

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: MOTION TO REFER JERRY ABBOTT, ET AL. V. NORFOLK SOUTHERN RAILWAY CO., MERCER COUNTY CIVIL ACTION NO. 03-C-269, TO THE ASBESTOS LITIGATION PREVIOUSLY REFERRED TO THE MASS LITIGATION PANEL

WHEREAS, By Supreme Court Administrative Order entered on November 17, 2000, all Asbestos cases pending in the Circuit Courts of this State were referred to the Mass Litigation Panel; and

WHEREAS, By Supreme Court Administrative Order entered on December 20, 2000, all Asbestos cases referred to the Mass Litigation Panel were transferred to the Circuit Court of Kanawha County; and

WHEREAS, By Supreme Court Administrative Order entered on July 9, 2002, the Honorable Arthur M. Recht, Judge of the First Judicial Circuit, was assigned as the Supervising Judge to preside in Asbestos cases referred to the Mass Litigation Panel and the Honorable Booker T. Stephens, Judge of the Eighth Judicial Circuit, was assigned to assist Judge Recht in said Asbestos cases; and

WHEREAS, Pursuant to Rule 26.01(e) of the West Virginia Trial Court Rules, the Chief Justice has received a copy of the motion filed in the Circuit Court of Kanawha County in the proceeding of In Re: Asbestos Personal Injury Litigation, Civil Action No. 01-C-9000, which was filed by the Honorable Derek C. Swope, Judge of the Ninth Judicial Circuit, seeking to refer the following pending action to the Asbestos litigation previously referred to the Mass Litigation Panel:

Jerry M. Abbott, et al. v. Norfolk Southern Railway Company, Mercer County Civil Action No. 03-C-269; and

WHEREAS, The time for litigants, attorneys and affected judges to respond has expired, and the Chief Justice has reviewed the motion and response thereto; and

WHEREAS, Rule 26.01(e) of the West Virginia Trial Court Rules provides that the Chief Justice may act directly upon the motion or may direct the Panel to conduct a hearing and make recommendations concerning coordinated or consolidated proceedings under this rule; and

WHEREAS, The Chief Justice finds that the motion appears to be in substantial compliance with Rule 26.01 of the West Virginia Trial Court Rules; and

WHEREAS, Upon review thereof, the Chief Justice finds that this litigation qualifies for a coordinated or consolidated resolution, and in the interests of justice and due process, the case referenced above should be referred to the Mass Litigation Panel;

UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, The Motion to Refer is granted and the case of Jerry M. Abbott, et al. v. Norfolk Southern Railway Company, Mercer County Civil Action No. 03-C-269, is hereby transferred to the Mass Litigation Panel and in accordance with Supreme Court Administrative Order entered on December 20, 2000, the above referenced case is hereby transferred to the Circuit Court of Kanawha County; and

IT IS FURTHER ORDERED, The Clerk of the Circuit Court of Mercer County need take no action to remove or otherwise transfer this matter until further direction is received in writing from the Mass Litigation Panel, a member thereof, or the Chief Justice; and

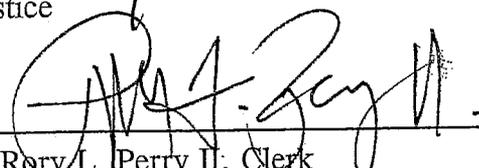
IT IS FURTHER ORDERED, That all proceedings in the transferred case be conducted as provided by law; and

IT IS FINALLY ORDERED, That a copy of this ORDER be transmitted to the Mass Litigation Panel, the Honorable Derek C. Swope, Mark T. Coulter, Esquire (counsel of record for Plaintiffs), Luke A. Lafferre, Esquire (counsel of record for Defendant), and to the Clerks of the Circuit Courts of Kanawha and Mercer Counties.

ENTER: NOVEMBER 5, 2003



LARRY V. STARCHER
Chief Justice

Attest: 

Rory L. Perry II, Clerk
Supreme Court of Appeals