



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

Civil Action No. 21-C-9000 MFR

THIS DOCUMENT APPLIES TO ALL MANUFACTURER CASES

**CASE MANAGEMENT ORDER RELATING TO THE
STATE OPIOID MANUFACTURER PROCEEDINGS**

On August 4, 2021, the Mass Litigation Panel (“MLP”) issued an order that directs that the State of West Virginia’s cases against Defendants Teva Pharmaceuticals USA, Inc. and Cephalon, Inc. (collectively “Teva Pharmaceuticals”), Defendants Watson Laboratories, Inc., Warner Chilcott Company LLC, Actavis Pharma, Inc. (f/k/a Watson Pharma, Inc.), Actavis South Atlantic LLC, Actavis Elizabeth LLC, Actavis Mid Atlantic LLC, Actavis Totowa LLC, Actavis LLC, Actavis Kadian LLC, Actavis Laboratories UT, Inc. (f/k/a Watson Laboratories, Inc.-Salt Lake City), and Actavis Laboratories FL, Inc. (f/k/a Watson Laboratories, Inc.-Florida) (collectively “the Teva-Acquired Actavis Entities”), Allergan Finance, LLC (f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.), Allergan USA, Inc., and Allergan Sales, LLC (collectively “Allergan”) (Civil Action No. 19-C-104 BNE); Defendants Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., and Johnson & Johnson (collectively “Janssen Defendants”) (Civil Action No. 19-C-105 BNE); and Defendants Endo Health Solutions, Inc., Endo Pharmaceuticals, Inc., and Par Pharmaceutical, Inc. (collectively “Endo Defendants”) (Civil Action No. 19-C-151 BNE) to proceed to trial on April 4, 2022 (Transaction ID 66821121). Together, these cases are referred to as the “State Opioid Manufacturer Proceedings.” Pursuant to Rules 16 and 26 of the West Virginia Rules of Civil Procedure, and the Court’s Order to conduct a non-jury trial April

4, 2022 (Transaction ID 66821121), 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 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 Manufacturer 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 admissions, 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 in order 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, October 25, 2021**. 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.

4. If a party contends that documents specific to the State of West Virginia that are responsive to a discovery request were produced in the MDL, the party must make a good faith effort to clearly and concisely identify such documents by bates number or bates range in its discovery responses.

B. Depositions

1. The parties agree that fact witness deposition testimony of parties taken in other opioid matters and produced in MDL 2804 through Discovery Ruling 22 (MDL 2804, Doc # 2576), and fact witness deposition testimony of consenting third parties 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. If the deponent's custodial file is requested by the noticing party, the file must be produced **ten (10) days prior** to the deposition. The parties are urged to prioritize those witness for whom documents are sought so they can proceed expeditiously with depositions.

2. The parties agree that there will be a **seven (7) hour** time limit on all fact depositions, except for 30(b)(7) depositions, for which a designee may appear over multiple **seven (7) hour** days. 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.

C. Third Party Discovery

1. All Subpoenas for production of documents must be served on third parties by **Monday, October 25, 2021**.

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, November 24, 2021**.

2. Plaintiff shall provide a report for each person whom it expects to call as an expert witness by **Friday, December 10, 2021**. The report shall include a complete statement of all opinions to be expressed and the basis 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. Plaintiff 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. Plaintiff 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 by **Friday, January 14, 2022**. The report shall include a complete statement of all opinions to be expressed and the basis 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 Plaintiff 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 Plaintiff 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 Plaintiff's experts to occur before depositions of Defendants' experts, particularly within logical groupings of experts (*e.g.*

marketing 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 in order 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 **Friday, February 11, 2022**.

7. Motions for summary judgment and motions challenging the admissibility of expert testimony shall be due **Friday, February 25, 2022**. Oppositions to such motions shall be due by **Friday, March 11, 2022**. Any replies shall be due by **Wednesday, March 16, 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 **Wednesday, March 9, 2022**. Oppositions to such motions shall be filed by **Friday, March 18, 2022**. Any reply briefs in support of such motions shall be filed by **Friday, March 25, 2022**.

9. Witness lists will be exchanged no later than **Friday, March 4, 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.

10. Exhibit lists will be filed no later than **Friday, March 18, 2022**. The parties shall develop a stipulated rolling process for objections to trial exhibits (similar to stipulations entered in other opioid cases).

11. Pretrial memoranda shall be filed on or before **Monday, March 21, 2022**.

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

13. The pretrial conference shall be held at **9:00 a.m. on Friday March 25, 2022**.

14. The trial in this case shall begin at **9:00 a.m. on Monday April 4, 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: October 6, 2021.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation