



**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**

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**ORDER DENYING PHARMACY DEFENDANTS' EMERGENCY MOTION TO STAY  
ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL CERTAIN DISCOVERY  
FROM CHAIN PHARMACY DEFENDANTS FROM 1996 TO PRESENT**

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The Discovery Commissioner has reviewed *Pharmacy Defendants' Emergency Motion To Stay Order Granting Plaintiffs' Motion To Compel Certain Discovery From Chain Pharmacy Defendants From 1996 To Present* (the "Emergency Motion to Stay") (Transaction ID 66074424). The Discovery Commissioner has considered this Emergency Motion to Stay, given Pharmacy Defendants' stated intention to promptly seek reconsideration of the *Order Granting Plaintiffs' Motion to Compel Certain Discovery from Chain Pharmacy Defendants from 1996 to Present* (Transaction ID 66065841) (the "Order"), and the Mass Litigation Panel's ("MLP") order requiring objections be made to a Discovery Commissioner order within seven (7) calendar days of the Discovery Commissioner's ruling (Transaction ID 64839031). The Discovery Commissioner finds:

1. On October 29, 2020, the Discovery Commissioner entered the Order granting Plaintiffs' *Motion to Compel Certain Discovery from Chain Pharmacy Defendants from 1996 to*

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<sup>1</sup> Pharmacy Defendants are the following entities for the purposes of this Order: The Kroger Co.; Kroger Limited Partnership I; Kroger Limited Partnership II; Rite Aid of Maryland, Inc.; Rite Aid of West Virginia, Inc.; Walgreens Boots Alliance, Inc. (Walgreens Boots Alliance, Inc. ("WBA") is a named defendant only in certain cases, where its motions to dismiss based on lack of personal jurisdiction are pending. By joining in the Motion, WBA does not waive, or intend to waive, its position that the Court lacks personal jurisdiction over it.); Walgreen Co.; Walmart Inc.; and Wal-Mart Stores East, LP.

*Present* (Transaction No. 65994674). The Order further compels Pharmacy Defendants to provide discovery responses to nine of Plaintiffs' discovery requests from January 1, 1996 to the present on a rolling basis by no later than December 31, 2020. *Id.* at 7.

2. Pharmacy Defendants intend to seek reconsideration of the Court's Order and are diligently preparing further briefing to alert the Discovery Commissioner of the basis for their request for reconsideration. Pharmacy Defendants intend to file such briefing by November 5, 2020.

3. The MLP's *Order Appointing Discovery Commissioner* (Transaction ID 64839031) provides seven (7) calendar days in which to object to an order by the Discovery Commissioner. *Id.* at 2. This order provides that failure to object within this window results in a permanent waiver of any objection. *Id.*

4. Pharmacy Defendants state that they are concerned about the possibility of contradictory orders issuing from the Discovery Commissioner and the MLP, as Pharmacy Defendants intend to file their motion for reconsideration prior to the deadline to object to an order of the Discovery Commissioner provided in the *Order Appointing Discovery Commissioner*.

5. Pharmacy Defendants' argue that a stay of the Order pending ruling on the motion for reconsideration would avoid the need for Pharmacy Defendants to file simultaneous objections with the MLP. The Discovery Commissioner finds that if the ruling is ultimately upheld the ordered production is delayed not only for the time for the motion to reconsider to be decided but also for the time needed for the review by the MLP. The Discovery Commissioner finds that the requested relief does not promote judicial economy, and instead would result in an unnecessary delay in the discovery process. The risk of contradictory rulings is apparent when

objection is filed to any discovery ruling. The MLP *Order Appointing Discovery Commissioner* (Transaction ID 64839031) provides an efficient procedure which allows any aggrieved party to request timely review of a discovery ruling.

WHEREFORE, based upon the foregoing, the Emergency Motion to Stay is **DENIED**. It is further **ORDERED** that if Pharmacy Defendants wish to file their motion for reconsideration it should be filed by November 5, 2020. Plaintiffs will file any response to Pharmacy Defendants' motion for reconsideration by November 16, 2020, and Pharmacy Defendants will file any reply by November 20, 2020.

**IT IS SO ORDERED.**

**ENTERED:** November 3, 2020.

/s/ Christopher C. Wilkes  
Discovery Commissioner