



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)**

CASE MANAGEMENT ORDER/TRIAL PLAN

1. All remaining cases against Liggett Group LLC (Liggett) now pending, filed in, or transferred to and accepted by this Court prior to August 15, 2000, shall be included in a single consolidated trial to commence on a date to be determined.

2. The issues to be determined in the consolidated trial shall be bifurcated as follows:

a. PHASE I – General liability issues pertaining to Defendant Liggett including, if appropriate, all claims that remain viable from the operative complaint. Plaintiffs reserve the right to seek leave to amend the operative complaint to add or reinstate claims based upon claims that are viable due to Liggett-specific evidence and theories of recovery.

The issue of whether entitlement to punitive damages will be tried in the Phase I trial will be determined by the Court following further briefing by the parties. Defendant Liggett filed its motion to move entitlement to punitive damages to any Phase II trials on November 10, 2016. Plaintiffs shall file any response to that motion on or before December 14, 2016, and Liggett shall file any reply on or before December 28, 2016. Once briefing is complete, the Court, in its discretion, will hold a hearing to resolve this issue.

b. PHASE II – Individual claims of the plaintiffs whose cases have been consolidated and who have viable claims at the conclusion of Phase I. Separate individual juries, judge or judges will independently address issues unique to each plaintiff's compensatory damages and any other individual issues in reasonably sized trial groups or on an individual basis.

3. The following shall be established and observed relative to discovery and other activity in this trial:

a. December 16, 2016 - As for each plaintiff included in the Liggett Phase I trial, plaintiffs are to provide baseline medical and factual information (i.e. plaintiff's name, address, date of birth, social security number, Liggett and other manufacturers' tobacco products used, the time frame such product or products were used, where the plaintiff purchased such product or products, the injury the plaintiff suffered as a result of tobacco use, the date the plaintiff discovered or was diagnosed with the injury, and the date and cause of decedent's death) and a list identifying each plaintiff to be included in the Liggett Phase I trial. Only Liggett Plaintiffs who were properly disclosed in the 5b Index previously filed in compliance with the original Case Management Order, or any authorized/approved amendments thereto, will be included in the Liggett Phase I trial.

b. December 19, 2016 - Plaintiffs provide a list of all lay witnesses and all expert liability and medical witnesses which are intended for use during the Phase I trial. Plaintiffs must provide all expert reports on this date. If an expert has not produced a report, a Rule 26(b)(4) interrogatory response shall be provided, which includes a summary of such expert's opinion and expected testimony;

c. February 13, 2017 – Defendant Liggett provides a list of all lay witnesses, expert liability and medical witnesses. Defendant Liggett must provide all expert reports on this date. If an expert has not produced a report, a Rule 26(b)(4) interrogatory response shall be provided, which includes a summary of such expert’s opinion and expected testimony;

d. February 10, 2017, to September 29, 2017 - Expert and lay witness depositions shall be conducted during this period; all reliance materials shall be disclosed to the other party 10 business days before a deposition is scheduled. Plaintiff’s expert witnesses shall be deposed before Liggett’s expert witnesses.

DEPOSITIONS – All sworn deposition or trial testimony from any previous or contemporary tobacco litigation cases in which Liggett was a party at the time the deposition or trial testimony was elicited, or where otherwise permitted by law, may be used in pretrial motion and at trial;

a. September 15, 2017 - Plaintiffs shall disclose trial exhibits, and provide electronic copies of all exhibits to counsel for Defendant;

b. September 29, 2017 – Defendant Liggett shall disclose trial exhibits, and provide electronic copies of all exhibits to counsel for Plaintiffs;

c. October 16, 2017 - Objections to plaintiffs’ exhibits and demonstrative materials must be filed;

d. October 30, 2017 - Objections to defendant Liggett’s exhibits and demonstrative materials must be filed;

e. Beginning on or about November 20, 2017, if needed, the Court shall schedule a series of exhibit conferences.

f. September 29, 2017 - Discovery deadline;

g. November 3, 2017 – Deadline for Plaintiffs and Liggett to file Deposition Designations for all Depositions they intend to use at trial;

h. December 14, 2017 – Deadlines for Plaintiffs and Liggett to file Objections and Counter-Designations to the opposing party's deposition designations;

i. December 29, 2017 – Deadlines for Plaintiffs and Liggett to file Objections to Counter-Designations and Counter-Counter Designations;

j. January 22, 2018 - All pretrial motions, dispositive motions and motions in limine must be filed;

k. March 14, 2018 - All written oppositions to pretrial, dispositive motions, and motions in limine must be filed;

l. March 29, 2018 - All written replies to pretrial, dispositive motions and motions in limine must be filed;

m. On or after April 13, 2018 - Hearing on all pretrial motions, dispositive motions, and motions in limine;

n. On or after April 13, 2018 - Pretrial, settlement, and document conferences;

Trial – TBD.

o. Parties to provide 48 hours notice of fact and expert witnesses to be called at trial;

p. Parties to provide 24 hours notice of exhibits they intend to use at trial, and exhibits in categorical publication packets to be used at trial, but excluding potential cross-examination exhibits/materials they intend to use at trial;

q. Parties to provide 24 hours notice of use of demonstrative exhibits to be used at trial, excluding potential cross-examination exhibits;

r. By agreeing to specific dates included with the final scheduling order entered by the Court, defendant Liggett does not waive any objection it may have to these proceedings. The objections and exceptions of all parties are noted, incorporated by reference, submitted for reconsideration, and preserved.

4. Discovery relevant to Phase II issues shall begin, if necessary, after the Phase I Liggett Trial.

5. Should any plaintiff-specific discovery become necessary to the Phase I consolidated trial in order to preserve the testimony of a plaintiff, reasonable and necessary discovery should be commenced immediately following compliance with the following provisions:

a. Once a specific plaintiff is designated as needing to have his or her testimony preserved, plaintiffs' counsel shall have five (5) days to turn over copies of all medical records concerning that plaintiff in their possession along with an executed authorization and answers to the defendant's first set of interrogatories;

b. The deposition of the designated plaintiff can be noticed any time after thirty (30) business days from the turning over of the indicated materials;

c. The deposition of the designated plaintiff shall be limited to eight (8) hours or whatever time period the plaintiff's treating physician feels that plaintiff can bear, including a reasonable period of time for breaks and meals.

ENTERED January 10, 2017.

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

SUBMITTED BY:

/s/ Kevin D. Stanley

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