

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA.

IN RE: _____ LITIGATION

Civil Action No. _____

FIRST CASE MANAGEMENT ORDER

PREAMBLE:

WHEREAS, the Chief Justice of the Supreme Court of Appeals of West Virginia has referred the above-styled Mass Litigation to the Mass Litigation Panel; and

WHEREAS, this Mass Litigation consists of cases received from the Circuit Courts of _____ Counties; and

WHEREAS, it is necessary to develop an efficient framework by which this Mass Litigation can be expeditiously managed for the benefit of the public and all parties thereto;

NOW THEREFORE, pursuant to the Rule 26.01 of the West Virginia Trial Court Rules (“TCR”) and Rule 42 of the West Virginia Rules of Civil Procedure (“RCP”) this First Case Management Order (“First CMO”) will govern the management of this Mass Litigation throughout its duration, unless amended by further Order of this Court.

I. ADMINISTRATIVE MATTERS

A. The style of this Mass Litigation is “In re: _____ Litigation, Civil Action No. _____.”

B. All complaints seeking damages as a result of _____ are included in this Mass Litigation. These matters are hereby consolidated in the Circuit Court of _____ County, which is the venue for this Mass Litigation.

C. While this Mass Litigation shall continue to be initiated in any appropriate Circuit Court in the State of West Virginia, subsequent filings shall be filed in the Circuit Court of _____, and shall bear the style of this Mass Litigation, as well as the applicable Civil Action Number from the Circuit Court in which the case was initiated. The Circuit Clerk of _____ County shall maintain a list of the full styles of those actions which are now or hereafter transferred to such court.

- D. Wherever the words “this Court” are used in the First CMO, they refer to The Honorable _____, assigned to preside in this Mass Litigation or proceedings therein as Lead Judge, and The Honorable _____, and The Honorable _____, assigned in support thereof.
- E. All court files relating to this Mass Litigation shall remain in the Circuit Courts of their respective counties unless and until their physical transfer is Ordered by this Court.

II. MASTER FILE

- A. The Clerk of the Circuit Court of _____ County, shall upon the entry of this Order, open and maintain a Master File captioned, “In re: _____ Litigation, Civil Action No. _____,” which file shall contain the First CMO and any other Case Management Orders, pleadings or documents of general applicability to this Mass Litigation, such as the Litigation Matrix, Trial Calendar, Notices of Deposition, if they are not case specific, Master Pleadings, Master Discovery and similar documents.
- B. When a document is intended to be applicable to all actions, this shall be indicated on the document by the words “THIS DOCUMENT APPLIES TO ALL CASES” and the document shall be filed in the Master File. When a document is intended to apply to less than all cases, the civil action number for each individual case to which the document(s) relate shall appear immediately after the words: “THIS DOCUMENT APPLIES TO” and shall be filed in each case to which the document applies.

Following are examples of proper case style:

For a document that applies to all cases:

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

In re: _____ Litigation

Civil Action No. _____

THIS DOCUMENT APPLIES TO ALL CASES

For a document that applies to specific cases:

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

In re: _____ Litigation

Civil Action No. _____

THIS DOCUMENT APPLIES TO:

Civil Action No. 03-C-1234 KAN

Civil Action No. 04-C-5678 BRK

Civil Action No. 06-C-5432 BNE

III. ELECTRONIC FILING AND SERVICE

- A. The Mass Litigation Panel (“Panel”) has determined that it is appropriate for this Mass Litigation to be subject to electronic filing and service (“e-filing and service”), pursuant to TCR 15.01 *et seq.* Upon entry of an order by the Panel Chair pursuant to TCR 15.02(c), this Mass Litigation will be designated for e-filing and service beginning on the date specified in the order.
- B. Pursuant to TCR 15.02(b), e-filing and service shall not be used to initiate a civil action, or to serve a new party with an amended complaint or a third-party complaint.
- C. Plaintiff firms shall provide case and party information for cases subject to e-filing and service to the e-service provider designated by the West Virginia Supreme Court.
- D. Any party seeking a waiver of e-filing and service requirements must promptly file a motion pursuant to TCR 15.06, setting forth the reasons why that party should not be required to e-file and serve documents in this Mass Litigation, and promptly schedule a hearing before the Court on such motion.
- E. The document title field of each e-filed document shall include:
 - (1) the party or parties filing the document;
 - (2) a descriptive title of the document;
 - (3) the party or parties against whom relief, if any, is sought;
 - (4) the nature of the relief sought (e.g., Defendant ABC Corporation’s Motion for Summary Judgment); and
 - (5) for documents that are not being filed in the Master Case File, the individual Circuit Court Civil Action Number(s) into which the document is being filed.

- F. Unless specifically requested by a member of this Court, judges assigned to this Mass Litigation or proceedings therein will not need hard copies of any documents e-filed and served pursuant to TCR 15.01 *et seq.*

IV. PRO HAC VICE ADMISSIONS

Motions for admission to practice *pro hac vice* shall be submitted to Judge _____ for decision, with copies to Judges _____ and _____. *Pro hac vice* counsel are required to comply with rule 8.0 of the Rules for Admission to the Practice of Law. There will be no adjournments of the schedule set forth in the First CMO or any other Case Management Order entered in this Mass Litigation due to the unavailability of *pro hac vice* counsel.

V. LIAISON COUNSEL

_____ is/are designated as Plaintiff Liaison Counsel, and _____ is/are designated as Defense Liaison Counsel. Liaison Counsel shall carry out their responsibilities as set forth in the Rules of Civil Procedure and the Trial Court Rules.

- A. Liaison Counsel may be contacted as follows:
- B. All counsel shall file and serve on all parties as soon as practicable, but no later than 30 days after the date of this Order, a Notice of Appearance, as defined in TCR 26.04(e).
- C. Plaintiff and Defense Liaison Counsel shall work together to provide a Certificate of Service List, as defined in TCR 26.04(d), as soon as practicable, but no later than 60 days after the date of this Order, to the Clerk of the Circuit Court of _____ County and this Court.
- D. Reimbursement: If agreement cannot be reached on a method for periodically reimbursing Liaison Counsel, Lead Counsel, or any other attorneys who may, from time to time, render services for or incur expenses on behalf of plaintiffs or defendants, the matter will be presented to this Court for resolution. This Court may refer the matter to a Special Master.
- E. Time Records: Counsel who anticipate seeking reimbursement for services rendered or expenses incurred shall maintain comprehensible, contemporaneous records that show the date, the name of the attorney or paralegal, the time spent on each discrete activity, the nature of the work performed, as well as the date, amount, vendor and a complete description of any expenses incurred. This Court

recommends that Counsel agree upon a summary form for recording services rendered and/or expenses incurred that will facilitate analysis of requests for reimbursement of such services and expenses.

VI. LEAD COUNSEL

_____ is/are hereby designated as Plaintiff Lead Counsel, and _____ is/are hereby designated as Defense Lead Counsel. Lead Counsel shall have the responsibilities set forth in the Rules of Civil Procedure and the Trial Court Rules.

- A. Lead counsel may be contacted as follows:

- B. The provisions of V.D. and E. above, shall govern the reimbursement of fees for services rendered and expenses incurred by Lead Counsel.

VII. INITIAL CONFERENCE

This Court has scheduled an Initial Conference on _____, at _____ in the _____ County Courthouse. All counsel and self-represented litigants are ordered to attend. At the Initial Conference this Court will determine what, if any, litigation phases are appropriate for this Mass Litigation, and will develop a Litigation Matrix, which will be filed in the Master File and served on all counsel of record and any self-represented parties after the Initial Conference. The Litigation Matrix will establish the phases of this Mass Litigation, if applicable, the respective dates and phases of trials, provide a schedule for discovery and motion practice, and address all other scheduling issues deemed necessary by this Court. Not less than 15 days before the scheduled date for the Initial Conference, counsel shall submit for consideration by the Court any proposals regarding what litigation phases, if any, counsel believe are appropriate for this Mass Litigation, along with counsel's proposals for the Litigation Matrix.

VIII. SUBSEQUENT CONFERENCES

At least once every 90 days or upon the occurrence of specific events, such as the expiration of discovery deadlines, and the completion of motion practice for each phase of this Mass Litigation, this Court will conduct Case Management Conferences at which all counsel will be prepared to bring any pertinent matters to this Court's attention. This Court will also schedule pre-trial conference dates and motion hearing dates for each phase of this Mass Litigation, as appropriate in the Litigation Matrix. Not less than 30 days before the scheduled date for any conference, counsel shall confer and agree upon a

proposed agenda for the conference. The parties' proposed agenda will be submitted to this Court no later than 15 days before the scheduled conference date. This Court may either accept the parties' proposed agenda or modify it, as appropriate. In the event this Court modifies the parties' proposed agenda, this Court will promptly notify all counsel of record of such modifications. As a rule, all counsel and any self-represented parties are required to attend motion hearings and conferences. In the event issues raised at a motion hearing or conference involve only a certain group or segment of this Mass Litigation, this Court will excuse non-interested parties from mandatory attendance and will so notify them.

IX. SPECIAL MASTERS AND MEDIATORS

A. SPECIAL MASTER

This Court has appointed _____ to serve as a Special Master in this Mass Litigation. This Court may refer discovery disputes, disputes regarding reimbursement of fees and expenses, settlement questions (except for questions regarding mediation), questions regarding distribution of and accounting for settlement proceeds, and any other matters it deems appropriate to the Special Master.

B. MEDIATOR

During the initial orientation conference, this Court will consider the parties' suggestions for the selection of a Mediator. However, the final selection of the Mediator will be made by this Court. The Mediator will perform all duties established in the Trial Court Rules.

C. COMPENSATION OF SPECIAL MASTER AND MEDIATOR

Compensation of the Special Master and the Mediator will be paid equally by all parties, except that, in the event the actions or inactions of a party or parties necessitate the use of the Special Master to resolve a dispute, this Court may order the party or parties whose actions or inactions necessitated such use to pay a greater share or all of the cost of the Special Master.

X. MANDATORY ALTERNATIVE DISPUTE RESOLUTION

The parties shall confer to determine whether alternative dispute resolution ("ADR") is mandatory. If a party claims ADR is mandatory and the parties fail to agree, the party who claims that ADR is mandatory shall file a motion seeking enforcement of mandatory ADR. Any objections to mandatory ADR must be filed within 30 days of the filing of the motion to enforce mandatory ADR. This Court will promptly schedule a hearing with the affected parties to determine whether or not arbitration is mandatory.

XI. PRESERVATION OF EVIDENCE

Each party shall preserve all documents and other records containing information that is potentially relevant to the subject matter of this Mass Litigation. Each party shall also preserve any physical evidence that is potentially relevant to the subject matter of this litigation, and shall not conduct any testing that alters the physical evidence without notifying opposing counsel, and unless counsel stipulate to the test, without obtaining this Court’s permission to conduct the test. Subject to further order of this Court, parties may continue routine erasures of computerized data pursuant to existing programs, but they shall (1) immediately notify opposing counsel about such programs and (2) preserve any printouts of such data. Requests for relief from this directive will receive prompt attention from this Court.

XII. DISCOVERY ISSUES

A. Plaintiff Fact Sheet

Within 60 days after the Initial Orientation Conference, counsel for the Plaintiffs will submit a Plaintiff Fact Sheet (“PFS”) in the format attached hereto as Exhibit ____.

B. Defendant Fact Sheet

Within 60 days after the Initial Orientation Conference, counsel for the Defendants will submit a Defendant Fact Sheet (“DFS”) in the format attached hereto as Exhibit ____ .

C. Common Discovery

This Court has determined that certain areas of discovery are of common interest to all parties. All common discovery shall be coordinated by Lead Counsel so the parties can more easily exchange information on such general issues as the identities of the parties, historical information, previous medical history, previous damage history, family relationships, insurance coverage, etc. To eliminate duplicative pleadings, this Court strongly encourages Lead Counsel to use Master Discovery requests for common areas of discovery. The schedule for such discovery will be addressed in the Litigation Matrix.

D. Case Specific Discovery

The parties shall be entitled to conduct case specific discovery on such issues as special theories of liability, special defenses, and unique injuries or damages, which may not be applicable to all parties.

E. Discovery Phases

With the exception of general discovery, which shall be conducted during the _____ phase of the litigation, all discovery conducted during each phase of the litigation shall be conducted solely as to the issues raised in that phase of the litigation. Each discovery phase will be addressed in the Litigation Matrix.

E. Independent Medical Examination/Inspections

The parties will conduct any inspections of premises or independent medical examinations during the time periods set forth in the Litigation Matrix.

F. Discovery Disputes

All discovery disputes will be resolved pursuant to the Rules of Civil Procedure. No discovery motion will be filed with this Court unless it includes a certification that the movant has conferred with opposing counsel in a good faith effort to resolve the discovery dispute without court action, and that the matter cannot be resolved by the parties. If a discovery motion and such certification is filed, this Court may refer the discovery dispute to the Special Master for hearing and recommendation to this Court.

XIII. MOTIONS

A. Motion practice will be governed by the Rules of Civil Procedure and the Trial Court Rules. However, all motions and the responses thereto must pertain only to the subjects addressed in each litigation phase. Any dispositive motions must be filed at the appropriate time during each litigation phase. The time frame for filing dispositive motions and any responses to such motions will be established after the Initial Conference, will be set forth in the Litigation Matrix, and will be heard by this Court.

B. Motions and/or responses that are intended to be applicable to all cases in this Mass Litigation shall be filed in the Master File. If a party filing a motion and/or response in a specific case adopts and incorporates by reference a motion and/or response filed in the Master File, the party shall specify the date on which the motion and/or response was filed in the Master File. If requested, the filing party must reproduce the motion and/or response and all attachments filed in the Master File twenty (20) days before the hearing on such motion.

XIV. DOCUMENT DEPOSITORY

The parties must submit a proposed plan to this Court by _____ for the establishment of a document depository to which all parties shall be given equal access. A copy of all

documents produced in discovery, whether or not they are to be used as exhibits at trial, shall be filed in the document depository.

XV. JOINDER OF PARTIES/DEADLINE ON AMENDED OR ADDITIONAL PLEADINGS

- A. The parties may add additional parties and/or amend their pleadings to raise different causes of action at a time to be set forth in the Litigation Matrix. No amendments may be made or parties added after that deadline without express leave of this Court.
- B. Motions seeking leave to file cross-claims, counterclaims and/or third party complaints may be filed no later than the date established in the Litigation Matrix.
- C. The parties must determine if there is related litigation pending in any other jurisdiction, including federal or other state courts, so this Court may coordinate its action with other courts handling such matters. Counsel shall promptly notify this Court of any such related litigation, including its location, and the name, address and telephone number of the judge presiding in such litigation. Counsel shall also advise this Court of the status of such litigation.

XVI. CLASS ACTION CERTIFICATION

Within 90 days of the date of this Order, the parties shall notify the Court whether any party seeks class action certification in this Mass Litigation. Upon receipt of such notification, this Court will establish a schedule to promptly resolve this issue. If counsel fails to notify this Court within the prescribed time period, then it shall be presumed that no such class action certification will be sought, or is appropriate.

XVII. JOINT DEFENSE PRIVILEGE

The Joint Defense Privilege applies. By conferring or meeting or exchanging information Defendants have not waived any attorney/client or work product privilege.