



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

**IN RE: TOBACCO LITIGATION  
(PHASE II)**

**Civil Action No. 00-C-5000  
Judge Arthur M. Recht**

**THIS DOCUMENT APPLIES TO ALL CASES**

**Memorandum Opinion and Order**

This matter is currently on the eve of a Phase II trial of those cases that survived after the jury returned a verdict in the Phase I trial on May 15, 2013. The cases that survived include those Plaintiffs who smoked ventilated filtered cigarettes between January 1, 1964 and July 1, 1969.

The Defendants in the first grouping of these Plaintiffs are Phillip Morris USA, Inc., and R.J. Reynolds Tobacco Company (herein the “Defendants”). Defendants have filed a Motion to Compel the Plaintiffs’ to provide proper expert witness disclosures to support their claim that exposure to certain amounts of excess smoke from those cigarettes involved could be a cause of any disease or injury under West Virginia Law. The Plaintiffs eventually attempted to provide those expert witnesses in a disclosure filed with the Court on Oct 26, 2016.<sup>1</sup>

The Defendants have also filed a Motion to Dismiss all of the Plaintiffs’ claims based upon the failure to provide the appropriate expert disclosures. The antidote to the Defendants’ Motion to Dismiss is to temporarily deny the motion without prejudice, and adopt in this opinion the Defendants’ proposed, revised schedule for testing the admissibility of Plaintiffs’ disclosed opinion’s adequacies, which address the causation issue. See page four of the Defendants’ filing of November 7, 2016 (Transaction ID No. 59802821).

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<sup>1</sup> Plaintiffs’ disclosures were filed beyond the time period established by this Court. However, as will be apparent from this opinion, the adequacy of these dilatory disclosures, the timing of which is not approved by this Court, may still be tested by the Defendants by adopting the suggested time table for the future development of this case that is contained in the Defendants’ November 7, 2016 filing.

After a *Gentry* hearing on the Defendants' Motion to Challenge and briefing schedule as suggested by the Defendants, this Court will then have a better opportunity to rule more intelligently on the current Motion to Dismiss.

Accordingly, the Defendants Motion to Dismiss is **DENIED** without prejudice to be reconsidered in accordance with the time periods set forth in the Defendants' proposed, revised time table set forth on page four of Defendants' filing of November 7, 2016 (Transaction ID No. 59802821).

It is **ORDERED**.

**ENTERED:** December 7, 2016.

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