

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

In re: Bausch & Lomb Contact Lens Solution Products Liability Litigation	)	MDL No: 1785
	)	
	)	C/A No. 2:06-MN-77777-DCN
	)	
This Order Relates To: All Cases	)	<b>PRETRIAL ORDER NO. 10</b>
	)	
_____	)	

IN THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In re: New York ReNu with MoistureLoc Product Liability Litigation	)	Index No. 766,000/07
	)	
	)	
	)	<b>Case Management Order re:</b>
This Order Relates To: All Cases	)	<b>Bellwether Trial Cases</b>
	)	
_____	)	

**BELLWETHER TRIAL CASES**

This joint order establishes the procedures for selecting individual cases for bellwether trials and provides a schedule for those trials, including fact witness discovery, expert witness discovery, and for making pretrial motions.

**I. SELECTION OF BELLWETHER TRIAL CASES**

**A. Number and Type of Cases**

Four cases will be chosen for bellwether trials. Those four cases will consist of one fusarium keratitis case and one bacterial case pending in the MDL, and one fusarium keratitis and one bacterial case pending in New York.

**B. Dates for Selection, Assignment, and Pre-trial Matters**

The four bellwether trial cases will be selected by February 29, 2008. The four bellwether trial cases will be ready for trial by October 6, 2008. The court will hold hearings on motions in limine and a final pre-trial conference no less than ten days before trial.

**C. Process for Selecting Bellwether Trial Cases**

Judge Norton will determine the process by which the two MDL bellwether trial cases will be selected. Justice Freedman will determine the process by which the two New York bellwether trial cases will be selected.

**II. FACT WITNESS DISCOVERY SCHEDULE**

Discovery of fact witnesses in all four bellwether trials will commence on February 29, 2008. The parties will identify their fact witnesses on or before March 7, 2008. The parties will complete their depositions of the fact witnesses on or before April 25, 2008.

**III. EXPERT WITNESS DISCOVERY SCHEDULE**

**A. Plaintiffs' Expert Witnesses**

Plaintiffs in the bellwether trial cases will identify their expert witnesses, and serve their experts' reports in compliance with Fed. R. Civ. P. 26(a)(2)(B), on or before April 28, 2008. Depositions of plaintiffs' expert witnesses will be completed on or before June 20, 2008.

**B. Defendant's Expert Witnesses**

Defendant will identify its expert witnesses, and its experts' reports in compliance

with Fed. R. Civ. P. 26(a)(2)(B), on or before May 28, 2008. Depositions of defendant's expert witnesses will be completed on or before July 21, 2008.

**IV. SCHEDULE FOR DISPOSITIVE AND DAUBERT/FRYE MOTIONS**

**A. Motions and Briefing Schedule**

The parties shall file any dispositive and Daubert/Frye motions in all bellwether trial cases on or before July 31, 2008. Opposition briefs and memoranda shall be filed on or before August 13, 2008. Reply briefs and memoranda shall be filed on or before August 29, 2008.

**B. Hearing on Motions**

A joint Daubert/Frye hearing before Judge Norton and Justice Freedman will be held after August 20, 2008. Hearings on dispositive motions in the bellwether trial cases will be held on or before September 19, 2008. Hearings on dispositive motions in MDL bellwether trial cases will be held before Judge Norton; hearings on dispositive motions in New York bellwether trial cases will be held before Justice Freedman.

**V. PRETRIAL SUBMISSIONS IN BELLWETHER TRIAL CASES**

Final witness lists, exhibit lists, and deposition designations are due on September 19, 2008. Any motions in limine are due on September 19, 2008. Objections to deposition designations and counter-designations, oppositions to motions in limine, and proposed jury instructions are due on September 26, 2008.

**VI. VENUE AND FORUM NON CONVENIENS**

The parties agree to waive any venue and forum non conveniens objections with respect to all four bellwether trial cases.

**AND IT IS SO ORDERED.**



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**DAVID C. NORTON  
CHIEF UNITED STATES DISTRICT JUDGE  
DISTRICT OF SOUTH CAROLINA**

**s/ Helen E. Freedman**

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**HELEN E. FREEDMAN  
SUPREME COURT OF THE STATE OF  
NEW YORK,  
COUNTY OF NEW YORK**

**November 14, 2007**