

PRESENT:

Honorable Helen E. Freedman, J.S.C.

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

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IN RE: NEW YORK RENU WITH MOISTURELOC
PRODUCT LIABILITY LITIGATION

Index No. 766,000/2007

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THIS DOCUMENT APPLIES TO ALL CASES

**CASE MANAGEMENT
ORDER NO. 2**

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General Procedures and Appointments of Counsel

I. Applicability of This Order

Pursuant to Case Management Order No. 1 entered in these coordinated cases on February 2, 2007, this Court, *inter alia*, established a Master File for New York ReNu with MoistureLoc Litigation as well as filing procedures to be followed in these cases. Representatives of the plaintiffs and defendants have now met and conferred, and have jointly presented this Order setting forth the General Procedures to be followed in these cases and to appoint committees of plaintiffs' and defendants' counsel to assist the Court in bringing about the fair and economical resolution of these cases. This Order applies to all ReNu with MoistureLoc which are presently or hereafter assigned to the undersigned.¹

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Pursuant to an Administrative Order signed by Administrative Judge Jacqueline W. Silbermann on January 8, 2007, this Court has been assigned temporarily to preside for all purposes prior to the commencement of trial over all actions in the Supreme Court of the State of New York, in any judicial district, involving claims for damages resulting from the use of ReNu with MoistureLoc.

II. Rules of Procedure

The Civil Practice Law and Rules (“CPLR”), the Uniform Rules for Trial Courts, and the express provisions of this and any prior or future Case Management Orders, shall govern all proceedings herein.

III. Liaison and Steering Committee Counsel

Appointment of Liaison Counsel Committee Counsel to act as set forth below will facilitate communications among the Court and counsel, minimize duplication of effort, foster the coordination of joint positions and provide for the efficient progress and control of this litigation.

A. Liaison Counsel

1. Liaison Counsel for the plaintiffs (“Plaintiffs’ Liaison Counsel”) shall be:

Paul J. Pennock, Esq.
Weitz & Luxenberg, P.C.
180 Maiden Lane
New York, New York 10038
(212) 558-5504
Fax: (212) 363-2721
E-mail: PPennock@weitzlux.com

2. Liaison Counsel for the defendants (Defendants’ Liaison Counsel”) shall be:

Joseph J. Ortego, Esq.
Nixon Peabody LLP
50 Jericho Triangle, Suite 300
Jericho, NY 11753
(516) 832-7564
Fax: (516) 832-7555

3. Liaison Counsel are vested by the Court with the following responsibilities

and duties:

- a. To prepare and maintain an official service list of plaintiffs' and defendants' counsel in the ReNu with MoistureLoc cases including the persons or companies they represent upon whom papers shall be served in this litigation.
 - b. To receive orders, notices, correspondence and telephone calls from the Court on matters of general applicability on behalf of all plaintiffs or defendants, as the case may be, and to notify such other plaintiffs' or defendants' counsel of communications received from the Court; and
 - c. To perform such other administrative tasks as may be necessitated by this or future CMO's, by the agreement of the parties, or by order of the Court.
4. Except as may be expressly otherwise provided in this or future CMO's, all pleadings, motions and other papers served in these cases shall be served on plaintiffs' and defendants' counsel for all of the parties in the case(s) to which such papers apply.
 5. Notwithstanding the appointment of Liaison Counsel, each counsel shall have the right to participate in all proceedings before the Court as fully as such counsel deems necessary. Other than with respect to procedural issues related to this coordinated proceeding, Liaison Counsel shall not have the right to bind any party except Liaison Counsel's own clients.

Further, Liaison Counsel shall remain free to represent the interests and positions of their clients free of any claim (including without limitations any claim of conflict) arising from service as Liaison Counsel.

6. Plaintiffs' Liaison Counsel shall be reimbursed periodically but not less than every three months by counsel for plaintiffs for their necessary and reasonable expenses actually incurred in performing their tasks pursuant to this Order. Liaison Counsel shall keep records for such expenses in reasonable detail for examination by counsel from whom reimbursement is sought. Reimbursable expenses may include copying costs, postage and, when necessary, costs for use of Federal Express or other delivery services; and other reasonable costs and expense. Liaison Counsel shall be paid by each plaintiffs' counsel on an equitable basis to be agreed upon by the parties or fixed by the Court with each plaintiff having to pay a proportionate share of the expenses incurred by its respective Liaison Counsel. Invoices for expenses as Liaison Counsel pursuant to this Order shall be due and payable when submitted. Interest shall be computed at the rate applicable to judgments starting thirty (30) days after the date of submission.

B. Steering Committees

1. Plaintiffs' Steering Committee shall, subject to further order of the Court effecting such changes as circumstances may require, be comprised of the following:

- a. Jerry Parker, Esq.
Parker & Waichman, LLP
111 Great Neck Road
Great Neck, New York 11021-5042
(516) 466-6500
- b. Jason Mark, Esq.
Parker & Waichman, LLP
111 Great Neck Road
Great Neck, New York 11021-5042
(516) 466-6500
- c. Hunter J. Shkolnik, Esq.
Rheingold, Valet, Rheingold, Shkolnik, & McCartney, LLP
113 East 37th Street
New York, New York 10016
(212) 684-1880
- d. Paul J. Pennock, Esq.
Weitz & Luxenberg, P.C.
180 Maiden Lane
New York, New York 10038
(212) 558-5504
- e. Richard Arsenault, Esq.
Neblett, Beard & Arsenault
2220 Bonaventure Court
P.O. Box 1190
Alexandria, LA 71301
(318) 487-9874
- f. Edward Blizzard, Esq.
Blizzard, McCarthy & Nabers, L.L.P.
Lyric Centre
440 Louisiana, Suite 1710
Houston, Texas 77002-1689
(713) 844-3750
- g. Seth A. Katz, Esq.
Burg Simpson Eldredge Hersh & Jardine, P.C.
40 Inverness Drive East
Englewood, CO 80112
(303) 792-5595

- h. Neil Overholtz, Esq.
Aylstock, Witkin & Sasser, PLC
4400 Bayou Boulevard
Suite 58
Pensacola, FL 32503
(850) 916-7450
- i. Teresa C. Toriseva, Esq.
Wexler Toriseva Wallace
1446 National Road
Wheeling, WV 26003
(304) 238-0066
- j. Joel Magolnick, Esq.
de la O, Marko, Magolnick & Leyton
3001 SW 3rd Avenue
Miami, FL 33129
(305) 285-2000
- k. Joseph Saunders, Esq.
Saunders & Walker, P.A.
3491 Gandy Blvd, Suite 200
Pinellas Park, FL 33781
(727) 580-6605
- l. Lee Balefsky, Esq.
Kline & Specter, P.C.
The Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102
(215) 772-1000

2. Defendants' Steering Committee shall, subject to further order of the Court effecting such changes as circumstances may require, be comprised of the following:

- a. John H. Beisner, Esq.
O'Melveny & Myers, LLP
1625 Eye Street, NW
Washington, DC 20006
(202) 383-5370

- b. Jessica Davidson Miller, Esq.
O'Melveny & Myers, LLP
1625 Eye Street, NW
Washington, DC 20006
(202) 383-5370
- c. Harvey L. Kaplan, Esq.
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108
(816) 559-2214
- d. Marie S. Woodbury, Esq.
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108
(816) 559-2214
- e. Joseph J. Ortego, Esq.
Nixon Peabody LLP
50 Jericho Triangle, Suite 300
Jericho, NY 11753
(516) 832-7564
- f. Gay L. Tedder, Esq.
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108
(816) 474-6550

- 3. The Plaintiffs' and Defendants' Steering Committees shall have the following responsibilities and duties for their respective constituencies:
 - a. to consider and propose future case management orders or other case management issues;
 - b. to call meetings of counsel for plaintiffs and defendants, respectively, for the purpose of proposing joint actions, including

but not limited to responses to questions and suggestions of the Court or of adversaries with regard to orders, schedules, briefs and other matters;

- c. to coordinate, to the extent practicable, the briefing motions;
- d. to coordinate, to the extent practicable, the argument of motions;
- e. to coordinate the conduct of discovery procedures including, where practicable, coordination with other proceedings;
- f. to coordinate the examination of witnesses at examinations before trial;
- g. to coordinate the selection of counsel to act as spokesperson at pretrial conferences; and
- h. to perform such other duties as may be set forth in future CMO's agreed upon by the respective parties, or ordered by the Court.

