Good et al v. American Water Works Company, Inc. et al

2016 | Cited 0 times | S.D. West Virginia | October 13, 2016

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON CRYSTAL GOOD, individually and as parent and next friend of minor children M.T.S., N.T.K. and A.M.S. and MELISSA JOHNSON, individually and as parent of her unborn child, MARY LACY and JOAN GREEN and JAMILA AISHA OLIVER, WENDY RENEE RUIZ and KIMBERLY OGIER and ROY J. McNEAL and GEORGIA HAMRA and MADDIE FIELDS and BRENDA BAISDEN, d/b/a FRIENDLY FACES DAYCARE, and ALADDIN RESTAURANT, INC., and R. G. GUNNOE FARMS LLC, and DUNBAR PLAZA, INC., d/b/a DUNBAR PLAZA HOTEL, on behalf of themselves and all others similarly situated, Plaintiffs, v. Civil Action No.: 2:14-01374 AMERICAN WATER WORKS COMPANY, INC., and AMERICAN WATER WORKS SERVICE COMPANY, INC., and EASTMAN CHEMICAL COMPANY, and WEST VIRGINIA-AMERICAN WATER COMPANY, d/b/a WEST VIRGINIA AMERICAN WATER, and GARY SOUTHERN and DENNIS P. FARRELL, Defendants.

MEMORANDUM OPINION & ORDER Pending are the motion by Eastman Chemical Company

care (ECF No. 726 testimony of Lawrence M. Stanton (ECF No. 734), and plaintiffs motion to strike and exclude the testimony of Michele R. Sullivan, Ph.D. (ECF No. 852).

I.

On January 9, 2014, approximately 300,000 residents in the Charleston, West Virginia, and the surrounding area suffered an interruption in their water supply. The interruption was caused by a spill into the Elk River of a mixture used for coal cleaning purposes, composed primarily of a chemical known as Crude MCHM that was sold and distributed exclusively by Eastman Chemical Company. Crude MCHM consists primarily of the chemical 4-methylcyclohexane methanol. The mixture was prepared and stored in a facility owned and operated

Industries called the mixture that spilled into the Elk River

other elements, present in relatively small proportion. The mixture containing Crude MCHM infiltrated and contaminated the WV American water treatment plant in Charleston, known as the

from the Elk River.

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By order entered on October 8, 2015 (ECF No. 470), the

under Federal Rule of Civil Procedure 23(c)(4) for the class- wide determination of the for the spill and resulting water service interruption. The issues class

certification also includes the comparative fault of Freedom, a non-party, for those events. As to Eastman, plaintiffs advance two theories of liability, based on strict liability and common- law negligence.

Under their strict liability theory, plaintiffs contend Eastman is liable for failing to warn of the dangers inherent to Crude MCHM, failing to properly instruct Freedom concerning the proper storage and handling of its product, and for producing and selling a product that was unreasonably dangerous and defective given its hazardous characteristics. Under their negligence theory, plaintiffs allege that Eastman failed to exercise reasonable care, as measured by applicable industry standards, in its sale of Crude MCHM to Freedom.

A. Summary Judgment Motion on the Issue of Responsible Care

Eastman seeks summary judgment on the issue of whether the Responsible Care constitutes a set of industry standards that impose a duty upon Eastman with respect to the plaintiffs. Eastman argues that Responsible Care is a voluntary program rather than a codified set of standards against which its conduct can be measured. The motion seeks a ruling that such a program does not create a duty to plaintiffs where none

otherwise exists

onsible Care (ECF No. 727) at 1.

In their Memorandum in Support of Class Certification, plaintiffs described their view that Responsible Care guidelines

storage and handling of a product [do not pose] a risk to public ECF No. 414-21 at 18-19. Plaintiffs have argued that

as Eastman failed to ensure its product, Crude MCHM, was properly stored and handled by Freedom. Id. at 19. In

Id. Plaintiffs focus in particular on the fact that Glenda Flick, an Eastman employee, visited the Freedom site prior to the spill, on May 31, 2012, but did not assess the adequacy of storage methods for Crude MCHM nor did she investigate the condition of the tanks holding Crude MCHM. Plaintiffs argue that had Ms. Flick been properly trained in the principles of Responsible Care, she

would have identified the risks posed by

personnel. Id.

Eastman attacks the plaintif Responsible Care as the basis for a duty owed by Eastman on several fronts. First, Eastman argues that even if Responsible Care were an industry standard, this would not create a duty to

onsible Care at 5. Second, relying on the testimony of its expert Michele Sullivan, Eastman argues tha Id. at 6 Responsible Care cannot supply a standard of conduct because it is intended to be flexible by design, allowing each member to

2016 at 4. s interpretation of Responsible Care is consistent with that of the ACC, which in its amicus brief (ECF No. 783-2) characterized Responsible Care as create industry standards or mandate uniform action. Id. at 14-15. Sullivan also opines product stewardship principles do not include a requirement that members audit or inspect their F No. 726-1 at 7).

Plaintiffs respond with a number of arguments

supporting their interpretation of Responsible Care. First, they rely on their expert, Lawrence M. Stanton, for the proposition that Responsible Care has been widely adopted by the chemi - accepted industry standard of care, though Stanton does not cite any specific examples. No. 831 at 3) (citing 2015 Stanton Decl. (ECF No. 831-2)). 1 Second, plaintiffs rely on Mr. Stanton for an extensive discussion of the purportedly mandatory nature of Responsible Id. at 4. Plaintiffs also cite statements made by Eastman and its employees on the importance of Responsible Care and the particular role it plays at the company. Id. at 6-7 (describing Responsible Care as an

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Turning to their legal arguments, plaintiffs point out that the ultimate test of whether a defendant owes a legal duty

1 confidence in Responsible Care as a system of self-policing. The only support for this observation comes from general Responsible Care implementation document. See RCMS Implementation, Operation and Accountability (ECF No. 831-4 at 6) (merely re environmental and security regulation.)

is the foreseeability of injury, and that whether injuries were reasonably foreseeable to Eastman is a mixed question of law and fact that should be reserved for the jury. Id. at 8 (citing Neely v. Belk Inc., 668 S.E.2d 189, 198 (W. Va. 2008)). Plaintiffs also

number of sources drawn from other industry participants confirm that point. Pls -17 (quoting

websites of various chemical company characterizing Responsible

In its reply, Eastman reiterates its argument that plaintiffs have failed to identify authority which supports imposing a duty on Eastman owed to plaintiffs. Eastman Reply on Responsible Care at 1 (ECF No. 901). Eastman argues that imposing a duty on it to police its customers would essentially render it a marketplace insurer. Id. at 5. Eastman also argues that West Virginia law precludes imposition of such a duty where Freedom, a third party, is criminally responsible for the

criminal activity of a third party because the foreseeability of risk is slight, and because of the social and economic Miller

v. Whitworth, 455 S.E.2d 821, 825 (W. Va. 1995))).

As to Responsible Care, Eastman argues that it cannot be treated as an industry standard due to its emphasis on continual improvement, variation in implementation between companies, and explicit language in guidance documents disclaiming any intent to create binding standards. Eastman cites its expert for the proposition that Responsible Care, even if it were an industry standard, would not require Eastman to inspect Freed rude MCHM was being stored. Eastman also objects to several of the materials relied

referencing Responsible Care produced from websites and testimony by an Eastman employee regarding safety measures applicable to Crude MCHM adopted by Eastman following the spill. Eastman argues that the latter would be inadmissible under Federal Rule of Evidence 407 as a remedial measure. 2

2 For the reasons discussed below, neither the statements cited by plaintiffs nor the testimony challenged by Eastman under Federal Rule of Evidence

contains a motion to strike those mat response, it is ORDERED that the motion to strike be, and it hereby is, dismissed as moot.

