the brand and version of all software, including operating system, private- and custom-developed applications, commercial applications, and/or shareware.
6. **“Defendant”** as used herein shall mean each of the named defendants in this matter.
7. **“Documents”** as used in this Request is coextensive with the meaning of the terms “documents” and “tangible things” in FRCP 34, and shall have the broadest possible meaning and interpretation ascribed to the terms “documents” and “tangible things” under FRCP 34. Consistent with the above definition, the term document shall include, without limitation, any written, printed, typed, photostatic, photographed, recorded, computer-generated, computer-stored, or otherwise maintained or reproduced communication or representation, any data compilation in any form, whether comprised of letters, words, numbers, pictures, sounds, bytes, e-mails, electronic signals or impulses, electronic data,

active files, deleted files, file fragments, or any combination thereof including, without limitation, all memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, projections, estimates, working papers, accounts, analytical records, reports and/or summaries of investigations, opinions or reports of consultants, opinions or reports of experts, opinions or reports of accountants, other reports, trade letters, press releases, comparisons, books, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, forecasts, drawings, diagrams, instructions, minutes of meetings or communications of any type, including inter- and intra-office communications, questionnaires, surveys, charts, graphs, photographs, phonographs, films, tapes, discs, data cells, drums, printouts, all other compiled data which can be obtained (translated, if necessary, through intermediary or other devices into usable forms), documents maintained on, stored in or generated on any electronic transfer or storage system, any preliminary versions, drafts or revisions of any of the foregoing, and other writings or documents of whatever description or kind, whether produced or authorized by or on behalf of you or anyone else, and shall include all non-identical copies and drafts of any of the foregoing now in the possession, custody or control of you, or the former or present directors, officers, counsel, agents, employees, partners, consultants, principals, and/or persons acting on your behalf.

8. **“Electronic data”** or “data” means the original (or identical duplicate when the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description whether inscribed by mechanical,

facsimile, electronic, magnetic, digital, or other means. Electronic data includes, by way of example only, computer programs (whether private, commercial, or work-in-progress), programming notes or instructions, activity listings of electronic mail receipts and/or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, operating systems, source code of all types, peripheral drivers, PIF files, batch files, ASCII files, and any and all miscellaneous files and/or file fragments, regardless of the media on which they reside and regardless of whether said electronic data consists in an active file, deleted file or file fragment. Electronic data includes any and all items stored on computer memories, hard disks, floppy disks, CD-ROMs, removable media such as Zip disks, Jaz cartridges, Bernoulli Boxes and their equivalent, magnetic tapes of all types, microfiche, punched cards, punched tape, computer chips, including, but not limited to EPROM, PROM, RAM and ROM, on or in any other vehicle for digital data storage and/or transmittal. The term electronic data also includes the file, folder tabs and/or containers and labels appended to, or associated with, any physical storage device associated with each original and/or copy.

9. **“Electronic media”** means any magnetic or other storage media device used to record electronic data. Electronic media devices may include computer memories, hard disks, floppy disks, CD-ROM, removable media such as Bernoulli Boxes and their equivalent, magnetic tapes of all types, microfiche, punched cards, punched tape, computer chips, including, but not limited to EPROM, PROM, RAM and ROM, or on or in any other vehicle for digital data storage and/or transmittal.
10. **“Financial records”** means all documents and statements containing information about the

financial condition, operating success, and future potential of the business enterprise which include but are not limited to financial documents and statements such as balance sheets, income statements, statements of retained earnings, statements of shareholder's equity, statement of changes in financial position, annual reports, accountant work papers, audits, SEC filings, tax returns, and financial projections.

11. **"Identify"** or **"identity"** with respect to persons, means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.
12. **"Janssen"** means defendant Janssen Pharmaceutica Inc., and any of its subsidiaries, affiliates, officers, agents, attorneys, employees, representatives, or others acting on its behalf including but not limited to Janssen Ortho, LLC; Janssen Pharmaceutica, Inc.; Janssen Products, Inc.; Janssen Animal; Janssen-Cilag A/S; Janssen-Cilag AB; Janssen-Cilag AG; Janssen-Cilag A/S (Switzerland); Janssen-Cilag B.V.; Janssen-Cilag Egypt Ltd.; Janssen-Cilag C.A.; Janssen-Cilag Farmaceutica, Ltda. (Brazil); Janssen-Cilag Farmaceutica, Ltda. (Portugal); Janssen-Cilag International N.V.; Janssen-Cilag Ltd.; Janssen-Cilag Limited; Janssen-Cilag N.V.; Janssen Cilag OY; Janssen Cilag Pharmaceutical; Janssen-Cilag Pharma GmbH; Janssen-Cilag Pty. Limited; Janssen-Cilag S.A. (Spain); Janssen-Cilag S.A. (France); Janssen-Cilag S. P. A.; Janssen Farmaceutica, S.A. de C. V.; Janssen-Cilag GmbH; Janssen-Cilag International N.V.; Janssen International C.V.; Janssen Korea, Ltd.; Janssen-Kyowa, Ltd.; Janssen Ortho, Inc. (Canada); Janssen Pharmaceutica Limited; Janssen Pharmaceutica N. V.; Janssen Pharmaceutical Limited.
13. **"Johnson & Johnson"** or **"J & J"** means defendant Johnson & Johnson, and any of its

