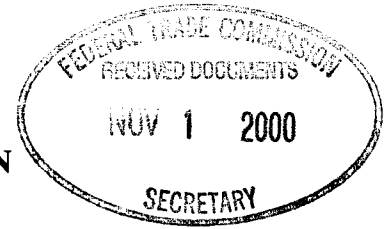


**UNITED STATES OF AMERICA**  
**BEFORE FEDERAL TRADE COMMISSION**



In the Matter of

**HOECHST MARION ROUSSEL, INC.**, a corporation,

**CARDERM CAPITAL L.P.**, a limited partnership,

and

**ANDRX CORPORATION**, a corporation.

Docket No. 9293

**RESPONDENT ANDRX CORPORATION'S NOTICE  
OF NONCOMPLIANCE WITH THIRD-PARTY  
SUBPOENAE SERVED ON BIOVAIL LAW FIRMS**

Pursuant to § 3.38 of the Federal Trade Commission's Rules of Practice, Respondent Andrx Corporation ("Andrx") hereby submits this notice that the outside counsel who have represented non-party Biovail Corporation International ("Biovail"), Cleary, Gottlieb, Steen & Hamilton; Keller and Heckman LLP; Verner, Liipfert, Bernhard, McPherson and Hand, Chartered; George S. Cary; and Steven J. Kaiser (together, the "Biovail Law Firms"), have failed to comply with the subpoenae served on them by Andrx, as set forth in detail in the accompanying declaration of Hal S. Shaftel.

Here, the Biovail Law Firms -- which have had extensive dealings with the FTC staff on behalf of Biovail in connection with this matter -- have refused to comply with the limited discovery that this Court already approved by express order. That obstructionist approach has continued even after this Court denied the Biovail Law Firms' motion for interlocutory appeal concerning the discovery at issue. Indeed, the

Biovail Law Firms' noncompliance is particularly egregious because a member of one of the firms (and one of the individuals ordered to appear for deposition), George Cary, is a former Deputy Director of the Bureau of Competition of the Federal Trade Commission. As such, Mr. Cary ought not to snub the orders of this Court directing that he and the other Biovail counsel provide discovery. Not only is Mr. Cary a former high-ranking FTC staff member, but the Biovail Law Firms have ignored the directives of this Court in collaboration with Complaint Counsel and other members of the FTC staff, which have coordinated closely with Biovail in preparing this case and identified Biovail executives as cooperating witnesses.

Just today, this Court issued an order denying -- without prejudice -- Andrx's motion to compel limited deposition discovery from David Balto, an FTC staff member who personally engaged in extensive communications regarding this matter with the Biovail Law Firms. That order was predicated on Complaint Counsel's view that Andrx's application "to depose Balto be deferred until such time as [the Biovail Law Firms] have been deposed." Accordingly, this Court specifically held that "[a]ny deposition of Balto is deferred until such time as the above-referenced attorneys for Biovail have been deposed." However, the Biovail Law Firms are resisting their discovery obligations, which, in turn, means that Andrx has a need to depose Mr. Balto now, since it is being blocked from obtaining discovery, in the first instance, from the Biovail Law Firms. Absent the Biovail Law Firms providing the discovery at issue forthwith, Andrx should be allowed to proceed with the deposition of Mr. Balto.

Given the short time remaining before the close of discovery and the commencement of the hearing in this matter, Andrx has been prejudiced by the delay on

the part of the Biovail Law Firms. Accordingly, Andrx is left with no choice but to advise this Court of the Biovail Law Firms' noncompliance and seek immediate certification of that noncompliance to the Commission for purposes of enforcement.

Section 3.38(c) of the Federal Trade Commission's Procedures and Rules of Practice provides that "in instances where a nonparty fails to comply with a subpoena or order, [the Administrative Law Judge] shall certify to the Commission a request that court enforcement of the subpoena or order be sought." (Emphasis added). As the record here makes clear, certification, regrettably, is necessary at this juncture in order for Andrx to obtain discovery to which it is entitled.

On June 20, 2000, the Biovail Law Firms moved to quash the subpoenae served on them by Andrx. In addition, on June 20, 2000, Biovail also filed a motion to quash the subpoenae served by Andrx on the Biovail Law Firms. Andrx filed its opposition to the two motions on June 30, 2000. On October 3, 2000, this Court issued an Order denying the motions to quash as to:

- (1) non-privileged communications, to/from Biovail or Biovail agents, regarding the Biovail Law Firms' communications with the FTC staff concerning the HMR/Andrx matter; and
- (2) the depositions of the three individual attorneys requested by Andrx (Carey, Kaiser and Dubeck) relating to non-privileged communications, including to/from Biovail or Biovail agents, regarding the Biovail Law Firms' communications with the FTC staff concerning the HMR/Andrx matter.

A copy of the Order dated October 3, 2000, is annexed as Exhibit A to the Shaftel Declaration.

On October 13, 2000, the Biovail Law Firms filed a Joint Motion for Interlocutory Appeal. Andrx filed its response on October 17, 2000, and on October 25, 2000, this Court issued an Order denying the Biovail Law Firms' Motion for Interlocutory Appeal. A copy of the Order dated October 26, 2000, is annexed as Exhibit B to the Shaftel Declaration.

Promptly after this Court denied that motion, Andrx circulated a copy of this Court's October 25 Order and requested that Carey, Kaiser and Dubeck be made available for deposition. Over a week later, Andrx had still heard nothing from the Biovail Law Firms, and therefore again contacted the Biovail Law Firms, leaving a phone message. One day after Andrx left that message, counsel for the Biovail Law Firms returned the call, stating that the Biovail Law Firms were not agreeable to discovery and were considering other recourse. Counsel for the Biovail Law Firms was unable to identify what recourse was being considered, and was unwilling either to provide a date on which they would definitively state their position, or to schedule depositions. A copy of Andrx's letter following up on that conversation is annexed as Exhibit C to the Shaftel Declaration.

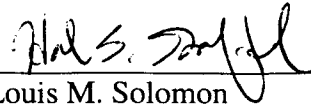
### **Conclusion**

For the reasons set forth above and in the accompanying Declaration of Hal S. Shaftel, certification of the Biovail Law Firms' noncompliance with their discovery obligations is warranted. Additionally, Andrx should be permitted to depose Mr. Balto forthwith in the event that the Biovail Law Firms further delay in providing the discovery at issue.

Dated: New York, New York  
October 31, 2000

Respectfully Submitted,

SOLOMON, ZAUDERER, ELLENHORN,  
FRISCHER & SHARP

By:  \_\_\_\_\_

Louis M. Solomon

Hal S. Shaftel

Claude M. Millman

45 Rockefeller Plaza

New York, New York 10111

(212) 956-3700

Counsel for Respondent Andrx Corp.

**UNITED STATES OF AMERICA**  
**BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

**HOECHST MARION ROUSSEL, INC.**, a corporation,

**CARDERM CAPITAL L.P.**, a limited partnership,

and

**ANDRX CORPORATION**, a corporation.

Docket No. 9293

**[PROPOSED] CERTIFICATION REQUESTING THAT JUDICIAL ENFORCEMENT  
OF SUBPOENAE ISSUED TO THE BIOVAIL LAW FIRMS BE SOUGHT**

WHEREAS, respondent Andrx Corporation ("Andrx") served subpoenae on outside counsel who have represented non-party Biovail Corporation International ("Biovail"), Cleary, Gottlieb, Steen & Hamilton; Keller and Heckman LLP; Verner, Liipfert, Bernhard, McPherson and Hand, Chartered; George S. Cary; and Steven J. Kaiser (together, the "Biovail Law Firms");

WHEREAS, by Order dated October 3, 2000, this Court denied the motions of the Biovail Law Firms to quash the subpoenae;

WHEREAS, by Order dated October 25, 2000, this Court denied the motion of the Biovail Law Firms for interlocutory appeal; and

WHEREAS, the Court has been advised that the Biovail Law Firms have refused to comply with the subpoenae;

NOW, this Court, pursuant to Section 3.38(c) of the Federal Trade Commission's Rules of Practice, hereby certifies to the Commission its request that court enforcement of the subpoenae be sought forthwith.

---

D. MICHAEL CHAPPELL  
ADMINISTRATIVE LAW JUDGE

Dated: November \_\_, 2000

**UNITED STATES OF AMERICA**  
**BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

**HOECHST MARION ROUSSEL, INC.**, a corporation,

**CARDERM CAPITAL L.P.**, a limited partnership,

and

**ANDRX CORPORATION**, a corporation.

Docket No. 9293

**DECLARATION OF HAL S. SHAFTEL**

HAL S. SHAFTEL, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of Solomon, Zauderer, Ellenhorn, Frischer & Sharp, counsel for respondent Andrx Corporation (“Andrx”). I submit this declaration in connection with Andrx’s Notice of Noncompliance with Subpoenae Served on the Biovail Law Firms pursuant to the Commission’s Rule of Practice 3.38.
2. Andrx served subpoenae on outside counsel who have represented non-party Biovail Corporation International (“Biovail”): Cleary, Gottlieb, Steen & Hamilton; Keller and Heckman LLP; Verner, Liipfert, Bernhard, McPherson and Hand, Chartered; George S. Cary; and Steven J. Kaiser (together, the “Biovail Law Firms”).
3. On June 20, 2000, the Biovail Law Firms moved to quash the subpoenae served on them by Andrx. In addition, on June 20, 2000, Biovail also filed a motion to quash the subpoenae served by Andrx on the Biovail Law Firms. Andrx filed its opposition to the two motions on June 30, 2000.
4. On October 3, 2000, this Court issued an Order denying the motions to quash as to:



- (1) non-privileged communications, to/from Biovail or Biovail agents, regarding the Biovail Law Firms' communications with the FTC staff concerning the HMR/Andrx matter; and
- (2) the depositions of the three individual attorneys requested by Andrx (Carey, Kaiser and Dubeck) relating to non-privileged communications, including to/from Biovail or Biovail agents, regarding the Biovail Law Firms' communications with the FTC staff concerning the HMR/Andrx matter.

A copy of the Order dated October 3, 2000, is annexed hereto as Exhibit A.

5. On October 13, 2000, the Biovail Law Firms filed a Joint Motion for Interlocutory Appeal. Andrx filed its response on October 17, 2000, and on October 25, 2000, this Court issued an Order denying the Biovail Law Firms' Motion for Interlocutory Appeal. A copy of the Order dated October 26, 2000, is annexed hereto as Exhibit B.

6. Promptly after this Court denied that motion, Andrx circulated a copy of this Court's October 25 Order and requested that Carey, Kaiser and Dubeck be made available for deposition. Over a week later, Andrx had still heard nothing from the Biovail Law Firms, and therefore again contacted the Biovail Law Firms, leaving a phone message. One day after Andrx left that message, counsel for the Biovail Law Firms returned the call, stating that the Biovail Law Firms were not agreeable to discovery and were considering other recourse. Counsel for the Biovail Law Firms was unable to identify what recourse was being considered, and was unwilling either to provide a date on which they would definitively state their position, or to schedule depositions. A copy of my letter following up on that conversation is annexed hereto as Exhibit C.

7. Just today, this Court issued an order denying -- without prejudice -- Andrx's motion to compel limited deposition discovery from David Balto, an FTC staff member who personally engaged in extensive communications regarding this matter with the Biovail Law Firms. That order was predicated on Complaint Counsel's view that Andrx's application "to depose Balto be deferred until such time as [the Biovail Law Firms] have been deposed." Accordingly, this Court specifically held that "[a]ny deposition of Balto is deferred until such time as the above-referenced attorneys for Biovail have been deposed." However, the Biovail Law Firms are resisting their discovery obligations, which, in turn, means that Andrx has a need to depose Mr. Balto now, since it is being blocked from obtaining discovery, in the first instance, from the Biovail Law Firms. Absent the Biovail Law Firms providing the discovery at issue forthwith, Andrx should be allowed to proceed with the deposition of Mr. Balto.

8. The Biovail Law Firms are merely attempting to further delay legitimate discovery. Andrx is suffering substantial prejudice because, as the Biovail Law Firms are aware, there is a November 10, 2000 cut-off date for discovery, and a December 5, 2000 trial date. Indeed, the Biovail Law Firms' non-compliance is particularly egregious because a member of one of the firms, George S. Cary, is a former high-ranking member of the Federal Trade Commission staff.

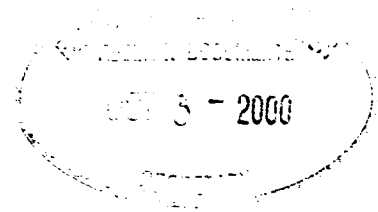
I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York, on October 31, 2000.

