

## Judge Recommends Mediation for Prenter Residents, Coal Companies

November 20, 2009/Coalvalleynews.com/ Boone County Circuit Judge William Thompson is recommending mediation between the parties of the Prenter water lawsuit.

Last Thursday, Judge Thompson heard arguments from both side of the case regarding a feasible timetable.

According to the timeline presented by Massey's attorney, A.L. Emch, with the Charleston law firm, Jackson Kelly, all discovery by the coal companies and insurance agencies named in the case, would be completed tentatively around October 2010.

The timeline also indicated that a pre-trial conference to determine trial plan would feasibly be set for sometime around the end of February or March 2011.

Both sides accepted the timeframe and agreed on the issue of mediation.

The Prenter lawsuit seeks compensatory and punitive damages, and a court-administered medical monitoring program for current and previous residents of the Prenter community, who have suffered a plethora of medical ailments, including gallbladder problems and intestinal bleeding.

The lawsuit filed in Boone County Circuit Court claims decades of surface and underground mining activities near the communities of Prenter and Seth fractured the geologic strata that had contained the slurry, a byproduct of cleaning coal.

Coal slurry injections into underground mines are what citizens identify as the culprit in their water woes.

The lawsuit claims the network of cracks created a pathway for the slurry to contaminate the aquifer.

The coal companies listed in the lawsuit are Massey Energy, Omar Mining, Independence Coal Co., Black Castle Coal Co., Peabody Energy Corp. and Pine Ridge Coal Co.

The plaintiffs want the coal companies to fund periodic health screenings to detect and diagnose illness.

Findings of high levels of arsenic and lead in their water, by Dr. D. Scott Simonton, an environmental engineer at Marshall University, is referenced in their motion.

According to the court documents, the findings of these studies indicate that the contaminants found in the water can lead to a number of health problems, including intestinal lesions, high blood pressure, kidney and liver damage, and gastrointestinal distress.

West Virginia case law requires they prove "significant exposure to a proven hazardous substance," that they face a higher risk of contracting "a serious latent disease" and that medical monitoring is "reasonably necessary."

The residents' original lawsuit also indicated they want the coal companies to pay for both temporary and permanent water supplies.

However, a public works project started this year is helping to expedite the residents' access to clean drinking water.

Counsel for the residents of Prenter, John Sutter, of the Sutter Law Firm in Charleston, took issue with the type of trial the judge hears.

"We are arguing for a Bell Weather Trial," he said, explaining that in cases where more than 100 plaintiffs joined a lawsuit against asbestos, a bell weather trial was used to try the liabilities and punitive damages.

"You don't have to do that on each individual," Sutter said, "It is the most expedient way and the fastest way to go to trial in this case."

"Just because they poisoned 300 people does not mean they can draw (this trial) out," Sutter said, noting that a Bell Weather trial would mean quicker justice. "That's what our people want," Sutter said, further noting, "Justice delayed is no justice at all."

The Prenter water case will continue December 10 before Judge Thompson, at the Boone County Courthouse.

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