

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

IN RE: ACCUTANE PRODUCTS  
LIABILITY LITIGATION

CASE NO. 8:04-MD-2523-T-30TBM  
MDL 1626 – ALL CASES

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**PLAINTIFFS’ MOTION FOR APPROVAL OF  
PLAINTIFFS’ ORGANIZATIONAL STRUCTURE FOR MDL-1626**

The Plaintiffs, by and through the undersigned counsel, hereby move this Court for approval of the Plaintiffs’ Organizational Structure For MDL-1626 as set forth herein.<sup>1</sup>

**I. Introduction**

On May 27, 2004, Michael Papantonio, on behalf of the Plaintiff in the case of Rand v. Hoffmann La Roche, Inc., et al, Case No.: 8:03-CV-1729-T-30TBM, United States District Court, Middle District of Florida, petitioned the Judicial Panel for Multidistrict Litigation (“JPML”) for 28 U.S.C. §1407 consolidation of all federal cases relating to Accutane injuries. This petition was then joined by Michael Ryan, on behalf of the Plaintiffs in the cases of Bishop v. Hoffmann La Roche, Inc., et al, Case No.: 8:02-CV-1533-T-30TBM, and Bencz v. Hoffmann La Roche, Inc. et al, Case No.: 8:03-CV-2080-T-30TBM. On November 1, 2004 the JPML consolidated all Accutane cases irrespective of the injuries alleged before the Middle District of Florida.

As of this date, eleven cases, as listed on Exhibit A attached hereto, have been consolidated pursuant to 28 U.S.C. §1407. Consolidation is also pending, subject to resolution

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<sup>1</sup> Pending approval of Plaintiffs’ Proposed Organizational Structure, the undersigned, as counsel in the Bishop case and a member of the Plaintiffs’ Steering Committee, has accepted the responsibility for filings before this Court on behalf of the Plaintiffs’ Co-Lead Counsel and the Plaintiffs.

of Hoffman La Roche's opposition, in the cases of Gerber v. Hoffman La Roche, Inc., et al, filed in the Southern District of Texas, Houston Division, Case No. H-03-1886, and Stupak v. Hoffman La Roche, Inc., et al, filed in the Eastern District of Wisconsin, Case No. 1:03-CV-421-WCG. Briefing on these two cases has been completed before the JPML. A Conditional Transfer Order has also been issued by the JPML for the following "tag-along actions" filed in the Southern District of Mississippi: Wade v. Hoffmann La Roche, Inc., et al, Case No. 2:2004-CV-408; Joachin v. Hoffmann La Roche, Inc., et al, Case No. 1:2004-CV-889; Leisner v. Hoffmann La Roche, Inc., Case No. 3:2004-CV-986; Temple v. Hoffman La Roche, Inc., et al, Case No. 3:2004-CV-987.

The Manual for Complex Litigation recognizes the need for coordination of counsel where multiparty cases have been consolidated to avoid confusion and unnecessary burdens for the court. MANUAL FOR COMPLEX LITIGATION, FOURTH, §10.22 (Coordination in Multiparty Litigation) (2004). As noted, "[i]nstituting special procedures for coordination of counsel early in the litigation will help to avoid these problems. In some cases the attorneys coordinate their activities without the court's assistance and such efforts should be encouraged." *Id.* Pursuant to these provisions, counsel for Plaintiffs in the Accutane cases held a meeting in Atlanta, Georgia on December 13, 2004 to discuss an organizational structure for the Plaintiffs in the consolidated litigation.

All counsel for Plaintiffs in the consolidated cases listed on Exhibit A attached hereto, counsel for others who could be identified as having a case pending in Federal Court against Hoffmann La Roche, Inc. involving Accutane related personal injuries, and counsel who will potentially file claims for other plaintiffs in the future, were invited to attend the meeting. Eighteen firms from across the country sent representatives to the December 13, 2004 meeting.

An additional four firms were represented by proxy and since the meeting two more firms have joined in supporting the decisions reached at the meeting. A total of twenty-two lawyers were present and participated in the discussions at the meeting.

At the meeting, unanimous consent was achieved from the Plaintiffs' lawyers in attendance and participating by proxy for the proposed organizational structure set forth herein.

