

STATE OF NEW YORK
LITIGATION COORDINATING PANEL

New York County Clerk's No.
560001/2006
S. 16 # 9

Panel Case No. 0004/2006

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

-----X
Janice Mc Connell,

Plaintiff,

Index No. 106201/2006

- against -

Bausch & Lomb, Incorporated

Defendant.

FILED

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AND OTHER MATTERS LISTED ON THE ATTACHED APPENDIX

DECISION AND ORDER

The plaintiff in the action captioned above, by Paul J. Pennock and Victoria J. Maniatis, Esqs. of the firm of Weitz & Luxenberg, P.C., move before the Litigation Coordinating Panel ("the Panel") for an order, pursuant to Section 202.69 of the Uniform Rules for the Trial Courts, coordinating the action and 27 other matters before a Justice of the Supreme Court. The law firms of Burg Simpson Eldredge Hersh Jardine PC, Lieff, Cabraser, Heirmann & Bernstein, LLP, Locks Law Firm, PLLC, Parker & Waichman, which represent plaintiffs in related actions, submitted papers joining in the request for coordination, as well as counsel for the defendant by Nixon Peabody LLP. It was also requested that the order of the Panel apply to all pending related actions that were not included in the original application and all related actions that may hereafter be filed. The related actions that have been specifically identified in the papers submitted, in addition to that captioned above, are listed in the Appendix hereto. There are 28 named actions before the Panel at this time.

The McConnell action and those listed in the Appendix, which are pending in more than one judicial district, are brought against Bausch & Lomb, Incorporated, the manufacturer of the contact lens solution *ReNu with MoistureLoc*, and allege that the plaintiffs suffered personal injuries as a result of the use of this product.

Counsel for the McConnell plaintiff and those other plaintiffs that join with Mc Connell in support of the order of coordination of the related proceedings, together with counsel for the defendant, agree that New York County is a proper venue for coordination.

The Panel met and considered the issues and circumstances involved, including the coordination order issued by the federal Judicial Panel on Multi-District Litigation of cases pending in the various district courts of the United States, *In Re Bausch & Lomb Inc. Contact Solution Products Liability Litigation*, Docket No. 1785, filed August 14, 2006. Those cases have been coordinated in the District of South Carolina. The Panel concluded that the application should be granted with respect to the actions involving *ReNu with MoistureLoc* only, including those that may hereafter be filed, for the exception of the matter *Harris v. Bausch & Lomb, Inc.*, #035995-CVN-2006, pending in the Civil Court of the City of New York, New York County. Coordination shall take place in the County of New York before a Justice of that County to be designated by the Administrative Judge thereof.

For these reasons, it is hereby

(1) Ordered that the actions set forth above and in the Appendix shall be coordinated, pursuant to Section 202.69 of the Uniform Rules of the Trial courts, in the Supreme Court of the State of New York, County of New York, before a Coordinating Justice of that county; and it is further

(2) Ordered that any actions for personal injury alleged to have occurred as a result of the use of the contact lens solution *ReNu with MoistureLoc* only and that were filed in the Supreme Court of the State of New York heretofore and that remain active but that are not listed in the caption above or on the attached Appendix and any such actions that are filed hereafter shall, in accordance with Subdivision F of the Procedures of the Panel, likewise be coordinated pursuant to Section 202.69 in New York County before the said Coordinating Justice unless the Panel rules otherwise as provided in the said Subdivision F; and it is further

(3) Ordered that, pursuant of Section 202.69(c)(1), the Administrative Judge of the First Judicial District shall designate the Coordinating Justice; and it is further

(4) Ordered that the Clerk of the Panel shall forthwith transmit a copy of this Decision and Order to all counsel for all parties herein, the Justices to whom each of the above actions is currently assigned, and the Honorable Jacqueline W. Silbermann, Administrative Judge of the First Judicial District: and it is further

(5) Ordered that, with respect to any additional action that is to be coordinated as provided in paragraph (2) hereof, upon service of a copy of the Decision and Order of the Panel with notice of entry, together with either the affidavit of compliance or the further decision of the Panel set forth in Subdivision F of the Procedures of the Panel, upon the Clerk of the court in which any such additional action is or hereafter shall be pending (other than Supreme Court, New York County) as provided in Subdivision F, the said Clerk shall forthwith transfer to the Clerk of the Supreme Court, New York County, after the payment of appropriate fees, if any, the file in any such additional action that is to be coordinated as provided in this Decision and Order and Subdivision F; and it is further

(6) Ordered that, the Clerk of the Supreme Court, New York County, shall assign a New York County index number without fee to any action transferred to that county from another as provided above and such number shall serve as a means of identification and orderly processing of any such case while it remains in New York County for the purpose of coordination.

This constitutes the Decision and Order of the Panel. The Presiding Justice of the Panel signs this Decision and Order in her own behalf and with the authorization and in behalf of all the Members of the Panel, with the exception of the Honorable Raymond E. Cornelius who did not participate in this matter before the Panel.

Dated: New York, New York

January 2, 2007

JUSTICES OF THE PANEL:

Hon. Helen E. Freedman
Presiding Justice, First Department

Hon. Raymond E. Cornelius
Associate Justice, Fourth Department

Hon. E. Michael Kavanagh
Associate Justice, Third Department

Hon. Joseph J. Maltese
Associate Justice, Second Department

FOR THE PANEL:



HON. HELEN E. FREEDMAN
Presiding Justice

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