

2019 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 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 Jack Alsop of the Fourteenth Judicial Circuit (Braxton, Clay, Gilmer and Webster Counties); Judge Joanna I. Tabit of the Thirteenth Judicial Circuit (Kanawha County); Judge Christopher J. McCarthy of the Fifteenth Judicial Circuit (Harrison County); and Judge Debra Scudiere of the Seventeenth Judicial Circuit (Monongalia County).

The following is a list of Mass Litigations pending in 2019, the county in which the litigation is pending, and the judge or judges assigned to the litigation:

Asbestos Personal Injury Litigation Civil Action No. 03-C-9600	Kanawha County	Ronald E. Wilson, Presiding Judge ¹
FELA Asbestos Cases Civil Action No. 02-C-9500	Kanawha County	Jay M. Hoke, Presiding Judge
Gavin Landfill Litigation Civil Action No. 16-C-8000	Raleigh County	Derek C. Swope, Lead Presiding Judge Jack Alsop, Presiding Judge Alan D. Moats, Resolution Judge Jay M. Hoke, Resolution Judge
Marcellus Shale Litigation Civil Action No. 14-C-3000	Ohio County	Derek C. Swope, Lead Presiding Judge Midstream Cases Jack Alsop, Lead Presiding Judge Well Pad Cases Alan D. Moats, Presiding Judge Jay M. Hoke, Lead Resolution Judge Joanna I. Tabit, Resolution Judge Debra Scudiere, Resolution Judge
Mingo County Coal Slurry Litigation Civil Action No. 10-C-5000	Ohio County	Jay M. Hoke, Presiding Judge Derek C. Swope, Lead Resolution Judge Alan D. Moats, Resolution Judge
Opioid Litigation	Kanawha County	Alan D. Moats, Lead Presiding Judge Derek C. Swope, Presiding Judge Joanna I. Tabit, Lead Resolution Judge Jay M. Hoke, Resolution Judge Debra Scudiere, Resolution Judge
Raleigh Heart Clinic Litigation	Raleigh County	Jay M. Hoke, Lead Presiding Judge Derek C. Swope, Presiding Judge Alan D. Moats, Resolution Judge Jack Alsop, 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.

Tobacco Litigation	Ohio County	Jack Alsop, Lead Presiding Judge Alan D. Moats, Presiding Judge Jay M. Hoke, Resolution Judge
Water Contamination Litigation Civil Action No. 16-C-6000	Kanawha County	Alan D. Moats, Lead Presiding Judge Derek C. Swope, Presiding Judge Jack Alsop, Resolution Judge
Yeager Airport Litigation Civil Action No. 16-C-7000	Kanawha County	Derek C. Swope, Lead Presiding Judge Jay M. Hoke, Presiding Judge Alan D. Moats, Resolution Judge Jack Alsop, Resolution Judge

Asbestos Personal Injury Litigation

From January 1, 2019, through March 2020, 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 set 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 2019 through December 2019, a total of 5,104 orders were entered in all Mass Litigation cases. 4,822 of those orders were entered in the Asbestos Personal Injury Litigation.

FELA Asbestos Cases

4 FELA Asbestos cases are currently pending on Presiding Judge Jay M. Hoke's docket: 1 case filed in 2018; 1 case filed in 2019; and 2 cases filed in 2020.

Gavin Landfill Litigation

Distributions from the Qualified Settlement Fund were made to all plaintiffs, and dismissal orders have been entered in all but 3 cases. The 3 remaining plaintiffs are in active, post-payment appeals with Medicare regarding subrogation liens against their settlements.

Marcellus Shale Litigation

Midstream Cases

Lead Presiding Judge Derek C. Swope and Presiding Judge Alan D. Moats conducted a pretrial conference on October 4, 2019, issuing numerous rulings on dispositive motions, motions *in limine* and other pretrial matters in anticipation of the October 28, 2019, trial date. Pursuant to the Court's order, Judge David W. Hummel, Jr. conducted mediation of these cases on October 10, 2019. Thereafter, Lead Resolution Judge Jay M. Hoke also worked with the parties to resolve these cases, which ultimately resolved on October 14, 2019. On November 8, 2019, Judge Swope and Judge Hoke conducted a status conference regarding the trial structure and pretrial development of the 6 remaining midstream cases trial groups, during which Judge Swope scheduled 4 trial groups for trial in 2020, and 2 for trial in 2021.

