



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

Civil Action No. 21-C-9000 DISTRIBUTOR

**THIS DOCUMENT APPLIES TO ALL
DISTRIBUTOR CASES**

**CASE MANAGEMENT ORDER RELATING TO THE
MASS LITIGATION PANEL OPIOID
DISTRIBUTOR PROCEEDINGS**

The Mass Litigation Panel (“MLP”) has ordered an expedited bench trial to begin on July 5, 2022 against AmerisourceBergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation (collectively, the “Distributor Defendants”), for all City/County Plaintiffs’ public nuisance claims.¹ Together, these cases are referred to as the “State Opioid Distributor Proceedings.” Pursuant to Rules 16 and 26 of the West Virginia Rules of Civil Procedure and the Court’s prior orders, the Court hereby **ORDERS** that the following Case Management Order (“Order”) should be entered.

I. APPLICABILITY AND SCOPE OF ORDER

A. Scope

This Order is intended to conserve judicial resources, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation.

B. Amendment and Exceptions

This Order may be amended by the Court on its own motion and any party may apply at any time to the Court for a modification of or exception to this Order.

Discovery shall be governed by applicable West Virginia Rules of Civil Procedure except as otherwise provided herein, in other stipulations or agreements entered into by the parties, or in

¹ September 30, 2021 *Order Regarding Voluntary Dismissal of Legal Claims Discussed During September 10, 2021 Status Conference* (Transaction ID 66980151); October 6, 2021 *Amendment to Order Regarding Voluntary Dismissal of Legal Claims Discussed During September 10, 2021 Status Conference* (Transaction ID 66992889); October 27, 2021 *Order* (Transaction ID 67047934).

a subsequent order from the Panel and/or Discovery Commissioner. The provisions of this Order, and any subsequent pretrial order or case management order issued in the State Opioid Distributor Proceedings, shall supersede any inconsistent provisions of the West Virginia Trial Court Rules.

II. TRIAL PROCEEDINGS

A. Form of Discovery and Limitations on Discovery

1. Time for Response. The parties initially shall have **thirty (30) days** from the date of the receipt of interrogatories, requests for admission, and requests for production of documents in which to serve a response. Nothing herein shall be construed to prevent the parties from agreeing between themselves to extensions of time, as necessary.

2. Depositions. The parties shall communicate in advance of the scheduling of any deposition to try to schedule the deposition at a time and place mutually acceptable to the witnesses and the parties. Depositions may be taken remotely, and the parties are directed to meet and confer about an appropriate remote deposition protocol.

III. FACT DISCOVERY SCHEDULE

A. Document Production and Interrogatories

1. The parties shall meet and confer regarding the proposed use of documents produced in other opioid litigation. Documents produced by all parties in the MDL (*In re: National Prescription Opiate Litigation*, Case No. 1:17-MD-2804 (MDL 2804)), including documents and depositions produced to the MDL Repository pursuant to Discovery Ruling 22 (MDL 2804, Doc # 2576), are available to the parties in this litigation, subject to all applicable protective orders, including the July 30, 2020 Protective Order in this case (Transaction ID 65810931). Certain documents from *City of Huntington v. AmerisourceBergen Drug Corporation et al.* and *Cabell County Commission v. AmerisourceBergen Drug Corporation et al.*, Case No. 3:17-CV-1362 (“MDL CT2”) are available to the parties as described in the Panel’s September 29, 2020 Third-

Party Discovery Protocol (Transaction ID 65972930). Any documents produced pursuant to this provision are subject to all applicable protective orders, including the July 30, 2020 Stipulated Protective Order in this case (Transaction ID 65810931).

2. Absent good cause, no new requests for production or interrogatories may be served after **Monday, January 17, 2022**. However, nothing in this paragraph shall prohibit a party from taking the position at a later date that particular documents that have come to its attention fall within the scope of an earlier-served request and should be produced.

3. If a party contends that documents it is requested to produce are not in its possession, custody, or control and should instead be sought from a third party (such as a vendor or former employee), it shall give prompt notice of that fact, identifying the documents or categories of documents at issue and the third-party source from which they should be sought.

