

MISSOURI LAWYERS WEEKLY

Suits over contact lens solution filed in St. Louis



Maurice Graham

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Dolan Media Newswire

A St. Louis County woman who contracted an eye fungus, which required her to undergo a cornea transplant, has filed a federal lawsuit against Bausch & Lomb, the maker of the contact lens wetting solution she used.

Marguerite Likes wore soft contact lenses and used ReNu MoistureLoc and its predecessor ReNu products for seven years before contracting severe fusarium keratitis in her right eye, according to the complaint filed by her attorney, Maurice B. Graham of Gray, Ritter & Graham in St. Louis. Treatment failed to improve her vision, and on Feb. 3, Likes had a cornea transplant but has been left with "significant scarring and permanent decreased vision," Graham alleged.

"Her vision in her right eye has been significantly affected," Graham said in a telephone interview. "She describes it as her right eye just looking like she's in a thick fog. She can only distinguish big, major objects. She can no longer wear contact lenses and has to wear corrective glasses, and the belief is she's also facing further surgery. She'll never be able to wear contact lenses again. And the success of this corneal transplant is also uncertain at this point. So it's been a life-changing and very discouraging event for her."

Graham said he anticipates proceeding under the theory of strict products liability. The complaint alleges ReNu MoistureLoc was "inherently dangerous" and an "unreasonably dangerous product" and alleges problems with the manufacture, design and packaging of the product.

According to Graham, Bausch & Lomb told the U.S. Food and Drug Administration there were some development and manufacturing deficiencies, but the details of those haven't yet been made public.

Considering the confirmation of these deficiencies, Graham said, "it would be my thought and hope that they would recognize their responsibility and take care of these cases that are clearly related to a fusarium fungus that came from this ReNu with MoistureLoc."

A PACER search turned up 47 products liability lawsuits filed against Bausch & Lomb in federal courts throughout the country. On Monday, a class-

action lawsuit was filed against the company in the U.S. District Court for the Western District of Missouri.

The first two lawsuits were filed on April 17, just 10 days after Bausch & Lomb filed with the FDA a formal report about the spike of fusarium keratitis cases among contact lens wearers in Singapore. The Singapore cases came to light in February, and, according to a release on the company's Web site, Bausch & Lomb immediately began discussing the cases with the FDA.

The Center for Disease Control & Prevention and the FDA began investigating Bausch & Lomb's Greenville, S.C., plant, where ReNu MoistureLoc was manufactured, on March 22.

The company voluntarily withdrew the product from the U.S. market on April 13 and recalled the product worldwide on May 15. That action, while not a defense to lawsuits, may serve to minimize the company's liability, according to Graham.

As of May 18, according to a CDC report, the CDC had received reports of 130 cases of fusarium keratitis infection. Of those, 125 people reported wearing contact lenses, and 118 were able to identify which contact lens solutions they had used. Seventy-five reported using ReNu MoistureLoc alone, 14 reported using it with another product, eight reported using a Bausch & Lomb solution, and 21 reported using products other than ReNu MoistureLoc from a variety of manufacturers.

Some experts speculate the company will settle these cases quickly. J. David Prince, a law professor at William Mitchell College of Law in St. Paul, Minn., told Lawyers USA, "It seems to me from their own press releases that they're essentially admitting liability. It's just a question of damages."

It's too early to determine what kind of damages are warranted in Likes' case, said Graham, because the effects of her surgery, and prospects for more surgery, are still unknown. But he said Likes would be open to a settlement.

"This has been a life-changing, catastrophic event for Mrs. Likes. I don't think she's anxious to go to trial; she would prefer to see this resolved amicably," Graham said.

Bausch & Lomb also seemed to defend itself in its online statements. A message by Chairman and CEO Ron Zarrella puts some of the responsibility on contact lens wearers. "There may be some aspect of the MoistureLoc formula, when combined with certain environmental factors, lens wear and care practices, and other factors, that might increase the risk of Fusarium infection in rare circumstances," Zarrella said in the statement.

Graham said his client was meticulous about following the directions of the product and of her ophthalmologist.

(This story originally appeared in the St. Louis Daily Record, a sister publication to Missouri Lawyers.)