



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

IN RE: TOBACCO LITIGATION

CIVIL ACTION NO. 00-C-5000

(INDIVIDUAL PERSONAL INJURY CASES)

(ARTHUR M. RECHT, JUDGE)

**AMENDED ORDER MODIFYING JANUARY 11, 2000 CASE MANAGEMENT
ORDER/TRIAL PLAN—REVISION NO. 31**

On June 7, 2012, came the parties, by counsel, pursuant to notice, duly served, for a hearing on:

(a) defendants' motion to compel plaintiffs to respond to certain contention interrogatories;

(b) defendants' motion concerning the priority of jury selection in Ohio County;

(c) plaintiffs' motion to set the trial of Phase I issues in Kanawha County.

As to the issues arising from defendants' motion with respect to the jury selection process in Ohio County, and plaintiffs' motion to hold the trial in Kanawha County, the court found that the venue of the trial is properly in Kanawha County as previously held since the vast majority of the cases were filed there, and, further, the only connection of the action to Ohio County is the residence of the presiding judge. Further, the refinement of the jury selection process in this suit and the volume of available jurors in Kanawha County substantiate the court's decision to try the case there.

Upon settling on a trial date, the court and counsel will see to the reservation of adequate courtroom space to accommodate this unique case. Jurors will be summoned by the Circuit Clerk of Kanawha County at the level to be directed by the court, and, in the event the jury pool in Kanawha County proves inadequate to impanel a qualified panel, the court may, pursuant to West Virginia Code Chapter 52, Article 1, Section 14, direct additional jurors to be

summoned from the eight (8) contiguous counties upon notice to the parties.

As to the defendants' motion to compel responses from the plaintiffs as to certain contention interrogatories, the court reviewed the respective filings and heard the argument of counsel.

After due consideration, the court finds:

(1) The motion and response have to do with the prospective deposing of experts named by plaintiffs to support a theory of liability against defendants of a claim that defendants (or some of them) failed to properly instruct users of their products such as plaintiffs as to the proper use of those products (cigarettes).

(2) The consideration of that failure could become an ingredient in the eventual equation to be decided in Phase I, as to whether or not those products were defective.

(3) In considering those issues, the prospective testimony of any expert will necessarily be predicated upon two steps:

(a) a determination of what specific acts of the defendants should have been and could have been accomplished to properly instruct the product users (plaintiffs) as to the appropriate use of that product (cigarettes). As to this threshold step, plaintiffs' counsel invited the court to review the recitations in plaintiffs' supplemental response to defendants' second set of contention interrogatories. Plaintiffs' counsel affirmed that the specific acts underlying the failure of defendants to instruct as to use of their product (cigarettes) is fully and completely set out in pages 4 and 5 of the submission. Therefore the court finds that those outlined specific acts were the limits of inquiry as to that issue; and pages 4 and 5 of the stated filing are attached hereto and made a part hereof.

(b) The second step in the consideration of the motion, is a distinct and contracted recitation by the plaintiffs as to the underlying data, research, opinions, and any and all other material relied upon by any experts to premise their resultant conclusions. In response to defendants' complaint that the myriad of materials cited by plaintiffs makes consideration of this step impractical, counsel for plaintiffs affirmed that defendants will be provided with specific designations of specific documents that each expert will rely upon in his deposition testimony by the end of June, 2012. Defendants agreed to that procedure and the court considered the issue resolved by agreement.

In addition to the stated agenda, counsel for plaintiffs moved the court to consider the terms of Rule 16 (c)(1) of the West Virginia Rules of Civil Procedure permitting the consideration of "elimination of frivolous claims or defenses." Since the matter was not filed in a written motion or designated on any agenda for hearing, the court directed the parties to designate any specific claim or defense considered to be "frivolous" prior to the next hearing herein.

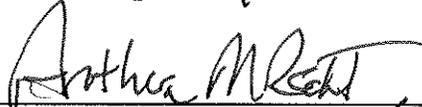
Further matters will be heard on June 21, 2012 at 1:30 P.M.

The exceptions of respective parties to all rulings of the court adverse to their position are here noted and preserved to the extent that at the time of the ruling it was made known to the Court the action such party desired the court to take or the objection to the actions of the Court and the grounds therefore.

DIRECTIVE to the CIRCUIT CLERKS:

Certified copies of this order are to be printed and mailed to the Circuit Clerks of both Kanawha and Ohio Counties.

ENTER: 6-29-12


ARTHUR M. RECHT, JUDGE (Senior)


DATE

PRESENTED BY:

/s/Timothy N. Barber
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products into the simple language required to instruct their customers regarding the appropriate use of their cigarettes. Further, it would be impossible to respond with all of the possible iterations of such instructions. Defendants should have instructed their customers on all of the expert knowledge contained in their statements and documents regarding the appropriate use of the cigarettes described in Plaintiffs' Response to Interrogatory No. 1(a). As the author and custodian of these documents, Defendants are the only individuals in possession of and intimately familiar with this collected knowledge. As examples of Defendants' knowledge, Plaintiffs incorporate the documents contained in Defendants' document websites (specifically stated in Interrogatory Response No. 1(j)) and the quotations from Defendants' statements and documents contained in Plaintiffs' Responses, Amended Responses and Supplemental Responses to Defendants' First Set of Contention Interrogatories. Notwithstanding these objections, Plaintiffs provide the following instructions that Defendants could have provided to their customers, including the Plaintiffs in West Virginia:

"Do not smoke a greater number of these cigarettes per day than you currently smoke. For example, if you currently smoke 20 cigarettes per day, then you should smoke no more than 20 of these cigarettes per day."

"Do not increase the number of these cigarettes you normally smoke per day."

"Do not smoke these cigarettes down further on the rod than you normally do."

“Don’t suck harder on these cigarettes than you normally do.”

“Do not take deeper draws or puffs from these cigarettes.”

“Do not inhale these cigarettes more deeply into your lungs.”

“Do not hold the smoke from these cigarettes in your lungs longer.”

“Do not block the filter vents on these cigarettes.”

“This cigarette contains tiny holes in the filter that you may not be able to see. While smoking this cigarette, it is important that you make sure you do not block the holes with your lips or fingers.”

“Don’t touch the filter tip with your tongue while smoking this cigarette.”

Additional instructions will be provided as supplements according to West Virginia law.

- c. Because federal law did not expressly “pre-empt” instructions, the Defendants could have provided instructions for the appropriate use of their cigarettes through all known channels of communication, including, but not limited to: Television; Radio; Infomercials; Online announcements (company websites; blogs, social networking sites, e-mail marketing, search engine results, banner ads, text ads, etc.); Digital