



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**IN RE: TOBACCO LITIGATION
(Individual Personal Injury Cases)**

**CIVIL ACTION NO. 00-C-5000
(Judge Arthur M. Recht)**

THIS DOCUMENT APPLIES TO ALL CASES

CASE MANAGEMENT ORDER/TRIAL PLAN FOR PHASE II

The Court enters this **ORDER** as follows:

1. This order concerns the claim of failure to instruct with respect to ventilated filter cigarettes manufactured, sold, and smoked between 1964 and July 1, 1969.
2. The Court has determined that there are 30 plaintiffs who can potentially pursue a failure to instruct claim in Phase II because their paragraph 5(b) filings in this case indicate that they may have smoked a brand of cigarettes with ventilated filters during the relevant period. See Exhibit A to Order of July 13, 2015.
3. This order sets out the initial procedures that will be followed to resolve the claims of the 30 plaintiffs listed on the referenced Exhibit A.
4. The parties will prepare five cases at a time. By October 23, 2015, plaintiffs shall disclose to the defendants and to the Court the name, current address, and specific type of medical condition for which each plaintiff listed on Exhibit A seeks to pursue the failure to instruct claim described above, along with the name of the ventilated filter cigarette reportedly listed on each plaintiff's 5(b) filing as smoked between January 1, 1964 and July 1, 1969, reciting the dates during that period when the ventilated filter product was smoked. At the same time, plaintiffs will identify the five cases that they propose to be the first five cases to be tried. By November 13, 2015, Defendants shall either accept the five cases

proposed, object to one or more of the five cases proposed, and/or propose their own set of five cases. If the parties cannot agree to a set of five cases, the Court will consider the parties' respective positions on the makeup of the group of five and by November 16, 2015, will identify which five cases will be the first to be tried. Within 7 days, Plaintiffs shall supply defendants with updated medical authorizations and the names and locations of treating physicians and facilities for each of the first five plaintiffs so that medical records can be collected.

5. After the first five cases are agreed or ordered by the Court, the parties shall follow the following schedule:

Expert and Party Discovery:

- Plaintiffs' Disclosure of Expert Witnesses: No later than January 15, 2016
- Defendants' Disclosures of Expert Witnesses: No later than February 15, 2016
- All Discovery Completed By Both Sides As To The First Five Plaintiffs: September 15, 2016

Motion Practice:

- All motions, including any *Gentry* Motions, will be due November 1, 2016, with oppositions due November 15, 2015 and reply briefs due November 25, 2016.
- Hearing on All Motions Not Requiring Testimony: December 1, 2016
- Hearing on Motions Requiring Testimony: To Be Determined on December 1, 2016

6. After the resolution of each of the initial five cases, the parties shall select the next group of cases as directed by the Court to be prepared as set forth above and the Court will then set a pre-trial schedule.
7. The Court plans to try to first five cases together in a single trial, with a trial date tentatively set for May 1, 2017. Defendants object to a consolidated trial and they contend that discovery will show that each plaintiff's claim should be tried individually. That objection is preserved. Moreover, defendants shall have the right to ask the Court to reconsider this issue based on information obtained during discovery, and may also renew the issue during trial.
8. In accordance with the jury verdict, all trials will be for compensatory damages only. The issues that will be subject to discovery, motion practice and trial for each individual plaintiff listed for a Phase II individual trial include, without limitation:
 - a. **Product use**—evidence related to an individual Plaintiff's use of ventilated filter cigarettes manufactured and sold by one of the defendants between 1964 and July 1, 1969;
 - b. **Medical causation**—evidence related to whether an individual Plaintiff's injury was causally related to a failure to instruct with respect to ventilated filter cigarettes manufactured, sold, and smoked between 1964 and July 1, 1969;
 - c. **Proximate causation**—evidence related to whether an individual Plaintiff's damages were caused by a failure to instruct the smoker regarding the ventilated filter cigarettes;

- d. **Affirmative defenses**—including (but not limited to) statute of limitations, comparative fault, assumption of the risk, bankruptcy, and *res judicata*;
- e. **Compensatory damages**—evidence related to the amount necessary to compensate the plaintiff for the harm that he or she suffered as a result of defendants' failure to instruct.
9. During the course of this action, defendants collected medical records for various plaintiffs and stored those records with a local court reporter pursuant to this Court's July 17, 2001, Order Modifying January 11 Case Management Order/Trial Plan—Revision No. 11. There is no longer any need to store these records since the vast majority of plaintiffs no longer have any claim in this litigation. To the extent that either side wants to undertake a search through the boxes of records to locate any records relating to the 30 plaintiffs referenced herein, that search shall be completed by December 15, 2015. Thereafter, the boxes in storage shall be sent to plaintiffs' counsel, should they so request within 30 days of this order, or otherwise shall be destroyed. There shall be no further obligation to maintain a depository of these records as set out in the Order of July 17, 2001.

ENTER: November 6, 2015.

/s/ Arthur M. Recht
Senior Status Judge
Tobacco Litigation

PRESENTED BY:

/s/ Susan M. Robinson
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