

1
2
3
4
5
6
7
8
9
10
11

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THOMAS A. JOHNSON, et al.,

Plaintiffs,

v.

CBS CORPORATION, et al.,

Defendants.

C17-834 TSZ

MINUTE ORDER

12 The following Minute Order is made by direction of the Court, the Honorable
Thomas S. Zilly, United States District Judge:

13 (1) Plaintiffs' motions in limine, docket no. 161, are GRANTED in part and
14 DEFERRED in part, as follows:

15 (a) Plaintiffs' motion to exclude certain documents is GRANTED in
16 part and DEFERRED in part. In light of the Court's prior ruling striking
17 defendants' sophisticated-purchaser or intermediary defense, *see* Minute Order at
18 ¶ 3(c) (docket no. 176), defendants will not be permitted to offer these documents
19 to establish the "sophistication" concerning asbestos of the United States Navy,
20 the Puget Sound Naval Shipyard, or the union for insulation workers, of which
21 plaintiff Thomas A. Johnson was not a member. The question of whether
22 defendants may offer these documents to show Mr. Johnson knew or should have
23 known of the hazards of asbestos and/or the steps he might have taken to reduce
his risk of injury is DEFERRED. At the hearing on March 30, 2018, defendants'
counsel shall be prepared to make an offer of proof as to each document they wish
to offer at trial concerning whether Mr. Johnson received, saw, read, or was
otherwise familiar with the contents of the document during the time he worked at
the Puget Sound Naval Shipyard. Absent an express ruling from the Court that a
document or documents listed in plaintiffs' motion to exclude may be offered at
trial, no party shall mention such document or documents in opening statement.

1 (b) Plaintiffs' motion to exclude the Complaint is GRANTED in part
2 and DEFERRED in part. Defendants will not be permitted to offer the Complaint
3 as evidence at trial. Counsel shall meet and confer prior to the hearing on March
30, 2018, to attempt to reach agreement regarding what information should be
provided to the jury about entities that are no longer defendants in this matter.

4 (c) Plaintiffs' motion to exclude evidence of collateral sources is
5 GRANTED. This ruling does not prevent defendants from identifying other ways
6 in which Mr. Johnson was exposed to asbestos; it merely precludes defendants
from offering evidence or argument concerning payments or settlement funds
plaintiffs received from other entities. See Fed. R. Evid. 408.

7 (d) Plaintiffs' motion to exclude evidence or argument suggesting that
8 the union of which he was a member should have warned of or protected him from
the hazards of asbestos is GRANTED.

9 (e) Plaintiffs' motion to admit certain documents, namely (i) the 1933
10 letter from Alice Hamilton to Gerard Swope, (ii) the 1934 letter from Stewart
11 Clark to Alice Hamilton, (iii) the 1934 report on a General Electric Company plant
12 in Philadelphia, and (iv) the 1942 Safety Practice Bulletin, is GRANTED. The
Court makes no ruling concerning whether any other documents related to these
documents are admissible. Plaintiffs' motion to admit the 1989 Technical
Information Letter is DEFERRED.

13 (f) Plaintiffs' motion to exclude the decision in Allen v. Asbestos Corp.,
138 Wn. App. 564, 157 P.3d 406 (2007), is GRANTED.

14 (g) Plaintiffs' motion to exclude mention of or argument about stricken
15 affirmative defenses is GRANTED. To the extent plaintiffs' motion seeks other
relief, it is DEFERRED.

16 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
17 record.

18 Dated this 23rd day of March, 2018.

19 William M. McCool
Clerk

20 s/Karen Dews
21 Deputy Clerk