

The Supreme Court of South Carolina

DANIEL E SHEAROUSE
CLERK OF COURT

BRENDA F SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

January 17, 2012

Robert L Widener, Esquire
Celeste T Jones, Esquire
A Victor Rawl, Jr , Esquire
Andrew G Melling, Esquire
McNair Law Firm, PA
P O Box 11390
Columbia, SC 29211

Stevens Bultman Elliott, Esquire
P O Box 6922
Columbia, SC 29260-6922

Curtis L Ott, Esquire
Turner, Padget, Graham & Laney, P A
P O Box 1473
Columbia, SC 29202

Daniel Thomas Sullivan, Esquire
The Sullivan Firm
907 Calhoun St
Columbia, SC 29201

Keith D Munson, Esquire
Sandi R Wilson, Esquire
Womble Carlyle Sandridge & Rice, PLLC
P O Box 10208
Greenville, SC 29603-0208

Re Weston, Monica v Kims Dollar Store

Dear Counsel

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows

Petitioner 15 minutes

Respondents 15 minutes

Petitioner in Reply 5 minutes

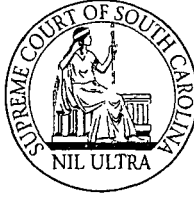
This case is scheduled for hearing on Thursday, January 26, 2012 at 10 30 a m

Very truly yours,

Daniel E Shearouse, Clerk

By Debbie M Hopkins
Administrative Assistant

DES/dmh



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

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January 4, 2012

Robert L. Widener, Esquire
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Sandi R. Wilson, Esquire
Womble Carlyle Sandridge & Rice, PLLC
P O Box 10208
Greenville, SC 29603-0208

Re Weston, Monica v Kims Dollar Store

Dear Counsel

Please be advised oral arguments in this matter will now be heard on ~~Tuesday~~, ^{Thursday},
January 26, 2012 at 10 30 a m and not 10 00 a m as previously scheduled

Very truly yours,

David E. Shearson
35

CLERK

DES/dmh

MCNAIR
ATTORNEYS

December 2, 2011

Robert L. Widener

RECEIVED DR...
rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

DEC 5 2011

DEC 5 2011

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

SC SUPREME COURT S.C. SUPREME COURT

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Petitioner, Monica Weston, will not be filing a Reply Brief with regard to the above cited case.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as

cc Sandi R. Wilson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

McNair Law Firm P.A.
1221 Main Street
Suite 1800
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

MCNAIR
ATTORNEYS

November 15, 2011

Robert L. Widener

rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re January 2012 Preliminary List

Dear Mr. Shearouse:

I am in receipt of the January Preliminary List for hearing of which I am counsel of record in the following two cases:

Weston, Monica v. Kims Dollar Store
Eldridge, Watson v. Eldridge, Frances

I have been noticed by the South Carolina Court of Appeals that *Estate of Caroline Gill v. Clemson University*, in which I am counsel of record, is on their January Preliminary List.

I respectfully request that the cases not be scheduled on the same day.

With kind regards, I am

Respectfully yours,



Robert L. Widener

RLW/as

McNair Law Firm P.A.
1221 Main Street
Suite 1800
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

NOV 15 2011
COLUMBIA
SOUTH CAROLINA SUPREME COURT

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Novartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

ORDER

For good cause having been shown, the time for serving and filing Reply Brief of Petitioner in the above entitled matter is hereby extended until December 2, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY *Sunda J Shaly*
Chief Deputy Clerk

Columbia, South Carolina

November 16, 2011

cc Robert L Widener, Esquire
Celeste T Jones, Esquire
Victor Rawl, Jr, Esquire
Andrew G Melling, Esquire
Stevens Bultman Elliott, Esquire
Curtis L Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D Munson, Esquire
Sandi R Wilson, Esquire

MCNAIR
ATTORNEYS

November 15, 2011

Robert L. Widener

rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

RECEIVED
NOV 15 2011
S C Supreme Court

Dear Mr. Shearouse:

Appellant's Reply Brief is currently due November 17, 2011. Due to conflicts in the schedule of counsel, Appellant respectfully requests a fifteen (15) day extension to serve and file the brief. This extension would make the brief due on December 2, 2011. We have enclosed our check in the amount of \$25.00 to cover the cost of this request.

By copy of this letter, we are advising counsel for the Respondent of this request.

Thank you for your consideration of this matter.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as

cc Sandi R. Wilson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

Check # 224702
\$25.00

McNair Law Firm, P.A.
1221 Main Street
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Columbia, SC 29211

mcnair.net



The South Carolina Supreme Court

DANIEL E SHEAROUSE
CLERK OF COURT
BRENDA F SHEALY
DEPUTY CLERK

P O BOX 11330
COLUMBIA S C 29211
PHONE NO 734 1080

To Daniel Thomas Sullivan Esquire
From Daniel E Shearouse
Date November 10 2011
RE January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court Our records indicate that you are counsel of record in one or more of these case(s)

Court will meet the days of January 10 11 24 25 and 26 Please notify this office in writing prior to November 18 2011 as to any scheduling conflicts for the January term and any changes or additions of counsel that should be made to the record for the purpose of argument If you do have a scheduling conflict please advise as to the specific nature of the conflict

Weston, Monica v Kims Dollar Store



The South Carolina Supreme Court

DANIEL E SHEAROUSE
CLERK OF COURT
BRENDA F SHEALY
DEPUTY CLERK

PO BOX 11330
COLUMBIA SC 29211
PHONE NO 734 1080

To Curtis L Ott Esquire
From Daniel E Shearouse
Date November 10 2011
RE January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court Our records indicate that you are counsel of record in one or more of these case(s)

Court will meet the days of January 10 11 24 25 and 26 Please notify this office in writing prior to November 18 2011 as to any scheduling conflicts for the January term and any changes or additions of counsel that should be made to the record for the purpose of argument If you do have a scheduling conflict please advise as to the specific nature of the conflict

Weston, Monica v. Kims Dollar Store



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Stevens Bultman Elliott Esquire
From Daniel E. Shearouse
Date November 10, 2011
RE January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 10, 11, 24, 25, and 26. Please notify this office in writing prior to November 18, 2011, as to any scheduling conflicts for the January term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Weston, Monica v. Kims Dollar Store



The South Carolina Supreme Court

DANIEL E SHEAROUSE
CLERK OF COURT
BRENDA F SHEALY
DEPUTY CLERK

P O BOX 11330
COLUMBIA S C 29211
PHONE NO 734 1080

To Robert L Widener Esquire
Celeste T Jones Esquire
A Victor Rawl Jr Esquire
Andrew G Melling Esquire
From Daniel E Shearouse
Date November 10 2011
RE January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s)

Court will meet the days of January 10 11 24 25 and 26. Please notify this office in writing prior to November 18 2011 as to any scheduling conflicts for the January term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict please advise as to the specific nature of the conflict.

Weston, Monica v. Kims Dollar Store



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Keith D. Munson Esquire
Sandi R. Wilson Esquire
From Daniel E. Shearouse
Date November 10, 2011
RE January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 10, 11, 24, 25, and 26. Please notify this office in writing prior to November 18, 2011, as to any scheduling conflicts for the January term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Weston, Monica v. Kims Dollar Store

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A PROFESSIONAL LIMITED
LIABILITY COMPANY



550 South Main Street Suite 400
Greenville SC 29601

Mailing Address
Post Office Box 10208
Greenville SC 29603 0208
Telephone (864) 255 5400
Fax (864) 255 5440
www.wcsr.com

Keith D Munson
Direct Dial (864) 255 5412
Direct Fax (864) 255 5480
E mail kmunson@wcsr.com

November 7, 2011

Mr Daniel E Shearouse
Clerk
South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

RECEIVED

NOV 9 2011

S.C. Supreme Court
pm 11-7-11

Re **Monica Weston v Kim's Dollar Store and CIBA Vision, et al**
Civil Action No 2005-CP-40-0655 (Appeal)
Opinion No 4592 (Ct App 7/15/09)
Case Tracking No 2009-147986

Dear Mr Shearouse

Enclosed herewith for filing is an original and 16 copies of Respondent CIBA Vision's Brief and Proof of Service Please file-stamp and return the extra clocked copy in the postage-paid envelope provided By copy of this letter, I am herewith providing all parties of record with copies of same Thank you for your assistance in this matter

Very truly yours,

Womble Carlyle Sandridge & Rice, LLP

Keith D Munson

KDM/drl
Enclosures

cc Robert L Widener, Esq (w/encl)
Celeste T Jones, Esq (w/encl)
A Victor Rawl, Jr, Esq (w/encl)
Andrew G Melling, Esq (w/encl)
Daniel Thomas Sullivan, Esq (w/encl)
Stevens B Elliott, Esq (w/encl)

MCNAIR
ATTORNEYS

September 27, 2011

Robert L. Widener

rwidener@mcnair.net
T (803) 799-9800
F (803) 753-3278

Via Fax ((803) 734-1499) and U.S. Mail

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED
SEP 29 2011
SC SUPREME COURT

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Appellant Monica Weston hereby consents to the Respondent CIBA Vision's Motion for Extension dated September 23, 2011, requesting an extension until November 5, 2011 to serve and file its brief.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as

cc Sandi R. Wilson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

McNair Law Firm P.A.
1221 Main Street
Suite 1800
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Novartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

ORDER

For good cause having been shown, the time for serving and filing the Brief of Respondent in the above entitled matter is hereby extended until November 7, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

September 28, 2011

cc Robert E Widener, Esquire
Celeste T Jones, Esquire
A Victor Rawl, Jr, Esquire
Andrew G Melling, Esquire
Stevens Bultman Elliott, Esquire
Curtis L Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D Munson, Esquire
Sandi R Wilson, Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

James R. Barber, III, Circuit Court Judge
G. Thomas Copper, Jr., Circuit Court Judge

Opinion No. 4592 (S.C. Ct. App. Filed July 15, 2009)

Monica Weston,

Petitioner,
~~Appellant,~~

v

Kims Dollar Store and
CIBA Vision, a division of Novartis Company

Respondents

**RESPONDENT CIBA VISION'S CONSENT MOTION FOR
EXTENSION OF TIME TO FILE BRIEF**

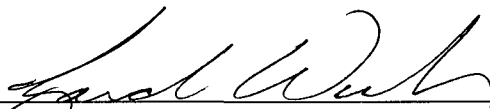
The Brief of Respondent is currently due on October 6, 2011. Counsel for the Respondent has been in trial in Miami, Florida for three weeks and the trial is not yet complete. Therefore, due to conflicts with the schedule of counsel, Respondent respectfully requests, with the consent of Appellant, that the time for filing and serving their Brief be extended thirty (30) days until November 5, 2011.

Respectfully submitted,

RECEIVED

SEP 20 2011

SC SUPREME COURT



Keith D. Munson (SC Bar No. 13400)

Sandi R. Wilson (SC Bar No. 16896)

Womble Carlyle Sandridge & Rice, PLLC

P.O. Box 10208

Greenville, SC 29603

Phone (864) 255-5400

Fax (864) 255-5480

ATTORNEYS FOR RESPONDENT CIBA VISION

September 23, 2011
Greenville, SC

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

James R. Barber, III, Circuit Court Judge
G. Thomas Copper, Jr., Circuit Court Judge

Opinion No. 4592 (S.C. Ct. App. Filed July 15, 2009)

Monica Weston,

Appellant,

v

Kims Dollar Store and
CIBA Vision, a division of Novartis Company

Respondents

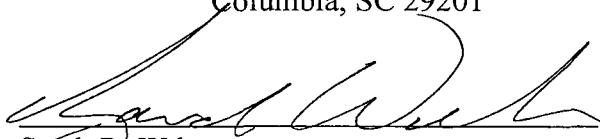
PROOF OF SERVICE

The undersigned hereby certifies that, on the 23 day of September, 2011, (s)he delivered a copy of the attached **RESPONDENT CIBA VISION'S CONSENT MOTION FOR EXTENSION** to the person(s) hereinafter named, at the place(s) and address(es) stated below, via U.S. Mail, which is/are the last known address(es)

A. Victor Rawl, Esq.
Robert L. Widener, Esq.
Celeste T. Jones, Esq.
Andrew G. Melling, Esq.
McNair Law Firm, P.A.
1301 Gervais St.
Columbia, SC 29201

Stevens B. Elliott, Esq.
P.O. Box 6922
Columbia, SC 29260

Daniel T. Sullivan, Esq.
Young and Sullivan, L.L.P.
907 Calhoun St.
Columbia, SC 29201


Sandi R. Wilson



September 23, 2011

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al (2)
Civil Action No 2005-CP-40-0655
Opinion No 4592
Heard June 9, 2009 – File July 15, 2009

Dear Mr. Shearouse

On behalf of Respondent CIBA Vision, we enclose an original and seven copies of our Consent Motion for Extension, respectfully requesting a 30-day extension from October 6, 2011, to November 5, 2011, in which to file our Brief. Also enclosed is an original and one copy of the Proof of Service for same, and our check in the amount of \$25 for the cost of this Motion. If you would please return a file-stamped copy in the self-addressed, stamped envelope provided.

Thank you for your consideration in this regard.

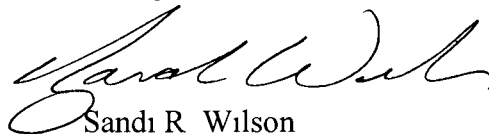
Sincerely,

RECEIVED

SEP 23 2011

S.C. SUPREME COURT
pm 9-23-11

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company



Sandi R. Wilson

SRW lw

Enclosures

cc Robert L. Widener, Esq (w/enc)
A. Victor Rawl, Jr., Esq (w/enc)
Daniel T. Sullivan, Esq (w/encl)
Curtis L. Ott, Esq (w/encl)
Jerry Bradford, Esq (w/encl)

check # 5500012127
\$25.00

McNAIR

ATTORNEYS

September 27, 2011

Robert L. Widener

rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

Via Fax ((803) 734-1499) and U S Mail

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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SEP 27 2011
S C SUPREME COURT

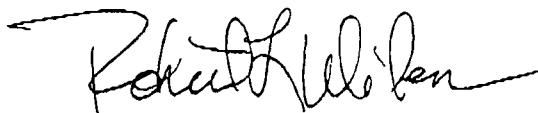
Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al (2)
Opinion No 4592
Heard June 9, 2009 - Filed July 15 2009

Dear Mr. Shearouse:

Appellant Monica Weston hereby consents to the Respondent CIBA Vision's Motion for Extension dated September 23, 2011, requesting an extension until November 5, 2011 to serve and file its brief.

