



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: FLOAT-SINK LITIGATION CIVIL ACTION NO. 11-C-5000000

THIS DOCUMENT APPLIES TO ALL CASES

SECOND CASE MANAGEMENT ORDER AND TRIAL PLAN

MEDIATION:

As provided in the December 18, 2012, order entered by Lead Resolution Judge Jay M. Hoke, mediation of the Float-Sink Litigation will reconvene at **10:00 a.m. on February 22, 2013**, in the conference rooms located on the first floor of the W. Kent Carper Justice and Public Safety Complex, 301 Virginia Street, East, Charleston, West Virginia. (TID 48483643.)

TRIAL PLAN AND TRIAL DATE:

The Presiding Judge is authorized, “after considering the due process rights of the parties, to adopt any procedures deemed appropriate to fairly and efficiently manage and resolve Mass Litigation.” West Virginia Trial Court Rule 26.08(d). Having conferred to insure uniformity of their decision, the Presiding Judges assigned to the Float-Sink Litigation hereby **ORDER** the following trial plan:

Phase I trial of medical monitoring and general liability, with trial to begin at **9:00 a.m. on July 30, 2013**, in the Ceremonial Courtroom of the Old Raleigh County Courthouse located at 215 Main Street, Beckley, West Virginia. A Phase II trial of proximate cause and damages will be scheduled by separate order of the Court.

PRE-TRIAL SCHEDULE:

FACT WITNESS DISCLOSURES: March 1, 2013

DISCOVERY MOTIONS: April 5, 2013

RESPONSES TO DISCOVERY MOTIONS: April 16, 2013

HEARING ON DISCOVERY MOTIONS: Beginning at **9:00 a.m. on May 3, 2013**, in the Ceremonial Courtroom of the Old Raleigh County Courthouse located at 215 Main Street, Beckley, West Virginia.

PLAINTIFFS' EXPERT WITNESS DISCLOSURES:

Plaintiffs may not disclose any new experts in addition to, or in lieu of, the seven experts identified in Plaintiffs' December 15, 2011 submission, except upon leave of court for good cause shown. See Paragraph 3, "Order Regarding Expert Witness Disclosures," entered February 13, 2012 (TID 42471949). All evidence related to medical expenses and all claims for such damages for medical expenses from these cases are stricken, and Plaintiffs' claims are limited to any illness or medical condition and exposure to perchloroethylene that is disclosed in the Amended Expert Reports filed in April, 2012. See pages 22-23, "Order Granting in Part Distributor Defendants' Motion to Dismiss Based on the Plaintiffs' Insufficient Responses to Amended Float-Sink Plaintiff Fact Sheets" entered August 30, 2012 (TID 46190294).

DEFENDANT'S EXPERT WITNESS DISCLOSURES: February 28, 2013

A. Any party desiring to use an expert witness must furnish opposing counsel with the specialty of such expert and copies of all reports submitted by such witness, or, if no reports have been submitted, a summary of the substance of such expert's contemplated testimony, on the date of Expert Disclosure in accordance with WVRCP 26(b)(4).

B. If the name, reports or 26(b)(4) material is not timely provided, a motion to continue, motion to exclude, or other sanction motions on this basis will not be considered unless opposing counsel has filed such motions prior to the pretrial conference.

C. Co-designation or co-reliance upon experts must specifically be made on the same date as the initial disclosure for either plaintiff's or defendant's experts.

DISCOVERY COMPLETION DATE: April 26, 2013

All responses and objections to discovery shall be completed and all motions to compel discovery shall be filed by the discovery completion date. All motions in limine and motions to exclude fact witnesses and/or expert witnesses shall be filed by the discovery completion date. The cut-off date established in this scheduling order does not excuse failure to comply with the provisions of Rule 26(e) requiring supplementation of responses to discovery.

