



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

**IN RE: TOBACCO LITIGATION  
(LIGGETT GROUP, LLC)**

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

**THIS DOCUMENT APPLIES TO ALL CASES**

**MEMORANDUM OPINION AND ORDER**

This Matter comes before the Court on *Defendant, Liggett Group, LLC's Motion to Move Determination of Entitlement to Punitive Damages to Phase II* (Transaction ID 59822923). This Court has formulated a trial plan for approximately 87 Plaintiffs who are asserting claims for personal injuries allegedly caused by smoking cigarettes manufactured by the Liggett Group, LLC ("Liggett").

In Phase I of the Court's trial plan for the Liggett cases (Phase I) two issues will be decided by a jury: (1) did Liggett manufacture a defective product, as that term that has been defined in *Morningstar v. Black and Decker Mfg. Co.*, 162 W.Va. 857, 253 S.E.2d 666 (1979); and (2) whether Liggett's conduct would justify an award of punitive damages, as that term is defined in *Mayer v. Frobe*, 40 W.Va. 246 22 S.E. 58 (1895).

The identical trial plan was adopted and successfully applied to what is known as the Phase I Trial Group of cases wherein R.J. Reynolds, Phillip Morris USA, Inc., Brown and Williamson Holding Inc. and Lorillard Tobacco Company were Defendants.<sup>1</sup>

With no objection in the extant case by any of the Plaintiffs or Liggett, those cases in which cigarettes were manufactured by Liggett were severed from the first Phase I Trial Group.

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<sup>1</sup> The verdict in these cases returned on May 15, 2013, was that only one particular cigarette was defective and none of the Defendants' conduct would have justified an award of punitive damages.

Now Liggett has filed a motion to remove consideration of entitlement to punitive damages from the Phase I trial of the Liggett cases.<sup>2</sup>

Liggett argues that because there is such a quantitative difference in the number of Plaintiffs in the instant cases – only 87 as opposed to the previous Phase I Trial group of approximately 1000 Plaintiffs – there is no need to consider the punitive damage issue in Phase I. Liggett further argues that the punitive damage issue is best left for consideration in any Phase II case if indeed the jury should conclude that Liggett manufactured a defective product.

The Plaintiffs resist Liggett's motion arguing in essence that if the trial plan which was previously successfully used is not broke, then don't fix it.

This Court believes that the trial plan previously followed should not be changed for two very practical reasons. First, the trial plan does not violate any due process to Liggett, and second because of the difficulty in selecting a jury in these tobacco cases it is most efficient to try as many issues as are legally permissible in Phase I.<sup>3</sup> Therefore, once a jury is successfully empaneled in the Phase I Liggett trial, it is necessary for judicial economy and efficiency to try as many issues as would be legally permissible. The current trial plan does exactly that.

**ACCORDINGLY**, the motion of Liggett to remove determination of entitlement to punitive damages from the Phase I trial is **DENIED** for the reasons stated in this memorandum opinion.

It is so **ORDERED**.

**Enter:** February 15, 2017

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

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<sup>2</sup> When it was severed from Phase I in the first group of cases Liggett did not request that the punitive damage issues be removed from Phase I of the Liggett trial.

<sup>3</sup> In the previous Phase I trial (10,000) jurors were summoned in order to empanel a jury of (10).