



West Virginia E-Filing Notice

CC-17-2024-C-151

Judge: Thomas A. Bedell

To: Joshua Miller
jdm@torisevalaw.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

Mark Walsh v. The City of Clarksburg

CC-17-2024-C-151

The following complaint was FILED on 6/25/2024 5:21:52 PM

Notice Date: 6/25/2024 5:21:52 PM

Albert F. Marano
CLERK OF THE CIRCUIT COURT
Harrison County
301 W. Main Street
CLARKSBURG, WV 26301

(304) 624-8640
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COVER SHEET

E-FILED | 6/25/2024 5:21 PM
CC-17-2024-C-151
Harrison County Circuit Clerk
Albert F. Marano

GENERAL INFORMATION

IN THE CIRCUIT COURT OF HARRISON COUNTY WEST VIRGINIA

Mark Walsh v. The City of Clarksburg

First Plaintiff: Business Individual Government Other

First Defendant: Business Individual Government Other

Judge: Thomas A. Bedell

COMPLAINT INFORMATION

Case Type: Civil

Complaint Type: Other

Origin: Initial Filing Appeal from Municipal Court Appeal from Magistrate Court

Jury Trial Requested: Yes No **Case will be ready for trial by:** 6/1/2026

Mediation Requested: Yes No

Substantial Hardship Requested: Yes No

Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

I am proceeding without an attorney

I have an attorney: Joshua Miller, 1446 NATIONAL RD , WHEELING, WV 26003

SERVED PARTIES

Name: The City of Clarksburg

Address: 222 West Main St., Clarksburg WV 26301

Days to Answer: 20 **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

**WALSH, MARK (Lieutenant), individually,
ALDRICH, NEAL, (Lieutenant) individually,
BARBERIO, FRANK, (Fire Fighter First Class) individually,
BEXFIELD, SCOTT, (Fire Fighter) individually,
BLAKE, JUSTIN, (Fire Fighter First Class) individually,
BLAKE, MICHAEL, (Fire Fighter First Class) individually,
BRADY, JONATHAN, (Lieutenant) individually,
BROWN, DYLAN, (Fire Fighter) individually,
CHAPMAN, JARED, (Fire Fighter) individually,
CROSS, MICHAEL, (Fire Fighter) individually,
CURREY, JONATHAN, (Fire Fighter) individually,
ELKO, BILLY, (Fire Fighter First Class) individually,
FITZPATRICK, IAN, (Lieutenant) individually,
FOSTER, CHRISTOPHER, (Fire Fighter) individually,
FOX, ARDEN, (Fire Fighter) individually,
GREEN, JAMES, (Deputy Chief) individually,
HALL, BRIAN, (Lieutenant) individually,
HANDSCHUMACHER, JON, (Fire Fighter First Class) individually,
HASTINGS, JEREMIAH, (Fire Fighter First Class) individually,
JONES, RICHARD, (Fire Fighter First Class) individually,
KNIGHT, WALTER, (Captain) individually,
MARINO, JADEN, (Fire Fighter) individually,
MARTIN, DARREN, Jr., (Fire Fighter) individually,
MAYLE, JUSTIN, (Fire Fighter First Class) individually,
MCINTIRE, STEPHEN, (Chief) individually,
NEVILLE, JACE, (Probationary Fire Fighter) individually,
PHILLIPS, ETHAN, (Fire Fighter) individually,
PULICE, ADAM, (Lieutenant) individually,
REEL, GERALD, (Lieutenant) individually,
REYNOLDS, ANDREW, (Fire Fighter First Class) individually,
ROHRBOUGH, NATHAN, (Fire Fighter First Class) individually,
RUNNER, CHRIS, (Lieutenant) individually,
SANDERS, JEFFREY, (Fire Fighter First Class) individually,
SANJULIAN, PATRICK, (Captain) individually,
SHINGLETON, CLAYTON, (Probationary Fire Fighter) individually,
SNYDER, DANNY, (Fire Fighter First Class) individually,
STALNAKER, JASON, (Lieutenant) individually,
TOMPKINS, JOSHUA, (Captain) individually,
WATTS, MARION, (Lieutenant) individually,
WEBB, CHRISTOFER, (Fire Fighter First Class) individually,
WEBB, JEFFREY, (Fire Fighter First Class) individually,
WEBBER, JUSTIN, (Fire Fighter) individually,
WOODS, BENJAMIN, (Fire Fighter) individually,
and WRIGHT, JEFFREY, (Fire Fighter First Class) individually,**

Civil Action No.:

Judge:

Plaintiffs,

vs.

**THE CITY OF CLARKSBURG,
a municipal corporation,**

Defendant.

COMPLAINT

NOW COME the Plaintiffs, Mark Walsh, *et al.*, by and through the undersigned counsel, Teresa C. Toriseva, Esq., Joshua D. Miller, Esq., Andrew A. Carpenter, Esq., Gabriella T. Taverne, Esq., and the office of Toriseva Law, and for their Complaint against the Defendant do so state and aver the following:

Prefatory Comment

The Plaintiffs in this lawsuit are current members of the City of Clarksburg Fire Department. As members of a West Virginia paid, professional fire department, the Plaintiffs work to ensure the citizens of the City of Clarksburg (hereinafter referred to as the “City” or “Defendant”) are safe from fire hazards 24-hours a day, 7-days a week, 365-days a year. To meet the needs of the City, the Plaintiffs work 24-hour shifts and are regularly scheduled to work approximately 2,936 hours per year, or about 41% more hours per year than a typical full-time employee. As a result, each of the Plaintiffs works hundreds of hours of overtime per year. For decades, the City has not paid the Plaintiffs overtime compensation consistent with either state or federal law. The City has failed to properly calculate each Plaintiff’s regular rate of pay and has been underpaying each employee for decades. Because the Plaintiff’s regular rate of pay has been miscalculated, the City has not been paying the Plaintiffs their overtime compensation correctly.

The City's miscalculations have artificially reduced the Plaintiffs' pay to the tune of millions of dollars. This lawsuit seeks the recovery of the Plaintiffs' unpaid wages and overtime compensation.

All of the Plaintiffs herein, as members of the City of Clarksburg Fire Department (hereinafter referred to as the "Fire Department"), are similarly situated employees of the defendant and each is asserting rights arising out of the same transaction, occurrence, or series of transactions or occurrences and the questions of law or fact are common to all the Plaintiffs in this action. Pursuant to applicable West Virginia statute and West Virginia case law they are permitted and are filing their case jointly in one action. "Specifically, and the Supreme Court of Appeals of West Virginia so holds, Rule 20(a) provides that all persons may join in one action as plaintiffs if they assert any right to relief (1) arising out of the same transaction or occurrence, and (2) if any question of law or fact common to all these persons will arise in the action. Under Rule 20(a), joinder is proper only if both of these requirements are satisfied." *State ex rel. J.C. v. Mazzone*, 233 W. Va. 457, 459, 759 S.E.2d 200, 202 (2014). See **Exhibit 1**.

PARTIES

1. Plaintiff Mark Walsh is a Lieutenant in the Clarksburg Fire Department and is the President of IAFF Local 89. Mark Walsh is employed as a professional fire fighter with the Defendant City of Clarksburg and he is a West Virginia resident.
2. In addition, the other named Plaintiffs are also all current professional fire fighters of the Fire Department and they are as follows:
 - i. Aldrich, Neal, (Lieutenant) Individually,
 - ii. Barberio, Frank, (Fire Fighter First Class) Individually,
 - iii. Bexfield, Scott, (Fire Fighter) Individually,
 - iv. Blake, Justin, (Fire Fighter First Class) Individually,
 - v. Blake, Michael, (Fire Fighter First Class) Individually,
 - vi. Brady, Jonathan, (Lieutenant) Individually,
 - vii. Brown, Dylan, (Fire Fighter) Individually,
 - viii. Chapman, Jared, (Fire Fighter) Individually,
 - ix. Cross, Michael, (Fire Fighter) Individually,

- x. Currey, Jonathan, (Fire Fighter) Individually,
- xi. Elko, Billy, (Fire Fighter First Class) Individually,
- xii. Fitzpatrick, Ian, (Lieutenant) Individually,
- xiii. Foster, Christopher, (Fire Fighter) Individually,
- xiv. Fox, Arden, (Fire Fighter) Individually,
- xv. Green, James, (Deputy Chief) Individually,
- xvi. Hall, Brian, (Lieutenant) Individually,
- xvii. Handschumacher, Jon, (Fire Fighter First Class) Individually,
- xviii. Hastings, Jeremiah, (Fire Fighter First Class) Individually,
- xix. Jones, Richard, (Fire Fighter First Class) Individually,
- xx. Knight, Walter, (Captain) Individually,
- xxi. Marino, Jaden, (Fire Fighter) Individually,
- xxii. Martin, Darren, Jr., (Fire Fighter) Individually,
- xxiii. Mayle, Justin, (Fire Fighter First Class) Individually,
- xxiv. McIntire, Stephen, (Chief) Individually,
- xxv. Neville, Jace, (Probationary Fire Fighter) Individually,
- xxvi. Phillips, Ethan, (Fire Fighter) Individually,
- xxvii. Pulice, Adam, (Lieutenant) Individually,
- xxviii. Reel, Gerald, (Lieutenant) Individually,
- xxix. Reynolds, Andrew, (Fire Fighter First Class) Individually,
- xxx. Rohrbough, Nathan, (Fire Fighter First Class) Individually,
- xxxi. Runner, Chris, (Lieutenant) Individually,
- xxxii. Sanders, Jeffrey, (Fire Fighter First Class) Individually,
- xxxiii. Sanjulian, Patrick, (Captain) Individually,
- xxxiv. Shingleton, Clayton, (Probationary Fire Fighter) Individually,
- xxxv. Snyder, Danny, (Fire Fighter First Class) Individually,
- xxxvi. Stalnaker, Jason, (Lieutenant) Individually,
- xxxvii. Tompkins, Joshua, (Captain) Individually,
- xxxviii. Watts, Marion, (Lieutenant) Individually,
- xxxix. Webb, Christofer, (Fire Fighter First Class) Individually,
- xl. Webb, Jeffrey, (Fire Fighter First Class) Individually,
- xli. Webber, Justin, (Fire Fighter) Individually,
- xlii. Woods, Benjamin, (Fire Fighter) Individually, and
- xliii. Wright, Jeffrey, (Fire Fighter First Class) Individually.

3. The Plaintiffs are forty-four (44) current Fire fighters for the Fire Department and are employees of the Defendant City of Clarksburg.
4. The City of Clarksburg is a municipal corporation created pursuant to the laws of the State of West Virginia with its municipal building located in Harrison County, West Virginia.
5. There is no applicable statutory immunity from this lawsuit for the City of Clarksburg.

JURISDICTION AND VENUE

6. The minimal jurisdictional amount for this filing is satisfied.
7. Venue is proper in this Court pursuant to W. Va. Code §56-1-1, in that all material acts described herein arose in Harrison County, West Virginia.
8. Additionally, venue is proper in Harrison County per W. Va. Code §29-12A-13.

FACTUAL BACKGROUND

I. City of Clarksburg Fire Department and Fire Fighters.

9. Currently, the Fire Department employs forty-four (44) professional fire fighters and one (1) fire chief.
10. All of the Plaintiffs are dedicated civil servants and are devoted to maintaining public safety in the City.
11. Unfortunately, due to the improper pay practices by the City, the Fire Department is facing critical personnel shortages.
12. The Fire Department is struggling to recruit new talent and to retain the fire fighters it does currently employ in order to maintain adequate coverage in its fire houses.
13. Like many other fire fighters across the country, the Plaintiffs work 24-hour shifts, from 8:00 a.m. one day to 8:00 a.m. the following day.
14. The City's fire fighters are divided into three separate shifts.
15. Shift "A" will work one day, then that shift will be off for 24-hours until working again.
16. During that 24-hour period, Shift "B" or Shift "C" will work a 24-hour shift and then Shift "A" will return and work a 24-hour shift. This rotation will repeat for four (4) calendar days, then Shift "A" will be off for four (4) days.

17. For example, the fire fighters assigned to Shift “A” are scheduled to work a total of 2,928 hours during 2024. The fire fighters on Shift “B” are scheduled to work a total of 2,952 hours during 2024. And the fire fighters on Shift “C” are scheduled to work a total of 2,904 hours during 2024. *See Exhibit 2.*
18. Thus, the Fire Department’s fire fighters are scheduled to work, on average, 2,936 hours in 2024. That is approximately 41% more scheduled hours than a typical full-time employee that works 40 hours per week.

II. How the City of Clarksburg’s Fire Fighters are Compensated.

19. When a fire fighter is hired by the City, he is provided with a written document, signed by a duly authorized representative of the City, agreeing to employ the individual as an employee and states the annual salary (hereinafter referred to as an “Agreement”).
20. Additionally, when a fire fighter is promoted through the ranks under the West Virginia Civil Service Rules for Paid Fire Departments, W. Va. Code § 8-15-11, *et seq.*, the fire fighter receives another written Agreement indicating the promotion and the new increased base salary rate.
21. Each fire fighter also receives certain line item pays for longevity with the Fire Department and for “special assignment pay.”
22. Longevity pay is a pay premium paid to fire fighters for their length of service with the Fire Department. Longevity pay is calculated from an annual pay supplement to the City’s employees.
23. “Special assignment pay” is similar to hazard pay for fire fighters as it is a pay premium designed to enhance fire fighter pay because of the hazardous and dangerous job they perform.

24. Both line items are based on a stated annual amount. That annual amount is then calculated by the City into an hourly wage and added to a fire fighter's hourly rate.
25. A fire fighter's annual salary is equal to his base annual salary plus the longevity and special assignment pay line items.
26. Despite receiving written agreements that the City's fire fighters are compensated based on the basis of an annual salary, each Plaintiff is paid hourly for the hours worked at the Fire Department.
27. The issue in this case is that the City has failed, for decades, to accurately calculate each Plaintiff's hourly rate from the Plaintiff's respective annual salary.
28. Since at least the 1950s, the City has calculated its fire fighters' hourly pay based on 3,328 hours per year. *See Exhibit 3.*
29. No one has been able to identify who determined that a fire fighter's hourly pay is based on 3,328 hours per year, when that figure was calculated, or how exactly it was calculated.
30. For decades, the City calculated the Plaintiffs' pay by dividing a fire fighter's stated annual salary by 3,328 hours.
31. None of the Plaintiffs are scheduled to work 3,328 hours in a given year.
32. The Defendant's use of 3,328 hours for calculating the Plaintiffs' regular rate of pay impermissibly decreases the Plaintiffs' actual regular rate of pay.
33. In late 2023 or early 2024, the City recalculated the number of hours it uses to calculate a fire fighter's regular rate of hourly pay from a stated annual salary.
34. The City now calculates a fire fighter's regular rate of hourly pay based on 3,406 hours instead of the prior 3,328 hour figure.
35. Again, none of the Plaintiffs are scheduled to work 3,406 hours in a given year.

36. It remains unclear who calculated the 3,406 figure, how it was calculated, or why the change was performed by the City. *See Exhibit 4.*
37. The act of increasing the hypothetical number of hours that is used for calculating the fire fighter's hourly pay from 3,328 to 3,406 worked to further decrease the Plaintiff's regular rate of hourly pay.
38. The City's erroneous use of either the 3,328 or 3,406 hour figure has led to a chronic miscalculation of the Plaintiffs' regular rate of hourly pay and overtime pay rate.

III. The City of Clarksburg's Policies and Procedures on Pay and Overtime Compensation.

39. The City utilizes written policies for, among other things, fire fighter pay and benefits.
40. Based on information and belief, the City's most recent Personnel & Administrative Policies & Procedures Manual became effective on October 16, 2020 (hereinafter referred to as the "City's Handbook").
41. According to the City's Handbook, the City has established a work period that begins on Monday morning at 12:01 a.m. and continues to Sunday at midnight. Specifically, it states "The work week used to determine such overtime shall run from Monday morning 12:01 a.m. to Sunday midnight." (City's Handbook, ¶ 32).
42. Likewise, the City's Handbook also promulgates rules for overtime compensation to the City's employees.
43. The City's Handbook provides:

Compensation for overtime hours shall be as follows:

1. Regular, full-time employees other than exempt employees and non 40-hour, regular, full-time employees with the fire department shall have the option to either.

a) Receive case payment equal to one and one-half (1 ½) times the employee's gross hourly rate.

OR

b) receive compensatory time equal to one and one-half (1 ½) hours off for each one (1) hour worked.

2. Non 40-hour, regular, full-time, non-exempt employees with the fire department shall receive a cash payment equal to one and one-half (1 ½) times the employee's gross hourly rate for all overtime hours worked. Compensatory time shall not be made available as an option due to the unique scheduling requirements of the department.

...

Employees shall not work overtime hours without the prior approval of their department head or the department head's designee. If overtime hours are worked without prior approval, the employee shall not be compensated for those hours.

(City's Handbook, ¶ 32) (Emphasis added).

44. The City pays the Plaintiffs overtime pay in the form of one and one-half times the fire fighter's regular rate of hourly pay.
45. The City, however, has incorrectly calculated the Plaintiff's regular rate of pay.
46. Likewise, the Plaintiff's overtime rate of pay is also incorrect.
47. There is no stated policy or mathematical calculation for how the City calculates a fire fighter's regular rate of hourly pay from the stated annual salary.
48. The City's Handbook contains no such policy or mathematical calculation.
49. The City's calculation of a fire fighter's regular rate of hourly pay, when derived from a stated annual salary, is inconsistent with West Virginia law.

IV. West Virginia Law on Fire Fighter Pay and Overtime Compensation.

50. West Virginia law requires that employers, including the City, pay non-exempt employees overtime compensation.

51. Fire fighters are non-exempt employees.

52. The West Virginia Minimum Wage and Maximum Hours Standards for Employees, W. Va.

Code § 21-5C-1, *et seq.* (hereinafter referred to as the “MWMH Law”) provides the following:

On and after [July 1, 1980], no employer shall employ any of his employees for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

W. Va. Code § 21-5C-3(a).

53. The Supreme Court of Appeals of West Virginia has addressed converting fire fighter pay from a stated annual salary into a regular rate of hourly pay and how to calculate overtime compensation.

54. In 1984, the Supreme Court addressed how the City of Morgantown, West Virginia was to calculate its fire fighters’ regular rate of hourly pay from a stated annual salary. The Court held:

[W]here a fixed salary is paid and there is no express agreement or formula shown that sets an amount for a regular rate of pay and an overtime rate of pay of at least one and one-half times the regular rate, such an agreement or formula may not be inferred from hypothetical retroactive calculations.

Local 313, Intern. Ass'n of Fire Fighters v. City of Morgantown, 174 W.Va. 122, 127 (1984)

55. The Court’s opinion in *Local 313* remains good law to this day.

COUNT ONE: VIOLATION OF THE WEST VIRGINIA MINIMUM WAGE AND MAXIMUM HOURS STANDARDS, W.Va. Code § 21-5C-1, et seq. FOR FAILURE TO PROPERLY CALCULATE THE PLAINTIFFS’ REGULAR RATE OF PAY

56. Plaintiffs incorporate by reference in this count all other material allegations set forth elsewhere in this complaint.

