

AMENDED ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: MOTION TO REFER TROY LEE MCCARTNEY, SR., ET AL. V. SODEXO, INC., ET AL., BARBOUR COUNTY CIVIL ACTION NO. 16-C-35, TO THE MASS LITIGATION PANEL

By Administrative Order entered November 17, 2000, then Chief Justice Elliott E. Maynard granted a Motion to Refer all pending asbestos litigation cases in the State of West Virginia to the Mass Litigation Panel.

By Administrative Order entered December 20, 2000, then Chief Justice Elliott E. Maynard ordered that the asbestos cases referred to the Mass Litigation Panel be transferred to the Circuit Court of Kanawha County, with the exception of four cases generally referred to as the "Putnam Mesothelioma Cases."

By Administrative Order entered July 9, 2001, then Chief Justice Warren R. McGraw ordered all asbestos personal injury cases filed subsequent to the June 27, 2000, Motion to Refer transferred to the Mass Litigation Panel for inclusion in the appropriate trial group, and further ordered any asbestos personal injury litigation filed subsequent to the entry of the July 9, 2001, order, may, upon appropriate order, be transferred to the Mass Litigation Panel for consideration of assignment to the appropriate trial group upon motion of a party, a member of the Mass Litigation Panel, or the judge assigned by the Chief Justice to hear any case or trial group. The foregoing asbestos personal injury litigation, as well as a large number of subsequently-filed cases, are currently pending for coordinated or consolidated resolution in In re: Asbestos Personal Injury Litigation, Kanawha County Civil Action No. 03-C-9600, the Honorable Ronald E. Wilson presiding.

The Chief Justice has received a copy of the Motion to Refer Troy Lee McCartney, Sr., et al. v. Sodexo, Inc., et al., (Sixteen civil actions consolidated under Barbour County Civil Action No. 16-C-35), filed by the Honorable Alan D. Moats, Chief Judge of the Nineteenth Judicial Circuit and Chair of the Mass Litigation Panel, seeking to refer these cases to the Mass Litigation Panel, as well as the Court's Reply Memorandum. Trial Court Rule 26.06 permits a judge to "seek a referral of actions as Mass Litigation to the Panel by filing a Motion to Refer to the Mass Litigation Panel in any circuit court in which an action is pending."

In his capacity as the movant in this matter, the Panel Chair recommends that all pending and subsequently filed cases in West Virginia asserting claims for personal injury and damages caused, in whole or in part, from exposure to asbestos and asbestos-containing materials be referred to the Mass Litigation Panel, and be transferred to the Circuit Court of Kanawha County for coordinated or consolidated resolution in In re: Asbestos Personal Injury Litigation, Kanawha County Civil Action No. 03-C-9600. The Panel Chair further recommends that the Mass

Litigation Panel be authorized to transfer and join with the existing Mass Litigation any similar or related actions subsequently filed in any circuit court.

The motion appears to be in substantial compliance with Rule 26.06 of the West Virginia Trial Court Rules. The time for parties and affected judges to respond has expired, and the Chief Justice has reviewed the motion and all reply memoranda.

The Chief Justice finds that, because the plaintiffs in Troy Lee McCartney, Sr., et al. v. Sodexo, Inc., et al., Barbour County Civil Action No. 16-C-35, have not been diagnosed with an asbestos-related disease they do not fall within any category of cases subject to the 2012 Case Management Order entered by the Honorable Ronald E. Wilson in In re: Asbestos Personal Injury Litigation, Kanawha County Civil Action No. 03-C-9600.

The Chief Justice also finds that, because the plaintiffs in Troy Lee McCartney, Sr., et al. v. Sodexo, Inc., et al., Barbour County Civil Action No. 16-C-35, allege medical monitoring claims and other damages arising from exposure to asbestos, these cases are appropriate for referral to the Mass Litigation Panel for assignment by the Panel Chair, pursuant to West Virginia Trial Court Rule 26.07.

The Chief Justice further finds that that all pending and subsequently filed cases in West Virginia asserting claims for personal injury and damages caused, in whole or in part, from exposure to asbestos and asbestos-containing materials should be referred to the Mass Litigation Panel and automatically transferred to the Circuit Court of Kanawha County for coordinated or consolidated resolution in In re: Asbestos Personal Injury Litigation, Kanawha County Civil Action No. 03-C-9600, the Honorable Ronald E. Wilson presiding.

UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, That the Motion to Refer is granted with respect to Troy Lee McCartney, Sr., et al. v. Sodexo, Inc., et al., Barbour County Civil Action No. 16-C-35, and these cases are transferred to the Mass Litigation Panel for assignment by the Panel Chair pursuant to West Virginia Trial Court Rule 26.07.

IT IS FURTHER ORDERED, That all pending and subsequently filed cases in West Virginia asserting claims for personal injury and damages caused, in whole or in part, from exposure to asbestos and asbestos-containing materials are referred to the Mass Litigation Panel and automatically transferred to the Circuit Court of Kanawha County for coordinated or consolidated resolution in In re: Asbestos Personal Injury Litigation, Kanawha County Civil Action No. 03-C-9600, the Honorable Ronald E. Wilson presiding.

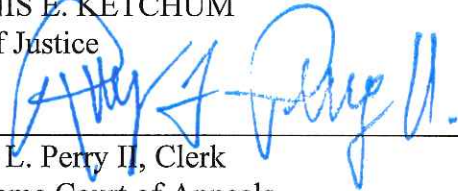
IT IS FURTHER ORDERED, That a copy of this AMENDED ORDER be transmitted to the Clerk of the Circuit Court of Barbour County who is directed to provide a copy of this order to all counsel of record.

IT IS FINALLY ORDERED, That a copy of this AMENDED ORDER be transmitted to the Honorable Alan D. Moats, Chair of the Mass Litigation Panel; the Honorable Ronald E. Wilson; the Mass Litigation Manager; and to the Clerks of all Circuit Courts in the State of West Virginia.

ENTERED: SEPTEMBER 28, 2016


MENIS E. KETCHUM
Chief Justice

Attest:


Rory L. Perry II, Clerk
Supreme Court of Appeals