B. Depositions

1. The parties agree that fact witness deposition testimony of parties, and of consenting third parties, taken in other opioid matters and produced in MDL 2804 through Discovery Ruling 22 (MDL 2804, Doc # 2576) may be used for any purpose at trial of this matter, subject to the West Virginia Rules of Evidence. Depositions may be taken remotely as described in paragraph II.2 of this Order. Before noticing the deposition of a witness who was previously deposed in opioid litigation, counsel shall review prior deposition testimony of the witness to determine if an additional deposition is necessary and shall inform counsel for the witness of the approximate amount of time needed for the additional deposition. The parties shall meet and confer as necessary regarding the length and/or scope of depositions of witnesses who have previously been deposed.

2. The parties agree that there will be a **seven (7) hour** time limit on all fact depositions. Should any party believe that additional time is required for any fact deposition, the parties shall meet and confer before approaching the Panel and/or Discovery Commissioner for additional time.

3. The parties agree that trial testimony taken in *City of Huntington. v. AmerisourceBergen Drug Corp., et al.*, Civil Action No. 3:17-01362 (S.D.W.V.), and *Cabell County Commission v. AmerisourceBergen Drug Corp., et al.*, 3:17-01665 (S.D.W.V.) may be used for any purpose at trial of this matter, subject to the West Virginia Rules of Evidence, to the same degree and in the same manner as any deposition transcript subject to Paragraph 1 of this section.

C. Third Party Discovery

1. All Subpoenas for production of documents must be served on third parties by **Friday, January 21, 2022.**

IV. OTHER DISCOVERY REQUIREMENTS.

The following additional limitations and requirements shall govern discovery. However, the parties may by agreement make exceptions or otherwise adjust these provisions for particular situations.

A. Communications with Witnesses

1. Any party that communicates with a former employee or agent of another party shall comply strictly with all applicable ethical rules. Any written communications with such a person concerning the subject matter of this litigation, or documents obtained from the person, are subject to discovery and shall be produced promptly. A party seeking to schedule the deposition of a current employee of a party shall coordinate with counsel for the witness's employer.

B. Third Party Discovery

1. The parties shall comply strictly with the requirement to provide timely notice of any third-party subpoenas served and shall provide the third-party subpoenas served with the notice to all parties.

2. Any party that serves a subpoena for documents on a third party shall make any documents produced in response to that subpoena, whether formally or informally in lieu of formal production,

available to all parties on the production site and serve a cover letter identifying the source and bates range of the documents within **three (3) days** of processing of the documents by that party's e-discovery vendor. Such documents shall be processed expeditiously for this purpose. To avoid disputes about compliance with these requirements, a party receiving documents from a third party pursuant to a subpoena shall provide separate notice of that fact to all other parties within **forty-eight (48) hours** of receipt of any such documents. If delay of **more than seven (7) days** is anticipated in the processing of the documents by the party's e-discovery vendor for re-production as provided above, notice shall be given of that fact. If documents are received from a third party whose deposition is to take place less than **ten (10) days** after receipt of the documents, the party in possession of the documents shall make **immediate** production of the documents to all other parties in the format received from the third party.

3. If any party submits a *Touhy* request to the federal government (or a similar request to any state agency) for any discovery sought in Trial Proceedings, it shall serve that request **contemporaneously** on all parties. Any formal response received in response to such a request shall be served on all parties upon receipt.

V. ADDITIONAL DEADLINES

1. Fact discovery shall be complete by **Wednesday, March 2, 2022**.

2. Plaintiffs shall provide a report for each person whom they expect to call as an expert witness in the "Phase 1" trial currently set to begin on July 5, 2022 by **Monday, March 7, 2022**.

