



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: WATER CONTAMINATION LITIGATION CIVIL ACTION NO. 16-C-6000

THIS DOCUMENT APPLIES TO:

**COUNTY COMMISSION OF LINCOLN
COUNTY, WEST VIRGINIA**

Plaintiff,

v.

Civil Action No. 17-C-41 LCN

**WEST VIRGINIA-AMERICAN WATER
WORKS COMPANY, INC.; EASTMAN
CHEMICAL COMPANY; GARY
SOUTHERN; DENNIS P. FARRELL;
WILLIAM E. TIS; CHARLES E. HERZING;
ROBERT J. REYNOLDS; AND MICHAEL
E. BURDETTE**

Defendants

ORDER

Pending before the Presiding Judges is *Governmental Plaintiff Lincoln County Commission's Motion for Reconsideration of The Order of The Judges of This MLP Proceeding That This Governmental Public Prosecution of The Sovereign's Remedial Authorities Under The Public Nuisance Doctrine Be "Joined With In Re: Water Contamination Litigation Civil Action No. L6-C-6000 [sic], Pending in the Circuit Court of Kanawha County, WV"* ("Motion for Reconsideration") (Transaction ID 60770123). The Presiding Judges have reviewed and maturely considered the Motion for Reconsideration and Responses filed by Defendants Eastman Chemical Company (Transaction ID 60825869) and West Virginia-American Water Company (Transaction ID 60828794).

Having conferred with one another to insure uniformity of their decision, as contemplated by Rule 26.07(a) of the West Virginia Trial Court Rules, the Presiding Judges unanimously

FIND that The Lincoln County Commission (“Lincoln County”) has not demonstrated any basis for reconsideration of the Court’s June 12, 2017 Order and, therefore, the motion is DENIED.

As stated in Syllabus Point 3 of *Malone v. Potomac Highlands Airport Auth.*, 237 W.Va. 235, 786 S.E.2d 594, 595 (2015):

A “motion to reconsider” is not recognized under our Rules of Civil Procedure. When motions seek relief afforded by the Rules of Civil Procedure, such motion should expressly identify the Rule of Civil Procedure under which relief is sought and should be captioned accordingly. The filing of motions which fail to identify the Rule of Civil Procedure or other legal authority providing the right to relief may serve as grounds for summary denial.

See also Franklin D. Cleckley, et al., *Litigation Handbook on West Virginia Rules of Civil Procedure* 1297 (4th ed. 2012)(“The rules of civil procedure do not recognize a ‘motion for reconsideration.’”)

That being said, “[i]nterlocutory orders and judgments . . . are left to the plenary power of the court that rendered them to afford such relief from them as justice requires.” *Hubbard v. State Farm Indem. Co.*, 584 S.E.2d 176, 185 (W.Va. 2003)(internal citations omitted). “In an ongoing action, in which no final order has been entered, a trial judge has the authority to reconsider his or her previous rulings [A] trial court has plenary power to reconsider, revise, alter, or amend an interlocutory order” *Id.* (internal citations omitted). “Such requests do not necessarily fall within any specific . . . Rule. They rely on the inherent power of the rendering . . . court to afford such relief from interlocutory judgments . . . as justice requires.” *Id.* (internal citations omitted).

Lincoln County has failed to demonstrate there is just cause for the Panel to reconsider its June 12, 2017, Order joining this civil action with *In re: Water Contamination Litigation*, Civil Action No. 16-C-6000. Lincoln County’s case is a subsequently filed civil action arising out of the very same chemical leak and water contamination at issue as all of the other water

contamination cases referred to the Panel. As such, joinder of this case with *In re: Water Contamination Litigation*, Civil Action No. 16-C-6000 is appropriate under Trial Court Rule 26.09 and the West Virginia Supreme Court's January 28, 2016, Administrative Order referring "all civil actions involving the same or similar common questions of law or fact concerning the chemical leak and water contamination at issue" and authorizing the Mass Litigation Panel "to transfer and join with the existing Mass Litigation any similar or related actions subsequently filed in any circuit court of West Virginia." Nothing asserted by Lincoln County in its Motion for Reconsideration changes that, and justice does not require a different result.

The Panel notes and preserves the objections of any party aggrieved by this Order.

It is so ORDERED.

ENTER: July 12, 2017.

/s/ Alan D. Moats
Lead Presiding Judge
Water Contamination Litigation