



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**IN RE: TOBACCO LITIGATION
(Individual Personal Injury Cases)**

CIVIL ACTION NO. 00-C-5000

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER REGARDING RULINGS ISSUED
DURING MARCH 23, 2018 HEARING**

On March 23, 2018, the Presiding Judges assigned to the Tobacco Litigation conducted a hearing during which the Court issued a number of rulings:

Parties' Motion to Dismiss Smokeless Tobacco Claims without Prejudice

On January 19, 2018, the Court heard Plaintiffs' and the Non-Liggett Defendants' joint motion to dismiss 41 smokeless tobacco claims identified by Plaintiffs' counsel without prejudice, subject to a right to refile those claims within two years, as described in Plaintiffs' and the Non-Liggett Defendants' *Joint Status Report on Resolution of all Non-Liggett Claims* (Transaction No. 6143583)¹. Plaintiffs' counsel asserted they no longer wished to pursue Plaintiffs' smokeless tobacco claims, and dismissal without prejudice would preserve Plaintiffs' right to hire other counsel to pursue those claims.² Plaintiffs' counsel confirmed they had informed Plaintiffs: they no longer desired to pursue Plaintiffs' smokeless tobacco claims; Plaintiffs could seek other counsel; and their contracts with Plaintiffs say that, "if we ever deem anyone's claim not to be something that can be pursued, we have the right to dismiss it."³

¹ In light of the agreement with Plaintiffs to dismiss their smokeless tobacco claims without prejudice with a right to re-file those claims within two years, the Non-Liggett Defendants filed a *Motion to Withdraw Motion to Dismiss Certain Smokeless Plaintiffs for Their Failure to Comply with the CMO* (Transaction ID 61426225).

² *January 19, 2018 Transcript*, page 8, line 8 through page 9, line 5.

³ *Id.*, p. 10, lines 1 through 18.

The Non-Liggett Defendants' asserted the Tobacco Litigation has been pending since 1999 and dismissal of the 41 smokeless tobacco claims identified by Plaintiffs' counsel without prejudice, subject to re-filing their claims within two years, was a realistic opportunity to bring to an end the claims against the non-Liggett Defendants.⁴ As explained by the Non-Liggett Defendants:

But ultimately, . . . given the causation issues in this case, given that these plaintiffs have long smoking histories and tried to prevail on those claims and did not, given the evidence problems that they have, we could understand if the plaintiffs didn't want to invest further dollars in this effort, but at the same time to give their plaintiffs the opportunity to pursue the claim, which we think is very unlikely.⁵

The Court set the matter for further hearing on March 23, 2018, to give the 41 Plaintiffs identified by Plaintiffs' counsel as having smokeless tobacco claims the opportunity to appear and inform the Court whether or not they want to pursue their claims with new counsel or dismiss their claims with prejudice.

On February 5, 2018, the Court ordered Plaintiffs' counsel to notify the 41 Plaintiffs identified as having smokeless tobacco claims that they must appear on March 23, 2018, and advise the Court whether: 1) they intend to hire other counsel and pursue their smokeless tobacco claims; or 2) they agree to dismiss their smokeless tobacco claims with prejudice. *Notice of Hearing* filed February 5, 2018 (Transaction ID 61645620). Plaintiffs' counsel was directed to provide a copy of the *Notice of Hearing* to the 41 Plaintiffs identified as having smokeless tobacco claims. The *Notice of Hearing* stated, among other things, that ***“Failure to appear before the Court on March 23, 2018, will cause the Plaintiff's smokeless tobacco claims to be dismissed with prejudice,***

⁴ *Id.*, page 12, line 19 through page 13, line 7.

⁵ *Id.*, page 13, line 14, through page 14 line 1.

absent good cause shown.” Id.

On March 22, 2018, one day prior to the Court’s hearing, Plaintiffs’ counsel filed 4 separate motions to dismiss with prejudice a total of 21 out of the 41 smokeless tobacco claims identified by Plaintiffs’ counsel. *See Motion to Dismiss Smokeless Tobacco Claims with Prejudice by Various Humphreys Clients* (Transaction ID 61828757) – 16 claims; *Motion for Dismissal with Prejudice of all Claims against the Non-Liggett Defendants, Including all Smokeless Tobacco Claims* (Transaction ID 61831146) – 2 claims; *Motion for Dismissal with Prejudice of Smokeless Tobacco Claims* (Transaction ID 61826571) – 2 claims; *Motion for Dismissal with Prejudice of Smokeless Tobacco Claims* (Transaction ID 61831261) – 1 claim.

On March 23, 2018, counsel for Plaintiffs appeared before the Court and confirmed that: none of the 41 Plaintiffs identified as having smokeless tobacco claims had appeared at the March 23, 2018, hearing;⁶ some Plaintiffs identified as having smokeless tobacco claims did not want to attend the hearing and did not want to pursue their claims, some are dismissed, and some either have estate problems or communication problems;⁷ while they are still counsel of record, they no longer want to pursue smokeless tobacco claims on behalf of the Plaintiffs identified as having such claims; and their representation agreement gives them the authority to dismiss the claims.⁸

Counsel of record having informed the Court they no longer desired to pursue the 41 smokeless tobacco claims, the Court ordered the claims **DISMISSED WITH**

⁶March 23, 2018 Transcript, page 5, lines 5 through 15; and page 7, lines 6 through 8.

⁷ Id., page 5, lines 1 through 15; and page 7, lines 15 through 21.

⁸ Id., page 5, line 24 through page 6, line 2; and page 6, line 20 through page 7, line 8; and page 7, line 15 through page 8, line 1.

PREJUDICE because the 41 Plaintiffs identified as having smokeless tobacco claims failed to comply with the Court's February 5, 2018, Notice of Hearing and Order.⁹ The Court will enter a separate dismissal order identifying with specificity those claims. Any exceptions or objections to the Court's ruling are noted and preserved.

Status of Settlement and Dismissal of Failure to Instruct Regarding Ventilated Filter Cigarette Claims

Plaintiffs' Counsel reported they had releases from 25 Plaintiffs identified as having claims of failure to instruct regarding ventilated filter cigarettes, and there are two pending motions to dismiss with prejudice those 25 claims. There being no objection, the Court **ORDERED** counsel to identify the pending motions by Transaction Identification Number so the appropriate orders can be entered by the Court dismissing those claims with prejudice.

The Court further **ORDERED** counsel to obtain releases and file proposed orders of dismissal with prejudice for the 5 remaining Plaintiffs identified as having claims of failure to instruct regarding ventilated filter cigarettes, **no later than 12:00 p.m. on April 26, 2018**. If Plaintiffs' counsel fails to file the proposed orders of dismissal, the Court will dismiss the 5 remaining Plaintiffs identified as having claims of failure to instruct regarding ventilated filter cigarettes with prejudice on April 27, 2018, for non-compliance with the Court's Order.¹⁰

Objections to Order of Dismissal with Prejudice and Motion by Certain Humphreys Plaintiffs with Liggett and Smokeless Claims to Reinstate Certain Cases

On March 5, 2018, the Court entered an *Order of Dismissal with Prejudice*

⁹ *Id.*, page 8, lines 2 through 11.

¹⁰ *Id.*, page 37, line 11 through page 38, line 4.

(Transaction ID 61785473) dismissing all cases with prejudice, *except* 1) the cases identified by Plaintiffs' counsel as having smokeless tobacco claims; 2) the cases identified by Plaintiffs' counsel as having Phase II, ventilated filter cigarette claims; and 3) the cases identified by Plaintiffs' counsel as having claims against the Liggett Defendants.

On March 10, 2018, certain Plaintiffs' counsel filed *Objections to Order of Dismissal with Prejudice* (Transaction ID 61785460) and a *Motion by Certain Humphreys Plaintiffs with Liggett and Smokeless Claims to Reinstate Their Cases* (Transaction ID 61785461) in which they identified, for the first time, 15 additional cases where Plaintiffs had smokeless tobacco claims, and 4 additional cases where Plaintiffs had claims against the Liggett Defendants.

Plaintiffs argued these newly-identified cases should be reinstated because: 1) they were inadvertently omitted from the designations of pending claims without willfulness or bad will; 2) Defendants will suffer no real prejudice; 3) the Plaintiffs were not responsible for not being listed on the designations; 4) some cases have estate issues resolution of which would benefit from additional investigation and time to locate and contact family members and determine if they wish to proceed with these claims; and 5) the designations are required disclosures constituting a form of discovery and dismissal is a harsh measure imposed only under extreme circumstances. *Objections*, pp. 2-3

During the March 23, 2018, hearing Plaintiffs' counsel confirmed the Court had ordered Plaintiffs to identify all smokeless tobacco claims, to include cigar, smokeless and roll your own, and the deadline for Plaintiffs to file fact sheets for the identified

claims was in August 2017.¹¹ They also confirmed they would not be pursuing any of the smokeless claims they were seeking to have reinstated.¹²

Plaintiffs' counsel argued that almost all of the 15 smokeless tobacco claims they wanted reinstated were either roll your own or pipes, which they contended were never part of the smokeless tobacco group because they were subject to a separate severance order. They contended that, although Plaintiffs' counsel talked about identifying roll your own claims in July 2016, there was never an actual order requiring Plaintiffs to identify those claims.¹³ However, Plaintiffs' counsel admitted only 3 of the 15 Plaintiffs they identified for reinstatement had indicated that they would like to have the opportunity to look for other counsel to represent them in those claims.¹⁴

Defendants argued the newly-identified cases should not be reinstated because more than 18 years after the Tobacco Litigation was begun, and almost 2 years after the deadline for Plaintiffs to identify themselves as having smokeless/non-cigarette claims, the 15 Plaintiffs are just now trying to resurrect their un-asserted claims. Of the 15 newly-identified smokeless/non-cigarette claims: 4 Plaintiffs assert smokeless claims; 1 Plaintiff asserts a cigar claim; and 13 Plaintiffs assert roll your own claims. However, the time to identify these claims ran long ago. *Response*, pp. 2-3

Defendants further argued that, during a hearing in 2016, Plaintiffs advised the Court they would identify any Plaintiffs with roll your own claims within 30 days. However, they failed to identify any such claims until March 10, 2018. The 15 newly-

¹¹ *Id.*, page 9, line 18 through page 10, line 11.

