

## Flood Trial to Begin in March 2006

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**The bulk of the litigation is separated into three stages and will take several months.**

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Lawsuits stemming from the 2001 summer floods will be broken down into at least three major trials, according to the new case management order.

Lawyers representing some 3,500 southern West Virginians are suing myriad mining, timbering, railroad and landholding companies in a consolidated lawsuit. The case is managed not by one but three judges who make up the flood litigation panel -- Raleigh County Circuit Judge John A. Hutchison, lead judge on the flood panel, Nicholas County Circuit Judge Gary Johnson and Ohio County Circuit Judge Arthur M. Recht, chairman of the state's mass litigation panel.

During a June 8 hearing at the Raleigh County Courthouse, plaintiffs' and defense counsel met with the flood panel to schedule how the massive lawsuit should proceed.

The West Virginia Supreme Court of Appeals had set out certain legal parameters for the case, and now those 3,500 claims are being broken up into six trials based on the six major watersheds affected by flooding July 8, 2001.

Those watershed areas are the Tug Fork River, Upper Guyandotte River, Upper (Middle) New River, Lower New River, Upper Kanawha River and the Coal River.

The six watersheds can be broken up into 51 sub-watersheds, all of which are designated by the state Department of Environmental Protection.

The trial plan indicates Hutchison will kick off the first trial March 6, 2006.

That proceeding will focus on watershed No. 2, the Upper Guyandotte River.

Johnson is slated to begin the Coal River watershed trial in June 2006, followed by the Upper Kanawha River watershed trial that Recht is scheduled to conduct in September 2006.

All flood litigation will take place at the Raleigh County Courthouse. Each trial will be bifurcated, which means general issues of liability will be determined in the first phase and damages will be handled in a second phase.

Henry Jernigan, a partner at Dinsmore & Shohl in Charleston and one of the lead defense attorneys, said those three watersheds contain most of the plaintiffs, which is why those trials were scheduled first.

For now, attorneys for each side have 30 to 90 days to submit detailed information about who the plaintiffs are and what defendant companies are being sued.

With less than a year before the first trial, Jernigan said, "It's going to take a lot of work by all parties to get ready for next March, but that's what the court ordered so that's what we'll do."

Efforts to reach Charleston attorney Stuart Calwell, lead plaintiffs' lawyer, were unsuccessful.

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