

2008 Annual Report of the Mass Litigation Panel

The Chairman of the Mass Litigation Panel is Circuit Judge Alan D. Moats of the Nineteenth Judicial Circuit, Barbour and Taylor Counties. Members of the Panel are Judge John A. Hutchison of the Tenth Judicial Circuit, Raleigh County; Judge Booker T. Stephens of the Eighth Judicial Circuit, McDowell County; Judge Jay M. Hoke of the Twenty-Fifth Judicial Circuit, Boone and Lincoln Counties; Judge Derek Swope of the Ninth Judicial Circuit, Mercer County; and Judge James P. Mazzone of the First Judicial Circuit, Brooke, Hancock, and Ohio Counties.

The following is a list of Mass Litigation referred to the Panel, the county in which the litigation is pending, and the judge or judges assigned to preside in the litigation:

Asbestos Personal Injury Litigation	Kanawha County	Ronald C. Wilson, Presiding Judge James P. Mazzone, Assisting Judge Mark A. Karl, Assisting Judge
Asbestos FELA Litigation	Kanawha County	Arthur M. Recht, Presiding Judge Jay M. Hoke, Assisting Judge
Digitek® Litigation	Kanawha County	Alan D. Moats, Lead Judge Booker T. Stephens, Presiding Judge Derek C. Swope, Presiding Judge
Flood Damage Litigation	Raleigh County	John M. Hutchison, Lead Judge Jay M. Hoke, Presiding Judge Derek C. Swope, Presiding Judge Booker T. Stephens, Lead Resolution Judge Alan D. Moats, Resolution Judge James P. Mazzone, Resolution Judge
Overweight Trucks Litigation	Lincoln County	Jay M. Hoke, Presiding Judge
Tobacco Litigation	Ohio County	Arthur M. Recht, Presiding Judge

Amendments to Rules Governing Mass Litigation

On July 1, 2007, then-Chief Justice Robin Jean Davis directed the Mass Litigation Panel to draft proposed rules for consideration by the Supreme Court governing Mass Litigation. For over a year the Panel worked on proposed amendments to the West Virginia Rules of Civil Procedure and the West Virginia Trial Court Rules that affect cases referred to the Mass Litigation Panel. The Panel proposed substantial amendments to Trial Court Rule 26, which governs Mass Litigation, as well as amendments to Trial Court Rule 16.05(a), and Rules 3(a) and 5(e) of the West Virginia Rules of Civil Procedure. The Panel also proposed Trial Court Rule 15, a new rule that establishes procedures for electronic filing and service (“e-filing and service”) in certain mass litigation referred to the Panel.

Throughout this process, the Panel was assisted in its efforts by Supreme Court Clerk Rory Perry, Deputy Clerk Edythe Nash, Assistant Director of Administration Kathleen Gross, and Kim Fields, who was hired by the Supreme Court on May 1, 2008, to assist the Panel in centralizing management of mass litigation in West Virginia. In her capacity as Mass Litigation Manager, Ms. Fields acts as a liaison between the members of the Panel, counsel, the circuit clerks, other members of the judiciary and court personnel.

After a period of public comment, the Panel submitted its final recommendations regarding the proposed rules to the Supreme Court during the Fall 2008 Term of Court. On October 9, 2008, the Supreme Court entered orders adopting the Panel's proposed rule changes.

Flood Litigation

On September 4, 2008, the Supreme Court ordered that *In re: Flood Litigation Coal River Watershed*, and *In re: Flood Litigation Upper Guyandotte River Watershed Subwatershed 2a* be remanded to the Raleigh County Circuit Court and transferred to the Mass Litigation Panel for further proceedings by current members of the Panel. On September 17, 2008, the Supreme Court ordered that the flood damage cases previously transferred to the Circuit Court of Raleigh County be reassigned to the current members of the Panel.

The Panel held a Status and Scheduling Conference in the Flood Litigation cases at the Raleigh County Courthouse on October 7, 2008. It was the first time all six circuit judges appointed to serve on the Mass Litigation Panel presided together on a matter.

During the status conference, Judge Moats told attorneys that the Panel plans to bring more accountability across the entire system and to work together as a panel as opposed to "a pool of six judges doing separate cases and going in separate directions."

