



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
IN RE: FELA ASBESTOS CASES **CIVIL ACTION NO. 02-C-9500**

THIS DOCUMENT APPLIES TO:

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DAVID PRICE,

Plaintiff,

v.

CC-20-2024-C-1398
Judge Maryclaire Akers

NORFOLK SOUTHERN
RAILWAY COMPANY, a corporation,

Defendant.

**ORDER GRANTING NORFOLK SOUTHERN RAILWAY COMPANY'S
MOTION TO JOIN IN EXISTING MASS LITIGATION**

Pending before the Court is *Defendant Norfolk Southern Railway Company's Motion to Join in Existing Mass Litigation* ("Motion") (Transaction ID 75775919). Pursuant to West Virginia Trial Court Rule 26.09, Defendant Norfolk Southern Railway Company ("NSRC") has moved the undersigned Presiding Judge assigned to the FELA Asbestos Cases for an Order joining the above-captioned civil action pending in the Circuit Court of Kanawha County, West Virginia, with *In re: FELA Asbestos Cases*, Civil Action No. 02-C-9500, pending in the Circuit Court of Kanawha County, West Virginia.

Having reviewed the Motion and evidence filed by counsel for Defendant NSRC as well as the law pertaining to the issues raised therein, and Trial Court Rule 26.09, and for good and sufficient reasons appearing to the Court therefore, the Court finds and rules as follows:

Findings of Fact:

1. This is a case brought under the Federal Employers' Liability Act, 45 U.S.C. Sec. 51 *et seq.* ("FELA"). See ¶ 4, *Plaintiff's Complaint*, copy attached to NSRC's Motion as *Exhibit A*.

2. Plaintiff David Price alleges that during his employment with Norfolk Southern Railway Company ("NSRC") from approximately 1974 to 2016, he was exposed to toxic substances and carcinogens in the course of his work. Specifically, Plaintiff claims exposure to diesel exhaust, diesel fumes, and soot, coal dust and coal smoke benzene and polycyclic aromatic hydrocarbons (PAHs), creosote, silica sand as well as asbestos-containing materials, which he alleges contributed to his occupational exposure to harmful substances. *Plaintiff's Complaint, Exhibit A*.

3. Plaintiff further alleges that the defendant violated the FELA by its negligent acts or omissions by:

- (a) Failing to provide a reasonably safe work environment for the Plaintiff.
- (b) Failing to warn the Plaintiff of the dangers associated with toxic substances.
- (c) Failing to provide hazard control to the Plaintiff.

Plaintiff's Complaint, Exhibit A.

4. Plaintiff alleges that his alleged occupational exposure to toxic substance caused or contributed to his cancer. *Plaintiff's Complaint, Exhibit A*

Conclusions of Law:

1. By Administrative Order entered on April 29, 2009, the Supreme Court of Appeals of West Virginia ordered "all pending and subsequently filed cases in West Virginia asserting claims under FELA 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 are transferred to the

Circuit Court of Kanawha County, West Virginia, for coordinated or consolidated resolution in *In re: FELA Asbestos Cases*, Kanawha County Civil Action No. 02-C-9500....”

2. Plaintiff’s case qualifies as a lawsuit subject to the Chief Justice’s 2009 Order and under the provisions of West Virginia Trial Court Rule 26.09 this case should be transferred and joined with *In re: FELA Asbestos Cases*, Kanawha County Civil Action No 02-C-9500.

3. Considering the foregoing, with the advice and consent of the Mass Litigation Panel, the Court **GRANTS** *Defendant Norfolk Southern Railway Company’s Motion to Join in Existing Mass Litigation* and **ORDERS** the above-captioned civil action transferred and joined with in *In Re: FELA Asbestos Cases*, Kanawha County Civil Action No. 02-C-9500.

4. The above-captioned civil action is designated for electronic filing and service, as provided in West Virginia Trial Court Rule 15.01, *et seq.*, effective immediately. To facilitate electronic filing and service in *In Re: FELA Asbestos Cases*, Civil Action No. 02-C-9500, pending in the Circuit Court of Kanawha County, West Virginia, the number for the above-captioned civil action shall hereinafter be **24-C-1398 KAN FELA**.

The Clerk of the Circuit Court of Kanawha County, West Virginia, is **ORDERED** to serve a copy of this Order on the Honorable Maryclaire Akers and all counsel of record in the above-captioned civil action. All counsel of record in *In Re: FELA Asbestos Cases*, Civil Action No. 02-C-9500 and in Civil Action No. 24-C-1398 KAN FELA shall this day be electronically served with a copy of this Order via File & Serve*Xpress*.

It is so **ORDERED**.

ENTERED: March 25, 2025.

/s/ Gregory L. Howard, Jr.
Presiding Judge
FELA Asbestos Cases