

Mass Litigation Panel

The chairman of the Mass Litigation Panel is Circuit Judge Alan D. Moats of the Nineteenth Judicial Circuit (Barbour and Taylor Counties). Members of the panel are Judge John A. Hutchison of the Tenth Judicial Circuit (Raleigh County); Judge Booker T. Stephens of the Eighth Judicial Circuit (McDowell County); Judge Jay M. Hoke of the Twenty-Fifth Judicial Circuit (Boone and Lincoln Counties); Judge Derek C. Swope of the Ninth Judicial Circuit (Mercer County); Judge James P. Mazzone of the First Judicial Circuit (Brooke,

Hancock, and Ohio Counties); and Judge Thomas C. Evans III of the Fifth Judicial Circuit (Jackson and Mason Counties).

Amendments to rules governing mass litigation

Effective June 30, 2009, the Supreme Court of Appeals amended Rule 26.02 of the West Virginia Trial Court Rules to increase the number of active or senior status circuit court judges appointed to serve on the Mass Litigation Panel from six to seven. Beginning in 2009 and

every third year thereafter, three judges will be appointed to serve on the panel by the Chief Justice, with the approval of the Court.

Digitek® litigation

The Digitek® Litigation, which is pending in the Circuit Court of Kanawha County as *In re: Digitek® Litigation, Civil Action No. 08-C-5555*, was referred to the panel on September 18, 2008. By December 2009, of the twenty cases filed in the *Digitek® Litigation*, one of which was a putative class action, eight cases were dismissed and the putative class action appeared to be abandoned.

Flood litigation

The most significant achievement of the panel in 2009 was the successful resolution of the Flood Litigation. The Flood Litigation arose from flooding in southern West Virginia on July 8, 2001, and was before the Supreme Court of Appeals of West Virginia on two separate occasions. In June 2008, the Flood Litigation was referred back to the panel. After conducting numerous, intensive work sessions to develop a plan to manage the litigation, the six judges assigned by the panel to the Flood Litigation were divided into a Trial Panel, led by Judge Hutchison, and a Resolution Panel, led by Judge Stephens. All six judges then conducted a status conference in October 2008 to explain how the litigation would be managed.

To assist the panel in managing the Flood Litigation, Raleigh County Deputy Clerk Paul Flanagan worked with

The following is a list of mass litigation referred to the panel, the county in which the litigation is pending, and the judge or judges assigned to preside in the litigation:

Asbestos Personal Injury Litigation

Kanawha County

Ronald C. Wilson, Presiding Judge
James P. Mazzone, Assisting Judge
Mark A. Karl, Assisting Judge

Asbestos FELA Litigation

Kanawha County

Arthur M. Recht, Presiding Judge
Jay M. Hoke, Assisting Judge

Digitek® Litigation

Kanawha County

Alan D. Moats, Lead Presiding Judge
Booker T. Stephens, Presiding Judge
Derek C. Swope, Presiding Judge

Flood Damage Litigation

Raleigh County

John M. Hutchison, Lead Presiding Judge
Jay M. Hoke, Presiding Judge
Derek C. Swope, Presiding Judge
Booker T. Stephens, Lead Resolution Judge
Alan D. Moats, Resolution Judge
James P. Mazzone, Resolution Judge

Overweight Trucks Litigation

Lincoln County

Jay M. Hoke, Presiding Judge

Tobacco Litigation

Ohio County

Arthur M. Recht, Presiding Judge

his staff during the spring of 2009 to construct a database, which allowed the parties to match plaintiffs with defendants in the various watersheds and sub-watersheds. Once the database was completed, Mr. Flanagan, Sarah Johnson (Judge Hutchison's Law Clerk at the time), the staff of LexisNexis, and Mass Litigation Manager Kim Fields worked diligently to implement electronic filing and service in the Flood Litigation, which became effective July 20, 2009.

On June 24, 2009, the Trial Panel entered an aggressive case management and scheduling order for the Phase II trial of the Upper Guyandotte Watershed, Subwatershed 2a, which included a plan for initial discovery that would allow defendants to obtain information necessary to make an evaluation of plaintiffs' cases for mediation and possible settlement, selection of cases for mediation, and selection of trial groups to be prepared for trials in 2011. By September 2009, the parties advised the panel they wanted to mediate all of the July 8, 2001, flood cases.

Led by Judge Stephens, the Resolution Panel conducted extensive mediation on November 16-17, 2009, in Welch, resulting in the resolution of eighty-five cases. Less than one month later, on December 8-10, 2009, the Resolution Panel conducted an even more extensive mediation at Glade Springs Resort and resolved the remaining 1,271 cases.

Mingo County coal slurry litigation

Pursuant to administrative orders entered on August 17, 2009, August 26, 2009, and October 21, 2009, Judge Evans was assigned by Acting Chief Justice Robin

Jean Davis to preside in over three hundred cases filed in the Circuit Court of Mingo County in which plaintiffs allege their well water was contaminated when defendants stored coal slurry in underground mine workings and an above-ground impoundment. On December 31, 2009, Judge Evans filed a motion to refer this litigation to the Mass Litigation Panel.

Motions to refer heard by the panel

On June 16, 2009, Chief Justice Brent D. Benjamin directed the panel, pursuant to the provisions of Trial Court Rule 26.06(c)(2), to conduct a hearing and submit findings of fact and a recommendation to the Chief Justice regarding whether *Richard D. Abbott, et al. v. Earth Support Services d/b/a Micon, Inc., et al.*, Civil Action No. 08-C-138, Circuit Court of Wyoming County, should be referred to the panel. The motion to refer was based upon a single civil action filed in Wyoming County Circuit Court on behalf of ninety-nine plaintiffs who claim personal injury as the result of exposure to products containing isocyanates while working in underground coal mines in West Virginia. The panel conducted a hearing and submitted its findings of fact and recommendation that the motion to refer should be denied as premature. By administrative order entered on December 4, 2009, Chief Justice Benjamin denied the motion to refer.

On December 8, 2009, Chief Justice Benjamin directed the panel to conduct a hearing and submit findings of fact and a recommendation to the Chief Justice regarding whether *Melissa Lester, et al. v. Alpha Natural Resources Services, et*

al., Civil Action No. 09-C-311, Circuit Court of Mingo County and other cases referenced in the motion to refer should be referred to the panel. The motion to refer was based upon the Lester complaint and nineteen related civil actions filed in Mingo County Circuit Court on behalf of twenty-nine plaintiffs claiming flood damage as the result of mining activities in support of the construction of the King Coal Highway in Mingo County, West Virginia.

Electronic filing and service in mass litigation

According to LexisNexis, from January 2009 through December 2009, 47,149 documents were filed using LexisNexis® File & Serve. Those filings totaled 303,565 pages, with an average of 6.4 pages per filing. These statistics represent total volume of the asbestos personal injury, Digitek®, tobacco personal injury, and flood litigation, and include items rejected in the clerk review process in order to capture all work performed in the various circuit clerks' offices in these litigations as well as orders, which do not go through the clerk review process. Additionally, a total of 9,498 orders were entered in these litigations from January 2009 through December 2009. This includes "entered orders" which are typically signed by the judge from the bench then electronically filed and served.