



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: GAVIN LANDFILL LITIGATION

CIVIL ACTION NO. 16-C-8000

THIS DOCUMENT RELATES TO ALL CASES

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS CLAIMS OF NON-
WORKING DIRECT CLAIM PLAINTIFFS AND SCHEDULING HEARING**

On June 14, 2017, the Supreme Court of Appeals of West Virginia granted Defendants' Petition for Writ of Prohibition in *State of West Virginia ex rel. American Electric Power Co., Inc., et al. v. The Honorable Derek C. Swope*, No. 16-1148, and remanded this matter for further proceedings consistent with the Supreme Court's Opinion. The Supreme Court's Mandate issued in this case on July 14, 2017.

Because Ohio's Mixed Dust Statute, Ohio Rev. Code §§ 2307.84 through .902 (2017), prohibits any claim against a premises owner based on alleged exposure to "mixed dust" unless the exposure occurred on the premises, Defendants' *Motion to Dismiss* (Transaction ID 59426554) is GRANTED as to the claims of the twelve non-working direct claim plaintiffs ("NWDC Plaintiffs") who allege they suffered injury as a result of "take-home" exposure to Coal Combustion Residuals ("CCR") from the Gavin Landfill, not exposure to CCR while on the premises of the Gavin Landfill. Accordingly, the claims of the twelve NWDC Plaintiffs are hereby DISMISSED WITH PREJUDICE.

The Court ORDERS the parties to appear for a hearing on *Defendants' Motion to Dismiss for Lack of Personal Jurisdiction or, in the Alternative, Pursuant to the Doctrine of Forum Non Conveniens* (Transaction ID 60883239) **at 2:00 p.m. on August 11, 2017**, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 409 Virginia Street, East, in Charleston, West Virginia.

The Court hereby advises the parties that it will not revisit Defendants' motion to dismiss pursuant to the doctrine of *forum non conveniens*. Defendants previously petitioned the Supreme Court to issue a writ of prohibition to prevent the enforcement of an order issued by the Circuit Court of Mason County denying Defendants' motion to dismiss based upon *forum non conveniens*. The Supreme Court denied the writ in *State ex rel. American Elec. Power Co., Inc. v. Nibert*, 237 W.Va. 14, 784 S.E.2d 713 (2016), and referred this matter to the Mass Litigation Panel. Accordingly, Defendants' motion to dismiss pursuant to the doctrine of *forum non conveniens* is DENIED.

Plaintiffs' response to *Defendants' Motion to Dismiss for Lack of Personal Jurisdiction* shall be filed no later than 5:00 p.m. on August 4, 2017, and the Court will hear oral argument of the motion on August 11, 2017 at 2:00 p.m. No reply to the motion will be permitted.

It is so ORDERED.

ENTER: July 27, 2017.

/s/ Derek C. Swope
Lead Presiding Judge
Gavin Landfill Litigation