subsidiaries, affiliates, officers, agents, attorneys, employees, representatives, or others acting on its behalf.

14. **“License Agreement”** as used herein shall mean the right, agreement, authority or granting of ownership to use, borrow, loan, or incorporate any Trademark, Trade name or corporate or other business enterprise logo or designation of another.
15. **“Network”** means any hardware and/or software combination that connects two or more computers together and which allows the computers to share and/or transfer data between them. For the purposes of this definition, the connection between or among the computers need not be either physical or direct, i.e., wireless networks, and sharing and/or transferring data via indirect routes utilizing modems and phone company facilities. In addition, there need not be a central file or data server nor a central network operating system in place, i.e., peer-to-peer networks and networks utilizing a mainframe host to facilitate data transfer.
16. **“Notification”** includes communication, documents and computer generated or assisted methods of transmitting information.
17. **“Or”** and **“and”** will be used interchangeably.
18. **“Person”** means natural person, as well as corporate and/or governmental entity.
19. **“Photographs”** means any and all positive and negatives of any pictures as well as any film, microfilm, microfiche or any video used to obtain representations of objects by means of chemical, action of light, digital technology or other kinds of radiant energy on special treated surfaces or films.
20. **“Plaintiff”** as used herein shall mean each of the named plaintiffs in this matter.
21. **“Propulsid”** means the anti-heartburn drug Cisapride, also known by the brand name

Propulsid or Propulsid, and any predecessor or non-final derivation of the drug that later became Propulsid.

22. **“Relating to,” “relate to,” “referring to,” “refer to,” “reflecting,” “reflect,” “concerning,” or “concern”** shall mean evidencing, regarding, concerning, discussing, embodying, describing, summarizing, containing, constituting, showing, mentioning, reflecting, pertaining to, dealing with, relating to, referring to in any way or manner, or in any way logically or factually, connecting with the matter described in that paragraph of these demands, including documents attached to or used in the preparation of or concerning the preparation of the documents. The term **“relate to”** including but not limited to, its various forms such as **“relating to”** shall mean, consist of, refer to, reflect or be in anyway relevant to the matter.
23. **“Request for Document” or “Records”** refers to originals unless otherwise specified, and for copies when originals are not available. The Request includes all documents and records in the actual or constructive possession, custody or control of you or your agents or representatives.
24. **“Rotation”** means any plan, policy or procedure that involves the re-use of an electronic media device after it has been used for backup, archival, or other electronic data storage purposes, particularly if such re-use results in the alteration and/or destruction of the electronic data residing on the device prior to its re-use.
25. **“Trademark”** shall mean any work, name, symbol or device or any combination thereof adapted and used by a person or business entity to identify goods made or sold by him and to distinguish them from goods made or sold by others.

26. “**Trade name**” shall mean a word, name, symbol, device or any combination thereof used by a person or business entity to identify his business, vocation or occupation and distinguish it from the business, vocation or occupation of others.
27. “**You**” or “**Your**” shall refer to the person, firm, entity or entities to whom this document is directed, or to any party, their officers, agents, servants, employees and attorneys, and anyone acting in active concert or participation with them.
28. With respect to the identification or production of any documents or information which you claim to be privileged, a statement shall be provided setting forth as to each such document:
- a) the name of the sender, if any, of the document;
 - b) the name of the author of the document;
 - c) name of the person, if any, to whom the document and copies were sent;
 - d) a description of the nature and the subject matter of the document;
 - e) the statute, rule or decision which is claimed to give rise to the privilege;
 - f) the last known custodian of the document and the present location of the document;
 - g) a description of any attachments to the document;
 - h) the number of pages comprising the document;
 - i) whether the document was handwritten, typewritten, or otherwise prepared; and
 - j) any other information which is useful in identifying or is necessary to identify the document.
29. Whenever appropriate, the singular form of a word shall be interpreted in the plural and vice versa.
30. Unless otherwise indicated, the relevant time period for the information sought is 1980 to present.
31. In responding to this request, if applicable, furnish documents as they are kept in the usual course of business or organize them to correspond with the categories of this request.
32. In responding to this request, for each document furnished, you are requested to produce the

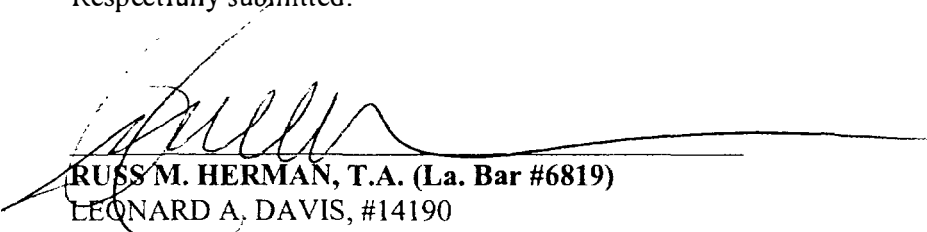
document as it is kept in its normal course of business and any English translations or interpretations of said document or thing.

33. The instructions and definitions set forth herein are expressly incorporated by reference and made a part of each of the requests set forth below.

II. ITEMS OF EXAMINATION

1. The list of documents attached as Exhibit 1.
2. The responses provided in the Sixth Supplemental Response by J & J and/or Janssen to Plaintiffs' Request For Admission and Interrogatory.
3. Exhibit A of the Sixth Supplemental List of Admissions/Objections Regarding 803(6) documents.
4. Each and every document listed in Exhibit A of the Sixth Supplemental List of Admissions/Objections Regarding 803(6) documents which J & J or Janssen denies is a "Business Record" subject to the FRE 803(6) business record exception to the Hearsay rule.
5. The collection, security, storage and creation of "e-mail" in the ordinary course of business within J & J and/or Janssen during the relevant time period.
6. The application and relationship of Federal Rules of Evidence 803 with respect to each documents identified on Exhibit 1.

Respectfully submitted:



RUSS M. HERMAN, T.A. (La. Bar #6819)

LEONARD A. DAVIS, #14190

HERMAN, MATHIS, CASEY, KITCHENS & GEREL, LLP

820 O'Keefe Avenue

New Orleans, Louisiana 70113

Phone: (504) 581-4892

Fax: (504) 561-6024

LIAISON COUNSEL FOR PLAINTIFFS

DANIELE E. BECNEL, JR.
106 W Seventh Street
Reserve, LA 70084-0508
Phone (504) 536-1186
Fax (504) 536-6445

JAMES DUGAN
3600 North Hullen Street
Metairie, LA 70002
Phone: (504) 456-8600
Fax: (504) 456-8624

ARNOLD LEVIN
510 Walnut Street, Suite 500
Philadelphia, PA 19106-3875
Phone: (215) 592-1500
Fax: (215) 592-4663

STEPHEN B. MURRAY
909 Poydras Street, Suite 2550
New Orleans, LA 70112
Phone: (504) 525-8100
Fax (504) 584-5249

J MICHAEL PAPANTONIO
316 S Baylen Street, Suite 600
P O. Box 12308
Pensacola, FL 32581
Phone (850) 435-7000
Fax (850) 435-7020

CHRISTOPHER A SEEGER
One William Street
New York, NY 10004
Phone: (212) 584-0700
Fax: (212) 584-0799

BOB F WRIGHT
556 Jefferson Street, Suite 500
Lafayette, LA 70502-3668
Phone: (337) 233-3033
Fax: (337) 232-8213

CHARLES S ZIMMERMAN
651 Nicollet Mall
Suite 501
Minneapolis, MN 55402
Phone: (612) 341-0400
Fax: (612) 341-0844

PLAINTIFFS' STEERING COMMITTEE

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been served on Liaison Counsel, James Irwin, by U. S. Mail and e-mail or by hand delivery and e-mail and upon all parties electronically by uploading the same to Verilaw in accordance with Pre-Trial Order No. 4, on this 12th day of December, 2003.



