



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

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

**CIVIL ACTION NO. 00-C-5000  
(Judge Arthur M. Recht)**

**ORDER REGARDING FEBRUARY 26, 2015 HEARING**

Having heard argument and presentations by the parties at a hearing on February 26, 2015 relating to the management of the future course of the remaining claims, the Court orders as follows:

1. On May 15, 2013, the Phase I jury rejected all claims in this action except for claims by those plaintiffs who allege that they were injured by a failure to instruct with respect to “ventilated filter cigarettes” manufactured, sold, and smoked between 1964 and July 1, 1969. Plaintiffs appealed the jury verdict and various rulings by this Court, but the West Virginia Supreme Court of Appeals rejected that appeal and affirmed the jury verdict and this Court’s rulings. In light of those events, the only work that remains to be accomplished in Phase II of this matter is to resolve the failure to instruct claims of those plaintiffs whose claims have not already been dismissed, who previously asserted in their paragraphs 5(b) submissions that they smoked ventilated filter cigarette brands manufactured and sold between 1964 and July 1, 1969, and who claim that they were injured by a failure to instruct relating to such cigarettes.

2. Defendants contend that the term "ventilated filter cigarettes" includes only those cigarette brands with ventilated filters -- that is, filters perforated with vent holes -- that were first manufactured beginning in 1964. Defendants contend that this definition is undisputed and born out by the record cites that they submitted to the Court on February 26, 2015. Defendants contend that there were very few brands of this type that were manufactured during the period of 1964 to July 1, 1969 covered by the jury verdict on the failure to instruct claim. Defendants

contend that there are only 30 plaintiffs who arguably smoked the few brands that fall with the jury verdict.

3. Plaintiffs disagree and assert that "ventilated filter cigarettes" are not limited to cigarettes with ventilated filters. Plaintiffs argue for a broader definition that they contend encompasses potentially more plaintiffs who may be eligible to pursue claims in Phase II.

4. The Court must resolve this threshold issue before proceeding to establish a case management order for Phase II claims.

5. On February 26, 2015, the Court ordered the parties to submit briefing on the issue of the definition of the term "ventilated filtered cigarettes" and scheduled briefing of the issue as follows: a) plaintiffs' brief due on or before March 26, 2015; b) defendants' responsive brief due on or before April 17, 2015; and c) plaintiffs' reply brief due on or before April 24, 2015.

6. On March 27, 2015, the Court granted plaintiffs' unopposed motion for an extension of time to file their brief to April 9, 2015. (Transaction ID 56986596)

7. On April 15, 2015, the Court granted defendants' unopposed motion for an extension of time to file responsive briefings as follows: a) defendants' responsive brief due on or before May 15, 2015; and b) plaintiffs' reply brief due on or before May 22, 2015. (Transaction ID 57082103)

8. A hearing on the presented issue will be held at 10:00 a.m. on June 8, 2015, in the Visiting Judges Courtroom in the Kanawha County Circuit Court Judicial Annex. Thereafter, a hearing will be held at 1:30 p.m. in the Visiting Judges Courtroom with regard to the remaining twenty-two (22) plaintiffs who have claims against the Liggett Group defendant and the status of these claims.

9. Upon the Court's announcement of a decision on the presented issue, the terms of the order will include predicate recitations of findings of fact and conclusions of law, together with appropriate terms of R. Civ. P. 46 to preserve exceptions.

10. Following that decision, the Court will schedule a status hearing in Phase II to identify participating plaintiffs and defendants, and, further, to schedule future proceedings and pretrial interactions by the parties.

11. Pursuant to Rule 46 of the West Virginia Rules of Civil Procedure the objections and exceptions of respective parties to all rulings of the Court adverse to their position are 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.

It is so **ORDERED**.

ENTER: April 21, 2015

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