

ENTERED

August 12, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROGELIO LOPEZ MUNOZ, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:19-CV-1460
	§	
INTERCONTINENTAL TERMINALS	§	
COMPANY LLC, <i>et al</i> ,	§	
	§	
Defendants.	§	

MEMORANDUM AND ORDER REGARDING SCHEDULING CONFERENCE

I.

The Court conducted a courtroom conference, this day, July 29, 2019, for the purpose of establishing a Management Plan for “consolidated discovery” in case No. 19-1460. The parties cooperatively and masterfully prepared and filed a joint discovery/case management plan, pursuant to Federal Rules of Civil Procedure, Rule 26(f), addressing in large measure, the Court’s interest in facilitating the discovery endeavor [DE 35]. The Court adopts and repeats the parties’ description of the nature of the case without regard for the merits of any claim(s) or defenses.

II.

On March 17, 2019, a fire began in one of the tank farms at ITC’s Deer Park facility and burned for several days. A number of lawsuits followed, and 23 or more of those lawsuits are presently consolidated in this action for pretrial purposes. The cases contain individual claims and claims for putative class actions. A variety of tort claims are asserted against ITC, Richardson, and/or Mitsui, including negligence, negligent training, negligence per se, negligent

misrepresentation, gross negligence, private nuisance, public nuisance, trespass, strict liability, vicarious liability, and *res ipsa loquitor*.

The defendant, Mitsui & Co. (U.S.A.), Inc. (“Mitsui”) separately, contends that it is not subject to personal jurisdiction in this Court. Subject to that defense, however, Mitsui joins all other defendants in opposing class certification with respect to the two putative class actions, denying the merits of plaintiffs’ allegations, and denying that plaintiffs are entitled to any of the requested relief.

II.

Pursuant to the courtroom conference and the Proposed Plan on file, the Court adopts relevant portions of the parties’ proposal and enters the following:

- a) the Court discourages motions for discovery until the initial disclosures are completed on or after September 3, 2019. Following initial disclosure and a meet-and-confer between the plaintiffs’ and defendants, a courtroom conference is convened on September 26, 2019, at 9:30 a.m. o’clock for the purpose of determining the scope of discovery necessary to identify any remaining unserved defendants. To the extent the parties agree on the identity of any remaining defendants, an agreed order will suffice and the courtroom conference is cancelled;
- b) the plaintiff, Vopak is of the opinion that diversity jurisdiction does not exist and, therefore, the case(s) should be remanded to state court. Without commenting on the merits of any such motion(s), the Court is of the opinion that a delay until December 20, 2019, in filing of such motions, would be expedient. Therefore, motions for remand will not be addressed before December 20, 2019, unless noticed, or determined to be appropriate. The Court’s Order, delaying such consideration, does not constitute a waiver by the defendant(s);
- c) the defendant Mitsui seeks to delay producing initial disclosures pending a determination of whether the Court lacks personal jurisdiction. The request is DENIED because personal jurisdiction issues may be subject to discovery, the propriety of which will be addressed following any disclosure. Any necessary discovery commences after September 26, 2019;
- d) ITC is to promptly identify all third parties who performed work on Tank 80-8 and related equipment over the past 10 years, including the nature of the work performed, including but not limited to maintenance, repairs, design evaluations

or monitoring. After September 3, 2019, such disclosures are to go forward on a rolling basis;

- e) After the September 3 disclosures, discovery may proceed on or after September 26, to identify any potential additional parties and any subject matters upon which the parties agreed, subject to other declarations contained in this Order;
- f) pursuant to agreement, ITC shall produce all document materials and information that is available to it and/or that it provides to any governmental agency investigating the relevant incident subject to confidentiality and privilege agreement when appropriate. To this end a protective order shall be filed on or before August 19, 2019;
- g) a document depository program shall be developed, if necessary, based on an agreed order submitted to the Court on or after August 19, 2019;
- h) the Court adopts the parties' agreement concerning the preparation of fact sheets as to each plaintiff, to the extent feasible. Hence, the Court overrules the *Bryant* plaintiffs' objection without prejudice to reconsideration;
- i) the Court adopts the parties preliminary case management schedule as follows:

Event	Date/Deadline
Deadline for Defendants to Submit Draft Fact Sheets for Personal Injury and Property Damage Claims to Plaintiffs	August 19, 2019
Deadline for Parties to Agree on Fact Sheets or, alternatively, Request Status Conference regarding Fact Sheets	September 6, 2019
Rule 26(a)(1) Initial Disclosures and Commencement of Third-Party Fact Discovery	September 3, 2019
Deadline for Plaintiffs to Produce Fact Sheets and Supporting Documentation for Current Plaintiffs	December 6, 2019
Deadline to Amend Pleadings and Add Parties	December 20, 2019
Deadline to Submit Joint Status Report to the Court regarding Scheduling Order for Next Phase of Case	January 10, 2020
Status Conference	January 17, 2020

- j) discovery on class certification shall commence on or after December 20, 2019.

IV.

Other Matters:

- a) The plaintiffs' motions for voluntary dismissal without prejudice in Cause Nos. 9-CV-1460; 19-CV-1440; 19-CV-1436; 19-CV-1450; 19-CV-1457; 19-CV-1428; 19-CV-1430; 19-CV-1443; 19-CV-1434; 19-CV-1461; 19-CV-1452; 19-CV-1444 and 19-CV-1431 are Denied;
- (b) the parties' joint stipulation regarding the time to answer or otherwise plead [DE 26] in 19-CV-1708 is Granted;
- (c) the defendant's opposed motion to consolidate [DE 31] 19-CV-1460; also in 19-CV-2429 [DE 09] is Granted; and
- (d) the plaintiffs' motion to remand filed in 19-CV-1447 and 19-CV-1882, reflected in 19-CV-1460 [DEs 03 and 09] are Denied without prejudice. Finally, the Court adopts other agreed procedures or dates set forth in the Joint Discovery Case Management Plan [DE 35].

It is so Ordered.

SIGNED on this 9th day of August, 2019.



Kenneth M. Hoyt
United States District Judge