RUSS M. HERMAN

Bates Number	Doc Date	Defendant Response
		Denied - Casual
B0012034	3/20/1996	Communication
B0077540	1/28/1998	Denied - Draft
B0077654	5/2/1998	Denied - Draft
B0077988	4/23/1998	Denied - Draft
		Denied - Casual
B0716210	12/21/1998	Communication
B0741185	4/4/1996	Denied - Email
		Denied - Third
B0867350	10/21/1997	Party
B0892448	5/21/1999	
		Denied - Casual
B0949886	5/26/1998	Communication
B1348878	8/10/1999	Denied - Email
B1348956	7/22/1999	Denied - E-mail
B1899307	8/28/1998	Denied - E-mail
B2445858		Denied - Email
B2504117	12/2/1999	
B2532879	5/7/1995	E-mail
B2888189	4/6/1997	Denied - E-mail
B2931128	7/24/1998	Denied - E-mail
B2953523	7/22/1999	
B3057397	2/24/2000	Denied - E-mail
B3072092	1/7/2000	Denied - Email
		Denied - Casual
CA001454	11/17/1998	Communication
		Denied - Casual
CA001457	04/00/1998	Communication, marginalia

CA001460	10/30/1998	Denied - Casual Communication
CA002530	8/3/1999	Denied - E-mail
CA002541	8/6/1999	Denied - E-mail
CA002746	9/28/1998	Denied - E-mail
CA002767	10/7/1998	Denied - E-mail
CA002875	10/27/1998	Denied - E-mail
CA002933	11/10/1999	Denied - E-mail
CA002987	11/23/1998	Denied - E-mail
CA003042	1/4/1999	
CA003339	1/22/1999	Denied - E-mail
E0080168	3/20/2000	E-mail
FDA 3055	7/19/1993	ADMITTED
FDA 9177	3/10/2000	
FDA09558	3/24/1992	
FDA11974	12/23/1994	
FDA13625	5/1/2000	Denied - Third Party
FDA2979	3/17/1992	ADMITTED
FDA6746	8/26/1999	Denied - Third Party
FDA8251	09/00/1999	
FDA9276	6/26/2000	
J0015994	9/25/1990	Denied - Third Party
J0076108	10/29/1993	Denied - Third Party
J0076438	1/25/1995	Denied - Third Party
J0080529	8/15/1998	Denied - Third Party

J0080605	8/14/1996	Denied - Third Party
J0081404	7/23/1998	E-mail
J0081704	8/20/1997	Denied - Third Party
J0088040	10/15/1999	Denied - Third Party
J0107680	10/14/1995	ADMITTED
J0108121	02/00/1996	Denied - Marginalia
J0109829	10/00/1996	ADMITTED
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J0144151	2/18/1994	Denied - Third Party
J0145757	11/18/1995	Denied - Incomplete Document
J0146838	6/20/1995	Denied - Third Party
J0146964	7/4/1995	E-mail
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J0193037	11/19/1997	Denied - Third Party
J0195922	03/00/1998	Denied - Casual Communication
J0197558	6/4/1998	Denied - Third

J0216057	1/31/2000	Party
J0216743	12/31/1999	Denied - unknown author
J0221773	10/20/1997	ADMITTED
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J0266878	7/29/1993	Denied - Third Party
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J0269335	12/21/1992	ADMITTED
J0280547	3/4/1992	Denied - Marginalia, Casual Communication
J0363559	1/7/2000	Denied - Third Party
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J0529705	00/00/0000	Denied - Casual Communication, Incomplete document
J0534010	6/26/1998	Denied - Casual Communication
J0576346	10/00/1997	ADMITTED
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J0702257	00/00/2000	

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J0702687	00/00/0000	Denied - Casual Communication
J0703328	00/00/2000	Denied - Casual Communication, Unknown Author
J0704146	3/25/1999	Denied - Casual Communication; Unknown Author
J0706496	2/25/1999	Denied - Incomplete Document
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J0735438	6/16/1999	Denied - Casual Communication; Unknown Author
J0738580	8/31/1998	Denied - Casual Communication, unknown author
J0740095	00/00/2000	Denied - Casual Communication
J0742495	00/00/1996	Denied - Casual Communication, unknown author
J0756760	11/00/1997	Denied - Marginalia, Unknown Author; Casual

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		Denied - Casual
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J0864326	6/26/1998	Party
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		Incomplete
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		Incomplete
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J0879220	/ / 0	Denied - Marginalia; Casual Communication
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J0879223	8/15/1997	Denied - Third Party
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J0879238	3/17/1996	Denied - Third Party
J0879272	9/5/1997	Denied - Email
J0930037	8/24/1994	ADMITTED
J0934196	2/12/1999	Denied - Casual Communication

J0939180	01/00/2000	Denied - Incomplete Document
J0939190	1/24/2000	Denied - Incomplete Document
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J0946654	08/00/1998	Denied - Third Party
J0948097	3/17/1998	Denied - Email
J0953191	00/00/1996	Denied - Draft
J0976525	9/22/1998	Denied - E-mail, Marginalia
J0976688	9/17/1998	Denied - E-mail, marginalia
J0976784	7/2/1998	
J0978226	6/11/1998	Denied - Casual Communication; Marginalia
J0979855	10/14/1998	Denied - Third Party
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J0985369	12/00/1998	Denied - Casual Communication; Unknown Author

