

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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In re: REMERON DIRECT PURCHASER :  
ANTITRUST LITIGATION : MASTER DOCKET  
: NO. 03-0085 (FSH)  
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**DECLARATION OF DAVID P. SMITH ON BEHALF OF  
PERCY, SMITH & FOOTE, LLP IN SUPPORT OF CLASS COUNSEL'S  
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENTS OF EXPENSES**

I, David P. Smith, under penalty of perjury under the laws of the State of United States of America, declare as follows:

1. My professional law corporation is a partner of the firm Percy, Smith and Foote, LLP. I am submitting this declaration in support of Class Counsel's motion for attorneys' fees and reimbursement of expenses in connection with services rendered by my firm in the above-entitled actions. A copy of my firm's resume is attached hereto as Exhibit 1.

2. The factual matters set forth and the assertions made herein are true and correct to the best of my knowledge, information and belief.

3. The total number of hours expended by my firm on this litigation is 2974.50. The total lodestar amount based on the firm's current rates is \$928,455.50.

4. The following schedule is a summary of the amount of time spent by each attorney and paralegal of my firm who was involved in this litigation, and the lodestar calculation based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available to the Court. Time expended in preparing this application for fees and expenses have not been included in this request.

<b>Attorneys</b>	<b>TOTAL HOURS</b>	<b>CURRENT HOURLY RATE</b>	<b>TOTAL LODESTAR</b>
David P. Smith (P)	1092.50	\$500.00	\$546,250.00
W. Ross Foote (A)	36.20	\$450.00	16,290.00
Betty R. Owens (SC)	4.0	\$450.00	1800.00
Brian D. Brooks (A)	319.20	\$295.00	94,164.00
Mayme Holt Brown (A)	749.90	\$250.00	187,475.00
Allison Kramer (CA)	9.90	\$125.00	1,237.50
Mark L. Windham (PL)	308.50	\$115.00	35,477.50
Jessica D. Chiasson (PL)	240.40	\$115.00	27,646.00
James Andy Sams (CP)	188.80	\$85.00	16,048.00
Randall Thiels (PL)	18.50	\$85.00	1,572.50
Margaret J. Long (PL)	1.90	\$75.00	142.50
Karen Woodard (PL)	4.70	\$75.00	352.50
<b>TOTALS</b>	2974.50	N/A	\$928,455.50

P = Partner; A = Associate; SC = Special Counsel; CA = Contract Attorney; PL = Paralegal; CP = Contract Paralegal

5. All of the work performed by the attorneys and staff to bring this case to a successful conclusion was performed at the direction of Co-Lead Counsel, was conducted effectively, efficiently, and economically and to avoid unnecessary expenditures of time and expense.

6. Among other things, my firm initially conducted discussions with Louisiana Wholesale Drug Company, Inc. about matters that led to the initiation of this litigation; conducted research and investigation of the facts and circumstances that gave rise to this lawsuit; reviewed and summarized district court opinions in *In re '099 Patent Litigation*; conducted various research and investigations relating to the possibility of bringing anti-trust claims on behalf of Louisiana Wholesale Drug Company, Inc. and on behalf of the direct purchaser class; drafted and entered into the engagement agreement with Louisiana Wholesale Drug Company, Inc. for the commencement of this action; compiled information in support of the initial complaint for class representative Louisiana Wholesale Drug Company, Inc.; conducted research relating to FDA's Orange Book and patent listings in the FDA's Orange Book, as well as requirements for listing patents in the FDA's Orange Book; followed through in pursuit of documents and information to support allegations alleged in the Complaint; participated in numerous conference calls with co-counsel where tasks were assigned and reviewed; participated in all phases of discovery that required extensive review of thousands of pages of documents obtained through discovery; coded and indexed documents for entry in Summation database; analyzed documents, pleadings and depositions in this litigation and in related patent infringement suits; performed extensive research regarding SolTab and the relationship of SolTab to this anti-trust proceeding; summarized documents, performed legal research and drafted legal memoranda on various issues, including issue preclusion and relevant market analysis in the pharmaceutical industry; summarized and digested depositions taken in the '099 patent litigation; reviewed and gathered information relating to brand name and generic drug pricing and marketing, including the impact of generic penetration of brand name drug markets; compiled information about

