



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: FLOOD LITIGATION

MC FLOOD 7/8/2001

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER REGARDING PROCEDURES AND METHODOLOGY
FOR REIMBURSEMENT OF DEFENSE LIAISON COUNSEL'S
FEES AND EXPENSES**

WHEREAS, by letters dated March 31, 2009 and July 31, 2009 submitted to the Mass Litigation Panel ("the Panel") and counsel for defendants, Defense Liaison Counsel in *In Re: Flood Litigation, MC Flood 7/8/2001* ("Flood Litigation") requested that the Panel adopt and approve certain procedures and methodology for reimbursement of a part of Defense Liaison Counsel fees and expenses.

WHEREAS, Defense Liaison Counsel represented that the remaining defendants, their counsel and their insurance carriers were able to reach a general consensus regarding the proposed fee reimbursement methodology, but did not come to complete agreement.

WHEREAS, Defense Liaison Counsel filed a "Motion Requesting Approval of Procedures and Methodology Governing Reimbursement of Defense Liaison Counsel Fees and Expenses" on August 18, 2009, (Transaction ID 26654522) requesting that the Panel adopt and approve the proposal for procedures and methodology for reimbursement of a part of Defense Liaison Counsel fees and expenses, as set forth in letters submitted to the Panel and counsel/law firms for defendants dated March 31, 2009 and July 31, 2009, and the motion was noticed for hearing on October 13, 2009 (Transaction ID 26718276).

WHEREAS, on September 3, 2009, Defense Liaison Counsel submitted a letter to the Panel requesting a ruling on the motion prior to October 13; setting forth an agreed

upon procedure by which any counsel/law firm for the remaining defendants could submit comments for or against Defense Liaison Counsel's reimbursement proposal by confidential letter; and representing that "Defense counsel unanimously agree that Your Honor may decide the Motion based solely upon the letters submitted if you deem it appropriate"

WHEREAS, West Virginia Trial Court Rule 26.08(c) provides that, "In the absence of an agreement of the parties, the Presiding Judge is authorized to appoint Liaison Counsel and/or Lead Counsel and, after consultation with all counsel, to determine the method and manner of compensation for Liaison Counsel and/or Lead Counsel."

NOW THEREFORE, having fully and carefully considered the motion of Defense Liaison Counsel to adopt and approve the proposal for procedures and methodology for reimbursement of a part of Defense Liaison Counsel fees and expenses, as set forth in letters dated March 31, 2009 and July 31, 2009 previously submitted to the Panel and the counsel/law firms for the remaining defendants, as well as any confidential letters submitted by defense counsel in response to the motion, the Panel finds that the following procedures and methodology are fair and reasonable and are hereby

APPROVED AND ADOPTED:

1. Each month, every counsel/law firm representing defendants who remain in the Flood Litigation, including those remaining defendants represented by Jackson Kelly PLLC ("JK"), will be allocated a percentage of the liaising fees and costs incurred by Defense Liaison Counsel in the previous month, using a reimbursement spreadsheet ("the spreadsheet") developed by JK in its role as Defense Liaison Counsel. The

spreadsheet will list each remaining defendant and the civil actions/case numbers in which it remains as a defendant as of the 15th day of the month involved.

Each remaining defendant will have one line on the spreadsheet for every different civil action/case number in which it is a defendant. For example, if defendant X is in three civil actions/case numbers, it will have three lines on the spreadsheet; if it is in 10, it will have 10 lines. The spreadsheet lines will be sorted by counsel/law firm for the remaining defendants. Therefore, if one counsel/law firm represents 2 defendants and each of those 2 defendants are in 5 different civil actions/case numbers, there will be a total of 10 lines on the spreadsheet for that counsel/law firm. The client or clients of that counsel/law firm will be responsible for paying the same percentage of Defense Liaison Counsel fees and expenses as 10 lines bears to the total number of lines on the spreadsheet. Thus, if there are 100 lines on the spreadsheet and the counsel/law firm's client(s) is/are listed on 10 lines, the counsel/law firm's client(s) would be responsible for paying 10% of Defense Liaison Counsel's total fees and expenses that month.

2. By the 10th of each month, JK as Defense Liaison Counsel shall provide the following information to counsel for the remaining defendants:

a) a certification that JK has performed services and/or incurred expenses in its role as Defense Liaison Counsel;

b) the spreadsheet reflecting the total amount owing, the percentage assigned to each counsel/law firm, and the dollar amount owed by each counsel/law firm;
and

c) JK's invoice(s) detailing the work performed and expenses incurred for which it seeks reimbursement (except that JK shall provide a certification,

spreadsheet and invoices for October 2008 through August 2009 as soon as practicable after entry of this order).

3. The certification, spreadsheet and invoices referred to in paragraph 2 shall be marked "CONFIDENTIAL, PRIVILEGED MATERIALS" and may not be shared by counsel/law firms for the remaining defendants with anyone outside of those defending claims in the Flood Litigation and their insurance carrier(s), where applicable, to ensure the details regarding the exact nature of the services rendered and expenses incurred will remain confidential.

4. Within 60 days of receiving such confidential certification, spreadsheet and invoice(s), the counsel/law firm(s) or remaining defendant(s) represented by such counsel/law firm(s) shall tender to JK payment in full of the amount or share allocated in the spreadsheet and as reflected on the invoice(s).

5. Once payment is tendered, any payer may challenge the amount paid by contacting JK and engaging in good faith discussions about the amount in question. If JK and the payer are unable to reach an amicable resolution, the payer may seek review of the disputed amount, which review shall be conducted by a mediator selected by the parties involved (or as ordered by the Lead Presiding Judge in the Flood Litigation) at an informal (off the record), confidential conference. The mediator's decision shall be binding on the parties involved, and the mediator's fees and expenses shall be shared equally by the parties involved. If an amount paid is agreed to be incorrect or is determined by a mediator to be incorrect as to one or more of the remaining defendants, JK shall promptly make the necessary adjustments in the following month's or months' invoice(s) and spreadsheet allocations, or make refunds if necessary.

ENTER: September 23, 2009

/s/ John A. Hutchison

Lead Presiding Judge, Flood Litigation