Well Pad Cases

The Presiding Judges granted plaintiffs' motion to amend their complaints in the Oxford Road Trial Group, and scheduled a trial on August 17, 2020. Lead Presiding Judge Jack Alsop ordered the parties to provide a list identifying all remaining well pad case trial groups no later than November 18, 2019, and required mediation of all well pad cases to be reconvened before February 1, 2020. Lead Resolution Judge Jay M. Hoke, and Resolution Judges Joanna I. Tabit and Debra Scudiere conducted mediation of all well pad cases on January 16-17, 2020, resulting in the resolution of certain cases in the Oxford Road Trial Group, and continuing discussions among the parties regarding resolution of all remaining well pad cases.

Mingo County Coal Slurry Litigation

Presiding Judge Jay M. Hoke continues to monitor the Mingo County Coal Slurry Litigation Medical Monitoring Program's Irrevocable Medical Care Trust. Judge Hoke conducted a hearing regarding the 2016, 2017, and 2018 Annual Fiduciary Accountings of the Trust, including whether disbursements from the Trust in 2017 and 2018 for epidemiological studies are allowable benefits under the terms of the Trust, and entered an Order regarding these issues on October 22, 2019.

Opioid Litigation

On June 7, 2019, then Chief Justice Elizabeth D. Walker entered an Administrative Order transferring the civil actions referenced in the motion to refer to the Mass Litigation Panel "as well as all civil actions involving the same or similar common questions of law or fact concerning claims for damages against manufacturers and distributors of certain prescription opioid pain medications and other defendant parties allegedly involved in the distribution or dissemination of such medications." In addition to the cases originally transferred to the Panel, several additional cases were subsequently transferred, for a total of 96 civil actions pending to date.

All of the judges assigned to the Opioid litigation conducted status conferences on September 20, 2019, and December 6, 2019. Lead Presiding Judge Alan D. Moats and Presiding Judge Derek C. Swope issued rulings on numerous issues, including previously filed motions to dismiss, Rule 19 joinder of persons needed for just adjudication, appointment of Liaison Counsel and Lead Coordinating Counsel, filing of legal memoranda regarding statute of limitations and public nuisance, and whether the parties were in agreement with the Court's proposal to conduct a non-jury, Phase I trial on the sole issue of whether there is liability for public nuisance under West Virginia law.

The parties were also ordered to meet and confer regarding the Court's proposal that the parties agree to engage in mediation of all state and federal West Virginia opioid cases with the Resolution Judges. As agreed to by the parties, Lead Resolution Judge Joanna I. Tabit, and Resolution Judges Jay M. Hoke and Debra Scudiere conducted early mediation of all state and federal West Virginia opioid cases on February 26-27, 2020. The Resolution Judges plan to conduct additional mediation sometime in the spring or summer of 2020, depending on the continuing public health crisis caused by the COVID-19 pandemic.

After extensive motion practice, the Presiding Judges entered numerous orders denying motions to dismiss. On February 19, 2020, the Presiding Judges found plaintiffs' claims for abatement of public nuisance are equitable claims to which a right to jury trial does not attach, and ordered a Phase I, non-jury trial on the issue of liability for public nuisance to be conducted after a reasonable period of discovery. The

Presiding Judges conducted a status conference on March 13, 2020, during which they scheduled the Phase I trial on March 22, 2021, recognizing that continuing public health concerns regarding the COVID-19 pandemic may impact the trial date; allowed the parties to file any briefs pertaining to certain Defendants' motion for reconsideration of the Court's Order regarding trial of liability for public nuisance; appointed the Honorable Christopher C. Wilkes to serve as Discovery Commissioner; and scheduled another status conference on May 8, 2020.

