



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: FLOOD LITIGATION

MC FLOOD 7/8/2001

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER REGARDING INITIAL DISCOVERY, MEDIATION
AND TRIAL PLAN FOR ALL REMAINING WATERSHEDS,
WITH THE EXCEPTION OF THE UPPER GUYANDOTTE
WATERSHED, SUB-WATERSHED 2a**

On October 13, 2009 the Mass Litigation Panel held a Status Conference regarding all Watersheds and Sub-watersheds in *In re: Flood Litigation*, MC FLOOD 7/8/2001 ("Flood Litigation"), with the exception of the Upper Guyandotte Watershed, Sub-watershed 2a. Counsel appeared before Lead Presiding Judge John A. Hutchison and Presiding Judges Jay M. Hoke and Derek C. Swope, and Lead Resolution Judge Booker T. Stephens to discuss initial discovery, mediation, and trials of the remaining Watersheds and Sub-watersheds. Having fully considered these issues the Panel now

ORDERS:

Initial Discovery and Mediation of all Cases in all Watersheds in which Plaintiffs are Represented by Attorneys Stuart Calwell, Randolph McGraw and James Humphreys

In anticipation of mediation, plaintiffs shall supply the following initial discovery to defendants by no later than **November 12, 2009**, for all plaintiffs in all Watersheds who are represented by attorneys Stuart Calwell, Randolph McGraw and James

Humphreys:

1. Each plaintiff's itemization of damages;
2. The precise location of each plaintiff's property; and
3. The gross settlement amount of any other settlements on behalf of each plaintiff.

Plaintiffs' counsel shall provide verification of this information by no later than

December 9, 2009.

Mediation of all cases in all Watersheds who are represented by attorneys Stuart Calwell, Randolph McGraw and James Humphreys shall be conducted beginning at **10:00 a.m. on Wednesday, December 9, 2009, and shall continue from day to day through Friday, December 11, 2009, in the Circuit Court of McDowell County, West Virginia, in the Courtroom of the Lead Resolution Judge Booker T. Stephens.** Judge Stephens will be assisted in the mediation by Resolution Judges Alan D. Moats and James P. Mazzone.

Pre-Trial Discovery and Trial of Cases Remaining after Mediation:

1. For any cases remaining after mediation, each Watershed shall have one, all-issues trial for all plaintiffs remaining in that Watershed.
2. Unless a plaintiff has made a claim for personal injury, defendants may not obtain medical records, except for good cause shown.
3. Unless a plaintiff has alleged loss of employment, defendants may not obtain plaintiffs' employment records, except for good cause shown.
4. If a plaintiff claims loss of income, defendants may request the income tax returns for individual plaintiffs only for the years 2000, 2001 and 2002, except for good cause shown. If a plaintiff claims loss of a business or harm to a business, defendants may request income tax returns from 1996 to 2006.
5. Defendants may request plaintiffs' property, business and motor vehicle insurance records only for the years 2001, 2002 and 2003, except for good cause shown.

6. All plaintiffs shall provide a Federal Emergency Management Agency (“FEMA”) Authorization for the release of all information and documents in FEMA’s possession regarding plaintiffs and plaintiffs’ property as a result of the July 8, 2001 flood event.

7. All plaintiffs shall provide a Small Business Administration Authority (“SBA”) Authorization for the release of all information and documents in SBA’s possession regarding plaintiffs and plaintiffs’ businesses as a result of the July 8, 2001 flood event.

8. Defendants are required to provide plaintiffs 10 days notice before scheduling an inspection of plaintiffs’ residence or business, and shall work with plaintiffs on scheduling such inspection. Inspections shall be conducted Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.

9. Depositions of plaintiffs with a business loss claim or a business harm claim shall be limited to 7 hours, except for good cause shown. Depositions of plaintiffs who are the “primary plaintiff” or “head of household” shall be limited to 3 hours, except for good cause shown. Depositions of all other plaintiffs shall be 1 hour, except for good cause shown.

10. Discovery and trial schedules will be issued by the Panel, as appropriate.

ENTER: October 15, 2009

/s/ John A. Hutchison
Lead Presiding Judge, Flood Litigation

/s/ Jay M. Hoke
Presiding Judge, Flood Litigation

/s/ Derek C. Swope
Presiding Judge, Flood Litigation