

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: E. I. DU PONT DE
NEMOURS AND COMPANY C-8
PERSONAL INJURY LITIGATION,

Civil Action 2:13-md-2433
CHIEF JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Elizabeth Preston Deavers

This document relates to: *Swartz, et al. v. E. I. du Pont de Nemours and Company, et al.*, Case No. 2:18-cv-0136

DISPOSITIVE MOTIONS ORDER NO. 32

DENYING DEFENDANT'S MOTIONS TO RECONSIDER PRIOR RULINGS

This matter is before the Court on Defendant's Motion to Exclude Mischaracterizations Related to the Science Panel and the Probable Link Findings from the *Swartz* Trial (ECF No. 50, Swartz Docket), and Defendant's Motion for Interpretation of the *Leach* Agreement with Respect to Specific Causation in the *Swartz* Case (ECF No. 51). For the reasons that follow, the Court **DENIES** both motions.

Both of DuPont's motions are directed to the application of the *Leach* Settlement Agreement, which has been extensively briefed by the parties in this multidistrict litigation ("MDL"): DuPont's Motions/Briefs at MDL ECF Nos. 1031, 1032, 2813, 2816, 3560, 3563, 5200; Plaintiffs' Motions/Briefs at MDL ECF Nos. 820, 1152, 1519, 2285, 2417, 2822, 2824, 3196, 3201, 3443, 3554, 3555, 4085, 4090, 4091, 4103, 4224, 5201. The Court has issued many decisions directed at the impact of the *Leach* Settlement Agreement, the Science Panel, general and specific causation, and the Probable Link Findings: Dispositive Motions Order No. ("DMO") 1, Class Membership and Causation, ECF No. 1679; DMO 1-A, Order on Dupont's

Motion for Clarification of Dispositive Motions Order No. 1, Class Membership and Causation, ECF No. 3972; DMO 5, Order on Defendant's Motions for Summary Judgment Related to Specific Causation, ECF No. 4113; DMO 12, Order on Defendant's Motion for Judgment as a Matter of Law or, Alternatively, for a New Trial and Remittitur on Plaintiff Carla Bartlett's Claims, ECF No. 4306; DMO 15, Order on Defendant's Motions for Summary Judgment Related to Specific Causation, ECF No. 4519; DMO 19, Order on DuPont's Rule 50 Motions, ECF No. 4598; DMO 21, Order on Defendant's Motion for Summary Judgment Related to Specific Causation, ECF No. 4810; DMO 21-A: *Nunc Pro Tunc* Order Related to DMO 21, ECF No. 4833; DMO 28, Order on Defendant's Motion for Summary Judgment Related to Specific Causation in Moody Case, ECF No. 5000; Evidentiary Motions Order No. ("EMO") 1, Plaintiffs' and Defendant's Motions for Expert Opinions Related to Causation, ECF No. 4079; EMO 4, Order on Defendant's Motion to Exclude Expert Opinion Related to Specific Causation, ECF No. 4518; EMO 5, Order on Plaintiff's Motions for Partial Exclusion of Defendant's Causation Experts, ECF No. 4532; EMO 9, Order on Motions Directed at Plaintiff's Expert Dr. Bahnson and Defense Expert Dr. Luongo, ECF No. 4777; Preliminary Pretrial Order No. 51, Consolidation of Cases for Trial, ECF No. 5214.

In these decisions the Court explained in detail – numerous times – why DuPont's position on causation conflates the parties' unambiguous definitions of general and specific causation that they set forth in the *Leach* Settlement Agreement and effectively rewrites the Agreement's provisions related to the function and application of the Probable Link Findings. While DuPont currently may phrase some of its arguments with different terms, the arguments remain the same.

The Court, however, declines to address these issues again. “[R]econsideration of a previous order is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” 12 James Wm. Moore et al., *Moore’s Federal Practice* ¶ 59.30[4] (3d ed.). A Court does a grave injustice to the judicial system if it continues to utilize scarce judicial resources to address issues that the parties have had a full and fair opportunity to litigate. The Court’s declination to address these issues again not only protects judicial resources but also protects the parties from the expense and vexation attendant to multiple, repetitive briefing of the same issue and fosters reliance on judicial action.

Accordingly, the Court shall permit evidence and testimony to be presented in accord with the rulings it has made on these issues in the past. The trial teams in the *Swartz* case have both been involved in the prior four trials held in this MDL and have all been counsel in this litigation since the first day it was centralized before this Court more than six years ago. The Court, therefore, has no concern that all counsel are intimately familiar with the Court’s prior rulings.

Based on the foregoing, the Court **DENIES** Defendant’s Motion to Exclude Mischaracterizations Related to the Science Panel and the Probable Link Findings from the Swartz Trial (ECF No. 50, *Swartz* Docket), and Defendant’s Motion for Interpretation of the *Leach* Agreement with Respect to Specific Causation in the *Swartz* Case (ECF No. 51, *Swartz* Docket).

IT IS SO ORDERED.

7-10-2019
DATE


EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE