

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Frank Nelson and Rosemary Nelson, his wife,
Plaintiffs

vs. Logan County Civil Action No. 17-C-308

Bizzack Construction, LLC, a Kentucky limited liability company, Beckley Drilling & Blasting Services, Inc., a West Virginia corporation, and Vecellio & Grogan, Inc., a West Virginia corporation,
Defendants

The Honorable Eric H. O'Briant, Chief Judge of the Seventh Judicial Circuit, has advised the Chief Justice of the Supreme Court of Appeals that Vecellio & Grogan, Inc., defendants in the Logan County civil actions referenced herein, by counsel, John R. Hoblitzell, Lindsay M. Gainer, and the law firm of Kay Casto & Chaney PLLC, filed a motion to refer the following Logan County civil actions to the Mass Litigation Panel:

- *Frank Nelson and Rosemary Nelson vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-308;
- *Otis Spaulding, Jr. vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-309;
- *Ozie Burgess and Lottie Burgess vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-311;
- *Carl Starkey and Patricia Starkey vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-312;
- *Fred Thompson, Jr. vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-313;
- *Steven Daniels and Helen Daniels vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-328;
- *Adam Thompson and Fred Thompson, Jr. vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-329;
- *Helen Daniels vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-331;
- *Regina Lynn Gibson vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-332;
- *Linda Sue Starkey, by her power of attorney Sara Adkins vs. Bizzack Construction, LLC, et al.*, Civil Action No. 17-C-333; and
- *Melissa Blair et al. vs. West Virginia Department of Transportation, et al.*, Civil Action Nos. 15-C-116 through 15-C-140 and 15-C-337 through 15-C-339 ("*Blair*").

Beckley Drilling and Blasting, Inc., defendant in the Logan County civil actions referenced in this Order, by counsel Michael P. Markins, T. Flynn Altmeyer, and the law firm of Cipriani & Werner, P.C., join the motion to refer. The West Virginia Department of Transportation, Division of Highways and Thomas J. Smith, P.E., Secretary of the Department of Transportation and Commissioner of the Division of Highways, as defendants in *Blair*, by counsel, John L. MacCorkle, Donna S. Quesenberry, and the law firm of MacCorkle Lavender PLLC, filed a response stating that they consent to referral of these civil actions to the Mass

Litigation Panel. Defendant East Cumberland, LLC, by counsel, Robert J. D'Anniballe, Jr. and the law firm of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, joined in said response.

Plaintiffs in Logan County Civil Action Nos. 17-C-308, 17-C-309, 17-C-311, 17-C-312, 17-C-313, 17-C-328, 17-C-329, 17-C-331, 17-C-332, and 17-C-333, by counsel, John H. Skaggs and The Calwell Practice, PLLC, and G. Patrick Jacobs and The Law Office of G. Patrick Jacobs, LC, filed a response objecting to the motion to refer, as well as a supplemental response. Alice Gullett, plaintiff in Logan County Civil Action No. 15-C-132, by counsel, Donald C. Wandling and the Wandling Law Office, L.C., filed a response objecting to the motion to refer. Plaintiffs in *Blair*, by counsel, Timothy R. Conaway, Benjamin Conaway, and the law firm of Conaway & Conaway, filed a response in opposition to the motion to refer. Chief Judge O'Briant filed a reply memorandum stating that the trial court objects to transfer of actions described in the motion to refer, and further stating, among other things, that these civil actions do not impose an undue burden on the trial court to see them to completion.

Defendant Vecellio & Grogan, Inc. filed a supplement to the motion seeking to refer an additional six Logan County civil actions, which are as follows:

- *William Mullins and Joann Mullins vs. Bizzack Construction, LLC, et al.*, Civil Action No. 18-C-3;
- *Terrie Adkins vs. Beckley Drilling & Blasting Services, Inc., et al.*, Civil Action No. 18-C-54;
- *Merlin Spears and Helen Spears vs. Beckley Drilling & Blasting Services, Inc., et al.*, Civil Action No. 18-C-55;
- *Anna Louise Walls vs. Beckley Drilling & Blasting Services, et al., Inc.*, Civil Action No. 18-C-56;
- *Harrison Spaulding, Jr. vs. Beckley Drilling & Blasting Services, Inc., et al.*, Civil Action No. 18-C-58; and
- *Larry G. Hatfield vs. Beckley Drilling & Blasting Services, Inc., et al.*, Civil Action No. 18-C-59.

Upon careful review and consideration of the motion, the supplement to the motion, 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 motion to refer should, therefore, be denied.

IT IS, HEREBY, ORDERED, that the motion to refer the above-styled actions is 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 Eric H. O'Briant, Chief Judge of the Seventh Judicial Circuit; to the Honorable Joshua D. Butcher, Judge of the Seventh Judicial Circuit; to the Mass Litigation Manager; and to the Circuit Clerk of Logan County.

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

ENTERED: APRIL 19, 2018


MARGARET L. WORKMAN
Chief Justice