

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

_____)	
IN RE URETHANE ANTITRUST)	
LITIGATION,)	
)	MDL No. 1616 (JWL/JPO)
)	
)	Civil Action Nos. 04-1616-JWL,
)	08-2617, 09-2026, 10-2077
THIS ORDER RELATES TO:)	
POLYETHER POLYOL CASES,)	
_____)	

PRACTICE AND PROCEDURE ORDER NO. 5

On March 26, 2010, U.S. Magistrate Judge James P. O’Hara conducted a telephone status conference with the parties’ attorneys. During the conference, counsel agreed that Practice and Procedure Order No. 4, filed on August 14, 2009 (doc. 1037), should be amended or replaced with a similar order to take into account the recent addition of another direct action case in this MDL proceeding (No. 10-2077-JWL).

In consideration of the foregoing,

It is hereby ORDERED as follows:

Direction Action Cases

1. In December 2008 and January 2009, the MDL Panel transferred direct action cases *Carpenter Co., et al v. BASF SE, et al.*, Case No. 08-2167-JWL, and *Woodbridge Foam Corp., et al. v. BASF, et al.*, Case No. 09-2026-JWL, to this MDL. In February 2010, the MDL Panel transferred direct action cases *Dash Multi-Corp., et al. v. BASF SE, et al.*,

Case No. 10-2077-JWL to this MDL. These cases shall be referred to together in this MDL as the “Direct Action Cases.” The Class Cases and the Direct Action Cases shall be referred to collectively as the “**Polyether Polyol**” cases. This Order relates to organization necessitated by these actions being transferred to this court for coordination with the already pending class action cases, which previously were transferred to this court pursuant to the MDL rules.

2. This court’s prior Practice & Procedure Order Upon Transfer (doc. 2) and Practice and Procedure Orders No. 2 and 3 (docs. 36 and 127) shall apply to all cases except as set forth in the next paragraph.

3. The organization of counsel set forth in Practice and Procedure Order No. 3 (doc. 127) filed on August 31, 2005, shall hereinafter apply in this multidistrict litigation to the class action Polyether Polyol cases. The law firms of Dickstein Shapiro LLP and Adams Holcomb LLP will be co-lead counsel for plaintiffs in the Direct Action cases.

Continued Coordination of Discovery

4. The court hereby orders counsel to continue to confer and attempt to agree upon the manner and extent to which discovery should be coordinated among the class action and Direct Action Cases so as to achieve any benefits of efficiency that can be gained from coordinating these cases for pretrial purposes.

Filing and Service of Papers and Court Orders

5. Service of pleadings and other papers to be filed with the court by any party as well as service of all court orders shall, subject to further order of this court, be made

according to the Order Regarding Service (doc. 35) filed on October 22, 2004. Liaison and co-lead counsel for the Polyether Polyol cases shall be responsible for effecting and receiving service on behalf of plaintiffs in the Polyether Polyol cases as stated in the Order Regarding Service.

Related Actions

6. The Direct Action plaintiffs' co-lead counsel shall promptly serve a copy of this order by overnight delivery service, facsimile, or other electronic means on counsel for plaintiffs in each related action that has not been consolidated in this proceeding to the extent that the Polyether Polyol Direct Action plaintiffs' co-lead counsel are aware of any such action(s).

7. The parties have recently submitted proposed Scheduling Order No. 5 which proposes new deadlines in this case. In order to facilitate the progress of the Polyether Polyol cases consolidated in this MDL proceeding and to avoid the need to further extend deadlines, the court will hold periodic status conferences in the Polyether Polyol proceedings. Lead counsel for the class action plaintiffs, lead counsel for the direct action plaintiffs and liaison counsel for defendants shall be responsible for submitting a joint agenda for each status conference three (3) business days prior to each status conference. Without intending to be exhaustive, each such agenda should address the status of discovery, the status of motions pending before the court, any scheduling issues, and any other matters that counsel believe appropriate to present to the court for consideration. The status conferences will be held telephonically unless the court and lead counsel and liaison counsel for the parties

determine that an in-person status conference would be beneficial to the court and the parties. The court will attempt to schedule these status conferences approximately every six (6) weeks in consultation with lead and liaison counsel.

IT IS SO ORDERED.

Dated March 30, 2010, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
U.S. District Judge