  
\_\_\_\_\_  
HAL S. SHAFTEL

## **Exhibit A**

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



\_\_\_\_\_  
)  
In the Matter of )  
)  
)  
HOECHST MARION ROUSSEL, INC., )  
)  
)  
a corporation, )  
)  
)  
CARDERM CAPITAL L.P., )  
)  
)  
a limited partnership, )  
)  
)  
and )  
)  
)  
ANDRX CORPORATION, )  
)  
)  
a corporation. )  
\_\_\_\_\_ )

Docket No. 9293

**ORDER ON MOTIONS TO QUASH SUBPOENAS SERVED  
BY ANDRX ON OUTSIDE COUNSEL FOR BIOVAIL**

**I.**

Andrx Corporation (“Andrx”) served subpoenas on outside counsel who have represented non-party Biovail Corporation International (“Biovail”): Cleary, Gottlieb, Steen & Hamilton; Keller and Heckman LLP; Verner, Liipfert, Bernhard, McPherson and Hand, Chartered; George S. Cary; and Steven J. Kaiser (together, the “Biovail Law Firms”). On June 20, 2000, the Biovail Law Firms moved to quash the subpoenas served on them by Andrx. Also on June 20, 2000, Biovail filed a motion to quash the subpoenas served by Andrx on the Biovail Law Firms. Andrx filed its opposition to the two motions on June 30, 2000. Based on the Court’s request, on September 26, 2000, both sides indicated that they had not resolved all disputed issues.

Although the subpoenas were originally broader, Andrx has represented in its September 26, 2000 status report that it now seeks only the following categories of discovery from the Biovail Law Firms:

- (1) Confirmation that, through document productions already made by others, Andrx has all the Biovail Law Firms’ written communications to or from the FTC;
- (2) The Biovail Law Firms’ written communications with Sitrick & Co., which was

Biovail's public relations firm, or any members of the press concerning the HMR/Andrx matter;

- (3) Non-privileged communications to/from Biovail or Biovail agents, regarding the Biovail Law Firms' communications with the FTC staff concerning the HMR/Andrx matter;
- (4) Time records or other diaries/memorializations (with related descriptions) of the Biovail Law Firms reflecting their communications with the FTC staff concerning the HMR/Andrx matter;
- (5) Retainer agreements and new matter memos reflecting the matters/projects in connection with which the Biovail Law Firms' communications with the FTC staff regarding the HMR/Andrx matter were conducted; and
- (6) The depositions of the three individual attorneys directly and substantially involved in the communications on Biovail's behalf with the FTC staff (i.e., Messrs. Carey, Kaiser and Dubeck).

For the reasons set forth below, the motions to quash are GRANTED in part and DENIED in part.

## II.

The subpoenas have been substantially narrowed to limit their burden and scope. Andrx asserts that it seeks only non-privileged information. A remaining question is whether the information Andrx seeks is "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defense of any respondent." 16 C.F.R. § 3.31(c)(1).

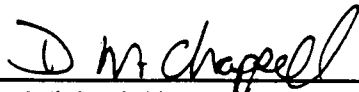
Depositions of attorneys may be permissible where the attorneys are fact witnesses. *American Casualty Co. v. Krieger*, 160 F.R.D. 582, 586 (S.D. Cal. 1995). *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8<sup>th</sup> Cir. 1986) and its progeny hold that courts should order the taking of opposing counsel's deposition only "where the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel . . . ; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case." Unlike *Shelton* and the other cases relied upon by the Biovail Law Firms, the attorneys here are not opposing counsel. Since Carey, Kaiser and Dubeck are not counsel to a party in this proceeding, the dispositive inquiry is not whether other means exist and whether the information is crucial, but whether their depositions are reasonably expected to yield relevant, non-privileged information.

The discovery sought in categories 3 and 6 listed above is reasonably expected to yield information relevant to the defense of Andrx. The motions to quash are DENIED only as to the following:

- (1) non-privileged communications, to/from Biovail or Biovail agents, regarding the Biovail Law Firms' communications with the FTC staff concerning the HMR/Andrx matter; and
- (2) the depositions of the three individual attorneys requested by Andrx (Carey, Kaiser and Dubeck) relating to non-privileged communications, including to/from Biovail or Biovail agents, regarding the Biovail Law Firms' communications with the FTC staff concerning the HMR/Andrx matter.

In all other respects, the motions to quash are GRANTED.

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date: October 3, 2000

## **Exhibit B**

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

\_\_\_\_\_)  
In the Matter of )  
 )  
HOECHST MARION ROUSSEL, INC., )  
a corporation, )  
 )  
CARDERM CAPITAL L.P., )  
a limited partnership, )  
 )  
and )  
 )  
ANDRX CORPORATION, )  
a corporation. )  
\_\_\_\_\_)

Docket No. 9293

**ORDER DENYING MOTION FOR INTERLOCUTORY APPEAL**

**I.**

On October 3, 2000, an Order on Motions to Quash Subpoenas Served by Andrx on Outside Counsel for Biovail was issued. On October 13, 2000, a Joint Motion for Interlocutory Appeal was filed with the Office of the Secretary by Cleary, Gottlieb, Steen & Hamilton; Keller and Heckman LLP; Verner, Liipfert, Bernhard, McPherson and Hand, Chartered; George S. Cary; and Steven J. Kaiser (collectively, the "Biovail Law Firms"). Respondent Andrx Corporation ("Andrx") filed a Memorandum in Opposition to Joint Motion for Interlocutory Appeal on October 17, 2000.

For the reasons set forth below, the Motion for Interlocutory Appeal is DENIED.

**II.**

The order for which appeal is sought is a discovery ruling. The Commission "generally disfavor[s] interlocutory appeals, particularly those seeking Commission review of an ALJ's discovery rulings." *In re Gillette Co.*, 98 F.T.C. 875, 875, 1981 FTC LEXIS 2, \*1 (Dec. 1, 1981). "Interlocutory appeals from discovery rulings merit a particularly skeptical reception, because [they are] particularly suited for resolution by the administrative law judge on the scene and particularly conducive to repetitive delay." *In re Bristol-Myers Co.*, 90 F.T.C. 273, 273, 1977 FTC LEXIS 83, \*1 (Oct. 7, 1977). Accord *In re Gillette Co.*, 98 F.T.C. at 875 ("resolution of discovery issues, as a general matter, should be left to the discretion of the ALJ").



The Biovail Law Firms' request fails to meet the requirements of Commission Rule 3.23(b) for granting an interlocutory appeal. Applications for review of a ruling by the Administrative Law Judge may be made only if the applicant meets both prongs of a two part test. First, the ruling must involve "a controlling question of law or policy as to which there is substantial ground for difference of opinion." 16 C.F.R. § 3.23(b). Second, the Administrative Law Judge must determine "that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or [that] subsequent review will be an inadequate remedy." 16 C.F.R. § 3.23(b).


The October 3, 2000 Order on Motions to Quash Subpoenas allowed narrowly limited discovery of non-privileged information relevant to Andrx's affirmative defenses. This discovery ruling does not involve a controlling question of law or policy, which has been defined as "not equivalent to merely a question of law which is determinative of the case at hand. To the contrary, such a question is deemed controlling only if it may contribute to the determination, at an early stage, of a wide spectrum of cases." *In re Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 478, \*1 (Nov. 5, 1996). Accordingly, the first requirement of Rule 3.23(b) has not been met.

Because the first prong of the test has not been met, an inquiry into the second prong is not necessary and an analysis of whether subsequent review would be an inadequate remedy is not dispositive. A determination of whether an immediate appeal from the ruling would materially advance the ultimate termination of the litigation is also not necessary. If such a determination were made, it is clear that an appeal of the discovery ruling at issue would not materially advance the ultimate termination of the litigation. Such a construction would make every ruling in every case appealable as to the relevance and propriety of any areas of discovery allowed by an administrative law judge. "This would negate the general policy that rulings on discovery, absent an abuse of discretion, are not appealable to the Commission." *In re Exxon Corp.*, 1978 FTC LEXIS 89, \*12 (Nov. 24, 1978).

Although the motion is denied on its merits on the substantive grounds set forth above, it would also be appropriate to deny the motion on procedural grounds. Applications for review may be filed within five days after notice of the Administrative Law Judge's determination. 16 C.F.R. § 3.23(b). Since a copy of the October 3, 2000 Order was delivered by fax to counsel of record for the Biovail Law Firms on October 3, 2000, the motion was apparently filed outside the five day timeframe.

The Motion for Interlocutory Appeal is DENIED.

