



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 EXCEPT:

**Rawl Sales & Processing Co., et al., v. AIG Casualty Company, et al.
Case No. 06-C-520 MNG Insurance Coverage Action**

ORDER REGARDING TRIAL PLAN

The Presiding Judge is authorized, “after considering the due process rights of the parties, to adopt any procedures deemed appropriate to fairly and efficiently manage and resolve Mass Litigation.” West Virginia Trial Court Rule 26.08(d). Having conferred to insure uniformity of decisions, the Presiding Judges assigned to the Mingo County Coal Slurry Litigation will conduct an all-issues trial of the seven (7) cases selected for the first trial group, which is scheduled to commence on August 1, 2011, in Ohio County, West Virginia, according to the following trial plan:

Phase I: General Liability and Punitive Damages

The jury will determine the issues of general liability and whether the relevant conduct of the defendants toward the plaintiffs entitles plaintiffs to a punitive damage award under *Mayer v. Frobe*, 40 W.Va. 246, 22 S.E. 58 (1895) and its progeny. See Syllabus Point 6, *Perrine v. E.I. du Point de Nemours and Company*, 225 W.Va. 482, 694 S.E.2d 815 (2010).

Phase II: Punitive Damages Multiplier, Proximate Cause and Damages

The jury will determine proximate cause and the amount, if any, of compensatory damages. If the jury determines in Phase I that the relevant conduct of the defendants

toward the plaintiffs justifies a punitive damage award, the jury will determine the amount of the award pursuant to the aggravating and mitigating criteria set forth in *Garnes v. Fleming Landfill, Inc.*, 186 W.Va. 656, 413 S.E.2d 897 (1991), and the compensatory/punitive damage ratio established in *TXO Production Corp. v. Alliance Resources Corp.*, 187 W.Va. 457, 419 S.E.2d 870 (1992). See Syl. Pt. 6, *Perrine*.

Collateral Estoppel

If judgment is rendered on the merits and there is a final judgment, collateral estoppel will apply for any subsequent trial group in the Mingo County Coal Slurry Litigation on the issues of general liability and whether the relevant conduct of the defendants toward the plaintiffs entitles plaintiffs to a punitive damage award. See *Conley v. Spillers*, 171, W.Va. 584, 301 S.E.2d 216 (1983).

Enter this 12th day of May, 2011.

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