

# 2024 Annual Report of the Mass Litigation Panel

## 2024 Panel Chair:

**Judge Gregory L. Howard, Jr.**, Sixth Judicial Circuit (Cabell County), was appointed to serve as Chair beginning October 20, 2023, through June 30, 2024. Judge Howard was re-appointed to serve as Chair from July 1, 2024, through June 30, 2025.

## 2024 Panel Members:

**Judge Stephanie Abraham**, Thirteenth Judicial Circuit (Kanawha County) through June 30, 2025.

**Judge Perri Jo DeChristopher**, Seventeenth Judicial Circuit (Monongalia County) through June 30, 2025.

**Judge Jason A. Wharton**, Fourth Judicial Circuit (Wirt and Wood Counties) through June 30, 2026.

**Judge Chad Lovejoy**, Sixth Judicial Circuit (Cabell County) through June 30, 2026.

**Judge Jack Alsop**, Fourteenth Judicial Circuit (Braxton, Clay, Gilmer, and Webster Counties), until he retired on December 31, 2024. Effective January 1, 2025, the Supreme Court approved Judge Alsop for admission to senior status and appointed him to continue to serve on the Panel through June 30, 2027.

**Judge Jay M. Hoke**, Twenty-Fifth Judicial Circuit (Boone and Lincoln Counties), was a member of the Panel until his term expired on June 30, 2024.

**Judge Robert E. Ryan**, Twenty-First Judicial Circuit (Grant, Mineral, and Tucker Counties) was a member of the Panel until his term as a circuit court judge ended on December 31, 2024.

## Mass Litigations Pending in 2024:

<b>Asbestos Personal Injury Litigation</b> <b>Civil Action No. 03-C-9600</b>	Kanawha County	Ronald E. Wilson, Presiding Judge Jack Alsop, Presiding Judge <sup>1</sup>
<b>FELA Asbestos Cases</b> <b>Civil Action No. 02-C-9500</b>	Kanawha County	Jay M. Hoke, Presiding Judge Gregory L. Howard, Jr., Presiding Judge <sup>2</sup>
<b>Mingo County</b> <b>Coal Slurry Litigation</b> <b>Civil Action No. 10-C-5000</b>	Ohio County	Jay M. Hoke, Presiding Judge Gregory L. Howard, Jr., Presiding Judge <sup>3</sup>

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<sup>1</sup> The Supreme Court assigned Judge Ronald E. Wilson to the Asbestos Personal Injury Litigation in 2003. Judge Wilson presided in this Mass Litigation until he retired on December 31, 2024. By order entered on December 26, 2024, the Panel Chair assigned Judge Jack Alsop to preside in the Asbestos Personal Injury Litigation effective January 1, 2025 (Transaction ID 75308106).

<sup>2</sup> Judge Jay M. Hoke was assigned to preside in the FELA Asbestos Cases by order of the Panel entered on September 4, 2018 (Transaction ID 62404953). Judge Hoke's term on the Panel expired on June 30, 2024. Judge Gregory L. Howard, Jr. was assigned to preside in the FELA Asbestos Cases by order of the Panel entered on September 5, 2024 (Transaction ID 74240117).

<sup>3</sup> Judge Jay M. Hoke was assigned to preside in the Mingo County Coal Slurry Litigation by order of the Panel entered on May 27, 2010. Judge Hoke's term on the Panel expired on June 30, 2024. Judge Gregory L. Howard, Jr. was assigned to preside in the Mingo County Coal Slurry Litigation by order of the Panel entered on September 10, 2024 (Transaction ID 74279636).

## **Asbestos Personal Injury Litigation**

In 2024, Judge Ronald E. Wilson scheduled 3 trial groups, consisting of approximately 60 Asbestos Personal Injury cases – living and deceased mesothelioma cases and living lung cancer cases – and 60 Backlog Lung Cancer cases, for a total of 120 cases scheduled for trial in February, June, and October 2024. Although most of the cases were resolved before trial, a small number of cases were moved to future trial groups. 108,552 documents were filed, and 4,525 orders were entered in the Asbestos Personal Injury Litigation in 2024.

## **FELA Asbestos Cases**

6 FELA Asbestos cases are currently pending: 3 cases filed in 2020; 1 case filed in 2022; and 2 cases filed in 2023. 4 cases were dismissed in 2024 as fully compromised and settled. Judge Gregory L. Howard, Jr. conducted status conferences in the 6 pending cases on January 27, 2025, scheduled oral argument on dispositive motions in 3 cases, scheduled trial dates in 2 cases, and scheduled another status conference in 1 case.

## **Mingo County Coal Slurry Litigation**

Judge Gregory L. Howard, Jr. continues to monitor the Mingo County Coal Slurry Litigation Medical Monitoring Program's Irrevocable Medical Care Trust.

## **Opioid Litigation**

All matters in controversy between all Plaintiffs and all Defendants have been resolved. The NAS cases were dismissed, with prejudice, subject to appeal, by Orders entered May 31, 2023,<sup>4</sup> and June 27, 2023,<sup>5</sup> pursuant to motions to dismiss filed by all Defendants. Plaintiffs filed Notices of Appeal to the Intermediate Court of Appeals on June 29, 2023,<sup>6</sup> June 30, 2023,<sup>7</sup> and July 14, 2023.<sup>8</sup> The

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<sup>4</sup> *Order Granting Defendants' Motions to Dismiss* (Transaction ID 70112431) entered May 31, 2023.

