



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

**IN RE: FLOAT-SINK LITIGATION      CIVIL ACTION NO. 11-C-5000000**

**THIS DOCUMENT APPLIES TO ALL CASES**

**ORDER**

On January 9, 2012, the Court heard oral argument on “The Dow Chemical Company’s Motion For Summary Judgment” (Transaction ID# 41185671) and on “Plaintiffs’ Memorandum of Law in Opposition To Dow Chemical Company’s Motion For Summary Judgment And Cross-Motion For A Stay To Conduct Discovery” (Transaction ID# 41518768). Having reviewed the motions and all related pleadings, and having conferred with one another to ensure uniformity of their decisions, as contemplated by West Virginia Trial Court Rule 26.07(a), the Court **CONTINUES** Dow Chemical Company’s motion for summary judgment and **GRANTS IN PART** plaintiffs’ motion for a stay to conduct discovery pursuant to Rule 56(f) of the West Virginia Rules of Civil Procedure on the issue of product identification.

Plaintiffs shall have ninety (90) days from the date of entry of this Order to conduct discovery in support of their proposed Rule 56(f) affidavit regarding the source of the float-sink chemicals to which plaintiffs claim they were exposed. In light of the number of depositions previously taken on the issue of product identification in *Addair v. Litwar Processing Company, LLC, et al.*, C.A. 04-C-252, Circuit Court of Wyoming County, West Virginia, Plaintiffs shall apply to the Court, and must show the Court good cause for the taking of any deposition on this issue.

The Court is not aware of any case where “market share” liability has been applied in West Virginia, and concludes, as a matter of law, that “market share” liability

may not be applied in this litigation. Accordingly, plaintiffs' discovery in support of their proposed Rule 56(f) affidavit may not include any inquiry into the alleged market share of any manufacturer or distributor defendant regarding float-sink chemicals, as defined by plaintiffs in this litigation.

With the exception of plaintiffs' product identification discovery in support of their Rule 56(f) affidavit, and the discovery and other deadlines set forth in the (1) Order Granting PPG Industries, Inc.'s Motion for Sanctions Due to Plaintiffs' Failure to Serve Complete and Responsive Answers and Responses to PPG Industries, Inc.'s Combined Discovery as Ordered by the Court (TID# 42085145); (2) Order Regarding Defendants' Motions to Strike Plaintiffs' Expert Witness Disclosures (TID# 42472270); (3) Order Regarding Expert Witness Disclosures (TID# 42471949); and (4) Order Requiring Manuel Estrathers, Jr., Michael Lipford, Mark Blevins, Anthony Testerman and James Slater to Show Cause (TID# 42610754); all discovery in all cases in the Float-Sink Litigation is **STAYED** for a period of ninety (90) days from the date of entry of this Order.

The parties' objections and exceptions to the Court's ruling are noted.

It is so **ORDERED**.

ENTER: February 23, 2012

/s/ John A. Hutchison  
Lead Presiding Judge  
Float-Sink Litigation