

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK \_\_\_\_\_X

In Re: New York Renu with Moistureloc  
Product Liability Litigation  
\_\_\_\_\_X

Index No. 766,000/2007

**CASE MANAGEMENT ORDER NO. 5**

This Document Applies to All Cases  
\_\_\_\_\_X

Consistent with the Joint Order issued by the Honorable David C. Norton and this Court the following Case Management Order is issued in the New York ReNu with MoistureLoc® litigation.

**SUPPLEMENTAL DEPOSITION PROTOCOLS**

In order to further the goal of coordinating this MDL proceeding with the New York Coordinated Proceeding, the Honorable David C. Norton, presiding judge in MDL No. 1785, and the Honorable Helen Freedman, presiding judge in the New York Coordinated Proceeding, held a joint hearing with lead plaintiffs' and defendant's counsel in the Bausch & Lomb MoistureLoc® litigation on April 19, 2007. At the hearing, the parties and the Courts addressed uniform rules to govern the conduct of depositions in this proceeding and the New York coordinated proceeding, including: (1) captioning of depositions; (2) production of documents before depositions; (3) deposition scheduling; and (4) deposition duration. The provisions listed below apply in both respective proceedings. It is hereby ORDERED that:

**I. CAPTIONING OF DEPOSITIONS**

Section V.B of Pretrial Order No. 7 is supplemented to include the following language:

“All cross-noticed deposition notices and transcripts shall contain a co-caption indicating that the depositions are being taken in both the New York and MDL proceedings.”

## **II. PRODUCTION OF DOCUMENTS RELATED TO DEPOSITIONS**

Section X of Pretrial Order No. 6 is amended to include the following additional provisions:

### **A. Document Production Certification By Defendant**

At least thirty (30) days prior to the deposition of persons currently or formerly employed by Bausch & Lomb, Bausch & Lomb shall provide Plaintiffs' Steering Committee with a written certification that it has completed production of that witness's custodial files.

### **B. Sharing Of Documents Prior To Depositions**

Deposing counsel shall provide to opposing counsel a copy of all documents to be shown to a witness during a deposition, with the exception of those documents to be used for impeachment purposes, either before the deposition begins or contemporaneously with the showing of each document to the witness. If the documents are provided (or otherwise identified) at least (3) business days before the deposition, then the witness and the witness's counsel shall not discuss the documents privately during the deposition. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to discuss the documents before the witness answers questions concerning the document.

## **III. DEPOSITION SCHEDULING**

### **A. Notice of Depositions**

Section X.B.1 of Pretrial Order No. 6 is supplemented to include the following language: "Counsel shall provide at least sixty (60) days notice prior to all depositions, in an attempt to ensure that the date is convenient for all counsel."

**B. Duration**

Section VI.D of Pretrial Order No. 7 is replaced with the following: “The total amount of questioning time by New York and MDL plaintiffs’ counsel for all cross-noticed depositions noticed by plaintiffs shall not exceed fourteen (14) hours. In the interests of coordination and minimizing duplicative depositions, the Court also encourages the MDL and New York Plaintiffs’ Steering Committees to coordinate with counsel in other states in dividing their questioning time and formulating deposition questions such that counsel for all plaintiffs in MoistureLoc® cases are able to complete their questioning of Bausch & Lomb witnesses in the allotted 14 hours.”

Dated: May 7, 2007

ENTER:

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

**FILED**  
**MAY - 7 2007**  
**NEW YORK**  
**COUNTY CLERK'S OFFICE**