<sup>5</sup> *Order Regarding Motions to Dismiss* (Transaction ID 70266225) entered June 27, 2023.

<sup>6</sup> Notice of Appeal filed June 29, 2023, *A.D.A. as next friend of L.R.A. v. Johnson & Johnson, et al.*, C.A. No. 21-C-110 MSH (Transaction ID 70288606). *See also*, No. 23-ICA-275 (Transaction ID 70287681).

<sup>7</sup> Notice of Appeal filed June 30, 2023, *A.N.C. as next friend of J.J.S. v. Johnson & Johnson, et al.*, C.A. No. 22-C-73 MSH (Transaction ID 70292268). *See also*, No. 23-ICA-276 (Transaction ID 70290811). Notice of Appeal filed June 30, 2023, *Travis Blankenship, Next Friend and Guardian of Minor Child Z.D.C., et al., v. McKesson Corporation, et al.*, C.A. Nos. 22-C-5 MSH, and 22-C-20 MSH through 22-C-36 MSH. *See also*, No. 23-ICA-287 (Transaction ID 70291818).

<sup>8</sup> Notice of Appeal filed July 14, 2023, *Trey Sparks v. Johnson & Johnson, et al.*, C.A. No. 23-C-14 MSH (Transaction ID 70396729). *See also*, No. 23-ICA-307 (Transaction ID 70395956).

ICA heard oral argument under Rule 20 on September 17, 2024, as part of ICA On-Campus.<sup>9</sup> On December 27, 2024, the ICA issued an opinion affirming in part, reversing in part, vacating in part, and remanding the NAS cases for further proceedings consistent with the ICA's opinion.

On March 7, 2024, the Panel ordered *State of West Virginia v. Publicis Health, LLC*, Civil Action No. CC-40-2024-C-20 transferred to Panel and joined with the Opioid Litigation (Transaction ID 72298093). The final consent judgment/consent order was entered in that case on March 19, 2024 (Transaction ID 72555495).

The State and Local Governments have entered into the West Virginia First Memorandum of Understanding ("MOU")<sup>10</sup> regarding the division of monetary amounts obtained through settlement or judgment, which has been adopted by the Court.<sup>11</sup> According to the terms of the MOU, 72.5 % will be distributed to the West Virginia First Foundation, which has been incorporated and approved by the West Virginia Legislature,<sup>12</sup> and 24.5 % will be paid to the Local Governments and divided pursuant to a formula agreed to by all parties. The remaining 3% will be held in escrow by the State for expenses incurred related to opioid litigation. If the 3% is not spent by December 31, 2026, then 1% goes to the Local Governments and 2% goes to the West Virginia First Foundation.<sup>13</sup>

A qualified settlement fund has been established, a Fund Administrator has been appointed, and a banking institution has been designated in which settlement funds will be deposited.<sup>14</sup> The Presiding Judges review the quarterly reports for the West Virginia First Qualified Settlement Fund, jointly filed by the Fund Administrator and the Custodial Bank and enter orders regarding payment of administrative costs.<sup>15</sup>

In 2024, the Presiding Judges also entered orders addressing MDL 2804 Common Benefit payments,<sup>16</sup> reimbursement of litigation held expenses and distribution of attorney fees,<sup>17</sup> and the

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<sup>9</sup> Order filed by the Intermediated Court of Appeals on July 12, 2024 (Transaction ID 73642188).

<sup>10</sup> Attached as Exhibit A to *Motion to Adopt the West Virginia First Memorandum of Understanding* (Transaction ID 68760098) filed January 4, 2023.

<sup>11</sup> *Order Adopting the West Virginia First Memorandum of Understanding* (Transaction ID 68796699)

<sup>12</sup> W. Va. Code § 5-31-1 to § 5-31-5 (eff. March 10, 2023).

<sup>13</sup> West Virginia First Memorandum of Understanding, Section B.2.b.i.-iii.

<sup>14</sup> *Order Establishing West Virginia First Qualified Settlement Fund and Appointing Settlement Fund Administrator* (Transaction ID 68247796) entered October 13, 2022; and *Order Regarding the West Virginia First Qualified Settlement Fund Custodial Bank and Administrator Duties* (Transaction ID 68524883) entered December 7, 2022.

<sup>15</sup> See Orders entered January 29, 2024 (Transaction ID 71898571), May 8, 2024 (Transaction ID 72999920), August 15, 2024 (Transaction ID 74059072), and November 19, 2024 (Transaction ID 75036375).

<sup>16</sup> *Order Regarding Motion for Clarification Regarding MDL 2804 Common Benefit Payments* (Transaction ID 72142540) and *Order Clarifying MDL 2804 Common Benefit Payments* (Transaction ID 73301337).

<sup>17</sup> *Order Approving Special Commissioner's Recommendations Regarding Reimbursement of Litigation Held Expenses and Distribution of Attorney Fees* (Transaction ID 74345665).

Qualified Settlement Fund Administrator's motion and recommendations for 2024 distribution of opioid abatement funds.<sup>18</sup>

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<sup>18</sup> *Order Regarding Qualified Settlement Fund Administrator's Motion and Recommendations for 2024 Distribution of Opioid Abatement Funds* (Transaction ID 75285869).