57. The Defendant violated the MWMH Law by improperly calculating the Plaintiffs' regular rate of pay and by not paying overtime compensation to the Plaintiffs based on a correct calculation of the Plaintiffs' respective regular rate of pay.
58. The Defendant is an "employer" as defined in W. Va. Code § 21-5C-1(e) as it is a political subdivision.
59. Pursuant to W.Va. Code 21-5C-1(f), the Plaintiffs are "employees" of the Defendant.
60. The Plaintiffs are full-time fire fighters.
61. The Defendant is required to compensate the Plaintiffs for hours they work in excess of forty (40) hours per work week pursuant to W. Va. Code § 21-5C-3(a).
62. The Plaintiffs are routinely scheduled to work more than forty (40) hours per week.
63. The Plaintiffs regularly work more than forty (40) hours per week.
64. The Defendant failed to pay the Plaintiffs overtime wages, at a rate not less than one-and-a-half times their regular rate of hourly pay, for hours that they worked in excess of forty (40) hours in a work week.
65. The Defendant has failed to accurately calculate the Plaintiffs' regular rate of pay consistent with West Virginia law and the MWMH Law.
66. The Defendant has improperly calculated the Plaintiffs' regular rate of pay and has improperly calculated the Plaintiffs' overtime pay rate.
67. The Defendant failed to pay the Plaintiffs their wages due under the MWMH Law.
68. Neither the Plaintiffs nor the Defendant could waive the requirements of the MWMH law.
69. The Plaintiffs are entitled to statutory interest, costs, and fees, including but not limited to, attorneys' fees pursuant to W. Va. Code § 21-5C-8.

70. Consequently, Plaintiffs make a claim for all damages recoverable under West Virginia Law.

71. That insofar as the actions of the Defendant as described herein were done in violation of the West Virginia Minimum Wage and Maximum Hour for Employees, the Plaintiffs are entitled to an award of the costs of this litigation, including attorneys' fees and witness fees.

COUNT TWO: VIOLATION OF THE WEST VIRGINIA WAGE PAYMENT AND COLLECTION ACT, W.VA. CODE §21-5-1 et. seq. FOR FAILURE TO PROPERLY CALCULATE THE PLAINTIFFS' REGULAR RATE OF PAY

72. Plaintiffs incorporate by reference in this count all other material allegations set forth elsewhere in this complaint.

73. The Defendant is an "employer" subject to W.Va. Code §21-5-1 *et seq.*, also known as the West Virginia Wage Payment Collection Act (hereinafter "WPCA").

74. The Plaintiffs are "employees" within the meaning of the WPCA.

75. The West Virginia Supreme Court of Appeals has held that "...the Legislature intended its statutory wage payment and collection guidelines to apply to both governmental and nongovernmental employers alike" *Ingram v. City of Princeton*, 208 W.Va. 352, 356, 540 S.E.2d 569, 573 (2000).

76. W.Va. Code §21-5-3 requires that employers settle with its employees at least twice every month and pay them their wages due, less authorized deductions and authorized wage assignments, for their work or services.

77. The Defendant has failed to properly calculate the Plaintiffs' regular rate of pay consistent with West Virginia law and the WPCA.

78. The Defendant has failed to properly calculate the Plaintiffs' overtime rate of pay consistent with West Virginia law and the WPCA.

79. The Defendant has failed to properly pay the Plaintiffs their regular rate of pay and overtime pay consistent with the City's Handbook.
80. The Defendant failed to timely pay the Plaintiffs their wages due.
81. By failing to properly and promptly pay the aforesaid pay to Plaintiffs, the City of Clarksburg has violated W.Va. Code §21-5-3, by not paying Plaintiffs "wages due" them.
82. By violating W.Va. Code §21-5-3, the City of Clarksburg is liable to pay for the costs of this action including interest and reasonable attorney fees of the plaintiffs pursuant to W.Va. Code §21-5-12 (b).
83. At all times relevant hereto W.Va. Code §21-5-6 provides "[i]f any person, firm or corporation shall refuse for the period of five days to settle with and pay any of its employees.... if presented, and suit be brought for the amount overdue and unpaid, judgment for the amount of such claim proven to be due and unpaid, with legal interest thereon until paid, shall be rendered in favor of the plaintiff in such action."
84. The Defendant has failed to settle with the Plaintiffs in violation of W.Va. Code §21-5-6 for the entirety of Plaintiffs' employment by Defendant.
85. Consequently, Plaintiffs make a claim for all damages recoverable under West Virginia law.
86. That insofar as the actions of the Defendant as described herein were done in violation of the West Virginia Wage Payment and Collection Act, the Plaintiffs are entitled to an award of the costs of this litigation, including attorneys' fees and witness fees.

**COUNT THREE: VIOLATION OF THE WEST VIRGINIA WAGE PAYMENT
AND COLLECTION ACT, W.VA. CODE §21-5-1 et. seq. FOR FAILURE TO
PROMPTLY PAY WAGES WHEN DUE**

87. Plaintiffs incorporate by reference in this count all other material allegations set forth elsewhere in this complaint.

88. The Defendant is an “employer” subject to the WPCA.
89. The Plaintiffs are “employees” within the meaning of the WPCA.
90. W.Va. Code §21-5-3 requires that employers settle with its employees at least twice every month and pay them their wages due, less authorized deductions and authorized wage assignments, for their work or services.
91. The term “wages due” shall include at least all wages earned up to and including the twelfth day immediately preceding the regular payday.
92. The Defendant has routinely and repeatedly failed to pay the Plaintiffs for all hours worked, including overtime hours worked, in the pay period for when those wages are due and owed to the Plaintiffs.
93. The Defendant routinely and repeated pays the Plaintiffs for the aforementioned hours in an untimely manner, and without interest.
94. The Defendant has failed to properly pay the Plaintiffs their wages due as required by the WPCA.
95. By failing to properly and promptly pay the aforesaid pay to plaintiffs, the City of Clarksburg has violated W.Va. Code §21-5-3, by not paying plaintiffs “wages due” them.
96. By violating W.Va. Code §21-5-3, the City of Clarksburg is liable to pay for the costs of this action including interest and reasonable attorney fees of the plaintiffs pursuant to W.Va. Code §21-5-12 (b).
97. At all times relevant hereto W.Va. Code §21-5-6 provides “[i]f any person, firm or corporation shall refuse for the period of five days to settle with and pay any of its employees.... if presented, and suit be brought for the amount overdue and unpaid,

judgment for the amount of such claim proven to be due and unpaid, with legal interest thereon until paid, shall be rendered in favor of the plaintiff in such action.”

98. The Defendant has failed to settle with the Plaintiffs in violation of W.Va. Code §21-5-6 for the entirety of Plaintiffs’ employment by Defendant.

99. Consequently, Plaintiffs make a claim for all damages recoverable under West Virginia law.

100. That insofar as the actions of the Defendant as described herein were done in violation of the West Virginia Wage Payment and Collection Act, the Plaintiffs are entitled to an award of the costs of this litigation, including attorneys’ fees and witness fees.

COUNT FOUR: VIOLATION OF THE WEST VIRGINIA WAGE PAYMENT AND COLLECTION ACT, W.VA. CODE §21-5-4(E), CLAIM FOR LIQUIDATED DAMAGES

101. Plaintiffs incorporate by reference in this count all material allegations set forth elsewhere in this complaint.

102. At all times relevant hereto, W.Va. Code 21-5-4(e) provided that if a person, firm, or corporation fails to pay an employee wage as required under W.Va. Code § 21-5-4(b) such corporation, “in addition to the amount which was unpaid when due is liable to the employee for two times that unpaid amount as liquidated damages.”

103. The Defendant has failed to pay Plaintiffs for their accumulated overtime earned during their employment with the Defendant.

104. Pursuant to W.Va. Code §21-5-4(e), eligible Plaintiffs are entitled to two times their owed wage as liquidated damages.

105. Under W.Va. Code, 21-5-12(b), the Plaintiffs are entitled to be awarded their costs in bringing this action, including costs and fees, including attorney’s fees.

106. Consequently, Plaintiffs make a claim for all damages recoverable under West Virginia Law.

107. That insofar as the actions of the Defendant as described herein were done in violation of the West Virginia Wage Payment and Collection Act, the Plaintiffs are entitled to an award of the costs of this litigation, including attorneys' fees and witness fees.

COUNT FIVE: BREACH OF EMPLOYMENT AGREEMENT

108. Plaintiffs incorporate by reference in this count all material allegations set forth elsewhere in this complaint.

109. When hired, the Defendant hires and employs the Plaintiffs pursuant to the aforementioned Agreements.

110. Those Agreements, among other things, define certain terms, benefits, and compensation to the Plaintiffs.

111. Those Agreements provide that the Plaintiffs will be paid a stated annual salary.

112. Those Agreements are executed by a duly authorized representative of the City.

113. The Plaintiffs performed all their obligations under the agreement.

114. The Defendant breached its material obligations under the agreement.

115. The Defendant has failed to properly calculate the Plaintiffs' regular rate of pay and overtime rate of pay consistent with the Agreements and West Virginia law.

116. As a direct and proximate result of the Defendant's breach of Agreements, the Plaintiffs suffered lost wages, lost income, lost benefits, and other harm.

117. Consequently, Plaintiffs make a claim for all damages recoverable under West Virginia Law.

PRAYER FOR DAMAGES

Plaintiffs respectfully request a judgment in their favor and against the Defendant and pray for all available relief and damages, including, but not limited to, injunctive relief, declaratory

relief, compensatory damages, statutory interest, liquidated damages, in an amount to be determined by the finder of fact at trial, plus costs and fees, including attorneys' fees, and any other relief this Court deems just and proper.

By: /s/

Teresa C. Toriseva, Esq. WV ID# 6947

Joshua D. Miller, Esq. WV ID# 12439

Andrew A. Carpenter, Esq. WV ID # 14542

Gabriella T. Taverne, Esq. WV ID # 14594

TORISEVA LAW

1446 National Road

Wheeling, WV 26003

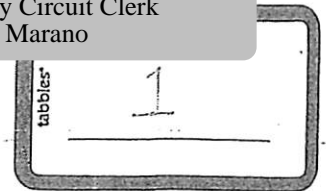
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Counsel for Plaintiffs

Positive
As of: June 4, 2019 2:32 PM Z



State ex rel. J.C. v. Mazzone

Supreme Court of Appeals of West Virginia
May 6, 2014, Submitted; May 27, 2014, Filed
No. 14-0207

Reporter

233 W. Va. 457 *; 759 S.E.2d 200 **; 2014 W. Va. LEXIS 575 ***; 2014 WL 2440032

STATE OF WEST VIRGINIA EX REL. J.C., A MINOR,
BY AND THROUGH HIS MOTHER AND NEXT
FRIEND, MICHELLE COOK, ET AL., Plaintiffs Below,
Petitioners v. THE HONORABLE JAMES P. MAZZONE,
LEAD PRESIDING JUDGE, ZOLOFT LITIGATION,
MASS LITIGATION PANEL; PFIZER, INC.; ROERIG, A
DIVISION OF PFIZER, INC.; AND GREENSTONE, LLC
F/K/A GREENSTONE, LTD, Defendants Below,
Respondents

as that rule was an administrative fee and record keeping provision; it did not provide authority for severing a complaint into two or more separate civil cases; [3]-The Panel did not have authority to vacate the Chief Justice's order finding that the actions constituted two cases.

Outcome

Writ granted.

Prior History: J. C. v. Pfizer, Inc., 2014 U.S. Dist. LEXIS 14090 (S.D. W. Va., Feb. 5, 2014)

LexisNexis® Headnotes

Disposition: WRIT GRANTED.

Core Terms

chief justice, joined, cases, civil action, circuit court, filing fee, parties, families, rule rule rule, joinder, Manual, rules of civil procedure, single complaint, federal court, issues, complaints, state court, recommendation, assigned, sever, manufacturers, occurrence, courts, Plaintiffs', twenty-five, provides, amendment amendment amendment, requirements, committees, court rule

Civil Procedure > ... > Writs > Common Law
Writs > Prohibition

HN1 [] Prohibition

Insofar as it is an extraordinary remedy, prohibition lies only to restrain inferior courts from proceeding in causes over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers and may not be used as a substitute for writ of error, appeal or certiorari.

Case Summary

Overview

HOLDINGS: [1]-The families' product liability and negligence claims set out in two complaints met the W. Va. R. Civ. P. 20(a) requirements for joining multiple plaintiffs in one complaint as the claims were logically related and arose from the production, distribution, and promotion of a drug, and the issues of the drug's design, the manufacturers' knowledge of safety, and their representations were common to all of the families; [2]-The Mass Litigation Panel erred in concluding that W. Va. R. Civ. P. 3(a) required the two complaints to be treated substantively as 25 individual causes of action

Civil Procedure > ... > Writs > Common Law
Writs > Prohibition

HN2 [] Prohibition

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, the Supreme Court of Appeals of West Virginia will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain

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the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN3 De Novo Review

An interpretation of the West Virginia Rules of Civil Procedure presents a question of law subject to a de novo review.

Civil Procedure > Parties > Joinder of Parties > Permissive Joinder

HN4 Permissive Joinder

W. Va. R. Civ. P. 20(a) provides for discretionary joinder of multiple plaintiffs in a single complaint. Rule 20(a) sets out a two-pronged test for permissive joinder of plaintiffs. Specifically, and the Supreme Court of Appeals of West Virginia so holds, Rule 20(a) provides that all persons may join in one action as plaintiffs if they assert any right to relief (1) arising out of the same transaction or occurrence, and (2) if any question of law or fact common to all these persons will arise in the action. Under Rule 20(a), joinder is proper only if both of these requirements are satisfied.

Civil Procedure > Parties > Joinder of Parties > Permissive Joinder

HN5 Permissive Joinder

See W. Va. R. Civ. P. 20(a).

Civil Procedure > Parties > Joinder of Parties > Permissive Joinder

HN6 Permissive Joinder

Joinder under W. Va. R. Civ. P. 20 is wholly procedural in nature and does not alter the substantive rights of the parties.

Governments > Courts > Rule Application & Interpretation

HN7 Rule Application & Interpretation

To aid in defining the meaning and scope of West Virginia's Rules of Civil Procedure, the Supreme Court of Appeals of West Virginia often gives substantial weight to federal cases interpreting virtually identical federal rules.

Civil Procedure > Parties > Joinder of Parties > Permissive Joinder

HN8 Permissive Joinder

See Fed. R. Civ. P. 20(a).

Civil Procedure > Parties > Joinder of Parties > Permissive Joinder

HN9 Permissive Joinder

The same transaction or occurrence prong of W. Va. R. Civ. P. 20(a) means all logically related events. This does not mean that all events must be identical. The logical relationship test is satisfied if there is a substantial evidentiary overlap in the facts giving rise to the cause of action against each defendant. In other words, individual claims of the plaintiffs are deemed to have met the same transaction or occurrence requirement where the defendants' alleged infringing acts, which give rise to the individual claims of infringement, share an aggregate of operative facts. In the final analysis, multiple persons may join in one action as plaintiffs if the essential facts of the various

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claims are so logically connected that considerations of judicial economy and fairness dictate that all issues be resolved in one lawsuit.

as an independent and equal branch of West Virginia's government.

Civil Procedure > Parties > Joinder of Parties > Permissive Joinder

HN10 Permissive Joinder

The second part of the joinder test under W. Va. R. Civ. P. 20(a) requires a showing of commonality. Courts hold that commonality under the rule is not a difficult test to satisfy. Rule 20(a) requires only a single common question be shown, not multiple common questions. The common question of fact or law need not be the most important or predominant issue in the litigation.

Governments > Courts > Clerks of Court

Civil Procedure > ... > Pleadings > Complaints > Filing Fees

HN11 Clerks of Court

Case law makes clear that, under W. Va. Code § 59-1-11 (2012), a clerk has a duty to collect a filing fee, in the amount set out under the statute, prior to allowing a complaint to be filed. For purposes of imposing the filing fee, the Supreme Court of Appeals of West Virginia concluded that the statute makes no distinction regarding the number of plaintiffs joining a particular suit.

Governments > Courts > Authority to Adjudicate

HN12 Authority to Adjudicate

Courts have inherent authority to require necessary resources, such as sufficient funds for operating expenses, work space, parking space, supplies, and other material items. In order for a court to invoke use of its inherent power to require resources, the court must demonstrate that such resources are reasonably necessary for the performance of its responsibilities in the administration of justice. Although courts must be cautious not to reach beyond the power of the judicial branch, it is crucial for the judiciary to be able to invoke such power as is reasonably necessary to maintain itself

Governments > Courts > Authority to Adjudicate

HN13 Authority to Adjudicate

A circuit judge or chief judge of a circuit with more than one judge, shall have the authority to enter an administrative order governing when separate filing fees are required and may require additional filing fees in multiple plaintiff cases until such time as a statewide rule governing filing fees in multiple plaintiff cases is promulgated.

Governments > Courts > Authority to Adjudicate

Governments > Courts > Clerks of Court

HN14 Authority to Adjudicate

When a circuit court clerk receives a complaint, which lists multiple plaintiffs, complies with the West Virginia Rules of Civil Procedure and is accompanied by the filing fee mandated by W. Va. Code § 59-1-11(a), the clerk must file the complaint. Once such a complaint has been filed, the circuit judge to whom the case has been assigned must determine whether the requirements are met such that additional filing fees should be assessed.

Governments > Courts > Authority to Adjudicate

Civil Procedure > Parties > Joinder of Parties > General Overview

HN15 Authority to Adjudicate

In the final analysis, case law from the United States District Court for the Southern District of West Virginia supports the proposition that, under the authority of West Virginia case law, multiple plaintiffs can join in a single complaint, even though they are charged separate filing fees and assigned separate docket numbers.

Civil Procedure > ... > Pleadings > Complaints > General

Overview

HN16 See W. Va. R. Civ. P. 3(a).

Civil Procedure > Parties > Joinder of Parties > General Overview

HN17 The Supreme Court of Appeals of West Virginia's intent behind W. Va. R. Civ. P. 3(a) is expressly set out in case law. That case law rejected a local circuit court rule that barred joinder of plaintiffs in a single complaint. The case law approved of such joinder and authorized circuit courts to assess separate filing fees in those circumstances.

Civil
Procedure > ... > Pleadings > Complaints > General Overview

Civil Procedure > Parties > Joinder of Parties > General Overview

HN18 All that W. Va. R. Civ. P. 3(a) is intended to do is to attach a separate filing fee and record keeping docket number for multiple persons, not related by marriage, a derivative or fiduciary relationship, who are joined as plaintiffs in a complaint.

