



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

IN RE: TOBACCO LITIGATION

CIVIL ACTION NO. 00-C-5000

Judge Arthur M. Recht

(INDIVIDUAL PERSONAL INJURY CASES)

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER GRANTING DEFENDANTS' MOTION TO COMPEL**

On February 12, 2016, Defendants filed a Motion to Compel Plaintiffs to Provide Proper Expert Witness Disclosures and to Stay Discovery (Transaction ID 58569537). Defendants argued that Plaintiffs' expert disclosures failed to disclose the expert testimony needed for Plaintiffs to proceed with their failure to instruct claims. Plaintiffs filed an opposition (Transaction ID 58854369) and Defendants filed a reply (Transaction ID 59014485). On May 23, 2016, the Court heard oral argument on the motion. Upon full and mature consideration of the parties' motions and memoranda, and the relevant authorities with respect thereto, and for the reasons stated by the Court during the May 23, 2016 hearing, the Court hereby rules as follows:

1. Defendants' Motion to Compel Proper Expert Witness Disclosures and to Stay Discovery is **GRANTED**.

Accordingly, it is ORDERED that:

- 1) Plaintiffs shall have until August 22, 2016, to submit revised or supplemental expert disclosures that include the following opinions:
  - a. an estimate of the excess dose of smoke each plaintiff inhaled prior to July 1, 1969 as a result of the failure to instruct; and
  - b. that the failure to instruct prior to July 1, 1969, caused, or contributed to cause, damage or harm to the Plaintiff within the meaning of West Virginia law.

- 2) If Plaintiffs provide disclosures offering the opinions described above, defendant shall have until October 21, 2016, to identify counter-experts to address the issue of whether the opinions disclosed meet the *Gentry* standards for admissibility.
- 3) The parties shall then have until December 20, 2016, to take depositions of the experts disclosed on the issue of causation and the alleged excess exposures at issue.
- 4) At the end of those periods, Defendants will have until January 19, 2017, to file a motion challenging the admissibility of the newly disclosed opinions, or can decide instead to hold the issue for pre-trial motions.
- 5) If a motion challenging admissibility is filed, Plaintiffs will have until February 20, 2017, to respond and Defendants shall have until March 2, 2017, to file a reply brief. A hearing will then be set to decide the issue.
- 6) The trial for the first five cases is currently scheduled to be set for May 2017. Once the expert disclosure issue described herein is decided, the Court will set a new schedule to complete discovery and will adjust the trial schedule as necessary.

It is so ORDERED.

ENTER: June 23, 2016.

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

PRESENTED BY:

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