C. New York Liaison Counsel to the Multidistrict Litigation

The Bausch & Lomb Contact Solution cases commenced or pending in federal court have been transferred by Order of the Judicial Panel for Multidistrict Litigation to the United States District Court of South Carolina for coordinated and consolidated pretrial proceedings. The coordinated cases, entitled *In re Bausch & Lomb Contact Lens Solution Products Liability Litigation* (MDL 1785), are assigned to The Honorable David C. Norton, United States District Judge for the District of South Carolina. Appointment of MDL Liaison Counsel will facilitate communications with the parties and committees appointed in MDL-

1785. MDL Liaison Counsel shall, subject to further order of the Court effecting such changes as circumstances may require, be comprised of the following:

1. New York Liaison Counsel to the MDL for the plaintiffs ("Plaintiffs' MDL Liaison Counsel") shall be:

Hunter Shkolnik
Rheingold, Valet, Rheingold & Shkolnik, P.C.
113 East 37th Street
New York, NY 10016-3042
(212) 684-1880
Fax: (212) 689-8156

2. MDL Liaison Counsel for the defendants ("Defendants's MDL Liaison Counsel") shall be:

Michael T. Cole, Esq.
Nelson Mullins Riley & Scarborough LLP
151 Meeting Street, 6th Floor
Charleston, SC 29401
(843) 720-4325

IV. Privileges

The Court recognizes that cooperation among counsel and parties is essential for the orderly and expeditious resolution of this litigation. The communication, transmission or dissemination of information in connection with the ReNu with MoistureLoc cases among the plaintiffs' counsel, or among the defendants' counsel, shall not be deemed a waiver of the attorney-client privilege, the protection afforded by the work product doctrine, the protection afforded to material prepared for litigation, the joint prosecution or joint defense privilege, or any other privilege to which a party may be entitled. Cooperative efforts, as described above, shall not in any way be used against any of the parties, be cited as purported evidence of a conspiracy,

wrongful action or wrongful conduct, and shall not be communicated to the jury at the trial of any action. Nothing in this paragraph shall in any way affect the applicability of any privileges or protection against disclosure otherwise available under law.

V. Pleadings

A. Service of Process

1. Service of Process shall be made upon defendant directly at Bausch & Lomb World Headquarters, One Bausch & Lomb Place, Rochester, NY 14604.

B. Service of Papers Pursuant to CPLR Rule 2103(b)

1. Within thirty (30) days of the date of entry of this Order, Plaintiffs' and Defendants' Liaison Counsel shall jointly prepare and shall serve and file in the ReNu with MoistureLoc Master File a master service list (the "Master Service List"). The Master Service List shall contain the name, address and telephone number of the attorney(s) (or in the case of a party appearing, the person) who will be deemed to be the person upon whom valid service of papers (other than process) to is to be made by any other party in accordance with Rule 2103 of the CPLR any party desiring to make a change to the Master Service List shall notify the Plaintiffs' and Defendants' Liaison Counsel in writing of such change.
2. Liaison Counsel shall publish an updated Master Service List or supplement thereto on or before the first of each month, which shall thereafter apply. If a change to the Master Service List is necessary,

Liaison Counsel shall file a notice so stating. The Master Service List shall bear a heading showing the date of the service list and indicating that it may be used until superseded by another list.