¹² *Id.*, page 17, lines 17 through 21.

¹³ *Id.*, page 18, lines 7 through page 19, line 13.

¹⁴ *Id.*, page 19, line 14 through page 20, line 18; page 28, line 12 through page 29, line 4; and page 31, line 19 through 22.

identified Plaintiffs with smokeless tobacco claims listed in this motion are among the Plaintiffs correctly dismissed by the Court on March 5, 2018, having lost their cigarette claims and missing the deadline to pursue any other claim by nearly 2 years. Resp. p. 3

As contended by the Non-Liggett Defendants, “no further claims should be allowed at this point, however they describe them, whatever label they put on them.”¹⁵

Phase I ended in 2013. At no time did those 3 [roll your own] claimants – and they were represented by various counsel throughout – identify themselves as wanting to pursue those claims.

In 2015, Counsel for the Plaintiffs listed the kind of claims they were thinking about pursuing, and Roll Your Own was one of those on there. At that time none of those people were going forward.

In 2016 and '17, Judge Recht entered an order specifically about Smokeless and Cigars, but at a hearing on July 11, 2016, the Plaintiffs recognized that Roll Your Own were in a group and said they would immediately bring those names to the attention of the parties and the Court within 30 days. They haven't done that. It was 2016.

We are now two years after that and they want to at the last minute add at this point, as I understand, three claims from these three individuals.

We respectfully submit that it is too late to do so. There were multiple opportunities to identify. We would ask the Court to dismiss those claims. In other words, deny the motion to reinstate, because we think that Your Honor's order dismissing them on March 5th was a valid order under all the circumstances under this litigation.¹⁶

The Court **DENIED** Plaintiffs' motion to reinstate the 15 cases Plaintiffs' counsel identified on March 10, 2018, as having smokeless tobacco claims.¹⁷ As argued by the Non-Liggett Defendants, these newly-identified claims should not be reinstated because more than 18 years after the Tobacco Litigation was begun, and almost 2 years after the

¹⁵ *Id.*, page 33, lines 1-3.

¹⁶ *Id.*, page 33, line 14 through page 34, line 14.

¹⁷ *Id.*, page 35, line 24 through page 36, line 3.

deadline for Plaintiffs to identify themselves as having smokeless/non-cigarette claims, these Plaintiffs are just now trying to resurrect their un-asserted claims. Any exceptions or objections to the Court's ruling are noted and preserved.

The Court took under advisement Plaintiffs' motion to reinstate 4 newly-identified cases in which Plaintiffs' counsel has identified Liggett claims, pending filing of any additional motions to dismiss Liggett claims for non-compliance.¹⁸

The Court **ORDERED** any other motion to dismiss Liggett claims filed and served no later than 12:00 p.m. on April 2, 2018; any Response filed and served no later than 12:00 p.m. on April 16, 2018; and any Reply filed and served no later than 12:00 p.m. on April 23, 2018.¹⁹

The Court will hear the following motions **at 9:00 a.m. on April 27, 2018**, in Courtroom Four, also known as the Ceremonial Courtroom, on the second floor of the Kanawha County Courthouse, located at 409 Virginia Street, East, in Charleston, West Virginia:

1. *Motion for Dismissal of Claims Against Defendant Liggett Group, LLC* filed on March 2, 2018 (Transaction ID 61751447);
2. *Motion to Dismiss Certain Plaintiffs' Claims Against Liggett Group, LLC, Liggett & Myers, Inc., and Brooke Group Ltd.* filed March 14, 2018 (Transaction ID 61803244);
3. *Defendants Liggett Group LLC, Liggett & Myers Inc., and Brooke Group Ltd.'s Omnibus Motion to Dismiss 44 Civil Actions* filed April 2, 2018 (Transaction ID 61865074);
4. *Defendant Liggett Group LLC's Motion for Discovery from Certain Plaintiffs* filed March 14, 2018 (Transaction ID 61803127); and
5. *Defendant Liggett Group LLC's Motion to Strike Plaintiffs' Second Amended*

¹⁸ *Id.*, page 35, line 20-23, and page 36, lines 12-16.

¹⁹ *Id.*, page 37, lines 1-10.

Designation of Peter Shields, M.D. filed March 14, 2018 (Transaction ID 61803315).

The Court then advised all counsel that based upon the Court's rulings today, the only claims that remain in this case are the Plaintiffs' claims against the Liggett Defendants and that all other claims are dismissed. The Court further advised counsel that further motions on the Liggett claims will be heard on April 27, 2017 at 9:00 a.m.

The Court then thanked all non-Liggett counsel for their participation in this case and excused them from further participation herein.

It is so **ORDERED**.

ENTER: April 6, 2018

/s/ Jack Alsop
Lead Presiding Judge
Tobacco Litigation