



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

**IN RE: GAVIN LANDFILL LITIGATION**

**CIVIL ACTION NO. 16-C-8000**

**THIS DOCUMENT APPLIES TO ALL CASES**

**ORDER REGARDING EXPERT WITNESS DISCLOSURES**

On a former day, November 13, 2017, came the parties, by their respective attorneys, for purposes of a hearing before the Discovery Commissioner, Webster J. Arceneaux, on Defendants' Motion to Compel Discovery Responses (Transaction ID 61268574); Defendants' Motion to Compel Expert Disclosures (Transaction ID 61267235); and Defendants' Amended Motion to Compel Expert Deposition Dates (Transaction ID 61318638).

Upon consideration of the Motions, Responses, Replies, and arguments of counsel, having noted the exceptions and objections made by Plaintiffs' counsel on the record during the hearing, and having conferred to ensure uniformity of its decisions, contemplated by West Virginia Trial Court Rule 26.07(a), the Court GRANTS, in part, and DENIES, in part, Defendants' motions, and ORDERS as follows:

1. Plaintiffs shall amend their Expert Witness Disclosures, filed on September 29, 2017, as set forth below on or before January 12, 2018.
2. Plaintiffs are notified that failure to provide amended Expert Witness Disclosures, according to the below requirements, on or before the date specified herein shall subject them to all sanctions, up to and including dismissal of their respective civil actions with prejudice.
3. Plaintiffs may not disclose any new experts in addition to, or in lieu of, the experts identified in Plaintiffs' September 29, 2017 submission, except upon leave of Court for good cause shown.
4. Plaintiffs shall submit amended Expert Witness Disclosures according to the

requirements set forth below.

A. In accordance with West Virginia Rule of Civil Procedure 26(b)(4) and the “Fourth Amended Case Management and Scheduling Order” of this Court, for each expert, Plaintiffs shall submit a report authored and signed by the expert or, alternatively, a disclosure setting forth the subject matter on which each expert is expected to testify, a statement of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. The report or disclosure shall identify each individual Plaintiff or decedent on whose behalf each expert is expected to testify. The reports produced or disclosures provided shall include the required information as set forth herein for each individual Plaintiff on whose behalf the expert is expected to testify so that Defendants may evaluate the opinions each expert may offer as to any given Plaintiff and the grounds for those opinions, and respond accordingly. Specifically, Plaintiffs are required to submit the following information for each expert:

- i. **Expert’s Information:** The name, professional address, and curriculum vitae of the expert, including a list of all publications authored by the witness and all cases in which the witness has been retained and provided an expert report or given testimony;
- ii. **Exposure Information:** For each expert who will address exposure of Plaintiffs to one or more of allegedly hazardous substances (as defined by Plaintiffs in their Amended Complaint), provide separately for each Plaintiff the expert’s opinion as to:
  1. The identity of the chemical(s) or substance(s) allegedly causing the individual Plaintiff’s alleged injuries;

2. The dates, nature and circumstances of each alleged exposure of that individual Plaintiff to the chemical(s), or substance(s) listed in response to (ii)(1), including a description of the type (i.e., airborne, dermal, ingestion, etc.) of exposure;
3. A quantification or calculation of the amount or level of alleged exposure of that individual Plaintiff to the chemical(s) or substance(s) listed in response to (ii)(1), and a description of the method used to quantify or calculate the alleged exposure; and
4. A summary of the grounds for the expert's opinions with regards to items 1-3.

**iii. General and Specific Causation:** For each expert who will opine that a particular disease or condition of an individual Plaintiff was caused by exposure to one or more the allegedly hazardous substances (as defined by Plaintiffs in their Amended Complaint), provide separately for each individual Plaintiff and for each chemical or substance the expert's opinion as to:

1. The identity of the individual Plaintiff's specific disease, illness or injury allegedly caused by exposure to each such chemical or substance;
2. The type of exposure resulting in each such disease, illness or injury (e.g., airborne, dermal, ingestion, etc.);
3. A summary of the grounds for the expert's opinions with

regards to items 1-2, including a list of the individual Plaintiff's medical records reviewed by the expert; and

4. Any and all reliable scientific and/or medical evidence, i.e., peer-reviewed and/or scientific medical literature, showing a causal link between the individual Plaintiff's alleged exposure scenario to each chemical or substance; the specific type of injury claimed; and a summary of any other grounds upon which the expert's opinion is based.

**iv. Damages Information:** For each expert who will address Plaintiffs' damages (including, but not limited to, costs of medical monitoring, past and/or future wage loss or any other economic or other type of claimed loss), provide separately for each individual Plaintiff the specific grounds upon which that testimony will be based, along with an itemization of the type and corresponding amount of damages upon which that expert will opine.

