

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA  
COURT OF APPEAL, THIRD CIRCUIT**

**06-1148 consolidated with 06-1149**

**STATE OF LOUISIANA, *EX REL.* CHARLES C. FOTI, JR.,  
ATTORNEY GENERAL  
VERSUS  
JANSSEN PHARMACEUTICA, INC., ET AL.**

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**APPEAL FROM THE  
TWENTY-SEVENTH JUDICIAL DISTRICT COURT  
PARISH OF ST. LANDRY, NOS. 04-C-3967 & 04-C-3977  
HONORABLE DONALD W. HEBERT, DISTRICT JUDGE**

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**ELIZABETH A. PICKETT  
JUDGE**

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Court composed of Sylvia R. Cooks, Elizabeth A. Pickett, and James T. Genovese,  
Judges.

**MOTION TO DISMISS APPEAL  
GRANTED. APPEAL CONVERTED  
INTO APPLICATION FOR  
SUPERVISORY WRIT.**

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PICKETT, Judge.

The plaintiff, Attorney General of the State of Louisiana, Charles C. Foti, Jr., moves to dismiss the devolutive appeal of the defendant, Janssen Pharmaceutica, Inc., as having been taken from a non-appealable, interlocutory judgment. For the reasons assigned, we grant the motion to dismiss appeal, and we convert the appeal into an application for supervisory writs.

This case arises out of the defendant's manufacturing, marketing and sale of an anti-psychotic drug called Risperdal. The plaintiff filed suit alleging that the prescription Risperdal was not approved by the Food and Drug Administration for pediatric use, although the defendant knowingly marketed and sold the drug for use by children, causing the children severe injury and illness. The plaintiff further alleged that the defendant marketed the drug for off-label adult use, causing injury and illness. The plaintiff averred that the defendant continued engaging in unfair trade practices, under Louisiana law, by promoting the off-label use of Risperdal for pediatric and adult use.

The defendant filed a pleading styled a "Motion to Dismiss and Enjoin" with the trial court, based on an allegedly unenforceable engagement letter between private counsel and the Office of the Attorney General. The defendant moved to dismiss the plaintiff's original petition and first supplemental and amending petition. Further, the defendant moved to enjoin the law firm of Morrow, Morrow, Ryan & Bassett, as well as attorneys Kenneth W. DeJean, Patrick C. Morrow, James P. Ryan, Jeffrey M. Bassett, Robert L. Salim, Kenneth T. Fibich and W. Michael Leebron, from prosecuting this matter on behalf of the Office of the Louisiana Attorney General. The aforementioned attorneys are the private counsel engaged by the Office of the

Attorney General to handle litigation regarding the prescriptions Zyprexa and Risperdal.

On July 14, 2006, the trial court denied the defendant's Motion to Dismiss and Enjoin. Notice of the judgment was mailed on July 17, 2006. The defendant timely filed a motion and order for devolutive appeal on July 20, 2006.

The record in this appeal was lodged in this court on September 6, 2006. The instant Motion to Dismiss Appeal was filed October 16, 2006.

The defendant's Motion to Dismiss and Enjoin is focused on dismissing and enjoining the private counsel hired by the plaintiff. This judgment does not decide the merits of this suit. A judgment which does not decide the merits of a case is an interlocutory ruling. La.Code Civ.P. art. 1841. An interlocutory judgment is appealable only when expressly provided by law. La.Code Civ.P. art. 2083. No law expressly provides for an appeal of this judgment. Accordingly, we dismiss appellant's appeal at its cost. La.Code Civ.P. art. 2162.

The instant matter is properly considered under our supervisory jurisdiction. The motion for devolutive appeal was filed within the time delays for seeking supervisory relief. In the interest of justice, we hereby convert this appeal into a writ application for consideration on the merits. The appellant has already filed its appellate brief. The appellee is given until November 13, 2006, by which to file any opposition brief, if desired.

**MOTION TO DISMISS APPEAL GRANTED. APPEAL CONVERTED INTO APPLICATION FOR SUPERVISORY WRIT.**