

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel. AmerisourceBergen Drug Corporation v. The Honorable Alan D. Moats, Lead Presiding Judge, Opioid Litigation, Mass Litigation Panel, et al.; State of West Virginia ex rel. Johnson & Johnson v. The Honorable Alan D. Moats, Lead Presiding Judge, Opioid Litigation, Mass Litigation Panel, et al.

AmerisourceBergen v. Moats · No. Nos. 20-0694 and 20-0751 · Decided June 11, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia consolidated two original prohibition proceedings arising from the State's opioid litigation. The court held that the Mass Litigation Panel did not clearly err in determining that the 2015 amendments to West Virginia's comparative fault statute did not apply to the public nuisance claims, but clearly erred by failing to protect defendants' right to have common issues tried to a jury. Petition No. 20-0751 was denied, while Petition No. 20-0694 was denied in part and granted in part.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Walker; Chief Justice Jenkins; Justice Armstead; Justice Hutchison; Justice Wooton
JURISDICTION	West Virginia
DECIDED	June 11, 2021
DOCKET	Nos. 20-0694 and 20-0751
DISPOSITION	other
PROCEDURAL POSTURE	Original proceedings in prohibition challenging orders of the West Virginia Opioid Litigation Mass Litigation Panel concerning jury trial rights and the application of West Virginia's 2015 comparative-fault amendments to public nuisance claims.
STANDARD OF REVIEW	A writ of prohibition will not issue to correct a simple abuse of discretion; it is available when a lower tribunal lacks jurisdiction or exceeds its legitimate powers. In nonjurisdictional cases, the court considers the five Hoover factors, giving substantial weight to whether the lower tribunal committed clear legal error.

PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Appeals of West Virginia.
PARTIES	AmerisourceBergen Drug Corporation and other defendants in Petition No. 20-0694, Johnson & Johnson and other defendants in Petition No. 20-0751 v. The Honorable Alan D. Moats, Lead Presiding Judge, Opioid Litigation, Mass Litigation Panel, et al.

TOPICS

writ of certiorari appellate procedure civil procedure statutory interpretation torts

PRACTICE AREAS

civil procedure appellate procedure mass litigation tort law statutory interpretation

QUESTIONS PRESENTED

1. Whether prohibition should issue because the Panel clearly erred in finding that the public nuisance claims were equitable rather than legal claims for damages.
2. Whether the 2015 amendments to West Virginia's comparative-fault statute applied to the public nuisance claims and permitted consideration of nonparty fault.
3. Whether the Panel could conduct a nonjury trial on public nuisance liability before a jury decided issues common to the public nuisance claims and the plaintiffs' legal claims.

HOLDINGS

1. The Panel's determination that the public nuisance claims were not clearly legal claims for damages, and therefore were not clearly subject to the constitutional jury-trial right or the 2015 comparative-fault amendments, was not a clear-cut legal error warranting prohibition.
2. The court denied prohibition challenging the Panel's determination that the 2015 amendments did not apply to the public nuisance claims.
3. When public nuisance liability and the plaintiffs' legal claims share common issues, the jury must decide those common issues before the court conducts a nonjury trial of the equitable public nuisance claim.

KEY QUOTATIONS

“To the extent that the public nuisance liability determination and Plaintiffs’ legal claims present common issues, the order of trial must be such that the jury first determines those common issues.” (23-24)

“But, those goals cannot override a party’s constitutionally-protected right to a jury trial.” (23)

FACTUAL BACKGROUND

Beginning in 2017, West Virginia cities, counties, hospitals, and the State sued opioid manufacturers, distributors, pharmacies, and other defendants in more than eighty consolidated actions. The Mass Litigation

Panel ordered a nonjury Phase I trial addressing liability and causation for public nuisance claims and later struck defendants' notices of nonparty fault. Defendants argued that the public nuisance claims were legal claims for damages, that the 2015 comparative-fault amendments applied, and that trying equitable claims first would impair their right to a jury trial on overlapping legal claims.

PROCEDURAL HISTORY

The Supreme Court of Appeals of West Virginia referred opioid-related cases to a Mass Litigation Panel. The Panel ordered a nonjury Phase I trial on liability for public nuisance claims and struck defendants' notices of nonparty fault on the ground that the 2015 comparative-fault amendments did not apply to the public nuisance claims. Defendants sought writs of prohibition. The court denied Petition No. 20-0751, denied Petition No. 20-0694 in part, and granted Petition No. 20-0694 in part, as moulded.

DISPOSITION

other

REMAND INSTRUCTIONS

The writ in Petition No. 20-0694 was granted in part as moulded. To the extent public nuisance liability and the plaintiffs' legal claims present common issues, the Panel must order the trial so that a jury first determines those common issues. The writ is narrow and affects only issues common to public nuisance liability and the plaintiffs' legal claims.

CASES CITED

- State ex rel. Peacher v. Sencindiver, 160 W. Va. 314, 233 S.E.2d 425 (1977)
- State ex rel. W. Va. Truck Stops, Inc. v. McHugh, 160 W. Va. 294, 233 S.E.2d 729 (1977)
- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- Camden-Clark Memorial Hospital Corp. v. Turner, 212 W. Va. 752, 575 S.E.2d 362 (2002)
- West Virginia Human Rights Commission v. Tenpin Lounge, Inc., 158 W. Va. 349, 211 S.E.2d 349 (1975)
- Realmark Dev., Inc. v. Ranson, 214 W. Va. 161, 588 S.E.2d 150 (2003)
- Bishop Coal Co. v. Salyers, 181 W. Va. 71, 380 S.E.2d 238 (1989)
- In re National Prescription Opiate Litigation, No. 1:17-MD-2804, 2019 WL 4043938 (N.D. Ohio Aug. 26, 2019)
- In re Opioid Litigation, No. 400000/2017 (Sup. Ct. New York May 19, 2020)
- State ex rel. Vanderra Res., LLC v. Hummel, 242 W. Va. 35, 829 S.E.2d 35 (2019)
- State ex rel. Appalachian Power Co. v. MacQueen, 198 W. Va. 1, 479 S.E.2d 300 (1996)
- State ex rel. Mobil Corp. v. Gaughan, 211 W. Va. 106, 563 S.E.2d 419 (2002)
- State ex rel. Allman v. MacQueen, 209 W. Va. 726, 551 S.E.2d 369 (2001)
- Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959)

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