drug prices and prepared memoranda about Louisiana Wholesale Drug Company, Inc.'s pricing of drugs; updated database with bibliographic and substantive information; attended multiple document review sessions in New York; obtained documents and information from Louisiana Wholesale Drug Company, Inc. pursuant to requests for production of documents by Defendants; collected and produced records of Louisiana Wholesale Drug Company, Inc. including Louisiana Wholesale Drug Company, Inc.'s purchase and sales of mirtazapine, pricing information relating to purchases and sales of mirtazapine, corporate organizational and other documents requested by the Defendants; reviewed records, documents, and information produced by Louisiana Wholesale Drug Company, Inc. in response to Defendants' document requests; collected information in preparation of Louisiana Wholesale Drug Company, Inc.'s responses to extensive interrogatory requests by Defendants; prepared responses to the Defendants' discovery document requests; prepared interrogatory requests and requests for production of documents directed to defendants; obtained and analyzed SolTab purchase information from various members of OptiSource, LLC; served on discovery committees, including Direct Purchaser Class Plaintiff's Causation Committee; participated in various committee conference calls which served to streamline and focus discovery and litigation efforts; reviewed files and information in preparation for the 30(b)(6) deposition of Louisiana Wholesale Drug Company, Inc. and for the continued 30(b)(6) deposition of Louisiana Wholesale Drug Company, Inc.; prepared objections and lodged objections to the 30 (b)(6) notice; held meetings and conferences with Gayle R. White, President of Louisiana Wholesale Drug Company, Inc. in preparation of Mr. White's deposition and his continued deposition as a 30(b)(6) representative of Louisiana Wholesale Drug Company, Inc.; defended the deposition and the continued deposition of Louisiana Wholesale Drug

Company, Inc. and/or Gayle R. White; retrieved and reviewed documents and information from Summation database in preparation for depositions of Warren Czerniak, Carol Shichman, Charlotte Kremer, Jan Paanakker, Hans Vemer, and Robert Huismann; reviewed depositions and other transcripts in preparation for the depositions of Warren Czerniak, Carol Shichman, Charlotte Kremer, Jan Paanakker, Hans Vemer, and Robert Huismann; attended depositions and participated in the examination of the various deponents including Warren Czerniak and Hans Vemer; reviewed and summarized deposition transcripts of this litigation including the deposition transcripts of Robert Cunard, Albert Mayo, Ana Arango Bossard, Carol Shichman, and Joseph Grotzinger; participating in the drafting of briefs for submission to the court; participated in multiple mediation and settlement conferences; participated and/or conferred on behalf of Plaintiff, Louisiana Wholesale Drug Company, Inc., with co-counsel in connection with settlement negotiations; and constantly conferred with the client, Louisiana Wholesale Drug Company, Inc., to keep it fully informed of all developments throughout this litigation.

7. My firm expended a total of \$207,008.64 in unreimbursed expenses in connection with the prosecution of this litigation. These expenses, from inception to date, are categorized in the following chart.

Litigation Fund Contributions.....\$145,000.00

Other Expenses:

Photocopying	15,558.80
Telephone/ Facsimile	4,684.49
On-line Research	1,087.25

Travel Expenses (Transportation/Meals/Hotels)	36,545.26
Postage/Messengers	1,381.42
Court Filing Fees	719.00
Other (describe)	2,032.42
<b>Total</b>	

Total Expenses .....\$207,008.64

8. The expenses incurred pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23<sup>rd</sup> day of September, 2005.



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David P. Smith

LAW OFFICES OF  
**PERCY, SMITH & FOOTE, LLP**  
INCLUDING A PROFESSIONAL LAW CORPORATION  
720 MURRAY STREET  
POST OFFICE BOX 1632  
ALEXANDRIA, LOUISIANA 71309-1632

TELEPHONE: 318-445-4480

FACSIMILE: 318-487-1741

**September 2005**

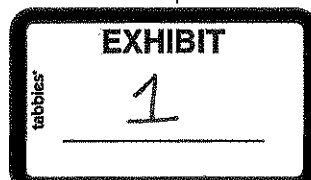
David P. Smith, A Professional Law Corporation ("APLC"), a partner of Percy, Smith, and Foote, LLP, engages in complex multi-party civil litigation. Mr. Smith has experience in healthcare litigation, financial transactions litigation, antitrust litigation, business tort litigation and frequently represents parties in significant class action and Multi-District Litigation matters.

