

2018 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). Members of the Panel in 2018 were: 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 Jack Alsop, of the Fourteenth Judicial Circuit (Braxton, Clay, Gilmer and Webster Counties).

Judge James P. Mazzone, whose term on the Mass Litigation Panel was to expire on June 30, 2019, resigned as a Circuit Court Judge on September 3, 2018. By Administrative Order of the Supreme Court of Appeals of West Virginia entered on September 11, 2018, Judge Joanna I. Tabit of the Thirteenth Judicial Circuit (Kanawha County) was appointed to serve on the Mass Litigation Panel for the duration of Judge Mazzone's unexpired term.

Judge John A. Hutchison, whose term on the Mass Litigation Panel was to expire on June 30, 2020, was appointed to serve as a Justice of the Supreme Court of Appeals of West Virginia following the resignation of Justice Allen H. Loughry II. By Administrative Order entered on December 28, 2018, Judge Christopher J. McCarthy of the Fifteenth Judicial Circuit (Harrison County) was appointed to serve on the Mass Litigation Panel for the duration of Judge Hutchison's unexpired term.

The following is a list of Mass Litigations pending in 2018, the county in which the litigation is pending, and the judge or judges assigned to the litigation:

Alderson Broaddus University Asbestos Litigation Civil Action No. 16-C-9000	Kanawha County	Alan D. Moats, Lead Presiding Judge James P. Mazzone, Presiding Judge Jack Alsop, Presiding Judge Booker T. Stephens, Lead Resolution Judge John A. Hutchison, Resolution Judge
Asbestos Personal Injury Litigation Civil Action No. 03-C-9600	Kanawha County	Ronald E. Wilson, Presiding Judge ¹ James P. Mazzone, Assisting
FELA Asbestos Cases Civil Action No. 02-C-9500	Kanawha County	James P. Mazzone, Presiding Judge until September 3, 2018 Jay M. Hoke, Presiding Judge September 4, 2018 to date
Gavin Landfill Litigation Civil Action No. 16-C-8000	Raleigh County	Derek C. Swope, Lead Presiding Judge John A. Hutchison, Presiding Judge Jack Alsop, Presiding Judge Booker T. Stephens, Lead Resolution Judge Alan D. Moats, Resolution Judge Jay M. Hoke, Resolution Judge

¹ Judge Ronald E. Wilson is not a current member of the Mass Litigation Panel. However, Judge Wilson was assigned to the Asbestos Personal Injury Litigation while serving on the Panel, and continues to preside in that litigation.

Alderson Broaddus University Asbestos Litigation

Lead Presiding Judge Alan D. Moats conducted a fairness hearing and approved the manner of distribution of settlement proceeds to plaintiffs on February 22, 2018. All cases were dismissed pursuant to the Court's March 21, 2018, *Order Approving and Directing Settlement* (Transaction ID 61826836). This litigation was dismissed in its entirety on April 20, 2018. *Final Order Dismissing Alderson Broaddus University Asbestos Litigation and Removing Cases from the Court's Docket* (Transaction ID 61941340).

Asbestos Personal Injury Litigation

From January 1, 2018, through February 2019, Judge Ronald E. Wilson scheduled 4 trial groups consisting of 20 Asbestos Personal Injury cases and 20 back log lung cancer cases, for a total of 160 cases for trial. These cases remain pending on the Court's docket until dismissal orders are entered for each Defendant in each case, which is time consuming because of the large number of Defendants in each case.

To underscore the work involved in this litigation, from January 2018 through December 2018, a total of 4,975 orders were entered in all Mass Litigation cases. 4,752 of those orders were entered in the Asbestos Personal Injury Litigation.

FELA Asbestos Cases

From January 1, 2018, through February 2019, 4 FELA Asbestos cases were dismissed. There are 5 FELA Asbestos cases currently pending on Judge Jay M. Hoke's docket.