B. Motion to Exclude Lawrence M. Stanton

Eastman moves to exclude Lawrence M. Stanton

the standards of care owed the public by the chemical industry 2015 Stanton Decl. at 1.

Infrastructure Security Compliance Division. Most relevantly, Stanton claims to h risk management business practices, including as a central

Id. at 2. 3

Stanton has provided two expert declarations in connection with this case. In his initial declaration, Stanton

3 attached to his initial expert declaration. See ECF No. 734-1 at 23. Eastman has qualifications as an expert, focusing instead on the content of his proffered opinions.

Id. at 4. Stanton opines that Eastman was aware of hazards associated with Crude MCHM and failed to

handling of the product. In particular, Stanton states that

deteriorated condition and that the company was not on firm financial footing. In simple terms, [Freedom] could not be assumed to understand the hazards and risks of MCHM or how to Id. at 5 (citations omitted). Despite that knowledge, Stanton concludes that

Id. at 6. Finally,

water company, and officials of the risks due to C Id.

the standards imposed by Responsible Care is based in part on a review of twelve Responsible Care Guiding Principles. Stanton opines that six of these principles specifically emphasize the importance of communication of risk and hazard information to stakeholders:

III. To work with customers, carriers, suppliers, distributors and contractors to foster the safe and secure use, transport and disposal of chemicals and provide hazard and risk information that can be

accessed and applied in their operations and products. . . . VI. To promote pollution prevention, minimization of waste and conservation of energy and other critical resources at every stage of the life cycle of our products. VII. To cooperate with governments at all levels and organizations in the development of effective and efficient safety, health, environmental and security laws, regulations and standards. VIII. To support education and research on the health, safety, environmental effects and security of our products and processes. IX. To communicate product, service, and process risks to our stakeholders and listen to and consider their perspectives. . . . XII. To promote Responsible Care® by encouraging and assisting others to adhere to these Guiding Principles. 2015 Stanton Decl. at 11-12 (quoting The American Chemistry

omitted). Stanton identifies two specific hazards associated with Crude MCHM--its potential corrosiveness and its strong odor--which Eastman was aware of and in his view was obligated to analyze and effectively communicate to Freedom. Id. at 13.

In his second declaration, Stanton adds observations

extent of regulations to which [Eastman] was subject, including regulations that may have materially impacted the Elk Creek [sic] -2 at 4). Stanton

an aspirational initiative, arguing that Responsible Care is a code of conduct and that the chemistry industry has represented as much to the government for years. Id. Care Code was offered as a better, more effective substitute to regulations [and] was accepted as such by government on the

constitute inadmissible legal conclusions and are supported by nothing -proclaimed authority on the

proffered testimony is not relevant and not supported by sufficiently reliable data and facts as required by Daubert v. Merrell Dow Pharm., 509 U.S. 579 (1993). In particular, Eastman

industry standard is based on nothing more than his subjective interpretation of Responsible Care, and notes his concession that

ECF No. 735, pg. 7 (. Eastman also emphasizes that Stanton did not evaluate the practices of other chemical companies in reaching the conclusions contained within his reports. Id. at 8. Third, Eastman seeks to exclude Stanton because his testimony would be unduly prejudicial and would tend to confuse or mislead the jury.

plaintiffs argue that the court has already ruled that E

their admissibility. Plaintiffs refer

r

motion to exclude Stanton for purposes of class certification, relies on Responsible Care standards that have not been adopted as industry standards and . . . incomplete or selective evidence weight rather than the admissibility of his opinion. See 310 F.R.D. 274, 286 (S.D.W. Va. 2015). Plaintiffs further argue that Sta routinely allow expert testimony on industry standards of care,

inform the existence of industry standard[s] commensurate with

In reply, Eastman argues that the court s prior

addressed only those issues germane to class certification. In

produced after class certification, and that his conclusions regarding Eastman lobbying efforts are based on uncorroborated hearsay.

C. Motion to Exclude Michele Sullivan

Plaintiffs, in turn, seek to strike and exclude the testimony of Michele Sullivan expert on Responsible Care. Sullivan describes herself as an

No. 852-1 at 17. While she has worked as an independent

experience was a period from 1999 to 2001 during which she served as a Senior Director at the American Chemistry Council, with responsibilities including work on Responsible Care. Sullivan has issued two reports for Eastman in connection with

this case, on May 22, 2015 and February 22, 2016.

improving performance . . . [and] does not prescribe specific duties or standar 734-5) at 13. Sullivan states her opinion that Responsible Care

employee to the Freedom Industries facility nor to inspect the Id. Sullivan states that Responsible Care to hazards and risks, but that the particular steps a company takes to communicate risks should be commensurate with the risks posed by a particular product. Id. at 11-12. In addition, she]here is no particular methodology or technique for quantifying risk required by Respon case of C ecision to rely primarily on a Material Safety Data Sheet (MSDS risks was appropriate. Id.

criticisms levied by Stanton, in particular the suggestion that Sullivan was conflating a global initiative by the International

Council of Chemical Associations (ICCA) with the domestic Responsible Care program. Sullivan Rep. 2016 (ECF No. 734-6) at 2-3, 7. Sullivan reiterates that Responsible Care is not an industry standard and states that the ICCA documents she relies

Id. at 7.

Plaintiffs move to exclude and to strike her reports in their entirety, arguing that her opinions

her subjective, unilateral interpretation of certain Responsible Care docum -2) at 2. Plaintiffs also argue that Sullivan fails to base her opinions on whether Responsible Care constitutes an industry standard on a factual basis or any analysis specific to current industry practices. Id. at 4- no analytical tie between the current industry and Dr.

Id. Plaintiffs also highlight portions their view constitute concessions that she is not qualified to render an expert opinion with respect to management systems or standards of care. Id. at 5-7. Plaintiffs also object to the portions of extensively quote portions of

Responsible Care documents, arguing that those materials should be presented directly to the jury

rather than introduced through an expert. Finally, plaintiffs move to strike and exclude

Responsible Care, arguing that her opinion was reached without ct stewardship with respect to Crude MCHM. Id. at 9-10.

In response, Eastman argues that Sullivan is fully qualified to testify on Responsible Care and that plainti - her depositions rather than her significant qualifications. Eastman argues that plaintiffs seek to exclude Sullivan because her opinion contradicts their theory of liability. E regarding the role of Responsible Care in the industry are relevant and supported by the Responsible Care literature, and

practices with respect to Responsible Care.

In their reply (ECF No. 902), plaintiffs again argue

speculative and not sufficiently tied to the facts of the case. llivan should be allowed to testify as to the general contours of Responsible

Care concedes that she has not considered the adequacy of in particular. Plaintiffs also rely on challenge her expertise in

Id. at 6-10. Finally, plaintiffs

language from Responsible Care documents and purporting to confir stricken and excluded. Id. at 12-14.

II. Legal Standards

A. Summary Judgment

shows that there is no genuine dispute as to any material fact

establish the el Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also News -Durham Airport Auth., 597 F.3d

material fact exists if, in viewing the record and all reasonable inferences drawn therefrom in a light most favorable to the non-moving party, a reasonable fact-finder could return a verdict for the non-movant. Anderson, 477 U.S. at 248.

