

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**IN RE: CARDIZEM CD ANTITRUST
LITIGATION**

:
: **MASTER FILE**
: **(No. 99-MD-1278)**
: **MDL No. 1278**
: **Honorable Nancy G. Edmunds**

This document relates to:
Louisiana Wholesale, 99-CV-73259
Duane Reade, 99-CV-73870

**AFFIDAVIT OF STUART E. DES ROCHES OF ODOM & DES ROCHES, LLP
IN SUPPORT OF JOINT PETITION FOR
ATTORNEYS' FEES AND EXPENSES**

STATE OF LOUISIANA)
) ss.: 433-23-6752
PARISH OF ORLEANS)

STUART E. DES ROCHES, being first duly sworn, deposes and says:

1. I am a partner in the law firm of Odom & Des Roches, LLP (hereinafter "the firm" or "ODR"). I submit this affidavit in support of the firm's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of costs and expenses incurred by the firm in connection with this litigation.

Involvement in the Case

2. The firm has actively participated in this case as co-counsel for Louisiana Wholesale Drug Company, Inc. (hereinafter "Louisiana Wholesale"), a named and certified class

representative. The firm was involved from the initiation of the lawsuit, throughout the prosecution, mediation and settlement of this matter.

3. ODR was involved in conducting a pre-filing investigation of the September 1997 Agreement and the causes of action applicable thereto. This consisted primarily of gathering as much information as possible about the Agreement, the regulatory framework affecting the pharmaceutical industry, and the business operations relating to the manufacturing and distribution of brand name and generic pharmaceutical products. This also consisted of detailed meetings with Louisiana Wholesale.
4. Once the case was filed by Louisiana Wholesale in the United States District Court for the Southern District of Florida, ODR actively participated in conducting discovery upon the Defendants and in responding to discovery propounded by the Defendants. During this time period, ODR (along with lawyers from the Garwin Bronzaft and Percy Smith law firms) prepared and defended Louisiana Wholesale in its 30(b)(6) deposition.
5. Once this case was transferred to the United States District Court for the Eastern District of Michigan, ODR was appointed by this Court to the omnibus Discovery Committee, which included a representative firm from each of the plaintiff and defendant groups. Co-Lead Counsel and the Executive Committee for the Sherman Act Class Plaintiffs also appointed ODR, along with the Niewald, Waldeck & Brown firm, to an internal Discovery Committee with the responsibility to devise an overall discovery plan and strategy, and to ensure that all discovery tasks were appropriately staffed, pursued and executed in an efficient fashion.

6. As a general matter, the firm participated in the following detailed discovery tasks:
 - (a) drafting discovery responses and producing documents on behalf of Louisiana Wholesale;
 - (b) prepared and defended Louisiana Wholesale in its 30(b)(6) deposition;
 - (c) drafting numerous requests for production, interrogatories and requests for admission to the Defendants;
 - (d) drafting and issuing subpoenas to various third parties;
 - (e) reviewing many boxes of documents obtained from Defendants; other manufacturers of generic Cardizem CD; purchasers of branded and generic Cardizem CD; suppliers of raw materials used in making Andrx's Cartia XT product; consultants engaged by the Defendants to study the diltiazem market; and the Federal Trade Commission;
 - (f) developing a searchable Summation database which allowed access to the above-described documents;
 - (g) working with experts and consultants in the fields of economics, pharmacoeconomics, FDA regulatory matters, and pharmaceutical manufacturing;
 - (h) Court appearances and telephone conferences relating to discovery issues; and
 - (i) drafting and arguing several motions to compel.
7. More particularly, it was the primary responsibility of ODR to oversee and conduct discovery on Defendant Andrx, relating primarily to whether Andrx would have, and could have, entered the Cardizem CD market earlier "but for" the September 1997 Agreement.
8. ODR, along with the assistance of the Garwin Bronzaft firm, undertook the effort to demonstrate with discovery that in the "but for" world (a) Andrx would have made the business decision to come to market at the end of the thirty month Hatch-

Waxman stay period (which ended at the beginning of July 1998) while the patent litigation was still pending; (b) that Andrx would have remained on the market by either settling its patent case with Aventis or by prevailing in the patent case outright; and (c) that Andrx had the manufacturing, scientific, and financial wherewithal to come to market during this same period of time.

