

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Westfield Insurance Company,
Plaintiff

vs. Harrison County Civil Action No. 18-C-164

Thomas K. Dowler and Renee I. Dowler,
individually, et al.,
Defendants

and

Robert Malone, Administrator of the Estate
of Rhoda Malone and Robert Malone,
individually, Plaintiffs

vs. Harrison County Civil Action No. 17-C-159

David M. Elsbury, Jr., et al., Defendants

and

Thomas K. Dowler and Renee I. Dowler,
Administrators of the Estate of Faith
Renee Dowler and Thomas K. Dowler and
Renee I. Dowler, individually, Plaintiffs

vs. Harrison County Civil Action No. 17-C-213

David M. Elsbury, Jr., et al., Defendants

and

Robert Malone, as parent and natural
guardian of Robert Logan Malone,
Plaintiff

vs. Harrison County Civil Action No. 17-C-358

David M. Elsbury, Jr., et al.,
Defendants

and

Felicia Browell, as Parent and natural
guardian of Rhianna L. Browell, a minor,
Plaintiff

vs. Harrison County Civil Action No. 18-C-48

David M. Elsbury, Jr., et al.,
Defendants

The Honorable Christopher J. McCarthy, Judge of the Fifteenth Judicial Circuit, has advised the Chief Justice of the Supreme Court of Appeals that Defendant David M. Elsbury, Jr., by counsel, Brent K. Kesner, Tanya Kesner, and the law firm of Kesner & Kesner; Defendant Hunter Leasing, LLC, by counsel, Teresa J. Dumire, Matthew D. Elshiaty, and the law firm of Kay Casto & Chaney PLLC; Defendants Idealease Services, Inc. and Idealease, Inc., by counsel, Lee Murray Hall, Sarah A. Walling, Allison J. Farrell, and the law firm of Jenkins Fenstermaker PLLC; Defendants Hunter Leasing, LLC and Hunter Leasing, Inc., by counsel, Robert A. Lockhart and the law firm of Cipriani & Werner PC; Defendant R.H. Sheppard Co., previously known as R.H. Sheppard Company, Incorporated, by counsel, L. John Argento, Kevin M. Ward, and the law firm of Swartz Campbell LLC; and Defendant Navistar, Inc., by counsel, Shawn P. George, Jennie O. Ferretti, and the law firm of George & Lorensen, PLLC, filed a joint motion to refer the above-styled civil actions to the Mass Litigation Panel. The joint motion further requested, if the motion is granted, that the Mass Litigation Panel be authorized to transfer and join any subsequently filed actions.

Plaintiff Westfield Insurance Company, in Civil Action No. 18-C-164, by counsel, David L. Wyant, Diane G. Senakievich, and the law firm of Bailey & Wyant, PLLC, and Gregory S. Hirtzel, pro hac vice, filed a separate motion to refer the above-styled civil actions to the Mass Litigation Panel.

Defendants Liberty Transportation, Inc., Liberty Distribution, Inc., Colonial Park Logistics, Inc., and Landmark Leasing, Inc. ("Liberty Defendants"), by counsel, J. Victor Flanagan, Jonathan J. Jacks, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, filed an objection to the joint motion to refer. Judge McCarthy filed a response in support of the joint motion to refer. Robert Malone, as administrator of the Estate of Rhoda Malone, in Civil Action No. 17-C-159, by counsel, Christopher J. Wallace and the Wallace Firm, PLLC, and Steven M. Barth, joined in Liberty Defendants' objection to the motion to refer.

Upon careful review and consideration of the motions and the reply memoranda, the Chief Justice has determined that these civil actions do not meet the definition of mass litigation as set forth in Rule 26.04(a) of the West Virginia Trial Court Rules, and the motions to refer should, therefore, be denied.

IT IS, HEREBY, ORDERED, that the motions to refer the above-styled actions are DENIED, and that a copy of this Order be transmitted to the Honorable Alan D. Moats, Chair of the Mass Litigation Panel; to the Honorable Christopher J. McCarthy, Judge of the Fifteenth Judicial Circuit; to the Mass Litigation Manager; and to the Circuit Clerk of Harrison County.

IT IS FURTHER ORDERED, that the Circuit Clerk of Harrison County record this Order and serve copies on all parties of record or their counsel.

ENTERED: MARCH 4, 2019


ELIZABETH D. WALKER
Chief Justice