

**CONFIDENTIAL ATTORNEY WORK PRODUCT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 99-MDL-1317 - SEITZ/GARBER

IN RE TERAZOSIN HYDROCHLORIDE  
ANTITRUST LITIGATION

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THIS DOCUMENT RELATES TO:

*Louisiana Wholesale Drug Co., Inc. v. Abbott  
Laboratories, et al.*

S.D. Fla. Case No. 98-3125

*Valley Drug Co. v. Abbott Laboratories, et al.*

S.D. Fla. Case No. 99-7143

**AFFIDAVIT OF DAVID P. SMITH IN SUPPORT OF  
JOINT PETITION FOR ATTORNEYS' FEES AND DISBURSEMENTS  
FILED ON BEHALF OF PERCY, SMITH & FOOTE, LLP**

STATE OF LOUISIANA

PARISH OF RAPIDES

I, DAVID P. SMITH, being first duly sworn, deposes and says:

1. My professional law corporation is a partner in the law firm of Percy, Smith, & Foote, LLP. I submit this affidavit in support of our firm's application for an award of attorneys' fees in connection with services rendered in this litigation, as well as for the reimbursement of expenses incurred by my firm in connection with this case.

2. Louisiana Wholesale Drug Co., Inc., a Class Plaintiff Representative in the litigation, is my client. Our firm has acted as liaison

for Louisiana Wholesale Drug Co., Inc. and has been involved in all aspects of this litigation, from inception to present day.

For purposes of this affidavit, our contributions can be summarized as follows. My firm, *inter alia*: was retained by Louisiana Wholesale Drug Co., Inc. concerning this matter; initially conducted discussions with Louisiana Wholesale Drug Co., Inc. about matters that led to the initiation of this litigation; conducted research and investigation into the facts and circumstances that gave rise to this lawsuit; entered the engagement agreement between Louisiana Wholesale Drug Co., Inc. for the commencement of this action; compiled information in support of the initial complaint for class representative Louisiana Wholesale Drug Co., Inc.; participated in numerous conference calls with co-counsel where all aspects of the litigation were reviewed and tasks were assigned; collected and produced records of Louisiana Wholesale Drug Company, Inc. including Louisiana Wholesale Drug Company, Inc.'s purchase and sales of terazosin hydrochloride, pricing information relating to purchases and sales of terazosin hydrochloride, 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; assisted in the identification and location of

experts to retain as witnesses for class plaintiffs; performed initial analysis of LWD's purchase data to estimate gross profits for purposes of evaluating LWD's "net economic benefit," or lack thereof; coordinated production of Louisiana Wholesale Drug Company, Inc. documents to experts for their review; reviewed and indexed documents; analyzed documents, pleadings and depositions in this litigation and in related patent litigation; summarized documents, depositions and pleadings, including, *inter alia*, depositions of Diane Servello, Irwin C. Gerson, Herschel Sparks, Melvin Sharoky and Gerald J. Houlihan; pleadings entitled "Zenith's Statement of Material Facts As to Which There Does Not Exist a Genuine Issue", "Zenith's Memorandum in Support of Its Motion for Partial Summary Judgment and Permanent Injunction", "Zenith's Reply Memorandum In Support of Its Motion for Partial Summary Judgment and Permanent Injunction", "Abbott's Memorandum of Law In Support of Its Motion to Dismiss Plaintiff's Complaint", "Zenith's Notice of Motion and Motion for Preliminary Injunction", "Appeal Brief filed by Zenith Laboratories, Inc.", "Reply Brief Filed by Zenith Laboratories", "Abbott's Memorandum In Opposition to Plaintiff's Motion for Partial Summary Judgment of Invalidity of U.S. Patent No. 5,294,615", "Complaint", "Answer, Affirmative Defenses and Counterclaims", "Abbott's Memorandum in Opposition to Zenith's Motion for Preliminary Injunction" and "Abbott's Appeal Brief"; performed legal research on fraud issues and other related issues; performed research relating to the "pass on defense"; drafted legal memoranda; 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 for expert witness use; reviewed files and information in preparation for the 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 as a 30(b)(6) representative of Louisiana Wholesale Drug Company, Inc.; participated in the preparation of Gayle White of Louisiana Wholesale Drug Co., Inc. for 30 (b) (6) two depositions of Louisiana Wholesale Drug Co., Inc.; attended the 30 (b) (6) deposition of Gayle White; participated in mediation, trial strategy, and settlement conferences; functioned as part of the trial preparation team; reviewed subpoenas and requests by Defendants for down stream discovery information requested from the class representatives and numerous other class members relative to the Eleventh Circuit Valley Drug class certification opinion; gathered voluminous downstream purchase and sales information and other information from Louisiana Wholesale Drug Company, Inc. and other class members regarding issues pertaining to the Eleventh Circuit Valley Drug class certification opinion; drafted affidavits and other documents relating to class certification issues raised by the Eleventh Circuit Valley Drug class certification opinion; attended court proceedings relating to class certification; conducted conferences with Louisiana Wholesale Drug Co., Inc.

regarding settlement and settlement negotiations between Geneva, Abbott, and the Sherman Act Class Plaintiffs; conducted research and constructed legal memoranda relating to jury instructions, motions in limine and evidentiary issues in preparation for trial; reviewed numerous depositions of testimony designated by Defendants for use at trial; lodged objections to the latter testimony; reviewed numerous documents designated by Defendants as exhibits for use at trial; lodged objections to the latter exhibits; and kept the client fully informed of all developments in this litigation.

3. The total number of hours on this litigation by our firm is 2582.10. The total lodestar for our firm is \$785,239.00 consisting of \$723,492.50 for attorneys' time and \$61,746.50 for paralegals' time. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

4. The schedule following is a summary of the amount of time spent, from inception through present, by each attorney and paralegal of our firm who was involved in this litigation, and the lodestar calculation based on current billing rates. For attorneys and paralegals who are no longer employed by our firm, the lodestar calculation is based upon the billing rates for such attorneys and paralegals in his or her final year of employment by our firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by our firm, which are available

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.

Attorneys	Hours	Hourly Rate	Lodestar
David P. Smith, APLC (P)*	1106.40	\$450.00	\$ 497,880.00
W. Ross Foote (SC)	94.80	\$425.00	\$ 40,290.00
Betty R. Owens (OC)	46.00	\$400.00	\$ 18,400.00
Brian D. Brooks (A)	417.10	\$275.00	\$ 114,702.50
Amy Holt Brown (A)	157.50	\$250.00	\$ 39,375.00
Kerry W. Cockrell (A)	41.40	\$250.00	\$ 10,350.00
Contract Attorneys (A)	8.50	\$145.00	\$ 1,232.50
Suzanne W. Williams (A)	10.10	\$125.00	\$ 1,262.50
Mark L. Windham (LA)	207.40	\$95.00	\$ 19,703.00
Jessica Dunn Chiasson (LA)	221.00	\$95.00	\$ 20,995.00
Randall Wayne Thiels (LA)	10.90	\$85.00	\$ 926.50
James Andy Sams (LA)	54.70	\$85.00	\$ 4,649.50
Christine Evans (LA)	15.30	\$75.00	\$ 1,147.50
Karen Woodard (LA)	.40	\$75.00	\$ 30.00
Margaret J. Long (LA)	103.50	\$75.00	\$ 7,762.50
Nancy A. Blackwell (LA)	29.50	\$75.00	\$ 2,212.50
Contract Paralegal (LA)	57.60	\$75.00	\$ 4,320.00
<b>TOTALS</b>	<b>2582.10</b>		<b>\$ 785,239.00</b>

\* P – Partner; SC – Special Counsel; OC – Of Counsel; A – Associate; LA – Legal Assistant

