

# Mass Litigation Panel

The chairman of the Mass Litigation Panel is 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).

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<sup>1</sup>  
James P. Mazzone, Assisting Judge  
Mark A. Karl, Assisting Judge

## **FELA Asbestos Litigation Kanawha County**

Arthur M. Recht, Presiding Judge<sup>2</sup>  
Jay M. Hoke, Assisting Judge

## **Digitek® Litigation Kanawha County**

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

## **Float-Sink Litigation Raleigh County**

John A. Hutchison, Lead Judge  
Alan D. Moats, Presiding Judge  
Thomas C. Evans, III, Presiding Judge  
Jay M. Hoke, Lead Resolution Judge  
Booker T. Stephens, Resolution Judge  
James P. Mazzone, Resolution Judge

## **Flood Litigation Raleigh County**

John A. Hutchison, Lead 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

## **Mingo County Coal Slurry Litigation Ohio County**

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

## **Overweight Trucks Litigation Lincoln County**

Jay M. Hoke, Presiding Judge

## **Tobacco Litigation Ohio County**

Arthur M. Recht, Presiding Judge

## **Digitek® Litigation**

By the end of 2011, all West Virginia Digitek® cases were settled, with only a few issues relating to completion of settlements remaining to be resolved.

## **Float-Sink Litigation**

The Float-Sink Litigation consists of 129 cases filed in seventeen circuit courts in West Virginia. Plaintiffs allege they used or were otherwise exposed to various toxic chemicals, predominantly perchloroethylene (“PCE” or “Perc”) in the course

of their work in float-sink labs in West Virginia. Plaintiffs assert “deliberate intent” claims against employer defendants pursuant to West Virginia Code §23-4-2(d) (2)(ii) and causes of action for strict products liability, negligence for failure to warn, and medical monitoring against manufacturer and distributor defendants.<sup>3</sup>

On January 24, 2011, with the advice and consent of the panel, Chairman Moats entered an order assigning Judge Hutchison to serve as Lead Presiding Judge, with Judge Swope

and Judge Evans assisting as Presiding Judges.<sup>4</sup> Judge Hoke was assigned to serve as Lead Resolution Judge, with Judge Stephens and Judge Mazzone assisting as Resolution Judges. On February 11 Judge Hutchison entered an order transferring and consolidating the Float-Sink Litigation, including all court files, in the Circuit Court of Raleigh County. The litigation was designated for electronic filing and service on May 10. All of the judges assigned to the litigation held a status and scheduling

<sup>1</sup>Although he does not serve on the Mass Litigation Panel, First Circuit Judge Ronald C. Wilson presides in the Asbestos Personal Injury Litigation, conducting trial groups of approximately twenty cases in February, June, and October each year.

<sup>2</sup>Although he does not currently serve on the Mass Litigation Panel, First Circuit Judge Arthur M. Recht presides in both the FELA Asbestos Litigation and the Tobacco Litigation.

<sup>3</sup>The Float-Sink Litigation is related to *Katy Addair, et al. v. Litwar Processing Company, LLC, et al.*, Civil Action No. 04-C-252 (“the *Addair* Litigation”), a group of cases pending in the Circuit Court of Wyoming County, West Virginia, since 2004. The same counsel represents the plaintiffs in the *Addair* Litigation and the Float-Sink Litigation, and the same claims are asserted against the manufacturer, distributor, and employer defendants – that plaintiffs were harmed as the result of exposure to perchloroethylene or “PERC” in the course of their employment in Float-Sink Laboratories in West Virginia.

<sup>4</sup>Judge Alan D. Moats was later assigned to replace Judge Derek C. Swope as one of the Presiding Judges in the Float-Sink Litigation when Judge Swope was appointed by the Chief Justice to preside in the class action lawsuit of *Bibb v. Monsanto*, Civil Action No. 04-C-465, pending in the Circuit Court of Putnam County, West Virginia.

conference on June 10. On August 12, the Presiding Judges approved fact sheets for plaintiffs and defendants and ordered the parties to serve their responses no later than October 10. The Presiding Judges entered a Case Management and Scheduling Order on October 18, and on December 5 scheduled a hearing to address numerous discovery and dispositive motions.

