



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)

ORDER REGARDING JUNE 8, 2015 HEARING – PHASE II

Having received briefs from both plaintiffs and defendants prior to a hearing on June 8, 2015, relating to the scope and management of the future course of the remaining claims, the Court **ORDERS** as follows:

1. On May 15, 2013, the Phase I jury rejected all claims in this action except for claims by those plaintiffs who allege that they were injured by a failure to instruct with respect to “ventilated filter cigarettes” manufactured, sold, and smoked between 1964 and July 1, 1969. Plaintiffs appealed the jury verdict and various rulings by this Court, but the West Virginia Supreme Court of Appeals affirmed the jury verdict and this Court’s rulings. In light of those events, the only work that remains to be accomplished in this matter in Phase II is to resolve the failure to instruct claims of those plaintiffs whose claims have not already been dismissed, who previously asserted in their paragraphs 5(b) submissions that they smoked ventilated filter cigarette brands manufactured and sold between 1964 and July 1, 1969, and who claim that they were injured by a failure to instruct relating to the ventilated filters of such cigarettes.

2. Defendants contend that the term "ventilated filter cigarettes" includes only those cigarette brands with ventilated filters -- that is, filters perforated with vent holes -- that were first manufactured beginning in 1964. Defendants contend that this definition is undisputed and borne out by the citations to the record cites that they submitted to the Court on February 26, 2015, and in their briefing prior to the June 8, 2015 hearing. Defendants contend that there were very few brands of this type that were manufactured during the period of 1964 to July 1, 1969,

covered by the jury verdict on the failure to instruct claim. Defendants submitted affidavits detailing these brands during the relevant time period. Defendants contend that the 5(b) responses identify only 30 plaintiffs who allegedly smoked the few brands that fall within the jury verdict. See Chart Attached as Exhibit A.

3. Plaintiffs disagree and assert that "ventilated filter cigarettes" are not limited to cigarettes with ventilated filters. Plaintiffs argue for a broader definition that they contend encompasses potentially more plaintiffs who may be eligible to pursue claims in Phase II.

4. After reviewing the parties' submissions, the verdict form and the Phase I jury instructions, the Court announced its ruling in open court on June 8, 2015. The Court holds that the issue is governed by the plain language of the verdict form question and the time period expressly covered by that question running from 1964 to July 1, 1969. In accordance with the undisputed evidence at trial and the testimony of both sides' experts, the term "ventilated filter cigarettes" means cigarettes with ventilated filters (that is, with filters bearing rings of perforated vent holes) which were first introduced in 1964. The relevant verdict form questions (Question 1(c)) expressly limits the cigarettes covered by that finding to ventilated filter cigarettes manufactured and smoked at any point during the period from 1964 to July 1, 1969.

5. After reviewing the evidence as to paragraph 5(b) filings in this matter, the Court finds that there are only 30 plaintiffs who allege that they smoked a brand of cigarettes during the relevant period of 1964 to July 1, 1969, that arguably falls within the category of ventilated filter cigarettes. They are listed on Exhibit A.

6. The Court hereby rules that the Phase II proceedings in this action will be limited to the failure to instruct claim described in Verdict Question 1(c) and will involve at most only the 30 plaintiffs and brands identified on Exhibit A.

7. The parties are directed to confer and submit to this Court by August 8, 2015, either a joint case management plan for the 30 potential individual claims identified for Phase II, or, in the event no agreement is reached, to submit their respective proposals. The Court tentatively set June 13, 2016, and December 4, 2016, as dates for the first rounds of trials, recognizing that discovery and motion practice will precede any trial settings.

8. Pursuant to Rule 46 of the West Virginia Rules of Civil Procedure the objections and exceptions of the respective parties to all rulings of the Court adverse to their position are here noted and preserved to the extent that at the time of the ruling it was made known to the Court the action such party desired the Court to take or the objection to the actions of the Court and the grounds therefore.

ENTER: July 13, 2015.