5. Our firm's lodestar figures are based upon billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.


6. Our firm also has incurred a total of \$253,044.82 in unreimbursed expenses in connection with the prosecution of this litigation. These expenses were reasonably and necessarily incurred in connection with this litigation and include:

CATEGORY:


Travel/Hotels/Meals .....	\$13,757.82
Photocopying .....	\$9,724.75
Postage/Courier Service .....	\$795.68
Telephone and Telecopier .....	\$2,697.75
Computer Research .....	\$655.51
Other Research Services .....	\$364.56
Litigation Fund Contribution .....	\$225,000.00
Court/Transcript Costs .....	\$0.00
Temporary Services .....	\$0.00
Office Supplies .....	\$48.75
TOTAL .....	\$253,044.82

7. The expenses incurred in this action are also reflected on the books and records of our firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate recordation of the expenses incurred.

8. With respect to the standing of counsel in this case, attached as Exhibit 1 is a brief biography of our firm and the attorneys in our firm who were principally involved in this litigation.

  
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DAVID P. SMITH

SWORN TO before me, Notary Public, this 24<sup>th</sup> day of March, 2005.

  
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Mark L. Windham, # 59714  
NOTARY PUBLIC  
PARISH OF RAPIDES, STATE OF LOUISIANA

LAW OFFICES OF  
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**March 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@psfq-law.com](mailto:mpercy@psfq-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 *In Re: Northwest Airlines, Inc., et al., Antitrust Litigation* (E.D. MI); the *Cardizem Antitrust Litigation*, MDL 1278 (S.D. MI); the *Hytrin Antitrust Litigation*, MDL 1317 (S.D. FI); the *Cipro Antitrust*

*Litigation*, MDL 1382 (E.D. NY); the *Buspirone Antitrust Litigation*, MDL 1410 (D.D.C), *In Re: K-Dur Antitrust Litigation*, MDL 1419 (Dist. of N.J.), *In Re: Relafen Antitrust Litigation*, *In Re: Neurontin Antitrust Litigation*, MDL 1479, *In Re: Remeron Antitrust Litigation*, *Independent Drug Co. v. Biovail Corporation, et al (Adalat CC Antitrust Litigation)* (D.C. Cir.), and *Louisiana Wholesale Drug Company, Inc. v. Purdue Pharma, et al (OxyContin Antitrust Litigation)* (S.D. NY); 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 honors, 1974; J.D., 1978); Duke University (M.A., 1975). Omicron Delta Kappa. President, Mortar Board, 1973-1974. Treasurer 1994-1996, 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; Association of Women Attorneys; Louisiana State Bar Association Committees: Continuing Legal Education Committee, 1985 to Present, People's Law School Subcommittee, 1985-1988; Multi-Topics Subcommittee, 1988-1993, Chair, 1991- 1992 and 1992-1993, Vice Chair, 1990-1991; Crossroads Inns of Court. 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, collections, real estate and general business.  
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### **SPECIAL COUNSEL**

**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.  
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## OF COUNSEL

**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.); 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, 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*.  
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## ASSOCIATES OF THE FIRM

**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, Western District 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.  
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**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 the *Hytrin Antitrust Litigation*, MDL 1317 (S.D. Fl); *In Re: K-Dur Antitrust Litigation*, MDL 1419 (Dist. of N.J.); and *In Re: Relafen Antitrust Litigation*, as well as commercial and business torts.  
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## **LEGAL ASSISTANTS**

**VICKI L. CEDARS**, born Alexandria, Louisiana, May 2, 1968; Education: Northeastern State University and Northwestern State University (Paralegal Certificate, 2000). Notary Public for the State of Louisiana; eleven years extensive experience in the legal field with an emphasis on bankruptcy creditor work.  
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**PAMELA S. DUMAS**, born Indianapolis, Indiana, March 1, 1962. Education: Pima Community College, Tucson, Arizona (Associates Degree – Paralegal Studies, 1995); eight years experience in the legal field with an emphasis in the field of insurance defense and medical malpractice defense.  
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**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.  
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**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.  
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