



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: GAVIN LANDFILL LITIGATION

Civil Action No. 16-C-8000

THIS DOCUMENT APPLIES TO ALL CASES

ORDER GOVERNING MEDIATION AND MEDIATION STATEMENTS

Pursuant to Trial Court Rule 26.08(b), and the Court's *Third Amended Case Management Order* entered January 4, 2017 (Transaction ID 60018584), mediation of the Gavin Landfill Litigation will be conducted **April 27, 2017, and April 28, 2017**, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia.

Mediation will begin at 9:00 a.m. on April 27, 2017, and will be conducted by Lead Resolution Judge Booker T. Stephens, with the assistance of Resolution Judge Alan D. Moats and Resolution Judge Jay M. Hoke, in accordance with the following procedures:

**PRE-MEDIATION CONFERENCE CALL**

1. Liaison Counsel for the parties shall participate in a conference call with the Resolution Judges at **12:00 p.m. on April 12, 2017**, to discuss any outstanding issues related to the mediation. The Mass Litigation Manager will provide Liaison Counsel with the call in number and the Participant PIN for the conference call.

**REQUIRED PARTICIPANTS**

2. The following persons are required to attend the mediation **in person**:
- (a) each individual Plaintiff who is at least 18 years of age;
  - (b) lead trial counsel for Plaintiffs;
  - (c) lead trial counsel for each Defendant;
  - (d) the corporate representative for each Defendant; and

(e) the insurer representative for each Defendant.

**FAILURE OF ANY PERSON REQUIRED TO ATTEND MEDIATION IN PERSON SHALL SUBJECT THAT PERSON TO SANCTIONS, UP TO AND INCLUDING THE STRIKING OF PLEADINGS AND DISMISSAL, ABSENT GOOD CAUSE SHOWN.**

3. Each individual Plaintiff who is at least 18 years of age is required to attend mediation in person **only on April 27, 2017**, provided the Plaintiff has executed an authorization giving their attorney **full authority** to act on their behalf, including full authority to negotiate settlement of their case, and to respond to developments during the mediation process.

Individual Plaintiffs may, but are not required to attend mediation on April 28, 2017, so long as they have executed an authorization giving their attorney full authority to act on their behalf. A form authorization approved by the Resolution Judges is attached. A copy of each Plaintiff's executed authorization shall be delivered to the office of Mass Litigation Manager Kimberley R. Fields for receipt **no later than April 12, 2017**.

If an individual Plaintiff who is at least 18 years of age cannot attend mediation on April 27, 2017, the Plaintiff must request permission from the Resolution Judges to be excused for good cause shown. The request for excusal must state the basis for the request, and must be delivered to the offices of Lead Resolution Judge Booker T. Stephens, Resolution Judge Alan D. Moats, Resolution Judge Jay M. Hoke, and Mass Litigation Manager Kimberley R. Fields for receipt **no later than April 12, 2017**. No request for excusal will be granted if the Plaintiff has not provided a copy of an executed authorization giving **full authority** to their attorney to act on their behalf, including full authority to negotiate settlement of their case, and to respond to developments during the mediation process.

No later than **April 20, 2017**, Liaison Counsel for Plaintiffs shall submit a Plaintiff Sign

in Sheet to Mass Litigation Manager Kimberley R. Fields via electronic mail at [kim.fields@courtswv.gov](mailto:kim.fields@courtswv.gov) containing: the name of each Plaintiff, with spaces on the sheet for each Plaintiff to sign his or her name; a space for confirmation the Plaintiff has produced proof of identification; a space for confirmation the Plaintiff has provided a copy of his or her authorization; and a space to show whether or not the Plaintiff has been excused from attending mediation on April 27, 2017, for good cause shown. A template of the Plaintiff sign in sheet is attached.

**PLAINTIFFS MUST ARRIVE AT MEDIATION NO LATER THAN 9:00 A.M. ON APRIL 27, 2017, TO SIGN IN AND PRODUCE PROOF OF IDENTIFICATION.**

4. No later than, **April 20, 2017**, Liaison Counsel for the parties shall submit a sign in sheet containing the names and contact information of all counsel, corporate representatives and insurer representatives participating in the mediation to the Mass Litigation Manager Kimberley R. Fields via electronic mail at [kim.fields@courtswv.gov](mailto:kim.fields@courtswv.gov).

5. Lead trial counsel and any corporate representative or insurer representative participating in the mediation must be familiar with the cases to be mediated and must have **full authority** to act on behalf of the party or parties they represent, including full authority to negotiate a resolution of the cases and to respond to developments during the mediation process.

**COUNSEL, CORPORATE REPRESENTATIVES AND INSURER REPRESENTATIVES MUST ARRIVE AT MEDIATION NO LATER THAN 9:00 A.M. ON APRIL 27, 2017, TO SIGN IN.**

**INFORMED CONSENT**

6. Lead trial counsel for Plaintiffs must obtain Plaintiffs' informed consent to any settlement reached. Rule 1.8(g) of the Rules of Professional Conduct, provides that, "A lawyer who

represents two or more clients shall not participate in making an aggregate or mass tort settlement of the claims of or against the clients . . . unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims . . . involved and of the participation of each person in the settlement.”

As further provided in Comments [15] and [16] to Rule 1.8:

[15] When the terms of an aggregate or mass tort settlement in civil litigation do not determine individual amounts to be distributed to, or paid by, each client, or are not based upon individual case-by-case negotiations, detailed disclosures are required before obtaining each client's consent to settle. For example, if a lump sum is offered in an aggregate or mass tort settlement, an attorney must, before obtaining the client's consent to the settlement, disclose to each client the number of his or her clients participating, the specifics of each client's claims relevant to the settlement, the method of dividing the lump sum, and the settlement amount each client is to receive. In addition, the attorney must disclose, to each client, prior to obtaining the client's consent, the total attorney fees and costs to be paid, payments to be made other than to clients, the method by which the costs are to be apportioned among the clients, and the settlement amount each client is to receive. The shared lawyer must obtain court approval of the settlement, including attorney's fees and expenses, to assure the settlement's fairness and reasonableness to the clients.

[16] If the terms of an aggregate or mass tort civil settlement establish the method or formula of calculating and distributing the settlement payments to each claimant, based upon each individual liability claim and/or damages, the disclosures to each multiple client do not need to be as detailed. In that instance, each client should be informed of the aggregate settlement offer, and how the settlement terms apply specifically to each client. There must also be a disclosure of attorney fees and costs to each client prior to obtaining each client's consent, including how costs are apportioned among the joint clients. The shared lawyer must obtain court approval of the settlement, including attorney's fees and expenses, to assure the settlement's fairness and reasonableness to the clients.

7. If an aggregate settlement is reached, Plaintiffs' counsel will be required to provide to the Presiding Judges documentation showing the client is informed of and agrees to the attorney's method of allocation and distribution of settlement proceeds; documentation showing an accounting of the individual client's settlement allocation and distribution; and documentation showing authorization by the client to enter into the proposed settlement.

## CONFIDENTIALITY

8. The contents of the mediation statements and the mediation discussions, including any resolution or settlement shall remain confidential, shall not be used in the present litigation nor any other litigation (whether presently pending or filed in the future), and shall not be construed as nor constitute an admission. Breach of this provision shall subject the violator to sanctions.

## MEDIATION STATEMENTS

9. Mediation statements containing all of the information required by Paragraph 12 shall be delivered to the offices of Lead Resolution Judge Booker T. Stephens, Resolution Judge Alan D. Moats, and Resolution Judge Jay M. Hoke for receipt **no later than April 12, 2017**. Mediation Statements shall either be hand delivered to the Resolution Judges, or delivered to them by Federal Express, UPS or any other express mail service with tracking capability.

10. **Mediation statements are confidential.** Mediation statements shall state on their face “CONFIDENTIAL MEDIATION STATEMENT” and shall be placed in envelopes marked “CONFIDENTIAL MEDIATION STATEMENT.” Mediation statements **shall not** be filed with the Clerk’s office, **shall not** be exchanged among the parties or counsel (unless the parties or counsel so desire), **shall not** be provided to the Presiding Judges, and **shall not** become part of the record in this matter. **Mediation statements shall not be electronically filed and served since they are not part of the Court record.**

11. Mediation statements may be in memorandum or letter form. They must be double-spaced, in no less than 12-point font, and be **no longer than fifteen (15) pages**.

12. Mediation statements **must** contain the following information:

- a) **Contact information:** all lead trial counsel participating in the mediation shall

provide: (1) a direct dial telephone work number; (2) a cell phone and/or home telephone number; and (3) an electronic mail address where lead trial counsel can be reached.

b) **Parties**: identify the party/parties represented, describe their relationship, if any, to each other, and by whom each party is represented, including the identity of all representatives who will be participating on behalf of a party/parties during the mediation.

b) **Factual and Procedural History of the Case**: provide a brief summary of the factual and procedural history of the case, including a statement of the essential facts of the litigation, clearly indicating which material facts are not in dispute and which material facts remain in dispute. Plaintiffs shall provide their theories of liability and a one-page itemization of damages claimed, both liquidated and special, for each Plaintiff. Defendants shall provide their theories of defense and their position as to the damages claimed by Plaintiffs.

Counsel for Plaintiffs shall also provide a copy of the one-page itemization of damages claimed by each Plaintiff to counsel for Defendants **no later than March 29, 2017**.

c) **Critical Deposition Testimony**: provide the deposition synopsis of any critical fact witness or expert witness, or in the alternative, a summary of the testimony of such fact witness or expert witness.

d) **Summary of Applicable Law**: provide a brief summary of the applicable law, including statutes, cases and standards.

e) **Strengths and Weaknesses of the Case**: provide an **honest** discussion of the strengths **and** weaknesses of the party's claims and/or defenses, the likelihood of a verdict in favor of the party, an opinion as to the probable verdict range, and an opinion as to the range of settlement value.

f) **Settlement Efforts**: provide a **brief** discussion of prior settlement negotiations

and discussions between the parties, including any outstanding demand made by the Plaintiffs to settle the litigation, any response by the defendants to that demand, and an assessment as to why settlement has not been reached.

g) **Settlement Proposal:** provide the party's proposed term(s) of settlement, including any proposed terms that may be non-monetary, as well as any suggestions regarding how the Resolution Judges may assist the parties in reaching a resolution.

h) **Fees and Costs:** list separately (i) attorneys' fees and costs incurred to date; (ii) other fees and costs incurred to date; (iii) a good faith estimate of additional attorneys' fees and costs to be incurred if this matter is not settled; and (iv) a good faith estimate of additional other fees and costs to be incurred if this matter is not settled.

i) **Other Settlements:** if applicable, Plaintiff's counsel shall provide the gross settlement amount of any other settlements on behalf of a Plaintiff whose case is being mediated.

j) **Other Matters:** in addition to the required topics described above, and provided that the mediation statement complies with the page limit stated above, counsel are encouraged to address any other matters they believe may be of assistance to the Resolution Judges.

#### **EXHIBITS TO MEDIATION STATEMENT**

13. While counsel may submit documents that will assist the Resolution Judges in understanding the issues and resolving the litigation as exhibits to the mediation statement, counsel is cautioned to limit exhibits to only those documents counsel believes will be crucial to resolution of the litigation.

#### **MEMORIALIZATION OF SETTLEMENT**

14. If the parties reach a resolution of their dispute, the parties shall memorialize the general terms of their settlement in a written memorandum signed by counsel. A copy of the settlement

memorandum shall be provided to the Resolution Judges prior to conclusion of the mediation.

**EX PARTE CONTACTS**

15. Before, during and after the scheduled mediation, the Resolution Judges may find it necessary and useful to communicate with one or more parties outside the presence of the other party or parties.

**OBLIGATION OF GOOD FAITH PARTICIPATION**

16. Except for individual Plaintiffs who have provided executed authorizations to their counsel, all Required Participants shall attend the entire mediation in person and shall be available and accessible throughout the mediation process. No party may be compelled by this Order, the Mass Litigation Panel, or The Resolution Judges to settle a case involuntarily or against the party's judgment. However, the Resolution Judges expect the parties' full and good faith cooperation with the mediation process, and expect the participants to be prepared to participate fully, openly and knowledgably in a mutual effort to examine and resolve issues. The Resolution Judges encourage all participants to keep an open mind in order to reassess their previous positions and to find creative means for resolving the dispute.

**IMPOSITION OF SANCTIONS**

17. **All counsel are reminded of their obligations to read and comply with this Order.**

To avoid the imposition of sanctions, counsel shall advise the Resolution Judges immediately of any problems regarding compliance with this Order.

ENTER: January 24, 2017.

/s/ Booker T. Stephens  
Lead Resolution Judge  
Gavin Landfill Litigation

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: GAVIN LANDFILL LITIGATION

Civil Action No. 16-C-8000

SETTLEMENT AUTHORIZATION

I, \_\_\_\_\_, understand that, for my attorney(s) to be able to settle my case, I must give my informed consent to them to enter into any settlement which might be reached at any time during the pendency of *In re: Gavin Landfill Litigation*, Civil Action No. 16-C-8000 (Gavin Landfill Litigation).

After explanation from my attorney(s) I understand and give my consent to enter into any settlement that might be reached during the pendency of the Gavin Landfill Litigation. I authorize my attorney(s) to act on my behalf during mediation or any other settlement negotiations, including full authority to negotiate settlement of my case, and to respond to developments during the mediation or settlement negotiation process.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

County of \_\_\_\_\_

State of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_