Percy, Smith, & Foote, LLP, maintains an office in Alexandria, Louisiana, including a support staff consisting of sixteen individuals, including associate attorneys, legal assistants and administrative staff. The clients of the firm include local businesses, national and international companies, and private individuals.

**PARTNERS OF THE FIRM**

**J. MICHAEL PERCY**, born Baton Rouge, Louisiana, December 15, 1942; admitted to bar, 1969, Louisiana. Education: Louisiana State University; Louisiana College (B.A., 1965); Louisiana State University (J.D., 1969). Phi Alpha Delta. Member: Governor's Commission on the Atchafalaya Basin, 1973-1975. Member: Alexandria, Louisiana State and American Bar Associations, Fifth Circuit Bar Association; Defense Research Institute; Louisiana Association of Defense Counsel: Board of Directors 1994-1995, Crossroads Inns of Court: Executive Committee. Areas of Practice: commercial law and litigation, contracts, real estate, insurance defense, litigation and products liability. E-mail: [mpercy@psfg-law.com](mailto:mpercy@psfg-law.com).

**DAVID P. SMITH, APLC**, born Lecompte, Louisiana, January 28, 1942; admitted to bar, 1968, Tennessee; 1971, Louisiana; U.S. Court of Military Appeals and U.S. Tax Court; 1974, U.S. Supreme Court. Education: Louisiana State University and A. and M. College (B.A., 1964); University of Tennessee at Knoxville (J.D., 1967). Capt., JAGC, USMCR, 1968-1971. Tax Attorney, Office of the Chief Counsel, Internal Revenue Service, 1971-1976. Member: Louisiana State and American Bar Associations. Committees: Louisiana Bar Association Committees, including past and current service on the Multi-Jurisdictional Practice Committee. Areas of Practice: diverse State and Federal litigation, including complex multi-party litigation such as *In Re: Brand Name Prescription Drugs Antitrust Litigation*, MDL 996 (N.D. Ill.); complex and diverse class actions such as *Northwest Airlines, Inc., et al., Antitrust Litigation* (E.D. MI); *Cardizem Antitrust Litigation*, MDL 1278 (S.D. MI); *Hytrin Antitrust Litigation*, MDL 1317 (S.D. FL); *Cipro Antitrust Litigation*, MDL 1382 (E.D. NY); *Buspiron Antitrust Litigation*, MDL 1410 (D.D.C.); *K-Dur Antitrust Litigation*, MDL 1419 (Dist. of N.J.); *Relafen Antitrust Litigation*; *Neurontin Antitrust Litigation*, MDL 1479; *Remeron Antitrust Litigation*; *Independent Drug Co. v. Biovail Corporation, et al (Adalat CC Antitrust Litigation)* (D.C. Cir.); *Louisiana Wholesale Drug Company, Inc. v. Purdue Pharma, et al (OxyContin Antitrust Litigation)* (S.D. N.Y.); *Louisiana Wholesale Drug Company, Inc, et a. v. Biovail Corporation et al (Tiazac Antitrust Litigation)* (D.C. Cir.);



*Louisiana Wholesale Drug Company, Inc. v. Abbott Laboratories, et al (TriCor Antitrust Litigation)* (Dist. of Delaware); *Louisiana Wholesale Drug Company, Inc. et al v. Becton Dickinson & Company (Hypodermic Products Antitrust Litigation)* (Dist. of N.J.); and *Louisiana Wholesale Drug Company, Inc. v. Ferring B.V., et al (Desmopressin Acetate Antitrust Litigation)* (S.D. N.Y.); as well as commercial and business torts.

E-mail: [dpsmith@psfg-law.com](mailto:dpsmith@psfg-law.com).

**ELIZABETH ERNY FOOTE**, born Lafayette, Louisiana, January 21, 1953; admitted to bar, 1978, Louisiana. Education: Louisiana State University (B.A., with college honors, 1974; J.D., 1978); Duke University (M.A., 1975). Omicron Delta Kappa. President, Mortar Board, 1973-1974. Treasurer 1994-1996; Board of Governors, 2000-2003, Louisiana State Bar Association. Recipient of 1994 President's Award, Louisiana State Bar Association. Member: Alexandria Bar Association; Louisiana State Bar Association; Louisiana Trial Lawyers Association; Louisiana Association of Defense Counsel. Publications: Louisiana Bar Journal, Vol. 39, No. 1, June 1991, "A Woman's View of Law Practice in the Next Century"; Frequent CLE Lecturer. Areas of Practice: Insurance defense, medical malpractice defense, commercial law, and general business. E-mail: [efoote@psfg-law.com](mailto:efoote@psfg-law.com).