Gavin Landfill Litigation

These cases settled on April 12, 2018, after extensive motion practice before the Presiding Judges and multiple mediation sessions conducted by the Resolution Judges. The Presiding Judges conducted a hearing to determine the fairness and reasonableness of the distribution of aggregate settlement proceeds among the plaintiffs on June 1, 2018, granted plaintiffs' motion to establish a Qualified Settlement Fund on June 7, 2018, approved the distribution of settlement proceeds on June 29, 2018, and approved numerous petitions for wrongful death settlement during a hearing conducted on August 2, 2018. (Transaction ID Numbers 61972183, 62109699, 62187918, and 62116711) On January 14, 2019, the Presiding Judges dismissed those plaintiffs who had loss of consortium claims against the defendants with prejudice. *Agreed Dismissal Order* (Transaction ID 62857229).

Marcellus Shale Litigation

Horizontal Well Drilling /Well Pad Cases

Nuisance actions filed by residents surrounding well sites are on hold pending appeal of *Robert Andrews, et al. v. Antero Resources Corporation, et al.*, No. 17-0126, to the Supreme Court of Appeals of West Virginia.

Midstream Cases

The first trial group of nuisance actions filed by residents surrounding compressor stations and midstream facilities ("Burch Ridge Trial Group") was mediated by the Resolution Judges on June 28-29,

2018. The parties continued to negotiate after mediation concluded, and subsequently resolved their claims in August 2018. The Presiding Judges entered a case management order for the second trial group of midstream cases (“Pinecone Trial Group”) on October 30, 2018, scheduling the trial of this group of cases on October 28, 2019. *Case Management Order for the Pinecone Trial Group* (Transaction ID 62612114)

Mingo County Coal Slurry Litigation

The Presiding Judges continued to monitor the Mingo County Coal Slurry Litigation Medical Monitoring Program’s Irrevocable Medical Care Trust. Presiding Judge Jay M. Hoke is conducting a hearing regarding the Annual Fiduciary Accounting of the Trust on May 7, 2019.

Raleigh Heart Clinic Litigation

The Supreme Court granted plaintiffs’ motion to refer these cases to the Panel on May 1, 2018, and an initial status conference was conducted by the Panel judges assigned to these cases on June 21, 2018. The Presiding Judges heard motions to dismiss on September 21, 2018, voluntarily dismissed plaintiffs’ claims against the West Virginia Department of Health and Human Resources with prejudice on September 24, 2018, and denied defendant Cardinal Health 414, LLC’s motions to dismiss on September 28, 2018. (Transaction IDs 62482226 and 62504813) On October 30, 2018, the Presiding Judges entered a case management and scheduling order scheduling a pre-trial conference and hearing of dispositive motions and motions *in limine* in these cases on November 15, 2019, and trial on December 16, 2019. (Transaction ID 62611705) The Resolution Judges will conduct mediation of these cases on April 18-19, 2019. *Order Rescheduling Mediation and Governing Mediation and Mediation Statements* (Transaction ID 63042604)

Tobacco Litigation

The Presiding Judges conducted several hearings in 2018, resulting in dismissal of numerous claims. At present, claims against all tobacco companies have been dismissed, with the exception of 57 cases with claims pending against the Liggett Defendants. The Presiding Judges will conduct the Phase I trial of these 57 cases on August 12, 2019. *Scheduling Order - Phase I Trial of all Remaining Cases against the Liggett Defendants* (Transaction ID 62524803) The Resolution Judges will conduct mediation of these cases on March 21-22, 2019. *Order Governing Mediation and Mediation Statements* (Transaction ID 62775947)

Water Contamination Litigation

Only 2 plaintiffs opted out of the class action settlement approved in *Crystal Good, et al. v. American Water Works Company, Inc. et al*, Civil Action No. 2:14-01374, pending in the United States District Court for the Southern District of West Virginia – Janet L. Thompson, Civil Action No. 16-C-123 KAN (*Thompson*) and the County Commission of Lincoln County, West Virginia, Civil Action No. 17-C-41 LCN (*Lincoln County*). With the exception of the *Thompson* and *Lincoln County* actions, the Presiding Judges dismissed with prejudice all civil actions in the Water Contamination Litigation and directed the Clerk of the Circuit Court of Kanawha County to remove those cases from the Court’s docket on September 28, 2018. (Transaction ID 62499237) The Presiding Judges granted defendants’ motions to dismiss the *Thompson* action on October 3, 2018 (Transaction IDs 62517690 and 62517821)

and denied plaintiff's motion for summary judgment under Rule 60(b) of the West Virginia Rules of Civil Procedure on December 13, 2018 (Transaction ID 6273948). The Court granted defendants' motions to dismiss the *Lincoln County* action on December 12, 2018 (Transaction ID 62758508).