Raleigh Heart Clinic Litigation

Lead Presiding Judge Jay M. Hoke and Presiding Judge Derek C. Swope conducted numerous hearings in this litigation, and Resolution Judges Alan D. Moats and Jack Alsop conducted mediation of these cases on April 18-19, 2019. On July 22, 2019, the Presiding Judges entered an order approving a settlement between plaintiffs and defendants, Thair Barghouthi, M.D. and Raleigh Heart Clinic, Inc. and dismissed those claims on August 5, 2019. On September 18, 2019, the Presiding Judges entered a second amended case management order scheduling a May 18, 2020, all-issues bellwether trial of 6 cases between plaintiffs and remaining defendant, Cardinal Health 414, LLC. The parties conducted mediation with a third-party mediator on November 11-12, 2019. On December 9, 2019, the Presiding Judges entered an agreed Order approving a settlement between plaintiffs and defendant Cardinal Health 414, LLC, and dismissed those claims on January 13, 2020, leaving only Cardinal Health 414, LLC's cross-claim against Thair Barghouthi, M.D. still pending.

Tobacco Litigation

Lead Resolution Judge Booker T. Stephens and Resolution Judge Jay M. Hoke conducted mediation of the remaining 57 cases pending against the Liggett Defendants on March 21-22, 2019. Although mediation was not successful, Judge Stephens continued to work with the parties toward resolution of these cases, which were scheduled for trial on August 12, 2019. Plaintiffs subsequently resolved their claims against the Liggett Defendants, and on June 3, 2019, the Court entered an agreed Order staying the litigation pending finalization of the settlement. Lead Presiding Judge Jack Alsop and Presiding Judge Alan D. Moats conducted a final hearing regarding plaintiffs' motion to approve the settlement on December 12, 2019. The Court granted plaintiffs' motion to approve the settlement on January 10, 2020, and entered a final order dismissing the entire litigation on March 6, 2020.

Water Contamination Litigation

The Court entered a final order dismissing the entire litigation on March 26, 2019.

Yeager Airport Litigation

Lead Presiding Judge Derek C. Swope and Presiding Judge Jay M. Hoke conducted extensive pretrial conferences on three separate days in February 2019, issuing rulings on numerous dispositive motions and motions *in limine*, and other pretrial issues in preparation for trial beginning on March 4, 2019. As of March 1, 2019, the Airport Authority's case regarding 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, leaving only Triad Engineering, Inc.'s cross-claim against The Travelers Indemnity Company for common law bad faith and unfair trade practices. The Presiding Judges conducted a status conference regarding the cross-claim on March 13, 2019, and ordered the parties to

prepare a proposed agreed case management order, with a January 2020 trial date. The parties subsequently resolved the cross-claim, and the Presiding Judges entered a final order dismissing the entire litigation on May 28, 2019.

Electronic Filing and Service in Mass Litigation

106,075 documents were electronically filed and 3,282,346 documents were electronically served from January 2019 through December 2019 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.

871,015 pages were electronically filed in all Mass Litigation cases subject to electronic filing and service during 2019. This translates to almost 363 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 2019, a total of 991,441 documents were electronically filed, and 6,426,414 pages were electronically filed in all Mass Litigation cases subject to electronic filing and service. This translates to almost 2,678 boxes of paper.

From January 2019 through December 2019, a total of 5,104 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 chart is a breakdown of orders entered in each Mass Litigation subject to electronic filing and service in 2019:

Litigation	Jan-Dec 2019
Asbestos Personal Injury Litigation	4,822
FELA Asbestos Cases	6
Gavin Landfill Litigation	5
Marcellus Shale Litigation	39
Mingo County Coal Slurry Litigation	1
Opioid Litigation	80
Raleigh Heart Clinic Litigation	65
Tobacco Litigation	20
Water Contamination Litigation	1
Yeager Airport Litigation	65
TOTAL NUMBER OF ORDERS	5,104