



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 CONVENING EARLY MEDIATION

Having determined that early mediation of this litigation is appropriate, Lead Resolution Judge Joanna I. Tabit, Resolution Judge Jay M. Hoke and Resolution Judge Debra Scudiere will conduct mediation on **February 26 and 27, 2020**, on the 17th Floor of the Chase Bank Building, located at 707 Virginia Street, East, Charleston, West Virginia 25701. **Mediation will begin at 9:00 a.m. on February 26, 2020.**

PRE-MEDIATION CONFERENCE CALL

1. Liaison Counsel for the parties shall participate in a pre-mediation conference call with the Resolution Judges at **12:00 p.m. on February 19, 2020**, to discuss any outstanding issues related to the mediation. The Mass Litigation Manager will provide Liaison Counsel with the call in number and the Participant PIN for the conference call.

REQUIRED PARTICIPANTS

2. The following persons are required to attend mediation **in person**:
- (a) lead trial counsel for each Plaintiff;
 - (c) lead trial counsel for each Defendant;
 - (d) the corporate representative for each Defendant; and
 - (e) the insurer representative for each Defendant.

FAILURE OF ANY PERSON REQUIRED TO ATTEND MEDIATION IN PERSON SHALL SUBJECT THAT PERSON TO SANCTIONS, UP TO AND INCLUDING THE STRIKING OF PLEADINGS AND DISMISSAL, ABSENT GOOD CAUSE SHOWN.

3. Plaintiffs may, but are not required to attend mediation, provided they have executed an

authorization giving their attorney **full authority** to act on their behalf, including full authority to negotiate settlement of their case, and to respond to developments during the mediation process.

4. Lead trial counsel and any corporate representative or insurer representative participating in mediation must be familiar with the cases to be mediated and must have **full authority** to act on behalf of the party or parties they represent, including full authority to negotiate a resolution of the cases and to respond to developments during the mediation process.

INVITED PARTICIPANTS

5. The State of West Virginia currently has one civil action pending before the Mass Litigation Panel.¹ That action is stayed due to Purdue's bankruptcy proceedings. The State has also filed four civil actions against opioid manufacturers in the Circuit Court of Boone County, West Virginia, which have not been served or transferred to the Panel.² Therefore, the Resolution Judges invite lead trial counsel for the State to participate in mediation on February 26 and 27, 2020. A copy of this Order shall be electronically served on the State this day via File & ServeXpress.

6. The parties have met and conferred, and have notified the Court they have no objection to West Virginia Plaintiffs with cases pending in *In re: National Prescription Opiate Litigation*, MDL 2804, United States District Court for the Northern District of Ohio, Eastern Division ("MDL 2804") participating in mediation of all state and federal West Virginia opioid cases with the Resolution Judges assigned to *In Re: Opioid Litigation*, Kanawha County Circuit Court, Civil Action No. 19-C-9000. See *Order Regarding Rulings Issued During December 6, 2010 Hearing*

¹ *State of West Virginia ex rel. Patrick Morrissey v. Purdue Pharma, L.P., et al.*, Civil Action No. 19-C-62 BNE.

² *State of West Virginia ex rel. Patrick Morrissey v. Teva Pharmaceuticals USA, Inc., et al.*, Boone County Civil Action No. 19-C-104; *State of West Virginia ex rel. Patrick Morrissey v. Johnson & Johnson, et al.*, Boone County Civil Action No. 19-C-105; *State of West Virginia ex rel. Patrick Morrissey v. Mallinckrodt LLC, et al.*, Boone County Civil Action No. 19-C-150; and *State of West Virginia ex rel. Patrick Morrissey v. Endo Health Solutions Inc., et al.*, Boone County Civil Action No. 19-C-151.

and Status Conference (Transaction ID 64520672) and *Notices Required by the Court's December 12, 2019 Order* (Transaction ID 6457616). Therefore, lead trial counsel for the West Virginia Plaintiffs in MDL 2804 are invited to participate in mediation on February 26 and 27, 2020. Plaintiffs' Liaison Counsel is directed to provide a copy of this Order to lead trial counsel for the West Virginia Plaintiffs in MDL 2804 immediately.

SIGN IN SHEET

7. Liaison Counsel for Plaintiffs and Defendants shall coordinate with one another to submit one, comprehensive sign in sheet containing the names and contact information of all counsel, corporate representatives and insurer representatives participating in the mediation to Mass Litigation Manager Kimberley R. Fields via electronic mail at kim.fields@courtswv.gov no later than **February 10, 2020**.

COUNSEL, CORPORATE REPRESENTATIVES AND INSURER REPRESENTATIVES MUST ARRIVE AT MEDIATION NO LATER THAN 8:30 A.M. ON FEBRUARY 26, 2020, TO SIGN IN.

CONFIDENTIALITY

8. Any written statement or discussion regarding mediation is confidential; shall not be used in the present litigation or in any other litigation (whether presently pending or filed in the future); and shall not be construed as or constitute an admission. Breach of this provision shall subject the violator to sanctions.

INFORMED CONSENT

9. Lead trial counsel for Plaintiffs must obtain Plaintiffs' informed consent to any settlement reached. When the terms of an aggregate or mass tort settlement in civil litigation do not determine individual amounts to be distributed to, or paid by, each client, or are not based upon

individual case-by-case negotiations, detailed disclosures are required before obtaining each client's consent to settle. For example, if a lump sum is offered in an aggregate or mass tort settlement, an attorney must, before obtaining the client's consent to the settlement, disclose to each client the number of his or her clients participating, specifics of each client's claims relevant to the settlement, the method of dividing the lump sum, and the settlement amount each client is to receive. In addition, the attorney must disclose, to each client, prior to obtaining the client's consent, the total attorney fees and costs to be paid, payments to be made other than to clients, the method by which the costs are to be apportioned among the clients, and the settlement amount each client is to receive.

