

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE LLRICE 601) 4:06MD 1811 CDP
CONTAMINATION LITIGATION) ALL CASES

**ORDER SETTING INITIAL
SCHEDULING CONFERENCE**

Twenty-two cases are now pending in this district as part of this multi-district case. Seven of the cases were initially filed in this district. The defendant has indicated that it knows of sixty-four cases that may be transferred here, although I have received notice of only thirty-three additional cases pending before the Judicial Panel on Multi-District Litigation. In any event, it appears that fewer than half of the cases have already arrived. Although I would prefer to have most of the cases in my court before taking actions that may bind later-arriving cases, I will nevertheless set an initial scheduling conference, because recent filings and telephone calls indicate that counsel are anxious about how the cases will proceed. In my experience, no good comes from anxious counsel. So, everyone needs to calm down, and have faith that these cases will move as expeditiously and efficiently as possible. I will set the conference in early April, in hopes that most of the cases will have been transferred to this district by that date.

Any counsel representing any party in these cases must have a CM/ECF registration with the Eastern District of Missouri. Counsel must use their own CM/ECF registrations to file matters; in other words, no counsel should “borrow” another’s registration, even within the same firm; the lawyer whose name appears on the signature line must be the filing lawyer. So long as counsel are members in good standing of any United States District Court, neither association of local counsel nor pro hac vice admissions are required. Counsel are expected to be familiar with the CM/ECF system so they can check the docket sheet themselves and not burden chambers or the Clerk’s office by calling with unnecessary questions.

As transferred cases are received in this District, the cases are given an Eastern District of Missouri case number, and the case numbers of all member cases are listed on the master docket sheet. As previously ordered, all filings must be in the master case (4:06MD1811 CDP) only, unless I enter a specific order to the contrary.

The docket sheet as of this morning lists fourteen lawyers for defendants and fifty-nine lawyers for plaintiffs. Both of these numbers will undoubtedly rise. While the CM/ECF system has lessened the need for liaison counsel, it may be that liaison counsel still needs to be appointed for administrative reasons,

including, at least, for the purpose of compliance with Rule 5.2(e) of the Rules of the JPML. Additionally, of course, the court must consider appointment of plaintiffs' lead counsel and/or a plaintiffs' steering committee. Defendants have suggested that the court should appoint plaintiffs' lead and/or liaison counsel in advance of holding a scheduling conference, but I would like to try to handle as much as possible at the initial scheduling conference. I will therefore appoint attorney Don Downing as plaintiffs' temporary liaison counsel and will appoint attorney Terry R. Lueckenhoff as defendants' temporary liaison counsel, for the purpose of organizing the matters required in this order, but these appointments will only last until the scheduling conference, and do not mean that I have reached any conclusions about final appointments.

In some cases there are questions regarding whether jurisdiction is appropriate and/or whether service of process has been appropriately achieved. I urge all plaintiffs' counsel to consider whether they have sued the proper defendants, as I have no desire to decide unnecessary motions.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion to set a scheduling conference [#16] is granted to the following extent:

1. The Court will hold an initial scheduling conference on **Thursday**,

April 12, 2007 at 1:00 p. m. in Courtroom 14 South. At least one counsel for each party shall appear in person at the conference. No telephone appearances will be allowed.

2. Well in advance of this conference, plaintiffs' counsel shall meet and confer in an attempt to reach agreement on which lawyers should be appointed as plaintiffs' liaison and lead counsel, and on whether a plaintiffs' steering committee should be appointed. In the absence of agreement, counsel should attempt to agree on a method for resolving any disputes, including a proposal for motions and briefs, and should be prepared to present that to the Court at the conference.

3. At their meeting, plaintiffs' counsel shall attempt to reach agreement on a proposed schedule for conducting discovery, class certification proceedings, and motion practice. Plaintiffs' counsel are specifically asked to discuss among themselves whether a consolidated class action complaint should be filed that would include the claims of all plaintiffs in one pleading.

4. Attorney Don M. Downing is appointed plaintiffs' temporary liaison counsel. He shall be responsible for filing any matters required of plaintiffs in this order. Additionally, he shall arrange for the conference of plaintiffs' counsel, and shall make all reasonable efforts to include in the conference any counsel representing plaintiffs in related cases that have not yet been received in the

district, but that are expected to become a part of this multi-district proceeding.

5. Attorney Terry R. Lueckenhoff is appointed defendants' temporary liaison counsel. He shall be responsible for filing any matters required of defendants in this order. Defendants should be prepared to report at the initial conference whether any of their counsel will withdraw, whether any defendants intend to file motions to dismiss based on jurisdiction or service issues, and whether they believe the appropriate defendants have been named.

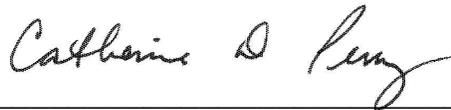
6. Not later than **Tuesday, April 3, 2007** plaintiffs' and defendants' liaison counsel shall file a joint proposed schedule for conducting discovery, class certification proceedings, motion practice, and any other necessary deadlines, to the extent they are able to agree. If they cannot agree they should explain their differences in the joint proposal. At counsel's option, the proposal may be general, for example, stating the number of months necessary to conclude various stages of the litigation, or it may be particular, with specific deadlines for specific events. Plaintiffs' liaison counsel should, of course, base his agreement to the joint proposals on any consensus that may have been achieved at the meeting of plaintiffs' counsel. If any party disagrees with the positions set out by its own liaison counsel in the joint proposal, that party may file a statement setting out the disagreement and alternative proposals no later than **Friday, April 6, 2007**.

7. Not later than **Tuesday, April 3, 2007** plaintiffs' and defendants' liaison counsel shall separately submit to the Court brief written statements indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements should address, among other things, whether any additional defendants are likely to be joined, the various class definitions that have been proposed, what class certification discovery is expected to be necessary, the types of expert testimony that are likely, and the ranges of damages that are likely to be claimed. These statements are simply for my information: they will not be binding, they will not waive claims or defenses, and they may not be offered in evidence against any party in later proceedings. The parties' statements shall identify any cases that either side knows about that have not been transferred to this court by that time. If any party disagrees with the statement filed by its own temporary liaison counsel, that party may file a supplemental statement no later than **Friday, April 6, 2007**.

8. In preparing the joint proposal, liaison counsel are expected to confer on all matters set out in Rules 16 and 26, Fed. R. Civ. P., and are especially reminded of their obligations to confer regarding preservation of evidence and discovery of electronically stored information.

9. The provisions of my January 8, 2007 order remain in effect.

10. The parties are reminded that Eastern District of Missouri Local Rule 4.04 provides that attorneys shall communicate with the Court by motion or memorandum filed in the case; counsel should not send letters to chambers.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 16th day of February, 2007.