

2014 Annual Report of the Mass Litigation Panel

The Chair of the Mass Litigation Panel is Judge Alan D. Moats of the Nineteenth Judicial Circuit (Barbour and Taylor Counties). The other 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 David W. Hummel, Jr. of the Second Judicial Circuit (Marshall, Tyler and Wetzel Counties).

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

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| Asbestos Personal Injury Litigation Civil Action No. 03-C-9600 | Kanawha County | Ronald C. Wilson, Presiding Judge ¹ James P. Mazzone, Assisting Judge Mark A. Karl, Assisting Judge |
| FELA Asbestos Litigation Civil Action No. 02-C-9500 | Kanawha County | Arthur M. Recht, Presiding Judge ² Jay M. Hoke, Assisting Judge |
| Carbon Monoxide Litigation Civil Action No. 14-C-8000 | Kanawha County | John A. Hutchison, Lead Presiding Judge Alan D. Moats, Presiding Judge Jay M. Hoke, Presiding Judge Booker T. Stephens, Lead Resolution Judge Derek C. Swope, Resolution Judge David W. Hummel, Jr., Resolution Judge |
| Float-Sink Litigation Civil Action No. 11-C-5000000 | Raleigh County | John A. Hutchison, Lead Presiding Judge Alan D. Moats, Presiding Judge Derek C. Swope, Presiding Judge Jay M. Hoke, Lead Resolution Judge Booker T. Stephens, Resolution Judge James P. Mazzone, Resolution Judge |
| LPG Land Litigation Civil Action No. 15-C-4000 | Ohio County | David W. Hummel, Jr., Lead Presiding Judge Alan D. Moats, Presiding Judge Derek C. Swope, Presiding Judge Booker T. Stephens, Lead Resolution Judge Jay M. Hoke, Resolution Judge |

¹ Judge Ronald C. Wilson does not currently serve on the Mass Litigation Panel. However, he continues to preside in the Asbestos Personal Injury Litigation, conducting trial groups of approximately 20 cases in February, June and October each year. Additionally, Judge Wilson has scheduled a number of groups of lung cancer cases for court ordered mediation. Should mediation prove unsuccessful, he will try these cases as well.

² Judge Recht does not currently serve on the Mass Litigation Panel. However, the Supreme Court recalled Judge Recht as a Senior Status Judge to continue presiding in the Tobacco Litigation and the FELA Asbestos Litigation, effective February 1, 2012. Currently, there are three cases pending in the FELA Asbestos Litigation scheduled for trial late summer 2015.

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| Marcellus Shale Litigation Civil Action No. 14-C-3000 | Ohio County | Alan D. Moats, Lead Presiding Judge Derek C. Swope, Presiding Judge David W. Hummel, Jr., Presiding Judge Booker T. Stephens, Lead Resolution Judge John A. Hutchison, Resolution Judge Jay M. Hoke, Resolution Judge |
| Mingo County Coal Slurry Litigation Civil Action No. 10-C-5000 | Ohio County | James P. Mazzone, Lead Presiding Judge John A. Hutchison, Presiding Judge Jay M. Hoke, Presiding Judge Derek C. Swope, Lead Resolution Judge Alan D. Moats, Resolution Judge |
| Mountain State University Litigation Civil Action No. 12-C-9000 | Kanawha County | Alan D. Moats, Lead Presiding Judge Derek C. Swope, Presiding Judge James P. Mazzone, Presiding Judge Booker T. Stephens, Lead Resolution Judge Jay M. Hoke, Resolution Judge David W. Hummel, Jr., Resolution Judge |
| Tobacco Litigation Civil Action No. 00-C-5000 | Ohio County | Arthur M. Recht, Presiding Judge ³ |
| University Commons Litigation Civil Action No. 13-C-7000 | Kanawha County | Derek C. Swope, Lead Presiding Judge Alan D. Moats, Presiding Judge David W. Hummel, Jr., Presiding Judge Booker T. Stephens, Lead Resolution Judge John A. Hutchison, Resolution Judge |
| Zoloft Litigation Civil Action No. 14-C-7000 | Kanawha County | James P. Mazzone, Lead Presiding Judge Derek C. Swope, Presiding Judge David W. Hummel, Jr., Presiding Judge Booker T. Stephens, Lead Resolution Judge Alan D. Moats, Resolution Judge Jay M. Hoke, Resolution Judge |

Carbon Monoxide Exposure Litigation

On May 8, 2014, then Acting Chief Justice Margaret L. Workman referred 23 personal injury cases to the Panel alleging exposure to carbon monoxide while plaintiffs were guests at the South Charleston, West Virginia, Holiday Inn Express. Throughout 2014, the Presiding Judges assigned to the litigation held numerous hearings on various substantive matters regarding these cases, and the Resolution Judges assigned to the litigation conducted mediation on six (6) separate occasions. Although the wrongful death case of *Moran v. Patel*, Kanawha County Civil Action No. 12-C-469, was

³ On April 15, 2013, Judge Recht presided in the Phase I trial of the Tobacco Litigation. A defense verdict was reached on all but one question on May 15, 2013. The sole plaintiff verdict was on the question of whether plaintiffs proved all ventilated filter cigarettes manufactured and sold by the defendants between 1964 and July 1, 1969, were defective because of a failure to instruct. The Phase I verdict was upheld on appeal. The parties are briefing the definition of ventilated filter cigarettes and the number of qualified plaintiffs who smoked ventilated filter cigarettes between 1964 and July 1, 1969. A hearing on these issues is scheduled on July 8, 2015.

not referred to the Panel and was never part of the Carbon Monoxide Exposure Litigation, the Resolution Judges encouraged and assisted the parties in resolving *Moran* in order to facilitate resolution of the cases referred to the Panel. During the course of the Pretrial Conference on April 3, 2015, plaintiffs' counsel reported that all remaining cases had been fully compromised and settled, and requested that the Court order the parties to meet with the Resolution Judges to resolve certain issues regarding aggregate settlements with some of the defendants.

Float-Sink Litigation

Dismissal orders have been entered in all 130 cases. Because 7 plaintiffs have claims stayed by the bankruptcy of Patriot Coal Corporation, et al., case number 12-51-502-659, currently pending in the United States Bankruptcy Court for the Eastern District of Missouri, those cases remain open on the Court's docket. One settlement payment issue remains in the Allyson Townsend case, which is continued by the Panel for further proceedings if the issue is not resolved by the parties.

LPG Land Litigation

On March 16, 2015, Chief Justice Margaret L. Workman entered an Administrative Order referring 10 cases filed against LPG Land & Development Corporation and Mike's Pipe Inspection, Inc. d/b/a Inspection Oilfield Services to the Panel. These cases arise from plaintiffs' allegations of nuisance resulting from work being conducted in the Mon Fayette Industrial Park (MFIP) located in Monongalia County, West Virginia. On April 9, 2015, the Panel entered an order assigning certain Panel members to serve on this litigation, making the litigation subject to electronic filing and service, and scheduling a status conference on May 15, 2015.

Marcellus Shale Litigation

On July 30, 2014, Chief Justice Robin Jean Davis ordered the Panel or a designated member thereof to conduct a hearing relative to the issue of whether the Marcellus Shale cases should be referred to the Panel. The Marcellus Shale cases arise out of nuisance claims relating to drilling activities conducted by the defendants. On September 9, 2014, Judge Alan D. Moats, Judge John A. Hutchison, and Judge Derek C. Swope, convened and received evidence and arguments by counsel for the parties relative to the issue of whether the Marcellus Shale cases should be referred to the Panel. On November 7, 2014, the "Findings of Fact, Conclusions of Law and Recommendation of the Mass Litigation Panel," along with a list of the cases affected by the recommendation and a copy of the hearing transcript, were submitted to the Chief Justice. On November 12, 2014, the Chief Justice ordered that the motions to refer the cases to the Panel be granted; transferred all cases listed in Exhibit A to the Administrative Order to the Panel for further proceedings; and further ordered that the Panel is authorized to transfer and join with the existing Mass Litigation any similar or related actions subsequently filed in any circuit court.

On November 13, 2014, the Panel entered an order assigning judges to the litigation and setting a status and scheduling conference. On November 25, 2014, the Panel ordered the litigation consolidated under the style, *In re: Marcellus Shale Litigation*, Civil Action No. 14-C-3000, designated the litigation for electronic filing and service, and transferred the litigation to the Circuit Court of Ohio County, West Virginia, solely for purposes of implementing electronic filing and service. On December 22, 2014, a status conference was conducted. Thereafter, the Court entered a Case Management Order for the

Harrison County Cherry Camp Trial Group on January 16, 2015, and granted a joint motion to refer 73 additional cases in the Marcellus Shale Litigation on March 24, 2015.

Mingo County Coal Slurry Litigation

Dismissal orders have been entered in 377 out of 379 cases. The Presiding Judges assigned to the Mingo County Coal Slurry Litigation continue to work through various post-settlement motions.

Mountain State University Litigation

On October 24, 2014, the Presiding Judges assigned to the Mountain State University Litigation entered a Preliminary Approval Order granting preliminary approval of a settlement agreement and release dated September 3, 2014; preliminarily certifying a limited fund settlement class pursuant to Rule 23(b)(1)(B) of the West Virginia Rules of Civil Procedure; approving the form and manner of providing notice to the putative class; staying certain litigation; and setting a schedule leading to the final approval hearing. On January 16, 2015, the Court held another hearing and ordered additional notice consistent with the Notice Plan be sent to the putative class members; approved the sale of Mountain State University's real estate in Beckley, West Virginia, to West Virginia University for the sum of \$8,000,000; approved the sale of Mountain State University's real estate in Martinsburg, West Virginia, to Viking Way Holdings, LLC for the sum of \$2,000,000; and scheduled a final fairness hearing. The Court held a final fairness hearing on February 26, 2015, and entered a Final Approval Order on March 9, 2015, approving the settlement agreement and release; certifying a limited fund settlement class pursuant to Rule 23(b)(1)(B) of the West Virginia Rules of Civil Procedure for the purposes of the settlement; approving the form and manner of notice provided to the class; and granting an injunction against certain litigation.

University Commons Litigation

A hearing on plaintiffs' motion to approve settlement was conducted, and on January 29, 2014, the Court entered a Final Order Approving the Settlement and Dismissing, With Prejudice, All Claims. Hearings were conducted on June 2, 2014 and August 19, 2014, regarding a proposed remediation plan for the University Commons Riverside Condominium Complex (UCR Complex). On August 27, 2014, the Court conditionally approved the proposed remediation plan, and appointed a Special Master to lead the remediation project and prepare a final agreed list of recommended repairs to the UCR Complex. The Court approved, in part, the final agreed list of recommended repairs on September 29, 2014. Petitioner Andrew C. Smith, *pro se*, filed a notice of appeal of the Court's August 27, 2014, Order, and moved to stay the August 27 order. The Supreme Court denied petitioner's motion to stay on October 9, 2014, and dismissed the appeal on April 7, 2015. The Court reviews the Special Master's monthly status report regarding work performed on remediation of the UCR Complex, and authorizes payments to be released from the settlement funds for the remediation.

Zoloft Litigation

The Zoloft Litigation was stayed pending the Supreme Court's decision on a petition for writ of prohibition in *State ex rel., J.C. v. Mazzone*, No. 14-1189. The Writ was denied on April 10, 2015.

Electronic Filing and Service in Mass Litigation

From January 2014 through December 2014 in all Mass Litigation cases subject to electronic filing and service 121,863 documents were e-filed and 3,937,018 documents were e-served. The statistics include items rejected in the clerk review process in order to capture all work performed in the three circuit court clerks' offices in these litigations, as well as orders, which do not go through the clerk review process.

During 2014, the number of pages electronically filed in all Mass Litigation cases subject to electronic filing and service totaled 757,218, which equals almost 316 boxes of paper documents, based on 2400 pages per box. From December 2008, when electronic filing and service was first implemented in certain Mass Litigation cases, through the end of December 2014, there were 463,777 documents filed electronically, totaling 2,868,955 pages. This translates to a little over 1,195 boxes of paper documents.

From January 2014 through December 2014, a total of 8,032 orders were entered in Mass Litigation cases subject to electronic filing and service. That number includes bench orders entered by the judge but filed by a circuit clerk or attorney. The following is a breakdown of orders by each Mass Litigation subject to electronic filing and service:

| Litigation | Jan-Dec 2014 |
|---------------------------|---------------------|
| Asbestos | 7832 |
| Carbon Monoxide | 24 |
| Float-Sink | 18 |
| Marcellus Shale | 1 |
| Mingo County Coal Slurry | 45 |
| Mountain State University | 48 |
| Tobacco | 1 |
| University Commons | 35 |
| Zoloft | 22 |
| TOTAL | 8026 |