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Flood trial off to slow start; focus still on first witness

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The largest mass litigation ever to come to Raleigh County Circuit Court appears to be off to a slow start.

This second day of testimony — and the third day of trial — remained focused on its first witness, New York environmental engineer Dr. Bruce A. Bell. Cross-examination of Bell began Thursday afternoon and will continue when the trial reconvenes Monday morning.

Jurors are trying to answer three main questions in this case that pits victims of the July 8, 2001, flooding in southern West Virginia against coal and timbering companies they say were responsible for much of the damage they suffered that day. Those questions are: Did the land use increase peak flow, that is the rate at which any rainwater on those sites ran off those sites? Did an increase in peak flow cause a material increase in the flooding of the streams? And was the landowners' use of the land reasonable?

The overall case involves thousands of plaintiffs and some 400 defendants in six southern West Virginia watersheds. But the portion of the case being tried before Raleigh County Circuit Judge John Hutchison concerns 900 plaintiffs and seven defendants in the hardest-hit of the watersheds, the Upper Guyandotte, which includes the subwatersheds of Mullens and Oceana. Several defendants have been dismissed from the case.

Wednesday, Bell testified that when land in a watershed is disturbed, there is an increase in the rate of peak stormwater runoff. But Thursday, he could not apply that general information specifically to any location at question in this trial.

Defense attorneys objected to much of what Bell had to say, claiming that it was outside of his expertise as an environmental engineer and should be reserved for witnesses who specialize in the science of hydrology. But Raleigh County Circuit Judge John A. Hutchison permitted the testimony to the extent that he did not go beyond the information he had studied and analyzed.

For instance, when plaintiffs' attorney Stuart Calwell asked Bell if, based on his modeling and experience, he arrived at an opinion as to the range of increase in the peak runoff in the two sub-watersheds of Mullens and Oceana, Bell was not allowed to answer.

Defense attorneys also objected to the accuracy of Bell's maps of timbering and surface mining activity in the Mullens and Oceana sub-watersheds and scrutinized the realistic application of his mathematical models.

In cross-examination, Bell said his maps did not "totally reflect the geography of Oceana and Mullens," because at least one of them did contain a mistake. He also said models are designed to "simulate nature in some reasonable way," and that they are useful and widely accepted because they set up synthetic storms

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to help engineers design stormwater management systems.

But they're not actual rain gauge measurements from actual storms, defense attorney Al Emch noted.

"Models are never reality," Bell answered.

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