Yeager Airport Litigation

The Resolution Judges reconvened mediation of the remaining property owner cases on February 1-2, 2018, which ultimately resulted in resolution of those cases. The Presiding Judges conducted a fairness hearing regarding distribution of settlement proceeds among property owner Plaintiffs represented by attorney Marvin Masters, and a status conference regarding the "Taxiway A" case on April 27, 2018.

The Presiding Judges heard a number of dispositive motions on October 15, 2018, in both the Airport's case regarding the failure of the mechanically stabilized earth retention structure at the end of Runway 5-23, and the Airport's subsequently-filed case regarding Taxiway A, which was referred to the Panel on April 11, 2018. The Presiding Judges issued rulings from the bench regarding each motion, directed the parties to submit detailed proposed orders, and set additional motions for hearing on November 30, 2018, so all issues requiring a ruling by the Presiding Judges could be addressed before the Resolution Judges conducted mediation on December 6-7, 2018.

In February 2019, the Presiding Judges conducted extensive pretrial conferences on three separate days, issuing rulings on numerous dispositive motions and motions *in limine*, and other pre-trial issues in preparation for trial beginning on March 4, 2019. As of March 1, 2019, the Airport Authority's case regarding the failure of the mechanically stabilized earth retention structure at the end of Runway 5-23 and the Taxiway A case were resolved by various settlements among the parties.

The only remaining claim in this litigation is Triad Engineering, Inc.'s cross-claim against The Travelers Indemnity Company for common law bad faith and unfair trade practices, which was bifurcated and stayed on October 18, 2018, pending resolution of the Airport Litigation. The Presiding Judges conducted a status conference regarding Triad's cross-claim on March 13, 2019, and ordered the parties to prepare a proposed agreed case management and scheduling order with a January 2020 trial date, a date on which the parties are prepared to conduct mediation with the Resolution Judges, a hearing date for dispositive motions and motions *in limine*, and a *Pitrolo* hearing in February 2020 after trial is concluded.

Zoloft Litigation

On May 15, 2018, the Supreme Court affirmed the Panel's ruling granting summary judgment in favor of defendants based on the absence of expert testimony to support plaintiffs' claims that Pfizer failed to adequately warn of the risks of the prescription medication Zoloft. *J.C., a minor, by and through his Mother and Next Friend, Michelle C., and I.H. a minor, by and through her Mother and Next Friend, Angela H. v. Pfizer, Inc., et al.*, No. 17-C-0282. Having determined all Zoloft cases transferred to the Panel were dismissed, the Presiding Judges dismissed the Zoloft Litigation in its entirety on July 11, 2018. *Final Order Dismissing Zoloft Litigation and Removing Cases from the Court's Docket* (Transaction ID 62226429)

Electronic Filing and Service in Mass Litigation

123,727 documents were electronically filed and 3,394,996 documents were electronically served from January 2018 through December 2018 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 handling Mass Litigation cases, as well as orders, which do not go through the clerk review process.

805,132 pages were electronically filed in all Mass Litigation cases subject to electronic filing and service during 2018. This translates to almost 336 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 2018, there were 885,366 documents filed electronically, and 5,555,399 pages electronically filed. This translates to almost 2,315 boxes of paper.

From January 2018 through December 2018, a total of 4,975 orders were entered in Mass Litigation cases subject to electronic filing and service. This includes bench order 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 2018
Alderson Broaddus University Asbestos	9
Asbestos	4,752
FELA Asbestos	12
Gavin Landfill	31
Marcellus Shale	17
Raleigh Heart Clinic Litigation	18
Tobacco	53
Water Contamination	19
Yeager Airport	61
Zoloft	3
TOTAL	4,975