



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

Civil Action No. 19-C-9000

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER DENYING DEFENDANTS' MOTION TO VACATE
DISCOVERY COMMISSIONER'S RULING REGARDING EARLY TRIAL
PRESERVATION DEPOSITION OF DR. RAHUL GUPTA**

Pending before the Panel is *Defendants' Objection to Discovery Commissioner Ruling Regarding Early Trial Preservation Deposition of Dr. Rahul Gupta* (Transaction ID 66942627) ("Objection"). Having reviewed Defendants' Objection as well as *Defendants' Expedited Motion for Protective Order Regarding Early Trial Preservation Deposition of Dr. Rahul Gupta* (Transaction ID 66901952), Plaintiffs' Response (Transaction ID 66904846), and the Discovery Commissioner's September 10, 2021, *Order on Defendants' Expedited Motion for Protective Order Regarding Early Trial Preservation Deposition of Dr. Rahul Gupta* (Transaction ID 66923080) the Panel **DENIES** Defendants' motion to vacate the Discovery Commissioner's September 10, 2021, ruling allowing a trial preservation deposition of Dr. Rahul Gupta to be conducted on September 23 and 24, 2021, and further **DENIES** Defendants' request for a protective order.

Dr. Rahul Gupta has been nominated to a federal position, and Plaintiffs assert that if he is confirmed he will be unavailable to testify in this litigation. Plaintiffs propose to take a trial preservation deposition of Dr. Gupta on September 23 and 24, 2021. Defendants contend the proposed deposition is premature. They argue the Court should enter a protective order that prevents the proposed deposition until fact discovery permits Defendants to examine Dr. Gupta fairly and fully, or, in the alternative, equitably limits Plaintiffs' use of Dr. Gupta's testimony.

Defs' Mot. p. 1.

Plaintiffs assert Defendants have ample information from which they can prepare for a deposition of Dr. Gupta, as Dr. Gupta previously sat for two depositions in CT2 where he was cross-examined by Defendants in this litigation and testified in the trial of CT2 where he was cross-examined by Defendants in this litigation. Plaintiffs' Resp. ¶¶ 5 and 14. Plaintiffs further assert they have made Dr. Gupta's deposition and trial testimony from CT2 available to all Defendants. *Id.*

The Panel agrees a trial preservation deposition of Dr. Gupta is appropriate at this stage of the litigation and **ORDERS** the trial preservation deposition of Dr. Gupta be conducted on September 23 and 24, 2021.

This Order is without prejudice to the parties' rights to object to the use or admissibility of any deposition testimony of Dr. Gupta at trial.

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

It is so **ORDERED**.

ENTERED: September 17, 2021.

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

/s/ Derek C. Swope
Lead Presiding Judge
Opioid Litigation