ORDERED:

  
D. Michael Chappell  
Administrative Law Judge

Date: October 25, 2000

## Exhibit C

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP

45 ROCKEFELLER PLAZA  
NEW YORK, NEW YORK 10111  
(212) 956-3700  
FACSIMILE: (212) 956-4068

RICHARD T. SHARP  
HARRY FRISCHER  
DAVID N. ELLENHORN  
MARK C. ZAUDERER  
LOUIS M. SOLOMON  
BERTRAND C. SELLIER  
DAVID E. NACHMAN  
EDWIN M. BAUM  
HAL S. SHAFTEL  
ROBERT L. MAZZEO  
JONATHAN P. HUGHES  
LEONARD S. BAUM  
MARGARET A. DALE  
COLIN A. UNDERWOOD

JOHN J. O'CONNELL  
OF COUNSEL

WRITER'S DIRECT DIAL

WAYNE M. AARON  
LISA M. BABISKIN  
JESSICA L. BIER  
DEAN T. CHO  
ANDRE K. CIZMARIK  
ROBERT S. FRENCHMAN  
TERESA A. GONSALVES  
STEVEN H. HOLINSTAT  
MICHAEL S. LAZAROFF  
SERGIO A. LLORIAN  
JONATHAN D. LUPKIN  
CAROLINE S. PRESS  
JENNIFER R. SCULLION  
CHARLES D. STAR  
EMILY STERN  
CAROLINE L. WERNER

October 31, 2000

(212) 424-0755

**VIA FACSIMILE**

David Gelfand, Esq.  
Cleary, Gottlieb, Steen & Hamilton  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Re: In the Matter of Hoechst Marion Roussel, et al. Dkt. No. 9293

Dear Mr. Gelfand:

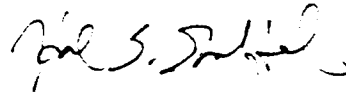
I am disturbed by the Biovail Law Firms' continued procrastination -- indeed, bad faith -- in responding to Andrx's discovery. That discovery was approved by the Administrative Law Judge on October 13, 2000; thereafter, the Biovail Law Firms' motion for interlocutory appeal was denied on October 25. I then, on the very next day, circulated the October 25 order to you, requesting dates for the depositions at issue. Not hearing anything back, I left a voice mail message for you yesterday. You finally returned my call today; however, you refused to schedule any dates, you refused to commit to when you would advise me as to your definitive position, and you refused to even explain what other recourse you might pursue.

As I stated on the telephone, the record reflects a pattern of delay and obstruction on your clients' part. I therefore advised you that Andrx not only reserves all of its rights but, in particular, it would seek to impose on your clients the costs and expenses of having to bring any further application to compel this discovery.

David Gelfand, Esq.  
October 31, 2000  
Page 2

I understand the same position is being taken by each of the Biovail Law Firms. If, however, any of the other Biovail counsel are willing to schedule depositions in accordance with the Administrative Law Judge's directives, please advise me immediately. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hal S. Shaftel". The signature is written in a cursive style with a large, sweeping flourish at the end.

Hal S. Shaftel

HSS/se  
cc: Other Biovail Counsel

**SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP**  
45 Rockefeller Plaza  
New York, NY 10111

Phone No. (212) 956-3700  
Telecopier No. (212) 956-4068

**TELECOPY TRANSMISSION COVER SHEET**

**DATE:** October 31, 2000

<u>TO</u>	<u>FAX NO.:</u>	<u>TEL NO.:</u>
John Dubeck	(202) 434-4654	
Richard Saltsman	(202) 371-6279	
Nick Gilman	(202) 383-5414	
Dave Gelfand	(202) 974-1999	
<u>FROM:</u>		
Hal S. Shaftel	(212) 956-4068	(212) 424-0755

**COMMENTS:**

---

**Number of Pages:**  
(incl. cover sheet)

**CLIENT/MATTER NO.** /

**Fax Operator:** Joyce Ashman

**Secretary:**

THE FOLLOWING MATERIAL IS INTENDED FOR THE USE OF THE ADDRESSEE ONLY AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE INTENDED RECIPIENT, DO NOT READ THE FOLLOWING MATERIAL, AND DO NOT DISSEMINATE THIS MATERIAL TO ANYONE OTHER THAN THE INTENDED RECIPIENT. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND MAIL THIS COMMUNICATION TO US AT THE ABOVE ADDRESS. THANK YOU.