Respectfully yours,

McNAIR LAW FIRM P A



Robert L. Widener

RLW/as

cc Sandi R. Wilson, Esq
Daniel T. Sullivan, Esq
Curtis L. Ott, Esq

McNair Law Firm P. A.
1221 Main Street
Suite 1800
Columbia, SC 29201

Mailing Address
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McNAIR
ATTORNEYS

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**FAX COVER LETTER
CONFIDENTIAL & PRIVILEGED**

RECEIVED
SEP 27 2011
SC SUPREME COURT

Date & Time September 27, 2011

Transmitted By *ASB*

Number to Call with Problems

PLEASE DELIVER AS SOON AS POSSIBLE TO

Recipient	Fax No	Phone No
The Honorable Daniel E. Shearouse South Carolina Supreme Court	(803) 734-1499	(803) '34-1080
Sandi R. Wilson, Esq Womble Carlyle Sandridge & Rice	(864) 255-5440	(864) '55-5400
Daniel T. Sullivan, Esq The Sullivan Firm	(803) 254-5798	(803) '52-3663
Curtis L. Ott Esq Turner Padgett, Graham & Laney	(803) 799-3957	(803) '27-4292

Total number of pages including cover 2

From Robert L. Widener

Client-Matter 037580/00001

CIRCULAR 230 DISCLOSURE

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used for the purpose of (i) avoiding penalties under the internal revenue code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it has been sent) without our express written consent. To read more about this disclosure, please see <http://www.mcnair.net/230.pdf>

The information contained in this facsimile message is confidential, protected by the attorney-client privilege and intended for the use of only the individual or entity named above. If the reader of the message or information is not the intended recipient of the message or information transmitted herewith, you are hereby notified that any dissemination, distribution or copying of the message or information is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

RECEIVED

SEP 06 2011

MCNAIR
ATTORNEYS

S.C. SUPREME COURT

September 1, 2011

Robert L. Widener

rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

Via E-mail (lallen@sccourts.org)

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Weston, Monica v Kim's Dollar Store
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Petitioner consents to Respondent CIBA Vision's Motion for Extension to serve and file its Brief.

With highest regards, I am

Respectfully yours,

McNAIR LAW FIRM, P.A.

Robert L. Widener
by Janeen Dealy with permission
Robert L. Widener

RLW/as

Enclosures

cc Curtis L. Ott, Esq.
Daniel T. Sullivan, Esq.
Keith D. Munson, Esq.
Sandi R. Wilson, Esq.

McNair Law Firm P.A.
1221 Main Street
Suite 1800
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

James R Barber, III, Circuit Court Judge
G Thomas Copper, Jr , Circuit Court Judge

Opinion No 4592 (S C Ct App Filed July 15, 2009)

Monica Weston,

Appellant,

v

Kims Dollar Store and
CIBA Vision, a division of Novartis Company

Respondents

PROOF OF SERVICE

The undersigned hereby certifies that, on the 31st day of August, 2011, (s)he delivered a copy of the attached **RESPONDENT CIBA VISION'S MOTION FOR EXTENSION** to the person(s) hereinafter named, at the place(s) and address(es) stated below, via U S Mail, which is/are the last known address(es)

A Victor Rawl, Esq
Robert L Widener, Esq
Celeste T Jones, Esq
Andrew G Melling, Esq
McNair Law Firm, P A
1301 Gervais St
Columbia, SC 29201

Stevens B Elliott, Esq
P O Box 6922
Columbia, SC 29260

Daniel T Sullivan, Esq
Young and Sullivan, L L P
907 Calhoun St
Columbia, SC 29201

RECEIVED

SEP 02 2011

S.C. SUPREME COURT


Sandi R Wilson

**WOMBLE
CARLYLE
SANDRIDGE
& RICE**
A PROFESSIONAL LIMITED
LIABILITY COMPANY



550 South Main Street Suite 400
Greenville SC 29601

Mailing Address
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Fax (864) 255 5440
www.wcsr.com

Sandi R. Wilson
Direct Dial (864) 255 5416
Direct Fax (864) 239 5870
E mail swilson@wcsr.com

September 1, 2011

Ms Linda Allen
Clerk of Court, South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al (2)
Civil Action No 2005-CP-40-0655
Opinion No 4592
Heard June 9, 2009 – File July 15, 2009

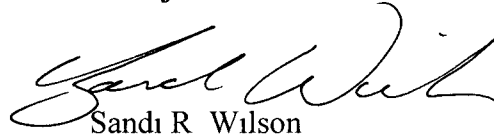
Dear Ms Allen

Per your conversation with our office, enclosed herein is an original and one copy of a Proof of Service in connection with our Motion for Extension. If you would please return a file-stamped copy in the self-addressed, stamped envelope provided.

Thank you for your consideration in this regard.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company



Sandi R. Wilson

SRW dhv
Enclosures

RECEIVED
SEP 02 2011
S.C. SUPREME COURT

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Novartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

ORDER

For good cause having been shown, the time for serving and filing the Brief of Respondent on behalf of CIBA VISION in the above entitled matter is hereby extended until October 6, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

September 2, 2011

cc Robert L. Widener, Esquire
Celeste T. Jones, Esquire
A. Victor Rawl, Jr, Esquire
Andrew G. Melling, Esquire
Stevens Bultman Elliott, Esquire
Curtis L. Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D. Munson, Esquire
Sandi R. Wilson, Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

James R Barber, III, Circuit Court Judge
G Thomas Copper, Jr , Circuit Court Judge

Opinion No 4592 (S C Ct App Filed July 15, 2009)

Monica Weston,

Appellant,

v

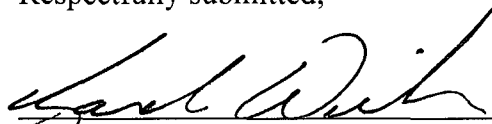
Kims Dollar Store and
CIBA Vision, a division of Novartis Company

Respondents

**RESPONDENT CIBA VISION'S MOTION FOR
EXTENSION OF TIME TO FILE BRIEF**

The Brief of Respondent is currently due on September 6, 2011 Due to conflicts in the schedule of counsel, Respondent respectfully requests that the time for filing and serving their Brief be extended thirty (30) days until October 6, 2011

Respectfully submitted,



Kerth D Munson (SC Bar No 13400)
Sandi R Wilson (SC Bar No 16896)
Womble Carlyle Sandridge & Rice, PLLC
P O Box 10208
Greenville, SC 29603
Phone (864) 255-5400
Fax (864) 255-5480

RECEIVED

SEP 01 2011

S.C. SUPREME COURT

ATTORNEYS FOR RESPONDENT CIBA VISION

August 31, 2011
Greenville, SC

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

James R Barber, III, Circuit Court Judge
G Thomas Copper, Jr , Circuit Court Judge

Opinion No 4592 (S C Ct App Filed July 15, 2009)

Monica Weston,

Appellant,

v

Kims Dollar Store and
CIBA VISION, a division of Novartis Company

Respondents

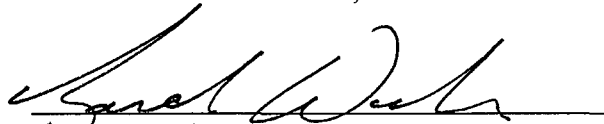
PROOF OF SERVICE

The undersigned hereby certifies that, on the ___ day of August, 2011, (s)he delivered a copy of the attached **RESPONDENT CIBA VISION'S MOTION FOR EXTENSION** to the person(s) hereinafter named, at the place(s) and address(es) stated below, via U S Mail, which is/are the last known address(es)

A Victor Rawl, Esq
Robert L Widener, Esq
Celeste T Jones, Esq
Andrew G Melling, Esq
McNair Law Firm, P A
1301 Gervais St
Columbia, SC 29201

Stevens B Elliott, Esq
P O Box 6922
Columbia, SC 29260

Daniel T Sullivan, Esq
Young and Sullivan, L L P
907 Calhoun St
Columbia, SC 29201


Sandi R Wilson



August 31, 2011

The Honorable Daniel E Shearouse
Clerk of Court, South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al (2)
Civil Action No 2005-CP-40-0655
Opinion No 4592
Heard June 9, 2009 – File July 15, 2009

Dear Mr Shearouse

On behalf of Respondent CIBA Vision, we enclose an original and seven copies of our Motion for Extension, respectfully requesting a 30-day extension from September 6, 2011, to October 6, 2011, in which to file our Brief Also enclosed is an original and one copy of the Proof of Service for same, and our check in the amount of \$25 for the cost of this Motion If you would please return a file-stamped copy in the self-addressed, stamped envelope provided

Thank you for your consideration in this regard

RECEIVED

SEP 01 2011

S.C. SUPREME COURT
pm 8-31-11

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company

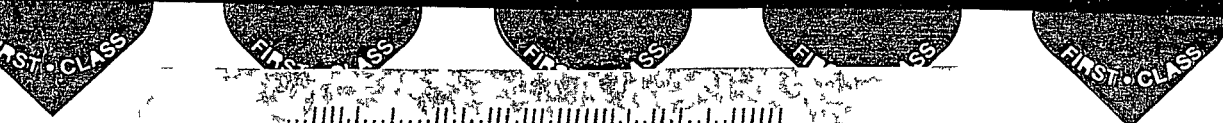

Sandi R Wilson

SRW lw

Enclosures

cc Robert L Widener, Esq (w/enc)
A Victor Rawl, Jr, Esq (w/enc)
Daniel T Sullivan, Esq (w/encl)
Curtis L Ott, Esq (w/encl)
Latonya Raston (w/encl)
Keith D Munson, Esq

check # 5500012060
\$2500



repost
09/13/2011
US POSTAGE

FIRST CLASS MAIL
\$01.48
ZIP 29601
04111010554

AFTER FIVE DAYS RETURN TO
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
POST OFFICE BOX 10208
GREENVILLE SC 29603 0208

First Class Mail

**WOMBLE
CARLYLE
SANDRIDGE
& RICE**
A PROFESSIONAL LIMITED
LIABILITY COMPANY

Post Office Box 10208
Greenville SC 29603 0208

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

MCNAIR
ATTORNEYS

September 1, 2011

Robert L Widener

rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

Via E-mail (lallen@sccourts.org)

The Honorable Daniel E Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Weston, Monica v Kim's Dollar Store
Opinion No 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr Shearouse

Petitioner consents to Respondent CIBA Vision's Motion for Extension to serve
and file its Brief

With highest regards, I am

Respectfully yours,

McNAIR LAW FIRM, P A

Robert L Widener
cc: Jennifer with permission
Robert L Widener

RLW/as
Enclosures

cc Curtis L Ott, Esq
Daniel T Sullivan, Esq
Keith D Munson, Esq
Sandi R Wilson, Esq

McNair Law Firm P A
1221 Main Street
Suite 1800
Columbia SC 29201

Mailing Address
Post Office Box 11390
Columbia SC 29211

mcnair.net

MCNAIR
ATTORNEYS

July 22, 2011

Robert L. Widener

rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

RECEIVED

JUL 25 2011

SC SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Weston, Monica v Kim's Dollar Store
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Petitioner consents to Respondent CIBA Vision's July 18, 2011 Motion for Extension to serve and file its Brief.

With highest regards, I am

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as

Enclosures

cc Curtis L. Ott, Esq.
Daniel T. Sullivan, Esq.
Keith D. Munson, Esq.
Sandi R. Wilson, Esq.

McNair Law Firm, P.A.
1221 Main Street
Suite 1800
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Novartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

ORDER

The request for an extension to serve and file the brief of respondent on behalf of CIBA VISION is granted and extended until September 6, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY *Brenda J Shealy*
Chief Deputy CLERK

Columbia, South Carolina

July 22, 2011

cc Robert L Widener, Esquire
Celeste T Jones, Esquire
A Victor Rawl, Jr , Esquire
Andrew G Melling, Esquire
Stevens Bultman Elliott, Esquire
Curtis L Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D Munson, Esquire
Sandi R Wilson, Esquire



July 18, 2011

The Honorable Daniel E Shearouse
Clerk of Court, South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al (2)
Civil Action No 2005-CP-40-0655
Opinion No 4592
Heard June 9, 2009 – File July 15, 2009

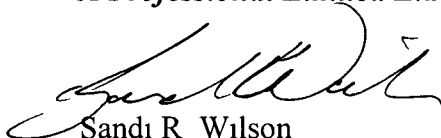
Dear Mr Shearouse

On behalf of Respondent CIBA Vision, we enclose an original and seven copies of our Motion for Extension, respectfully requesting a 30-day extension from August 4, 2011, to September 3, 2011, in which to file our Brief Also enclosed is an original and one copy of the Proof of Service for same, and our check in the amount of \$25 for the cost of this Motion If you would please return a file-stamped copy in the self-addressed, stamped envelope provided

Thank you for your consideration in this regard

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company



Sandi R Wilson

SRW lw

Enclosures

cc Robert L Widener, Esq (w/enc)
A Victor Rawl, Jr, Esq (w/enc)
Daniel T Sullivan, Esq (w/encl)
Curtis L Ott, Esq (w/encl)
Latonya Raston (w/encl)
Keith D Munson, Esq
Stevens B Elliott, Esq (w/encl)

RECEIVED

JUL 21 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

James R Barber, III, Circuit Court Judge
G Thomas Copper, Jr , Circuit Court Judge

Opinion No 4592 (S C Ct App Filed July 15, 2009)

Monica Weston,

Appellant,

v

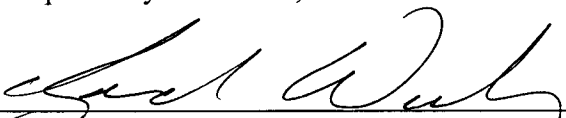
Kims Dollar Store and
CIBA Vision, a division of Novartis Company

Respondents

**RESPONDENT CIBA VISION'S MOTION FOR
EXTENSION OF TIME TO FILE BRIEF**

The Brief of Respondent is currently due on August 4, 2011 Due to conflicts in the schedule of counsel, Respondent respectfully requests that the time for filing and serving their Brief be extended thirty (30) days until September 3, 2011

Respectfully submitted,



Keith D Munson (SC Bar No 13400)
Sandi R Wilson (SC Bar No 16896)
Womble Carlyle Sandridge & Rice, PLLC
P O Box 10208
Greenville, SC 29603
Phone (864) 255-5400
Fax (864) 255-5480

RECEIVED

JUL 21 2011

SC SUPREME COURT

July 18, 2011
Greenville, SC

ATTORNEYS FOR RESPONDENT CIBA VISION

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

James R Barber, III, Circuit Court Judge
G Thomas Copper, Jr , Circuit Court Judge

Opinion No 4592 (S C Ct App Filed July 15, 2009)

Monica Weston,

Appellant,

v

Kims Dollar Store and
CIBA Vision, a division of Novartis Company

Respondents


PROOF OF SERVICE

The undersigned hereby certifies that, on the 19th day of July, 2011, (s)he delivered a copy of the attached **RESPONDENT CIBA VISION'S MOTION FOR EXTENSION** to the person(s) hereinafter named, at the place(s) and address(es) stated below, via U S Mail, which is/are the last known address(es)

A Victor Rawl, Esq
Robert L Widener, Esq
Celeste T Jones, Esq
Andrew G Melling, Esq
McNair Law Firm, P A
1301 Gervais St
Columbia, SC 29201

Stevens B Elliott, Esq
P O Box 6922
Columbia, SC 29260

Daniel T Sullivan, Esq
Young and Sullivan, L L P
907 Calhoun St
Columbia, SC 29201


Sandi R Wilson

MCNAIR
ATTORNEYS

July 5, 2011

Robert L. Widener

rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

Via Courier

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

JUL - 5 2011

SC Supreme Court

Re Weston, Monica v Kim's Dollar Store
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Enclosed for filing, please find the original and sixteen copies of the Brief of Petitioner, along with the original and one copy of the Certificate of Service. Please return the file stamped extra copy to me via our courier. Also enclosed please find thirteen additional copies of the appendix.

