

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re Polyurethane Foam Antitrust
Litigation

Case No. 10 MD 2196

This document relates to:
ALL CASES and 13 PF 10004

QUESTIONS ON ARBITRATION
MATTERS TO BE DISCUSSED AT
HEARING ON CLASS CERTIFICATION

JUDGE JACK ZOUHARY

Pursuant to this Court's prior Order (Case No. 10 MD 2196, Doc. 898; Case No. 13 PF10004, Doc. 29), the following questions will be discussed during the January 15, 2014 hearing.

Motion for Leave to Amend Answer to Direct Purchaser Plaintiffs' Consolidated Amended Class Action Complaint (Case No. 10 MD 2196, Doc. 828)

1. When did Mohawk learn of the existence of the class members' arbitration agreements? Of CAP Carpet's arbitration agreement?
2. Are the discovery efforts taken to date transferrable to arbitration? Other than determining the terms of class member arbitration agreements, what specific additional discovery would Direct Purchasers require if this Court determines the arbitration defense has not been waived?
3. How would Direct Purchasers' and Mohawk's litigation efforts have differed if the arbitration defense had been added to the Answer sooner, considering that some, but apparently not all, of Mohawk's customers entered into arbitration agreements?

4. Discuss Mohawk's view that class members are "parties" to an action after a class is certified, at least for arbitration purposes.

Motion to Compel Arbitration (Case No. 13 PF 10004, Doc. 24)

1. Provide your single best case that held a similar boilerplate arbitration clause to be "narrow" -- limited to pay disputes -- or "broad" -- extending to any product-related claim.
2. When CAP Carpet and Mohawk stipulated to Mohawk's amending its Answer, did CAP Carpet know that amendment would add an arbitration defense? If yes, should CAP Carpet's claims that it suffered prejudice from the length of time it took Mohawk to add the arbitration defense be discounted, considering that CAP Carpet could have opposed an amendment as Direct Purchasers have?
3. What is your best record evidence that the parties intended CAP Carpet's claim to be submitted to arbitration?
4. Explain how this "specific dispute falls within the substantive scope" of the 1996 Agreement. *Javitch v. First Union Sec. Inc.*, 315 F.3d 619, 624 (6th Cir. 2003)
5. Would any terms of the 1996 Agreement play a role in deciding the *merits* of this antitrust price-fixing claim if it is submitted to arbitration?

6. What, if anything, do the 1996 Commercial Arbitration rules of the American Arbitration Association say about resolving a complex antitrust claim?

7. Identify how Mohawk's delay in raising this defense has prejudiced CAP Carpet *in this case*, which has only been pending for eight months as compared to the three-year-old MDL? *See Johnson Assoc. Corp. v. HL Operating Corp.*, 680 F.3d 713, 719–20 (6th Cir. 2012).

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

January 10, 2014