Civil
Procedure > ... > Pleadings > Complaints > General Overview

HN19 A complaint is synonymous with a civil action. Moreover, a civil action is defined as an action brought to enforce, redress, or protect private rights. A civil action brought to redress an injury is embodied in the complaint. If there is no complaint, there is no civil action. In other words, the filing of a complaint, regardless of how many plaintiffs are joined, is but one civil action. While it is true there may be many theories set out in a complaint, this does not alter the fact that only one civil action is commenced through the filing of one complaint. The number of complaints filed determines the number of civil actions filed.

Civil Procedure > Parties > Joinder of Parties > Permissive Joinder

HN20 Permissive Joinder

It is black letter law that when plaintiffs are initially joined in a complaint, there is no requirement that a separate motion for joinder be made under W. Va. R. Civ. P. 20(a).

Civil
Procedure > ... > Pleadings > Complaints > General Overview

HN21 The Supreme Court of Appeals of West Virginia holds that W. Va. R. Civ. P. 3(a) provides that for a complaint naming more than one individual plaintiff not related by marriage, a derivative or fiduciary relationship, each plaintiff shall be assigned a separate civil action number and be docketed as a separate civil action and be charged a separate fee by the clerk of a circuit court. Rule 3(a) is an administrative fee and record keeping provision. The use of multiple case docket numbers is for the purpose of assessing and tracking filing fees, and for tracking documents that may apply to individual plaintiffs. Rule 3(a) does not provide authority for severing a complaint substantively into two or more separate civil cases.

Governments > Courts > Court Personnel

HN22 Court Personnel

As a general matter, the Chief Justice of the Supreme Court of Appeals of West Virginia has the constitutional authority to issue administrative orders controlling the courts in West Virginia. W. Va. Const. art. III, § 3.

Civil Procedure > Preliminary Considerations > Venue > Multidistrict Litigation

HN23 Multidistrict Litigation

W. Va. Mass Lit. R. 26.06(a)(3).

Civil Procedure > Preliminary Considerations > Venue > Multidistrict Litigation

HN24 Multidistrict Litigation

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W. Va. Mass Lit. R. 26.06(a)(3) permits any party or affected judge to file a response to the motion.

Civil Procedure > Preliminary
Considerations > Venue > Multidistrict Litigation

HN25 Multidistrict Litigation

W. Va. Mass Lit. R. 26.06(c)(1) provides that the motion for referral and all reply memoranda must be submitted for review to the Chief Justice of the Supreme Court of Appeals of West Virginia. This provision of the rule provides the Chief Justice with two options: Upon review of the motion and reply memoranda, 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.

Civil Procedure > Preliminary
Considerations > Venue > Multidistrict Litigation

HN26 Multidistrict Litigation

There is no provision in the West Virginia Mass Litigation Rules that gives the Mass Litigation Panel the authority to vacate an order by the Chief Justice of the Supreme Court of Appeals of West Virginia.

Civil Procedure > Preliminary
Considerations > Venue > Multidistrict Litigation

HN27 Multidistrict Litigation

W. Va. Mass Lit. R. 26.05(f) states that the West Virginia Mass Litigation Panel can take such action as is reasonably necessary and incidental to the powers and responsibilities conferred by this rule or by the specific directive of the Chief Justice of the Supreme Court of Appeals of West Virginia. W. Va. Mass Lit. R. 26.05, in its entirety, allows the Panel to implement procedural devices for efficiently handling cases referred by the Chief Justice. However, the Supreme Court of Appeals does not find that this provision authorizes the Panel to vacate an order of the Chief Justice.

Civil Procedure > Preliminary

Considerations > Venue > Multidistrict Litigation

HN28 Multidistrict Litigation

See W. Va. Mass Lit. R. 26.05.

Civil Procedure > Preliminary
Considerations > Venue > Multidistrict Litigation

HN29 Multidistrict Litigation

There is no provision in the West Virginia Mass Litigation Rules that expressly or implicitly gives the Mass Litigation Panel discretion to convert two cases referred to it by the Chief Justice of the Supreme Court of Appeals of West Virginia into 25 separate cases. In fact, the Mass Litigation Rules are careful to expressly limit the ability of the Panel to substantively add more cases. For example, under W. Va. Mass Lit. R. 26.09(b), if the initial order of the Chief Justice granting a motion to refer to the Mass Litigation Panel does not authorize the Panel to transfer and join with the existing Mass Litigation any subsequently filed actions, the procedure under W. Va. Mass Lit. R. 26.06 shall be followed. Rule 26.09(b) makes clear that, absent express authorization by the Chief Justice, the Panel cannot add new cases to its litigation.

Civil Procedure > Preliminary
Considerations > Venue > Multidistrict Litigation

HN30 Multidistrict Litigation

When an order of the Chief Justice of the Supreme Court of Appeals of West Virginia transfers cases to the Mass Litigation Panel, the Panel has no authority to separate the cases under W. Va. R. Civ. P. 3(a) for the purpose of substantively increasing the number of cases that were transferred.

Civil Procedure > Preliminary
Considerations > Venue > Multidistrict Litigation

HN31 Multidistrict Litigation

The West Virginia Mass Litigation Panel has the authority to implement procedural mechanisms to address the numerous individual and collective unique issues that are inherent in mass litigation. The West

Virginia Rules of Civil Procedure provide a host of mechanisms for the Panel to use in efficiently processing mass litigation cases.

Syllabus

[*459] [**202] BY THE COURT

1. "In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight." Syllabus point 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996).

2. Rule 20(a) of the West Virginia Rules of Civil Procedure provides that "[a]ll persons may join in one action as plaintiffs if they assert any right to relief . . . [1] arising out of the same transaction [or] occurrence . . . and [2] if any question of law or fact common to all these persons will arise in the action." Under Rule 20(a), joinder is proper only if both of these requirements are satisfied.

3. Rule 3(a) of the West Virginia Rules of Civil Procedure provides that "[f]or a complaint naming more than one individual plaintiff not related by marriage, a derivative or fiduciary relationship, each plaintiff shall be assigned a separate civil action number and be docketed as a separate civil action and be charged a separate fee by the clerk of a circuit court." Rule 3(a) is an administrative fee and record keeping provision. The use of multiple case docket numbers is for the purpose of assessing and tracking filing fees, and for tracking documents that may apply to individual plaintiffs. Rule 3(a) does not provide authority for severing a complaint

substantively into two or more separate civil cases.

Counsel: [***1] For Petitioners: Bert Ketchum, Greene, Ketchum, Farrell, Bailey & Tweel, Huntington, West Virginia and Ancil G. Ramey, Steptoe & Johnson, Huntington, West Virginia.

For Respondents: Michael J. Farrell, Erik W. Legg, Megan Farrell Woodyard, Farrell, White & Legg, Huntington, West Virginia and Mark S. Cheffo, Quinn Emanuel Urquhart & Sullivan New York, New York.

Judges: CHIEF JUSTICE DAVIS delivered the Opinion of the Court. JUSTICE LOUGHRY concurs and reserves the right to file a concurring opinion. JUSTICE KETCHUM, deeming himself disqualified, did not participate in the decision of this case.

Opinion by: Davis

Opinion

PETITION FOR WRIT OF PROHIBITION

Davis, Chief Justice:

In this proceeding, twenty-five plaintiff families (hereinafter collectively "the Petitioners")¹ have invoked the original jurisdiction of this Court to obtain a writ of prohibition to prevent enforcement of an order by the Mass Litigation Panel (hereinafter "the Panel"). The Petitioners were referred by the Chief Justice of this Court to the Panel as two civil actions consisting of nineteen plaintiff families in one action, and six plaintiff families in the other. The Panel entered an order that divested the Petitioners of their status as two civil [***2] actions and transformed them substantively into twenty-five separate actions. The Petitioners allege that, as a result of the Panel's order, the overwhelming majority of the Petitioners and their claims will be removed to federal court by the Respondents.² The Petitioners now [*460] [**203] ask this Court to prevent enforcement of the order on the grounds that the Panel did not have authority to substantively alter their status as two civil actions. After a careful review of the briefs, the record submitted, and listening to the argument of the parties,

¹ Each plaintiff family consists of a mother and her child.

² The Respondents are the drug manufacturer Pfizer, Inc., and two of its subsidiaries, Roerig and Greenstone, LLC. While it is not clear, the record suggests that Roerig no longer exists.

we grant the writ.³

I.

FACTUAL AND PROCEDURAL HISTORY

This matter began on July 11, 2012, when nineteen children, by and through their mothers, filed a single complaint alleging products liability and negligence claims against the Respondents in the Circuit Court [***3] of Wayne County.⁴ The complaint alleged that each child was born with a birth defect as a result of his or her mother ingesting a drug named Zoloft (also called Sertraline) that was manufactured by the Respondents.⁵ Consistent with the requirements of Rule 20(a) of the West Virginia Rules of Civil Procedure, the complaint alleged that "joinder of Plaintiffs' claims is proper because Plaintiffs' claims arise out of the same acts and/or omissions of Defendants and/or involve common questions of law and/or fact."⁶ Although only one complaint was filed, Rule 3(a) of the West Virginia Rules of Civil Procedure required each plaintiff family to pay a filing fee and be docketed with a separate civil action number.⁷

On August 7, 2012, the Respondents removed the claims of eighteen of the plaintiff families to a federal district court [***4] in the Southern District of West Virginia.⁸ The Respondents removed the claims on the grounds that, under Rule 3(a), the claims were actually

³We wish to acknowledge that the Court invited the Panel to file a brief in this matter. We have considered the Panel's brief and its accompanying appendix.

⁴The residency of each plaintiff family was as follows: West Virginia, Michigan, Connecticut, Oklahoma, Texas, Tennessee, Maryland, Oregon, South Carolina, Ohio, New York, Louisiana (2), Pennsylvania (2), Florida (2), and North Carolina (2).

⁵Zoloft is used to treat several disorders that include major depression, acute post traumatic stress, and panic disorder.

⁶The application of Rule 20(a) is discussed fully in Section III. A, *infra*.

⁷The application of Rule 3(a) is discussed fully in Section III. B, *infra*.

⁸One of the plaintiff families was not removed because its residency, New York, was the same as the headquarters of Respondent Pfizer.

eighteen separate actions, not one case. While the matter was pending in federal court, the circuit court clerk filed an affidavit in that proceeding explaining that the separate civil action numbers assigned to the plaintiffs were solely for administrative filing fee purposes and that the matter constituted only one case. The plaintiffs filed a motion to remand the case back to circuit court. The federal district judge granted the motion to remand. See J.C. ex rel. Cook v. Pfizer, Inc., Nos. 3:12-CV-04103, et al., 2012 U.S. Dist. LEXIS 136791, 2012 WL 4442518 (S.D. W. Va. Sept. 25, 2012).⁹

After the federal district court remanded the case, the Respondents filed a motion to dismiss the claims asserted by the plaintiff family from New York on the grounds of *forum non conveniens*.¹⁰ The circuit court denied the motion to [***5] dismiss the New York plaintiff family. The Respondents subsequently filed a petition for writ of prohibition with this Court seeking to prohibit enforcement of the circuit court's order denying dismissal of the New York plaintiff family. This Court refused the petition.

The Respondents eventually filed a motion to have the nineteen plaintiff families referred to the Panel. Pursuant to the authority of Rule 26.06(c)(3) of the Mass Litigation [461] [**204] Rules,¹¹ the Chief Justice of this Court entered an order on September 24, 2013, denying the motion to refer the plaintiff families to the Panel.¹² Contrary to the Respondents' recitation of the facts, the motion was denied because the plaintiff families' cause of action constituted only one case. The order by the Chief Justice specifically provided "that such Motion to Refer should be denied without prejudice to renew the motion [***6] in the event additional state actions are

⁹The Respondents appealed the district court's order. The Fourth Circuit dismissed the appeal on the grounds that it lacked subject matter jurisdiction to address a remand order. See E.D. ex rel. Darcy v. Pfizer, Inc., 722 F.3d 574 (4th Cir. 2013).

¹⁰This motion to dismiss was an effort to once again remove the case to federal court because complete diversity of jurisdiction would occur if the New York plaintiff family was dismissed from the case. See Stiftung v. Plains Mktg., 603 F.3d 295, 297 (5th Cir. 2010) ("A federal court cannot exercise diversity jurisdiction if one of the plaintiffs shares the same citizenship as any one of the defendants.").

¹¹This rule is presented fully in Section III. C, *infra*.

¹²Justice Benjamin was the Chief Justice at that time.

filed."¹³

On October 28, 2013, six children, by and through their mothers, filed a single complaint in the Circuit Court of Wayne County, that also alleged products liability and negligence claims against the Respondents.¹⁴ The complaint alleged that each child was born with a birth defect that was caused by Zolofit.¹⁵ Although only one complaint was filed, each plaintiff family was required to pay a filing fee and be docketed with a separate civil action number. On the same date that the complaint was filed, the circuit court entered an order consolidating the complaint of the six plaintiff families with the previously filed complaint of the nineteen plaintiff families.

After the two complaints were consolidated, the Petitioners filed a motion to refer the matter to the Panel on December 2, 2013. On January 14, 2014, the Chief Justice of this Court entered an order transferring the two consolidated cases to the Panel.¹⁶

Prior to the two cases being transferred to the Panel, the Respondents filed a second notice of removal in federal court on December 23, 2013. In this second removal attempt, the Respondents named all nineteen plaintiff families that filed the first complaint.¹⁷ The Respondents argued that the plaintiff family from New York was fraudulently joined. Therefore, complete diversity [^{***8}] existed with the remaining eighteen plaintiff families. The federal district court denied the motion to remove on the grounds that "partial removal of

¹³In order to have a proceeding initiated before the Panel, at least two cases must be referred that meet the definition of "Mass Litigation" under Rule 26.04(a) of the Mass Litigation Rules. This rule is presented fully in Section III. C, *infra*.

¹⁴The residency of each plaintiff family was as follows: West Virginia, New York, South Carolina, Iowa, Indiana, and Illinois.

¹⁵The attorneys for the six [^{***7}] new plaintiff families are the same attorneys representing the nineteen plaintiff families. It appears that the six plaintiff families initially tried to intervene in the case involving the nineteen plaintiff families. However, they withdrew their motion to intervene. Thereafter, counsel attempted to amend the complaint of the nineteen plaintiff families in order to add the six plaintiff families, but the trial court denied the motion to amend and directed the six plaintiff families to file a separate complaint.

¹⁶The author of this opinion entered the referral order.

¹⁷The Respondents did not seek to remove the six plaintiff families that filed the second action.

a consolidated state civil action is improper." J.C. ex rel. Cook v. Pfizer, Inc., No. 3:13-33048, 2014 U.S. Dist. LEXIS 14090, 2014 WL 495455, at *5 (S.D. W. Va. Feb. 5, 2014).

After the two cases were referred to the Panel, a status conference was held on March 4, 2014. During the conference, the six Panel members introduced themselves and provided some commentary on the history of mass litigation in the State. The Panel also informed the parties that it interpreted Rule 3(a) to mean that the two complaints filed were actually twenty-five separate civil actions. The Panel later restated its interpretation of Rule 3(a) in an order entered on March 11, 2014. The Petitioners filed the instant petition for a writ of prohibition to prevent enforcement of that order separating the litigation into twenty-five cases.

II.

STANDARD OF REVIEW

In this proceeding, the Petitioners seek a writ of prohibition to preclude enforcement of an order by the Panel that interpreted Rule 3(a) as essentially nullifying joinder of unrelated plaintiffs in a single complaint. [^{***9}] HN1 [[↑]] Insofar as it is an extraordinary remedy, "[p]rohibition lies only to restrain [^{*462}] [^{**205}] inferior courts from proceeding in causes over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers and may not be used as a substitute for writ of error, appeal or certiorari." Syl. pt. 1, Crawford v. Taylor, 138 W. Va. 207, 75 S.E.2d 370 (1953). In cases where a lower court is alleged to have exceeded its authority, we apply the following standard of review:

HN2 [[↑]] In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5)

whether the lower tribunal's order raises new and important problems or issues [***10] of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. pt. 4, State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996).

This proceeding also will require this Court to interpret our Rules of Civil Procedure. In that regard, we have held that HN3 [↑] "[a]n interpretation of the West Virginia Rules of Civil Procedure presents a question of law subject to a *de novo* review." Syl. pt. 4, Keesecker v. Bird, 200 W. Va. 667, 490 S.E.2d 754 (1997).

With the foregoing standards as our foundation, we now consider the merits of the Petitioners' request for a writ of prohibition.

III.

DISCUSSION

In this proceeding, we have been called upon to determine whether the Panel was correct in *sua sponte* deciding that, under Rule 3(a), the two cases that were referred to it by the Chief Justice had to be litigated substantively as twenty-five separate cases. Resolution of this issue involves three considerations: (1) the requirements for joining multiple plaintiffs in one complaint under Rule 20(a); (2) the impact of Rule 3(a) on joinder of multiple plaintiffs in one [***11] complaint; and (3) the authority of the Panel to vacate an administrative order issued by the Chief Justice of this Court. We will address each issue separately.

A. The Requirements for Joining Multiple Plaintiffs in One Complaint under Rule 20(a)

Each of the Petitioners that joined in the two complaints filed below did so under Rule 20(a). HN4 [↑] This rule provides for discretionary joinder of multiple plaintiffs in

a single complaint.¹⁸ "Rule 20(a) sets out a two-pronged test for permissive joinder of plaintiffs[.]" Franklin D. Cleckley, Robin Jean Davis, and Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure* § 20(a), at 572 (4th ed. 2012). Specifically, and we so hold, Rule 20(a) of the West Virginia Rules of Civil Procedure provides that "[a]ll persons may join in one action as plaintiffs if they assert any right to relief . . . [1] arising out of the same transaction [or] occurrence . . . and [2] if any question [***463] [**206] of law or fact common to all these persons will arise in the action."¹⁹ Under Rule 20(a), "[j]oinder is proper only if both of these requirements are satisfied." Smith v. Planned Parenthood of St. Louis Region, 225 F.R.D. 233, 243 (E.D. Mo. 2004).

The purpose of Rule 20(a)'s "permissive joinder is the promotion of judicial economy by preventing both the duplication of effort and the uncertainty embodied in piecemeal litigation." Morris v. Crown Equip. Corp., 219 W. Va. 347, 356 n.8, 633 S.E.2d 292, 301 n.8 (2006). Moreover, HN6 [↑] "[j]oinder under Rule 20 is wholly procedural in nature and does not alter the substantive rights of the parties." Cleckley, Davis, and Palmer, *Litigation Handbook*, § 20, at 570 (footnote omitted).

