



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

ORDER

On January 9, 2012, the Court heard oral argument on *Manufacturing Defendants' Joint Motion to Strike Plaintiffs' Expert Witness Disclosures and Exclude Plaintiffs' Expert Witnesses*, which was joined by the Distributor Defendants and the Employer Defendants (collectively, "*Defendants' Motion to Strike Plaintiffs' Expert Witness Disclosures*"). The Court also heard several motions for sanctions, including Motions to Dismiss Plaintiffs' complaints for failure to respond to Defendants' discovery requests.

After considering the parties' written submissions and oral arguments, and after conferring with one another to insure uniformity of their decisions, as contemplated by West Virginia Trial Court Rule 26.07(a), the Court found that: Plaintiffs failed to respond appropriately to the Court's October 18, 2011, Case Management and Scheduling Order when they served Plaintiffs' Expert Witness Disclosures on December 15, 2011; Plaintiffs' failure to provide appropriate information regarding their expert witnesses caused Defendants to be unable to make their expert witness disclosures as required by the Court's Case Management Order; Plaintiffs' failure to provide appropriate information, especially with regards to their expert witnesses, caused the mediation scheduled on January 26 and 27, 2012, to be cancelled because it would be fruitless to proceed; and Plaintiffs' conduct was egregious, totally unacceptable and sanctionable. See January 9, 2012 Hearing Transcript at pp. 59-62 and *Order Regarding*

Defendants' Motion to Strike Plaintiffs' Expert Witness Disclosures (TID 42472270), incorporated herein by reference.

The Court also found that Plaintiffs' responses to the Plaintiff Fact Sheet were deficient because they were boilerplate and lacked the plaintiff-specific detail required to be fully responsive; and that Plaintiffs' answers to Defendants' discovery requests were deficient because they lacked the detail required to be fully responsive to Defendants' discovery requests, were not plaintiff-specific, and improperly referred to Plaintiff Fact Sheet responses instead of being directly and substantively responsive. *Id.*

Because of these deficiencies, the Court ordered plaintiffs to: (1) file Amended Plaintiff Expert Witness Disclosures; (2) make detailed amendments to their Responses to the Plaintiff Fact Sheet to supply additional plaintiff-specific detail; and (3) amend their answers and responses to defendants' discovery requests to supply additional, plaintiff-specific detail. *Id.* See also, *Order Regarding Expert Witness Disclosures* (TID 42471949). The Court further ordered the Defendants' attorneys involved in drafting *Defendants' Joint Motion to Strike Plaintiffs' Expert Witness Disclosures* and the Defendants' attorneys who prepared motions for sanctions related to Plaintiffs' failure to fully respond to the Plaintiff Fact Sheet and to Defendants' discovery requests to serve upon the Court, the Mass Litigation Manager, and Plaintiffs' counsel a detail of their time and expenses with regard to preparation of such motions for the Court to consider in assessing monetary sanctions against Plaintiffs. See January 9, 2012 transcript at pp. 62, 137, 189 and *Order Regarding Defendants' Motions to Strike Plaintiffs' Expert Witness Disclosures* (TID 42472270) at paragraph 16.

Having reviewed Defendants' affidavits and other submissions in support of their request for attorneys' fees and expenses and any objections thereto, having considered the circumstances and history of this case, and having conferred with one another to insure uniformity of their decisions, as contemplated by West Virginia Trial Court Rule 26.07(a), the Court **FINDS** the following monetary sanctions are reasonably calculated to reimburse Defendants for their reasonable costs incurred in trying to enforce their rights to obtain Plaintiffs' expert witness disclosures as well as to obtain complete, plaintiff-specific responses to the Plaintiff Fact Sheet and to Defendants' discovery requests.

The Court **ORDERS** Plaintiffs' counsel to pay the following monetary sanctions within fourteen (14) days of the date of entry of this Order. All checks shall be made payable to counsel for the benefit of the Defendants set forth below. Counsel for each of these Defendants shall file and serve an acknowledgement of receipt of the monetary sanction issued for the benefit of their respective client(s).

Defendants' Joint Motion to Strike Plaintiffs' Expert Witness Disclosures

1. \$731.00 made payable to counsel for the benefit of Defendants Eastern Associated Coal, LLC, Amherst Coal and Hobet Mining Inc.;
2. \$5,535.70 made payable to counsel for the benefit of Defendant Dow Chemical Company;
3. \$5,677.95 made payable to counsel for the benefit of Defendant Legacy Vulcan Corporation;
4. \$2,574.00 made payable to counsel for the benefit of Defendant PPG Industries, Inc.;
5. \$2,451.20 made payable to counsel for the benefit of Defendant Preiser Scientific, Inc.;

6. \$1,500.50 made payable to counsel for the benefit of Defendant ICL-IP America;

Other Motions for Sanctions

7. \$2,500.00 made payable to counsel for the benefit of Defendants Patriot Mining Company, Inc. and Hunter Ridge Coal Company in connection with the filing of these Defendants' Motion to Dismiss Complaints filed in *Spotloe v. Arkema, Inc., et al.*, Civil Action No. 11-C-5010003 and *Fridley v. Arkema, et al.*, Civil Action No. 11-C-5310001, for Plaintiffs' Failure to Comply with September 28, 2011 Order;
8. \$2,508.75 made payable to counsel for the benefit of Defendant Red Ash Sales & Processing, Inc. in connection with the filing of its Motion for Sanctions in *Testerman v. Red Ash Sales & Processing, Inc., et al.*, Civil Action No. 11-C-5240008;
9. \$1,545.00 made payable to counsel for the benefit of Defendant U.S. Steel Mining Company, LLC in connection with the Motion for Sanctions filed in *McNeal v. Arkema, Inc., et al.*, Civil Action No. 11-C-5200011;
10. \$1,252.50 made payable to counsel for the benefit of Defendant U.S. Steel Mining Company, LLC in connection with the Motion for Sanctions filed in *Dunn v. Cliffs Natural Resources Exploration, et al.*, Civil Action No. 11-C-5550001.

Plaintiffs' objections and exceptions to the Court's ruling are noted.

It is so **ORDERED**.

ENTER: March 9, 2012

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