When examining the record, the court must neither resolve disputes of material fact nor weigh the evidence, Russell v. Microdyne Corp., 65 F.3d 1229, 1239 (4th Cir. 1995), nor make determinations of

credibility, Sosebee v. Murphy, 797 F.2d 179, 182 (4th Cir. 1986). Instead, the party opposing the motion is entitled to have his or her version of the facts accepted as true and, moreover, to have all internal conflicts resolved in his or her favor. Charbonnages de France v. Smith, 597 F.2d 406, 414 (4th Cir. 1979). Along those lines, inferences be viewed in the light most favorable to the party opposing the United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

B. Daubert Standard

Federal Rule of Evidence 702 governs the ad

Daubert v. Merrell Dow Pharm., 509 U.S. 579, 597 (1993). Neither Rule 702 nor case law establish a mechanistic test for determining the reliability of an expert's

latitude when it decides how to determine reliability as it

enjoys in respect to it United States v. Wilson, 484 F.3d 267, 274 (4th Cir. 2007) (quoting Kumho Tire Co. v. Carmichael, 526 U.S. 137, 141-42 (1999)).

Testimony is relevant if it has any tendency to prove or disprove an issue of fact that is of consequence in determining the action. Fed. R. Evid. 401. Though relevance United States v. Leftenant, 341 F. 3d 338, 346 (4th Cir. 2003),

United States v. Queen, 132 F. 3d 991, 998 (4th Cir. 1997).

proffered expert testimony is irrefutable or certai -- -examination, presentation of contrary evidence, and careful instruction on United States v. Moreland, 437 F.3d 424, 431 (4th Cir. 2006) (quoting Daubert, 509 U.S. at 596) (alteration in original); see also Maryland Cas. Co. v. Therm-O- Disc., Inc., 137 F.3d 780, 783 (4th Cir. 1998) (noting that Daubert demands is that the trial judge make a

court is focused on the principles and methodology employed by the expert, not the conclusion reached. Westberry v. Gislaved Gummi AB, 178 F.3d 257, 261 (4th Cir. 1999).

III. Application

At the outset, the court notes that the arguments

on the issue of Responsible Care encompass two distinct disagreements. First, there is a dispute about whether, as a matter of law, Eastman owed a duty of care to the plaintiffs. In that context, Eastman seeks a ruling that Responsible Care does not supply such a duty. The court has previously concluded that Eastman may owe a duty of care to Plaintiffs arising from the purported failure to provide information concerning the potential hazards of Crude MCHM. motion seeks a ruling that it

owed no duty to Plaintiffs, it is denied as moot.

Second, the parties dispute whether Responsible Care

comported with its requirements. The court concludes that the record lacks competent evidence to establish that Responsible Care represents the industry standard.

safety performance initiative of the chemical industry, promulgated by the ACC. 4

The Responsible Care guidelines are

f employees and

Guidance , ECF No. 783-3, pg. 5. refers to the objectives of Responsible Care as they relate to product handling and safety.

Surprisingly, there appear to be very few cases in which courts have considered whether t guidelines for the chemical industry. Eastman cites two prior cases in which courts purportedly held that Responsible Care is not an industry standard that creates a legal duty, Lescs v. William R. Hughes, Inc., 1999 WL 12913 (4th Cir. Jan. 14, 1999) (unpublished), and E. S. Robbins Corp. v. Eastman Chem. Co., 912 F. Supp. 1476 (N.D. Ala. 1995). 5

Plaintiffs, in contrast, rely on Westley v.

4 . 5 Eastman also cites Weist v. E.I. DuPont De Nemours & Co., 2008 U.S. Dist. LEXIS 25615 (W.D.N.Y. Feb. 8, 2008) for the proposition that, even assuming the adoption of Responsible Care by the defendant in that case, it does not demonstrate an of a manu roducts. The opinion cited is a magistrate commendation that was rejected by the district court with respect to a different issue having to do with negligent entrustment for which factual development was still outstanding, resulting in recommittal to the magistrate

Ecolab, Inc., a case in which the district court held that

industry based, in part, on a reference to Responsible Care. See 2004 WL 1068805 at *11 (E.D. Pa. May 12, 2004) (unpublished). Plaintiffs attempt to distinguish the cases cited by Eastman, pointing out that Lescs and E. S. Robbins Corp. dealt with limited aspects of Responsible Care and did not explicitly hold that the program does not create a duty to third parties.