## **II. PROPOSED ORGANIZATIONAL STRUCTURE**

Pursuant to section 10.221 of the Manual for Complex Litigation, Fourth, Plaintiffs' counsel have unanimously selected, and request that the Court approve, the following counsel to act on behalf of the Plaintiffs in roles designated:

### **Co-Lead Counsel**<sup>2</sup>

Michael D. Hook  
Hook, Bolton, Kirkland & McGhee  
3298 Summit Blvd, Suite 22  
Pensacola, Florida 32503

Paul L. Smith  
Paul L. Smith & Associates  
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Austin, Texas 78733

### **Liaison Counsel**<sup>3</sup>

Donald Buckler  
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<sup>2</sup> Co-lead counsel are "[c]harged with formulating (in consultation with other counsel) and presenting positions on substantive and procedural issues during the litigation." MANUAL FOR COMPLEX LITIGATION, FOURTH, §10.221 (Organizational Structures) (2004). They will act or coordinate for the group in presenting written and oral argument to the Court, working with opposing counsel on case management, responding to discovery, conducting depositions, managing experts, case support, and schedules. Id.

<sup>3</sup> Liaison Counsel shall be responsible for administrative matters, such as coordination of communications with the Court and other counsel, distribution of notices, service copies and other documents, convening meetings of counsel, and resolving scheduling conflicts. MANUAL FOR COMPLEX LITIGATION, FOURTH, §10.221 (Organizational Structures) (2004).

**Plaintiffs' Steering Committee**<sup>4</sup>

The Plaintiffs' Steering Committee is listed on Exhibit B attached hereto.

**State Court Liaison Counsel**<sup>5</sup>

Christopher Seeger  
Seeger Weiss L.L.P.  
550 Broad Street, Suite 920  
Newark, New Jersey 07102

The attorneys selected to serve as co-lead counsel have been extensively involved in Accutane litigation for several years. Mr. Hook is lead counsel in six of the consolidated cases before this Court (Rand, McLain, Perrone, St. Pierre, Baril, and Palmer) and Mr. Smith is lead counsel in four of the consolidated cases (Rand, Bishop, Bencz, and Gerber). They are familiar with all common substantive issues in the Accutane cases and have lead briefing and discovery efforts in their respective cases that have implications for all of the consolidated cases. Mr. Buckler is an experienced litigator and is well suited to serve as Liaison Counsel for the Plaintiffs. Mr. Seeger is presently counsel in approximately seventy-five cases filed in Atlantic County, New Jersey, the venue with the most state court cases pending. Cases are also pending in state courts in California, the District of Columbia, Florida, Georgia, Illinois, Indiana, Mississippi, Nebraska, Texas, and Utah. Mr. Seeger is well positioned to advise Plaintiffs and the Court in the consolidated cases on the progress of the New Jersey and other state court cases. Additional information on the experience and background of these designated attorneys is attached as Exhibit C.

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<sup>4</sup> The Plaintiffs' Steering Committee will assist Co-Lead Counsel in the performance of their duties.

<sup>5</sup> There are presently ninety cases pending in state courts throughout the country involving Accutane. See Exhibit B attached hereto. Plaintiffs' counsel believe it is wise to be advised of the status and progress, to the extent possible, of discovery in these various cases. Accordingly, Plaintiffs' counsel believe it is advisable to establish one of the Plaintiffs' lawyers as State Court Liaison Counsel to be responsible for tracking the status of the state court cases.

### **III. Request for Court Approval**

Plaintiffs hereby move the Court for approval of the proposed Organizational Structure. The proposed structure is unanimously supported by the Plaintiffs' counsel who attended the Plaintiffs' December 13, 2004, organizational meeting and others who participated by proxy or have since joined in the support. These attorneys represent a majority of the Plaintiffs in the consolidated cases. As evidenced by the information provided herein, the designated counsel are experienced litigators who are active in the Accutane litigation and well-qualified to lead the Plaintiffs in MDL-1626.

For the foregoing reasons, the undersigned, on behalf of Plaintiffs in the consolidated cases, respectfully request that the Court approve the organizational structure set forth herein.

I HEREBY CERTIFY that on the 25th day of January, 2005, I electronically filed the foregoing Plaintiffs' Motion for Approval of Plaintiffs' Organizational Structure for MDL -1626 with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

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