**v. Failure-to-Warn Claims:** For each expert who will address the adequacy of Defendants' warnings, provide separately for each individual Plaintiff a list of each and every warning that the expert contends is inadequate, the identity of the Defendant who provided the warning, the chemical or substance to which the warning relates, and the date of the Material Safety Data Sheet (MSDS), product label, or other document on which the warning appears. For each warning that is listed, provide the expert's opinion as to:

1. The specific reason(s) why the expert believes the warning is

inadequate;

2. The identity of the specific standard(s) and/or regulation(s) that the warning allegedly fails to meet;
3. The specific reason(s) the language and/or form of the warning allegedly fails to meet the applicable standards and/or regulations;
4. The substance of the specific information or warning that should have been, but was not provided; and
5. A summary of the grounds for the expert's opinions with regards to items 1-4.

**vi. Failure-to-Eliminate Claims:** For each expert who will address the adequacy of Defendants' failure to eliminate, provide separately for each individual Plaintiff a list of each and every reasonable measure that the expert contends should have been implemented, the identity of the Defendant who should have implemented the measure that would have eliminated any risk, the chemical or substance to which the measure would have related, and the date of the Material Safety Data Sheet (MSDS), product label, or other document on which the notice of a duty to implement the measure would have appeared. For each measure that is listed that would have eliminated any risk, provide the expert's opinion as to:

1. The specific reason(s) why the expert believes the measure was required by law or the applicable standard of care;
2. The identity of the specific standard(s) and/or regulation(s)

that would have imposed on a specific Defendant the obligation to implement the measure;

3. The specific reason(s) the measure would have eliminated the health hazards to each individual Plaintiff posed by the allegedly hazardous substances or chemicals (as defined by Plaintiffs in their Amended Complaint);
4. The substance of the specific measure that should have been, but was not implemented; and
5. A summary of the grounds for the expert's opinions with regards to items 1-4.

**vii. Failure-to-Protect Claims:** For each expert who will address the adequacy of Defendants' failure to protect, provide separately for each individual Plaintiff a list of each and every reasonable protective measure that the expert contends should have been implemented that would have protected each individual Plaintiff from the risks of exposure, the identity of the Defendant who should have implemented the protective measure, the chemical or substance to which the measure would have related, and the date of the Material Safety Data Sheet (MSDS), product label, or other document on which the notice of a duty to implement the protective measure would have appeared. For each remedial measure that is listed, provide the expert's opinion as to:

1. The specific reason(s) why the expert believes the protective measure was required by law or the applicable standard of care;

2. The identity of the specific standard(s) and/or regulation(s) that would have imposed on a specific Defendant the obligation to implement the protective measure;
3. The specific reason(s) the protective measure would have reduced the health hazards to each individual Plaintiff posed by the allegedly hazardous substances or chemicals (as defined by Plaintiffs in their Amended Complaint);
4. The substance of the specific protective measure that should have been, but was not implemented; and
5. A summary of the grounds for the expert's opinions with regards to items 1-4.

**viii. Medical Monitoring Claims:** For each expert who will address Plaintiffs' medical monitoring claims, provide separately for each Plaintiff the expert's opinion as to:

1. The specific disease(s) for which medical monitoring is being requested;
2. A description of all exposures to one or more of the allegedly hazardous substances (as defined by Plaintiffs in their Amended Complaint) that the expert will opine are "significant" relative to the general population (as that phrase is used in Bower v. Westinghouse Electric Corp., 522 S.E.2d 424 (W. Va. 1999)), including for each chemical the type, duration, and frequency of each exposure;

3. An explanation of each reason that the individual Plaintiff has a significantly increased risk of contracting the disease(s) identified in (1) relative to what would be the case in the absence of the exposures identified in (2), including any and all peer-reviewed scientific literature and/or evidence that demonstrates a proximate link between the exposures identified in (2) to the disease(s) identified in (1);
4. A description of all monitoring and diagnostic procedures that the expert opines will make early detection of the disease(s) listed in response to (1) possible, linking the specific procedure to the specific disease(s) identified in (1).
5. The expert's basis for concluding that the procedures listed in response to (4) are different from what would be prescribed in the absence of the exposure, and that periodic administration of those procedures is necessary; and
6. A summary of the grounds for the expert's opinions with regards to items 1-5.

B. If an expert is not identified in the amended disclosures as offering an opinion with respect to a particular Plaintiff, then that expert will be prohibited from later offering testimony regarding that particular Plaintiff absent a showing of good cause to the Court.

5. Upon the filing and service by all remaining Plaintiffs of proper Expert Witness Disclosures as ordered herein, Defendants shall thereafter have a period of forty-five (45) days within which to file and serve their Expert Witness Disclosures.



6. The Defendants are not required to file expert reports on all areas designated in this Order, as the primary burden of proof lies with the Plaintiffs. But the Defendants are notified that the specificity requirements of this Order equally run to their Expert Witness Disclosures. The Defendants' failure to meet the requirements specified herein, on or before the date specified herein, shall subject the Defendants to all sanctions, up to and including the striking of Answers and entry of default judgments.

7. Plaintiffs shall submit any rebuttal Expert Witness Disclosures within thirty (30) days after Defendants serve their Expert Witness Disclosures.

The Parties' objections to the rulings set forth herein are noted and preserved.

It is so ORDERED.

ENTER: December 8, 2017

/s/ Derek C. Swope  
Leading Presiding Judge  
Gavin Landfill Litigation