

2021 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 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 Jack Alsop of the Fourteenth Judicial Circuit (Braxton, Clay, Gilmer and Webster Counties); Judge Joanna I. Tabit of the Thirteenth Judicial Circuit (Kanawha County); Judge Christopher J. McCarthy of the Fifteenth Judicial Circuit (Harrison County); and Judge Gregory L. Howard of the Sixth Judicial Circuit (Cabell County).

The following is a list of Mass Litigations pending in 2021, the county in which the litigation is pending, and the judge or judges assigned to the litigation:

Asbestos Personal Injury Litigation Civil Action No. 03-C-9600	Kanawha County	Ronald E. Wilson, Presiding Judge ¹
FELA Asbestos Cases Civil Action No. 02-C-9500	Kanawha County	Jay M. Hoke, Presiding Judge
Gavin Landfill Litigation Civil Action No. 16-C-8000	Raleigh County	Derek C. Swope, Lead Presiding Judge Jack Alsop, Presiding Judge Alan D. Moats, Resolution Judge Jay M. Hoke, Resolution Judge
Marcellus Shale Litigation Civil Action No. 14-C-3000	Ohio County	Derek C. Swope, Lead Presiding Judge Midstream Cases Jack Alsop, Lead Presiding Judge Well Pad Cases Alan D. Moats, Presiding Judge Jay M. Hoke, Lead Resolution Judge Joanna I. Tabit, Resolution Judge
Mingo County Coal Slurry Litigation Civil Action No. 10-C-5000	Ohio County	Jay M. Hoke, Presiding Judge Derek C. Swope, Lead Resolution Judge Alan D. Moats, Resolution Judge
Opioid Litigation Civil Action No. 19-C-9000	Kanawha County	Alan D. Moats, Lead Presiding Judge Derek C. Swope, Presiding Judge Joanna I. Tabit, Lead Resolution Judge Jay M. Hoke, Resolution Judge Gregory L. Howard, Resolution Judge

Asbestos Personal Injury Litigation

In 2021, Judge Ronald E. Wilson conducted 3 trial groups, consisting of approximately 60 Asbestos Personal Injury cases – living and deceased mesothelioma cases and living lung cancer cases –

¹ Judge Ronald E. Wilson is not a current member of the Mass Litigation Panel. However, Judge Wilson was assigned to the Asbestos Personal Injury Litigation while serving on the Panel and continues to preside in that litigation.

and 60 Backlog Lung Cancer cases, for a total of 120 cases. Due to the COVID-19 pandemic, the February 2021 trial group was conducted in June 2021 in Kanawha County. The October 2021 trial group was conducted in Ohio County. One living mesothelioma case went to trial for two weeks in June, with settlement reached at the end of the trial before it went to the jury. Another mesothelioma case was tried in Wheeling, WV in August 2021, which also ended in settlement. Most of the cases in the 2021 trial groups were settled.

FELA Asbestos Cases

8 FELA Asbestos cases are currently pending on Presiding Judge Jay M. Hoke's docket: 1 case filed in 2018; 2 cases filed in 2019; 4 cases filed in 2020; and 1 case filed in 2021.

Gavin Landfill Litigation

Distributions from the Qualified Settlement Fund have been made and dismissal orders have been entered in all 40 cases. On September 30, 2021, Lead Presiding Judge Derek C. Swope entered an agreed order dismissing the Gavin Landfill Litigation.

Marcellus Shale Litigation

Midstream Cases

Lead Presiding Judge Derek C. Swope entered case management orders scheduling the last two Midstream Cases trial groups for trial in 2021 – the Fort Beeler Trial Group in January 2021, and the Oak Grove Trial Group in August 2021. During 2020 and 2021, the parties conducted discovery and motion practice, Judge Swope issued rulings on pretrial motions and conducted numerous hearings, and Lead Resolution Judge Jay M. Hoke and Resolution Judge Joanna I. Tabit conducted several mediations of the Midstream Cases. As a result of these combined efforts, all Midstream Cases trial groups have been resolved.

