



**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 APRIL 27, 2018**

On April 27, 2018, the Presiding Judges conducted a hearing and issued the following rulings:

The Court heard *Plaintiffs Motion to Approve the Settlement* (Transaction ID 61915545)<sup>1</sup> with Defendants Triad Engineering, Inc. (Triad), Central West Virginia Airport Authority, Inc. (the Airport Authority), and Cast & Baker Corporation (Cast & Baker) to permit the disbursement of settlement proceeds, and to dismiss their cases with prejudice.

Counsel for Plaintiffs represented to the Court that: Defendants' settlement with the Plaintiffs is an aggregate settlement; representatives from each of the Plaintiff families were present at the hearing, except for Plaintiffs James and Donna Johnson (the Johnsons); with the exception of the Johnsons, all Plaintiffs were advised of the terms of the settlement, including their portion of the settlement proceeds; and with the exception of the Johnsons, all Plaintiffs have signed informed consents to settle their cases according to the terms of the settlement and the proposed distribution of settlement proceeds.

Counsel for Plaintiffs further represented to the Court that: the Johnsons verbally agreed to settle their claims against Triad and signed a release of their claims against Triad while counsel was representing them; after the settlement with Triad, counsel moved to withdraw from

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<sup>1</sup>This motion applies to: *Kenneth W. Carter v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1791; *Robert L. Harrah, II v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1792; *Terry Letart, et al. v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1793; *Deborah K. Harrah v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1794; *Patricia Wolfe and Curtis Naylor v. Cast & Baker Corporation, et al.*, Civil Action No. 16-C-1815; and *James Johnson, et. al. v. Cast & Baker Corporation, et al.*, Civil Action No. 16-C-1826 KAN.

representing the Johnsons and the Court granted the motion; counsel contacted Plaintiff James Johnson by telephone and arranged a meeting to discuss the terms of the Johnson's settlement with Triad, but Mr. Johnson failed to attend the meeting; counsel sent a copy of the motion to approve the settlement and notice of the fairness hearing to the Johnsons' last known address; counsel has not been able to explain the terms of Triad's settlement with the Johnsons; and the Johnsons did not appear on April 27, 2018, for the hearing of Plaintiffs' motion to approve the settlement.

Counsel also represented to the Court that the Johnsons are in a different posture than the other property owner Plaintiffs. Unlike the other property owners, who had to leave their homes on Keystone Drive when the slope partially collapsed, the Johnsons never lived on their Keystone Drive property.<sup>2</sup> To determine an appropriate disbursement of settlement proceeds from Triad, counsel for Plaintiffs' took the value of the Johnsons' property and compared it to the value of the rest of the property owners and determined the Johnsons' property value is 3% of the total value of the property owned by the Plaintiffs. Thus, Counsel proposed that the Johnsons receive 3% of Plaintiffs' settlement with Triad.

The Court directed the bailiff to go out into the hallway and call the Johnsons. The bailiff called for the Johnsons three times, but received no response. Having reviewed and considered Plaintiffs' motion and the representations of counsel, the Court found the settlement and the proposed disbursement of settlement proceeds is appropriate and reasonable under all of the circumstances. The Court further found that the Johnsons had actual and written notice of

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<sup>2</sup> The Court notes that it granted summary judgment in favor of Defendants Cast & Baker, Triad and the Airport Authority on March 16, 2018, finding, among other things, that the Johnsons' alleged damages and demands arise out of destruction of structures on their properties, however, the structures were condemned and destroyed by order of the Kanawha County Commission, not the Defendants, and the Johnsons suffered no quantifiable loss in the aftermath of the partial slope collapse. *Order Granting "Defendants' Motion for Summary Judgment"* (Transaction ID 61812258)

Plaintiffs' motion and the hearing, and ample opportunity to appear before the Court and object to the proposed disbursement of settlement proceeds. There being no objection to the settlement and the proposed disbursement of settlement proceeds, the Court **GRANTED** Plaintiffs' motion to approve the settlement.

The Court directed Plaintiffs' counsel to send the Johnsons' portion of the settlement proceeds to them via professional courier. If the Johnsons' settlement proceeds cannot be delivered to the Johnsons within 30 days, Counsel is directed to deposit the Johnsons' settlement proceeds with the General Receiver in the Circuit Court of Kanawha County, West Virginia.

Plaintiffs' motion for dismissal of their cases with prejudice was **HELD IN ABEYANCE** pending resolution of *Triad's Motion to Sever and Consolidate Cross-claims Against Cast & Baker* (Transaction ID 61823102).<sup>3</sup> The Court heard oral argument in support of and in opposition to Triad's motion to sever and thereafter took the motion under advisement.

Counsel advised the Court that the parties have resolved the discovery dispute set forth in *Defendant Triad Engineering, Inc.'s Motion for Show Cause Order and to Compel* (Transaction ID 61956450),<sup>4</sup> subject to the Airport Authority producing the requested discovery by May 18, 2018. Counsel further advised the Court that, subject to the Airport Authority producing the requested discovery by May 18, 2018, and the parties' agreeing to adjust some discovery deadlines, the Defendants have no objection to *Plaintiffs' Motion to Amend Second Amended*

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<sup>3</sup>Triad's motion applies to: *Central West Virginia Regional Airport Authority, Inc. v. Triad Engineering, Inc., et al.*, C.A. No. 15-C-1022 KAN; *Kenneth W. Carter v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1791; *Robert L. Harrah, II v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1792; *Terry Letart, et al. v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1793; *Deborah K. Harrah v. Cast & Baker Corporation, et al.*, Civil Action No. 15-C-1794; *Patricia Wolfe and Curtis Naylor v. Cast & Baker Corporation, et al.*, Civil Action No. 16-C-1815; *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.*, C.A. No. 16-C-293 KAN.

<sup>4</sup> This motion applies to *Central West Virginia Airport Authority, Inc. v. Triad Engineering, Inc., et al.*, C.A. No. 15-C-1022 KAN.

*Complaint* (Transaction ID 61952433).<sup>5</sup> Plaintiff requested an accelerated briefing schedule regarding its declaratory judgment action, and mediation scheduled in September. Defendants’ objected, arguing that issues of liability and insurance coverage are separate; the Court’s *Amended Scheduling Order* (Transaction ID 61739854) establishes a discovery and briefing schedule for declaratory judgment motions; and the parties have agreed to this scheduling format. Counsel for New Hampshire Insurance Company then reminded the Court that its motion for summary judgment has been fully briefed and argued and is ready for ruling by the Court.

The Court conducted an initial status conference in *Central West Virginia Regional Airport Authority, Inc. v. Triad Engineering, Inc.*, Civil Action No. 17-C-825 KAN (the “Taxiway A” case), referred to the Mass Litigation Panel by Supreme Court Administrative Order on April 11, 2018, and consolidated with the Yeager Airport Litigation by Panel Order entered on April 16, 2018 (Transaction ID 61921363). Plaintiffs requested the Court give the parties 60 days to conduct discovery then set a briefing schedule on the issue of whether one insurance contract or two insurance contracts cover the Runway 5-23 partial slope collapse and the claims regarding Taxiway A. The parties advised the Court that a separate scheduling order should be entered in the Taxiway A case in light of the different documents, different issues and two new Defendants in that case. The Court **ORDERED** the parties to submit a proposed agreed scheduling order for the Taxiway A case.

**ENTER:** May 17, 2018.

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

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<sup>5</sup> Plaintiffs’ motion to amend the Second Amended Complaint also applies to *Central West Virginia Airport Authority, Inc. v. Triad Engineering, Inc., et al.*, C.A. No. 15-C-1022 KAN.