

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA****In Re : Asbestos Litigation****Civil Action No. 00-  
Misc-222****RECOMMENDED ORDER TO THE CHIEF JUSTICE**

On the 29<sup>th</sup> day of August 2000 the Honorable Chief Justice of the Supreme Court Appeals Elliott E. Maynard referred to this court a petition filed by the Honorable Arthur M. Recht and the Honorable A. Andrew McQueen for referral of 25,000 asbestos cases to the Mass Litigation Panel. The Administrative Order required this court to determine under Rule 26.01 of the West Virginia Trial Court Rules to determine if the referral was warranted and in compliance with the rules. On November the 8th 2000 this court undertook an evidentiary hearing for purposes of making proposed Conclusions of Law and Findings of Fact to the Chief Justice. Based upon those hearings, the evidence taken, the arguments made by counsel, and a complete review of the motions and memorandum filed in this matter this court makes the following Findings of Fact and Conclusions of Law :

**Findings of Fact:**

1. The Honorable Arthur M. Recht and the Honorable A. Andrew McQueen filed a motion to refer asbestos litigation to the Mass Litigation Panel on June 27<sup>th</sup>, 2000.
2. In the motion to refer, the moving parties sought to have more than 25,000 asbestos litigation cases currently pending in West Virginia Courts to be referred to the Mass Litigation Panel pursuant to Rule 26 of the Trial Court Rules.
3. Certain defendants filed a motion to stay asbestos cases other than those cases where the trial date was acquired prior to June 27, 2000.

4. On August 29, 2000 the Supreme Court of Appeals of West Virginia issued an Administrative Order, in which the court held that the motion to refer appeared to be in substantial compliance with Rule 26.01 of the West Virginia Trial Court Rules.
5. In its Administrative Order the court ordered the John A. Hutchison, Judge of the Circuit Court of Raleigh County and a member of the Mass Litigation Panel to "hold a prompt hearing to receive evidence and to entertain arguments by the parties or any judge in favor of or in opposition to the motion and in matters related thereto and he shall submit findings of fact and a recommendation to the chief justice".
6. At the hearing held on November the 8th, 2000 court heard from defendants U.S. X and CSX, the two defendants who had filed detailed motions in opposition to the referral, and the court further heard from other plaintiffs and defendants regarding their positions in this matter.
7. In addition to the motion to refer, certain defendants filed a motion to stay certain trial dates in a number of cases, which trial dates were set after June 27, 2000.
8. The plaintiffs and defendants, with the exception of USX and a CSX, generally agreed that the cases should be sent to the mass litigation panel. The concern of all parties however, was what they perceived to be a lack of specific plans to handle these cases. The parties further agreed that in the event the cases were referred to the Mass Litigation Panel, that immediate conferences should be held for purposes of coming up with specific litigation plans for the variety of cases that have been lumped in this referral.
9. The plaintiffs in these actions uniformly opposed the motion for staying all cases filed by certain defendants in this case.
10. The specific cases to which the plaintiffs object being stayed are what have been referred to as the "Brooke Mass One cases" and the "Putnam Mesothelioma cases".
11. USX and CSX specifically object to their cases being referred with the other asbestos cases. These defendants believe that their cases are not significantly similar as is required by the rule. They do however, recognize that there are approximately 2500 railroad cases that contain allegations of asbestos exposure.

## Conclusions Of Law :

1. Under Trial Court Rule 26.01 (e) a motion to refer to the Mass Litigation Panel shall:

“Identify the nature of the action sought to be referred, the number of plaintiffs, the number of defendants, the number of actions pending, the basis for the request, a listing of the particular cases in all the circuit courts for which a referral is being requested, and if known, whether additional related actions may be filed in the future.”

2. The motion to refer in this case has substantially complied with Trial Court Rule 26.01 (b) in that it:

- A. Identifies the nature of the action sought to be referred;
- B. Identifies the number of plaintiffs to a substantial degree of certainty;
- C. Identifies the number of defendants to a substantial degree of certainty;
- D. Identifies the number of actions pending to a substantial degree of certainty; and
- E. Identifies the basis for the referral request;
- F. Identifies the particular cases and all the circuits for which there referral was being requested; and
- G. Identifies whether additional related actions may be filed in the future.

3. Because this Court finds that the Motion To Refer has substantially complied with Trial Court Rule 26.01, the Motion To Refer is granted with respect to all pending asbestos litigation cases in the state of West Virginia.

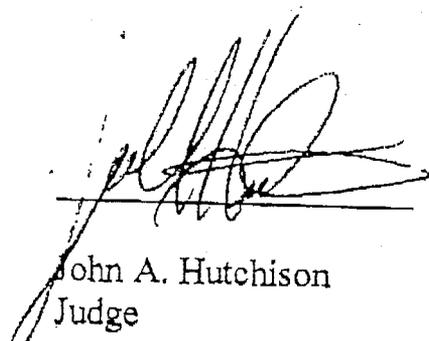
4. Under Trial Court Rule 26.01 (f) the filing of a motion to refer to the Mass Litigation Panel shall not operate to stay discovery in any affected case in any instance or to delay a scheduled trial unless a stay of trial is Order by the Chief Justice.

5. This court finds that in the interests of justice and due process the motion to stay should be granted notwithstanding the provisions of Trial Court Rule 26. 01 (f) with respect to all pending asbestos litigation cases, excluding however, the four cases generally referred to as the "Putnam Mesothelioma cases" which are currently scheduled to be tried on December 12<sup>th</sup> and 13<sup>th</sup> 2000 before the Honorable Clarence Watt Judge of the Circuit Court of Putnam County.

6. The court orders that the stay ordered by this order shall be for a period of not less than 90 days. Within 10 days of the entry of this order the plaintiffs in this matter and the defendants in this matter shall each appoint seven representatives to meet with the Mass Litigation Panel to develop specific rules and strategies to deal with the disposition of these cases. Once appointed the representatives and the Panel shall meet within 30 days to began the process.

7 The parties and the Panel shall, within 90 days from the entry of this order, report to the Chief Justice regarding the plan adopted or shall request additional time and shall further request an extension of the stay ordered herein .

All the above is hereby recommended by this Judge to the Honorable Elliott E. Maynard Chief Justice of the Supreme Court of Appeals of West Virginia on this the 14<sup>th</sup> day of November 2000 .



John A. Hutchison  
Judge

Date: 11-14-00

The foregoing Findings of Fact and Conclusions of Law and the Recommendations contained therein are hereby adopted and approved on this the \_\_\_ day of November 2000.

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Elliott E. Maynard  
Chief Justice