



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**IN RE: MINGO COUNTY
COAL SLURRY LITIGATION**

CIVIL ACTION NO. 10-C-5000

THIS DOCUMENT APPLIES TO ALL CASES EXCEPT:

**Rawl Sales & Processing Co., et al., v. AIG Casualty Company, et al.
Case No. 06-C-520 MNG Insurance Coverage Action**

CASE MANAGEMENT AND SCHEDULING ORDER

The following schedule is hereby adopted and **ORDERED** by the Court:

TRIAL DATE: AUGUST 1, 2011 at 9:00 a.m.

SELECTION OF CASES FOR TRIAL:

Counsel for plaintiffs and counsel for defendants shall each select two (2) cases from the following seven (7) categories of cases:

Category 1: plaintiffs claiming they have property damage and serious illness or injury, such as cancer or renal failure, as the result of exposure to allegedly contaminated water.

Category 2: plaintiffs claiming they have property damage and cognitive impairment, such as ADD or ADHD, as the result of exposure to allegedly contaminated water.

Category 3: plaintiffs claiming they have property damage and personal injury in the form of colon or kidney problems as the result of exposure to allegedly contaminated water.

Category 4: plaintiffs claiming they have property damage and personal injury in the form of leukemia, spina bifida or pancreatitis as the result of exposure to allegedly contaminated water.

Category 5: plaintiffs claiming they have property damage and personal injury in the form of cysts, boils or internal ulcers as the result of exposure to allegedly contaminated water.

Category 6: plaintiffs claiming they have property damage and personal injury in the form of gallbladder or other health issues as the result of exposure to allegedly contaminated water.

Category 7: plaintiffs claiming they have property damage and personal injury in the form of sentinel symptoms, such as chronic diarrhea or rashes, as the result of exposure to allegedly contaminated water.

Counsel for plaintiffs and counsel for defendants shall file and serve their case selections by **APRIL 1, 2011**. The Court will then randomly select one (1) case for each of the above-referenced categories from counsel's selections by **APRIL 8, 2011**.

The Court will then conduct an all issues trial of the seven (7) selected cases beginning on **AUGUST 1, 2011**.

EXPERT WITNESS DISCLOSURES ON CAUSATION AND DAMAGES: APRIL 15, 2011

REBUTTAL EXPERT WITNESS DISCLOSURES: APRIL 20, 2011

A. Any party desiring to use an expert witness must furnish opposing counsel with the specialty of such expert and copies of all reports submitted by such witness, or, if no reports have been submitted, a summary of the substance of such expert's contemplated testimony, on the date of Expert Disclosure in accordance with WVRCP 26(b)(4).

B. If the name, reports or 26(b)(4) material is not timely provided, a motion to continue, motion to exclude, or other sanction motions on this basis will not be considered unless opposing counsel has filed such motions prior to the pretrial conference.

C. Anticipated destructive tests of tangible evidence or of a simulated conditions nature must also be disclosed on the above date.

D. Co-designation or co-reliance upon experts must also specifically be made in writing on the above date.

EXPERT WITNESS DISCOVERY COMPLETION DATE: MAY 1, 2011

MOTIONS TO EXCLUDE EXPERT WITNESSES: MAY 13, 2011

RESPONSES TO MOTIONS TO EXCLUDE EXPERT WITNESSES: MAY 18, 2011

HEARING ON MOTIONS TO EXCLUDE EXPERT WITNESSES:

Beginning on **MAY 19, 2011**, at 9:00 a.m. and continuing through **MAY 20, 2011**, until concluded.

DISCOVERY COMPLETION DATE: JUNE 10, 2011

All responses and objections to discovery shall be completed and all motions to compel discovery shall be filed by this date.

ALL LAWYERS ARE REMINDED OF THE MANDATORY LANGUAGE IN RULE 26(e) REQUIRING THE SUPPLEMENTATION OF RESPONSES TO INTERROGATORIES. THE CUT-OFF DATE ESTABLISHED IN THIS SCHEDULING ORDER DOES NOT EXCUSE THE FAILURE TO COMPLY WITH THE PROVISIONS OF RULE 26(e).

