



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE OPIOID LITIGATION

Civil Action No. 19-C-9000

THIS DOCUMENT APPLIES TO THE FOLLOWING CASES:

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STATE OF WEST VIRGINIA, ex rel. :  
PATRICK MORRISEY, Attorney General :

Plaintiff, :

v. :

TEVA PHARMACEUTICAL :  
INDUSTRIES, LTD; *et al.* :

Defendants. :

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Civil Action No. 19-C-104 BNE

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STATE OF WEST VIRGINIA, ex rel. :  
PATRICK MORRISEY, Attorney General :

Plaintiff, :

v. :

JANSSEN PHARMACEUTICALS, INC.; :  
*et al.* :

Defendants. :

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Civil Action No. 19-C-105 BNE

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STATE OF WEST VIRGINIA, ex rel. :  
PATRICK MORRISEY, Attorney General :

Plaintiff, :

v. :

ENDO HEALTH SOLUTIONS, INC.; :  
*et al.* :

Defendants. :

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Civil Action No. 19-C-151 BNE

**ORDER GRANTING PLAINTIFF’S MOTION TO SEVER  
CASES FOR BENCH TRIAL ON EXPEDITED BASIS**

Pending before the Mass Litigation Panel (“Panel”) is *Plaintiff’s Motion to Sever Cases for Bench Trial on Expedited Basis* (Transaction ID 66764662) filed in the above-captioned civil actions. The Panel has reviewed the Motion, Defendants’ Responses (Transaction IDs 66805945, 66805734, and 66805381) and Plaintiff’s Reply (Transaction ID 66820200). Because the Panel finds that severing the above-captioned civil actions and scheduling them for an expedited bench trial will fairly and expeditiously resolve disputed matters in this Mass Litigation the Panel **GRANTS** Plaintiff’s Motion to Sever based on the following findings of fact and conclusions of law.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Plaintiff is the State of West Virginia, acting by and through Patrick Morrissey, the Attorney General of West Virginia (“the State”). The State has sued Defendants Teva Pharmaceutical Industries, Ltd. (“Teva”), Janssen Pharmaceuticals, Inc. (“Janssen”), and Endo Health Solutions, Inc. (“Endo”) (collectively, “Defendants”) in connection with their manufacture, promotion, and distribution of prescription opioids in West Virginia.

2. The West Virginia Trial Court Rules authorizes the Panel to “develop and implement case management and trial methodologies to fairly and expeditiously resolve Mass Litigation referred to the Panel by the Chief Justice.” T.C.R. 26.05(a). The Panel may “take such action as is reasonably necessary and incidental to the powers and responsibilities conferred by this rule or by the specific directive of the Chief Justice.” T.C.R. 26.05(f).

3. “Consistent with this broad grant of authority” the Supreme Court of Appeals of West Virginia has held that “management of [mass tort] cases cannot be accomplished without granting trial courts assigned these matters significant flexibility and leeway with regard to their

handling of these cases.” *State of West Virginia ex rel. AmerisourceBergen Drug Corp. v. Hon. Alan D. Moats*, Nos. 20-0694 and 20-0751 (W. Va. June 11, 2021) (Wooton, J. concurring in part and dissenting in part) (quoting *In re: Tobacco Litig.*, 218 W. Va. 301, 306, 624 S.E.2d 736, 743 (2005) (internal citation omitted).

4. The State filed the above-captioned civil actions against Defendants alleging their deceptive marketing and unlawful distribution of prescription opioids has contributed to a devastating public health crisis in West Virginia. The State asserts two counts against each Defendant—one for common law public nuisance seeking the remedy of abatement, and one for violations of the West Virginia Consumer Credit and Protection Act seeking statutory civil penalties and other equitable remedies. The State seeks statewide abatement of the alleged public nuisance of the opioid epidemic, plus civil penalties, disgorgement, and other equitable and injunctive remedies under the WVCCPA for Defendants’ alleged statewide conduct.