The parties agree to abide the requirements of Federal Rule of Civil Procedure 26 with respect to the reports of expert witnesses, including but not limited to the requirements that the report shall include a complete statement of all opinions to be expressed and the bases and reasons therefor; a list of the data, documents, or other information considered by the witness in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within

the preceding ten years; a statement of the compensation to be paid for the study and testimony in the case; and a list of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. Plaintiffs shall provide Defendants with the data or documents relied upon by the expert if such data or documents are not publicly available or produced in the litigation. Plaintiffs shall provide Defendants with three (3) proposed deposition dates for each expert when the reports are served.

3. Defendants shall provide a report for each person whom they expect to call as an expert witness in the “Phase 1” trial currently set to begin on July 5, 2022 by **Monday, April 11, 2022**. The parties agree to abide the requirements of Federal Rule of Civil Procedure 26 with respect to the reports of expert witnesses, including but not limited to the requirements that the report shall include a complete statement of all opinions to be expressed and the bases and reasons therefor; a list of the data, documents, or other information considered by the witness in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; a statement of the compensation to be paid for the study and testimony in the case; and a list of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. Defendants shall provide Plaintiffs with the data or documents relied upon by the expert if such data or documents are not publicly available or produced in the litigation. Defendants shall provide Plaintiffs with three (3) proposed deposition dates for each expert when the reports are served.

4. Consistent with Fed. R. Civ. P. 26(b)(4), no party will seek discovery of any experts’ notes, drafts of expert reports, or communications with counsel, provided, however, that counsel may serve discovery or inquire at a deposition about any facts, data, or assumptions provided to the expert by counsel and upon which such expert is relying in expressing the expert’s opinions. Each party also agrees to bear its own expert costs.

5. Expert depositions shall begin after Defendants' expert reports are served. The parties will work, to the extent practicable, to schedule depositions of Plaintiffs' experts to occur before depositions of Defendants' experts, particularly within logical groupings of experts. The parties will, to the extent practicable, work with counsel in other pending opioid cases to coordinate depositions of common experts for either party to minimize multiple depositions of the same experts. In addition, for experts who have previously been deposed in the opioid litigation, the parties will make a good faith effort to limit their deposition questions to matters that were not inquired into or adequately addressed in the expert's prior depositions. Expert depositions shall otherwise be limited to **seven (7) hours**. Should any party believe that additional time is required for an expert deposition, the parties shall meet and confer before approaching the Panel or Discovery Commissioner to seek additional time.

6. All expert discovery shall be concluded by **Wednesday, May 4, 2022**.

7. Motions for summary judgment and motions challenging the admissibility of expert testimony shall be due **Monday, May 16, 2022**. Oppositions to such motions shall be due by **Monday, June 6, 2022**. Any replies shall be due by **Wednesday, June 15, 2022**. Upon the filing of any motion challenging the admissibility of expert testimony, the filing party must identify whether prior motions to limit or exclude the subject expert's testimony in other opioid related matters were granted or denied.

8. Motions in limine shall be filed by **Friday, June 10, 2022**. Oppositions to such motions shall be filed by **Friday, June 17, 2022**. Any reply briefs in support of such motions shall be filed by **Friday, June 24, 2022**.

9. Witness lists will be exchanged no later than **Friday, June 3, 2022**. The parties will develop a process to differentiate their likely-to-call witnesses, and each side will have an opportunity to depose any likely-to-call witnesses not previously deposed. Exhibit lists will be

filed no later than **Friday, June 17, 2022**. The parties shall develop a stipulated rolling process for objections to trial exhibits (similar to stipulations entered in other opioid cases).

10. Pretrial memoranda shall be filed on or before **Tuesday, June 21, 2022**.

11. The Parties shall develop a stipulated rolling process for deposition designations and objections (similar to stipulations entered in other opioid cases).

12. The pretrial conference shall be held on a date and at a time to be determined.

13. The trial in this case shall begin at **9:00 a.m. on Tuesday July 5, 2022**.

A copy of this Order has this day been electronically served on all counsel of record this day via File & Serve *Xpress*.

It is so **ORDERED**.

ENTERED: January 19, 2022.

/s/ Alan D. Moats
Lead Presiding Judge
Opioid Litigation

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation