

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: ALL NEWLY-FILED CASES.

PRETRIAL ORDER NO. 48

November 2, 2018 Conference

Changed Directions for Selection of Trial Cases

This matter came before the Court for an in-person status conference on November 2, 2018. This Order memorializes the results of that conference as follows:

Initially the Court discussed with the parties their Proposed Case Management Order related to discovery. The Court directed the parties to modify the Proposed Order in accordance with the rulings made at the conference and to provide to the Court an amended Proposed Order via email.

The Court next reviewed with the parties their proposed selection of trial cases for the newly-filed cases. Pursuant to the Court's direction, each side has chosen four trial cases. The parties estimate that the length of the trials of the newly-filed cases will be the same as the previously tried cases, *i.e.*, approximately five to six weeks each. Through a random selection process (to be precise, a coin toss), DuPont was permitted to choose the first case for trial, which is: *Angela and Teddy Swartz v. E. I. du Pont de Nemours and Company, et al.*, Case No. 2:18-

cv-136. Plaintiffs chose the second case: *Travis Abbott and Julie Abbott v. E.I. DuPont De Nemours et al.*, 17-cv-00998. Both of these cases were filed by Ohio plaintiffs.

At least one of the next cases chosen, however, was filed by a West Virginia plaintiff. This necessitated a discussion of whether DuPont would waive their right to trial in the Southern District of West Virginia, see *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), which counsel indicated DuPont did not intend to do. The Court notes that DuPont took this position before the Judicial Panel on Multidistrict Litigation (“JPML”) when DuPont moved to prevent the newly-filed West Virginia cases from being made tag-along actions to the instant MDL. In its Transfer Order, the JPML assessed the argument as follows:

Movants’ other arguments against transfer [of the West Virginia cases to MDL No. 2433] are no more convincing. Movants insist they do not intend to waive their right to trial in the Southern District of West Virginia, see *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), and therefore transfer will not serve judicial economy. Whether defendants waive their *Lexecon* rights, though, is irrelevant to the question of whether centralization will result in efficiency benefits and enhance the convenience of the parties. Moreover, movants do not dispute that the transferee judge has indicated his willingness to seek an inter-circuit assignment to conduct trials in West Virginia should the need arise.

(Transfer Order at 1–2, ECF No. 5130) (emphasis added).

As to the benefits to which the JPML refers, it stated:

To the extent common discovery remains, such discovery is best coordinated by the Honorable Edmund A. Sargus, Jr., who is intimately familiar with the factual and legal issues in this litigation. Similarly, these actions will involve similar, if not identical, pretrial motion practice. Coordination within the MDL will ensure consistent pretrial rulings and minimize any potential for duplicative efforts.

(Transfer Order at 1, ECF No. 5130.)

Based on the foregoing, the Court finds that trying any West Virginia case in the initial trial group is not warranted. This Court is intimately familiar not only with the factual and legal issues of this litigation but also with the evidentiary issues. However, an inter-circuit transfer

would be an unnecessary inconvenience to the Court. Alternatively, it would be a great imposition on a new judge to try one of these cases, with little if any benefit to the parties. No party contends that the cases arising within this district are not suitable as bellwether cases. Therefore, the Court shall not permit the initial trial cases to include any case filed by a West Virginia plaintiff. If the need arises in the future, the Court will determine whether the most appropriate route would be to request an inter-circuit transfer for the West Virginia trials, or to suggest remand.

The parties are **DIRECTED** to withdraw any West Virginia case they have chosen as a trial case and replace it with an Ohio case. The parties have seven (7) days from the date of this Order to submit their substitutions to the Court, which can be done via email.

IT IS SO ORDERED.

11-6-2018
DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

11/6/2018
DATE



ELIZABETH A. PRESTON DEAVERS
UNITED STATES MAGISTRATE JUDGE