Well Pad Cases

Lead Presiding Judge Jack Alsop entered case management orders scheduling 3 Well Pad Cases trial groups for trial in 2021 and 4 Well Pad Cases trial groups for trial in 2022. During 2021, the parties conducted discovery and motion practice, Judge Alsop issued rulings on pretrial motions and conducted numerous hearings, and Lead Resolution Judge Jay M. Hoke, Resolution Judge Joanna I. Tabit conducted several mediations of the Well Pad Cases. As a result of these combined efforts, all Well Pad Cases trial groups have been resolved.

Mingo County Coal Slurry Litigation

Presiding Judge Jay M. Hoke continues to monitor the Mingo County Coal Slurry Litigation Medical Monitoring Program's Irrevocable Medical Care Trust.

Opioid Litigation

Certain defendants filed petitions for writ of prohibition on September 10, 2020, *State ex rel. AmerisourceBergen Drug Corp., et al. v. Hon. Alan D. Moats, et al.*, No. 20-0694, and September 25, 2020, *State ex rel. Johnson & Johnson, et al. v. Hon. Alan D. Moats, et al.*, No. 20-0751. On December

3, 2020, the Supreme Court of Appeals of West Virginia awarded a Rule to Show Cause as to the petitions, consolidated the cases for purposes of oral argument, consideration, and decision, and scheduled oral argument under Rule 20 of the Rules of Appellate Procedure on February 17, 2021. On December 16, 2020, the Supreme Court ordered the automatic stay of the lower court proceedings lifted for the limited purpose of allowing mediation to proceed, but otherwise refused to lift the stay. Lead Resolution Judge Joanna I. Tabit, Resolution Judge Jay M. Hoke and Resolution Judge Gregory Howard reconvened mediation on December 18, 2020, and conducted additional mediation in April, October, and December 2021. Additional mediation is scheduled to be conducted on February 3-4, 2022.

On June 11, 2021, the Supreme Court issued an opinion denying in part and granting in part petition for prohibition No. 20-0694 and denying petition for prohibition No. 20-0751. *State ex rel. AmerisourceBergen Drug Corp. v. Moats*, 859 S.E.2d 374 (W. Va. 2021). The Supreme Court issued Mandates on July 13, 2021, making the opinion final. On July 20, 2021, Lead Presiding Judge Alan D. Moats granted the State of West Virginia's motion to transfer to the Mass Litigation Panel and join with the Opioid Litigation four cases filed against certain national retail pharmacies.

On August 4, 2021, Judge Moats and Presiding Judge Derek C. Swope granted the State of West Virginia's motion to sever three cases filed by the State against certain manufacturers of prescription opioids, ordered the cases set for a consolidated expedited bench trial of the State's public nuisance and West Virginia Consumer Credit and Protection Act ("WVCCPA") claims to begin on April 4, 2022 and denied Defendants' motion to stay the cases. On August 6, 2021, the Presiding Judges vacated the October 13, 2020 Order scheduling a Phase I, non-jury trial of liability for public nuisance on November 21, 2021.

The Presiding Judges conducted a status conference on September 10, 2021, during which they granted the State's motion to sever the cases filed by the State against certain national retail pharmacies and ordered the cases set for an expedited bench trial of the State's public nuisance and WVCCPA claims to begin on September 12, 2022. On September 30, 2021, the Presiding Judges ordered an expedited bench trial on July 5, 2022, for all City/County and Hospital plaintiffs which had voluntarily dismissed their legal claims in accordance with *State ex rel. AmerisourceBergen Drug Corp. v. Moats*, 859 S.E.2d 374 (W. Va. 2021). The Presiding Judges amended the order on October 6, 2021 to clarify that the July 5, 2022 trial would be against certain distributors of prescription opioids.

On October 27, 2021, the Presiding Judges ordered consolidation of the City/County plaintiffs' cases against certain distributors of prescription opioids for purposes of conducting an expedited bench trial of liability for public nuisance on July 5, 2022, with a separate trial of the Hospital plaintiffs' nuisance claims to be scheduled on a date to be determined. The Presiding Judges further ordered that general causation will be addressed in Phase I trials of liability for public nuisance against manufacturers, distributors, and pharmacies. If general causation is proved in any of the Phase I trials, then specific causation will be addressed in a Phase II statewide abatement trial. On December 7, 2021, certain distributor defendants filed a petition for writ of prohibition.