



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

SECOND ORDER RECONVENING MEDIATION

Pursuant to Trial Court Rule 26.08(b), Lead Resolution Judge Derek C. Swope and Resolution Judge Alan D. Moats have determined that Mediation of all cases in the Mingo County Coal Slurry Litigation will be reconvened on **July 25 and 26, 2011**, at Embassy Suites, 300 Court Street, Charleston, West Virginia 25301, and shall continue from day to day thereafter at the sole discretion of the Resolution Judges. **Mediation shall begin at 9:00 a.m. on July 25, 2011.**

1. The following persons are required to attend the reconvened mediation **in person**:
 - (a) lead trial counsel for plaintiffs;
 - (c) lead trial counsel and the corporate representative for each named defendant;
 - (d) lead trial counsel and the corporate representative third-party plaintiff; and
 - (e) lead trial counsel and the corporate representative for each named third-party defendant.
2. As previously required by the Court's Mediation Order entered on August 31, 2010, Lead trial counsel and any corporate 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.
3. Lead trial counsel for plaintiffs must obtain plaintiffs' informed consent to any settlement reached. If an aggregate settlement is reached and the terms of the aggregate

settlement do not determine individual amounts to be distributed to each client, detailed disclosures are required. For example, if a lump sum is offered in an aggregate settlement and the plaintiffs' attorney is involved in dividing the settlement sum, the plaintiffs' attorney must, before obtaining the client's consent to the settlement, disclose to each client the number of his or her clients participating, specifics of each client's claim relevant to the settlement, and the method of dividing the lump sum. In addition, the attorney must disclose prior to obtaining the client's consent, the total attorney fees and costs to be paid, payments to be made other than to clients, to their attorneys and for costs, the method by which the costs are to be apportioned among the clients and ultimately the amount each client receives.

4. If an aggregate settlement is reached, plaintiffs' counsel will be required to provide to the Lead Resolution Judge and the Lead Presiding Judge 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.

5. **Mediation discussions, including any resolution or settlement of the Mingo County Coal Slurry Litigation 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.**

6. If the parties reach a resolution of their dispute, the Resolution Judges will have a court reporter available to record the terms of any settlement reached by the parties.

7. Before, during and after reconvening the 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.

8. The 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.

9. **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: June 30, 2011

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