## Flood Litigation

The panel will conclude this litigation with an accounting of any unclaimed settlement checks.

## Mingo County Coal Slurry Litigation

The Mingo County Coal Slurry Litigation consists of 368 cases<sup>5</sup> originally filed in the Circuit Court of Mingo County. More than seven hundred plaintiffs alleged their well water was contaminated when defendants Rawl Sales & Processing Company and Massey Energy Company stored coal slurry in underground mine workings and an above-ground impoundment. Plaintiffs sought damages for personal injury and property damage, injunctive relief in the form of medical monitoring, and environmental remediation for public and private nuisance. Defendants denied liability and asserted that their storage of coal slurry was consistent with good mining practices. A third-party insurance coverage action was also filed by defendants against numerous primary and excess insurance carriers.

Lead Resolution Judge Swope and Resolution Judge Moats reconvened mediation on February 22 and 23. As a result of the second mediation, settlement was reached for plaintiffs' medical monitoring claims. The Presiding Judges entered a case management order on March 8; selected the first trial group on April 19; and entered an order setting forth the trial plan

for the first trial group, scheduled to begin trial on August 1. Lead Presiding Judge Mazzone, along with Presiding Judge Hutchison and Presiding Judge Hoke, conducted hearings on motions to exclude expert witnesses on May 19 and 20; plaintiffs' motion for preliminary approval of partial class action settlement and renewed motion to certify a limited medical monitoring class for settlement purposes on June 17; and motions in limine and dispositive motions on July 21 and 22. Lead Resolution Judge Swope and Resolution Judge Moats conducted mediation for the third time on July 25 and 26. The July mediation resulted in settlement of all remaining aspects of the litigation. Through the end of 2011, the Court granted plaintiffs' motion to establish a Qualified Settlement Fund and appoint a fund administrator and trustee; appointed more than sixty guardians *ad litem* to represent the interests of more than one hundred minor plaintiffs and several incompetent, incarcerated, or missing plaintiffs; and conducted two hearings regarding the proposed settlement.

## Overweight Trucks Litigation

Plaintiffs have moved the Court to dismiss the class action allegations and claims for relief contained in the Regional Complaint for Nuisance and Damage for Overweight Trucks filed originally in the Circuit Court of Mingo County, West Virginia, and styled *Denver Mitchell, et al. v. Delbarton Mining Company, et al.*, Civil Action No. 04-C-88.

## Electronic Filing and Service in Mass Litigation

From January 2011 through December 2011, 71,715 documents were e-filed and 2,429,098 documents were e-served using LexisNexis File &

Serve®. The statistics represent total volume between the Asbestos Personal Injury, Digitek®, Float-Sink, Flood, Mingo County Coal Slurry, and Tobacco Personal Injury Litigations. The statistics include items rejected in the clerk review process in order to capture all work performed in the various circuit court clerks' offices in these litigations, as well as orders, which do not go through the clerk review process.

During 2011, the number of pages electronically filed in all mass litigation cases subject to electronic filing and service totaled 463,337, which equals a little more than 193 boxes of paper documents, based on 2,400 pages per box. From December 2008, when electronic filing and service was implemented in certain mass litigation cases, through the end of December 2011, a total of 1,075,125 pages were filed electronically, an amount almost equal to 448 boxes of paper documents.

From January 2011 through December 2011, a total of 7,816 orders were entered in mass litigation cases subject to electronic filing and service. That number includes bench orders entered by a judge but filed by a circuit clerk or attorney and orders denying motions as moot or withdrawn.

The following is a breakdown of orders by each mass litigation subject to electronic filing and service.

	Jan-Dec 2011
Tobacco .....	20
Coal Slurry .....	102
Float-Sink.....	37
Flood .....	1
Digitek .....	0
Asbestos .....	7,656
<b>TOTAL .....</b>	<b>7,816</b>

<sup>5</sup>This number includes the third-party insurance coverage action.