



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 REGARDING RULINGS ISSUED DURING
DECEMBER 6, 2019 HEARING AND STATUS CONFERENCE**

On December 6, 2019, the Judges assigned to *In re: Opioid Litigation*, Civil Action No. 19-C-9000, conducted a hearing and status conference and issued a number of rulings.

Defendants' Motions for Extension of Reply Deadline

Defendants' motions seeking an extension of time **until January 9, 2020**, to file replies to Plaintiffs' responses to Defendants' motions to dismiss (Transaction IDs 64491765 and 64492771) are **GRANTED**. *See Order Granting Extension of Time for Defendants' Reply* (Transaction ID 64506520) and *Order Granting Motion to Continue Deadlines for Defendants' Replies to Plaintiffs' Responses to Defendants' Motions to Dismiss* (Transaction ID 64506748) entered on December 9, 2019.

Rule 19 Joinder

Having reviewed the parties' briefing, and finding good cause shown, the Court **GRANTS** *Certain Defendants' Motion for Reconsideration of the Court's September 24, 2019 Order* (Transaction ID 64251890). The Court **RESCINDS** that portion of its September 24, 2019, *Order Regarding Appointment of Liaison Counsel and Procedure for Notification of Rule to Show Cause* (Transaction ID 64235145), insofar as it pertains to the Notification of Rule to Show Cause under Rule 19 of the West Virginia Rules of Civil Procedure why other entities should not be joined as plaintiffs in the Opioid Litigation.

Statute of Limitations

The appropriate statute of limitations must be decided in order to determine the

appropriate time period for discovery as it relates to liability and damages in these cases. Plaintiffs and Defendants are, therefore, **ORDERED** to file and serve their respective memoranda of law regarding the appropriate statute of limitations under West Virginia law **no later than February 4, 2020**.

Plaintiffs shall file one, joint memorandum of law stating their position regarding the appropriate statute of limitations. Likewise, Defendants shall file one, joint memorandum of law stating their position regarding the appropriate statute of limitations. If a party files a motion seeking leave to file a separate memorandum of law setting forth the party's unique position regarding the appropriate statute of limitations, the motion must include an affidavit from counsel stating that the party has exhausted all efforts to state its position in Plaintiffs' or Defendants' joint memorandum of law.

West Virginia Board of Pharmacy's Motion to Dismiss

On July 16, 2019, the West Virginia Board of Pharmacy filed a *Motion to Dismiss* (Transaction ID 63552778) in *County Commission of Mason County, et al. v. Purdue Pharma, L.P., et al.*, Civil Action Nos. 19-C-4 MSH through 19-C-9 MSH ("Mason County, et al."). The Court scheduled the motion for hearing on December 6, 2019. *Notice of Hearing* (Transaction ID 64429742). Two days before the hearing, Plaintiffs voluntarily dismissed the West Virginia Board of Pharmacy in *Mason County, et al.* (Transaction ID 64487552) and also in *Mayor Peggy Knotts on behalf of the City of Grafton, et al., v. Purdue Pharma, L.P., et al.*, Civil Action Nos. 19-C-151 MSH through 19-C-152 MSH (Transaction ID 64487850). Accordingly, the West Virginia Board of Pharmacy's motion to dismiss is **MOOT** (Transaction ID 64492753).

Public Nuisance

Plaintiffs are **ORDERED** to file and serve one, joint memorandum of law stating what

statutory authority and/or ordinance(s) they are relying upon in support of their public nuisance causes of action **no later than 12:00 p.m. on December 20, 2019.**

The parties are **ORDERED** to meet and confer regarding whether they are in agreement with the Court's proposal to conduct a non-jury, Phase I trial on the sole issue of whether there is liability for public nuisance under West Virginia law, which trial can be conducted while the parties are conducting discovery on the issues of damages and abatement of public nuisance. Plaintiffs shall file one, joint memorandum of law stating their position on this issue, and Defendants shall file one, joint memorandum of law stating their position on this issue **no later than 12:00 p.m. on December 20, 2019.**

Mediation of West Virginia State and Federal Cases

The parties are **ORDERED** to meet and confer regarding whether they are in agreement with the Court's proposal that the parties communicate with their counterparts in *In Re: National Prescription Opiate Litigation*, MDL 2804, United States District for the Northern District of Ohio, Eastern Division ("MDL 2804"), to explore whether the parties are willing to engage in mediation of all state and federal West Virginia opioid cases with the Resolution Judges assigned to *In Re: Opioid Litigation*, Civil Action No. 19-C-9000. Liaison Counsel for the parties shall file and serve a notice regarding the parties' positions on this issue **no later than 12:00 p.m. on December 20, 2019.**

Reports Regarding MDL 2804 and Other Consolidated Opioid Litigations

The Court welcomes periodic reports from the parties regarding developments in MDL 2804, as well as consolidated litigations pending in other state courts. Counsel are directed to coordinate in order to prepare a joint report of the parties, which shall be submitted on a quarterly basis, unless the parties determine more frequent reports would assist the Court.

Proposed Agendas for Future Status Conferences

If the Court determines that a proposed agenda for a status conference is appropriate, the parties shall prepare a joint, proposed agenda for review and approval of the Court on such date and time as the Court determines. Liaison Counsel for the parties shall be responsible for filing and serving any joint proposed agenda, upon the Court's request.

List of Proposed Discovery Commissioners

The parties are **ORDERED** to meet and confer in order to prepare an agreed upon list of proposed Discovery Commissioners for the Court's review and consideration. Liaison Counsel for the parties shall file and serve a notice regarding the parties' proposed list of Discovery Commissioners **no later than 12:00 p.m. on December 20, 2019.**

Plaintiffs' Motion to Join in Existing Mass Litigation

Counsel representing eight Plaintiffs in civil actions recently filed in the Circuit Court of Marshall County, West Virginia, notified the Court they intend to file a motion to join these cases with *In Re: Opioid Litigation*, Civil Action No. 19-C-9000, and they have submitted a proposed, agreed order to Defendants for review. If the parties are in agreement, the Court will grant the motion to join these cases with the litigation.

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

It is so **ORDERED**.

ENTERED: December 12, 2019.

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