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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

JPML Centralizes Contact Lens Antitrust Actions In Florida

By **Lisa Ryan**

Law360, New York (June 9, 2015, 6:11 PM ET) -- The Judicial Panel on Multidistrict Litigation centralized to the Middle District of Florida seven class actions accusing Johnson & Johnson Vision Care Inc., Alcon Laboratories Inc. and other contact lens manufacturers of using unilateral pricing policies to artificially inflate prices.

Five of the pending cases — including one launched by lead plaintiff Costco Wholesale Corp. — were **originally filed in California**, one was initiated in Kansas and the other in Florida. Defendants Johnson & Johnson and ABB Optical Group are both headquartered in the Sunshine State, and U.S. District Judge Harvey E. Schlesinger, who has knowledge of the contact lens industry, is there as well, the panel said.

“By selecting Judge Schlesinger to serve as the transferee judge, we have chosen a jurist who is familiar with the contact lens industry by virtue of his experience presiding over a previous MDL involving allegations of anti-competitive conduct in that industry,” the panel said in its order.

Lesley Weaver of Block & Leviton LLP, a lawyer for one of the many firms representing individual plaintiffs in the underlying class actions, told Law360 on Tuesday that Judge Schlesinger is “an experienced judge” who has overseen similar cases in the past.

“He is a good choice to manage this kind of complex matter going forward,” Weaver said.

The class actions **accuse contact lens makers** Alcon Laboratories, Bausch & Lomb, Johnson & Johnson, ABB Optical and CooperVision Inc. of fixing the minimum prices for their products through unilateral pricing policies.

The plaintiffs in the suits generally say that the manufacturers have been allowed to fix minimum resale prices without reaching agreements with retailers on price.

In its suit, Costco claims that retailers, including optometrists and ophthalmologists who sell contacts in their offices, pressured Johnson & Johnson to set a minimum retail price policy in June. The more level pricing policy, the company says, makes it more likely that consumers will buy lenses from their eye care professionals, who have a greater incentive to prescribe contacts based on profit considerations, potentially threatening patient care.

Costco balked at the plan and refused to increase its prices, but backed off once Johnson & Johnson threatened to stop selling its contacts, the complaint says. Costco eventually complied, but maintained that the minimum prices were illegal and violated the companies' retail contract.

The putative class actions brought on behalf of consumers generally claim that

manufacturers turned to so-called unilateral pricing policies, or UPPs, because they were concerned about deep discounts being offered by Wal-Mart Stores Inc., Costco and Internet merchants 1-800-Contacts and LensDiscounters.com.

The slew of suits came just months after the American Antitrust Institute in October sent a letter to the U.S. Department of Justice and the Federal Trade Commission, **requesting an investigation** into the use of UPPs, which have been adopted throughout the contact lens industry. A Senate Judiciary subcommittee held a hearing on the matter last summer.

Representatives for the defendants didn't immediately respond to requests for comment on Tuesday.

Costco is represented by David P. Chiappetta, Mara Boundy, David J. Burman, Shylah R. Alfonso and David S. Steele of Perkins Coie LLP.

The consumer plaintiffs are represented by Block & Leviton LLP, Tycko & Zavareei LLP, Kopelowitz Ostrow PA, Blood Hurst & O'Reardon LLP, Pritzker Levine LLP, Cotchett Pitre & McCarthy LLP, Hagens Berman Sobol Shapiro LLP and Hausfeld LLP, among others.

Counsel information for the defendants wasn't immediately available on Tuesday.

The suit is In Re: Disposable Contact Lens Antitrust Litigation, case number 2626, in front of the U.S. Judicial Panel on Multidistrict Litigation.

--Additional reporting by Melissa Lipman and Jonathan Randles. Editing by Stephen Berg.

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