In Lescs v. William R. Hughes, Inc., the plaintiff asserted that defendant Dow Chemical failed to adhere to standards contained within the Responsible Care Progress Report for 1995-1996 in its production of the pesticide Dursban. 1999 WL 12913 (4th Cir. 1999) (unpublished). to Responsible

Care, plaintiff asserted, meant that Dow failed to meet industry standards, and thus could be liable under Virginia law. Though the Fourth Circuit disposed of the issue on the grounds that the Responsible Care guidelines relied on by plaintiff were not in effect at the time of the production of the pesticide, the court also was not impressed with the vague language of Responsible Care. See id.

judge. Id. at *3.

[Responsible Care report] reveals little in the way of ; see also id. at *12 it mildly, this language [of the Responsible Care report] paints

Similarly, in E. S. Robbins Corporation v. Eastman Chemical Company, the district court for the Northern District of Alabama rejected a purchaser onsible Care imposed a duty on a chemical supplier to ensure that its products were handled by a carrier in a particular manner. 912 F. Supp. 1476 (N.D. Ala. 1995). The plaintiffs there contended that the product stewardship provisions of Responsible Care imposed a duty on the supplier (Eastman), owed to plaintiff, to supervise or train carrier employees in how to load the chemical product in recognize a duty, the court emphasized the general, aspirational nature of the guidelines. See id. simply show that Eastman . . . is studying a wide array of safety and health-related .

In contrast, in Westley v. Ecolab, Inc., the district court for the Eastern District of Pennsylvania found that Responsible Care was the industry standard for the chemical industry. 2004 WL 1068805 (E.D. Pa. 2004). In Westley, the plaintiff, who had been injured on the job while using a

chemical cleaning product, sought to offer the expert testimony that the product s supplier had failed to properly train employer as to how to handle the product under the Responsible Care guidelines. The defendant sought to exclude

applied only to chemical manufacturers, not chemical product suppliers. mony, stating that:

be an accepted industry standard in the area of to this standard is not inappropriate. Id. at *11. The court appears to have based its conclusion entirely on the testimony of a single expert, Dr. Davidson, without reference to any case authority on the role of Responsible Care. The opinion does not indicate what additional evidence, if any, suggests that Responsible Care was the industry standard.

The brief treatments of the matter in the cited opinions are of limited guidance. However, the court agrees with the concerns expressed in E. S. Robbins and Lescs that the Responsible Care guidelines provide relatively little in the way of substantive standards. An

accepted. See Handley v. Union Carbide Corp., 804 F.2d

265, 273 (4th Cir. 1986). Establishing an industrial standard requires equal or similar standard was in

place or recognized by a business or industrial entity conducting the same or similar Id. Though the Plaintiffs question whether they are more properly characterized as

Responsible Care and its implementation material provide simply a set of principles and framework against which Eastman derived its own specific rules regarding the handling of its product. See RCMS Guide, ECF No. 783-3, pg. 4 (explaining that the implementation guidance).

Beyond their heavy reliance on the district court opinion in Westley, the only other support for

is the opinions, however, are supported by little more than his own assertions.

is based entirely on his professional experience with the chemical industry and hazard regulations. Though his experience is

extensive, the Federal Rules of Evidence require that the expert establish some link between his experience and the facts. See

the witness is relying solely or primarily on experience, the witness must explain . . . how that experience is reliably s discussed above, a requires at least some evidence that an equal or similar standard has been adopted or recognized by another industry actor. See Handley, 804 F.2d at 273. Stanton concedes that he did not evaluate the practices of other chemical companies in reaching the conclusions contained within his reports. See Stanton 2015 Depo. at pp. 407-408. Stanton also acknowledges that Responsible Care does not impose specific requirements or finite rules of behavior on chemical companies; rather, it provides a list of general principles. See id. at pp. 195-196. Without some foundation to conclude that the broad principles of Responsible Care translated into specific practices or actions of companies that were well known and commonly accepted within the industry, is not shown to represent the industry standard. The court will grant

seeks a ruling that Responsible Ca industry standard and did not independently create a duty on Eastman owed to Plaintiffs.

