

**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. 13</b>
	)	
	)	
	)	

---

**CASE SELECTION PLAN FOR FUSARIUM KERATITIS BELLWETHER TRIAL**

IT IS HEREBY ORDERED THAT the following Pretrial Order shall govern the selection of fusarium keratitis bellwether cases for trial. Selection of bacterial bellwether cases for trial will be addressed in a subsequent order.

**A. Process for Selecting Fusarium Keratitis Bellwether Case for Trial**

1. MDL plaintiffs' and defense counsel have jointly identified six (6) MDL fusarium keratitis cases, listed in Chart A below. These six (6) cases will be referred to as the "Initial Fusarium Keratitis Discovery Cases." Depositions of plaintiffs and plaintiffs' spouses in the Initial Fusarium Keratitis Discovery Cases will be completed expeditiously.

<b>Chart A: Initial Fusarium Keratitis Discovery Cases</b>		
<b>Case Caption</b>	<b>Case Number</b>	<b>Plaintiff's Counsel</b>
Barbara M. Corbett v. Bausch & Lomb, Inc and John Does 1-50	06-2705	Shane Langston Langston & Langston 201 North President Street Jackson, MS 39201 601-969-1356
Karen Dempsey v. Bausch & Lomb, Inc.	07-1191	Mark Davis Davis & Feder P.O. Drawer 6829 Gulfport, MS 39506 228-863-6000
Laura Holmes v. Bausch & Lomb, Inc.	06-2684	Jay Hirsch Pope McGlamry Kilpatrick Morrison & Norwood LLP 3455 Peachtree Road, Northeast, Suite 925 Atlanta, GA 30326-3243
Gary Idelchick v. Bausch & Lomb, Inc.	07-2536	Jimmy Williamson Williamson & Rusnak 4310 Yoakum Blvd. Houston, TX 77006
Whitney Ervin Mitchell v. Bausch & Lomb, Inc.	07-3220	William Quin Langston Law Firm P.O. Box 787 Booneville, MS 38829-0787 662-728-3738
Marsha H. Shell v. Bausch & Lomb, Inc.	07-1849	Paul D. Merullo Shuttleworth, Ruloff, Giordano & Swain, P.C. Southport Centre; 4525 South Blvd, Ste 300 Virginia Beach, VA 23452-1137

2. The MDL plaintiffs' counsel and defendant's counsel will each strike two (2) of the six (6) fusarium keratitis cases on or before February 28, 2008. Two fusarium keratitis cases will remain. By February 29, 2008, Judge Norton will randomly select one of the two fusarium keratitis cases.
3. The case randomly selected in Paragraph A.2 will be referred to as the "MDL Fusarium Keratitis Bellwether Trial Case."
4. If plaintiffs choose to dismiss the MDL Fusarium Keratitis Bellwether Trial Case after February 29, 2008 then the case shall be dismissed with prejudice.
5. If plaintiffs dismiss the MDL Fusarium Keratitis Bellwether Trial Case after February 29, 2008, then Judge Norton shall randomly select a replacement case from the Initial Fusarium Keratitis Discovery Cases (*see* Paragraph A.1) within one week after the dismissal.

**B. Venue and *Forum Non Conveniens***

1. The parties, through their respective lead counsel, have indicated that they waive all applicable venue and *forum non conveniens* objections (including any objections under the *Lexecon* case) to the MDL Fusarium Keratitis Bellwether Trial Case selected for trial before Judge Norton in the U.S. District Court for the District of South Carolina.

**IT IS SO ORDERED.**

Dated: January 31, 2008  
Charleston, South Carolina



By \_\_\_\_\_  
HONORABLE DAVID C. NORTON  
UNITED STATES DISTRICT JUDGE