9. The firm conducted discovery on Andrx for the purpose of refuting the following defenses: (a) Andrx's management and board of directors had no intention of entering the market with its Original Formulation of Cartia XT (i.e., the product having a not-less-than 55% dissolution profile at the 18-hour mark) during the existence of the patent litigation; (b) Andrx had insufficient funds to develop and manufacture its Reformulated Product (i.e., the product having a not-less-than 65% dissolution profile at the 18-hour mark), but needed the money from the September 1997 Agreement to perform this work; (c) Andrx did not have sufficient funds to properly market any version of its Cartia XT in July 1998; (d) Andrx did not possess sufficient equipment to produce Cartia XT in adequate commercial quantities; (e) Andrx did not possess sufficient facilities to produce Cartia XT in adequate commercial quantities; (f) Andrx did not have sufficient numbers of trained and qualified employees to manufacture Cartia XT in adequate commercial quantities; and most importantly, (g) Andrx did not have the scientific and manufacturing know-how to make any version of Cartia XT with sufficient consistency to "validate" and responsibly launch its product.

10. ODR participated in the following depositions on behalf of the Sherman Act Class Plaintiffs: (a) Dat Trieu (Andrx's Director of Validation and former Director of Technical Services) – Stuart Des Roches was the lead examiner; (b) Randall Glover (Andrx's former Director of Production) – Stuart Des Roches was the lead examiner; (c) Angelo Malahias (Andrx's Chief Financial Officer) – John Odom was the lead examiner; (d) Larry Rosenthal (Andrx's Director of Marketing) – Stuart Des Roches was the lead examiner; (e) David Gardner (Andrx's former Director of Regulatory Affairs) – Stuart Des Roches actively participated for the Sherman Act Class Plaintiffs; (f) Diane Servello (Andrx's current Director of Regulatory Affairs) – Stuart Des Roches actively participated for the Sherman Act Class Plaintiffs; (g) Frank Ciriello (Aventis' former Product Director for Cardizem CD) – Stuart Des Roches was the lead examiner; and (h) ODR actively participated in preparation for the depositions of Louis Solomon (Andrx's outside counsel), Dr. Chih-Ming Chen (Andrx's former President and Chief Scientific Officer), Dr. Elliot Hahn (Andrx's Chief Executive Officer), and Scott Lodin (Andrx's General Counsel).
11. ODR also actively participated in the weekly conference calls with Co-Lead Counsel and the Executive Committee for the purpose of providing updates to the progress of discovery and to discuss overall case strategies.
12. The firm also was an active participant in the mediation and settlement of this case. ODR participated in the following tasks in this regard: (1) drafting of the detailed mediation position statements; (2) delivered a presentation to the members of management of Andrx and Aventis, as well as their counsel, during mediation on the

causation issues related to Andrx’s willingness and ability to come to market in the “but for” world; and (3) reviewed and discussed drafts of the memorandum of understanding and the settlement agreement.

Attorneys’ Fees and Costs/Expenses

13. Discovery in this matter was a daunting task in terms of the volume of information and documents to be obtained, reviewed, and analyzed, as well as in terms of complexity. Discovery was further complicated in that counsel for the Defendants, particularly Andrx, vigorously defended this action.

14. Contained below is a chart demonstrating the time spent on this case by each ODR attorney, and the lodestar calculation based on the firm’s current billing rates for complex commercial litigation. The hourly rates for the attorneys are the same as rates actually charged to clients for services in non-contingent fee matters of a similar nature. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by the firm, which are available for inspection at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

Attorney	Hours	Rate Per Hour	Total Lodestar
John G. Odom (senior partner)	705.75	\$450	\$317,587.50
Stuart E. Des Roches (partner)	2,247.15	\$400	\$898,860.00
Randall S. Acree (of counsel)	295.90	\$400	\$118,360.00
Andrew W. Kelly (senior associate)	133.55	\$300	\$40,065.00

Charles F. Zimmer (associate)	1,425.25	\$250	\$356,312.50
Edward J. Westlow (contract lawyer)	2.00	\$400	\$800.00
Samantha Rusk (paralegal)	34.50	\$65	\$2,242.50

15. The total number of hours expended on this litigation by the firm is 4,844. The total lodestar for the firm is \$1,734,227.50.
16. A breakdown of the above hours and fees by substantive categories of work performed is as follows:

Preparation of Pleadings and Briefs (including class certification)	Hours: 166.85 Fees: \$63,512.50
Discovery (including motions to compel)	Hours: 3,892.60 Fees: \$1,356,417.50
Mediation/Settlement	Hours: 386.85 Fees: \$155,055.00
Work with Experts	Hours: 116.40 Fees: \$43,675.00
Court Hearings (including preparation and travel)	Hours: 173.15 Fees: \$71,022.50
Case Management	Hours: 108.25 Fees: \$44,545.00

17. In addition to the above, ODR has incurred a total of \$147,134.00 in unreimbursed expenses and costs in connection with the prosecution of this case. The expenses and costs incurred in this action are reflected on the books and records of the firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate recordation of the actual expenses and costs incurred. No "premium" or other additional charge has been added to these figures.

The categorical breakdown of the unreimbursed costs and expenses is as follows:

Advances to litigation fund	\$25,000.00
Copy costs	\$34,461.00
Postage/Fed Ex	\$ 9,707.00
Travel expenses	\$50,109.00
Deposition transcripts	\$14,474.00
Long distance/fax	\$10,469.00
Dinner conferences with co-counsel participating in several document review and coding sessions	\$ 1,563.00
Service of subpoenas	\$ 667.00
Computer research	\$ 684.00
Total	\$147,134.00

Experience of ODR

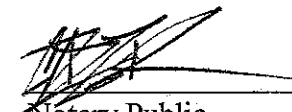
18. With respect to the standing of counsel in this case, attached hereto as Exhibit "1" is a brief biography of the firm and attorneys who were involved in this case.
19. ODR engages in contingency fee and hourly fee commercial litigation. Although the firm routinely handles defense matters, particularly for an international accounting firm, the firm's primary work involves plaintiff's contingency fee litigation in commercial litigation. Since the Fall of 1993, the firm has handled contingency fee antitrust cases involving the pharmaceutical industry.

SO SWORN, this 31st day of October, 2002, New Orleans, Louisiana.



Stuart E. Des Roches, Esq.

Sworn to before me, this 31st
day of October, 2002.



Notary Public

CARY A. DES ROCHES
Attorney at Law and Notary Public
All Parishes, State of Louisiana
My Commission is issued for life.

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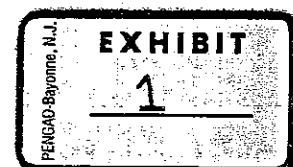
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October 30, 2002

Odom & Des Roches, LLP engages in multi-party litigation of complex civil matters throughout the United States. The firm's clients include local businesses, national and international companies, and private individuals.

The lawyers of Odom & Des Roches, LLP have particular depth of experience in corporate litigation, financial transactions litigation, professional liability litigation, RICO litigation, antitrust litigation, pharmaceutical industry litigation, and securities litigation. The firm maintains an active defense practice, and regularly represents an international accounting firm and other business interests. At the request of other nationally prominent law firms, the firm expanded its practice to represent plaintiffs in significant class action and Multi-District Litigation matters, particularly in the pharmaceutical industry. The firm is actively involved in several national antitrust class action and non-class action cases, including *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, U.S.D.C., N.D. Ill. (representation of 3,800 non-class independent retail pharmacy operations); *In re Cardizem CD Antitrust Litig.*, MDL Docket No. 1278, U.S.D.C., E.D. Mich. (court appointment to discovery committee representing Sherman Act Class Plaintiffs); *In re Terazosin Hydrochloride Antitrust Litig.*, MDL Docket No. 1317, U.S.D.C., S.D. Fla. (counsel for Sherman Act Class Plaintiffs); *In re K-Dur Antitrust Litig.*, MDL Docket No. 1419, U.S.D.C., D.N.J. (court appointment to executive committee representing Sherman Act Class Plaintiffs); *In re Buspirone Antitrust Litig.*, MDL Docket No. 1410, U.S.D.C., S.D.N.Y. (court appointment to steering committee representing Sherman Act Class Plaintiffs); *In re Ciprofloxacin Hydrochloride Antitrust Litig.*, 00-MDL-1383, U.S.D.C., S.D.N.Y. (court appointment to executive committee representing Sherman Act Class Plaintiffs); *In re Northwest Airlines Corp., et al., Antitrust Litig.*, Master File No. 96-74711, U.S.D.C., E.D. Mich.