10. If an aggregate settlement is reached, Plaintiffs' counsel will be required to provide to the Presiding Judges documentation showing the client is informed of and agrees to the attorney's method of allocation and distribution of settlement proceeds; documentation showing an accounting of the individual client's settlement allocation and distribution; and documentation showing authorization by the client to enter into the proposed settlement.

MEDIATION POSITION STATEMENTS

11. Each party is **ORDERED** to deliver a confidential mediation position statement to the Resolution Judges by hand delivery, Federal Express, UPS or any other express mail service with tracking capability **no later than February 12, 2020**.

12. Mediation position statements shall state on their face "**CONFIDENTIAL MEDIATION POSITION STATEMENT**" and shall be placed in an envelope marked "**CONFIDENTIAL MEDIATION POSITION STATEMENT.**" Mediation position statements **shall not** be filed with the Clerk's office, **shall not** be exchanged among the parties or counsel (unless the parties or counsel so desire), **shall not** be provided to the Presiding Judges,

and **shall not** become part of the record in this matter. **Mediation position statements shall not be electronically filed and served since they are not part of the Court record.**

13. Mediation position statements may be in memorandum or letter form. They must be double-spaced, in no less than 12-point font, and be **no longer than fifteen (15) pages.**

14. Mediation position statements **must** contain the following information:

a) **Contact information:** all lead trial counsel participating in the mediation shall provide: (1) a direct dial telephone work number; (2) a cell phone number; and (3) an electronic mail address where lead trial counsel can be reached.

b) **Parties:** identify the party/parties represented, describe their relationship, if any, to each other, and by whom each party is represented, including the identity of all representatives who will be participating on behalf of a party/parties during the mediation.

b) **Factual and Procedural History of the Case:** provide a brief summary of the factual and procedural history of the case, including a statement of the essential facts of the litigation, clearly indicating which material facts are not in dispute and which material facts remain in dispute. Plaintiffs shall provide their theories of liability and a one-page itemization of damages claimed, both liquidated and special, for each Plaintiff. Defendants shall provide their theories of defense and their position as to the damages claimed by Plaintiffs.

c) **Critical Deposition Testimony:** provide the deposition synopsis of any critical fact witness or expert witness, or in the alternative, a summary of the testimony of such fact witness or expert witness.

d) **Summary of Applicable Law:** provide a brief summary of the applicable law, including statutes, cases and standards.

e) **Strengths and Weaknesses of the Case:** provide an **honest** discussion of the

strengths **and** weaknesses of the party's claims and/or defenses, the likelihood of a verdict in favor of the party, an opinion as to the probable verdict range, and an opinion as to the range of settlement value.

f) **Settlement Efforts**: provide a **brief** discussion of prior settlement negotiations and discussions between the parties, including any outstanding demand made by the Plaintiffs to settle the litigation, any response by the Defendants to that demand, and an assessment as to why settlement has not been reached.

g) **Settlement Proposal**: provide the party's proposed term(s) of settlement, including any proposed terms that may be non-monetary, as well as any suggestions regarding how the Resolution Judges may assist the parties in reaching a resolution.

h) **Fees and Costs**: list separately (i) attorneys' fees and costs incurred to date; (ii) other fees and costs incurred to date; (iii) a good faith estimate of additional attorneys' fees and costs to be incurred if this matter is not settled; and (iv) a good faith estimate of additional other fees and costs to be incurred if this matter is not settled.

i) **Other Settlements**: if applicable, Plaintiff's counsel shall provide the gross settlement amount of any other settlements.

j) **Other Matters**: in addition to the required topics described above, and provided that the mediation statement complies with the page limit stated above, counsel are encouraged to address any other matters they believe may be of assistance to the Resolution Judges.

15. While counsel may submit documents that will assist the Resolution Judges in understanding the issues and resolving the litigation as exhibits to the mediation statement, counsel are cautioned to limit exhibits to only those documents counsel believes will be crucial to resolution of the litigation.

MEMORIALIZATION OF SETTLEMENT

16. If the parties reach a resolution of their dispute, the parties shall memorialize the general terms of their settlement in a written memorandum signed by counsel. A copy of the settlement memorandum shall be provided to the Resolution Judges prior to conclusion of the mediation.

EX PARTE CONTACTS

17. Before, during and after the scheduled mediation, the Resolution Judges may find it necessary and useful to communicate with one or more parties outside the presence of the other party or parties.

OBLIGATION OF GOOD FAITH PARTICIPATION

18. All Required Participants shall attend the entire mediation in person and shall be available and accessible throughout the mediation process. No party may be compelled by this Order, the Mass Litigation Panel, or The Resolution Judges to settle a case involuntarily or against the party's judgment. However, the Resolution Judges expect the parties' full and good faith cooperation with the mediation process, and expect the participants to be prepared to participate fully, openly and knowledgably in a mutual effort to examine and resolve issues. The Resolution Judges encourage all participants to keep an open mind in order to reassess their previous positions and to find creative means for resolving the dispute.

IMPOSITION OF SANCTIONS

19. **All counsel are reminded of their obligations to read and comply with this Order.**

To avoid the imposition of sanctions, counsel shall advise the Resolution Judges immediately of any problems regarding compliance with this Order.

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

It is so **ORDERED**.

ENTER: January 7, 2020.

/s/ Joanna I. Tabit
Lead Resolution Judge
Opioid Litigation