

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:

***Terry Pugh, v. E. I. du Pont de Nemours and Company,*
Case No. 2:12-CV-1193.**

PRETRIAL ORDER NO. 43

Plaintiffs' Motion for Leave to Amend Terry Pugh's Complaint

This matter is before the Court on Mr. Pugh's request to amend his complaint. (MDL ECF No. 3744; Pugh ECF No. 103.) Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the Court should freely grant a party leave to amend his or her pleadings when justice so requires. Fed. R. Civ. P. 15(a). Rule 15(a) sets forth "a liberal policy of permitting amendments to ensure the determination of claims on their merits." *Oleson v. United States*, 27 F. App'x 566, 569 (6th Cir. 2001) (internal quotations omitted).

Mr. Pugh asks permission to amend his complaint to substitute paragraph 46, with the following paragraph:

Plaintiff was diagnosed with High Cholesterol, an injury for which the Science Panel has issued a C-8 exposure probable link finding.

Paragraph 46 currently reads:

Plaintiff was diagnosed with Ulcerative Colitis, an injury for which the Science Panel has issued a C-8 exposure probable link finding.

DuPont opposes amendment because it would effectively permit dismissal of Mr. Pugh's ulcerative colitis claim without prejudice. DuPont requests dismissal of that claim with prejudice based on Case Management Order No. ("CMO") 6, which provides in part that "this provision is designed to provide Defendant with further protection in this regard by requiring that dismissal after the commencement of depositions be with prejudice and with notice to the Court."

(DuPont's Opp. at 1.) DuPont's argument is not well taken.

CMO 6 sets out the parameters for selection of the discovery pool plaintiffs, a group from which the bellwether cases were selected. The process permitted both sides to select a certain number of cases and sets up a procedure where each can strike a certain number of the other parties' choices. Paragraph 5 in section B of CMO 6, which is relied upon by DuPont, is intended to prevent the plaintiffs from dismissing a defense selected case after the selection process has been completed. Specifically, the paragraph provides in relevant part: "The intent of this provision is to eliminate defendant's concern that plaintiffs' attorney might seek to dismiss defense selected cases after the commencement of case-specific core fact discovery[.]" The situation *sub judice* does not present such a situation.

In his complaint, Mr. Pugh alleges that he suffers from ulcerative colitis. Since filing his complaint, Mr. Pugh was informed that he was misdiagnosed with ulcerative colitis. Thus, Mr. Pugh wishes to amend his complaint to reflect this fact. Nothing in CMO 6 prevents the Court from viewing Mr. Pugh's request to amend his complaint as it would any other such request. In this regard, the Court finds that there is no bad faith or gamesmanship in Mr. Pugh's request, nor is there any undue prejudice to DuPont by permitting amendment.

Accordingly, the Court **GRANTS** Mr. Pugh's Motion for Leave to File an Amended Complaint. (MDL ECF No. 3744; Pugh ECF No. 103.) The Clerk is **DIRECTED** to file in

Case No. 2:12-cv-1193 the proposed amended complaint found at ECF No. 103-1 and title it
"First Amended Complaint."

IT IS SO ORDERED.

2-26-2016
DATE


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