MOTIONS IN LIMINE: May 17, 2013

RESPONSES TO MOTIONS IN LIMINE: May 31, 2013

DISPOSITIVE MOTIONS: May 17, 2013

RESPONSES TO DISPOSITIVE MOTIONS: May 31, 2013

If a discovery deposition is scheduled within 30 days of the close of discovery, counsel must request an expedited copy of the transcript of such deposition. The Court will not permit supplementation of dispositive motions or responses to dispositive motions with deposition testimony received after the briefing deadlines set forth above.

HEARING ON MOTIONS IN LIMINE AND DISPOSITIVE MOTIONS: Beginning at 9:00 a.m. on June 27, 2013, and continuing through June 28, 2013, until concluded in

the Ceremonial Courtroom of the Old Raleigh County Courthouse located at 215 Main Street, Beckley, West Virginia.

WVRE 103(c) requires that all Motions in Limine should, where practicable, be determined prior to trial. Accordingly, this Court will not consider motions in limine on the day of trial without good cause shown.

WITNESS AND EXHIBIT LISTS, PROPOSED JURY QUESTIONNAIRE, PROPOSED VOIR DIRE, AND PROPOSED JURY INSTRUCTIONS TO BE SUBMITTED TO THE COURT: May 31, 2013

Parties shall electronically file and serve their witness and exhibit lists, proposed jury questionnaire, proposed voir dire, and proposed jury instructions on one another, the Presiding Judges and the Mass Litigation Manager by **May 31, 2013**. Parties shall also provide Lead Presiding Judge John A. Hutchison with a disk containing their proposed voir dire and proposed jury instructions in Microsoft WORD format by no later than **May 31, 2013**.

The witness list is to be a bona fide list of intended trial witnesses as well as any recently discovered fact or condition witness. Names of witnesses must be specified and must include contact information for each witness and a statement of intended testimony. Unnamed/unlisted witness reservations are not authorized.

EXHIBITS AND DEPOSITION DESIGNATIONS EXCHANGED: May 31, 2013.

Parties are to exchange full and complete copies of all exhibits intended to be introduced into evidence at trial and all deposition designations. All exhibits shall be pre-marked.

OBJECTIONS TO EXHIBITS, WITNESSES AND DEPOSITION

DESIGNATIONS: June 14, 2013.

PRETRIAL CONFERENCE MEMORANDA:

All parties are directed to exchange and deliver their respective pretrial conference memoranda to the Presiding Judges and the Mass Litigation Manager by **no later than June 14, 2013.** Pretrial memoranda are to contain at a minimum, the following eleven (11) items:

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|----------------------------------|--------------------------------------|
| a. Statement of the Case | g. Pending Motions |
| b. Issues of Fact | h. Motions in Limine |
| c. Issues of Law | i. All Proposed Jury Voir Dire |
| d. Proposed Stipulations | j. Proposed Verdict Form |
| e. Specific Schedule of Exhibits | k. Deposition Designation Objections |
- (NO reservations authorized)
- f. Specific List of Witnesses
- (NO reservations authorized)

All parties are to meet and confer by no later than **June 20, 2013**, to resolve objections to witnesses, exhibits and deposition designations.

PRETRIAL CONFERENCE: Beginning at **9:00 a.m. on June 27, 2013**, and continuing through **June 28, 2013**, until concluded. The Pre-trial Conference will take place in the Ceremonial Courtroom of the Old Raleigh County Courthouse located at 215 Main Street, Beckley, West Virginia. **LEAD COUNSEL TRYING THE CASE MUST APPEAR AT THE PRE-TRIAL CONFERENCE.**

MODIFICATION: In accordance with WVRCP 16(b) and 29(b), this scheduling conference order shall not be modified except by leave of the Court.

SANCTIONS: In accordance with WVRCP 16(f), the Court will impose the full spectrum of sanctions authorized by the WVRCP if a party or party's counsel fails to obey this order or other Orders of this Court.

Unless authorized by the Court the above dates and requirements of this Scheduling Conference Order are **FINAL**. Therefore, **NO** additional evidence developed as a result of deviations from the above will be admissible at trial.

It is so **ORDERED**.

ENTER: February 19, 2013

/s/ John A. Hutchison
Lead Presiding Judge,
Float-Sink Litigation