



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

**IN RE: FLOAT-SINK LITIGATION**

**CIVIL ACTION NO.: 11-C-5000000  
(Honorable John A. Hutchison)**

**THIS DOCUMENT APPLIES TO ALL CASES**

**ORDER REGARDING DEFENDANTS' MOTIONS TO STRIKE PLAINTIFFS'  
EXPERT WITNESS DISCLOSURES**

Came the 9<sup>th</sup> Day of January 2012, the parties, by counsel, for a Hearing on *Manufacturing Defendants' Joint Motion to Strike Plaintiffs' Expert Witness Disclosures and Exclude Plaintiffs' Expert Witnesses*, filed on December 22, 2011, related Joinders by Distributor Defendants and Employer Defendants, filed on December 29 and 30, 2011, respectively, and other Motions seeking similar relief (hereinafter collectively "*Defendants' Motion to Strike Plaintiffs' Expert Witness Disclosures*"). After consideration of the written and oral arguments of the parties, the Court hereby **FINDS** that:

- 1) Plaintiffs failed to respond appropriately to the October 18, 2011 Case Management and Scheduling Order (hereinafter "Case Management Order") when they served Plaintiffs' Expert Witness Disclosures on December 15, 2011.
- 2) Plaintiffs' conduct in regards to the service of Plaintiffs' Expert Witness Disclosures was egregious and totally unacceptable.
- 3) Due to the Plaintiffs' failure to appropriately supply information regarding their experts, Defendants are unable to make their expert disclosures as required by the Case Management Order on January 16, 2012.
- 4) Due to Plaintiffs' failure to provide appropriate and meaningful information, especially in relation to Plaintiffs' Expert Witness Disclosures, Mediation scheduled for January 26 and 27, 2012 would be fruitless.

**Granted** Judge John A Hutchison Feb 13, 2012

- 5) Based upon the Court's review of the history of this action and the egregiousness of Plaintiffs' present conduct, Plaintiffs' actions regarding Plaintiffs' Expert Witness Disclosures are sanctionable.
- 6) Plaintiffs' Responses to the Plaintiff Fact Sheet are deficient insofar as they are boilerplate and lack the plaintiff-specific detail required to be fully responsive.
- 7) Plaintiffs' Answers and Responses to Defendants' discovery requests are deficient insofar as they lack the requisite detail required to be fully responsive to Defendants' discovery requests, are not plaintiff-specific and improperly refer to Plaintiff Fact Sheet responses instead of being directly and substantively responsive.
- 8) References to the Plaintiffs' Responses to the Plaintiff Fact Sheet in Plaintiffs' Answers and Responses to Defendants' discovery requests is inappropriate because the Plaintiff Fact Sheet was intended to provide only basic information on each Plaintiff's claim while still providing the parties with the ability to obtain more detailed information through formal discovery.

WHEREFORE, based on the foregoing, the Court **ORDERS**:

- 9) No later than (10) days from the January 9, 2012 Hearing, Defendants shall serve upon the Court and all Responsive Counsel, pursuant to West Virginia Trial Court Rule 24.01, a proposed Order outlining what information Defendants require Plaintiffs disclose in their Amended Plaintiff Expert Witness Disclosures in order to facilitate appropriate Defendant Expert Witness Disclosures. *See* the proposed Order Regarding Expert Witness Disclosures, filed on January 19, 2012. The Court shall review the proposed Order Regarding Expert Witness Disclosures and then enter a final Order requiring

Plaintiffs to file Amended Plaintiff Expert Witness Disclosures no later than sixty (60) days from the entry of that Order.

10) The January 16, 2012 deadline for Defendants' Expert Witness Disclosures is continued to a later date to be determined by the Court.

11) The January 26 and 27, 2012 Mediation is cancelled and will be rescheduled on a later date to be determined by the Court.

12) Plaintiffs shall make detailed amendments to their Responses to the Plaintiff Fact Sheet and supply additional plaintiff-specific detail no later than sixty (60) days from the January 9, 2012 Hearing.

13) In Plaintiffs' Amended Responses to the Plaintiff Fact Sheet, Plaintiffs are barred from stating that any Response requires an expert opinion. Plaintiffs are further barred from referring to original or amended Answers and Responses to Defendants' discovery requests. Plaintiffs shall provide individual and complete Responses to each and every Plaintiff Fact Sheet question.

14) Plaintiffs shall amend their Answers and Responses to Defendants' discovery requests to supply additional, plaintiff-specific detail no later than sixty (60) days from the January 9, 2012 Hearing.

15) In Plaintiffs' Amended Answers and Responses to Defendants' discovery requests, Plaintiffs are barred from referring to Plaintiffs' original or amended Responses to the Plaintiff Fact Sheet.

16) No later than (10) days from the January 9, 2012 Hearing, all Defendants' counsel who were involved in the drafting of *Defendants' Motion to Strike Plaintiffs' Expert Witness Disclosures*, or who filed Motions for Sanctions that sought the same relief in this

Motion, shall serve upon the Court, the Mass Litigation Panel Manager, Kim Fields, and Plaintiffs' counsel a detailed report under seal of their time and expenses with regard to the preparation of the *Defendants' Motion to Strike Plaintiffs' Expert Witness Disclosures* or Motions seeking the same relief.

17) The Court will enter a separate Order detailing specific sanctions against Plaintiffs, including all monetary sanctions.

Entered this \_\_\_\_\_ day of January, 2012.

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Honorable John A. Hutchison, Presiding Judge

Submitted for entry by:

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This document constitutes a ruling of the court and should be treated as such.

**File & Serve**

**Transaction ID:** 42024591

**Current Date:** Feb 13, 2012

**Court Authorizer:** John A Hutchison

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**/s/ Judge John A Hutchison**