**The Potential Future Fate of Opioid Lawsuits in West Virginia**

**Written by: Lauren Mahaney**

On February 17, 2021, the West Virginia Supreme Court of Appeals heard arguments in *State ex rel. AmerisourceBergen Drug Corporation, et al. v. Hon. Alan D. Moats, Leading Presiding Judge, et. al.* This decision will determine the fate of dozens of opioid lawsuits in West Virginia. Before the Court, among others, were two important issues: 1) whether the plaintiffs’ claims that the sale and distribution of opioids should be abated as a public nuisance should be decided by a jury or by Judge Moats and Judge Swope as the appointed MLP judges; 2) whether the protections of West Virginia’s Non-Party Fault statute apply to the adjudication of a public nuisance claim.

The Petitioners, representing several of the more than 60 defendants, argued that the Respondent’s claims seeking abatement of a public nuisance are not equitable claims that would warrant a bench trial. Rather, Petitioners argue that the Respondents are seeking a legal remedy of money damages as their sole form of relief. Petitioners claim such relief would require a jury trial. Petitioners also argue that the Court’s refusal to apply the Non-Party Fault statute to Petitioner’s nuisance claim deprives entities such as drug manufacturers, distributors and pharmacies of the right to have relative fault apportioned by a jury. The Court amended West Virginia law in 2015 to allow for the fault of all interested entities to be apportioned by a jury, regardless of whether they had been sued.

 Respondents argue that case law requires a bench trial because the equitable relief sought flows from the abatement claims. Additionally, allowing for a jury trial could create issues in jury selection. A trial in such a case could be scheduled to continue for months and finding jurors that could be present for such a complex case would be difficult. Respondents argued that the benefits of a bench trial would allow the presiding judges to participate while continuing to run their own docket. Parties would also have the benefit of staggering the trials rather than trying them continuously in front of a jury. Respondents argued that allowing the non-party fault statute to apply would extend the trials that are already predicted to take months. The pending decision will determine the proceedings for many of the current opioid case and has the potential to set a precedent that significantly limits the application of the Non-Party Fault statute.