of Stanton and in view of the reasoning above, the court concludes that Stan opinion is similarly deficient insofar as it asserts that Eastman failed to adhere to the Responsible Care guidelines. assumption that Responsible Care imposed a duty on Eastman to take particular actions concerning the handling of Crude MCHM. Given g that Responsible Care did not impose a duty on Eastman, the court believes that lacks relevance to a finder of fact and should be excluded. See Daubert, 509 U.S. at 597 (1993). However, to the limited extent that Stanton has opined regarding risk management and whether the hazards of Crude MCHM would be obvious to those in the chemical industry, the court concludes that his opinion is both sufficiently reliable and relevant to a finder of fact as to be admissible.

As to Sullivan, her reports assert that Responsible Care was not an industry standard, and serve assertion that Responsible Care represents the industry standard. The remainder of her conduct did, in fact, comply with the Responsible Care guidelines. Thus, for the reasons discussed previously, the

court believes they lack relevance and will be excluded. 6

IV. Conclusion

For the above-stated reasons, the court ORDERS as follows:

1.

hereby is, granted to the extent that Responsible Care is not the industry standard and does not impose an independent duty on Eastman, but otherwise denied;

2. to exclude Lawrence M. Stanton be,

and it hereby is, granted to the extent that Stanton opines regarding Responsible Care, but denied regarding risk management and hazards of Crude MCHM; and

3. P Michele R. Sullivan,

Ph.D. be, and it hereby is, granted.

6 A motion to strike expert testimony is generally improper, and for that reason the court declines to strike any portion of court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matte Fed. R. Civ. P. 12(f) (emphasis added). The expert reports at issue are not pleadings as defined by Rule 7, and there is no provision in the rules for a motion to strike any other type of document. In addition, motions to strike are generally viewed with disfavor, and the Fourth Circuit has held that such motions a drastic

The Clerk is directed to forward copies of this memorandum opinion and order to counsel of record and any unrepresented parties. DATED: October 13, 2016

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON THOMAS PARKER,

Plaintiff, v. Civil Action No. 15-14025 THE DOW CHEMICAL COMPANY LONG TERM DISABILITY PROGRAM, an Employee Welfare Benefits Plan, LIBERTY LIFE ASSURANCE COMPANY OF BOSTON, a Massachusetts Corporation, and DOES 1 THROUGH 10, inclusive,

Defendants.

ORDER AND NOTICE Pursuant to L.R. Civ. P. 16.1, it is ORDERED that the following dates are hereby fixed as the time by or on which certain events must occur: 01/28/2016

Motions under F.R. Civ. P. 12(b), together with supporting briefs, memoranda, affidavits, or other such matter in support thereof. (All motions unsupported by memoranda will be denied without prejudice pursuant to L.R. Civ. P. 7.1 (a)). 02/08/2016

Last day for Rule 26(f) meeting. 02/15/2016

Last day to file Report of Parties= Planning Meeting. See L.R. Civ. P. 16.1. 02/22/2016

Scheduling conference at 4:30 p.m. at the Robert C. Byrd United States Courthouse in Charleston, before the undersigned, unless canceled. Lead counsel directed to appear. 02/29/2016

Entry of scheduling order. 03/08/2016

Last day to serve F.R. Civ. P 26(a)(1) disclosures. The Clerk is requested to transmit this Order and Notice to all counsel of record and to any unrepresented parties.

DATED: January 5, 2016

John T. Copenhaver, Jr. United States District Judge