¹⁸ The issue of mandatory joinder of parties in a complaint is governed by Rule 19 of the West Virginia Rules of Civil Procedure. See Franklin D. Cleckley, Robin Jean Davis, and Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure* [***12], § 19(a), at 559 (4th ed. 2012) ("If Rule 19(a) analysis determines the person should join as a plaintiff, but he/she refuses to do so, the person may be made . . . an involuntary plaintiff."). See also Calgon Corp. v. Nalco Chem. Co., 726 F. Supp. 983, 990 (D. Del. 1989) ("We will also give Calgon leave to file a Rule 19 motion to join Kurita as an involuntary plaintiff within the 30 days if Calgon should determine that Kurita will not enter a voluntary appearance."). Insofar as the instant matter concerns discretionary joinder, we will limit our analysis to Rule 20(a).

¹⁹ Rule 20(a) provides in full as follows:

HN5 [↑] All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to

The two-pronged test under Rule 20(a) also is contained in Rule 20(a) of the Federal Rules of Civil Procedure.²⁰ The decisions of this Court have indicated that, HNT "[t]o aid in defining the meaning and scope of this state's individual civil rules of procedure, this Court often gives substantial weight to federal cases interpreting virtually identical federal rules." State ex rel. Erie Ins. Prop. & Cas. Co. v. Mazzone, 220 W. Va. 525, 533 n.6, 648 S.E.2d 31, 39 n.6 (2007). In that regard, we find that the decision in In re Prempro Products Liability Litigation, 591 F.3d 613 (8th Cir. 2010), helps illustrate the application of Rule 20(a) in the context of multiple plaintiffs suing several drug manufacturers. The decision in Prempro involved three lawsuits filed in a Minnesota state court. One complaint was filed by fifty-seven women, [***14] another was brought by the representatives of six deceased women and the third complaint was filed by sixty women. All three complaints alleged that the women developed breast cancer from their use of the defendants' medications.²¹ The defendants removed all three cases to federal district court. The federal district court found that some of the plaintiffs were fraudulently joined to defeat federal diversity jurisdiction, and that the plaintiffs failed to satisfy the joinder requirements under Rule 20(a). The Eighth Circuit Court of Appeals disagreed with the district court on both issues and ordered the cases be remanded to the Minnesota state court. With respect to the Rule 20(a) issue, the Eighth Circuit reasoned as follows:

all defendants will arise in the action. A plaintiff or defendant need not [***13] be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

²⁰ Federal Rule of Civil Procedure 20(a) provides, in relevant part:

HNT (a) Persons Who May Join or Be Joined.

(1) Plaintiffs. Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; [***16] and

(B) any question of law or fact common to all plaintiffs will arise in the action.

²¹ The Respondent Pfizer also was one of the defendants in all three cases.

After considering the Rule 20 joinder standards, we conclude that the manufacturers have not met their burden of establishing that plaintiffs' claims are egregiously misjoined. Plaintiffs' claims arise from a series of transactions between HRT pharmaceutical manufacturers and individuals that have used HRT drugs. Plaintiffs allege the manufacturers conducted a national sales and marketing campaign to falsely promote the safety and benefits of HRT drugs and understated the risks of HRT drugs. [***15] Plaintiffs contend their claims are logically related because they each developed breast cancer as a result of the manufacturers' negligence in designing, manufacturing, testing, advertising, warning, marketing, and selling HRT drugs. Some of the plaintiffs allege to [***16] [***207] have taken several HRT drugs made by different manufacturers.

Furthermore, given the nature of the plaintiffs' claims, this litigation is likely to contain common questions of law and fact. One such common question might be the causal link between HRT drugs and breast cancer. Causation for all of the plaintiffs' claims will likely focus on the 2002 WHI study suggesting a link between HRT drugs and breast cancer and whether the manufacturers knew of the dangers of HRT drugs before the publication of that study.

Prempro, 591 F.3d at 623 (internal citation omitted). We find Prempro instructive of the resolution of the Rule 20(a) joinder issue in this case.

In the instant proceeding, the Petitioners contend that they satisfied both requirements of Rule 20(a) in joining nineteen plaintiff families in the first complaint and six plaintiff families in the second complaint. We agree.

HNT The same transaction or occurrence prong of Rule 20(a) means all logically related events. This does not mean that all events must be identical. See Mosley v. General Motors Corp., 497 F.2d 1330, 1333 (8th Cir. 1974) ("Absolute identity of all events is unnecessary."). "[T]he logical relationship test is satisfied if there is a substantial evidentiary overlap in the facts giving rise to the cause of action against each defendant[.]" Klamath Irrigation Dist. v. United States, 113 Fed. Cl. 688, 707 (2013) (internal quotations and citation omitted). In other words, individual claims of the plaintiffs are deemed to have met the same transaction or occurrence requirement "where the defendants' alleged infringing acts, which give rise to the individual claims of

infringement, . . . share an aggregate of operative facts." *In re Rivera Lugo*, 503-B.R. 13, 17 (Bkrtcy. D. P.R. 2013) (internal quotations and citations omitted). In the final analysis, multiple persons may join in one action as plaintiffs if "the essential facts of the [***17] various claims are so logically connected that considerations of judicial economy and fairness dictate that all issues be resolved in one lawsuit." *Martin v. Bank of Am., N.A.*, No. 13 Civ. 02350 (ILG) (SMG), 2014 U.S. Dist. LEXIS 32231, 2014 WL 977653, at *2 (E.D.N.Y. Mar. 12, 2014) (internal quotations and citation omitted).

In this proceeding, both complaints allege that the Respondents designed, manufactured, and promoted the drug Zolofl. The Respondents in this proceeding are companies that essentially constitute a single manufacturer. The complaints allege that each plaintiff mother ingested Zolofl while pregnant, in a manner and dosage recommended by the Respondents and as prescribed by the plaintiff mothers' doctors. It is also contended that each plaintiff child allegedly suffered birth defects as a result of the drug. Both complaints allege that the Respondents knew or should have known of risks associated with taking the drug during pregnancy. The complaints allege that the Respondents failed to adequately disclose the risks of birth defects to the plaintiff mothers and the medical community. The Petitioners contend in the complaints that the Respondents actively concealed and suppressed those dangers. The complaints allege that the plaintiff mothers' treating [***18] physicians would not have prescribed Zolofl had adequate warnings and information about its risks appeared on the drug label. We find that these allegations satisfy the first requirement of *Rule 20(a)*. The claims alleged in the complaints are logically related and arise from the same transactions or occurrences, i.e., the production, distribution, and promotion of Zolofl.²²

HN10 [↑] The second part of the joinder test under *Rule 20(a)* requires a showing of commonality. Courts have

²²In the attempted removal to federal court involving the eighteen plaintiff families, the district court judge also found that the Petitioners satisfied the same transaction or occurrence prong of federal *Rule 20(a)*. See *J.C. ex rel. Cook v. Pfizer, Inc.*, 2012 U.S. Dist. LEXIS 136791, 2012 WL 4442518, at *5 ("Plaintiffs argue that the claims in the complaint satisfy the same transaction or occurrence requirements of Rule 20 because the claims all arise out of the design and mass production of Zolofl and its distribution without adequate labeling of known risks and warning about the drug's inherent dangers.' The Court agrees.").

held that commonality under the rule is not a difficult test to satisfy. See *Bridgeport-Music, Inc. v. 11C* [***465] [***208] *Music*, 202 F.R.D. 229, 231 (M.D. Tenn. 2001) ("[T]he common question test[] is usually easy to satisfy." (citation omitted)). *Rule 20(a)* requires only a single common [***19] question be shown, not multiple common questions. See *Sprint Commc'ns Co., L.P. v. Theglobe.com, Inc.*, 233 F.R.D. 615, 617 (D. Kan. 2006) ("Some, not all, questions of law or fact must be common."). The common question of fact or law "need not be the most important or predominant issue in the litigation." *Nguyen v. CTS Elecs. Mfg. Solutions Inc.*, No. 13-CV-03679-LHK, 301 F.R.D. 337, 2014 U.S. Dist. LEXIS 1645, 2014 WL 46553, at *4 (N.D. Cal. Jan. 6, 2014). The Petitioners' claims also satisfy the second requirement of *Rule 20(a)*. A few of the questions of fact common to all Petitioners include the design of Zolofl, the Respondents' knowledge of the drug's safety, and their representations about its safety.²³

In sum, the allegations set out in the two complaints are sufficient to permit joinder under *Rule 20(a)*.²⁴

B. The Impact of Rule 3(a) on Joinder of Multiple Plaintiffs in One Complaint

²³In the attempted removal to federal court involving the eighteen plaintiff families, the district court judge also found that the Petitioners satisfied the common question of fact or law prong of federal *Rule 20(a)*. See *J.C. ex rel. Cook v. Pfizer, Inc.*, 2012 U.S. Dist. LEXIS 136791, 2012 WL 4442518, at *6 ("Plaintiffs' claims also satisfy the second requirement of *Rule 20(a)*—that any question of law or fact common to all plaintiffs will arise in this action.").

²⁴Our determination that the allegations in both complaints satisfy the joinder requirements under *Rule 20(a)* is consistent with findings by other courts in cases involving the drug Zolofl. See *T.F. ex rel. Foster v. Pfizer, Inc.*, No. 4:12CV1221CDP, 2012 U.S. Dist. LEXIS 101859, 2012 WL 3000229, at *2 (E.D. Mo. July 23, 2012) [***20] ("Plaintiffs in this case have filed suit against defendants for injuries caused by the same drug [Zolofl] and arising out of the same development, marketing and sales practices for that drug, and common issues of law and fact are likely to arise in the litigation."); *In re: Zolofl (Sertraline Hydrochloride) Prods. Liab. Litig.*, 856 F. Supp. 2d 1347, 1348 (J.P.M.L. 2012) ("On the basis of the papers filed and the hearing session held, we find that these 57 actions involve common questions of fact[.] These actions share factual questions arising out of allegations that Zolofl causes birth defects in children whose mothers ingest the drug while pregnant.").

Although the two complaints filed in this matter set out allegations that satisfied the requirements for permissive joinder under Rule 20(a), the Panel determined that Rule 3(a) required the two complaints to be treated substantively as twenty-five individual causes of action. The Panel has pointed out that it proposed an amendment to Rule 3(a) in 2008,²⁵ which incorporated language that required unrelated plaintiffs pay a separate filing fee and be docketed with a separate civil action number. The Panel has indicated that it proposed the amendment for substantive purposes, not [***21] for administrative fee purposes. We do not question what the Panel may have intended in proposing the amendment to Rule 3(a) in 2008. However, this Court's intent in adopting the amendment to Rule 3(a) predates 2008, and was, in fact, articulated in Cable v. Hatfield, 202 W. Va. 638, 505 S.E.2d 701 (1998). Consequently, before we examine Rule 3(a) and the Panel's interpretation thereof, we must look at the precursor to Rule 3(a) that was created in Cable.

1. Joining multiple plaintiffs in one complaint under Cable. The decision in Cable v. Hatfield came to this Court as an appeal by plaintiffs from a circuit court order that denied their petition for a writ of mandamus. The plaintiffs in Cable attempted to have a complaint filed that named sixteen persons as plaintiffs, but the circuit clerk refused to file the complaint.²⁶ The clerk determined that, under a local court rule, multiple plaintiffs could not be joined in a single complaint; therefore, each plaintiff had to file a separate complaint and a separate filing fee.²⁷ The plaintiffs filed a petition for a writ of mandamus with the circuit court seeking to compel the clerk [***22] to file the complaint. The circuit court denied relief, and the plaintiffs appealed.

[*466] [**209] At the outset in Cable, this Court recognized that the issue of the assessment of a fee for filing a civil complaint was governed by statute. See W. Va. Code § 59-1-11 (2012) (Repl. Vol. 2012). HN11 [↑] Cable made clear that, under that statute, a clerk has a duty to collect a filing fee, in the amount set out under the statute, prior to allowing a complaint to be filed. For purposes of imposing the filing fee, Cable concluded

²⁵The Panel also proposed amendments to several other rules, and a recommendation for the adoption of a new rule under the West Virginia Trial Court Rules.

²⁶The complaint was mailed to the clerk's office with a single filing fee.

²⁷The clerk also refused to file the complaint for another reason that is not relevant in this case.

that the "statute makes no distinction regarding the number of plaintiffs joining a particular suit." Cable, 202 W. Va. at 644, 505 S.E.2d at 707. Cable also made the following observations regarding naming multiple plaintiffs in a single complaint:

Our rules of civil procedure permit multiple plaintiffs to join in a single action, under the appropriate circumstances. Increasingly, numerous parties will join in an action as authorized by Rule 20. The mass litigation that can result imposes a *significant burden, financial and otherwise, on circuit clerks' offices*. However, the West Virginia [***23] Rules of Civil Procedure are silent with regard to the filing fee to be charged when multiple parties choose to join in one action.

Cable, 202 W. Va. at 644-45, 505 S.E.2d at 707-08 (citation omitted) (emphasis added).

To relieve the "significant" financial burden imposed on circuit clerks by a complaint naming multiple plaintiffs, Cable noted that circuit courts had the administrative authority to impose additional fees when multiple plaintiffs are joined in a single complaint.

HN12 [↑] Courts have inherent authority to require necessary resources, such as sufficient funds for operating expenses, work space, parking space, supplies, and other material items. In order for a court to invoke use of its inherent power to require resources, the court must demonstrate that such resources are reasonably necessary for the performance of its responsibilities in the administration of justice. Although courts must be cautious not to reach beyond the power of the judicial branch, it is crucial for the judiciary to be able to invoke such power as is reasonably necessary to maintain itself as an independent and equal branch of our government. Syl. pt. 3, State ex rel. Lambert v. Stephens, 200 W. Va. 802, 490 S.E.2d 891 (1997).

Cable, 202 W. Va. at 645, 505 S.E.2d at 708. Recognizing the authority of circuit courts to require resources for the proper administration of [***24] the courts, Cable made the following dispositive holding:

HN13 [↑] A circuit judge or chief judge of a circuit with more than one judge, shall have the authority to enter an administrative order governing when separate filing fees are required and may require additional filing fees in multiple plaintiff cases *until such time as a statewide rule governing filing fees*

in multiple plaintiff cases is promulgated.

Syl. pt. 3, Cable, 202 W. Va. 638, 505 S.E.2d 701 (emphasis added). The decision in *Cable* went on to set out the procedure that should be followed when multiple plaintiffs are joined in a complaint:

HN14 [↑] When a circuit court clerk receives a complaint, which lists multiple plaintiffs, complies with the West Virginia Rules of Civil Procedure and is accompanied by the . . . filing fee mandated by W. Va. Code § 59-1-11(a) . . . , the clerk must file the complaint. Once such a complaint has been filed, the circuit judge to whom the case has been assigned must determine whether the requirements . . . are met such that additional filing fees should be assessed.

Syl. pt. 4, in part, Cable, 202 W. Va. 638, 505 S.E.2d 710.²⁸

[*467] [**210] In sum, the critical factual setting presented to this Court in *Cable* involved a local circuit court rule that prohibited multiple parties from being joined in one complaint. Under the local rule each plaintiff had to file a separate complaint and pay a separate filing fee. Based upon the application of Rule 20(a), this Court rejected the local court rule that barred joinder of multiple plaintiffs in a single complaint. The decision in *Cable* expressly noted that Rule 20(a) authorized such joinder. However, we were keenly sensitive to the "significant burden, financial and otherwise, on circuit clerks' offices" as a result of allowing multiple plaintiffs to be joined in one complaint. To alleviate this financial [***26] burden, the Court in

²⁸The decision in *Cable* also made reference to the newly established Panel and its potential role in litigation involving multiple plaintiffs joined in a single complaint:

This Court recently [***25] established a Mass Litigation Panel to, *inter alia*, "develop and implement case management and trial methodologies for mass litigation." See Rule 26.05(a), W. Va. T.C.R. for Trial Courts of Record. This panel became fully operational on July 1, 1998. Due to its recent commencement, the panel obviously has not yet had the opportunity to address issues such as the one presently before us. *In the absence of the adoption of a relevant rule proposed by the mass litigation panel, our decision must be guided by W. Va. Code § 59-1-11(a).*

Cable, 202 W. Va. at 646, 505 S.E.2d at 709 (emphasis added).

Cable authorized circuit courts to impose additional filing fees on complaints filed by multiple plaintiffs, pending this Court's adoption of a statewide rule addressing the issue.

The discretion *Cable* gave to trial courts to require additional filing fees, when multiple plaintiffs joined in a single complaint, was addressed by a federal court in Grennell v. Western Southern Life Insurance Co., 298 F. Supp. 2d 390 (S.D. W. Va. 2004). The decision in *Grennell* started out as a civil action filed by 2,286 plaintiffs in the Circuit Court of Mason County, West Virginia. The plaintiffs sued an insurance company and seven individuals who were allegedly agents of the insurer. The single complaint filed by the plaintiffs alleged that the defendants committed various forms of fraud against them in the sale of certain life insurance policies. Although only one complaint was filed, the clerk of the court, acting pursuant to an administrative order of the circuit court, required each "family unit plaintiff" to pay a separate filing fee and be assigned a separate case number. Based upon the definition given to "family unit plaintiff," 1,891 case numbers were assigned, and 1,891 filing fees were charged. Even though the clerk was required to assign multiple case [***27] numbers and charge multiple filing fees, the plaintiffs were not required to file multiple complaints. "According to the Mason County Circuit Court Clerk, multiple case numbers were assigned 'for purposes of assessing and tracking the filing fees . . . and for tracking documents that may apply to individual Plaintiffs' [sic]." Grennell, 298 F. Supp. 2d at 392.

The defendants in *Grennell* removed the claims of 1,317 of the plaintiffs to federal court. The defendants argued that they did not have to remove all the plaintiffs to federal court because the plaintiffs were never properly joined in circuit court, and, therefore, the plaintiffs' claims constituted separate causes of action. Alternatively, the defendants contended that if the claims constituted one action, some of the plaintiffs were fraudulently joined to defeat federal jurisdiction. The plaintiffs argued that the claims should be remanded to circuit court because only one action had been filed. The federal district court agreed with the plaintiffs, in part, in finding that only one civil action was filed even though separate filing fees were charged and separate docket numbers were assigned. The decision addressed the matter as follows:

Plaintiffs urge this [***28] Court to examine the status of this litigation as it existed in Mason County Circuit Court and to determine that despite certain

administrative actions taken by that court, there existed only one case. . . . According to Plaintiffs, if the Mason County litigation was truly one case, then removal was improper. . . . If as Defendants posit and as explained more fully below Plaintiffs were fraudulently joined in state court, then a finding that the litigation was only a single case will not defeat the diversity jurisdiction of this Court. . . .

....

Defendants argue that "there has been no joinder or consolidation here." The Court is not swayed by this assertion. As noted, the Mason County plaintiffs filed only one complaint to initiate litigation that included over 2,200 individuals. Defendants are correct that the cases were never formally consolidated. Therefore, if Plaintiffs were not joined in one action, the Circuit Court would have required them to file a separate complaint on behalf of each plaintiff. Defendants also point out that [*468] [**211] Plaintiffs were required to pay multiple filing fees. As discussed, however, the Mason County Circuit Court Clerk characterizes these as "supplemental [***29] filing fees." This description of the fees supports Plaintiffs' argument that the litigation involved something other than 1,891 separate original actions. . . . The Court therefore finds that Defendants have not met their burden of demonstrating that the Mason County Circuit Court litigation involved non-joined plaintiffs.²⁹

Grennell, 298 F. Supp. 2d at 393-95.

HN15 [↑] In the final analysis, Grennell supports the proposition that, under the authority of Cable, multiple plaintiffs can join in a single complaint, even though they are charged separate filing fees and assigned separate docket numbers.

2. Joining multiple plaintiffs in one complaint under Rule 3(a). As previously mentioned, the Panel *sua sponte* determined that the two cases referred to it by the Chief Justice would be treated substantively as twenty-five separate civil actions. The Panel's order addressed the matter as follows:

[T]he Panel ORDERS the 25 civil actions filed in the Zoloff Litigation to be treated as separate civil actions. The Panel notes . . . that Rule 3(a) is, on its face, a substantive rule of civil procedure, not an

"administrative rule."

We respectfully disagree [***30] with the Panel's interpretation of Rule 3(a).

To begin, the relevant language in Rule 3(a) that was relied upon by the Panel was incorporated into the rule in 2008. The text of Rule 3(a) provides as follows:

HN16 [↑] (a) Complaint. A civil action is commenced by filing a complaint with the court. *For a complaint naming more than one individual plaintiff not related by marriage, a derivative or fiduciary relationship, each plaintiff shall be assigned a separate civil action number and be docketed as a separate civil action and be charged a separate fee by the clerk of a circuit court.*

(Emphasis added). The italicized language was added in 2008. The Panel's order states that it proposed this amendment to the Court with the intent that "[e]ach separately assigned civil action number constitutes a separate civil action for any and all substantive purposes, as opposed merely for administrative purposes, such as fee collection." The Respondents have argued that "[t]he Panel's unique role as the author of the rule and the judicial tribunal charged with applying it to mass-tort scenarios makes the Panel especially well-suited to interpret the rule's meaning and purpose." Both the Panel and the Respondents overlook the fact that the Panel's [***31] purported intent in recommending the adoption of Rule 3(a) is inconsistent with Cable and Rule 20(a).

Simply put, this Court did not adopt the amendment to Rule 3(a) for the purpose articulated by the Panel. **HN17** [↑] This Court's intent behind Rule 3(a) was expressly set out in Cable. As pointed out previously, the decision in Cable rejected a local circuit court rule that barred joinder of plaintiffs in a single complaint. Cable approved of such joinder and authorized circuit courts to assess separate filing fees in those circumstances. The Panel's interpretation of Rule 3(a) resurrects the local circuit court rule that this Court rejected in Cable and, in effect, implicitly overrules Cable.

It is obvious from the wording of Rule 3(a) that multiple plaintiffs may join in a single complaint. The relevant language in the rule states: "[f]or a complaint naming more than one individual plaintiff[.]" This language clearly implies that a complaint may name multiple persons as plaintiffs in a single complaint. If this Court intended the result argued by the Panel, we could have

²⁹The Grennell Court went on to find that the plaintiffs were fraudulently joined to defeat federal jurisdiction.

233 W. Va. 457, *468; 759 S.E.2d 200, **211; 2014 W. Va. LEXIS 575, ***31

achieved that result by fashioning an amendment that read: "No complaint shall name more than one individual plaintiff, unless they are related by marriage, a derivative or fiduciary [***32] relationship." Rule 3(a) was not drafted to achieve this result. HN18 [↑] All that Rule 3(a) was [*469] [**212] intended to do was to attach a separate filing fee and record keeping docket number for multiple persons, not related by marriage, a derivative or fiduciary relationship, who are joined as plaintiffs in a complaint.

In its brief filed in this matter, the Panel also argued that the definition of mass litigation provided by Rule 26.04(a)(2) supports its decision to treat the two cases as twenty-five separate actions. The Panel points out that Rule 26.04(a)(2) has defined mass litigation to mean "[t]wo (2) or more *civil actions* pending in one or more circuit courts . . . involving common questions of law or fact in 'personal injury mass torts' implicating numerous claimants in connection with widely available or mass-marketed products and their manufacture, design, use, implantation, ingestion, or exposure[.]"³⁰ (Emphasis added). The Panel contends that, under the rule, the phrase "civil actions" has a different meaning

³⁰The full definition of "Mass Litigation" is provided under Rule 26.04(a) as follows:

"Mass Litigation" Two (2) or more civil actions pending in one or more circuit courts: (1) involving common questions of law or fact in mass accidents or single catastrophic events in which a number of people are injured; or (2) involving common questions of law or fact in "personal injury mass torts" implicating numerous claimants in connection with widely available or mass-marketed products and their manufacture, design, use, implantation, ingestion, or exposure; or (3) involving common questions of law or fact in "property damage mass torts" implicating numerous claimants in connection with claims for replacement or repair of allegedly defective products, including those in which claimants seek compensation for the failure of the product to perform as intended with resulting damage to the product itself or other property, with or without personal injury overtones; or (4) involving common questions of law or fact in "economic loss" cases implicating numerous claimants [***34] asserting defect claims similar to those in property damage circumstances which are in the nature of consumer fraud or warranty actions on a grand scale including allegations of the existence of a defect without actual product failure or injury; or (5) involving common questions of law or fact regarding harm or injury allegedly caused to numerous claimants by multiple defendants as a result of alleged nuisances or similar property damage causes of action.

than the term "complaint." According to the Panel, "Mass Litigation is not determined by the number of complaints filed. It is determined by the number of civil actions pending in one or more circuit courts." The Panel failed to cite any authority [***33] to support its contention that, in essence, one complaint can be composed of twenty-five civil actions. We are not persuaded by the Panel's analysis.

HN19 [↑] "[A] complaint is synonymous with . . . a civil action." Cooley v. Zewe, No. 11-99 Erie, 2012 U.S. Dist. LEXIS 180852, 2012 WL 6677885, at *3 (W.D. Pa. Dec. 21, 2012) (internal quotations and citation omitted). Moreover, "[a] 'civil action' has been defined as an [a]ction brought to enforce, redress, or protect private rights." Estate of Johnson v. Randall Smith, Inc., 135 Ohio St. 3d 440, 2013-- Ohio -1507, 989 N.E.2d 35, 39 (Ohio 2013). See Derderian v. Essex Ins. Co., 44 A.3d 122, 128 (R.I. 2012) ("[A] 'civil action' is defined as [a]n action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation."). A civil action brought to redress an injury is embodied in the complaint. If there is no complaint, there is no civil action. In other words, the filing of a complaint, regardless of how many plaintiffs are joined, is but one civil action. While it is true there may be many theories set out in a complaint, this does [***35] not alter the fact that only one civil action is commenced through the filing of one complaint. The number of complaints filed determines the number of civil actions filed. Consequently, we do not accept the Panel's distinction between a civil action and a complaint.

Further, if this Court had sought to achieve the Panel's interpretation of Rule 3(a), we necessarily would have had to abolish Rule 20(a). As previously discussed in this opinion, Rule 20(a) expressly permits multiple persons to "join in one action as plaintiffs" under specified conditions. The Respondents contend that the Panel's interpretation of Rule 3(a) works in harmony with Rule 20(a) because "claims of unrelated plaintiffs must begin as separate cases, and a court can then consolidate those cases if the standard for joinder is satisfied." To achieve the result argued by the Respondents would require ignoring the clear language in Rule 3(a) that states that a complaint may "nam[e] more than one individual plaintiff[.]" This language does not require unrelated plaintiffs [*470] [**213] to file individual complaints and thereafter seek joinder under Rule 20(a). HN20 [↑] It is black letter law that when plaintiffs are initially joined in a complaint, there is no requirement that a separate motion for joinder be [***36] made under Rule 20(a). See Grennell v.

Western Southern Life Ins. Co., 298 F. Supp. 2d at 395 ("Defendants also note that no motion for joinder was made in the Circuit Court action. Under both West Virginia and federal procedural rules, however, no such motion is required where, as in this case, multiple parties are joined at the time of the filing of a complaint.")³¹

In view of the foregoing discussion, [***37] we now make clear and hold that HN21 Rule 3(a) of the West Virginia Rules of Civil Procedure provides that "[f]or a complaint naming more than one individual plaintiff not related by marriage, a derivative or fiduciary relationship, each plaintiff shall be assigned a separate civil action number and be docketed as a separate civil action and be charged a separate fee by the clerk of a circuit court." Rule 3(a) is an administrative fee and record keeping provision. The use of multiple case docket numbers is for the purpose of assessing and tracking filing fees, and for tracking documents that may apply to individual plaintiffs. Rule 3(a) does not provide authority for severing a complaint substantively into two or more separate civil cases.

The holding reached in this case also has been reached by two federal district courts. In the previously mentioned federal case involving the eighteen plaintiff families, the Respondents herein argued "that because the state court separated Plaintiffs' claims into distinct

³¹ Under the proper circumstances, severance of parties properly joined under Rule 20(a) may be achieved through Rule 21 of the West Virginia Rules of Civil Procedure. Rule 21 provides, in relevant part, that "[a]ny claim against a party may be severed and proceeded with separately." It has been recognized that "Rule 21 may . . . be invoked to sever the claims of parties otherwise permissively joined pursuant to Rule 20(a) for convenience, to avoid prejudice, or to promote the expeditious resolution of the litigation." Dantzier-Hoggard v. Graystone Acad. Charter Sch., No. 12-0536, 2012 U.S. Dist. LEXIS 79163, 2012 WL 2054779, at *10 (E.D. Pa. June 6, 2012) (internal quotations and citation omitted). See Robinson v. Dart, No. 13C1502, 2014 U.S. Dist. LEXIS 7696, 2014 WL 222711, at *5 (N.D. Ill. Jan. 21, 2014) ("[P]laintiffs are properly joined under Rule 20(a), the court may still sever a party pursuant to Rule 21[.]"); Brighton Collectibles, Inc. v. RK Texas Leather Mfg., No. 10-CV-419-GPC (WVG), 2013 U.S. Dist. LEXIS 82089, 2013 WL 2631333, at *2 (S.D. Cal. June 11, 2013) ("A court may sever a trial under Rule 21 even if the parties are properly joined under Rule 20(a)."); Gsouri v. Farwest Steel Corp., No. C105769BHS, 2011 U.S. Dist. LEXIS 54089, 2011 WL 1827343, at *2 (W.D. Wash. May 12, 2011) ("A court may, in its discretion, sever a trial under Rule 21, even if the parties are properly joined under Rule 20(a).").

case numbers, and charged separate filing fees for each case, the claims are not properly joined." J.C. ex rel. Cook v. Pfizer, Inc., 2012 U.S. Dist. LEXIS 136791, 2012 WL 4442518, at *2. The district judge rejected this argument as follows:

Defendants offer no authority . . . for the proposition that Rule 3(a) was meant to have the rather severe substantive [***38] effect of prohibiting all unrelated persons from proceeding with a mass claim in West Virginia state courts. Instead, it seems more likely that the changes to Rule 3(a) were intended to alter the administration of mass claims by the state courts. Plaintiffs provide the affidavit of the Clerk of the Wayne County Circuit Court . . . stating that Plaintiffs in this matter were separated by the state court as directed by Rule 3(a), but that they were not required to file separate complaints, were not considered separate cases, and were all assigned to the same judge. A single affidavit may not be dispositive on the question of how to interpret a state rule of civil procedure, but in this case, it illustrates the principle evident from the changes to Rule 3(a). . . : administrative separation of claims in state court does not determine the propriety of joinder in federal court. Defendants have not met their burden of demonstrating that Plaintiffs' claims were not properly joined because of case processing practices in Wayne County Circuit Court.

J.C. ex rel. Cook v. Pfizer, Inc., 2012 U.S. Dist. LEXIS 136791, 2012 WL 4442518, at *3.

In the second federal case, Almond v. Pfizer Inc., No. 1:13-CV-25168, 2013 U.S. Dist. LEXIS 178991, 2013 WL 6729438 (S.D. W. Va. Dec. 19, 2013), the district court addressed the meaning of our Rule 3(a). In Almond, over thirty-six plaintiffs [*471] [**214] filed a single [***39] complaint in the McDowell County Circuit Court against Pfizer, a Respondent in this case. The plaintiffs alleged that they developed diabetes as a result of taking the defendant's drug called Lipitor. The defendant removed the claims of thirty-six of the plaintiffs to a federal district court. One of the arguments made by the defendant in the federal litigation was that, under our Rule 3(a), the plaintiffs had to be treated substantively as having filed thirty-six separate complaints. The plaintiffs argued that only one complaint was filed in state court and that the case should be remanded back to state court. The district judge, relying in part on the decision in J.C. ex rel. Cook v. Pfizer, Inc., agreed with the plaintiffs as follows:

In considering this precise issue in a case with the same defendant, represented by the same counsel, setting forth the same arguments, Judge Chambers interpreted Rule 3(a) as "intended to alter the administration of mass claims by the state courts" and found that it was not "meant to have the rather severe substantive effect of prohibiting all unrelated persons from proceeding with a mass claim in West Virginia state courts." J.C. ex rel. Cook v. Pfizer, Inc., 2012 U.S. Dist. LEXIS 136791, 2012 WL 4442518, 3 (S.D.W. Va. 2012) (Chambers, J.).

....

The Plaintiffs in the [***40] present action properly joined their claims in a single case, regardless of the administrative filing requirements of the state court. This Court finds Judge Chambers' reasoning persuasive with respect to the application of West Virginia Rule of Civil Procedure 3(a), and further finds that the rule does not mandate that federal courts treat all plaintiffs in a joined case, whether under a single civil action number or not, independently for the purposes of remand analysis. It is undisputed that four of the Plaintiffs named in the complaint and the amended complaint are New York citizens, and that the Defendant has its principal place of business in New York and is, therefore, considered a New York citizen for federal diversity jurisdiction purposes. As such, the four New York plaintiffs, parties to the single complaint, defeat diversity jurisdiction.

Almond v. Pfizer Inc., 2013 U.S. Dist. LEXIS 178991, 2013 WL 6729438, at *3-4.³²

³² Some federal courts similarly require separate filing fees for multiple prisoners that are joined in a single complaint. See Schuenke v. Wisconsin Dep't. of Corrs., No. 13-CV-865-bbc, 2014 U.S. Dist. LEXIS 30701, 2014 WL 905529, at *1 (W.D. Wis. Mar. 7, 2014) ("Although plaintiffs have joined their claims in one complaint, each is bringing an action subject to the 1996 Prison Litigation Reform Act and each must pay the full \$350 fee for filing the action."); [***41] Ross v. Hardy, No. 12 C1069, 2013 U.S. Dist. LEXIS 33621, 2013 WL 951164, at *1 (N.D. Ill. Mar. 12, 2013) ("Although Fed. R. Civ. P. 20(a) permits co-plaintiffs to bring a jointly filed complaint, the Prison Litigation Reform Act holds each plaintiff responsible for payment of a full filing fee, which is \$350. Accordingly, each inmate who seeks to be a part of this suit must . . . prepay the \$350 filing fee."). Nevertheless, federal courts do not treat a complaint filed by multiple prisoners as separate complaints for each prisoner merely because each prisoner is assessed a filing fee. Our research also found that the courts of Louisiana

C: The Authority of the Panel to Vacate an Administrative Order Issued by the Chief Justice

Although we have determined that the Panel incorrectly interpreted Rule 3(a), we are compelled to address the issue of whether the Panel had the authority to vacate [472] [**215] the Chief Justice's order that found that these actions constituted two cases. HN22 [4] As a general matter, the Chief Justice of this Court has the constitutional authority to issue administrative orders controlling the courts in this State. See W. Va. Const. III, § 3 ("The chief justice shall be the administrative head of all the courts."). See also W. Va. Code § 50-1-16 (1982) (Repl. Vol. 2008) ("Rules promulgated by the judge of a circuit court, or the chief judge thereof, pursuant to the provisions of this chapter shall be subordinate and subject to the rules of the Supreme Court [***43] of Appeals or the orders of the chief justice thereof."); W. Va. Code § 51-2A-7(b) (2013) (Supp. 2013) "Local [family court] administrative rules are subordinate and subject to the rules of the Supreme Court of Appeals or the orders of the chief justice.").

On December 2, 2013, the Petitioners filed a motion in the circuit court to have the instant two cases referred to the Panel. The procedure for seeking a referral to the Panel is set out under Rule 26.06(a)(3) of the Mass Litigation Rules:

HN23 [4] The motion shall be served on all the parties, including those parties not represented by

have the authority to assess separate filing fees against each plaintiff named in a complaint. See Adams v. Airco Welding Prods. Co., 739 So. 2d 375, 377 (La. Ct. App. 1999) ("[T]he fees schedule of this court requires each plaintiff to pay the full filing fees in petitions of multiple plaintiffs unless the lawsuit arises from one single incident, such as an automobile accident."). Moreover, it appears that some state courts in Mississippi have required multiple plaintiffs joined in a single complaint pay separate filing fees. However, the Mississippi Supreme Court found that no statutory authority allowed for the imposition of separate filing fees. See Hinds Cnty. Bd. of Supervisors v. Abnie, 934 So. 2d 996, 999 (Miss. 2006) ("As succinctly stated by this Court's Order of September 4, 2003, the Legislature established the [***42] statutory fees allowed to be charged by clerks, and 'no more.' In the matter sub judice, the Circuit Clerk was not at liberty to assess and collect administrative costs and separate filing fees for each plaintiff, as it was contrary to state law, specifically Miss. Code Ann. Section 25-7-1 and Section 25-7-13. Plaintiffs were improperly and impermissibly required to pay filing fees and administrative costs in excess of the statutorily authorized amount.").

counsel, all judges in actions which are the subject of the motion, and the Panel's Mass Litigation Manager. Any party shall have twenty (20) days after the motion is filed to file a reply memorandum stating its position and opposition, if any. Any affected judge may file a reply memorandum within twenty (20) days thereafter.

HN24 [↑] This rule permits any party or affected judge to file a response to the motion.

The motion filed by the Petitioners stated that "[t]his litigation is subject to coordinated case management as mass litigation before the West Virginia Mass Litigation Panel *because it is two Complaints* involving common questions of law and fact[.]" (Emphasis [***44] added). The Respondents filed a response to the motion. The response purported to support the referral motion; but, it actually was inconsistent with the motion. The response memorandum addressed two separate issues. First, the response argued that the complaint filed by the original nineteen plaintiff families should not be referred because those plaintiffs were going to be removed to federal court.³³ Second, the response contended that the case involving the remaining six plaintiff families should be referred to the Panel because their complaint was actually six separate cases.

After the motion and response were filed in circuit court, Rule 26.06(c)(1) outlined the next step in the process.

HN25 [↑] That rule provides that the motion for referral and all reply memoranda must be submitted for review to the Chief Justice of this Court. This provision of the rule provides the Chief Justice with two options:

Upon review of the motion and reply memoranda, the Chief Justice may act directly upon the motion or *may direct the Panel to conduct a hearing and make recommendations concerning [***45] coordinated or consolidated proceedings under this rule.*

Rule 26.06(c)(1) (emphasis added). This provision gives the Chief Justice discretion to ask the Panel to render a recommendation on the referral motion.³⁴ This provision

³³ The federal court rejected the Respondents' attempt to have the complaint of the nineteen plaintiff families removed to federal court.

³⁴ The procedure the Panel must follow is provided by Rule 26.06(c)(2):

(2) If the Chief Justice directs, a Panel member or members shall hold a hearing to receive evidence and entertain arguments by the parties or any judge, and shall

is an important limitation on the authority of the Panel. The provision states clearly that if the Chief Justice asks the Panel to review the referral motion, the Panel can make only a recommendation to the Chief Justice. More importantly, it is only at this stage that the Mass Litigation Rules allow the Panel to have direct input into whether cases are proper for litigation before the Panel.³⁵

[*473] [**216] In the instant case, the Chief Justice did not ask the Panel to review the referral motion. On January 14, 2014, the Chief Justice entered an order transferring the two consolidated cases to the Panel.³⁶ The transfer order stated that "[t]he Chief Justice has determined that such Motion to Refer should be granted and that it is appropriate to transfer *all cases identified in said Motion* to the Mass Litigation Panel." (Emphasis added). Only two cases were identified in the motion, and therefore, only two cases were transferred. Thus, the Chief Justice rejected the position of the Respondents that the complaint filed by the six plaintiff families should be referred to the Panel as six separate cases and that the remaining nineteen plaintiff families should not be referred to the Panel.

After the Chief Justice entered the order referring the two cases, the Panel *sua sponte* decided that the Chief

submit findings of fact and a recommendation to the Chief Justice.

³⁵ See, e.g., *In re Flood Litig.*, 216 W. Va. 534, 540 n.3, 607 S.E.2d 863, 869 n.3 (2004) ("The Chief Justice of this Court originally received a motion . . . to refer to the Mass Litigation Panel certain litigation pending before seven circuit courts. This motion was referred to the Honorable Gary L. Johnson, . . . as a member of the Mass Litigation Panel, for the purpose of conducting a hearing [***46] and submission of findings of fact and a recommendation to the Chief Justice regarding the motion to refer. Judge Johnson essentially concluded that the issues raised in the flood litigation cases could be more efficiently and fairly resolved by referral to the Mass Litigation Panel. By order of May 16, 2002, the Chief Justice granted the motion to refer as recommended by Judge Johnson.").

³⁶ The authority of the [***47] Chief Justice to enter the order is provided by Rule 26.06(c)(3) as follows:

The Chief Justice, whether acting directly upon the motion or upon the recommendation of the Panel member or members, shall enter an order either granting or denying the motion, or providing modified relief. The order shall be filed with the Clerk of the Supreme Court of Appeals who shall send a copy of the order to the Panel Chair and to the clerk(s) of the circuit court(s) where the actions are pending for service on all parties.

Justice actually referred twenty-five cases. This determination, in effect, vacated the Chief Justice's referral order. The Panel's order stated that in view of its interpretation of Rule 3(a), "any other orders that are inconsistent with the Panel's prior application of Rule 3(a), as plainly written, are VACATED." HN26 There is no provision in the Mass Litigation Rules that gives the Panel the authority to vacate an order by the Chief Justice.

The Respondents contend in a footnote of their brief that Rule 26.05(f) of the Mass Litigation Rules is the authority for the Panel's decision. HN27 Rule 26.05(f) states that the Panel can "take such [*48] action as is reasonably necessary and incidental to the powers and responsibilities conferred by this rule or by the specific directive of the Chief Justice."³⁷ Rule 26.05, in its entirety, allows the Panel to implement procedural devices for efficiently handling cases referred by the Chief Justice. However, we do not find that this provision authorizes the Panel to vacate an order of the

³⁷ Rule 26.05 provides in full as follows:

HN28 The Panel shall:

- (a) develop and implement case management and trial methodologies to fairly and expeditiously resolve Mass Litigation referred to the Panel by the Chief Justice;
- (b) preside in Mass Litigation or proceedings therein referred by the Chief Justice;
- (c) request the assignment by the Chief Justice of additional active or senior status circuit court judges to assist the Panel in resolving Mass Litigation or proceedings therein as needed, and provide assistance and guidance to such judges when assigned;
- (d) recommend for adoption by the Supreme Court of Appeals rules for conducting the business of the Panel as needed;
- (e) report periodically to the Chief Justice concerning the Panel's activities;
- (f) take such action as is reasonably necessary and incidental to [*49] the powers and responsibilities conferred by this rule or by the specific directive of the Chief Justice; and
- (g) develop and implement plans for central organization, including, but not limited to staffing, record keeping, and other assistance for the management of Mass Litigation, the transfer and storage of Mass Litigation court files to the appropriate circuit, the implementation of appropriate technology, and the adoption of necessary rules and procedures.

Chief Justice.

Moreover, HN29 there is no provision in the Mass Litigation Rules that expressly or implicitly gives the Panel discretion to convert two cases referred to it by the Chief Justice into twenty-five separate cases. In fact, the Mass Litigation Rules are careful to expressly limit the ability of the Panel to substantively add more cases. For example, under Rule 26.09(b), "[i]f the initial order of the Chief Justice granting a Motion to Refer to the Mass Litigation Panel does not authorize the Panel to transfer and join with the existing Mass Litigation any subsequently filed [*474] [*217] actions, the procedure under Rule 26.06 shall be followed." Rule 26.09(b) makes clear that, absent express authorization by the Chief Justice, the Panel cannot add new cases to its litigation.³⁸

The Mass Litigation Panel does not have authority to vacate an order of the Chief Justice of the West Virginia Supreme Court of Appeals. Therefore, HN30 when an order of the Chief Justice transfers cases to the Panel, the Panel has no authority to separate the cases under Rule 3(a) of the West Virginia Rules of Civil Procedure for the purpose of substantively increasing the number of cases that were transferred.

Although our holding recognizes limitations on the authority of the Panel, we wish to make clear that we support the Panel's need to have some discretion in processing the numerous issues that necessarily flow from mass litigation cases. In this regard, we wish to be clear in also recognizing that HN31 the Panel has the authority [*51] to implement procedural mechanisms to address the numerous individual and collective unique issues that are inherent in mass litigation. See *In re Tobacco Litig.*, 218 W. Va. 301, 303 n.1, 624 S.E.2d 738, 740 n.1 (2005) ("A creative, innovative trial management plan developed by a trial court which is designed to achieve an orderly, reasonably swift and efficient disposition of mass liability cases will be approved so long as the plan does not

³⁸ Another example [*50] of the restraint placed on the Panel's authority to alter the number of cases it has involves class actions. Rule 26.10 of the Mass Litigation Rules addresses the procedure to be followed when cases referred to the Panel become the subject of a class action in another proceeding. This rule states that "[i]f any Mass Litigation transferred to the Panel is later certified as a class action by any court pursuant to Rule 23, W. Va. R. Civ. P., the Panel may request the Chief Justice transfer the Mass Litigation from the Panel to the appropriate circuit court."

trespass upon the procedural due process rights of the parties." (quoting *Syl. pt. 3, State ex-rel. Appalachian Power Co. v. MacQueen*, 198 W. Va. 1, 479 S.E.2d 300 (1996)). Our Rules of Civil Procedure provide a host of mechanisms for the Panel to use in efficiently processing mass litigation cases. We encourage the Panel to be innovative within the meaning and spirit of our rules.³⁹

For example, nothing prevents the Panel from using procedural mechanisms to procedurally divide the plaintiffs and defendants into any number of relevant groups, so long as no substantive division occurs as was done in this case. Moreover, to the extent that some plaintiffs may be subject to dispositive motions based upon such issues as statutes of limitation or summary judgment, the Panel also is free to devise a scheme that permits the defendants to raise those issues and have them addressed separately. In addition to these examples, the Panel also may craft solutions to address other procedural issues that may arise.

Furthermore, a good source for suggestions on how to efficiently handle complex mass litigation issues is the Federal Judicial Center's *Manual for Complex Litigation*, Fourth (2004) ("hereinafter the Manual").⁴⁰ Federal courts "often look to the Manual as a guidepost in crafting procedures that will aid all parties involved in both the progression and adjudication of complex cases[.]" *Dunlavey v. Takeda Pharms. Am., Inc., Nos. 6:12-CV-1162, et al., 2012 U.S. Dist. LEXIS 120897, 2012 WL 3715456, at *1 (W.D. La. Aug. 23, 2012)*. For example, the Manual suggests courts designate attorneys to act on behalf of other counsel [***53] and parties in addition to their own clients. In fact, the Manual permits the court to appoint well-seasoned, experienced mass litigation lawyers to spearhead the

³⁹ Some of the concerns raised by the Panel in its brief involve out-of-state litigants filing complaints in this state and naming one West Virginia resident as a plaintiff in order to defeat federal jurisdiction. There are procedural mechanisms for removing improperly or fraudulently joined plaintiffs. See *Grennell*, 298 F.Supp. 2d at 397 ("[M]isjoinder is present, and severance appropriate, when the claims asserted by or against the joined parties do not arise out of the same transaction or occurrence or do not present some common question of law or fact."). Rule 3(a) was not [***52] created to address this issue.

⁴⁰ The Manual can be found at: [http://www.fjc.gov/public/pdf.nsf/lookup/MCL40000.pdf/\\$file/MCL40000.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/MCL40000.pdf/$file/MCL40000.pdf) (last visited May 14, 2014).

litigation even though they may, or may not, be counsel in the pending litigation. The Manual has identified four categories of counsel: liaison counsel,⁴¹ [***475] [***218] lead counsel,⁴² trial counsel,⁴³ and committees of counsel.⁴⁴ The Manual provides some excellent ideas

⁴¹ The Manual describes the role of "liaison counsel" as follows:

Liaison counsel. Charged with essentially administrative matters, such as communications between the court and other counsel (including receiving and distributing notices, orders, motions, and briefs on behalf of the group), convening meetings of counsel, advising parties of developments, and otherwise assisting in the coordination of activities and positions. Such counsel may act for the group in managing document depositories and in resolving scheduling [***54] conflicts. Liaison counsel will usually have offices in the same locality as the court. The court may appoint (or the parties may select) a liaison for each side, and if their functions are strictly limited to administrative matters, they need not be attorneys.

Manual, § 10.221.

⁴² The Manual describes the role of "lead counsel" as follows:

Lead counsel. Charged with formulating (in consultation with other counsel) and presenting positions on substantive and procedural issues during the litigation. Typically they act for the group—either personally or by coordinating the efforts of others—in presenting written and oral arguments and suggestions to the court, working with opposing counsel in developing and implementing a litigation plan, initiating and organizing discovery requests and responses, conducting the principal examination of deponents, employing experts, arranging for support services, and seeing that schedules are met.

Manual, § 10.221.

⁴³ The Manual describes the role of "trial counsel" as follows:

Trial counsel. Serve as principal attorneys at trial for the group and organize and coordinate the work of the other attorneys on the trial team.

Manual, § 10.221.

⁴⁴ The Manual describes the role of "committees of [***55] counsel" as follows:

Committees of counsel. Often called steering committees, coordinating committees, management committees, executive committees, discovery committees, or trial teams. Committees are most commonly needed when group members' interests and positions are sufficiently dissimilar to justify giving them representation in decision making. The court or lead

for handling such issues as discovery disputes, privilege claims and protective orders, handling documents, discovery of computerized data, depositions, interrogatories, stipulations, and requests for admission.

Finally, to the extent that the Panel was attempting to find a way to efficiently manage the two cases referred by the Chief Justice, it simply was not appropriate to do so by entering a ruling that effectively vacated the Chief Justice's order. A reservoir of information and procedural devices exist to assist the Panel in bringing the two cases to a fair and just resolution. As we have noted, we recognize the Panel's authority to manage cases referred to it and its ability to craft creative solutions to problems [***56] it may encounter in its consideration of multiple cases. However, we reiterate that such authority granted to the Panel does not exceed that vested in the Chief Justice of this Court.

IV.

CONCLUSION

In view of the foregoing, we grant the Petitioners' request for a writ of prohibition and prohibit enforcement of the Panel's order of March 11, 2014, that separated the two cases referred by the Chief Justice into twenty-five civil cases.

Writ granted.

Concur by: LOUGHRY

Concur

LOUGHRY, Justice, concurring:

I agree with the majority's holdings regarding Rule 3(a) and Rule 20 of the West Virginia Rules of Civil Procedure, but write separately to emphasize that the majority's opinion should not be read as diminishing the avenues available to litigants for challenging whether

counsel may task committees with preparing briefs or conducting portions of the discovery program if one lawyer cannot do so adequately. Committees of counsel can sometimes lead to substantially increased costs, and they should try to avoid unnecessary duplication of efforts and control fees and expenses.

Manual, § 10.221.

parties were permissibly joined into one action under Rule 20. The Panel's stated intent in proposing what became the 2008 amendment to Rule 3(a) clearly exceeded what was contemplated by this Court in *Cable*,¹ as the majority has fully [*476] explained. [**219] While the Panel urges us to interpret Rule 3(a) as a substantive rule creating multiple civil actions² and warns that any other interpretation could result in West Virginia from becoming a "dumping ground for foreign lawsuits," the fact remains that there are established tools to prevent [***57] such an event from occurring. Challenges, such as a motion to dismiss based on forum non conveniens under *West Virginia Code § 56-1-1a* (2012),³ or a motion to dismiss fraudulently or improperly joined parties,⁴ are available to litigants. In short, misjoined claims and parties may still be addressed through appropriate procedural and

¹ I have reviewed the file maintained by this Court regarding the amendment to Rule 3(a) in 2008, and its contents confirm that the purpose of the amendment was to allow for the collection of multiple filing fees where one complaint is filed naming multiple, unrelated plaintiffs, as discussed in *Cable*.

² The Panel forecasted its interpretation of Rule 3(a) in its Findings of Fact and Recommendation of the Mass Litigation Panel filed in *Abbott v. Earth Support Services d/b/a/ Micon, Inc., et al.* (Civil Action No. 08-C-138, Circuit Court of Wyoming County), wherein it explained that had the *Abbott* case been filed after the 2008 amendment to Rule 3(a), it would have been "99 separate civil actions instead of one civil action with 99 plaintiffs[]" and would have met the definition of mass litigation under Trial Court Rule 26.04(a). Similarly, this Court's interpretation of Rule 3(a) was forecasted in the case at bar when the [***58] Chief Justice denied the defendants' motion to refer this litigation to the Panel on the basis that

substantive challenges.⁶

there was only one case; although there were nineteen plaintiff families who had been assigned multiple civil action numbers by the Wayne County Circuit Court Clerk. It was only after a second complaint was filed by additional plaintiffs that the Chief Justice granted the subsequent motion to refer to the Panel, which was filed by the plaintiffs.

³ *West Virginia Code § 56-1-1a* provides, in part, as follows:

a) In any civil action if a court of this state, upon a timely written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action, or dismiss any plaintiff. Provided, That the plaintiff's choice of a forum is entitled to great deference, but this preference may be diminished when the plaintiff is a nonresident and the cause of action did not arise in this state. In determining whether to grant a motion to stay or dismiss an action, or dismiss any plaintiff under the [***59] doctrine of forum non conveniens, the court shall consider:

(1) Whether an alternate forum exists in which the claim or action may be tried;

(2) Whether maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(3) Whether the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(4) The state in which the plaintiff(s) reside;

(5) The state in which the cause of action accrued;

(6) Whether the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum, which shall include consideration of the extent to which an injury or death resulted from acts or omissions that occurred in this state. Factors relevant to the private interests of the parties include, but are not limited to, the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling witnesses; the cost of obtaining attendance of willing witnesses; possibility of a view of the premises, if a view would be appropriate [***60] to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. Factors relevant to the public interest of the state include, but are not limited to, the administrative difficulties flowing from court congestion; the interest in having localized controversies decided within the state; the avoidance of unnecessary problems in conflict of laws, or in the application of

I also agree with the majority that Rule 3(a) cannot be interpreted in a manner that essentially nullifies Rule 20, which provides [***477] [***220] that "[a]ll persons may join in one action as plaintiffs" While I appreciate the Panel's argument regarding the manner in which Rule 3(a) dovetails with Trial Court Rule 26.04(a)(2) as it pertains to "civil actions," the Panel failed to address permissive joinder under Rule 20 in its brief filed in this Court, even though the interplay between Rule 20 and Rule 3(a) was the focus of the other parties' arguments in this matter. In fact, the Panel's lack of discussion in this regard is arguably an implicit recognition of the conflict between Rule 20 and the Panel's interpretation of Rule 3(a). Additional rule amendments and revisions may well be necessary to address the Panel's litigation management concerns, but it must be done in a manner that does not affront permissive joinder.

Lastly, I do not understand why the majority felt compelled to recommend the Federal Judicial Center's *Manual for Complex Litigation*, Fourth (2004), to the Panel as a "good source of suggestions on how to efficiently handle complex mass [***62] litigation issues[.]" The majority quotes the federal manual's definitions of "liaison counsel" and "lead counsel," as if these definitions and ideas are a novel concept, when our own Trial Court Rule 26.05 already defines these very terms. And, given the obvious similarities between the definitions of these terms in the federal manual versus our Trial Court Rules, our definitions may well have been based on the definitions in the federal

foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty;

7) Whether not granting the stay or dismissal would result in unreasonable duplication or proliferation of litigation; and

(8) Whether the alternate forum provides a remedy.

⁴ Rule 21 of the West Virginia Rules of Civil procedure provides:

Misjoinder of parties is not ground for dismissal of an action. Parties maybe dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claims against a party may be severed and proceeded with separately.

⁵ Also, as the majority explains, the Panel may use procedural mechanisms to procedurally (but not substantively) divide plaintiffs into relevant groups, or to "devise a scheme" [***61] that permits the defendants to raise assert dispositive motions based on issues such as statute of limitations as to certain plaintiffs.

manual. Indeed, I am confident that the Panel has utilized this federal manual on many occasions for guidance and "suggestions" in its development of mechanisms and plans for organization and procedure of mass litigation. Consequently, I find the majority's recommendation of this federal manual to the Panel to be unnecessary.

For the reasons set forth above, I respectfully concur in the majority's holdings, as reflected in its opinion.

End of Document

2024 Shifts

A Shift					B Shift					C Shift				
Pay Period	Hours	Reg	OT		Pay Period	Hours	Reg	OT		Pay Period	Hours	Reg	OT	
1/1-1/15	120	80	40		1/1-1/15	144	96	48		1/1-1/15	96	64	32	
1/16-1/31	144	96	48		1/16-1/31	144	96	48		1/16-1/31	120	80	40	
2/1-2/15	96	64	32		2/1-2/15	96	64	32		2/1-2/15	144	96	48	
2/16-2/29	120	80	40		2/16-2/29	144	96	48		2/16-2/29	120	80	40	
3/1-3/15	120	80	40		3/1-3/15	96	64	32		3/1-3/15	120	80	40	
3/16-3/31	120	80	40		3/16-3/31	120	80	40		3/16-3/31	120	80	40	
4/1-4/15	120	80	40		4/1-4/15	144	96	48		4/1-4/15	120	80	40	
4/16-4/30	144	96	48		4/16-4/30	120	80	40		4/16-4/30	120	80	40	
5/1-5/15	96	64	32		5/1-5/15	96	64	32		5/1-5/15	144	96	48	
5/16-5/31	120	80	40		5/16-5/31	144	96	48		5/16-5/31	96	64	32	
6/1-6/15	144	96	48		6/1-6/15	120	80	40		6/1-6/15	120	80	40	
6/16-6/30	120	80	40		6/16-6/30	120	80	40		6/16-6/30	144	96	48	
7/1-7/15	96	64	32		7/1-7/15	120	80	40		7/1-7/15	120	80	40	
7/16-7/31	144	96	48		7/16-7/31	144	96	48		7/16-7/31	96	64	32	
8/1-8/15	120	80	40		8/1-8/15	96	64	32		8/1-8/15	144	96	48	
8/16-8/31	120	80	40		8/16-8/31	120	80	40		8/16-8/31	120	80	40	
9/1-9/15	120	80	40		9/1-9/15	144	96	48		9/1-9/15	120	80	40	
9/16-9/30	144	96	48		9/16-9/30	120	80	40		9/16-9/30	120	80	40	
10/1-10/15	96	64	32		10/1-10/15	96	64	32		10/1-10/15	120	80	40	
10/16-10/31	120	80	40		10/16-10/31	144	96	48		10/16-10/31	120	80	40	
11/1-11/15	144	96	48		11/1-11/15	120	80	40		11/1-11/15	144	96	48	
11/16-11/30	120	80	40		11/16-11/30	120	80	40		11/16-11/30	120	80	40	
12/1-12/15	96	64	32		12/1-12/15	120	80	40		12/1-12/15	96	64	32	
12/16-12/31	144	96	48		12/16-12/31	144	96	48		12/16-12/31	120	80	40	
	2928	1952	976			2976	1984	992			2904	1936	968	

Avg weekly hours is 2936

KEEP TRACK OF ALL OF YOUR PAY STUBS!

11 July 2023

EMPLOYEES:
FIRE DEPARTMENT
 3328 hrs/yr (except Chief, Trng Officer & Fire Marshal)
 3328 hrs/yr (except Chief, Trng Officer & Fire Marshal)

	SALARY OR HOURLY (Dept 706)	ANNUAL BASE SALARY	LONGEVITY	SPECIAL ASSIGNMENT PAY	GROSS ANNUAL SALARY	BASE HOURLY	LONGEVITY HOURLY	SPECIAL ASSIGNMENT HOURLY	GROSS HOURLY	SEMI MONTHLY
Chief:										
1	\$	\$96,350.00	\$8,836.00	\$3,000.00	\$98,186.00	\$41.51	\$4.25	\$1.44	\$47.20	\$4,091.08
Deputy Chief:										
2	\$	\$63,436.00	\$6,884.00	\$3,000.00	\$73,320.00	\$30.50	\$3.31	\$1.44	\$35.25	\$3,055.00
Fire Marshal:										
3	\$	\$61,986.00	\$3,151.00	\$3,000.00	\$68,137.00	\$29.80	\$1.51	\$1.44	\$32.75	\$2,839.04
Captain: (3) BUDGETED										
4	\$	\$61,108.00	\$5,050.00	\$3,000.00	\$69,158.00	\$18.36	\$1.52	\$0.90	\$20.78	\$2,881.58
5	\$	\$61,108.00	\$5,050.00	\$3,000.00	\$69,158.00	\$18.36	\$1.52	\$0.90	\$20.78	\$2,881.58
6	\$	\$61,108.00	\$3,402.00	\$3,000.00	\$67,510.00	\$18.36	\$1.02	\$0.90	\$20.28	\$2,812.92
Lieutenant: (9) BUDGETED										
7	\$	\$55,312.00	\$3,151.00	\$3,000.00	\$61,463.00	\$16.62	\$0.95	\$0.90	\$18.47	\$2,560.96
8	\$	\$55,312.00	\$3,402.00	\$3,000.00	\$61,714.00	\$16.62	\$1.02	\$0.90	\$18.54	\$2,571.42
9	\$	\$55,312.00	\$2,151.00	\$3,000.00	\$60,463.00	\$16.62	\$0.65	\$0.90	\$18.17	\$2,519.29
10	\$	\$55,312.00	\$1,500.00	\$3,000.00	\$59,812.00	\$16.62	\$0.45	\$0.90	\$17.97	\$2,492.17
11	\$	\$55,312.00	\$1,104.00	\$3,000.00	\$59,416.00	\$16.62	\$0.33	\$0.90	\$17.85	\$2,475.67
12	\$	\$55,312.00	\$3,151.00	\$3,000.00	\$61,463.00	\$16.62	\$0.95	\$0.90	\$18.47	\$2,560.96
13	\$	\$55,312.00	\$1,800.00	\$3,000.00	\$60,112.00	\$16.62	\$0.54	\$0.90	\$18.06	\$2,504.67
14	\$	\$55,312.00	\$1,104.00	\$3,000.00	\$59,416.00	\$16.62	\$0.33	\$0.90	\$17.85	\$2,475.67
15	\$	\$55,312.00	\$3,402.00	\$3,000.00	\$61,714.00	\$16.62	\$1.02	\$0.90	\$18.54	\$2,571.42

Reel, Gerald (Matt)

Firefighter First Class: (17) (after completion of 3 years)

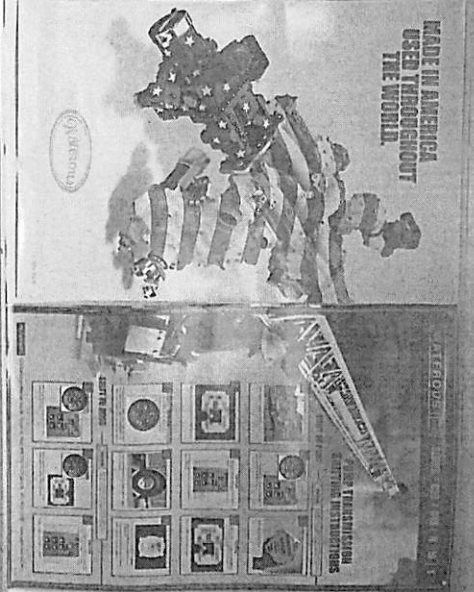
16	Snyder, Danny	06/01/02	S	\$52,005.00	\$3,151.00	\$3,000.00	\$58,156.00	\$15.63	\$0.95	\$0.90	\$17.48	\$2,423.17
17	Blake, Michael	08/01/00	S	\$52,005.00	\$3,402.00	\$3,000.00	\$58,407.00	\$15.63	\$1.02	\$0.90	\$17.55	\$2,433.63
18	Jones Jr., Richard	06/19/05	S	\$52,005.00	\$2,151.00	\$3,000.00	\$57,156.00	\$15.63	\$0.65	\$0.90	\$17.18	\$2,381.50
19	Mayle, Justin	08/14/06	S	\$52,005.00	\$1,800.00	\$3,000.00	\$56,805.00	\$15.63	\$0.54	\$0.90	\$17.07	\$2,366.88
20	Rohrbough, Nathan	01/17/05	S	\$52,005.00	\$1,800.00	\$3,000.00	\$56,805.00	\$15.63	\$0.54	\$0.90	\$17.07	\$2,366.88
21	Bacon, Mark	11/20/07	S	\$52,005.00	\$1,500.00	\$3,000.00	\$56,505.00	\$15.63	\$0.45	\$0.90	\$16.98	\$2,354.38
22	Sanders, Jeffrey (Mechanic Duties)	03/03/08	S	\$54,441.00	\$1,500.00	\$3,000.00	\$58,941.00	\$16.36	\$0.45	\$0.90	\$17.71	\$2,455.88
23	Barberio Jr., Frank	02/02/09	S	\$52,005.00	\$1,500.00	\$3,000.00	\$56,505.00	\$15.63	\$0.45	\$0.90	\$16.98	\$2,354.38
24	Aldrich, Neal	05/02/11	S	\$52,005.00	\$1,104.00	\$3,000.00	\$56,109.00	\$15.63	\$0.33	\$0.90	\$16.86	\$2,337.88
25	Handschumacher, Jon	10/16/13	S	\$52,005.00	\$496.00	\$3,000.00	\$55,501.00	\$15.63	\$0.15	\$0.90	\$16.68	\$2,312.54
26	Phillips, Ethan Andrew	05/15/15	S	\$52,005.00	\$496.00	\$3,000.00	\$55,501.00	\$15.63	\$0.15	\$0.90	\$16.68	\$2,312.54
27	Hastings, Jeremiah David	07/01/15	S	\$52,005.00	\$496.00	\$3,000.00	\$55,501.00	\$15.63	\$0.15	\$0.90	\$16.68	\$2,312.54
28	Webb, Christofer James	05/16/17	S	\$52,005.00	\$372.00	\$3,000.00	\$55,377.00	\$15.63	\$0.11	\$0.90	\$16.64	\$2,307.38
29	Webb Jr., Jeffrey O.	09/15/17	S	\$52,005.00	\$248.00	\$3,000.00	\$55,253.00	\$15.63	\$0.07	\$0.90	\$16.60	\$2,302.21
30	Blake, Justin Scott	02/01/18	S	\$52,005.00	\$248.00	\$3,000.00	\$55,253.00	\$15.63	\$0.07	\$0.90	\$16.60	\$2,302.21
31	Elko, Billy Joe	03/16/20	S	\$52,005.00	\$124.00	\$3,000.00	\$55,129.00	\$15.63	\$0.04	\$0.90	\$16.57	\$2,297.04

Firefighter: (10)

32	Reynolds, Andrew Wayne	02/01/21	S	\$50,152.00	\$124.00	\$3,000.00	\$53,276.00	\$15.07	\$0.04	\$0.90	\$16.01	\$2,219.83
33	Wright II, Jeffrey Scott	02/02/21	S	\$50,152.00	\$124.00	\$3,000.00	\$53,276.00	\$15.07	\$0.04	\$0.90	\$16.01	\$2,219.83
34	Chapman, Jared W.	08/02/21	S	\$50,152.00	\$0.00	\$3,000.00	\$53,152.00	\$15.07	\$0.00	\$0.90	\$15.97	\$2,214.67
35	Woods, Benjamin C.	08/03/21	S	\$50,152.00	\$0.00	\$3,000.00	\$53,152.00	\$15.07	\$0.00	\$0.90	\$15.97	\$2,214.67
36	Marino, Jaden S.	08/04/21	S	\$50,152.00	\$0.00	\$3,000.00	\$53,152.00	\$15.07	\$0.00	\$0.90	\$15.97	\$2,214.67
37	Webber, Justin E.	08/05/21	S	\$50,152.00	\$0.00	\$3,000.00	\$53,152.00	\$15.07	\$0.00	\$0.90	\$15.97	\$2,214.67
38	Cross, Michael	12/01/21	S	\$50,152.00	\$0.00	\$3,000.00	\$53,152.00	\$15.07	\$0.00	\$0.90	\$15.97	\$2,214.67
39	Foster, Christopher	12/16/21	S	\$50,152.00	\$0.00	\$3,000.00	\$53,152.00	\$15.07	\$0.00	\$0.90	\$15.97	\$2,214.67
40	Martin, Jr., Darren L.	01/03/22	S	\$50,152.00	\$0.00	\$3,000.00	\$53,152.00	\$15.07	\$0.00	\$0.90	\$15.97	\$2,214.67
41	Brown, Dylan	05/16/22	S	\$50,152.00	\$0.00	\$3,000.00	\$53,152.00	\$15.07	\$0.00	\$0.90	\$15.97	\$2,214.67

Probationary Firefighter: (3) (1 year period)

\$40.00												
42	Currey, Jonathan P	02/01/23	S	\$46,062.00	\$0.00	\$3,000.00	\$49,062.00	\$13.84	\$0.00	\$0.90	\$14.74	\$2,044.25
43	Fox, Arden	04/03/23	S	\$46,062.00	\$0.00	\$3,000.00	\$49,062.00	\$13.84	\$0.00	\$0.90	\$14.74	\$2,044.25
44	Bexfield, Scott	04/17/23	S	\$46,062.00	\$0.00	\$3,000.00	\$49,062.00	\$13.84	\$0.00	\$0.90	\$14.74	\$2,044.25
	VACANT		S	\$46,062.00	\$0.00	\$3,000.00	\$49,062.00	\$13.84	\$0.00	\$0.90	\$14.74	\$2,044.25
44	TOTAL - BUDGETED FIREMEN (45) (Including Chief)											\$101,071.49



A SHIFT 122 DAY 2024
 REG 1952 HRS
 OT 970 HRS
 21.66 AVERAGE DAYS A YEAR
 HOURLY RATE BASE ON BUDGETS/LINITY ÷ TOTAL HOURS 3400 ÷
 ROUNDING UP AMOUNTS CNT 6108 LT 55312

BASE RATE	LONGEVITY	HAZARD	REG. H ² RATE	OT H ² RATE	REG YEAR	OT YEAR	TOTAL	FF 50152
LT 16.24	\$1.00	.88	18.11	27.17	35,350.72	26,517.92	61,868.64	61,714
FF1 15.27	53	.88	16.67	25.01	32,539.64	24,409.76	56,949.60	56,805
PROB 13.52	Ø	.88	14.40	21.60	28,108.80	21,081.60	49,190.40	49,062

96 4M
 120 5M
 144 6M
 PAY BENDS



14.72 Ø .88 15.60 23.40
 64 1159.04 80 1448.8
 32 869.44 40 1086.8
 2028 48 2535.6
 3042.72

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), *et al.*,

Plaintiffs,

vs.

**THE CITY OF CLARKSBURG,
a municipal corporation,**

Defendant.

Civil Action No.:

Judge:

PLAINTIFFS' FIRST SET OF COMBINED DISCOVERY

NOW COMES the Plaintiff, Mark Walsh, *et al.*, by and through their undersigned counsel, Teresa C. Toriseva, Esq., Joshua D. Miller, Esq., Andrew A. Carpenter, Esq., Gabriella T. Taverne, Esq., and the law office of Toriseva Law, and pursuant to Rules 33, 34 and 36 of the West Virginia Rules of Civil Procedure hereby serves the following Interrogatories, Requests for Production of Documents and Requests for Admission to be answered separately, under oath, within forty-five (45) days after service hereon.

INSTRUCTIONS

1. Each interrogatory shall be continuing so as to require you to file supplemental answers pursuant to Rule 26 of the West Virginia Rules of Civil Procedure.
2. Each interrogatory calls for information in Defendant's possession, custody or control, or in the possession, custody or control of Defendant's representatives, agents, consultants, and legal counsel, unless privileged or otherwise protected.
3. With respect to any information that is withheld on a claim of privilege, provide at the time of responding to those interrogatories a statement signed by an attorney representing the Defendant setting forth as to each such item of information withheld:

- (a) the identity of the person(s) having knowledge of the information;
- (b) the identity of all persons to whom the information was communicated or otherwise made available;
- (c) the job title or position of every person identified in response to subparagraphs (a) and (b);
- (d) the date(s) on which the information was received or became known by each person having knowledge of its existence;
- (e) a brief description of the nature and subject matter of the information; and
- (f) the statute, rule or decision that is claimed to give rise to the privilege.

4. Each part of the following interrogatories, whether a numerical paragraph or one of the subparagraphs, is to be answered separately and fully.

5. If objection is made to an interrogatory, or any portion thereof, the interrogatory or portion thereof shall be specified and, as to each, all reasons for objections shall be stated fully by the responding party.

6. If all the information furnished in an answer to all or any part of an interrogatory is not within the personal knowledge of the person signing the interrogatory, identify each person to whom all or any part of the information furnished is a matter of personal knowledge, and each person who communicated to the person signing the interrogatory any part of the information furnished.

7. If the answer to all or any part of the interrogatory is not presently known or available, include a statement to that effect, furnish the information known or available, and respond to the entire interrogatory by supplemental answer in writing and under oath within ten (10) days from the time the answer becomes known or available

DEFINITIONS

1. “And” includes “or” and “or” includes “and”; “any” includes “all” and “all” includes “any”; “each” includes “every” and “every” includes “each.”

2. “Company” or “entity” means any form of business, wherever organized, including, without limitation, any corporation, sole proprietorship, partnership (general or limited), joint venture, association group, government agency and agent, firm or other business enterprise or legal entity which is not a natural person, and means both the singular and plural.

3. “Define” when used with reference to a phrase or term, means (a) state the meaning of the phrase or term; and (b) identify each person known by Defendant to have personal knowledge regarding the meaning of such phrase or term upon whose testimony Defendant presently intends to rely at trial.

4. “Describe” means to explain fully by reference to underlying facts rather than conclusions of fact or law.

5. “Document” means originals or any exact copies of written, recorded, transcribed, punched, filmed, taped, or graphic matter, however and by whomever prepared, produced, reproduced, disseminated or made, including, but not limited to, any memoranda, interoffice communications, letters, studies, reports, summaries, articles, releases, notes, records of conversations, minutes, statements, comments, speeches, testimony, notebooks, drafts, data sheets, work sheets, records, statistics, charts, contracts, diaries, bills, accounts, graphics or oral records, representations of an kind (including, without limitation, photographs, plats, charts, graphs, microfiche, microfilm, video tape recordings and motion pictures), tapes, data processing sheets or cards, computer or word processing disks, or other written, printed, typed, aural, or recorded material in the possession, custody or control of Defendant. The term “document” also means all

copies or reproductions of all the foregoing items upon which notations in writing, print, or otherwise has been made that do not appear in the originals. To the extent the data processing cards, magnetic tapes, or other computer-related materials are produced, produce all programs, instructions, and other similarly related information necessary to read, comprehend and otherwise utilize said data processing cards, magnetic tapes, or other computer-related materials.

6. “Identify”, when used with reference to a natural person, means to state his or her (a) full name; (b) present business and/or residence address and telephone numbers; (c) present business affiliation, address, title or position; (d) if different from (c), the group, organization or business the person was representing at any time relevant to the answer to a specific interrogatory; and (e) home address. If this information is not known, furnish such information as was last known.

7. “Identify”, when used with reference to a business entity, means to state its (a) full name; (b) form of organization (e.g., corporation, partnership); (c) place of proprietorship, partnership, joint venture, group, government agency and agent, firm or other business enterprise or legal entity, which is not a natural person, and means both the singular and the plural.

8. “Individual” or “person” means any natural person, including, without limitation, an officer, director, employee, agent, representative, distributor, supplier, independent contractor, licensee or franchisee, and it includes any corporation, sole proprietorship, partnership, joint venture, group, government agency and agent, firm or other business enterprise or legal entity, which is not a natural person, and means both the singular and plural.

9. “Fire Fighter” and “fire fighter” shall mean the fire fighters employed by you.

10. “You”, “your”, and “City” means “The City of Clarksburg”

INTERROGATORIES

INTERROGATORY NO. 1: Please state the name, address, email address, phone number, and occupation of the person/persons completing the responses to discovery.

RESPONSE:

INTERROGATORY NO. 2: Describe in detail the policy and procedure behind calculating the Fire Fighters' regular rate of pay.

RESPONSE:

INTERROGATORY NO. 3: Describe in detail the policy and procedure behind calculating the Fire Fighters' overtime rate of pay.

RESPONSE:

INTERROGATORY NO. 4: State the base annual salary and any additional pay premiums for the fire department for the past ten (10) years for each of the following:

- i. Fire Chief
- ii. Secretary
- iii. Officers
- iv. Captain
- v. Lieutenant
- vi. Fire Fighter First Class
- vii. Fire Fighter
- viii. Probationary Fire Fighter
- ix. Fire Fighter Apprentice
- x. Emergency Medical Technicians
- xi. New Hires/Probationary employees

RESPONSE:

INTERROGATORY NO. 5: Identify the individual(s) who originally determined how a fire fighter's regular rate of pay was calculated from a fire fighter's stated salary.

RESPONSE:

INTERROGATORY NO. 6: Identify any individual(s) who has reviewed, recalculated, audited, or evaluated how a fire fighter's regular rate of pay is calculated from a fire fighter's stated salary.

RESPONSE:

INTERROGATORY NO. 7: Identify any written policies that prescribe a mathematical calculation for how a fire fighter's regular rate of pay was calculated from a fire fighter's stated salary.

RESPONSE:

INTERROGATORY NO. 8: Identify any written policies that discuss how a fire fighter's regular rate of pay was calculated from a fire fighter's stated salary.

RESPONSE:

INTERROGATORY NO. 9: Identify the individual who ensures that fire fighters are paid according to state and federal law?

RESPONSE:

INTERROGATORY NO. 9: Identify the name of the payroll software or computer program, and the entity from whom it was purchased that the City currently uses to calculate the payroll for the Firefighters.

RESPONSE:

INTERROGATORY NO. 10: State the date the software or computer program was first implemented for calculating the payroll for the Firefighters.

RESPONSE:

INTERROGATORY NO. 11: State the total cost of the software, including but not limited to the initial purchase cost, the cost of any ongoing updates and/or additional software or hardware, and or training costs that the City has paid to implement said program.

RESPONSE:

INTERROGATORY NO. 12: State the name of any employee, agent, or contractor, that performed any investigation or audit into how fire fighters are paid by the City within the last ten years.

RESPONSE:

INTERROGATORY NO. 13: Please identify all persons known to you to have personal knowledge of the facts surrounding fire fighter pay as it relates to determining a regular rate of pay or overtime pay.

RESPONSE:

INTERROGATORY NO. 14: Please identify all expert witnesses who will be called to testify at the trial of this case, the area of expertise of each, a resume or CV for each, and the summary of the expected testimony of each.

RESPONSE:

INTERROGATORY NO. 15: Please identify all insurance agreements you have providing insurance coverage for the subject matter of the Complaint, including the name of the owner, the name of the insurance carrier, the policy number, the type of coverage, the amount of coverage (specifying its upper and lower limits) and the effective dates of said policy for the past five years.

RESPONSE:

INTERROGATORY NO. 16: Identify the individual(s) who determined that a fire fighter's regular rate of pay was calculated based on 3,328 hours per year.

RESPONSE:

INTERROGATORY NO. 17: Identify the individual(s) who determined that a fire fighter's regular rate of pay was calculated based on 3,406 hours per year.

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all documents identified in your responses to the Plaintiffs' interrogatories.

RESPONSE:

REQUEST NO. 2: Produce legible copies of any executed contracts of employment between the City and the Fire Fighters, either as a group or individually, for the last ten years.

RESPONSE:

REQUEST NO. 3: Produce legible copies of any letter sent to a Fire Fighter by the City stating the fire fighter's salary, for the last ten years.

RESPONSE:

REQUEST NO. 4: Produce legible copies of any letter sent to a Fire Fighter by the City stating the fire fighter has received an appointment to the City's fire department, for the last ten years.

RESPONSE:

REQUEST NO. 5: Produce legible copies of any letter sent to a Fire Fighter by the City stating the fire fighter has received a promotion in the City's fire department, for the last ten years.

RESPONSE:

REQUEST NO. 6:

Produce all writing, including but not limited to letters, correspondence, emails, memoranda of understanding, ordinances, policies or any other writing that would describe the method or process of calculating a Fire Fighter's regular rate of pay.

RESPONSE:

REQUEST NO. 7:

Produce all writing, including but not limited to letters, correspondence, emails, memoranda of understanding, ordinances, policies or any other writing that would describe the method or process of calculating a Fire Fighter's overtime rate of pay.

RESPONSE:

REQUEST NO. 8:

Produce copies of all wage payment records for all of the Plaintiffs for the last ten (10) years.

RESPONSE:

REQUEST NO. 9:

Produce copies of all time keeping records, including but not limited to, time sheets, for all of the Plaintiffs for the last ten (10) years.

RESPONSE:

REQUEST NO. 10:

Produce copies of all of the pay stubs for all of the Plaintiffs for the last ten (10) years.

RESPONSE:

REQUEST NO. 11:

Produce copies of all of the W-2 tax forms for all of the Plaintiffs for the last ten (10) years.

RESPONSE:

REQUEST NO. 12:

Produce copies of all of the W-4 tax forms for all of the Plaintiffs for the last ten (10) years.

RESPONSE:

REQUEST NO. 13:

Produce certified copies of all current and former versions of the City's Personnel & Administrative Policies & Procedures Manual for the last ten years.

RESPONSE:

REQUEST NO. 14:

Produce all orders, letters, rules, and amendments to City's Personnel & Administrative Policies & Procedures Manual that relate in any way to the Fire Fighter's pay for the last ten years.

RESPONSE:

REQUEST NO. 15: Please produce all written, recorded, or signed statements of any party or witness related to subject matter of the Complaint.

RESPONSE:

REQUEST NO. 16: Please a true and correct copy of any and all documents that you, or your counsel, receive during the pendency of this litigation through a request, subpoena, or authorization, including, but not limited to, any document regarding any Plaintiff.

RESPONSE:

REQUEST NO. 17: Please produce a copy of all notes, journals and other documents prepared by you and your agents and employees regarding and as a result of the subject matter of the Complaint.

RESPONSE:

REQUEST NO. 18: Please produce a copy of all insurance policies that provide any insurance coverage to you for any or all of the claims in the Complaint, including but not limited to excess or umbrella policies.

RESPONSE:

REQUEST NO. 19: Please produce all claims logs pertaining to all applicable insurance carriers regarding the subject matter of the Complaint.

RESPONSE:

REQUEST FOR ADMISSIONS

REQUEST #1: Admit that the City of Clarksburg does not have any written policy for calculating a fire fighter’s regular rate of pay from a stated annual salary.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #2: Admit that the City of Clarksburg does not calculate a fire fighter’s regular rate of hourly pay by reducing the fire fighter’s annual salary to its work-period equitant to then dividing this amount by the number of hours which it is intended to compensate.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #3: Admit that the City of Clarksburg’s Fire Fighters work a seven (7) work week.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #4: Admit that the City of Clarksburg’s Fire Fighters work a seven (7) work week for the purposes of overtime compensation.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #5: Admit that the City of Clarksburg pays the Fire Fighters overtime compensation for hours worked in excess of forty (40) hours per work week.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #7: Admit that in each of the last ten years that none of the City of Clarksburg’s Fire Fighters have been scheduled to work 3,328 hours per year.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #8: Admit that in each of the last ten years that none of the City of Clarksburg’s Fire Fighters have been scheduled to work 3,406 hours per year.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #9: Admit that the City of Clarksburg’s use of 3,328 hours per year for calculating a Fire Fighter’s regular rate of pay does not comply with the West Virginia Minimum Wage and Maximum Hours Standards for Employees, 21-5C-1, *et seq.*

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #10: Admit that the City of Clarksburg’s use of 3,406 hours per year for calculating a Fire Fighter’s regular rate of pay does not comply with the West Virginia Minimum Wage and Maximum Hours Standards for Employees, 21-5C-1, *et seq.*

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #11: Admit that in 2024 none of the City of Clarksburg’s Fire Fighters are scheduled to work 3,328 hours per year.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #12: Admit that in 2024 none of the City of Clarksburg’s Fire Fighters are scheduled to work 3,406 hours per year.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

REQUEST #13: Admit that the City of Clarksburg is required to pay the Plaintiffs overtime compensation for all hours worked in excess of forty (40) hours in a work week.

ADMIT: _____

DENY _____

If your answer is anything but an unqualified admission, please state your response more fully herein.

Mark Walsh, et al.

BY COUNSEL

By: /s/Teresa C. Toriseva

Teresa C. Toriseva, Esq. WV ID# 6947

Joshua D. Miller, Esq. WV ID# 12439

Andrew A. Carpenter, Esq. WV ID # 14542

Gabriella T. Taverne, Esq. WV ID # 14594

TORISEVA LAW

1446 National Road

Wheeling, WV 26003

Telephone: (304) 238-0066

Facsimile: (304) 238-0149

Email: justice@torisevalaw.com

Counsel for Plaintiffs

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), *et al.*,

Plaintiffs,

vs.

THE CITY OF CLARKSBURG,
a municipal corporation,

Defendant.

Civil Action No.:

Judge:

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing **Plaintiff's First Set of Combined Discovery** was served along with the Complaint to the individual listed below by the clerk via certified mail, return receipt requested, on the 25th of June, 2024:

The City of Clarksburg
222W Main Street
Clarksburg, WV 26301

Mark Walsh, et al.
BY COUNSEL

By: /s/Teresa C. Toriseva

Teresa C. Toriseva, Esq. WV ID# 6947

Joshua D. Miller, Esq. WV ID# 12439

Andrew A. Carpenter, Esq. WV ID # 14542

Gabriella T. Taverne, Esq. WV ID # 14594

TORISEVA LAW

1446 National Road

Wheeling, WV 26003

Telephone: (304) 238-0066

Facsimile: (304) 238-0149

Email: justice@torisevalaw.com

(Counsel for the Plaintiffs)

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), et al.,

Plaintiffs,

vs.

**THE CITY OF CLARKSBURG,
a municipal corporation,**

Defendant.

Civil Action No.:

Judge: _____

NOTICE OF DEPOSITION FOR TIFFANY MYERS

PLEASE TAKE NOTICE that the undersigned will take the deposition of **TIFFANY MYERS** will occur at TORISEVA LAW, 1446 National Road, Wheeling, WV 26003 on **October 16, 2024, at 1:00 p.m.** Said deposition will be taken before a person authorized by law to administer oaths and will continue until complete.

**Mark Walsh, et al.
BY COUNSEL**

By: /s/ Teresa C. Toriseva
Teresa C. Toriseva, Esq. WV ID# 6947
Joshua D. Miller, Esq. WV ID# 12439
TORISEVA LAW
1446 National Road
Wheeling, WV 26003
Telephone: (304) 238-0066
Facsimile: (304) 238-0149
Email: justice@torisevalaw.com
Counsel for Plaintiffs

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), et al.,

Plaintiffs,

vs.

**THE CITY OF CLARKSBURG,
a municipal corporation,**

Defendant.

Civil Action No.:

Judge: _____

CERTIFICATE OF SERVICE

Service of the foregoing **NOTICE OF DEPOSITION OF TIFFANY MYERS** was served with the Complaint to the individual listed below via certified mail with the Complaint:

**The City of Clarksburg
222W Main Street
Clarksburg, WV 26301**

By: /s/ Teresa C. Toriseva _____
Teresa C. Toriseva, Esq. WV ID# 6947
Joshua D. Miller, Esq. WV ID# 12439
TORISEVA LAW
1446 National Road
Wheeling, WV 26003
Telephone: (304) 238-0066
Facsimile: (304) 238-0149
Email: justice@torisevalaw.com
Counsel for Plaintiffs

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), et al.,

Plaintiffs,

vs.

**THE CITY OF CLARKSBURG,
a municipal corporation,**

Defendant.

Civil Action No.:

Judge: _____

NOTICE OF DEPOSITION FOR TIFFANY FELL

PLEASE TAKE NOTICE that the undersigned will take the deposition of **TIFFANY FELL** will occur at TORISEVA LAW, 1446 National Road, Wheeling, WV 26003 on **October 16, 2024, at 9:00 a.m.** Said deposition will be taken before a person authorized by law to administer oaths and will continue until complete.

**Mark Walsh, et al.
BY COUNSEL**

By: /s/ Teresa C. Toriseva
Teresa C. Toriseva, Esq. WV ID# 6947
Joshua D. Miller, Esq. WV ID# 12439
TORISEVA LAW
1446 National Road
Wheeling, WV 26003
Telephone: (304) 238-0066
Facsimile: (304) 238-0149
Email: justice@torisevalaw.com
Counsel for Plaintiffs

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), et al.,

Plaintiffs,

vs.

**THE CITY OF CLARKSBURG,
a municipal corporation,**

Defendant.

Civil Action No.:

Judge: _____

CERTIFICATE OF SERVICE

Service of the foregoing **NOTICE OF DEPOSITION OF TIFFANY FELL** was served with the Complaint to the individual listed below via certified mail with the Complaint:

**The City of Clarksburg
222W Main Street
Clarksburg, WV 26301**

By: /s/ Teresa C. Toriseva _____
Teresa C. Toriseva, Esq. WV ID# 6947
Joshua D. Miller, Esq. WV ID# 12439
TORISEVA LAW
1446 National Road
Wheeling, WV 26003
Telephone: (304) 238-0066
Facsimile: (304) 238-0149
Email: justice@torisevalaw.com
Counsel for Plaintiffs

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), et al.,

Plaintiffs,

vs.

**THE CITY OF CLARKSBURG,
a municipal corporation,**

Defendant.

Civil Action No.:

Judge: _____

NOTICE OF DEPOSITION FOR SHERRI MATHENY

PLEASE TAKE NOTICE that the undersigned will take the deposition of **SHERRI MATHENY** will occur at TORISEVA LAW, 1446 National Road, Wheeling, WV 26003 on **October 16, 2024, at 11:00 a.m.** Said deposition will be taken before a person authorized by law to administer oaths and will continue until complete.

**Mark Walsh, et al.
BY COUNSEL**

By: /s/ Teresa C. Toriseva
Teresa C. Toriseva, Esq. WV ID# 6947
Joshua D. Miller, Esq. WV ID# 12439
TORISEVA LAW
1446 National Road
Wheeling, WV 26003
Telephone: (304) 238-0066
Facsimile: (304) 238-0149
Email: justice@torisevalaw.com
Counsel for Plaintiffs

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), et al.,

Plaintiffs,

vs.

**THE CITY OF CLARKSBURG,
a municipal corporation,**

Defendant.

Civil Action No.:

Judge: _____

CERTIFICATE OF SERVICE

Service of the foregoing **NOTICE OF DEPOSITION OF SHERRI MATHNEY** was served with the Complaint to the individual listed below via certified mail with the Complaint:

**The City of Clarksburg
222W Main Street
Clarksburg, WV 26301**

By: /s/ Teresa C. Toriseva _____
Teresa C. Toriseva, Esq. WV ID# 6947
Joshua D. Miller, Esq. WV ID# 12439
TORISEVA LAW
1446 National Road
Wheeling, WV 26003
Telephone: (304) 238-0066
Facsimile: (304) 238-0149
Email: justice@torisevalaw.com
Counsel for Plaintiffs

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), et al.,

Plaintiffs,

vs.

**THE CITY OF CLARKSBURG,
a municipal corporation,**

Defendant.

Civil Action No.:

Judge: _____

NOTICE OF RULE 30(b)(7) DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(7) of the West Virginia Rules of Civil Procedure, Plaintiffs, Lieutenant Mark Walsh, et al, by undersigned counsel, will take the Deposition of a representative of The City of Clarksburg in the above styled action. You are required to bring with you any and all documents and/or electronic records in your possession, with regard to the aforementioned allegations and claims. The deposition will be taken upon oral examination before a person authorized by law to administer oaths, will continue until complete, and will be taken at a date, time, and location to be mutually agreed upon among counsel.

Under the West Virginia Rules of Civil Procedure, The City of Clarksburg has a duty to, “designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify.” *See* W.Va. R. Civ. P. 30(b)(7). Pursuant to Rule 30(b)(7) of the West Virginia Rules of Civil Procedure, one or more designees of The City of Clarksburg shall appear to be deposed concerning:

1. Payroll records specific to the Clarksburg Firefighters.
2. Employment contracts related to the Clarksburg Firefighters.
3. Work schedules for each and every Clarksburg Firefighter within the last ten (10) years.

4. The City of Clarksburg's policies and procedures for its employees.
5. The City of Clarksburg Personnel & Administrative Policies & Procedures Manual, and any amendments thereto.
6. Anyone with knowledge of all the Clarksburg Firefighters and their various employee pay, hours, schedule, job description and classifications.
7. The calculation of the Plaintiffs' regular rate of pay.
8. The calculation of the Plaintiffs' overtime rate of pay.

The deposition shall take place on **October 17, 2024, beginning at 10:00 a.m. at the office of TORISEVA LAW located at 1146 National Road, Wheeling, West Virginia 26003.** You are required to bring with you any and all documents and/or electronics records in your possession with regard to the aforementioned allegations and claims

Mark Walsh, et al.
BY COUNSEL

By: /s/ Teresa C. Toriseva
Teresa C. Toriseva, Esq. WV ID# 6947
Joshua D. Miller, Esq. WV ID# 12439
TORISEVA LAW
1446 National Road
Wheeling, WV 26003
Telephone: (304) 238-0066
Facsimile: (304) 238-0149
Email: justice@torisevalaw.com
Counsel for Plaintiffs

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

WALSH, MARK (Lieutenant), *et al.*,

Plaintiffs,

vs.

THE CITY OF CLARKSBURG,
a municipal corporation,

Defendant.

Civil Action No.:

Judge: _____

CERTIFICATE OF SERVICE

Service of the foregoing **NOTICE OF RULE 30(b)(7) DEPOSITION** was served with the Complaint to the individual listed below via certified mail with the Complaint:

**The City of Clarksburg
222W Main Street
Clarksburg, WV 26301**

By: /s/ Teresa C. Toriseva _____
Teresa C. Toriseva, Esq. WV ID# 6947
Joshua D. Miller, Esq. WV ID# 12439
TORISEVA LAW
1446 National Road
Wheeling, WV 26003
Telephone: (304) 238-0066
Facsimile: (304) 238-0149
Email: justice@torisevalaw.com
Counsel for Plaintiffs