Arthur M. Recht
Senior Status Judge
Tobacco Personal Injury Litigation



EXHIBIT A

**PLAINTIFFS WHO ALLEGE THAT THEY SMOKE VENTILATED FILTER PRODUCTS
BETWEEN 1964 AND JULY 1, 1969***

No.	Case Name	Smoker Name	Civil Action Number	Ventilated Filter Brand Alleged Between 1964-July 1, 1969	Defendant Who Manufactured the Ventilated Filter Brand
1	Akers, N	Akers, Maurice, Jr. (deceased)	00-C-933	Doral (1948-1990)	RJR
2	Badgett, AT	Badgett, Avin T.	00-C-392	Doral (1966-1969)	RJR
3	Ball, LC	Ball, Lidburn Conrad (deceased)	00-C-398	Philip Morris (1965-1975)	PM
4	Boone, RR	Boone, James E. (deceased)	98-C-2341	Philip Morris (1956-1965)	PM
5	Brown, EK	Brown, Mary A. (deceased)	00-C-1778	Doral (1967-1972)	RJR
6	Buckley, S	Buckley, Sarah	00-C-448	Doral (1963-1966)	RJR
7	Canaday, E	Canady, Earl, Jr. (deceased)	00-C-1001	Doral (1964-2000)	RJR
8	Carmichael, NJ	Carmichael, Nellie J. (deceased)	00-C-1003	Doral (1946-2000)	RJR
9	Clay, SK	Stone, Naomi L. (deceased)	98-C-1797	Doral Lights (1962-1968)	RJR
10	Collett, JH	Collett, John H.	00-C-483	Doral (1957-2000)	RJR
11	Crabtree, D	Crabtree, Dale	00-C-1027	Doral (1963-2000)	RJR
12	Foster, Lois	Hammond, Anna Catherine	01-C-322	Philip Morris	PM
13	Gnojek, LA	Gnojek, John A.	00-C-555	Philip Morris (1940-1984)	PM
14	Harrison, Wanda	Harrison, Wanda J.	00-C-588	Parliament (undated)	PM
15	Haynes, JR	Haynes, James R.	00-C-1112	Carlson (sic) (1968-1988)	RJR
16	Lawhun, B	Frazier, Wanda (deceased)	00-C-1185	Doral (1940s-1999)	RJR
17	Lopez, Catherine	Lopez, Catherine	00-C-1187	Doral (1966-2000)	RJR
18	Lovejoy, Betty	Lovejoy, Betty	00-C-1188	Doral (1948-2000)	RJR

No.	Case Name	Smoker Name	Civil Action Number	Ventilated Filter Brand Alleged Between 1964-July 1, 1969	Defendant Who Manufactured the Ventilated Filter Brand
19	Mahone, L	Mahone, Lossie	00-C-1196	Carlton (1954-1964)	RJR
20	Marcum, Dessie	Marcum, Dessie	00-C-686	Doral Menthol (undated)	RJR
21	Marcum, E	Marcum, Everette	00-C-1202	Doral (undated)	RJR
22	Maynard, Dorothy	Maynard, Dorothy	00-C-1211	Doral (undated)	RJR
23	Moubray K	Moubray, Kathleen	00-C-729	Philip Morris (1969-1975)	PM
24	Potts, PJ	Potts, Patricia J.	00-C-766	Doral (1958-2000)	RJR
25	Smith, Minnie	Smith, Minnie	00-C-824	Doral (1952-1994); Philip Morris (1952-1994)	RJR and PM
26	Smith, William F	Smith, William F	00-C-1379	Philip Morris (1950-1996)	PM
27	Spencer, A	Spencer, Allen	00-C-1388	Doral (1961-2000)	RJR
28	Stevey, Jannette E	Stevey, Janette E.	00-C-846	Doral (undated)	RJR
29	Summerfield V.	Summerfield, Vauna (deceased)	00-C-852	Carlton Slims (1969-1996)	RJR
30	Thomas, Donald C	Thomas, Donald G.	00-C-917	Philip Morris (1950-1986)	PM

* Defendants point out that several of the brands allegedly smoked by plaintiffs in this group were sold with ventilated filters for only part of the designated time period. Doral was first sold with a ventilated filter on June 16, 1969, approximately two weeks before July 1, 1969. Philip Morris Multifilter 84 mm Menthols were commercially available in a ventilated form for approximately four months prior to July 1, 1969, and Parliament 100s were commercially available in a ventilated form for approximately 20 months prior to July 1, 1969. Only plaintiffs who allege that they smoked one of those brands during the period when they were available in a ventilated form would be theoretically eligible to pursue an individual compensatory damage claim. Further, Carlton Slims were not available between 1964 and July 1, 1969 and thus plaintiff Summerfield's alleged smoking of Carlton Slims would not make that plaintiff eligible to pursue the failure to instruct claim from 1964 to July 1, 1969 identified by the jury.