5. In its February 19, 2020 Order Regarding Trial of Liability for Public Nuisance (Transaction ID 64739341) (“Liability Trial Order”), the Panel ordered a Phase I, non-jury trial on public nuisance liability to “be conducted as soon as practicable, after a reasonable period of discovery on this issue is conducted.” Liability Trial Order at 9. The Panel recognized that a trial on liability “can be conducted while the parties are conducting discovery on the issues of damages and abatement of public nuisance.” *Id.* at 1. In its March 20, 2020 and July 23, 2020 Orders denying reconsideration (Transaction ID 64846125, 65792140), the Panel emphasized that liability discovery would take no more than one year (March 20, 2020 Order at 2), and that bifurcation would promote judicial economy and expedition (July 23, 2020 Order at 7).<sup>1</sup>

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<sup>1</sup> Despite these considerations, the Panel subsequently determined that the exigencies of the COVID-19 pandemic necessitated continuing the public nuisance liability trial date to November 1, 2021. *See* Order Continuing Trial Date (Transaction ID 66016709) (“Continuance Order”).

6. In its June 11, 2021 Opinion and Order the Supreme Court of Appeals affirmed that Defendants have no right to a jury trial or apportionment on either of the State’s claims. *See State of West Virginia ex rel. AmerisourceBergen Drug Corp. v. Hon. Alan D. Moats*, Nos. 20-0694 and 20-0751 (W. Va. June 11, 2021) at 18 (“we deny the writ requested by Petition No. 20-0751, challenging the Panel’s August 4, 2020, order as it relates to the applicability of the 2015 Act to the State’s public nuisance claim”) and 19 n.55 (denying Defendants’ petition for writ of prohibition as to State’s claims for public nuisance and violation of the WVCCPA).<sup>2</sup>

7. The Supreme Court of Appeals left in place the Panel’s Order for a bench trial as it applies to the State’s public nuisance claim but vacated the Order as it applies to other Plaintiffs.<sup>3</sup> Thus, the State’s public nuisance claims and its WVCCPA claims are uniquely suited in the context of this litigation for a bench trial on an expedited basis.

8. Severing and expediting the State’s claims for a bench trial is consistent with the Panel’s prior rulings and directive to expeditiously resolve these critical cases and issues. The Panel’s rationale for originally expediting trial on public nuisance liability still applies to the State’s public nuisance and WVCCPA claims against Defendants.

Based upon the findings of fact and conclusions of law, as set forth above, the Panel **FINDS** that severing the above-captioned civil actions brought by the State and scheduling them for an expedited bench trial will help to fairly and expeditiously resolve disputed matters in this

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<sup>2</sup> “As noted by the Solicitor General during oral argument, this alternative argument – and so our conclusion, below, to grant in part Petition No. 20-0694 – does not apply to the State, which has brought claims for public nuisance and violation of the WVCCPA. As noted above, that portion of the Panel’s August 4, 2020, order finding that the state does not seek damages for its claim under the WVCCPA is not challenged in this instance.” *Id.* at 19 n.55

<sup>3</sup> “To the extent that the public nuisance liability determination and Plaintiffs’ legal claims present common issues, the order of trial must be such that the jury first determines those common issues. For that reason, we grant in part and deny in part the writ requested in Petition No. 20-0694. We emphasize that the issued writ is narrow and impacts only those issues common to determination of liability for public nuisance and Plaintiffs’ legal claims.” *Id.* at 24.

Mass Litigation. Accordingly, it is **ORDERED** that *Plaintiff's Motion to Sever Cases for Bench Trial on Expedited Basis* (Transaction ID 66764662) is **GRANTED**. It is further **ORDERED** that the above-captioned cases shall be set for a consolidated bench trial to commence on April 4, 2022.

A copy of this Order has this day been electronically filed on all counsel of record in the above-captioned civil actions via File & Serve*Xpress*.

It is so **ORDERED**.

**ENTERED:** August 4, 2021

/s/ Alan D. Moats  
Lead Presiding Judge  
In re: Opioid Litigation

/s/ Derek C. Swope  
Presiding Judge  
Opioid Litigation