

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

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| In re: Bausch & Lomb Contact Lens |) | MDL No: 1785 |
| Solution Products Liability Litigation |) | |
| |) | C/A No. 2:06-MN-77777-DCN |
| |) | |
| This Order Relates To: All Cases |) | CASE MANAGEMENT ORDER |
| |) | NO. 3 |
| |) | |
| |) | |

This Order reflects agreement to date between the parties with respect to case management issues governing all proceedings in this matter. Several issues remain under discussion between the parties. The Court anticipates that an additional supplemental order will be entered after the parties confer on a number of outstanding provisions. It is hereby **ORDERED:**

I. SERVICES OF DOCUMENTS AND FILING PROCEDURES

A. Orders

The Clerk shall deliver a copy of each order to Plaintiffs' Liaison Counsel and to Defendants' Liaison Counsel for distribution as appropriate to other counsel and parties on their respective sides of this proceeding. The Clerk shall also serve each Order electronically to all counsel who have registered for electronic service.

B. Electronic Filing and Service

As set forth in Pretrial Order No. 1, the parties are expected to follow the District of South Carolina's policies and procedures on Electronic Case Filing. Any document

which pertains to only one case shall be filed only in that case file. Any document which relates to two or more cases shall be filed in the master file MDL -1785 and shall also be filed in the individual case file to which it relates. Electronic case filing of a document in the master file shall be deemed to constitute proper service on all parties. Discovery and other documents not filed with the Court shall be served by electronic mail on the Liaison Counsel, Lead Counsel, and the Executive Committee of the party served.

C. Separate Dockets and Files

The Clerk shall maintain a separate docket and case files for each case removed to, or transferred to, this Court. Each such case will be assigned a new case number in this Court.

D. Captions; Separate Filing

Orders, pleadings, motions and other documents will bear captions similar to that of this Order. If generally applicable to all coordinated actions, they shall include in their caption the notation that they relate to “all cases” and shall be filed and docketed only in the master file.

E. Discovery Requests and Responses

Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the Court, except when specifically ordered by the Court or to the extent they are presented in connection with a motion.

II. INTERIM MEASURES

A. Admission of Counsel

Attorneys admitted to practice and in good standing in any United States District Court are admitted pro hac vice in this litigation and will not be assessed the usual pro hac vice admission fee. Association of local co-counsel is not required.

B. Pleadings

Each Defendant is granted an extension of time for responding to any pending motions and answering any complaints until a date to be set at the Court conference scheduled for January 24, 2007.

C. Pending and New Discovery

Pending the January 24, 2007 Court conference in this proceeding, all outstanding disclosure and discovery obligations are stayed, and no further discovery shall be initiated unless permitted by order of the Court.

D. Orders of Transferor Courts

All orders by transferor courts imposing dates for pleadings or discovery are vacated.

III. STATUS CONFERENCES

A. Regularly Scheduled Conferences

The Court intends to schedule and hold status conferences every six weeks. Counsel for each side shall meet and confer in advance of each status conference and submit to the Court a joint agenda and status conference report listing all matters and motions to be considered by the Court at the status conference forty-eight (48) hours

prior to each scheduled conference.

B. Telephonic Conferences

Telephonic conferences may be conducted at the Court's discretion by prior arrangement with the Court's chambers, provided that all interested parties receive at least forty-eight (48) hours notice. The parties shall provide the court with a proposed agenda twenty-four (24) hours prior to the telephonic conference. The Court may initiate conference calls on procedural or scheduling matters.

IV. PLEADING ISSUES

A. General Briefing Requirements

All briefs shall conform to Local Rules 7.01-7.10, except that reply briefs in support of motions shall be filed within seven (7) days after service of the response.

B. Master Complaints – Class Actions

The various named Plaintiffs in the class actions shall file consolidated Master Complaints with respect to the class actions by January 31, 2007. The Master Complaint(s) shall apply to and supersede all pending class actions and to those subsequently filed, removed, or transferred to this Court as part of this proceeding.

C. Fed. R. Civ. P. 12 Motions – Class Actions

Should any Defendant decide to file a motion to dismiss under Fed. R. Civ. P. 12(b) concerning any or all portions of the consolidated class action Master Complaint, any such motion shall be filed within twenty (20) days after Class-Action Plaintiffs file their Master Complaint. This provision does not preclude the filing of other Rule 12 motions or other dispositive motions in the class actions at other times, as appropriate.

Class-Action Plaintiffs' responses to any Rule 12 motions shall be filed and served thirty (30) days thereafter, and Defendants' replies (if any) shall be filed and served fifteen (15) days thereafter.

D. Master Answer – Class Actions

Within twenty (20) days after the Court issues the last of its orders resolving all Rule 12(b) motions in the Class Actions, Defendants shall file a Master Answer to the Master Complaint (to the extent not dismissed). The Master Answer shall constitute an answer in each Class Action now pending or subsequently added to this proceeding. Defendants need not file answers in any class-action complaints other than the Master Complaint (to the extent they have not already done so).

E. Motions and Responsive Pleadings – Individual Actions

To the extent Defendants do not file a Rule 12(b)(6) motion pursuant to this section, or jurisdictional motions, Defendants shall answer any complaints in the Individual Actions within twenty (20) days after the entry of this Order, if they have not already done so.

F. Additional Parties

Except with leave of Court, no additional plaintiffs or defendants may be added to any individual or class action case after Defendant(s) file an answer in such case.

V. CLASS CERTIFICATION MATTERS

A. Plaintiffs' Class Certification Motion(s)

Within ten (10) days after the Court rules on motions to dismiss and to the extent any class claims remain following such a ruling, the parties shall confer on an appropriate

date for the filing of Plaintiffs' motion for class certification on any proposed classes set forth in their Master Complaint. If the parties are unable to agree on an appropriate date, they shall schedule a conference with the Court to present their respective positions.

Upon the filing of Plaintiffs' motion, Plaintiffs shall identify all experts and witnesses upon whom Plaintiffs intend to rely in support of such motion (including the information contemplated by Fed. R. Civ. P. 26(a)(2)(B) as to experts) and file any expert reports or affidavits upon which they rely in support of their class certification motion. Plaintiffs shall be precluded, without leave of Court, from relying on any other experts or expert opinions in support of class certification. Following the filing of this motion, priority shall be given to the taking of the depositions of any experts and witnesses upon whom Plaintiffs rely in support of their motion.

B. Defendants' Class Certification Motion Opposition

Defendants shall file a brief setting forth arguments in opposition to Plaintiffs' class certification motion and the evidentiary basis thereof within ninety (90) days after the filing of any such motion. At the same time, Defendants shall identify all experts and witnesses upon whom they will rely in opposing Plaintiffs' class certification motion (including the information contemplated in Fed. R. Civ. P. 26(a)(2)(B) as to experts), and file any expert reports or affidavits upon which it relies in opposing plaintiffs' class certification motion. Defendants shall be precluded from relying on any experts or expert opinions in opposition to class certification who are not identified at this time. Following the filing of Defendants' opposition brief, priority shall be given to the taking of depositions of any experts or witnesses upon whom Defendants rely in support of their

opposition to class certification.

C. Plaintiffs' Reply Memorandum

Plaintiffs may file a reply memorandum in support of their class certification motion within forty-five (45) days of the filing of any opposition briefs. The reply memorandum shall be confined to responding to arguments and expert opinions presented in Defendants' opposition brief.

D. Class Certification Argument

After the filing of all briefs concerning Plaintiffs' class certification motion, the Court may schedule an oral argument on such motions.

VI. GENERAL DISCOVERY RULES

A. Applicability of Rules

Except as otherwise provided in this Order, the Federal Rules of Civil Procedure and the Local Rules of this Court will generally apply in this proceeding. However, the Court specifically notes that the provisions of this Order obviate (a) the obligation of any party to this proceeding to comply with any applicable initial disclosure requirements of Fed. R. Civ. P. 26(a)(1); (b) any applicable specifications on timing and sequencing of discovery set forth in Fed. R. Civ. P. 26(d); and (c) any applicable obligation of any party to this proceeding to comply with the conference and planning requirements in Fed. R. Civ. P. 26(f) and Local Rule 26.03.

B. Discovery Dispute Resolution

To avoid unnecessary litigation concerning discovery disputes, counsel are directed to meet and confer before contacting the Court on discovery issues. The Court

will meet periodically with Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel to address any unresolved discovery disputes and it will accept letter briefs not exceeding five pages from the parties at least two business days in advance of such meetings. If discovery disputes arise which the parties cannot resolve on their own, and that require resolution before the next scheduled meeting with the Court, the parties shall contact the Court by telephone. The Court, at its discretion, will then either: (1) schedule an additional meeting with Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel and any other relevant counsel; (2) conduct a telephonic conference call with such counsel; or (3) invite written submissions from the parties explaining the dispute. Any motion to compel or motion for protective order not previously authorized by the Court will be summarily denied for failure to follow this procedure.

C. Preservation Order

The Court hereby adopts and incorporate by reference as if fully set forth herein the document preservation order entered on July 5, 2006 in *Lamarche v. Bausch & Lomb, Inc.*, CV06-0669 (W.D. La.) (attached).

D. Document Depository

All documents produced by Defendants in this proceeding shall be produced to the Personal Injury Plaintiffs' Steering Committee and Economic Loss Plaintiffs' Steering Committee (collectively, the "PSCs") designee in electronic format. The PSCs shall bear the cost of and administer their own document depository. The PSCs shall make the documents produced by Defendants available to plaintiffs in any state court litigation, subject to an appropriate cost-sharing provision which will be the subject of a

further order. This production shall not preclude any party from asserting in any action that such documents are inadmissible at trial, nor shall this provision be construed to supersede or amend any state's law or state court order pertaining to such documents.

E. Identification of Documents

- 1. Numbering System.** The parties shall develop and use a system for identifying, by unique number or symbol, each document produced or referred to during the course of litigation. Each producing party shall give each page of any document it produces a unique number, using a consistent numbering system that identifies the producing party (using a letter or series of letters as a prefix). All reasonable efforts should be made to avoid having the same page assigned more than one identifying number except when there is a need to account for different copies of the same document or page (for example, because of special notations being placed on the document).
- 2. Documents Produced by Non-Parties.** In the event that documents produced by persons or entities who are not parties to this action are not, when produced, identified by a unique numbering system, the party at whose request production was made shall be responsible for numbering the documents in accordance with the terms of the paragraph above.

F. Legibility of Documents

Each producing party shall take reasonable steps to assure that the copies of the documents it produces are legible. To the extent a producing party cannot or does not produce a legible copy, it shall make the original document(s) available for inspection and copying upon request.

VII. COORDINATION WITH OTHER LITIGATION

A. Coordination to Extent Practical

Plaintiffs and Defendants in this litigation, and in particular the Plaintiffs' Liaison Counsel, PSCs, Defendants' Liaison Counsel, and all other counsel designated by the Court in prior or subsequent Pretrial Orders, shall work to coordinate to the extent practicable the conduct of this litigation with other product liability actions involving ReNu® with MoistureLoc® pending in any state court. Such coordination is intended to conserve scarce judicial resources, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. It is contemplated by the Court and the parties that all discovery conducted in these proceedings may be utilized in any related state court action, in accordance with that state's law and rules of evidence, and vice versa, subject to an appropriate cost-sharing provision that will be the subject of a further order. All discovery obtained in these proceedings that is used in any state court litigation is subject to this Order and such future cost-sharing orders as may be entered.

B. Intent to Coordinate with State Courts

In order to achieve the full benefits of this MDL proceeding, this Court intends to coordinate with state courts presiding over related cases, to the extent such state courts so

desire, such as through joint orders that will allow the parties in the state court actions to fully utilize any discovery conducted in the MDL proceedings and vice versa. This Court intends to work with any state court that is interested in coordinating discovery activities. The Court expects counsel for parties in the MDL proceeding to help ensure such coordination is achieved wherever it is practicable. To that end, Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall jointly submit to the Court on the fifteenth day of each month a status report on the state court cases, along with contact information for all state court judges presiding over such cases.

C. Coordination by Plaintiffs' Counsel.

All discovery directed to Defendants and non-party witnesses on behalf of Plaintiffs shall be undertaken by, or under the direction of, the PSCs on behalf of all Plaintiffs with cases in these MDL proceedings. Any discovery not limited to a specific plaintiff shall be signed by Plaintiffs' Liaison Counsel, Personal Injury Plaintiffs' Lead Counsel, or Economic Loss Plaintiffs' Lead Counsel. The PSCs shall, where practicable, coordinate their discovery requests with Plaintiffs' counsel in state court litigation to the extent practicable to eliminate duplicative discovery requests.

D. Pledge of Cooperation

This Court pledges its full cooperation with any state court that agrees to discovery coordination and urges all counsel in this MDL proceeding to accord a full participatory role to the counsel in the state court cases.

VIII. PLAINTIFF FACT SHEETS, DOCUMENTS, AND AUTHORIZATIONS

A. Plaintiffs' Obligation to Serve Plaintiff Fact Sheet

1. **Applicable Plaintiff Fact Sheet.** Each individual Plaintiff bound by this Order shall serve upon Defendants' counsel designated below a complete and signed Plaintiff Fact Sheet ("PFS") in a form to be agreed upon by the parties and pursuant to the schedule ordered in paragraph VIII.B below. Each PFS shall be mailed to:

Eric Anielak, Esq.
Shook, Hardy & Bacon LLP
2555 Grand Boulevard
Kansas City, MO 64108

2. **Answers Binding as if Interrogatory Responses and Signed Under Penalty of Perjury.** All responses in a PFS are binding on each Plaintiff as if they were contained in responses to interrogatories. Each PFS shall be signed and dated by the Plaintiff or the proper Plaintiff representative under penalty of perjury.

B. Schedule for Serving Plaintiff Fact Sheets, Responsive Documents and Authorizations.

Each plaintiff bound by this Order whose case has been transferred to the MDL proceedings as of the date of this Order shall have sixty (60) days from agreement upon the form of the PFS to serve upon Defendants' counsel designated above a complete and signed PFS, all responsive documents (or a written notice that none are in the possession of Plaintiff or Plaintiff's counsel), and properly executed authorizations. Each Plaintiff in

cases that are filed in or transferred to this MDL proceeding after the entry of this Order shall serve upon Defendants' counsel designated above a complete and signed PFS, all responsive documents (or a written notice that none are in the possession of plaintiff or plaintiff's counsel), and properly executed authorizations within sixty (60) days from the date of transfer of such case. For purposes of this paragraph, the "date of transfer" is defined as follows: (1) for any case transferred pursuant to a Conditional Transfer Order ("CTO") issued by the Judicial Panel on Multidistrict Litigation ("JPML"), the date that the applicable final CTO is entered on the docket in these MDL proceedings; (2) for any case where transfer by CTO is opposed, the date that any subsequent Order from the JPML transferring the case is entered on the docket in these MDL proceedings; or (3) for any case filed directly in the District of South Carolina, the date that the case was filed.

IX. RULES APPLICABLE TO WRITTEN FACT DISCOVERY IN INDIVIDUAL CASES

A. Master Written Discovery by Plaintiffs.

The PSCs may serve Master Set(s) of Requests for Production (pursuant to Paragraph IX B), Master Set(s) of Interrogatories (not to exceed 35 interrogatories, including all discrete subparts, unless good cause is shown), and Master Set(s) of Requests for Admission on Bausch & Lomb or any other Defendant. No requests for production, interrogatories, or requests for admission may be propounded on any Defendant other than the master discovery propounded by the PSCs.

The party served shall answer and/or object to the interrogatories and requests for admission in the manner described in Rules 33 and 36, respectively, of the Federal Rules of Civil Procedure in accordance with a schedule that should be negotiated by the parties

following service of such discovery requests. That schedule will be submitted for Court approval. No additional interrogatories or requests for admission may be served on Defendants without leave of Court upon good cause shown.

B. Document Production

Following the entry of this Order, Plaintiffs' Liaison Counsel (and/or their representatives) shall meet with Defendants' Liaison Counsel (and/or its representatives) to confer about the scope, process, and timing for document production by Defendants in this matter and shall endeavor to present to the Court a stipulated order concerning document production matters. The purpose of this procedure is to seek to reach a stipulation regarding the document production process without need for requests made pursuant to Fed. R. Civ. P. 34. In their conferences on this issue, the parties shall consider the extent to which the document requests responded to by Defendants in related cases satisfy the needs of the parties to this proceeding. Within thirty (30) days following the issuance of this Order, the parties shall present to the Court a proposed stipulation concerning document production and, if necessary, briefing concerning the matters on which they disagree.

C. Extension of Discovery Deadlines

Nothing in this Order shall be interpreted to restrict the ability of the parties to stipulate to an extension of discovery deadlines in a particular case or to move for an extension of discovery deadlines in a particular case based on a showing of good cause.

X. RULES APPLICABLE TO DEPOSITIONS OF FACT WITNESSES

A. General

The scheduling and conduct of depositions, including resolution of any disputes arising during depositions, shall be in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court, including Local Rule 30.04. Counsel are expected to cooperate with, and be courteous to, each other and deponents.

B. Scheduling of Depositions

1. Absent extraordinary circumstances, counsel shall consult in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times and places. Liaison Counsel, or their representatives, shall attempt to establish by mutual agreement a schedule for depositions in this proceeding that reflects sequencing consistent with (a) the availability of documents from among those produced by the parties and third parties and (b) the objective of avoiding the need to subject any person to repeated depositions. The parties shall work cooperatively to ensure a fair and orderly process for the scheduling of depositions. Disputes concerning the timing and scheduling of depositions, however, may be presented to the Court.
2. The Court expects that the use of formal notices of depositions or subpoenas with respect to party witnesses will be unnecessary in

this case, ~~that~~ party witnesses will be produced in accordance with whatever schedule is developed.

3. Plaintiffs' Liaison Counsel will be responsible for keeping other Plaintiffs' counsel fully apprised of the scheduling of any depositions in this proceeding.
4. Depositions of Plaintiffs and other case-specific fact witnesses in the Individual Actions may be taken in this proceeding at any time.
5. All depositions of persons currently or formerly employed by Bausch & Lomb shall be taken in a place mutually agreed to by Liaison Counsel. All depositions of other witnesses shall be taken at such other locations as shall be agreed upon by the witness and Liaison Counsel.
6. Once a deposition has been mutually scheduled by Liaison Counsel, it shall not be taken off the calendar, rescheduled, or relocated less than three calendar days in advance of the date it is scheduled to occur, except upon agreement between Liaison Counsel and counsel for the witness, or by leave of Court for good cause.

