

2015 Annual Report of the Mass Litigation Panel

The Chair of the Mass Litigation Panel is Judge Alan D. Moats of the Nineteenth Judicial Circuit (Barbour and Taylor Counties). The other 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 C. Swope of the Ninth Judicial Circuit (Mercer County); Judge James P. Mazzone of the First Judicial Circuit (Brooke, Hancock and Ohio Counties); and Judge David W. Hummel, Jr. of the Second Judicial Circuit (Marshall, Tyler and Wetzel Counties).

The following is a list of Mass Litigations 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 Civil Action No. 03-C-9600	Kanawha County	Ronald C. Wilson, Presiding Judge ¹ James P. Mazzone, Assisting Judge Mark A. Karl, Assisting Judge
FELA Asbestos Litigation Civil Action No. 02-C-9500	Kanawha County	Arthur M. Recht, Presiding Judge ² Jay M. Hoke, Assisting Judge
Carbon Monoxide Litigation Civil Action No. 14-C-8000	Kanawha County	John A. Hutchison, Lead Presiding Judge Alan D. Moats, Presiding Judge Jay M. Hoke, Presiding Judge Booker T. Stephens, Lead Resolution Judge Derek C. Swope, Resolution Judge David W. Hummel, Jr., Resolution Judge
Float-Sink Litigation Civil Action No. 11-C-5000000	Raleigh County	John A. Hutchison, Lead Presiding Judge Alan D. Moats, Presiding Judge Derek C. Swope, Presiding Judge Jay M. Hoke, Lead Resolution Judge Booker T. Stephens, Resolution Judge James P. Mazzone, Resolution Judge
LPG Land Litigation Civil Action No. 15-C-4000	Ohio County	David W. Hummel, Jr., Lead Presiding Judge Alan D. Moats, Presiding Judge Derek C. Swope, Presiding Judge Booker T. Stephens, Lead Resolution Judge Jay M. Hoke, Resolution Judge

¹ Judge Ronald C. Wilson does not currently serve on the Mass Litigation Panel. However, he continues to preside in the Asbestos Personal Injury Litigation, conducting trial groups of approximately 20 cases in February, June and October each year. Through trials and settlement agreements, Judge Wilson has concluded over 800 cases since 2003. In 2014, Judge Wilson developed a plan to reduce the pending aged lung cancer cases that have lingered on the Asbestos Personal Injury docket. Judge Wilson facilitated settlement of 55 aged lung cancer cases in 2015 through mediation. Since the plan's inception, four groups of approximately 30 cases have been successfully mediated. In addition to the regular Asbestos Personal Injury Trial Groups, Judge Wilson has scheduled 90 aged lung cancer cases for mediation in 2016.

² Judge Arthur M. Recht does not currently serve on the Mass Litigation Panel. However, the Supreme Court recalled Judge Recht as a Senior Status Judge to continue presiding in the Tobacco Litigation and the FELA Asbestos Litigation, effective February 1, 2012. Currently, there are no cases pending in the FELA Asbestos Litigation.

Marcellus Shale Litigation Civil Action No. 14-C-3000	Ohio County	Alan D. Moats, Lead Presiding Judge Derek C. Swope, Presiding Judge David W. Hummel, Jr., Presiding Judge Booker T. Stephens, Lead Resolution Judge John A. Hutchison, Resolution Judge Jay M. Hoke, Resolution Judge
Mingo County Coal Slurry Litigation Civil Action No. 10-C-5000	Ohio County	James P. Mazzone, Lead Presiding Judge John A. Hutchison, Presiding Judge Jay M. Hoke, Presiding Judge Derek C. Swope, Lead Resolution Judge Alan D. Moats, Resolution Judge
Mountain State University Litigation Civil Action No. 12-C-9000	Kanawha County	Alan D. Moats, Lead Presiding Judge Derek C. Swope, Presiding Judge James P. Mazzone, Presiding Judge Booker T. Stephens, Lead Resolution Judge Jay M. Hoke, Resolution Judge David W. Hummel, Jr., Resolution Judge
Tobacco Litigation Civil Action No. 00-C-5000	Ohio County	Arthur M. Recht, Presiding Judge ³
University Commons Litigation Civil Action No. 13-C-7000	Kanawha County	Derek C. Swope, Lead Presiding Judge Alan D. Moats, Presiding Judge David W. Hummel, Jr., Presiding Judge Booker T. Stephens, Lead Resolution Judge John A. Hutchison, Resolution Judge
Zoloft Litigation Civil Action No. 14-C-7000	Kanawha County	James P. Mazzone, Lead Presiding Judge Derek C. Swope, Presiding Judge David W. Hummel, Jr., Presiding Judge Booker T. Stephens, Lead Resolution Judge Alan D. Moats, Resolution Judge Jay M. Hoke, Resolution Judge

Carbon Monoxide Exposure Litigation

On May 8, 2014, then Acting Chief Justice Margaret L. Workman referred 23 personal injury cases to the Panel alleging exposure to carbon monoxide while plaintiffs were guests at the South Charleston, West Virginia, Holiday Inn Express. Throughout 2014, the Presiding Judges assigned to the litigation held numerous hearings on various substantive matters regarding these cases, and the Resolution Judges assigned to the litigation conducted mediation on six (6) separate occasions.

³ On May 15, 2013, the Phase I jury rendered a defense verdict, except for the claims of those plaintiffs who alleged they were injured by a failure to instruct with respect to “ventilated filter cigarettes” manufactured, sold, and smoked between 1964 and July 1, 1969. Plaintiffs appealed the Phase I verdict, which was upheld by the Supreme Court. On June 8, 2015, Judge Recht conducted a hearing regarding Phase II, and found that: 1) the term “ventilated filter cigarettes” means cigarettes with ventilated filters first introduced in 1964; and 2) there are only 30 plaintiffs who allege they smoked a brand of cigarettes during the relevant time period of 1964 to July 1, 1969, that arguably fall within the category of ventilated filter cigarettes. The Court ruled that Phase II proceedings are limited to the failure to instruct claim described in Phase I Verdict Question 1(c) and directed the parties to submit a proposed joint case management order or, if no agreement was reached, their respective proposals. Counsel identified the first five cases for Phase II trial on December 14, 2015.

Although the wrongful death case of *Moran v. Patel*, Kanawha County Civil Action No. 12-C-469, was not referred to the Panel and was never part of the Carbon Monoxide Exposure Litigation, the Resolution Judges encouraged and assisted the parties in resolving *Moran* in order to facilitate resolution of the cases referred to the Panel. During the course of the Pretrial Conference on April 3, 2015, plaintiffs' counsel reported that all remaining cases had been fully compromised and settled, and requested that the Court order the parties to meet with the Resolution Judges to resolve certain issues regarding aggregate settlements with some of the defendants.

In May and June 2015, Judge Hutchison conducted hearings on a petition for approval of wrongful death settlement in the *Linn* case and a petition for approval of a minor plaintiff settlement in the *Mallow* case. Lead Resolution Judge Booker T. Stephens conducted mediation of certain issues regarding aggregate settlements with some of the defendants on July 17, 2015, resulting in agreement of the parties regarding the disputed issues. Lead Presiding Judge John A. Hutchison entered an *Aggregate Settlements Allocation and Distribution Order* on September 9, 2015. Judge Hutchison continued to review and enter numerous dismissal orders in this litigation throughout the remainder of 2015. On December 28, 2015, he appointed a guardian *ad litem* in the *Epling* case and scheduled the infant summary proceeding for hearing on January 29, 2016.

Float-Sink Litigation

Dismissal orders have been entered in all 130 cases. Because 7 plaintiffs have claims stayed by the bankruptcy of Patriot Coal Corporation, et al., case number 12-51-502-659, currently pending in the United States Bankruptcy Court for the Eastern District of Missouri, those cases remain open on the Court's docket. One settlement payment issue remains in the *Allyson Townsend* case, which is continued by the Panel for further proceedings if the issue is not resolved by the parties. On October 21, 2015, the Court ordered the Fund Administrator of the Qualified Settlement Fund to provide a Fund Statement including, without limitation, a statement of receipts, investment earnings and all disbursements made since inception of the Fund. The Fund Statement was served on November 2, 2015.

LPG Land Litigation

On March 16, 2015, then Chief Justice Margaret L. Workman entered an Administrative Order referring 10 cases filed against LPG Land & Development Corporation and Mike's Pipe Inspection, Inc. d/b/a Inspection Oilfield Services to the Panel. These cases arise from plaintiffs' allegations of nuisance resulting from work being conducted in the Mon Fayette Industrial Park (MFIP) located in Monongalia County, West Virginia. On April 9, 2015, Panel Chair Alan D. Moats entered an order assigning certain Panel members to serve on this litigation, making the litigation subject to electronic filing and service, and scheduling a status conference on May 15, 2015. Lead Presiding Judge David W. Hummel, Jr. entered a case management order on May 15, 2015, and entered an order on August 21, 2015, granting plaintiffs' motion to replace an expert, and defendants' joint request that plaintiffs supplement their expert disclosures in full compliance with Rule 26(b)(4) of the Rules of Civil Procedure. Mediation will be conducted by the Resolution Judges on February 24, 25, and 26, 2016, in Morgantown, West Virginia. A hearing on dispositive motions will be conducted by the Presiding Judges on May 20, 2016, and trial is scheduled to begin on June 13, 2016.

Marcellus Shale Litigation

The Marcellus Shale Litigation arises out of numerous actions originating in Doddridge, Harrison, Kanawha, Monongalia, Monroe, Pleasants and Ritchie counties, in which plaintiffs allege private temporary continuing abatable nuisance and negligence as the result of horizontal drilling and hydraulic fracturing activities of defendants. On November 12, 2014, then Chief Justice Robin Jean Davis ordered the proceedings referred to the Panel and authorized the Panel to transfer and join with the existing Mass Litigation any similar or related actions subsequently filed in any circuit court. The judges assigned to the Marcellus Shale Litigation conducted an initial status conference on December 22, 2014.

Lead Presiding Judge Alan D. Moats entered a Case Management Order for the Harrison County Cherry Camp Trial Group on January 16, 2015, granted a joint motion to join 73 additional civil actions in the litigation on March 24, 2015, and granted plaintiffs' motion to join 13 additional civil actions in the litigation on June 9, 2015. The Court has granted additional motions to join 8 civil actions in the litigation, for a total of 115 civil actions to date. Mediation was conducted on August 26, and 27, 2015, however, resolution was not achieved at that time.

Trial of the Harrison County Cherry Camp Trial Group is scheduled to begin on July 11, 2016. The Oxford Road and Halls Run Trial Groups were designated on January 11, 2016, with trials scheduled to commence on November 7, 2016, and March 6, 2017, respectively.

Mingo County Coal Slurry Litigation

Dismissal orders have been entered in 377 out of 379 cases. The litigation was stayed when Alpha Natural Resources, Inc. and certain of its direct and indirect subsidiaries filed voluntary petitions for bankruptcy relief in the United States Bankruptcy Court for the Eastern District of Virginia, case number 15-33896, on August 3, 2015.

On November 6, 2015, the Court ordered the Administrator and Trustee of the Qualified Settlement Fund for the Mingo County Coal Slurry Litigation to prepare an accounting of the settlement fund through December 31, 2015, for submission to the Court no later than January 15, 2016. On December 9, 2015, the Court approved the initial Fiduciary Accounting of the Mingo County Coal Slurry Litigation Irrevocable Medical Care Trust. The Court has ordered a Fiduciary Accounting of the Irrevocable Medical Care Trust prepared for the period January 1, 2015 through December 31, 2015, to be submitted to the Court no later than January 30, 2016.

Mountain State University Litigation

On January 16, 2015, the Court conducted a hearing and ordered additional notice consistent with the Notice Plan sent to putative class members; approved the sale of Mountain State University's real estate in Beckley, West Virginia, to West Virginia University for the sum of \$8,000,000; approved the sale of Mountain State University's real estate in Martinsburg, West Virginia, to Viking Way Holdings, LLC for the sum of \$2,000,000; and scheduled a final fairness hearing.

The Court conducted the final fairness hearing on February 26, 2015, and entered a Final Approval Order on March 9, 2015, approving the settlement agreement and release; certifying a limited fund settlement class pursuant to Rule 23(b)(1)(B) of the West Virginia Rules of Civil Procedure for the

purposes of the settlement; approving the form and manner of notice provided to the class; and granting an injunction against certain litigation.

On August 31, 2015, Plaintiffs' Liaison Counsel submitted the *Affidavit of John Jenkins, CPA on Claims Administration, Final Report* identifying 14 written challenges to the Claims Administrator's determinations of certain class members' claims. The Court requested the complete file for each of the challenges, conducted a hearing on October 13, 2015, and ruled from the bench regarding all challenges. On October 30, 2015, the Court entered 14 separate orders regarding the challenges, an order directing the Claims Administrator to submit a final accounting of all monies received and all monies paid in the Mountain State University Litigation, and the Final Dismissal Order. A final accounting was submitted to the Court on November 12, 2015.

University Commons Litigation

Throughout 2015, the Presiding Judges reviewed monthly status reports submitted by the Special Master regarding work performed on remediation of the University Commons Riverside Condominium Complex, authorized payments for work performed to be released from the settlement funds, and reviewed and approved change orders as needed.

On September 23, 2015, Lead Presiding Judge Derek C. Swope entered an *Order Regarding Special Master's August 2015 Status Report, Special Master's Final Status Report and Request for Payment, Bailey & Glasser's Request for Permission to Distribute Funds, and Distribution of Remaining Funds to Original Unit Owners*, finding that: the Architect of Record, the State Fire Marshal and the Town of Star City Building Inspector executed a *Fire Marshal/Building Inspector Certification for Construction Completion* on August 21, 2015; the Town of Star City issued Certificates of Occupancy for all 84 condominium units; and the UCR Complex remediation was finally completed on September 3, 2015.⁴

The Court ordered Bailey & Glasser LLP to file under seal and serve on the Presiding Judges, the Mass Litigation Manager, and all unit owners who had not been dismissed: 1) a post-remediation accounting of all settlement funds used to remediate the UCR Complex, including the balance of remaining settlement funds; and 2) a chart showing the proposed distribution of remaining settlement funds in equal shares on a one share per-unit basis to those original unit owners who still owned their units as of September 3, 2015, when remediation of the UCR Complex was finally completed. On October 13, 2015 the Court entered an order distributing the remaining settlement funds to the original unit owners who still owned their units on September 3, 2015. On December 8, 2015, Bailey & Glasser LLP filed the final accounting of all settlement funds used to remediate the UCR Complex. The Court entered the final dismissal order on December 10, 2015.

Zoloft Litigation

The Zoloft Litigation was stayed pending the Supreme Court's decision on a petition for writ of prohibition in *State ex rel., J.C. v. Mazzone*, No. 14-1189 regarding the Panel's decision to grant a motion to dismiss certain plaintiffs on the grounds of *forum non conveniens*. The writ was denied on April 10, 2015 and the Supreme Court's Mandate issued on May 11, 2015.

⁴ The Special Master selected by the Presiding Judges to oversee remediation of the UCR Complex completed the project substantially under budget.

The Presiding Judges conducted a status conference on August 10, 2015, during which the parties and the Court discussed the status of the litigation in light of the Supreme Court's Mandate, the trials of Zoloft cases in other state courts, and developments in the federal Zoloft MDL. The Court entered a Second Case Management Order on September 3, 2015, which among other things, required amended complaints to be filed by September 30, 2015; required fact discovery to be completed by February 29, 2016; required expert discovery to be completed by June 15, 2016; and scheduled a hearing on dispositive motions, motions in limine and *Daubert/Wilt* motions on September 19, 2016, a pretrial conference on October 11, 2016, and trial on October 24, 2016.

Electronic Filing and Service in Mass Litigation

93,923 documents were e-filed and 3,004,392 documents were e-served from January 2015 through December 2015 in all Mass Litigation cases subject to electronic filing and service. These statistics include items rejected in the clerk review process in order to capture all work performed in the three circuit court clerks' offices in these litigations, as well as orders, which do not go through the clerk review process.

During 2015, there were 596,327 pages electronically filed in all Mass Litigation cases subject to electronic filing and service. This translates to more than 248 boxes of paper, based on 2400 pages per box. From December 2008, when electronic filing and service was first implemented in certain Mass Litigation cases, through the end of December 2015, there were 557,700 documents filed electronically, for a total of 3,465,282 pages filed. This translates to over 1,443 boxes of paper.

From January 2015 through December 2015, a total of 5,281 orders were entered in Mass Litigation cases subject to electronic filing and service. This includes bench orders entered by the judge but filed by a circuit clerk or attorney. The following is a breakdown of orders by each Mass Litigation subject to electronic filing and service:

Litigation	Jan-Dec 2015
Asbestos	5,026
Carbon Monoxide	50
Float-Sink	5
LPG Land	11
Marcellus Shale	94
Mingo County Coal Slurry	18
Mountain State University	22
Tobacco	22
University Commons	21
Zoloft	12
TOTAL	5,281