### SPECIAL COUNSEL TO THE FIRM

**BETTY R. OWENS**, born Texas City, Texas, December 21, 1951; admitted to bar, 1988, Texas. Education: Louisiana State University (B.S., 1973; M.A., 1975); University of Texas (J.D., with high honors, 1988). Mortar Board. Who's Who. Omicron Delta Kappa. Vice Chancellor, Texas Law Review (Book Review Editor). Order of the Coif. Phi Kappa Phi. Member: American Law Institute; American Bar Association; State Bar of Texas; Houston Bar Association; Professional Development Consortium; Texas Supreme Court Gender Fairness Reform Implementation Committee. Fellow: Texas Bar Foundation; Houston Bar Foundation. Committees: Houston Bar Association Member Benefits Task Force, Chairman, 1999; American Bar Association, Antitrust Section, Books and Treatises Committee, Vice-chairman, 2000-2001; American Bar Association, Antitrust Section, Civil Practice and Procedure Committee, Vice-chairman, 1994-1998. Publications: Antitrust Summary Judgment Newsletter, Editor, 1996-1998; Antitrust Law Developments (4<sup>th</sup> ed.), Contributor; Annual Review of Antitrust Law Developments, Contributor, 1992-1995; Frequent lecturer for various programs on civil rights/reverse discrimination issues and appellate advocacy. Special Recognition: The University of Texas School of Law Faculty Service Award Recipient, 2001; Who's Who in American Law, 2000-present; Who's Who in American Women, 2001-present. Areas of Practice: Commercial Litigation, Antitrust Law, Appellate Law. Representative cases include *Hopwood v. Texas*, which challenged The University of Texas School of Law's affirmative action programs; cases involving lender liability, trust management, and director and office liability issues such as *FDIC v. Capitol Bank Directors* and *Municipal Employees Pension System v. First City Bank*; cases tried in Harris and Milam Counties, Texas, including *Shexnayder v. Terry Oilfield Supply Company*; cases tried in the Eastern and Western Districts of Texas including *Hopwood* and *Energy Transportation Systems, Inc. v. Santa Fe Railroad*. E-mail: [bettyrowens@sbcglobal.net](mailto:bettyrowens@sbcglobal.net).

## ASSOCIATES OF THE FIRM

**WILLIAM ROSS FOOTE**, born Alexandria, Louisiana, October 1, 1952; admitted to bar, 1978, Louisiana. Education: University of Manchester, England (spent one year as an Independent Scholar in Philosophy, 1972-73); Duke University (B.A., 1974); Louisiana State University (J.D.1978). Omicron Delta Kappa Honorary Society. Editor, *L'Avocat* (LSU Law Center Yearbook). Member: Alexandria Bar Association; Louisiana State Bar Association. Partner, Ledbetter, Percy & Stubbs until forming own firm, Sooter & Foote in 1983. Partner, Sooter & Foote (1983-1991); firm engaged in commercial and medical malpractice litigation. District Judge, Ninth Judicial District for the State of Louisiana (1991-2004); during tenure on the bench, handled complex cases involving class action litigation, both granting and denying class certification under Louisiana's statutes (modeled on Federal rules), with one case being tried to judgment in a bench trial setting. "Special Counsel" with Percy, Smith & Foote, LLP; creator of the International Collaborative Center (devoted to expanding the international use of the collaborative process in family/domestic cases); consulting includes several states, Canadian provinces and meetings with the Lord Justice Thorpe and Lady Hale of the House of Lords in London (2004–present); practice currently limited to antitrust litigation, collaborative practice teaching and development, ad hoc judicial appointments and serving the judiciary as an appointed Special Master in complex cases and new judge training. Other activities include: adjunct faculty of the National Judicial College in Reno, Nevada; created and chaired the Louisiana Mentoring Program and the Louisiana Judicial Retreat Program; 10 years on the Executive Committee of the Louisiana District Judges Association; Advisory Committee for Technology for the National Center for State Courts; assistance teaching at Bolton High School (received the Louisiana Distinguished Partner in Education in 2004); extensive jury research with post-trial questionnaires and is published on jury issues; consultant to the California District Attorney Association; frequent lecturer for the Louisiana Judicial College and the Louisiana State Bar Association. E-mail: [rfoote@psfg-law.com](mailto:rfoote@psfg-law.com).

