



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: YEAGER AIRPORT LITIGATION

Civil Action No. 16-C-7000

THIS DOCUMENT APPLIES TO ALL CASES

ORDER REGARDING RULINGS ISSUED ON OCTOBER 17, 2017

On October 17, 2017, the Presiding Judges conducted a hearing in the Yeager Airport Litigation and issued the following rulings after hearing oral argument on various motions:

The Court agrees with the recommendations set forth in the *Report of Discovery Commissioner* (Transaction ID 61178723).¹ The Court **ORDERS** the Airport Authority to produce the documents identified in its privilege log to the Court no later than November 16, 2017, for an *in camera* review and determination as to whether the attorney client privilege protects the documents from disclosure.² The Court further **ORDERS** Plaintiffs Theodore and Rebecca Carter, Nationwide and the Airport Authority to each pay \$1,678.96 to the Discovery Commissioner no later than November 6, 2017, for costs and expenses associated with referral to the Discovery Commissioner of three discovery matters filed in the *Carter* case.

Plaintiffs' Counsel in certain other property owner cases³ advised the Court that it withdraws *Plaintiffs' Motion to Amend the Complaint* (Transaction ID 61161654) as to Defendants Hanson Ready-Mix, Inc., f/k/a Arrow Concrete Company, and Kokosing

¹ Filed in *Theodore Carter and Rebecca Carter v. Central Regional West Virginia Airport Authority, et al.*, Civil Action No. 15-C-1074 KAN.

² See *Plaintiffs' Motion to Compel Discovery Responses from Defendant, Central West Virginia Regional Airport Authority* (Transaction ID 61010565).

³ *Kenneth W. Carter v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1791 KAN; *Robert L. Harrah II v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1792 KAN; *Terry Letart, et al. v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1793 KAN; *Deborah K. Harrah v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1794 KAN; *Patricia A. Wolfe, et al. v. Cast & Baker Corporation, et al.*, Civil Action No. 16-C-1815 KAN; and *James Johnson, et al. v. Cast & Baker Corporation, et al.*, Civil Action No. 16-C-1826 KAN.

Construction Company, Inc. f/k/a Ahern & Associates, Inc. and such motion is hereby **WITHDRAWN** as to these two Defendants. The Court **ORDERS** Plaintiffs' motion **HELD IN ABEYANCE** as to Defendants Michael Baker International, Inc., Novel Geo-Environmental, LLC.

The Court **GRANTS** *Brotherhood Mutual Insurance Company's Motion to Strike Defendants' Joint Notice of Fault by a Nonparty and Incorporated Memorandum of Law* (Transaction ID No. 60719089).⁴ The Court **DENIES** *The Keystone Apostolic Church's (1) Motion for Partial Summary Judgment on Liability of the Central West Virginia Regional Airport Authority, Inc. and (2) Motion for an Expedited Trial on Damages* (Transaction No. 60564030), and also **DENIES** *Central West Virginia Regional Airport Authority, Inc.'s Response to Keystone Apostolic Church's Motion for Partial Summary Judgment on Liability and Counter Motion for Summary Judgment* (Transaction No. 60637304).⁵

The Court **GRANTS** the Airport Authority's motion to consolidate *The Keystone Apostolic Church, f/k/a The Pentecostal Assembly of Christ v. Central West Virginia Regional Airport Authority*, Civil Action No. 16-C-536 KAN (Keystone) with *Brotherhood Mutual Insurance Co. v. Central West Virginia Regional Airport Authority, Inc., et al.*, Civil Action No. 16-C-293 KAN (Brotherhood), and **ORDERS** the *Keystone* case consolidated with the *Brotherhood* case.⁶ All future filings in these consolidated cases will be filed in *Brotherhood*

⁴ Filed in *Brotherhood Mutual Insurance Co. v. Central West Virginia Regional Airport Authority, Inc., et al.*, Civil Action No. 16-C-293 KAN.

⁵ Filed in *The Keystone Apostolic Church, f/k/a The Pentecostal Assembly of Christ v. Central West Virginia Regional Airport Authority*, Civil Action No. 16-C-536 KAN.