J0988378	6/23/1998	Denied - Casual Communication; Unknown Author
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J1056584	4/12/2000	ADMITTED
J1288219	7/19/1999	Denied - Draft
J1288878		Denied - Marginalia, Casual Communication, Unknown Author
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		Denied - Third	
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		Denied - Casual	
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		Denied - Casual	
J1555934	5/22/1998	Communication	
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		Denied - Casual	
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		Denied - Casual	
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		Denied - Casual	
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J1875995	12/15/1998	Marginalia, Casual Communication, Unknown Author	

J1878317	12/7/1999	Denied - Email Denied - Marginalia; Casual
J2216860	1/16/1996	Communication
J2481984	4/21/1999	Denied - Email
J2481984	4/21/1999	Denied - Email Denied - Marginalia; Casual
J2483771	9/12/1997	Communication
J2847720	12/27/1999	Denied - E-mail Denied - Marginalia, Casual
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J3010232	8/26/1994	Communication Denied - Casual
J3105821	12/15/1998	Communication, Unknown author Denied - Casual
J3458335	6/29/1998	Communication Denied - Casual
J3458722	/ / 0	Communication
J3476472	11/30/1999	Denied - E-mail

EXHIBIT B

Bates no. J 0076438, Klausner Deposition 1-31-01, Exhibit 12; (Also labeled P 10)

Bates no. J 0195922, Klausner Deposition 2-1-01, Exhibit 50; (Also labeled P 24)

Bates no. J 0411251, Pruden Deposition 4-26-01, Exhibit 144; Habrack Deposition 12-11-02; (Also labeled P 6)

Bates no. J 0452874, Klausner Deposition 2-1-01, Exhibit 57; (Also labeled P 26)

Bates no. J 0702678, Joslyn Deposition 4-3-01, Exhibit 81; (Also labeled P 37)

Bates no. J 0452874, Klausner Deposition 2-1-01, Exhibit 57; (Also labeled P 26)

Bates no. J 0704146, Pruden Deposition 4-26-01, Exhibit 145; (Also labeled P 93)

Bates no. 0706496, Pruden Deposition 4-26-01, Exhibit 136; (Also labeled P 87)

Bates no. J 0798668, Golkow Deposition 4-2-01; Exhibit 14, Habrack Deposition 12-11-02; (Also labeled as P 21)


Bates no. J 0953191, Joslyn Deposition 4-4-01, Exhibit 107; (Also labeled P 46)

Bates no. J 1340618, Gorsky Deposition 6-19-02, Exhibit 15, Habrack Deposition 12-12-02; (Also labeled P 37)

Bates no. J 2847720, Pamco Deposition 6-20-02, Exhibit 39, Habrack Deposition 12-12-02; (Also labeled P 42)

Bates no. J 1556306, Gheuens Deposition 5-24-01, Exhibit 203; (Also labeled P 64)

Respectfully submitted:



JAMES B. IRWIN, T.A.
QUENTIN F. URQUHART
KIM E. MOORE (La. Bar)
MONIQUE M. GARSAUD
IRWIN ERITCHIE UROU

Phone: (504) 310-2100

Fax: (504) 310-2101

**LIAISON COUNSEL FOR DEFENDANTS,
JANSSEN PHARMACEUTICA INC. AND
JOHNSON & JOHNSON**

DRINKER, BIDDLE & REATH LLP

THOMAS F. CAMPION

SUSAN M. SHARKO

500 Campus Drive

Florham Park, NJ 07932-1047

Phone: (973) 549-7300

Fax: (973) 360-9831

and

DRINKER, BIDDLE & REATH LLP

CHARLES F. PREUSS

DONALD F. ZIMMER, JR.

50 Fremont Street

San Francisco, CA 94105-2235


Phone: (415) 591-7500

Fax: (415) 591-7510

**CO-LEAD COUNSEL FOR DEFENDANTS,
JANSSEN PHARMACEUTICA INC. AND
JOHNSON & JOHNSON**

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing pleading has been served on Plaintiffs' Liaison Counsel, Russ M. Herman, by U.S. Mail and e-mail or by hand delivery and e-mail and upon all parties electronically by uploading the same to Verilaw in accordance with Pre-Trial Order No. 4, on this 14th day of JANUARY, 2004.

A handwritten signature in black ink, appearing to be "R. Herman", is written over a horizontal line.