**SUSAN C. SEGURA**, born Loreauville, Louisiana, March 5, 1965; admitted to bar, 1993, Louisiana; also admitted to practice before U.S. Court of Appeals Fifth Circuit, U.S. District Court, Eastern and Western Districts of Louisiana. Education: University of Southwestern Louisiana (B.S., Summa Cum laude, 1987), Louisiana State University (J.D., 1993). Member: Appellate Advocacy Board; Chancellor's List, Spring and Fall, 1992; Recipient, American Jurisprudence Award; Administrative Law, 1992, Federal Courts 1992, Criminal Procedure, 1993; Alexandria, Louisiana State and American Bar Associations; Louisiana Association of Defense Counsel. E-mail: [ssegura@psfg-law.com](mailto:ssegura@psfg-law.com).

**BRIAN D. BROOKS**, born Leesville, Louisiana, October 25, 1974, admitted to bar, 2003, Louisiana. Education: Northwestern State University (B.A., 1998); Washington & Lee University (J.D., 2002). Member: Louisiana State and American Bar Associations. Areas of Practice: Diverse state and federal litigation, including complex multi-party litigation such as *In Re: Brand Name Prescription Drugs Antitrust Litigation*, MDL 996 (N.D. Ill.); complex and diverse class actions such as *Hytrin Antitrust Litigation*, MDL 1317 (S.D. Fl); *Relafen Antitrust Litigation*; *K-Dur Antitrust Litigation*, MDL 1419 (Dist. of N.J.); *Cipro Antitrust Litigation*, MDL 1382 (E.D. NY); *Neurontin Antitrust Litigation*; *Louisiana Wholesale Drug Company, Inc. v. Purdue Pharma, et al (OxyContin Antitrust Litigation)* (S.D. N.Y.) MDL 1479; and *Louisiana Wholesale Drug Company, Inc. et al v. Becton Dickinson & Company (Hypodermic Products Antitrust Litigation)* (Dist. of N.J.); as well as commercial and business torts. E-mail: [bdbrooks@psfg-law.com](mailto:bdbrooks@psfg-law.com).

## LEGAL ASSISTANTS

**VICKI L. UPTON**, born Alexandria, Louisiana, May 2, 1968; Education: Northeastern State University and Northwestern State University (Paralegal Certificate, 2000). Notary Public for the State of Louisiana; thirteen years extensive experience in the legal field with an emphasis on bankruptcy creditor work. E-mail: [vupton@psfg-law.com](mailto:vupton@psfg-law.com).

**JESSICA DUNN CHIASSON**, born Alexandria, Louisiana, February 28, 1977. Education: Louisiana College (B.A., English Education, 1999). Legal experience includes areas of complex commercial litigation and class action antitrust litigation. E-mail: [jdunn@psfg-law.com](mailto:jdunn@psfg-law.com).

**MARK L. WINDHAM**, born Natchez, Mississippi, January 31, 1972. Education: Louisiana Tech University (B.S., Business Administration, 1997); Louisiana Tech University and University of Louisiana at Lafayette (Graduate Studies in Business Administration). Notary Public for the State of Louisiana. Eleven years experience in the legal field with an emphasis in the areas of complex commercial litigation, class action antitrust litigation, contracts, and estate planning/successions. E-mail: [mwindham@psfg-law.com](mailto:mwindham@psfg-law.com).

**MARSHALL A. WRIGHT**, born Oklahoma City, Oklahoma, September 24, 1965. Education: Cameron University (B.A., Liberal Arts, 1990). Fourteen years of experience in the legal field with an emphasis in the areas of medical malpractice, tort, mass tort, domestic, estate/succession and criminal. Experience in Oklahoma, Mississippi and Louisiana. Admitted to the Association of Trial Lawyers of America as a Paralegal Affiliate in January, 2004. E-mail: [mwright@psfg-law.com](mailto:mwright@psfg-law.com).