

# LITIGATION UPDATES:

## **Bausch & Lomb Renu with MoistureLoc**

Great news on our litigation with Bausch & Lomb concerning ReNu with MoistureLoc contact lens solution. We filed two cases in Palm Beach County Circuit Court. Bausch & Lomb immediately requested that they be moved to federal court. At the same time, Bausch lawyers moved to stay all proceedings pending a decision by a federal judicial panel to transfer every case in the nation to one judge in South Carolina federal court. We opposed the move to federal court, the stay, and the transfer to South Carolina. The issues were thoroughly briefed and, ultimately, the courts ruled in our favor, sending both cases back to Palm Beach County Circuit Court.



Bausch has been successfully employing this tactic all over the country. As a result, many plaintiffs found themselves mired in the bureaucracy and delay associated with federal court multi-district litigation. We are fortunate to have avoided this quagmire.

Our case preparation is on track. It has become widely known that Bausch took great liberties during the Food and Drug Administration's approval process for the MoistureLoc brand. Several shortcuts involved testing to prove the product's germ-killing ability. It is also becoming obvious that Bausch knew there were problems with MoistureLoc well before it removed the product from the market.

We expect to have our first cases set for trial within eight months. Our confidence in the strength of these cases grows with each new piece of evidence we uncover. ■

## **Tobacco and the recent Florida Supreme Court decision**

The Florida Supreme Court's July 2006 decision in *Engle v. Leggett* laid the groundwork for a defined group of smokers to bring individual lawsuits against the tobacco companies. The *Engle* case was a class action filed on behalf of Florida residents who smoked and first became sick from a tobacco-related illness between 1990 and 1996. The 1999 *Engle* trial resulted in a verdict that

found tobacco companies liable for manufacturing a defective product and for having conspired to keep the true dangers of smoking from consumers. The jury also awarded \$140 billion in punitive damages against the big tobacco companies.

In its July 2006 decision, the Supreme Court threw out the punitive damages award, and held that smokers who were members of the *Engle* class action case had to bring their claims individually. However, unlike past smokers' cases, former *Engle* class members would not have to prove that cigarettes are addictive, cause cancer, and/or that manufacturers lied about smoking hazards. In doing so, the Court gave former *Engle* class members a substantial advantage over all previous individual smokers' cases.

Since the Court's decision, we have been taking cases for former *Engle* class members. Although as many as 700,000 smokers were in the *Engle* class, we are only taking cases for smokers, and the families of deceased smokers, who suffered mouth, airway, or lung cancer, chronic obstructive pulmonary disease (COPD), or emphysema. The Supreme Court's decision granted valuable rights, but it also imposed strict limitations on who qualified as a class member and when that person must file an individual claim. Both sides currently have pending motions for rehearing. Until the motions are decided, not only is the decision not final but its ultimate impact is uncertain.

What we do know is that thousands of sick Florida smokers, and the families of deceased Florida smokers, have absolutely no idea that they have been given valuable legal rights, and a very short time within which to exercise those rights. We have been working very hard to get the word out. Anyone who smoked, lived in Florida, and first became ill from smoking between 1990 and 1996, may qualify. As a matter of fact, if the Court grants one of the rehearing motions, smokers who became ill up until 1999 may qualify. So, if you, or anyone you know, smoked and suffered or died from lung or airway cancer, COPD, or emphysema, between 1990 and 1999, please call us regarding your legal rights.

**Our smoking litigation  
toll free number is  
866-365-8535. ■**