3. When service of a document is made, it shall be sufficient to attach an affidavit of service to any such document indicating that the document has been served on the persons entitled to be served as shown on the Master Service List in effect on the date that service of that document was made.
4. Regardless of any other provision governing service, all documents of general applicability to be filed in the Master File in the New York ReNu with MoistureLoc Litigation shall be served on Plaintiffs' and Defendants' Liaison Counsel. In any filing relating to an individual action or group of individual actions, service shall be made on each party of record in each such action. Regardless of the number of cases in which a law firm has appeared, service of one copy upon that firm shall be sufficient for each case subject to this Order, in which that law firm has appeared on behalf of a party.

VI. Motions

A. Procedure

1. As noted above, it shall be the responsibility of the Plaintiffs' and Defendants' Steering Committees to coordinate, to the extent practicable, motion practice in these cases. However, subject to any future orders of the Court concerning motion practice, including without limitation the grouping or sequencing of certain types of motions, motions may be made

by a party at any time.

2. Unless otherwise ordered by the Court or agreed by the parties, all motions shall be made returnable on at least twenty-eight (28) days notice.²

Opposition papers, and any cross-motion, shall be served no later than fourteen (14) days prior to the return date. Reply papers, and any opposition to a cross-motion, shall be served no later than seven (7) days prior to the return date.

3. Motions shall be heard on the last Thursday of each month at 3 p.m. in Room 208, Supreme Court of the State of New York, New York County, 60 Centre Street, New York, NY, unless otherwise directed by the Court.

4. The parties shall make a good faith effort to resolve all disputes before resorting to motion practice. Any motion relating to discovery or any other subject on which accord of the affected parties might reasonably be expected shall contain counsel's statement (made by affidavit or affirmation) that, prior to moving, the movant has conferred with affected adversary parties and made a good faith effort to resolve the dispute without need of court intervention.

5. Notwithstanding the above, any party may contact the Court with respect to any disputed matter and/or potential motion to determine the manner in which the Court chooses to proceed with respect to hearing and resolving

² When service is made by mail, five days shall be added to each of the periods prescribed herein for the making and responding to motions. When service is made by overnight courier service, one day shall be added.

such dispute and/or potential motion.

VII. Pro Hac Vice

The following individuals are represented to be in good standing and are hereby admitted to practice *pro hac vice* for these coordinated proceedings:

1. John H. Beisner, Esq.
O'Melveny & Myers, LLP
Counsel of Defendant
2. Jessica Davidson Miller, Esq.
O'Melveny & Myers, LLP
Counsel for Defendant
3. Michael T Cole
Nelson Mullins Riley & Scarborough LLP
Counsel for Defendant
4. Harvey Kaplan
Shook Hardy Bacon
Counsel for Defendant
5. Marie S. Woodbury, Esq.
Shook, Hardy & Bacon L.L.P.
Counsel for Defendant
6. Gay L. Tedder, Esq.
Shook, Hardy & Bacon L.L.P.
Counsel for Defendant
7. Richard Arsenault, Esq.
Neblett, Beard & Arsenault
Counsel for Plaintiffs
8. Edward Blizzard, Esq.
Blizzard, McCarthy & Nabers, L.L.P.
Counsel for Plaintiffs
9. Lee Balefsky, Esq.
Kline & Specter, P.C.
Counsel for Plaintiffs

10. Neil Overholtz, Esq.
Aylstock, Witkin & Sasser, PLC
Counsel for Plaintiffs
11. Teresa C. Toriseva, Esq.
Wexler Toriseva Wallace
Counsel for Plaintiffs
12. Joel Magolnick, Esq.
de la O, Marko, Magolnick & Leyton
Counsel for Plaintiffs
13. Joseph Saunders, Esq.
Saunders & Walker, P.A.
Counsel for Plaintiffs

VIII. Other Matters

Plaintiffs' and Defendants' Liaison Counsel are hereby directed to mail a copy of this Order to all counsel who have appeared in these actions for plaintiffs and defendants, respectively.

Dated: Mar. 26
February 26, 2007
New York, New York

ENTERED: _____


Helen E. Freedman, J.S.C.

FILED

MAR 27 2007

**NEW YORK
COUNTY CLERK'S OFFICE**