



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

NOTICE OF SETTLEMENT HEARING

WHEREAS, on July 25, July 26, and July 27, 2011, Lead Resolution Judge Derek C. Swope and Resolution Judge Alan D. Moats conducted mediation of all underlying cases in *In re: Mingo County Coal Slurry Litigation*, Civil Action No. 10-C-5000, in which Plaintiffs are represented by attorneys Kevin Thompson, Van Bunch, Bruce Stanley, and Sean Cassidy.

WHEREAS, after engaging in extensive discussion regarding the issues presented in the Mingo County Coal Slurry Litigation and the possible terms of settlement, counsel for Plaintiffs and counsel for Defendants reached agreement to compromise and settle the Mingo County Coal Slurry Litigation as a result of the aforementioned mediation.

WHEREAS, information regarding the method of distribution and the method of allocation of settlement proceeds is required by the Mass Litigation Panel to ensure fair and equitable distribution of such proceeds to the individual Plaintiffs.

NOW THEREFORE, please take notice there will be a hearing regarding the proposed settlement of the Mingo County Coal Slurry Litigation at **10:00 a.m.** on **September 29, 2011**, in **Courtroom Four**, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, in **Charleston, West Virginia**.

The purpose of these hearings will be to review the terms of the proposed settlement and to discuss the proposed method for allocation and distribution of settlement proceeds as well as notice to individual Plaintiffs regarding such allocation and distribution. The Court will also consider any application for an award of attorneys' fees and expenses.

Counsel for Plaintiffs must identify any incarcerated Plaintiffs, minor Plaintiffs, or incompetent Plaintiffs for whom a guardian ad litem must be appointed by no later than **August 15, 2011**. The cost of the guardian ad litem(s) shall be borne by Defendants and their insurers.

No later than **August 29, 2011**, Counsel for Plaintiffs is **ORDERED** to provide the following to each individual Plaintiff affected by the proposed settlement:

1. A copy of the proposed settlement agreement affecting the individual Plaintiff;
2. A disclosure of the amount the individual Plaintiff will receive under the proposed settlement and distribution plans; and
3. A copy of this Notice of Hearing.

Counsel for Plaintiffs shall advise the Plaintiffs they have the option, but are not required to attend the hearing on **September 29, 2011**. Counsel for Plaintiffs are **ORDERED** to submit an accounting of any and all Notices of Hearing returned to Counsel for Plaintiffs to Lead Presiding Judge James P. Mazzone and Lead Resolution Judge Derek C. Swope by no later than **September 15, 2011**.

Counsel for Plaintiffs are further **ORDERED** to submit a copy of any settlement agreement that is the subject of these hearings directly to Judge Mazzone and Judge Swope by no later than **September 15, 2011**. If such settlement agreement is subject to a

confidentiality agreement, the word “**CONFIDENTIAL**” is to be clearly and prominently marked or stamped across the top of each page of the settlement agreement.

The settlement agreement will not be subject to distribution beyond the Panel and all information regarding the terms of the settlement agreement will remain strictly confidential.

In addition, Counsel for Plaintiffs are **ORDERED** to provide Judge Mazzone and Judge Swope with the following information by no later than **September 15, 2011**:

1. A proposed method of allocating and distributing gross settlement proceeds to individual clients. The proposed method of allocation and distribution should address the impact of divorce, death, incompetence, claims by minors, and dissolution of business entities or other organizations on allocation and distribution of settlement proceeds; investment of settlement proceeds; and interim distributions and partial payments of fees and expenses.
2. A procedure for handling lost or returned settlement checks, and a proposed method of accounting for and disposition of all undistributed or unclaimed settlement proceeds, including whether the unclaimed settlement proceeds will be returned to the settling Defendant, paid to other Plaintiffs, distributed to a charitable or non profit institution, left to the discretion of the Panel for making *cy pres awards*, or any other reasonable distribution proposed by counsel.
3. A proposed report to the Court in spread sheet format regarding allocation and distribution of settlement proceeds to individual clients. The proposed report should include the name of the settling Defendant or Defendants; gross fee percentage; any fee sharing information; allocated gross proceeds; allocated expenses; client last name; client first name; client middle name; claimed damages used for allocation; allocated proceeds; gross fees; allocated expenses; total to the Plaintiff’s law firm; and net to the client.
4. A detailed accounting of costs, expenses and attorney’s fees incurred by Counsel for the Plaintiffs.
5. The name and address of the financial institution where settlement proceeds will be deposited, including the name of the account, the account number and the name of any Trustee or Account manager.
6. Any document showing authorization by the client to enter into the proposed settlement.

7. Any document showing the client is informed of and agrees to the method of allocation and distribution of settlement proceeds.
8. Any document showing an accounting of the individual client's settlement allocation and distribution.
9. A proposed order approving the settlement, the method of allocation and distribution, and dismissing the appropriate parties.

The responses and information provided to Judge Mazzone and Judge Swope pursuant to this Order are regarded as highly confidential and, therefore, the word “**CONFIDENTIAL**” is to be clearly and prominently marked or stamped across the top of each page of such responses and information. Counsel for the Plaintiffs shall file and serve on all counsel of record a certificate of compliance stating that the responses and information have been provided to Judge Mazzone and Judge Swope as ordered herein.

Only counsel representing the settling Plaintiffs, counsel representing the settling Defendants and any self-represented parties affected by the proposed settlement are required to attend the September 29, 2011, hearing.

ENTER: August 2, 2011

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

/s/ Derek C. Swope
Lead Resolution Judge,
Mingo County Coal Slurry Litigation