

WEST VIRGINIA SUMMARY JUDGMENT IN FAVOR OF WVDEP



Bailey & Wyant PLLC's Equity Member John P. Fuller, Member Daniel T. LeMasters, and Associate Jeffrey M. Carder successfully prosecuted an appeal before the Supreme Court of Appeals of West Virginia on behalf of the West Virginia Department of Environmental Protection.

Plaintiffs, a potential group of over 100 individuals, alleged that the WVDEP had negligently issued a surface mining permit and negligently inspect a mining operation in McDowell County, West Virginia and that said alleged negligence had resulted in flooding along Bull Creek in 2014. The WVDEP moved for Summary Judgment in the Circuit Court asserting that it was entitled to qualified immunity for discretionary decisions made with regard to the decision to issue the permit and the manner of enforcing the permit once it was issued.

The Circuit Court denied Summary Judgment finding that material issues of fact remained to be decided. Oral Arguments were held before the Supreme Court of Appeals of West Virginia on February 10, 2021 and the Court published its Opinion on March 16, 2021. The Court held that the WVDEP was entitled to qualified immunity for discretionary decisions made during the permitting process. Additionally, the Court held that, while the WVDEP has a non-discretionary duty to enforce SCMRA, the manner of enforcement was discretionary. Ultimately, the appellate Court overturned the Order denying Summary Judgment to the WVDEP and remanded the case back to the Circuit Court of McDowell County, West Virginia, directing the Circuit Court to enter an Order granting Summary Judgment in favor of the WVDEP.



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