DISPOSITIVE MOTIONS AND MOTIONS IN LIMINE: JULY 1, 2011

RESPONSES TO DISPOSITIVE MOTIONS AND RESPONSES TO MOTIONS IN LIMINE: JULY 15, 2011

If a discovery deposition is scheduled within 30 days of the close of discovery, counsel must request an expedited copy of the transcript of such deposition. The Court will not permit supplementation of dispositive motions or responses to dispositive motions with deposition testimony received after the briefing deadlines set forth above.

HEARING ON DISPOSITIVE MOTIONS AND MOTIONS IN LIMINE:

Beginning on **JULY 21, 2011**, at 9:00 a.m. and continuing through **JULY 22, 2011**, until concluded.

WVRE 103(c) requires that all Motions in Limine should, where practicable, be determined prior to trial. Accordingly, this Court will not consider motions in limine on the day of trial without good cause shown.

DEADLINE FOR PROPOSED JURY QUESTIONNAIRE TO BE SUBMITTED TO THE COURT: JULY 7, 2011

WITNESS AND EXHIBIT LISTS, PROPOSED VOIR DIRE AND PROPOSED JURY INSTRUCTIONS: JULY 7, 2011

Parties shall electronically serve their witness and exhibit lists, proposed voir dire and proposed jury instructions on one another, the Presiding Judges and the Mass Litigation Manager by **JULY 7, 2011**. Parties shall provide Lead Presiding Judge James P. Mazzone with a disk containing their proposed voir dire and jury instructions in Microsoft WORD format by no later than **JULY 7, 2011**.

The witness list is to be a bona fide list of intended trial witnesses as well as any recently discovered fact or condition witness. Names of witnesses must be specified and unnamed/unlisted witness reservations are not authorized.

EXHIBITS AND DEPOSITION DESIGNATIONS EXCHANGED: JULY 7, 2011.

Parties are to exchange full and complete copies of all exhibits intended to be introduced into evidence at trial and all deposition designations. All exhibits shall be pre-marked.

OBJECTIONS TO EXHIBITS, WITNESSES AND DEPOSITION DESIGNATIONS: JULY 14, 2011.
PRETRIAL CONFERENCE MEMORANDA:

All parties are directed to exchange and deliver their respective pretrial conference memoranda to the Presiding Judges and the Mass Litigation Manager by **no later than JULY 14, 2011.**

Plaintiff(s) will have made and defendant(s) will have responded to bona fide settlement demands by **no later than JULY 14, 2011.**

Pretrial memoranda are to contain as a minimum, the following ten (10) items:

- | | |
|--|-----------------------------------|
| a. Statement of the Case | g. Pending Motions |
| b. Issues of Fact | h. Motions in Limine |
| c. Issues of Law | i. All Proposed Jury
Voir Dire |
| d. Proposed Stipulations | j. Proposed Verdict Form |
| e. Specific Schedule of Exhibits
(NO reservations authorized) | |
| f. Specific List of Witnesses
(NO reservations authorized) | |

PRETRIAL CONFERENCE:

Beginning on **JULY 21, 2011**, at 9:00 a.m. and continuing through **JULY 22, 2011**, until concluded.

LEAD COUNSEL TRYING THE CASE MUST APPEAR AT THE PRE-TRIAL CONFERENCE.

MODIFICATION: In accordance with WVRCP 16(b) and 29(b), this scheduling conference order shall not be modified except by leave of the Court.

SANCTIONS: In accordance with WVRCP 16(f), the Court will impose the full spectrum of sanctions authorized by the WVRCP if a party or party's counsel fails to obey this order or other Orders of this Court.

Unless authorized by the Court the above dates and requirements of this Scheduling Conference Order are **FINAL**. Therefore, **NO** additional evidence developed as a result of deviations from the above will be admissible at trial.

Enter this 8th day of March, 2011.

/s/ James P. Mazzone
Lead Presiding Judge
Mingo County Coal Slurry Litigation