With the advice and consent of the Panel, Judge Moats entered an order assigning Judge John A. Hutchison to serve as Lead Judge presiding in all cases in all watersheds in the Flood Litigation, with Judge Jay M. Hoke and Judge Derek C. Swope assigned to assist Judge Hutchison as Presiding Judges. Judge Booker T. Stephens was assigned to serve as Lead Resolution Judge, with Judge James A. Mazzone and Judge Alan D. Moats assigned to assist Judge Stephens as Resolution Judges. The Litigation Judges will provide consistent rulings on pre-trial motions, and work on moving the cases through the litigation process. The Resolution Judges will work on resolution of cases through mediation and oversee accounting of settlement proceeds.

In December 2008, the Panel received information it had requested from the parties to assist the Panel in its management of the Flood Litigation. This information was used by Raleigh County Deputy Circuit Court Clerk Paul Flanagan to construct a case, party, watershed and subwatershed matrix, which will be utilized by LexisNexis, the Court's designated e-service provider, to implement e-filing and service in the Flood Litigation.

Implementation of Electronic Filing and Service in Digitek® and Asbestos Personal Injury Litigation

On September 18, 2008, Chief Justice Elliott E. Maynard entered an order transferring all pending and subsequently filed Digitek® cases in the State of West Virginia to the Mass Litigation Panel. The Digitek® Litigation is a product liability litigation concerning the heart medication digoxin.

Shortly after these cases were transferred to the Panel, in accordance with new Trial Court Rule 15, the Panel determined that it was appropriate for the Digitek® litigation, as well as certain trial groups in the Asbestos Personal Injury Litigation to be subject to e-filing and service. On November 3, 2008, the Panel entered orders causing these litigations to be subject to e-filing and service beginning December 8, 2008.

The Digitek® Litigation is the first Mass Litigation to be managed by the Panel from beginning to end using e-filing and service. On December 8, Judge Moats, who sits in Taylor and Barbour Counties, entered the first electronically filed order and served it on all counsel of record in the Digitek® Litigation, which is pending in Kanawha County. The order was filed and served in a matter of minutes, instead of the days or weeks it can take using traditional methods of filing and service when cases are pending in one circuit, but the presiding judge is located in another circuit.

A prime example of the time and cost savings to be gained by e-filing and service is in the Asbestos Personal Injury Litigation. First Circuit Judge Ronald E. Wilson sits in Hancock County, but presides in the Asbestos Personal Injury Litigation, which is pending in Kanawha County Circuit Court. Yet, Judge Wilson is able to enter hundreds of orders in the Asbestos Personal Injury Litigation in a fraction of the time it used to take using traditional methods of filing and service.

"Electronic filing and service will benefit the court system, attorneys and parties alike," said Judge Moats. "Online clerk and judicial review of filed documents will improve court operations, while the online document depository will improve access to filed documents for everyone."

E-filing and service is a welcome change for Kanawha County Circuit Clerk Cathy Gatson, whose office manages the filings in both the Digitek® Litigation and the Asbestos Personal Injury Litigation. "E-filing and service will save time and allow our office to manage large numbers of filings electronically," said Ms. Gatson. "Mass Litigation has created huge numbers of documents that currently require countless hours to manage. E-filing and service will significantly improve that process."

E-filing doesn't just provide a quicker, more efficient way to exchange information in the judicial system. According to Tobias Hartmann, vice president and managing director of File & Serve for LexisNexis, "The courts and law firms that have implemented File & Serve have demonstrated that they can improve their efficiency and significantly lower costs while

dramatically reducing the consumption of paper, energy and pollution at a time when our planet requires more responsible management of natural resources."

Mass Litigation Panel Web Page

With the assistance of Supreme Court Clerk Rory Perry and Mass Litigation Manager Kim Fields, the Mass Litigation Panel now has a web page that is maintained on the Supreme Court's website. The panel's web page contains recent Administrative Orders entered by the Supreme Court on motions to refer Mass Litigation to the Panel, recent Orders of the Panel, forms created to assist the judiciary and counsel in their management of Mass Litigation, and other forms of complex litigation, as well as contact information for members of the Panel and Ms. Fields.