



**IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA**

**IN RE: TOBACCO LITIGATION  
(PHASE II INDIVIDUAL PERSONAL INJURY CASES)**

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

**THIS DOCUMENT APPLIES TO ALL CASES**

**MEMORANDUM OPINION AND ORDER REGARDING COMPOSITION OF  
INITIAL GROUPING OF FIVE PLAINTIFFS FOR FIRST PHASE II TRIAL**

As a result of the hearing on October 9, 2015, this Court attempted to offer a means to structure the composition of the initial grouping of five plaintiffs to begin Phase II of the above captioned matter.

This Court requested the plaintiffs nominate five individuals designated upon what is referred to as the paragraph 5 (b) filing of the plaintiffs claiming to have smoked ventilated filter cigarettes between January 1, 1964 and July 1, 1969.

The 5(b) filings would be produced and nominated from the list of thirty plaintiffs which include twenty claims against defendant, R.J. Reynolds Tobacco Company and eight claims against defendant, Phillip Morris USA, Inc.

The plaintiffs nominated five individuals with a request that the first trial involve only defendant, Philip Morris USA, Inc.

Defendant, Philip Morris USA, Inc. objected to the plaintiffs' nominations and urged a random sample of plaintiffs and defendants arguing that this modality would produce a more impartial and equitable way to involve a representative cross section of plaintiffs in the first trial.

Defendant R. J. Reynolds Tobacco Company did not object to the plaintiff's nominations of plaintiffs and defendant, Phillip Morris USA, Inc.'s response. However, defendant, R.J. Reynolds Tobacco Company suggested that plaintiffs' initial nominations be rejected, and that all parties should be given an opportunity to propose the initial grouping of plaintiffs, which

implicitly would result in the initial group to include a combination of both defendants, Philip Morris USA, Inc. and R.J. Reynolds Tobacco Company.

This Court is of the view that a more productive way to structure the first trial is to have participation of both defendants. Such an approach would serve as a more efficient manner to proceed on a more intelligent path for the remaining cases.

**ACCORDINGLY**, this Court holds that a random selection process should be utilized to assume participation of all parties. The parties should gather together to attempt to agree on a slate of original participants within two weeks of the date of the Order. If the parties are unable to accomplish this task, then this Court shall make the selections and thereafter the trial shall proceed in accordance with paragraphs (5-9) of the Case Management Order entered on November 6, 2016.

**IT IS SO ORDERED.**

**ENTER:** November 23 2015.

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