⁶*Central West Virginia Regional Airport Authority, Inc.'s Motion to Dismiss or In the Alternative Motion to Consolidate* (Transaction No. 60733041).

Mutual Insurance Co. v. Central West Virginia Regional Airport Authority, Inc., et al., Civil Action No. 16-C-293 KAN. The Airport Authority’s motion to dismiss is **DENIED**.

The Court **ORDERS** the Airport Authority and New Hampshire Insurance Company to each submit a proposed order with findings of fact and conclusions of law as to *Defendant New Hampshire Insurance Company’s Motion for Summary Judgment* (Transaction ID 60374382) no later than November 16, 2017.⁷

The Court **DENIES** the *Motion to Transfer to Mass Litigation Panel Central West Virginia Regional Airport Authority, Inc. v. Triad Engineering, Inc., et al.*, (the “Taxiway A” case) Kanawha County Civil Action No. 17-C-825, currently pending before the Honorable Jennifer F. Bailey. The Court does not have authority to transfer and join the case with *In Re: Yeager Airport Litigation*, Civil Action No. 16-C-7000, because the case is not a subsequently filed action, “arising from the March 12, 2015, failure of the mechanically stabilized earth retention structure at the end of Runway 5 at the Central West Virginia Regional Airport Authority’s Yeager Airport in Charleston, West Virginia.” See December 16, 2016, Administrative Order of the Supreme Court of Appeals of West Virginia referring Yeager Airport Litigation to the Mass Litigation Panel. If a party wishes to file a motion to refer this case to the Mass Litigation Panel, such motion must be filed pursuant to Rule 26.06 of the West Virginia Trial Court Rules.

There being no objection, the Court **GRANTS** *Defendant Michael Baker International, Inc.’s Motion for Leave to Amend Answer to Second Amended Complaint, Affirmative Defenses and Cross-Claims Against All Co-Defendants* (Transaction ID 61164296).⁸

⁷ Filed in *Central West Virginia Regional Airport Authority v. Triad Engineering, Inc., et al.*, Civil Action No. 15-C-1022 KAN.

⁸ Filed in *Central West Virginia Regional Airport Authority v. Triad Engineering, Inc., et al.*, Civil Action No. 15-C-

The Court has determined reverse bifurcation of the property damage cases is appropriate and will enter a separate case management order addressing the damages only trial of these cases.⁹ The Court has further considered the parties' inquiry regarding whether entitlement to punitive damages will be tried in the damages only trial of the property damage cases, and has determined the issue of entitlement to punitive damages and what, if any, punitive damages multiplier is appropriate, shall be determined in the liability trial of all cases in the litigation.

Pursuant to the Court's Order, counsel has filed and served a revised, proposed scheduling order for the liability trial of all cases in the litigation. See Proposed Scheduling Order (Transaction ID 61296096). Any objection to the proposed scheduling order must be filed in the master case file and served on all counsel of record, the Presiding Judges and the Mass Litigation Manager no later than November 13, 2017.

It is so **ORDERED**.

ENTER: November 1, 2017.

/s/ John A. Hutchison
Lead Presiding Judge
Yeager Airport Litigation

1022 KAN.

⁹ *Theodore Carter and Rebecca Carter v. Central Regional West Virginia Airport Authority, et al.*, Civil Action No. 15-C-1074 KAN; *Kenneth W. Carter v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1791 KAN; *Robert L. Harrah II v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1792 KAN; *Terry Letart, et al. v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1793 KAN; *Deborah K. Harrah v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1794 KAN; *Patricia A. Wolfe, et al. v. Cast & Baker Corporation, et al.*, Civil Action No. 16-C-1815 KAN; *James Johnson, et al. v. Cast & Baker Corporation, et al.*, Civil Action No. 16-C-1826 KAN; and *Brotherhood Mutual Insurance Co. v. Central West Virginia Regional Airport Authority, Inc., et al.*, Civil Action No. 16-C-293 KAN.