The core of this firm's practice is its commitment and proven ability to actually try jury cases, and its lawyers structure their strategy from the outset of an engagement with an eye towards eventual appearance in the courtroom. It is the firm's philosophy and experience that being prepared for the rigors of trial maximizes the opportunities for the client to obtain favorable results. In addition to its active jury trial practice, the firm has extensive appellate experience, and its senior partner argued and won the unanimous reversal of a federal circuit court of appeals before the United States Supreme Court in *Rivet v. Regions Bank of La.*, 522 U.S. 470, 118 S. Ct. 921, 1139 L. Ed. 2d 912 (1998). Odom & Des Roches, LLP, which is rated "AV" by Martindale-Hubbell, maintains offices in New Orleans, Louisiana and Hahira, Georgia. The firm is listed in Martindale-Hubbell's "Bar Register of Preeminent Lawyers".



PARTNERS

John Gregory Odom, PLC. Mr. Odom was born in Hahira, Lowndes County, Georgia on November 29, 1951, and was admitted to the bar of the State of Georgia in 1978, the District of Columbia in 1982, and the State of Louisiana in 1983. He is also admitted to the bars of numerous United States District Courts and Courts of Appeals throughout the country, as well as the United States Supreme Court. He practiced with a leading Savannah firm for several years, and was a business litigation partner in the second-largest firm in Louisiana for seven years before leaving to form his own firm in 1990.

Mr. Odom was educated at Yale University (B.A., cum laude, 1973); The Queen's College, Oxford University (B.A. (hons.), 1975; M.A., 1981); and the University of Virginia School of Law (J.D., 1978). He is the author of "Recent Developments in Litigation Under the Racketeer Influenced and Corrupt Organizations Act and Federal Securities Law," Manual of Recent Developments in the Law, Louisiana State Bar Association, 1987-1990, and "Creative Applications of Civil RICO," 11 Am. J. Trial Adv. 245, Fall, 1987. His regular areas of practice include corporate litigation; healthcare industry litigation; securities litigation; RICO litigation; professional liability litigation; class action litigation; and antitrust litigation.

Stuart E. Des Roches. Mr. Des Roches was born in New Orleans, Louisiana on August 12, 1966, was admitted to the bar for the State of Louisiana in 1992. He has practiced continuously with Mr. Odom since 1992 and was made a partner in the firm in 1998. He is admitted to practice in numerous United States District Courts and Courts of Appeals, as well as the United States Supreme Court. Mr. Des Roches was educated at Louisiana State University; University of New Orleans (B.A., 1989); and Tulane University Law School (J.D., 1992), and is a member of the New Orleans, Louisiana, Federal and American Bar Associations. He has routinely practiced antitrust law in the pharmaceutical sector for the past ten years. His other regular areas of practice include general business litigation and accountants' liability defense litigation.

ASSOCIATES

Andrew W. Kelly. Mr. Kelly was born in Bellefont, Pennsylvania on December 6, 1966, and was admitted to the bar for the States of California and Louisiana in 1994. He is admitted to practice in the United States District Courts for the Eastern, Middle, and Western Districts of Louisiana, and the Southern District of California; and the United States Court of Appeals for the Fifth Circuit. Mr. Kelly was educated at the University of California at Berkeley (B.A., 1988); and the University of San Diego School of Law (J.D., 1994), and is a member of the California and Louisiana Bar Associations. He served as law clerk to the Honorable John Minor Wisdom, of the United States Court of Appeals for the Fifth Circuit. His regular areas of practice include business litigation; class action litigation; and antitrust litigation. He is also available for counseling on criminal defense matters.

Charles F. Zimmer II. Mr. Zimmer was born in New Iberia, Louisiana on October 29, 1973. He was educated at Louisiana State University (B.S., 1996); and Tulane University (J.D., 1999). Mr. Zimmer studied business and accounting in college, and has passed all parts of the Uniform Certified Public Accounting Examination. He is a member of the Louisiana bar and the bars of the United States District Court for the Eastern, Middle, and Western Districts of Louisiana. Mr. Zimmer joined the firm upon graduation from law school, and actively participates in all phases of the firm's litigation practice.

OF COUNSEL

Randall S. Acree. Mr. Acree was born in Augusta, Georgia on August 4, 1959, and was admitted to the bar for the State of Georgia in 1987. He is admitted to practice in the United States District Courts for the Northern and Southern Districts of Georgia. Mr. Acree was educated at Valdosta State College (B.A., 1981); did graduate work at the University of Georgia; and received his legal education at Mercer University (J.D., 1986), and Georgetown University (L.L.M. in Securities, 1987). Mr. Acree has extensive hospital industry experience, and his regular areas of practice include healthcare industry litigation; business tort litigation; securities litigation; class action litigation; and antitrust litigation.