By copy of this letter, we are serving opposing counsel with a copy of the brief.

With highest regards, I am

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as
Enclosures

cc Curtis L. Ott, Esq.
Daniel T. Sullivan, Esq.
Keith D. Munson, Esq.
Sandi R. Wilson, Esq.

McNair Law Firm P.A.
1221 Main Street
Suite 1800
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Novartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

ORDER

For good cause having been shown, the time for serving and filing the Brief of Petitioner and the additional copies of the Appendix in the above entitled matter is hereby extended until July 5, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY 

Clerk

Columbia, South Carolina

June 7, 2011

cc Robert I. Widener, Esquire
Celeste T. Jones, Esquire
A. Victor Rawl, Jr., Esquire
Andrew G. Melling, Esquire
Stevens B. Elliott, Esquire
Curtis L. Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D. Munson, Esquire
Sandi R. Wilson, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G Thomas Cooper, Jr , Circuit Court Judge

Opinion No 4592
Heard June 9, 2009 – Filed July 15, 2009

(3)

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA Vision,
a Division of Novartis Company,

Respondents

MOTION FOR EXTENSION TO SERVE AND FILE
BRIEF OF PETITIONER
AND ADDITIONAL COPIES OF APPENDIX

The Brief of Petitioner and additional copies of the Appendix are currently due June 3, 2011 Preliminary settlement talks have not yielded any meaningful discussion Accordingly, Petitioner respectfully requests that the time for serving and filing the Brief and additional copies of the Appendix be extended thirty (30) days until July 5, 2011

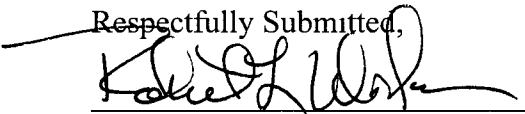
RECEIVED

JUN 07 2011

SC SUPREME COURT

June 3, 2011
Columbia, SC

Respectfully Submitted,


Robert L. Widener
McNair Law Firm, P A
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

G Thomas Cooper, Jr , Circuit Court Judge

Case No 05-CP-40-0655

Opinion No 4592
Heard June 9, 2009 – Filed July 15, 2009

Monica Weston,

Petitioner,

v

Kim's Dollar Store and
CIBA Vision, a division of Novartis Company,

Respondents

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served a copy of the Motion for Extension to Serve and File Brief of Petitioner and Additional Copies of Appendix by depositing a copy in the United States Mail, postage prepaid, on June 3rd, 2011 addressed to the attorneys of record, as follows

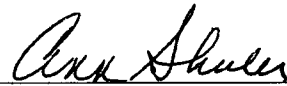
Keith D Munson, Esquire
Sandi R Wilson, Esquire
Womble Carlyle Sandridge & Rice, PLLC
Post Office Box 10208
Greenville, SC 29603

Curtis L. Ott, Esquire
Turner, Padgett, Graham & Laney
Post Office Box 1473
Columbia, SC 29202

Attorneys for the Respondent CIBA Vision

Daniel T. Sullivan, Esquire
Young and Sullivan, L.L.P.
907 Calhoun Street
Columbia, SC 29201

Attorney for the Respondent Kim's Dollar Store



Ann Shuler

MCNAIR
ATTORNEYS

June 3, 2011

Robert L. Widener

rwidener@mcnair.net

T (803) 799 9800
F (803) 753 3278

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

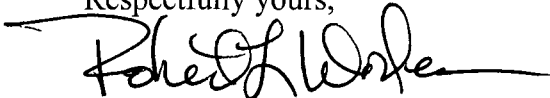
Re Weston, Monica v Kim's Dollar Store (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Enclosed for filing, please find the original and seven copies of Petitioner's Motion for Extension to Serve and File Brief of Petitioner and Additional Copies of Appendix, along with the original and one copy of the Certificate of Service. Also enclosed is our check in the amount of \$25.00.

By copy of this letter, we are serving counsel of record with a copy of the motion on counsel of record by U.S. Mail.

Respectfully yours,



Robert L. Widener

RLW/as
Enclosures

cc Keith D. Munson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

McNair Law Firm P.A.
The Tower at 1301 Gervais
1301 Gervais Street, 18th Floor
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

RECEIVED

JUN 07 2011

SC SUPREME COURT
pm 6-3-11

rec'd check #220372
\$25.00

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Novartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

ORDER

For good cause having been shown, the time for serving and filing Brief of Petitioner and the additional copies of the Appendix in the above entitled matter is hereby extended until June 3, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY

Aracida A. Shealy
Clerk
Chief Deputy

Columbia, South Carolina

May 6, 2011

cc Robert L. Widener, Esquire
Celeste Jones, Esquire
A Victor Rawl, Jr, Esquire
Andrew G. Melling, Esquire
Stevens Bultman Elliott, Esquire
Curtis L. Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D. Munson, Esquire
Sandi R. Wilson, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G Thomas Cooper, Jr , Circuit Court Judge

Opinion No 4592
Heard June 9, 2009 – Filed July 15, 2009

(g)

Monica Weston,

Petitioner,

v

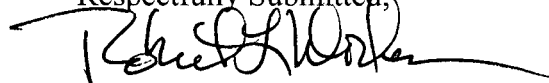
Kim's Dollar Store and CIBA Vision,
a Division of Novartis Company,

Respondents

MOTION FOR EXTENSION TO SERVE AND FILE
BRIEF OF PETITIONER
AND ADDITIONAL COPIES OF APPENDIX

The Brief of Petitioner and additional copies of the Appendix are currently due May 4, 2011. Due to conflicts in the schedule of counsel, Petitioner respectfully requests that the time for serving and filing the Brief and additional copies of the Appendix be extended thirty (30) days until June 3, 2011. Counsel for Respondents has consented to this motion.

Respectfully Submitted,



Robert L. Widener
McNair Law Firm, P A
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
Attorneys for Petitioner

May 4, 2011
Columbia, SC

RECEIVED

MAY 06 2011

SC SUPREME COURT

Check # 219576
\$2500

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

G Thomas Cooper, Jr , Circuit Court Judge

Case No 05-CP-40-0655

Opinion No 4592
Heard June 9, 2009 – Filed July 15, 2009

Monica Weston,

Petitioner,

v

Kim's Dollar Store and
CIBA Vision, a division of Novartis Company,

Respondents

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served a copy of the Motion for Extension to Serve and File Brief of Petitioner and Additional Copies of Appendix by depositing a copy in the United States Mail, postage prepaid, on May 4, 2011 addressed to the attorneys of record, as follows

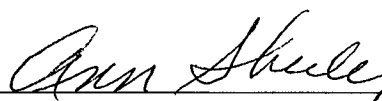
Keith D Munson, Esquire
Sandi R Wilson, Esquire
Womble Carlyle Sandridge & Rice, PLLC
Post Office Box 10208
Greenville, SC 29603

Curtis L. Ott, Esquire
Turner, Padgett, Graham & Laney
Post Office Box 1473
Columbia, SC 29202

Attorneys for the Respondent CIBA Vision

Daniel T. Sullivan, Esquire
Young and Sullivan, L L P
907 Calhoun Street
Columbia, SC 29201

Attorney for the Respondent Kim's Dollar Store



Ann Shuler

MCNAIR
ATTORNEYS

May 4, 2010

Robert L. Widener

rwidener@mcnair.net

T (803) 799 9800

F (803) 753 3278

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

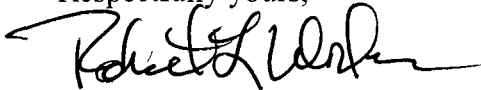
Re Weston, Monica v Kim's Dollar Store (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Enclosed for filing, please find the original and seven copies of Petitioner's Motion for Extension to Serve and File Brief of Petitioner and Additional Copies of Appendix, along with the original and one copy of the Certificate of Service. Also enclosed is our check in the amount of \$25.00.

By copy of this letter, we are serving counsel of record with a copy of the motion on counsel of record by U.S. Mail.

Respectfully yours,



Robert L. Widener

RLW/as
Enclosures

cc Keith D. Munson, Esq.
Sandi R. Wilson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

McNair Law Firm, P.A.
The Tower at 1301 Gervais
1301 Gervais Street, 18th Floor
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

RECEIVED

MAY 06 2011

SC SUPREME COURT
pm 5-4-11

COLUMBIA 1039297v1

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Norvartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

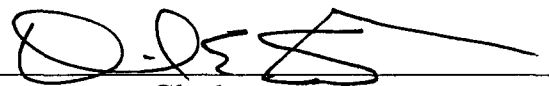
ORDER

For good cause having been shown, the time for serving and filing the Brief of
Petitioner and additional copies of the Appendix in the above entitled matter is
hereby extended until May 4, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 5, 2011

cc Robert L. Widener, Esquire
Celeste T. Jones, Esquire
A. Victor Rawl, Jr., Esquire
Andrew G. Melling, Esquire
Stevens Bultman Elliott, Esquire
Curtis L. Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D. Munson, Esquire
Sandi R. Wilson, Esquire

MCNAIR
ATTORNEYS

April 4, 2011

Robert L. Widener

rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

Via Courier

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Weston, Monica v Kim's Dollar Store

Dear Mr. Shearouse

The Brief of Petitioner and additional copies of the appendix are due April 4, 2011 with regard to the above referenced case. Due to conflicts in the schedule of counsel, Petitioner respectfully requests a thirty day extension to file and serve the Brief of Petitioner and provide the additional copies of the appendix. This extension would make the brief and additional copies of the appendix due on May 4, 2011. We have enclosed our check in the amount of \$25.00 for the fee for this request.

We are advising counsel for the Respondent of this request via facsimile and by U.S. Mail.

Respectfully yours,

McNAIR LAW FIRM, P.A.

Robert L. Widener

Robert L. Widener

RLW/as
Enclosure

cc Curtis L. Ott, Esq.
Daniel T. Sullivan, Esq.
Keith D. Munson, Esq.
Sandi R. Wilson, Esq.
Stevens B. Elliott, Esq.

RECEIVED

APR - 4 2011 HD

SC Supreme Court

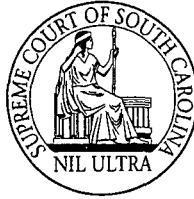
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The Supreme Court of South Carolina

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March 3, 2011

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Re Weston, Monica v Kim's Dollar Store

Dear Counsel

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before April 4, 2011. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Weston, Monica v Kim's Dollar Store
Page Two
March 3, 2011

Very truly yours,



CLERK

DES/lda

Enclosure

cc Curtis L Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D Munson, Esquire
Sandi R Wilson, Esquire

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

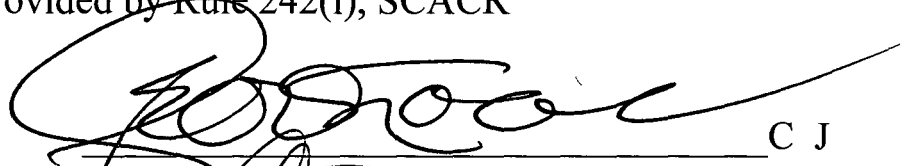
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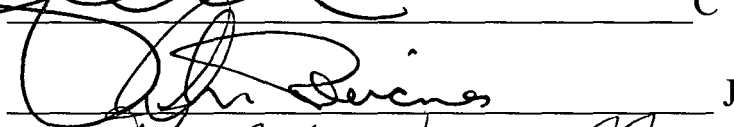
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VISION, a division of Norvartis
Company,

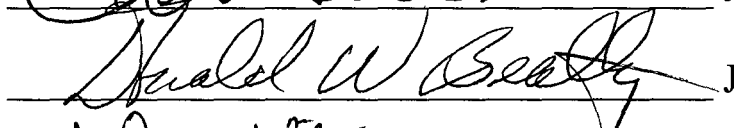
Respondents

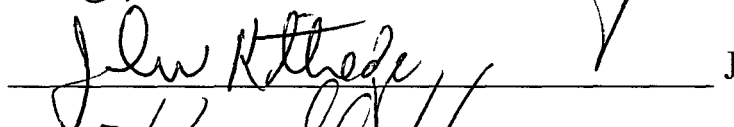
ORDER


We grant the petition for a writ of certiorari to review the Court of Appeals' decision in *Weston v Kim's Dollar Store*, 385 S C 520, 684 S E 2d 769 (Ct App 2009) The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR


C J


J

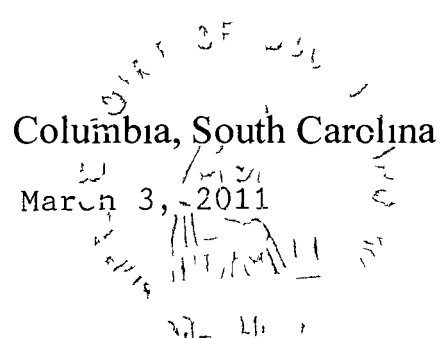

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Columbia, South Carolina

March 3, 2011



THE STATE OF SOUTH CAROLINA
In The Supreme Court

ORIGINAL

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
James R Barber, III, Circuit Court Judge
G Thomas Cooper, Jr , Circuit Court Judge

RECEIVED

FEB 17 2010

S.C. SUPREME COURT

Opinion No 4592 (S C Ct App Filed July 15, 2009)

Monica Weston,

Petitioner,

v

Kim's Dollar Store and
CIBA Vision, a division of Norvartis Company

Respondents

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on November 19, 2009

QUESTIONS PRESENTED

- 1 CIBA is entitled to preemption if and only if it received a pre-market approval (PMA) letter for its non-corrective lenses
- 2 Viewing the evidence, inferences, and ambiguities in the light most favorable to Customer, and construing the same most strongly against CIBA, there is a question of fact as to whether CIBA applied for and/or received PMA approval for its non-corrective lenses
- 3 The Court of Appeals misapprehended how MDA preemption comes into existence and therefore misapprehended the requisite showing for summary judgment on the issue of preemption
- 4 The Court of Appeals misapprehended Customer's jurisdiction argument and appeared to usurp the exclusive jurisdiction of the FDA

STATEMENT OF THE CASE

This is a federal preemption case. Federal preemption is an invasion of state sovereignty in derogation of the federalism principles that are the cornerstone of American government. Thus, a statute imposing federal preemption is narrowly construed. *Medtronic Inc v Lohr*, 116 S Ct 2240, 2250 (U S 1996). The trial court granted partial summary judgment to Respondent CIBA VISION (CIBA) based on federal preemption, and the Court of Appeals affirmed (R 1-18, Appx , Tab A at 1-18). Petitioner seeks certiorari, reversal, and remand for trial.

Petitioner (Customer) purchased “FreshLook” colored, non-corrective contact lenses manufactured by CIBA. These lenses were not designed to and did not correct any vision problems. Their purpose is to cosmetically change the color of the eye.

The contacts caused an infection and rendered Customer blind in her left eye, and she sued CIBA for damages. CIBA moved for partial summary judgment on the basis of federal preemption. CIBA contended (1) it had received pre-market approval for its non-corrective lenses from the Food and Drug Administration (FDA), and (2) this approval gave rise to federal preemption that precluded any claims based on state law requirements that differed from the requirements imposed by the FDA in the pre-market approval process. The trial court granted partial summary judgment to CIBA and the Court of Appeals affirmed.

Contact lenses were developed as a replacement for eyeglasses in correcting visual acuity. With the advent of adding color to contact lenses, so as to change the color of the eye, non-corrective lenses became a viable product line despite not correcting visual acuity.

CIBA aggressively marketed its colored, non-corrective lenses. Beginning in 2001, CIBA launched a five-year, print advertising campaign for numerous FreshLook lens models directly to consumers at a cost of approximately \$23 Million Dollars (R 324-325, 339). This ad

campaign was directed primarily at women between the ages of 18-34 (Id at 339-345), Customer here was 28 when she purchased the lenses. An earlier ad campaign had been aimed at even younger teenage girls, using a teen icon (Christina Aguilera) and the leading internet site for marketing to teens (R 391)

Beginning in 2002, CIBA launched a \$20 Million Dollar advertising campaign emphasizing FreshLook contact lenses as a cosmetic accessory like make-up (R 391) Beginning in 2003, CIBA also launched television advertising, the 2003 budget was \$8 0 Million Dollars (Id at 326) In June 2003, CIBA updated its packaging to feature eye-catching graphics to appeal to consumers (Id at 390-391) ¹

All advertising campaigns were directed at persons with and without vision problems (Id at 330-335, 346-363) Approximately 20% of all FreshLook contact lens sales were non-corrective “plano” lenses that were for beauty enhancement, not vision correction (Id at 334, 337-338)

During these ad campaigns, CIBA did not emphasize the need for a prescription to obtain the lenses, including the non-corrective (plano’) lenses, often stating only things like “see your participating eye care professional” These same ads were directed at persons without vision problems with phrases like “Even if your vision is perfect” (See generally R 364-389, and 394-398, 399, 400-449) Many of the ads used phrases like “just for the moment” and “Just for tonight” (emphasis in original), while others invited the consumer to “Change the color of your eyes as often as you change your mind,” all emphasizing a short-term beauty use of the lenses (R 394-398, 399, 418) Other ads emphasized coordination of lens color with makeup and other

¹ This was a very odd expenditure in light of CIBA’s claim that lenses were never to be sold directly to consumers. If, as CIBA claims, its intent was to always sell through an eye care professional, there was no need to spruce up the box. An inference thus arises from this fact, particularly when combined with CIBA’s knowledge that its lenses were in fact being sold by non-professionals without a prescription directly to customers in a “black market” that CIBA intended the “spruced up” box to help generate sales directly to consumers.

fashion accessories (*E g*, R 400, 428-445) Some ads referred to the FreshLook lenses as “*Cosmetic Contact Lenses*” (emphasis added) (*E g*, R 404-406, 418-420)

A “black market” developed for colored, non-corrective contact lenses By March 2002, CIBA knew its lenses were “being resold to unauthorized channels that passed them out like lollipops to teens” and knew of several resulting and significant injuries to minor children (R 766, see also R 38-39, ¶¶ 10-11) In September 2002, and throughout the time of the above-summarized ad campaigns, CIBA knew there was an ever-growing problem with black market sales of its non-corrective lenses without a prescription and without the warning information that accompanied the packages (R 463-165, see also R 38-39, ¶¶ 10-11) CIBA knew that would-be users needed the usage instructions and medical advice to properly use and care for the lenses (R 465) CIBA knew its non-corrective (“plano”) lenses were being sold at beauty product trade shows throughout the country, as well as beauty supply stores, nail salons, flea markets, video stores, and gas stations (R 465-466, 468, 474-475, see also R 38-39, ¶¶ 10-11) It knew these sales were on the rise (R 468) CIBA knew that consumers often believed a prescription and professional fitting were not necessary for lenses that changed eye color without any vision correction, *i e*, for its non-corrective “plano” lenses (R 468) It knew that these unauthorized sellers were “breaking down” the packages and selling individual blister packs with one-pair of lenses but without any warnings or instructions (R 467, 470-471, see also R 38, ¶ 10) CIBA knew all of this conduct could cause and had caused serious injuries to consumers (R 469-470, see also R 38-39, ¶¶ 10-11)

By March 2004, CIBA knew that its non-corrective lenses accounted for 98% of black market sales (R 767) Despite all of this knowledge, CIBA failed to take reasonable steps to stop these sales to consumers like Customer (R 38-39 at ¶¶ 10-11)

In March 2004, Customer purchased CIBA's non-corrective ("plano") FreshLook Color lenses from Respondent Kim's Dollar Store without proper usage instructions, without proper labeling, and without proper involvement by a qualified eye care professional (R 39 at ¶¶ 12-16) Two days later, the Customer experienced severe eye pain from an infection caused by the lenses (R 39-40 at ¶¶ 17-21) Her condition worsened despite treatment, and she eventually went blind in her left eye (R 40 at ¶ 21)

ARGUMENT

BURDEN OF PROOF AND STANDARD OF REVIEW CIBA bore the burden of proving it had received pre-market approval from the FDA for its non-corrective lenses *Eldridge v City of Greenwood*, 503 S E 2d 191, 197 (S C App 1999) ("the party claiming preemption bears the burden of proving it") In seeking summary judgment, CIBA bore the burden of showing there was no issue of fact as to whether it had received this pre-market approval from the FDA Rule 56, SCRCP In deciding summary judgment "All ambiguities, conclusions and inferences arising from the evidence must be construed most strongly against [CIBA]" as to whether it had received this pre-market approval from the FDA *Tupper v Dorchester County*, 487 S E 2d 187, 191 (S C 1997) (emphasis added)

SUMMARY OF ARGUMENT It is undisputed that CIBA has 'preemption immunity' *if and only if*, CIBA applied for and received pre-market approval from the FDA for its non-corrective lenses It is undisputed that this pre-market approval, and the resulting "preemption immunity," is obtained *if and only if*, the FDA issued a pre-market approval letter (PMA) for the non-corrective lenses In other words, there is only one way for CIBA to prove preemption possession and presentation of a PMA letter for non-corrective lenses It is undisputed that CIBA never sought and never received a PMA letter specifically for its non-corrective lenses as

such. It is undisputed that every PMA letter approving contact lenses in a positive-to-negative diopter power range included language limiting the pre-market approval to lenses “indicated for the correction of visual acuity.” It is undisputed that the non-corrective, zero power lenses at issue here do not and cannot correct visual acuity.² It is thus undisputable that CIBA has failed to produce the only evidence that is competent to prove its entitlement to preemption immunity.

I CIBA is entitled to preemption if and only if it received a pre-market approval (PMA) letter for its non-corrective lenses

Federal preemption is an invasion of state sovereignty in derogation of the federalism principles that are the cornerstone of American government. Thus, a statute imposing federal preemption is narrowly construed. *Medtronic Inc v Lohr*, 116 S. Ct. 2240, 2250 (U.S. 1996).

There are three basic types of federal preemption: (1) “express preemption,” in which Congress defines the scope of preemption, (2) “field preemption,” in which Congress so completely occupies a regulatory field that it has impliedly preempted state law, and (3) “conflict preemption,” in which state laws are preempted to the extent they conflict with federal law, *i.e.*, when compliance with both state and federal law is impossible or state law frustrates the federal purpose and hinders fulfillment of federal objectives. *State v. 192 Coin-Operated Video Game Machines*, 525 S.E.2d 872, 877 (S.C. 2000). The present case involves application of an express conflict preemption statute in the Medical Device Amendments of 1976 (MDA), which provides in pertinent part that state laws concerning medical devices are preempted if (1) they are different from or in addition to the requirements imposed under the MDA, and (2) they relate to the safety or effectiveness of the device or to any other requirement imposed by the MDA. 21 U.S.C. § 360k(a).

² Diopter is a unit of measurement of the refractive power of lenses. Glasses and contact lenses correct visual acuity by refracting and focusing light. Non-corrective (zero power) lenses do not refract or focus light.

The MDA preemption finds its roots in the Food and Drug Act of 1906, which was Congress's first significant public health legislation and introduced a broad prohibition against the manufacture or sale of adulterated or misbranded foods and drugs *Medtronic Inc v Lohr*, 116 S Ct 2240, 2246 (U S 1996) Congress expanded this prohibition with the Food, Drug, and Cosmetic Act of 1938 to include misbranded or adulterated medical devices and cosmetics, but medical devices otherwise remained largely unregulated *Id* In the 1960's and 1970's, there was a significant increase in the number and complexity of medical devices, and there were notable injury-producing failures (*e g*, the Dalkon Shield) *Id*, see also *Riegel v Medtronic Inc*, 128 S Ct 999, 1003 (U S 2008) Several states adopted regulations for medical devices in response to growing public concern *Id* Congress entered the fray with the adoption of Medical Device Amendments of 1976 (MDA), largely nullifying the state regulations in favor of detailed federal oversight and enacting the preemption statute at issue here *Id*

The federal oversight scheme was based upon classification of medical devices into one of three classes depending on the risks presented by the device Class I devices are largely benign and subject to the lowest level of regulations Class II devices present some dangers and are subject to somewhat higher standards Class III devices present the highest dangers and are subject to stringent standards *Riegel*, 128 S Ct at 1003 Contact lenses are Class III devices

Congress delegated the power to implement the MDA through regulations to the Secretary of Health and Human Services The Secretary in turn delegated this task to the Food and Drug Administration (FDA) *Lohr*, 116 S Ct at 2249 n 5 The FDA in turn developed a pre-market approval (PMA) process for Class III devices, which yields device-specific regulations and results in device-specific conflict preemption based on those regulations *Riegel*, 128 S Ct at 1004-1005, 107 In short, preemption does not arise directly from the statute enacted by

Congress, rather, it arises from a device-specific, administrative review process (PMA) conducted by specialists working for the FDA

Pre-market approval by the FDA is a rigorous process that has three basic steps. First, the manufacturer submits an application for pre-market approval, which is typically a multi-volume document that details everything about the product, including the use of the product and proposed directions, warnings, and labeling. *Riegel*, 128 S. Ct. at 1004. Second, the FDA reviews the application, possibly sending it to an expert panel for comment or requesting additional information from the applicant. *Id.* Third, if the FDA approves the application, it sends a “PMA letter” granting approval and noting any conditions imposed on the approval. *Id.* at 104-105.

The issuance of a PMA letter subjects the device to federal regulation and triggers conflict preemption under the MDA. Thus, any federal preemption for CIBA’s non-corrective contact lenses arose if, and only if, CIBA received a PMA letter for its non-corrective lenses. Concomitantly, a PMA letter approving CIBA’s non-corrective lenses is the only evidence that is competent to prove federal preemption.

II Viewing the evidence, inferences, and ambiguities in the light most favorable to Customer, and construing the same most strongly against CIBA, there is a question of fact as to whether CIBA applied for and/or received PMA approval for its non-corrective lenses

There are only two possible ways that CIBA could have obtained PMA approval for its non-corrective lenses. First, it could have applied for approval of its non-corrective lenses in a “stand alone” application, *i.e.*, submission of only its non-corrective lenses for approval. CIBA’s Head of Global Regulatory Affairs admitted, however, that CIBA never sought or obtained this “stand alone” approval of its non-corrective lenses. (R. 459)

Second, CIBA could have applied for pre-market approval of a diopter range of lenses, including non-corrective (zero power) lenses. It appears CIBA asserts that it did so, but it did not submit any PMA application in support of its summary judgment motion that included non-corrective (zero power) lenses. Rather, CIBA relies solely on PMA letters that approved lenses in a plus-to-minus diopter range and argues this necessarily included approval of its non-corrective lenses, because a plus-to-minus range includes zero. Every “diopter range” letter, however, includes the limitation that the lenses being approved are “indicated for the correction of visual acuity.” Non-corrective (zero power) lenses simply do not and cannot correct visual acuity. At the very least, this limitation gives rise to an inference that the PMA letters relied upon by CIBA did not include approval of its non-corrective lenses. Again, CIBA’s Head of Global Regulatory Affairs admitted that all of CIBA’s “diopter range” PMA letters included the limitation that the lenses being approved were “indicated for the correction of visual acuity.” (R 461)

Preemption under the MDA for Class III medical devices arises only upon the issuance of a device-specific PMA letter that subjects the device to device-specific regulations and thereby gives rise to device-specific preemption. Thus, preemption for any particular device can be proven only by a PMA letter that is specific for that device. Absent such proof, there simply is no preemption. To date, CIBA has not submitted or produced in discovery any PMA letter that specifically approves its non-corrective lenses as such or approves a diopter-range of lenses as such without the limitation of “indicated for the correction of visual acuity.” If CIBA possesses such a PMA letter, which is the only way to prove MDA preemption, Customer challenges CIBA to produce it now. Customer consents to CIBA supplementing the record before this Court with any such letter.

III The Court of Appeals misapprehended how MDA preemption comes into existence and therefore misapprehended the requisite showing for summary judgment on the issue of preemption

The Court of Appeals misapprehended the touchstone requirement for MDA preemption, to-wit a PMA letter from the FDA approving CIBA's non-corrective lenses as such, or a PMA letter approving a diopter range of lenses that included the non-corrective (zero power) lenses but did not limit the approval to lenses "indicated for the correction of visual acuity" This letter is simply the only way to prove MDA preemption The Court of Appeals, however, relied upon "affidavits, depositions, and documentation, *indicating* [CIBA's non-corrective lenses were] approved by the FDA pursuant to the PMA process" (Appx Tab A at 9) (emphasis added) This was error for several reasons

First, CIBA bore the ultimate burden of proof on the defense of preemption, and in seeking summary judgment, it bore the burden of *demonstrating* not *indicating*" actual FDA approval of its non-corrective lenses as such through a PMA letter³ This could be done by presentation of a PMA letter that approved the non-corrective lenses as such Absent this PMA letter there simply cannot be any preemption, because it is the only means for obtaining FDA approval of non-corrective lenses as such, and this approval is the trigger for MDA preemption

Second, testimony from experts or others, by affidavit or deposition, simply cannot prove the touchstone requirement for preemption, *i e*, the requisite PMA letter This letter, not testimony reflecting at best a reading of some letter, is the only way to prove preemption Such testimony, at best, creates a question of fact but cannot demonstrate the absence of a question of

³ Later in its opinion the Court of Appeals observed "we find no *indication* in the record the DHHS or the FDA excluded any specific diopter or diopter range from the applicable PMA or its supplements" (Appx Tab A at 11) (emphasis added) This observation is factually incorrect and legally irrelevant Factually it is *undisputed* that every PMA letter approving a diopter range of lenses as such included the limitation of the lenses being indicated for the correction of visual acuity and it is *undisputed* that non-corrective lenses cannot and do not correct visual acuity Legally Customer bore no burden of proving exclusion or anything else Rather CIBA bore the burden of proving beyond question that the FDA has issued a PMA approval letter that actually included non-corrective lenses as such It manifestly failed to do so under the undisputed facts in this case

fact as to whether CIBA requested and received a PMA letter actually approving non-corrective lenses as such

Third, the “documentation” relied upon by the Court of Appeals does not and cannot support summary judgment. This documentation primarily consists of *supplemental* PMAs, which do not and cannot satisfy the touchstone requirement. It is *undisputed* that the supplemental PMA process is an “add-on” system, *i.e.*, it does not involve going back to ground zero and reconsidering or reapproving the prior PMAs or applications. For example, with respect to the supplemental PMA regarding UV protection (upon which the Court of Appeals relied heavily), the PMA merely and only approved adding UV protection to those lenses that had already been approved in a prior PMA(s) (Appx Tab A at 10). It is one of these prior PMAs, not the UV-PMA, that must satisfy the touchstone requirement of approving non-corrective lenses as such or approving a diopter range of lenses as such but without the limitation of the lenses being “indicated for the correction of visual acuity.” The same is true of all the other “documentation” relied upon by the Court of Appeals.

Fourth, contrary to the Court of Appeals’ apparent finding, there is no evidence that CIBA provided its non-corrective lenses as “exemplars” in support of an application for approval of zero-power lenses as such or approval of a diopter range of lenses as such (Appx Tab A at 11). Indeed, the record is devoid of any application for approval of non-corrective lenses as such or approval of a diopter range of lenses as such. Though unclear, the Court of Appeals may have been referring to the 1994 submission letter appearing at R. 667-670. That submission letter requested approval of language and information used in labeling and package inserts (R. 667). The “exemplars” for this request apparently included packages for non-corrective lenses (R. 670). This is not conclusive evidence of FDA approval for the following reasons:

- 1 The submission letter does not request approval of non-corrective lenses (R 667)
- 2 The submission letter simply requests amendatory approval of labeling and package inserts for lenses that had been approved in a prior PMA(s), *i e*, it is part of the “add-on” process noted above (R 667) Again, it is this prior PMA (if it exists) that would trigger MDA preemption
- 3 Most importantly, the record is devoid of any PMA approving this submission letter and, even were there such a PMA, it would remain irrelevant to the question of summary judgment on preemption unless it approved non-corrective lenses as such or approved a diopter range of lenses as such but without the limitation of the lenses being “indicated for the correction of visual acuity”

In short, no “documentation” in the record satisfies the touchstone requirement for federal preemption Any such documentation can only be, and preemption can only be proven by, a PMA letter specifically approving CIBA’s non-corrective lenses as such or a PMA letter approving a diopter range of lenses as such but without the limitation of the lenses being “indicated for the correction of visual acuity” CIBA has never produced or submitted any such letter in discovery or to any court If CIBA possesses such a PMA letter, which is the only way to prove MDA preemption, Customer challenges CIBA to produce it now Customer consents to CIBA supplementing the record before this Court with any such letter

IV The Court of Appeals misapprehended Customer’s jurisdiction argument and appeared to usurp the exclusive jurisdiction of the FDA

Contrary to the Court of Appeals’ opinion, Customer never argued the court does not have jurisdiction “over the subject matter of her suit” (Appx Tab A at 6) Rather, her argument is that, in the absence of PMA approval from the FDA, no court has jurisdiction to rule that a device is to be regulated as a medical device, thereby giving rise to federal preemption It is *undisputed* that such jurisdiction lies solely with the FDA A court’s only permissible inquiry is whether the FDA has, in fact, granted PMA approval for the device This PMA approval by the FDA is the only possible basis for federal preemption and, at the very least, the undisputed facts

of this case create a question of fact as to whether the FDA has, in fact, issued a PMA letter that approved CIBA's non-corrective lenses as such

It appears the Court of Appeals, like the trial court, mistakenly usurped the exclusive jurisdiction of the FDA to approve medical devices, thereby giving rise to federal preemption. In reading the Court of Appeals' opinion, it appears the Court came to the following conclusions

- 1 Non-corrective lenses, generally, are medical devices subject *to* regulation by the FDA
- 2 The FDA views non-corrective lenses as medical devices that are subject to regulation
- 3 CIBA views its non-corrective lenses as medical devices that are subject to regulation

The Court of Appeals concluded "The question whether CIBA's FreshLook Colors contact lenses fit the statutory definition of medical devices, thus triggering the MDA's provision preempting state law, is properly a question of law for the circuit court" (Appx Tab A at 6) (emphasis added). This simply is not the question. Fitting the statutory definition of a medical device does not trigger preemption. Actual regulation by the FDA through the issuance of a PMA is the only preemption trigger for a Class III medical device.

The controlling inquiry is not whether non-corrective lenses are medical devices, nor is it whether such lenses are "subject to" regulation. Rather, the only inquiry is whether CIBA's non-corrective lenses have, in fact, been subjected to regulation by the FDA. It matters not that CIBA's non-corrective lenses would be, could be, or should be subjected to regulation. For CIBA to assert federal preemption, it must prove its non-corrective lenses as such have in fact been subjected to regulation by the FDA. This actual regulation by the FDA is the "trigger" for federal preemption, and it can only be proven with a PMA letter specifically approving CIBA's non-corrective lenses as such or a PMA letter approving a diopter range of CIBA's lenses as

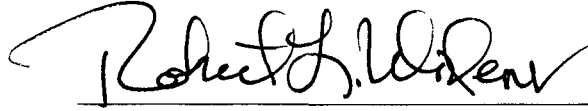
such but without the limitation of the lenses being “indicated for the correction of visual acuity”
There simply is no such PMA letter If CIBA possesses such a PMA letter, which is the only way to prove MDA preemption, Customer challenges CIBA to produce it now Customer consents to CIBA supplementing the record before this Court with any such letter

CONCLUSION

The protection of consumers from defective products is primarily the province of state law and state sovereignty. Statutes creating federal preemption are an invasion of that state sovereignty and thus are narrowly construed. Here, federal preemption arises not from a statute directly, but from an administrative review process that is commenced by an application from a manufacturer, *i.e.*, the manufacturer essentially asks the FDA to grant preemption that will insulate the manufacturer from state laws. If an invasion of state sovereignty is to arise from decisions made in an administrative review process conducted by a federal agency at the request of a manufacturer, the manufacturer manifestly must show strict compliance with the regulatory process that triggers preemption. Here, such compliance requires CIBA to possess and produce a PMA letter that approves its non-corrective lenses as such or approves a dioper range of its lenses that both includes its non-corrective (zero power) lenses and does not limit that approval to lenses “indicated for the correction of visual acuity”. CIBA has failed to do so. If CIBA possesses such a PMA letter, which is the only way to prove MDA preemption, Customer challenges CIBA to produce it now Customer consents to CIBA supplementing the record before this Court with any such letter

For all of the foregoing reasons, it is respectfully requested that this Court grant certiorari, reverse the Court of Appeals, and remand for trial

Respectfully Submitted,



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February 7, 2010
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

G Thomas Cooper, Jr , Circuit Court Judge

Case No 05-CP-40-0655

Opinion No 4592
Heard June 9, 2009 – Filed July 15, 2009

Monica Weston,

Petitioner,

v

Kim's Dollar Store and
CIBA Vision, a division of Novartis Company,

Respondents

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served a copy of the Petitioner's Petition for a Writ of Certiorari and Appendix by depositing a copies in the United States Mail, postage prepaid, on February 17, 2010 addressed to the attorneys of record, as follows


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Honorable Jeanette F. Barber
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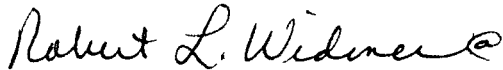
Re Weston, Monica v Kim's Dollar Store (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Ms. Barber:

Attached please find two copies of Monica Weston's Petition for a Writ of Certiorari that we are filing with the South Carolina Supreme Court this date. Please return the file stamped extra copy of the Petition to me via our courier.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as
Enclosures

cc The Honorable Daniel E. Shearouse ✓
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

James R. Barber, III, Circuit Court Judge
G. Thomas Copper, Jr., Circuit Court Judge

Opinion No. 4592 (S.C. Ct. App. Filed July 15, 2009)

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APR 21 2010

S.C. SUPREME COURT

Monica Weston,

Appellant,

v

Kims Dollar Store and
CIBA Vision, a division of Novartis Company

Respondents

**RESPONDENT CIBA VISION'S RETURN IN OPPOSITION
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COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I Should the Supreme Court invoke its discretionary jurisdiction to review whether the Court of Appeals commit reversible error in determining that federal preemption (a matter of law to be determined by the court), applied to certain of several causes of action asserted by Petitioner Weston in the underlying civil action?

- II Did the Court of Appeals commit reversible error in affirming summary judgment in favor of Respondent CIBA Vision as to certain causes of action on the basis that those causes of action are preempted by federal law and federal requirements governing regulated contact lenses under the Medical Device Amendments of 1976 to the Federal Food, Drug, and Cosmetic Act (21 U S C § 301, *et seq*)?

COUNTER-STATEMENT OF THE CASE

Petitioner Monica Weston (“Weston”) alleged causes of action for personal injury against Respondent CIBA VISION, a Novartis Company (“CIBA”), stemming from her alleged illegal purchase and use of contact lenses without a prescription from Respondent Kim’s Dollar Store (“Kim’s”) (Am Compl paras 8, 12, 15, 19, 24) (R pp 38-40) Weston’s petition relates to the partial summary judgment of certain causes of action that were dependent on warning, labeling, design, marketing and/or misbranding theories, as those claims are preempted by federal law (Order Granting SJ, R p 17) Weston’s claims for negligence per se, strict liability and breach of implied warranty were not dismissed and remain pending in the trial court If Weston prevails on the remaining causes of action, she likely will be forced to make an election of remedies Thus, in essence, Weston brings this petition, in part, merely to keep her options open

In June 2006, CIBA filed a motion for partial summary judgment on the basis that certain of Weston’s claims and legal theories were subject to federal preemption pursuant to the Medical Device Amendments of 1976 to the Federal Food, Drug, and Cosmetic Act (21 U S C § 301, *et seq*) The Honorable G Thomas Cooper, Jr , held an extended hearing on CIBA’s motion for summary judgment on August 28, 2006 On November 28, 2006, Judge Cooper issued an 18-page order granting summary judgment in favor of CIBA on the issue of federal preemption (“Order”), thereby terminating certain of Weston’s multiple claims and theories Following the denial of Weston’s motion for reconsideration, Weston filed an appeal on January 19, 2007 The Court of Appeals affirmed the dismissal of certain claims and theories in its lengthy opinion of July 15, 2009 Following the denial of a motion for reconsideration and a post-argument motion to supplement the record on appeal, Weston filed this petition

It is Weston's contention that she suffered temporary loss of vision in one eye as a result of wearing non-corrective color contact lenses manufactured by CIBA under the trade name, FreshLook Colors (Am Compl paras 3, 18-24, Transcript of Hearing ("Transcript") pp 4, 7) (R pp 37, 39-40, 264, 267) The contact lenses came in a range of powers from (-)20 00 Diopters to (+)20 00 Diopters, and are capable of correcting nearsightedness, farsightedness, and astigmatism At the zero-power point in the range, the lenses are "non-corrective" or "plano" lenses, although they still have medical and physiological effects, including protection from damaging UV radiation In addition, plano contact lenses can be used not only to change the color of the user's eye, but to address medical issues, such as monovision and ocular defects (Parisian Dep p 144) (R p 654)¹

In framing the issue underlying this petition, Weston asserts that Federal preemption arises only if FreshLook Colors plano contact lenses were approved by the FDA as "medical devices" under its pre-market approval (PMA) process prior to the purchase of those devices by Weston This is exactly what was established at the summary judgment hearing and set forth in detail in Judge Cooper's Order, as affirmed by the Court of Appeals

Weston then immediately ignores the issue she frames and, in *ad hominem* fashion, attacks CIBA for its advertising campaigns, eye catching graphics, and awareness of possible

¹ Dr Suzanne Parisian was Weston's own expert on the application of federal preemption

unauthorized reselling² What this information actually establishes is that the FDA was actively regulating these medical devices through its PMA approval authority With regard to the advertising campaigns, a number of times these advertisements included “Contact lenses, even if worn for cosmetic reasons, are medical devices that should be worn under the prescription, direction and supervision of an eye care professional” (Julie Collins Dep Exhibit 29, p 2, Exhibit 32, p 2, Exhibit 37, p 2, and Exhibit 39, pp 4 and 8) (R pp 402, 411, 425, 431, and 435)

Moreover, if third-party instances of medical substance/device abuse nullified federal regulatory authority, there would be few, if any, prescription drugs or devices available in the United States The individual contact lenses Weston allegedly purchased from Kim’s were marked “prescription only” and labeled “not to be sold individually” (Oris Dep pp 59-60, Exhibit 4) (R pp 470-471, p 588) Notwithstanding this sales restriction Kim’s, an unauthorized and unlicensed seller of contact lenses, obtained the lenses from a third party (30(b)(6) Dep of Kim’s Dollar Store pp 37-38, Pl ’s Exhibit 1) (R pp 316-317, p 322) The lenses were discarded by Weston and are not available to confirm the brand, manufacturer or other physical information

² That a device manufacturer advertises one use at one time through a particular medium has no effect on the device’s regulatory status For example, human-based collagen injection products are PMA-approved by the FDA for improvements of soft tissue appearance “such as wrinkles and acne scars” (<http://www.fda.gov/cdrh/pdf3/p800022s050a.pdf>) That the manufacturer chooses to educate the “wrinkle” audience with TV commercials, while educating the “acne scar” audience with product information at the dermatologist’s office, does not make collagen injections mere cosmetics

ARGUMENT

Summary of the Argument Weston continues to make the contorted semantic argument that unless the FDA used her chosen magic words in granting pre-market approval to FreshLook Color contact lenses, then there cannot be federal preemption. This is not the law. This should not be the law. In addition, Weston's argument fails under the weight of the undisputed facts and her own FDA expert's testimony. Courts presented with such semantic arguments in other preemption cases have summarily dismissed them.³

Standard of Review The question of federal preemption under the Medical Devices Amendments ("MDA") to the Federal Food, Drug, and Cosmetic Act ("FDCA") is a question of law for the court to decide. Cox v Shalala, 112 F 3d 151 (4th Cir 1997). Moreover, factual findings supporting matters to be determined by the Court are made by the Court and not a jury. Gardner v Kirven, 184 S C 37, 191 S E 814, 825 (1937) ("Where an appeal is taken from the findings of fact by a circuit judge, it is incumbent on the appellant to show that the decree of the circuit judge is against the weight of the evidence") (citation omitted).⁴

I The Supreme Court should not invoke its discretionary jurisdiction to review whether the Court of Appeals commit reversible error in determining that federal preemption (a matter of law to be determined by the court), applied to certain of several causes of action raised by Petitioner Weston in the underlying civil action

Rule 242(b) 1-5 [formerly Rule 226(b)] sets forth a list of considerations for this Court to

³ See, e g , Stucky v City of San Antonio, 266 F 3d 342, 343 (5th Cir 2001) where Court held that city "could not simply avoid preemption with mere semantics regarding 'consent' and 'non-consent' [and] reiterated the district court's admonishment of the same argument " "[The City] cannot, by sleight of hand (or language), simply eliminate that concern' [The City's] argument is unpersuasive " *Id*

⁴ Judge Cooper heard oral argument on August 28, 2006, and issued his comprehensive 18-page Order on November 28, 2006, after three full months to study the application of federal preemption in this case

weigh in deciding whether to issue a writ of certiorari. None of those considerations weigh in favor of Weston in this case. First, there are no novel questions of law involved in this case – just a straightforward application of Rule 56 and the long established and well recognized rules of preemption. Whaley v CSX Transportation, Inc, 362 S C 456, 481, 609 S E 2d 286, 299 (2005) (applying federal preemption to bar state tort causes of action)

Second, there was no dissent in the well reasoned opinion of the Court of Appeals. Third, the Court of Appeals’ opinion is in complete accord with the prior decisions of the Supreme Court. See, Whaley, supra, In re Campbell, 379 S C 595, 599, 666 S E 2d 908, 910-11 (2008). Fourth, because the Court of Appeals found that federal preemption applied there is no constitutional issue raised in the opinion.⁵

Fifth and finally, there is no conflict between the Court of Appeals’ opinion and the opinions of the United States Supreme Court regarding federal preemption. In fact, the recent case of Riegel v Medtronic, 128 S Ct 999, 169 L Ed 2d 892 (2008) virtually mandates the application of federal preemption in this case. Riegel substantially modified the holdings and interpretation of Medtronic, Inc v Lohr, 518 U S 470, 116 S Ct 2240, 135 L Ed 2d 700 (1996) on which Weston relies. Riegel involved a catheter manufactured by defendant Medtronic. The suit arose after plaintiff’s surgeon overinflated the catheter while performing a coronary angioplasty, causing the catheter to rupture. On review, the Supreme Court affirmed dismissal of plaintiff’s strict liability, breach of implied warranty, and negligent design, testing, inspection, distribution, labeling, marketing, and sale claims on the grounds that they were preempted by the MDA. Id at 1005-06. Post-Riegel, federal courts have found “reliance upon the highly fractured opinion of the Supreme Court in the pre- Riegel case of Medtronic, Inc v Lohr, 518

⁵ Although, had the Court of Appeals failed to recognize and give effect to federal preemption, a constitutional issue regarding the supremacy clause would have arisen.

U S 470, 116 S Ct 2240, 135 L Ed 2d 700 (1996) is misplaced ” Dorsey v Allergan, Inc., WL 703290, #6 (M D Tenn 2009)(noting that Riegel limited Lohr to “generic concerns about device regulation generally”) ⁶

II The Court of Appeals did not commit reversible error in affirming Respondent CIBA Vision’s summary judgment as to certain causes of action on the basis that those causes of action are preempted by federal law and federal requirements governing regulated contact lenses under the Medical Device Amendments of 1976 to the Federal Food, Drug, and Cosmetic Act (21 U S C § 301, *et seq*)

Weston’s four (4) questions presented are merely restatements of this fundamental question in different forms in order to give her petition the appearance of substance In essence, Weston suggests that if the Court found the PMA approval covered these contact lenses (Question III), then it is the Court itself (not the FDA) that has granted PMA approval (Question IV) because, without Weston’s “magic words”, the PMA approval does not cover these lenses (Question I), or at least Weston should be allowed to try and prove otherwise (Question II) Of course, if Weston’s overly linguistic form-over-substance argument is rejected (i e , the FDA’s PMA approval covered the FreshLook Color contact lenses allegedly worn by Weston), then the Court did not usurp the FDA’s jurisdiction⁷, the Court was correct in finding PMA approval existed, and there would be no genuine issues of material fact preventing entry of summary judgment on the issue of federal preemption (an issue which is a matter of law for the Court) To avoid unnecessary repetition of the overwhelming evidence of Pre-Market Approval and

⁶ Weston continues to rely on Lohr in her Argument without any mention of the Riegel opinion (Petition, pp 7 and 8)

⁷ For example, the FDA “has taken the position that tinted contact lenses that do not correct or improve vision and are promoted to enhance eye color are medical devices This position is based on the fact that all contact lenses, including neutral lenses, have a physiological effect on the eye ” (emphasis added) (citing to United States v Int’l Hydron Corp., No 87-2129 (E D N Y)) (R pp 152-155)

preemption, CIBA will deal with each facet of the fundamental question together. As a preliminary matter, it is worth noting that Weston completely concedes that if she purchased FreshLook Color contact lenses that were pre-market approved by the FDA, then her claims are preempted, summary final judgment for CIBA on those claims must stand, and the discovery limitations on the remaining causes of action are valid.

All Class III medical devices, such as these contact lenses, have been approved by the FDA through its rigorous PMA process. As the Seventh Circuit explained in a case similarly finding federal preemption of product liability claims:

Before a Class III device may be introduced to the market, the manufacturer must provide the [FDA] with a reasonable assurance that the device is safe and effective under the MDA. To provide that assurance, a manufacturer must obtain premarket approval (“PMA”) from the FDA. This procedure is a “rigorous” process, in which the manufacturer must submit detailed information to the FDA regarding the safety and effectiveness of the device. Manufacturers must provide the FDA with samples of the device, an outline of the device’s components and properties, a description of the manufacturing process, copies of the proposed labels, various other data and information, and any other information the FDA requests. The FDA spends an average of 1,200 hours per PMA application reviewing these materials.

Mitchell v. Collagen Corp., 126 F.3d 902, 905 (7th Cir. 1997), cert. denied, 523 U.S. 1020 (1998). In addition, FDA regulations permit manufacturers to seek approval for device modifications by submitting supplements to a prior PMA. The “FDA considers revisions proposed in a PMA supplement using the same type of rigorous scientific process utilized for review of original PMAs.” See FDA Letter Brief filed as *amicus curiae*, Horn v. Thoratec, 376 F.3d 163 (3d Cir. 2004), available at 2004 WL 1143720, at *10 (May 14, 2004) (hereafter “Horn”).

Amicus Brief”), Riegel 128 S Ct at 1005. Consequently, every approval of a PMA supplement application is a renewal of the original PMA approval and the prior related PMA supplements.⁸

The evidence that FreshLook Colors contact lenses were and are regulated by the FDA as Class III medical devices is overwhelming and uncontradicted. Specifically, FreshLook Colors contact lenses were approved through the PMA Supplement process described above. In cataloguing the FDA’s approval to the trial court, CIBA submitted two PMA Supplement approval letters from the FDA related to the FreshLook Colors family of contact lenses, along with the testimony of CIBA’s Director of Global Regulatory Affairs, the testimony of Weston’s own expert (Dr. Parisian), and the testimony of Philip Phillips, former FDA Deputy Director of Science and Regulatory Policy for the Office of Device Evaluation.

As acknowledged by Weston’s expert, the PMA approval was originally issued in 1983 by the FDA with regard to an ancestor lens to the FreshLook Colors contact lens (Parisian Dep pp 88-89) (R pp 642-643) 21 C.F.R. § 814.39. By 1994, approximately 30 PMA Supplements had been submitted to the FDA, with the FreshLook Colors lenses appearing in PMA Supplement 33 and thereafter (Parisian Dep Exhibit 6) (R pp 667-670). This included submission to the FDA of packaging approval for FreshLook Colors non-corrective (spherical power of 0.00) contact lenses (a/k/a “plano” lenses) (Parisian Dep p 137 and Exhibit 6) (R pp 650, pp 667-670).⁹ Weston’s own expert acknowledged that the Color Fresh lenses at issue in the case were approved for the range of -20.00 - +20.00 diopters (with 0.00 being at the mid-

⁸ There were over 40 PMA supplement applications/approvals for FreshLook related contact lenses before Weston purchased the lenses at issue in this case (Parisian Dep Exhibit 7) (R pp 671-673).

⁹ The FDA has also acknowledged that approval of a range of corrective powers includes approval of the zero power or plano lens. See, Import Alert 86-10, n 1 (R p 754, n 1).

point) and that the 0 00 power was used on the labeling submissions to the FDA (R p 588, 655, 667-670 & 679)

In January 1996, CIBA obtained approval for a PMA Supplement (No 39) to its FreshLook Colors contact lenses for incorporating an ultra-violet absorber into the referenced lenses (See FDA FreshLook Colors UV Approval Letter, Parisian Dep Exhibit 8) (R pp 674-678)¹⁰ It is uncontradicted that Weston’s claim relates to FreshLook Colors contact lenses with UV absorbers as approved in PMA Supplement No 39 (Parisian Dep p 28 and Exhibit 4 (Exhibit 4 “represents what was on her package ”)) (R p 630, p 655) (Oris Dep pp 65-66 (Q During the relevant period “all FreshLook Colors lenses that were manufactured, to be sold in North America were UV?” A “Yes ”)) (R pp 472-473) Since Weston’s lenses were UV lenses, it is the FDA approval letters for PMA Supplements No 39 (January 25, 1996) and No 42 (May 7, 1999) that are the most relevant to this case (R pp 671-675)

Weston’s attack on the overwhelming evidence in the Record on Appeal can only be understood with reference to an evidentiary error she made in drafting her Initial Brief Weston stated in her Initial Brief (page 6) that CIBA submitted only a 2002 approval and a 2003 approval in support of its motion for summary judgment (referencing an Exhibit B) Apparently, Weston’s counsel was operating from the wrong motion These approval letters were attached to a prior withdrawn motion for summary judgment in 2005 filed before the discovery leading to the current motion for summary judgment The submissions with the current motion included the PMA approval letters from the FDA for the exact contact lenses at issue in this case

¹⁰ The FDA approval letter read, in part, “ [the FDA] has completed its evaluation of your pre-market approval application (PMA) supplement, which requested approval for incorporating an ultra-violet absorber into the above referenced lenses [FreshLook Colors UV] Based upon the information submitted, the PMA Supplement is approved ”

(FreshLook Colors UV) (R pp 671-678)¹¹ Because this error was the foundation for Weston's entire brief, most of her evidentiary arguments are simply irrelevant to the Order granting summary judgment. And, although this evidentiary oversight was brought to the attention of Weston in CIBA's Initial Brief (Page 8, n 6), Weston choose not to file a Reply Brief, or otherwise correct the evidentiary misunderstanding.

Weston's entire petition is predicated on this Court concluding that to give effect to pre-market approval of the lenses allegedly worn by Weston, the FDA was required to use a magic phrase like "specifically including zero power non-corrective plano lenses" in approving the entire range of FreshLook Color lenses. Weston takes this position despite the fact that FDA approved all FreshLook Color contact lenses in every power running from (-) 20.00 diopters to (+) 20.00 diopters, and despite the overwhelming evidence of FDA's consideration and approval of the lenses and the submission of marketing materials that expressly reference the zero power, non-corrective plano lenses. Weston goes so far as to suggest that any other conclusion would mean that the Court has constituted itself as the FDA and itself approved these lenses under the federal Medical Device Amendments. The suspension of reason necessary to even posit such an argument should foreshadow its doom.

It is a fundamental precept of our judicial system that when courts interpret statutes or agency actions they are not encroaching into the purviews of the separate branches, but are rather merely fulfilling their constitutional and legal duty. See Breeden v. S.C. Democratic Executive Committee, 226 S.C. 204, 209-210, 84 S.E.2d 723, 725-726 (1954) (noting that it was been "repeatedly rejected" that "any action by the Court 'would be an encroachment upon the powers

¹¹ The 2006 Motion for Summary Judgment and memoranda of law and exhibits are located in the Record at pages 69-210. In addition, all the deposition excerpts and deposition exhibits in the Record on Appeal were before the trial court at the summary judgment hearing.

of the legislative and executive branches of Government” (citations omitted), State v Hunt, 20 S C L 1, 1834 WL 1462, *8 (1834) (the state court system is “a department of government established by the Constitution to interpret and enforce the laws”), Gunter v Blanton, 259 S C 436, 444-445, 192 S E 2d 473, 476-477 (1972) (“the power [is] vested in the judiciary to declare an act of the General Assembly unconstitutional”) The duty of judicial interpretation (as opposed to usurpation) has been recognized in South Carolina since as early as 1812

‘It is the peculiar and characteristic excellence of the free governments of America, that the legislative power is not supreme, but that it is limited and controlled by written constitutions, to which the Judges, who are sworn to defend them, are authorised to give a transcendent operation over all laws that may be made in derogation of them This judicial check affords a security here for civil liberty, which belongs to no other governments in the world, and if the Judges will every where faithfully exercise it, the liberties of the American nation may be rendered perpetual ’

Id (citation omitted)

Weston contends that PMA approval can purportedly be established in only the precise form and wording that she prescribes Weston’s argument is akin to claiming that the only means of establishing ownership of an item is by submitting the receipt for purchase Of course, ownership can be shown in any number of ways For example, possession, long time use, a stamped purchase order, a bill of lading, a store cashier’s testimony, a store’s surveillance camera, tax assessments/payments, or ownership of the raw materials, are all ways to establish ownership of an item It is important to note that Weston does not claim a factual issue exists because she has submitted a receipt showing that she owns the item, rather, she says that despite all the indicia of ownership listed above, a factual issue would exist in this example until the receipt is produced This is not the law and Weston cannot avoid summary judgment by vague

references to missing “phantom evidence” or artificial issues of fact Buekner v Sam’s Club, Inc., 75 F 3d 290, 292 (7th Cir 1996)

As opposed to fixating on Weston’s claimed determinative wording¹², the Courts below appropriately interpreted the entire bulk of evidence and information reviewed by the FDA in granting and renewing pre-market approval for the class of lenses including the FreshLook Color contact lenses see, e.g., State v Perry, 138 S C 329, 136 S E 314, 316 (1927) (in the process of interpreting the law the courts may “construing together all the sections of the ordinance, judicially interpret its language”), In re Erickson, 63 B R 632, 635 (W D Wis 1986) (it is a principle of interpretation that “a statute is to be interpreted, not only by its exact words, but also by its apparent general purpose”), McCullough v Scott, 109 S E 789, 795 -796 (N C 1921) (in “construing a statute, it is to be considered in its relation to other laws, as part of a general and uniform system of jurisprudence, in connection with other statutes on the same or cognate subjects, or even on different subjects The spirit or reason of the law prevails over its letter ”)

Not only does Weston have to contort the law in order make a plausible argument for issuing a writ of certiorari, she also has to contort the facts Even when she cherry picks one document out of all the evidence and suggests that it includes a mandatory “limitation that the lenses being approved are *indicated for the correction of visual acuity*” only (Petition, Page 10), she necessarily cherry picks from within that one document as well For example, the May 7, 1999 FDA approval letter for FreshLook contact lenses expressly states that the device, as modified, will be marketed with certain use indications (R , p 671 (last paragraph) – p 672 top of page) In this approval letter, there are five (5) subparagraphs describing the various uses for

¹² That pre-market approval cannot cover these lenses unless FDA expressly stated “specifically including zero power non-corrective plano lenses” in its approval letter

FreshLook Color contact lenses. Granted, some of those indications discuss “visual acuity” as referenced by Weston. However, the fifth and final approved indication for use states, without any limitations, “to help protect against the transmission of harmful UV radiation to the cornea and into the eye” (R, p. 672). Moreover, it is expressly noted that the UV protection is not based on any visual acuity property (i.e., correcting power), but merely because the lenses (including the zero power non-correcting plano lenses) are manufactured with a “UV-absorbing monomer” (R, p. 672).¹³

Having set forth a summary of the overwhelming evidence of preemption, it is also worth noting that at the summary judgment hearing, CIBA sought to eliminate even immaterial and non-genuine questions of FDA approval by drafting a letter for the Court to send to the FDA (pursuant to the Code of Federal Regulations) specifically asking whether CIBA’s plano (non-corrective) contact lenses were within the FDA’s pre-market approval. (Transcript p. 44, lines 5-25) (R. p. 304). A copy of the proposed letter to the FDA was filed with the trial court. (R. pp. 167-169). When asked by Judge Cooper of their position on seeking absolute confirmation from the FDA, Weston’s counsel called it a “delaying tactic” to which “[w]e’ve actually filed a frivolous motion letter” (Transcript, p. 45, lines 1-5) (R. p. 305). Having succeeded in stopping the Court from obtaining absolute confirmation directly from the FDA itself, Weston’s counsel now argues that only absolute confirmation directly from the FDA could be considered by the Court in granting summary judgment. (Petition, p. 13). The central role of an appellate court is to correct errors in the court below, not to provide an alternative audience for litigants to take contrary positions. Hayne Federal Credit Union v. Bailey, 327 S. Ct. 242, 251, 489 S. E. 2d 472, 477 (1997) (“Judicial estoppel precludes a party from adopting a position in conflict with one

¹³ Similarly, the fourth indication for use listed in the May 7, 1999 approval letter includes no language related to correcting visual acuity.

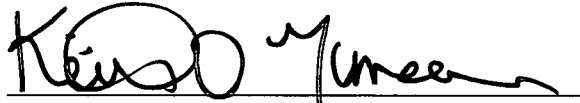
earlier taken in the same or related litigation “*[W]here a party assumes a certain position in a legal proceeding and succeeds in maintaining that position he may not thereafter simply because his interests have changed assume a contrary position*” (internal citations omitted) Consequently, Weston should not be heard to complain that the Court below erred by agreeing with her on this point

CONCLUSION

Rule 56, SCRCR, states that a motion for summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact” Here, the evidence in the record was uncontradicted

Moreover, once CIBA met its burden, Weston failed to come forward with any evidence demonstrating the existence of a genuine issue of material fact Weston has an affirmative duty to point out specific facts in the record to demonstrate that a genuine issue of material fact exists, which she failed to do See Street v J C Bradford & Co, 886 F 2d 1472, 1479-80 (6th Cir 1989) Weston cannot avoid summary judgment by vague references or artificial issues Buekner v Sam’s Club, Inc., 75 F 3d 290, 292 (7th Cir 1996) Hence, the evidence in the record supports but one reasonable conclusion, namely, that the lenses at issue are Class III medical devices that are regulated by the FDA under a regulatory scheme that preempts the claims for which Judge Cooper entered, and the Court of Appeals affirmed, summary judgment Accordingly, this Petition for Writ of Certiorari should be denied

Respectfully submitted,



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Sandi R Wilson (SC Bar No 16896)
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*ATTORNEYS FOR RESPONDENT
CIBA VISION*

Dated April 19th, 2010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

James R. Barber, III, Circuit Court Judge
G. Thomas Copper, Jr., Circuit Court Judge

Opinion No. 4592 (S.C. Ct. App. Filed July 15, 2009)

Monica Weston,

Appellant,

v

Kims Dollar Store and
CIBA Vision, a division of Novartis Company

Respondents

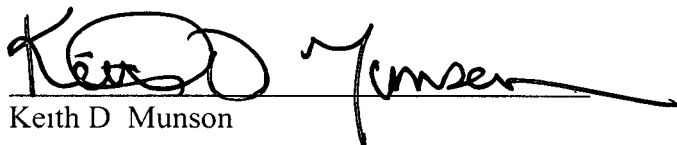
PROOF OF SERVICE

The undersigned hereby certifies that, on the 19th day of April, 2010, (s)he delivered a copy of the attached **RESPONDENT CIBA VISION'S RETURN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI** to the person(s) hereinafter named, at the place(s) and address(es) stated below, via U.S. Mail, which is/are the last known address(es)

A. Victor Rawl, Esq.
Robert L. Widener, Esq.
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Keith D. Munson

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ORIGINAL

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
James R Barber, III, Circuit Court Judge
G Thomas Cooper, Jr , Circuit Court Judge

RECEIVED

MAY 19 2010

Opinion No 4592 (S C Ct App Filed July 15, 2009)

SC SUPREME COURT

Monica Weston,

Petitioner,

v

Kim s Dollar Store and
CIBA Vision, a division of Norvartis Company

Respondents

REPLY TO RETURN TO
PETITION FOR A WRIT OF CERTIORARI

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ATTORNEY FOR RESPONDENT
KIM'S DOLLAR STORE

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REPLY ARGUMENTS

I CIBA argues and applies the wrong standard of review

This is a summary judgment case and, therefore, “[a]ll ambiguities, conclusions and inferences arising from the evidence must be construed most strongly against [Respondent (CIBA)]” *Tupper v Dorchester County*, 487 S E 2d 187, 191 (S C 1997) (emphasis added) CIBA, however, posits and relies upon the following standard of review “Where an appeal is taken from the findings of fact by a circuit judge, it is incumbent on the appellant to show that the decree of the circuit judge is against the weight of the evidence” (Cert Ret at 5) CIBA cites the dissent in a 1937 opinion from this Court for this standard of review, but that case involved an appeal after a bench trial on the merits of an action to set aside fraudulent conveyances See *Gardner v Kirven*, 191 S E 814, 825 (S C 1937) (cited at Cert Ret 5) The present case, however, involves summary judgment, not a bench trial Thus, as a matter of law, there are and can be no findings of fact by the trial judge

Armed with this erroneous standard of review, CIBA meanders through the evidence to highlight portions that support its position, drawing all inferences in its favor and in direct contravention of the controlling standard of review For example, CIBA’s shining evidentiary star is a 1999 PMA supplement (Cert Ret at 10, 13-14) This PMA supplement approves *inter alia* a change to the “bifocal design for the referenced device,” *i e* , to CIBA’s contact lenses (R 671) It then imposes five modifications on the prior PMA approvals The first three specify all referenced lenses are “indicated for the correction of visual acuity” (Id at 671-672) The fourth modification imposes requirements and limitations on use of the lenses for “extended wear” (Id at 672) The fifth modification provides in full “FreshLook Lenses with UV-absorbing monomer help protect against the transmission of harmful UV radiation to the cornea and into

the eye” (Id. at 672). Contrary to CIBA’s argument, nowhere in this fifth modification is it “expressly noted that the UV protection is not based on any visual acuity property” (Cert. Ret. at 14). Rather, the only reasonable reading of this PMA letter is that all of the modifications apply to all of the lenses. Nothing in this PMA letter indicates any consideration of any zero powered lenses as such. The letter references a “bifocal design change, which cannot have anything to do with zero power lenses. At the very least, when viewed in the light most favorable to Customer, the PMA letter shows that the approval was limited to lenses that correct visual acuity.

CIBA’s entire argument is replete with this type of misapplication of the proper standard of review. Another example is its citation to a footnote in Import Alert 86-10. That footnote observed that, when zero power lenses were being regulated as cosmetic devices rather than medical devices, some manufacturers had voluntarily submitted “a plano lens in the range of corrective powers” (R. 754, n. 1). Contrary to CIBA’s argument, this footnote does not demonstrate the “FDA has acknowledged that approval of a range of corrective powers includes approval of the zero power or plano lens” (Cert. Ret. at 9, n. 9). Rather, and at most, it shows that the FDA will consider approval of a zero power lens if a plano lens is ‘submitted’ for approval. Here, nothing in the record shows that CIBA ever actually submitted a plano lens for approval as such.

In short, and throughout its Return, CIBA weighs the evidence and inferences in its favor. This is exactly opposite of what must be done in reviewing the grant of summary judgment.

II Contrary to CIBA's mischaracterization of Customer's arguments, Customer does not argue some magic language had to be used in a PMA to show approval of a zero power lens

Throughout its argument, CIBA mischaracterizes Customer's argument as being some magic language was required to prove PMA approval of zero powered lenses. To the contrary, Customer has simply reviewed the only evidence of record, which includes three admitted and controlling facts: (1) it is undisputed that CIBA never sought and never received a PMA letter specifically for its zero power lenses as such, (2) it is undisputed that every PMA letter approving contact lenses in a positive-to-negative diopter power range included language limiting the pre-market approval to lenses "indicated for the correction of visual acuity", and (3) it is undisputed that the zero power lenses at issue here do not and cannot correct visual acuity. These undisputed facts, as a matter of law, give rise to an inference that CIBA has not received PMA approval for its zero power lenses as such and, therefore, it is not entitled to summary judgment on this issue.

III CIBA's "judicial estoppel" argument is spurious and manifestly without merit

CIBA argues Customer's arguments are precluded by judicial estoppel. (Cert. Ret. at 14-15). Judicial estoppel arises if, and only if, the court is forced to take a position based on a factual assertion. *Hawkins v Bruno Yacht Sales Inc*, 577 S.E.2d 202, 208 (S.C. 2002), *aff'd as modified* 536 S.E.2d 698 (S.C. App. 2000). When the court rules in favor of the party making the factual assertion, that party cannot thereafter present a contrary factual position. *Id.* at 209 quoting *Zimmerman v Central Union Bank*, 8 S.E.2d 359, 365 (S.C. 1940).

Customer's position has been and remains consistent. CIBA must prove PMA approval from the existing PMA letters, which is the only conceivable way to prove the existence of PMA

approval and resulting federal preemption at the time Customer purchased the lenses at issue. Customer contends now, as she has always contended, that CIBA did not obtain approval from the FDA. The trial court did not rule in Customer's favor on this issue. There having been no change in Customer's position on the facts, and since Customer did not prevail on the factual issue, there manifestly can be no judicial estoppel. Moreover, the FDA did not respond when CIBA asked the question (R. 304). Nothing indicates a letter from the trial judge would have prompted a response from the FDA, and Customer was and remains concerned waiting for an FDA response would delay this case for an inordinate amount of time to no meaningful end. CIBA has all of the PMA's related to the lens at issue here. If the approval is not given in these PMA's (and it is not), then nothing from the FDA can change that.

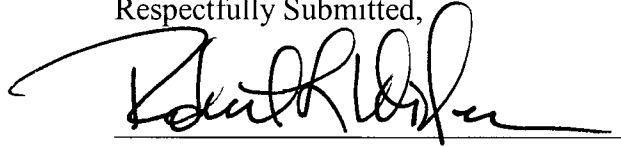
CONCLUSION

The only question presented here is whether, viewing the evidence and inferences in the light most favorable to Customer, and construing the same most strongly against CIBA, there is a question of fact as to whether CIBA obtained PMA approval for its zero power lenses as such. The undisputed evidence in this case manifestly creates such a question of fact. CIBA has no PMA approval letter directed specifically at zero power lenses, all PMA letters approving a diopter range of lenses limit the approval to lenses "indicated for the correction of visual acuity", and zero power lenses do not and cannot correct visual acuity. The trial court and the Court of Appeals accepted CIBA's invitation to weigh the evidence in violation of the controlling standard of review.

For all of the foregoing reasons, and for the reasons set forth in the Petition for a Writ of Certiorari, which are incorporated herein by reference, it is respectfully submitted this Court

should decline CIBA's invitation to apply the wrong standard of review, reverse the Court of Appeals, and remand the case for further proceedings and a trial on the merits

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert L. Widener", written over a horizontal line.

Robert L. Widener
Celeste T. Jones
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ATTORNEYS FOR PETITIONER

May 11, 2010
Columbia, South Carolina

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

G Thomas Cooper, Jr , Circuit Court Judge

Case No 05-CP-40-0655

Opinion No 4592
Heard June 9, 2009 – Filed July 15, 2009

RECEIVED

MAY 12 2010

SC SUPREME COURT

Monica Weston,

Petitioner,

v

Kim's Dollar Store and
CIBA Vision, a division of Novartis Company,

Respondents

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm certify that I have served a copy of the Reply to Return to Petition for a Writ of Certiorari by depositing a copy in the United States Mail, postage prepaid, on May 11, 2010 addressed to the attorneys of record, as follows

Keith D Munson, Esquire
Sandi R Wilson, Esquire
Womble Carlyle Sandridge & Rice, PLLC
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Attorneys for the Respondent CIBA Vision

Daniel T. Sullivan, Esquire
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Attorney for the Respondent Kim's Dollar Store



Ann Shuler

MCNAIR
ATTORNEYS

May 11, 2010

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RECEIVED

MAY 12 2010

SC SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Weston, Monica v Kim's Dollar Store (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Enclosed for filing, please find the original and six copies of Petitioner's Reply to Return to Petition for a Writ of Certiorari along with the Certificate of Service.

By copy of this letter, we are serving counsel of record with a copy of the Reply by U.S. Mail.

Respectfully yours,



Robert L. Widener

RLW/as
Enclosures

cc Sandi R. Wilson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

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COLUMBIA 998863v1

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Norvartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

ORDER

For good cause having been shown, the time for serving and filing the Reply to Return to Petition for a Writ of Certiorari in the above entitled matter is hereby extended until May 11, 2010

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

April 30, 2010

cc Robert L Widener, Esquire
Celeste T Jones, Esquire
A Victor Rawl, Jr , Esquire
Andrew G Melling, Esquire
Curtis L Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D Munson, Esquire
Sandi R Wilson, Esquire

April 29, 2010

RECEIVED

APR 30 2010

SC SUPREME COURT

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The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Monica Weston v. Kim's Dollar Store and CIBA Vision, et al
Case Tracking No. 2009-CP-40-147986
Civil Action No. 2005-CP-40-0655

Dear Mr. Shearouse:

Petitioner's Reply to Return to Petition for a Writ of Certiorari in the above entitled matter is due April 29, 2010. Petitioner respectfully requests a ten (10) day extension to file and serve the Reply. This extension would make the Reply due on May 10, 2010. Our check in the amount of \$25.00 is enclosed. By copy of this letter, we are advising all counsel of this request.

Thank you for your consideration in this matter.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as
Enclosure

cc Sandi R. Wilson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

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April 19, 2010

Mr Daniel E Shearouse
Clerk
South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al
Civil Action No 2005-CP-40-0655 (Appeal)
Opinion No 4592 (Ct App 7/15/09)
Case Tracking No 2009-147986

Dear Mr Shearouse

Enclosed for filing in the above matter is an original and 6 copies of the **Return in Opposition to Petition for Writ of Certiorari of Respondent CIBA Vision** along with the corresponding Proof of Service Please file-stamp and return the extra clocked copy of each in the postage-paid envelope provided

By copy of this letter, I am herewith providing all parties of record with a copy of each document Thank you for your assistance in this matter

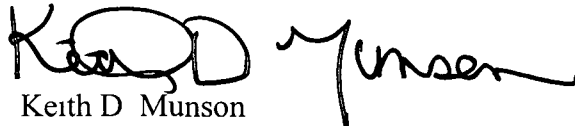
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APR 21 2010

SC SUPREME COURT

Very truly yours,

WOMBLE CARLYLE SANDRIDGE &
RICE
A Professional Limited Liability Company


Keith D Munson

KDM/drl
Enclosures
cc Robert L Widener, Esq
Celeste T Jones, Esq

WOMBLE
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& RICE
PLLC

A Victor Rawl, Jr, Esq
Andrew G Melling, Esq
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Daniel Thomas Sullivan, Esq
Sandi R Wilson, Esq

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March 17, 2010

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The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al
Case Tracking No 2009-147986
Civil Action No 2005-CP-40-0655

Dear Mr. Shearouse

Please accept this as Petitioner Monica Weston's consent to Respondent CIBA Vision's request for a 30-day extension to file and serve its response to the Petition for Writ of Certiorari.

Respectfully yours,



Robert L. Widener

RLW/as

cc Sandi R. Wilson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

RECEIVED
MAR 18 2010
SC SUPREME COURT

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The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Norvartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

ORDER

For good cause having been shown, the time for serving and filing the Return to Petition for a Writ of Certiorari in the above entitled matter is hereby extended until April 19, 2010

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY Brenda J. Shealy
Chief Deputy CLERK

Columbia, South Carolina

March 17, 2010

cc Robert L Widener, Esquire
Celeste T Jones, Esquire
A Victor Rawl, Jr , Esquire
Andrew G Melling, Esquire
Curtis L Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D Munson, Esquire
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March 16, 2010

Mr Daniel E Shearouse
Clerk
South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

Re Monica Weston v Kim's Dollar Store and CIBA Vision, et al
Civil Action No 2005-CP-40-0655 (Appeal)
Case Tracking No 2009-147986

Dear Mr Shearouse

On behalf of Respondent CIBA Vision, we respectfully request a single 30-day extension from March 19, 2010, to April 19, 2010, in which to respond to Appellant's Petition for Writ of Certiorari. Our check for \$25 is enclosed for the cost of this request, together with an extra copy of this letter, which I would appreciate your file-stamping and returning in the self-addressed, stamped envelope provided.

Thank you for your consideration in this regard.

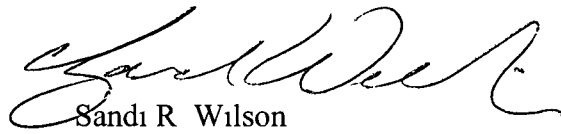
Sincerely,

RECEIVED

MAR 17 2010

S.C. SUPREME COURT

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company



Sandi R. Wilson

SRW yf

Enclosures

cc A Victor Rawl, Esq
Robert L Widener, Esq
Celeste T Jones, Esq
Andrew G Melling, Esq
Stevens B Elliott, Esq
Daniel T Sullivan, Esq

February 22, 2010

Robert L. Widener

Via Courier

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The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
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RECEIVED

FEB 22 2010

Re Weston, Monica v Kim's Dollar Store
Case Tracking No. 2009-147986

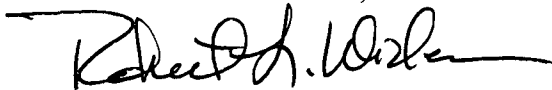
SC SUPREME COURT

Dear Mr. Shearouse:

We previously filed our Certiorari Petition and Appendix. It is our understanding from conversations with your office that opposing counsel called your office to complain that we had not included the Return to the Petition for Rehearing in the Appendix. He never called us. The contents of the Appendix are governed by Rule 242(c), SCACR, and it does not require or permit the inclusion of the Return unless the Court of Appeals dismissed the appeal for procedural or other reasons, which did not occur here. *Comapre* Rule 242(c)(2) with 242(c)(4), SCACR. Nevertheless, to avoid any further waste of the Court's time on this matter, we are filing the original and six copies of an Amended Appendix, which includes the Respondent CIBA Vision's Return in Opposition to Petition for Rehearing and also our Reply to Return to Petition for Rehearing. Enclosed also is the original Certificate of Service for the Amended Appendix though service of the Appendix is not required and our original service of the original Appendix was a matter of courtesy. See Rule 224(c)(4), SCACR. Please return the file stamped extra copy to me via our courier.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

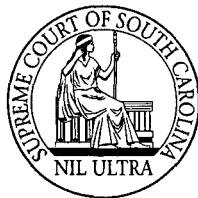
RLW/as
Enclosures

cc Keith D. Munson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

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Columbia, SC 29201

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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February 18, 2010

Robert L. Widener, Esquire
Celeste T. Jones, Esquire
A. Victor Rawl, Jr., Esquire
Andrew G. Melling, Esquire
McNair Law Firm, PA
P O Box 11390
Columbia, SC 29211

Re Weston, Monica v Kim's Dollar Store
Case Tracking No 2009-147986

Dear Counsel

This office has received your Petition for a Writ of Certiorari in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Robert L Widener, Esquire
Celeste T Jones, Esquire
A Victor Rawl, Jr , Esquire
Andrew G Melling, Esquire
Page Two
February 18, 2010

Very truly yours,

A handwritten signature in black ink, appearing to be "O. D. S.", with a long horizontal line extending to the right.

CLERK

DES/dmh

Enclosure

cc Curtis L Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D Munson, Esquire
Sandi R Wilson, Esquire

February 17, 2010

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Via Courier

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re Weston, Monica v. Kim's Dollar Store (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Enclosed for filing, please find the original and six copies of Appellant's Petition for a Writ of Certiorari, along with the Certificate of Service. Also in accordance with Rule 242(e), we are filing two copies of the Appendix. One extra copy of each is attached, which we request you file, stamp, and return via our courier. We have enclosed our check in the amount of \$100.00 for the filing fee.

By copy of this letter, we are serving counsel of record with copies of the Petition and Appendix by U.S. Mail.

Respectfully yours,


Robert L. Widener

RLW/as
Enclosures

cc Honorable Jeanette F. Barber
Keith D. Munson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

McNair Law Firm, P.A.
The Tower at 1301 Gervais
1301 Gervais Street, 18th Floor
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Norvartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

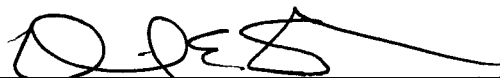
ORDER

Petitioner seeks a second extension of time to serve and file the Petition for a Writ of Certiorari and Appendix in the above entitled matter. The opposing party has not filed a return. The request for an extension is granted until February 19, 2010. No further extensions of time will be granted to serve and file the Petition for a Writ of Certiorari and Appendix in this matter.

IT IS SO ORDERED

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

February 4, 2010

cc Robert L Widener, Esquire
Celeste T Jones, Esquire
A Victor Rawl, Jr , Esquire
Andrew G Melling, Esquire
Curtis L Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D Munson, Esquire
Sandi R Wilson, Esquire
The Honorable Tanya Gee

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ORIGINAL

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

G Thomas Cooper, Jr¹, Circuit Court Judge

JAN 21 2010

Opinion No 4592
Heard June 9, 2009 – Filed July 15, 2009

SC SUPREME COURT

Monica Weston,

Petitioner,

v

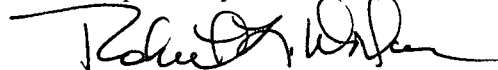
Kim's Dollar Store and CIBA Vision,
a Division of Novartis Company,

Respondents

AMENDED MOTION FOR EXTENSION TO FILE
AND SERVE PETITION FOR A WRIT OF CERTIORARI

The Petitioner's Petition for a Writ of Certiorari and Appendix are currently due January 20, 2010. Due to conflicts in the schedule of counsel, Petitioner respectfully requests that the time for serving and filing the Petition and Appendix be extended thirty (30) days until February 19, 2010. Undersigned counsel's time over the past two weeks has been consumed by pressing and emergency matters on behalf of other clients. Counsel for all Respondents have consented to this motion.

Respectfully Submitted,



Robert L. Widener
McNair Law Firm, P A
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
Attorneys for Petitioner

January 21, 2010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JAN 21 2010

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

SC SUPREME COURT

G Thomas Cooper, Jr , Circuit Court Judge

Case No 05-CP-40-0655

Opinion No 4592
Heard June 9, 2009 – Filed July 15, 2009

Monica Weston,

Petitioner,

v

Kim's Dollar Store and
CIBA Vision, a division of Norvartis Company,

Respondents

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served a copy of the Petitioner's Amended Motion for Extension to File and Serve Petition for a Writ of Certiorari by facsimile and by depositing a copy in the United States Mail, postage prepaid, on January 21, 2010 addressed to the attorneys of record, as follows

Keith D Munson, Esquire
Sandi R Wilson, Esquire
Womble Carlyle Sandridge & Rice, PLLC
Post Office Box 10208
Greenville, SC 29603
Fax (864) 255-5480

Curtis L. Ott, Esquire
Turner, Padgett, Graham & Laney
Post Office Box 1473
Columbia, SC 29202
Fax (803) 799-3957

Attorneys for the Respondent CIBA Vision

Daniel T. Sullivan, Esquire
Young and Sullivan, L.L.P.
907 Calhoun Street
Columbia, SC 29201
Fax (803) 254-5798

Attorney for the Respondent Kim's Dollar Store



Ann Shuler

January 21, 2010

Robert L. Widener

rwidener@mcnair.net
T (803) 799 9800
F (803) 753 3278

Via Courier

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

JAN 21 2010

SC SUPREME COURT

Re Weston, Monica v Kim's Dollar Store (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Enclosed for filing, please find the original and seven copies of Appellant's Amended Motion for Extension to File and Serve Petition for a Writ of Certiorari, along with an Amended Certificate of Service. Please return the file stamped copy to me via our courier. Counsel of record have consented to this motion.

By copy of this letter, we are serving counsel of record with a copy of the motion via facsimile and by U.S. Mail.

Respectfully yours,



Robert L. Widener

RLW/as
Enclosures

cc Honorable Jeanette F. Barber
Keith D. Munson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

McNair Law Firm, P.A.
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January 20, 2010

Robert L. Widener

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T (803) 799 9800
F (803) 753 3278

Via Courier

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

JAN 20 2010

SC SUPREME COURT

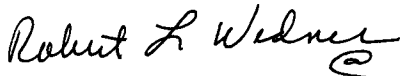
Re Weston, Monica v Kim's Dollar Store (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Enclosed for filing, please find the original and seven copies of Appellant's Motion for Extension to File and Serve Petition for a Writ of Certiorari with regard to the above case. Also enclosed are the original Certificate of Service and our check in the amount of \$25.00. Please return the file stamped copy to me via our courier.

By copy of this letter, we are serving counsel of record with a copy of the motion via facsimile and by U.S. Mail.

Respectfully yours,



Robert L. Widener

RLW/as
Enclosures

cc Honorable Jeanette F. Barber
Keith D. Munson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.

McNair Law Firm, P.A.
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1301 Gervais Street, 18th Floor
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Columbia, SC 29211

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The Supreme Court of South Carolina

Monica Weston,

Petitioner,

v

Kim's Dollar Store and CIBA
VISION, a division of Novartis
Company,

Respondents

The Honorable G Thomas Cooper, Jr
Richland County
Trial Court Case No 2005-CP-40-00655

ORDER

For good cause having been shown, the time for serving and filing the
Petition for Writ of Certiorari and Appendix in the above entitled matter is
hereby extended until January 20, 2010

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

December 18, 2009

cc Robert L Widener, Esquire
Celeste T Jones, Esquire
A Victor Rawl, Jr , Esquire
Andrew G Melling, Esquire
Curtis L Ott, Esquire
Daniel Thomas Sullivan, Esquire
Keith D Munson, Esquire
Sandi R Wilson, Esquire
The Honorable Jeanette Barber

December 17, 2009

Robert L. Widener

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Via Courier

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

DEC 17 2009

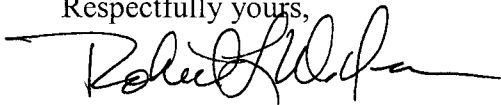
S.C. SUPREME COURT

Re Weston, Monica v Kim's Dollar Store (2)
Opinion No. 4592
Heard June 9, 2009 - Filed July 15, 2009

Dear Mr. Shearouse:

Appellant's Petition for A Writ of Certiorari is due in the above cited case on December 21, 2009. Due to conflicts in the schedule of counsel, Appellant respectfully requests a thirty (30) day extension to file and serve her Petition. This extension would make the Petition due on January 20, 2010. Our check in the amount of \$25.00 is enclosed. We are advising all counsel of record of this request via facsimile and by U.S. Mail.

Respectfully yours,



Robert L. Widener

RLW/as
Enclosure

cc Keith D. Munson, Esq.
Daniel T. Sullivan, Esq.
Curtis L. Ott, Esq.
Honorable Jeanette F. Barber

McNair Law Firm, P.A.
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