



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
MARCH 13, 2020 STATUS CONFERENCE**

On March 13, 2020, the Presiding Judges assigned to *In re: Opioid Litigation*, Civil Action No. 19-C-9000, conducted a status conference and issued the following rulings.

Joint Report on Status of Related Opioid Litigation

The Court thanked Liaison Counsel for the parties' March 12, 2020, *Joint Report on Status of Related Opioid Litigation* (Transaction ID 64822484). The Court will coordinate its efforts in the Opioid Litigation state court cases pending before the Mass Litigation Panel with the efforts of District Judge David A. Faber, before whom *The City of Huntington v. AmerisourceBergen Drug Corporation, et al.*, Civil Action No. 3:17-01362 (*City of Huntington*), and *Cabell County Commission v. AmerisourceBergen Drug Corporation, et al.*, Civil Action No. 3:17-01665 (*Cabell County*), are currently pending in the Southern District of West Virginia.

Phase I Non-Jury Trial of Liability for Public Nuisance

The Court has **ORDERED** the Phase I, non-jury trial of liability for public nuisance to be conducted beginning on **March 22, 2021**. However, the Court recognizes that continuing public health concerns regarding the novel coronavirus (COVID-19) may impact this date.

The Court is not inclined to re-visit its *Order Regarding Trial of Liability for Public Nuisance* (Transaction ID 64739341), because Plaintiffs' claims for abatement of public nuisance are equitable claims to which a right to jury trial does not attach. Order p. 9. Nonetheless, the Court **ORDERED** the parties to file any briefs pertaining to *Certain Defendants' Motion for Reconsideration of Order Regarding Trial of Liability for Public*

Nuisance (Transaction ID 64819458) **no later than March 27, 2020.**

Scope and Duration of Discovery for Phase I Trial

The Court does not agree with Defendants' assertion that 18 months of discovery is necessary to conduct the Phase I non-jury trial of liability for public nuisance. Defendants have the benefit of intensive discovery already conducted in *In re: National Prescription Opiate Litigation*, Case No. 1:17-MD-2804 (MDL 2804), as well as any discovery conducted in the *City of Huntington* and *Cabell County* cases.

Based on the Court's March 22, 2021 trial date, the parties have one year to conduct discovery regarding liability for public nuisance. The Court declines to allow separate discovery of every county, municipality and hospital in West Virginia regarding alleged liability for public nuisance. Plaintiffs' allegations of public nuisance are not confined. They affect the entire State of West Virginia.

The Court will allow the parties to conduct discovery of one county, one municipality and one hospital in West Virginia for purposes of determining the costs of abating the alleged public nuisance. The Court has selected Harrison County, the City of Clarksburg and United Hospital for purposes of conducting discovery regarding the cost of abatement.

State of West Virginia's Cases and Motion for Expedited Trial

The State of West Virginia has represented that it does not oppose transfer of *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, to the Mass Litigation Panel to be joined with the Opioid Litigation. The Court **ORDERS** the Plaintiff to confer with the Defendants in these cases, and to file a proposed agreed order transferring these cases from the Circuit Court of

Boone County, West Virginia, to the Mass Litigation Panel, and joining these cases with *In re: Opioid Litigation*, Civil Action No. 19-C-9000.

Plaintiff's Motion for Expedited Trial Date (Transaction ID 64816288) filed on March 11, 2020, in *State of West Virginia ex rel. Patrick Morrissey v. Teva Pharmaceutical Industries, Ltd, et al.*, Civil Action No. 19-C-104 BNE, and *State of West Virginia ex rel. Patrick Morrissey v. Janssen Pharmaceuticals, Inc.*, Civil Action No. 19-C-105 BNE is **DENIED** as premature.

Res Judicata

This issue has been raised by Defendants as part of their motion to dismiss filed in *State of West Virginia ex rel. Patrick Morrissey v. Janssen Pharmaceuticals, Inc. et al.*, Civil Action No. 19-C-105 BNE. Briefing of that motion will conclude on March 30, 2020. Judge Faber has also ordered briefing of the issue in the *City of Huntington* and *Cabell County* cases.

Newly-Filed State Court Cases

The Parties are **ORDERED** to prepare a proposed, agreed order transferring the 14 newly-filed state court opioid cases from the Circuit Court of Marshall County, West Virginia to the Mass Litigation Panel and joining them with *In re: Opioid Litigation*, Civil Action No. 19-C-9000.

Appointment of Discovery Commissioner

The Court has appointed The Honorable Christopher C. Wilkes to serve as Discovery Commissioner in the Opioid Litigation pending before the Mass Litigation Panel. *Order Appointing Discovery Commissioner* (Transaction ID 64839031). Judge Faber has also appointed Judge Wilkes as the Special Master in the *City of Huntington* and *Cabell County* cases to aid with discovery matters and disputes. Judge Wilkes' appointments will ensure consistency of rulings on discovery matters in these cases.

March 6, 2020 Letter from Plaintiffs' Counsel

On March 6, 2020, certain Plaintiffs' counsel filed a letter asking this Court to send a letter to Judge Polster requesting remand of certain West Virginia cases pending in *In re: National Prescription Opiate Litigation*, Case No. 1:17-MD-2804 (MDL 2804) to the Mass Litigation Panel. (Transaction ID 64801789). The Court has directed the parties to discuss this issue and, if both sides can come to an agreement to narrow the focus of these cases to public nuisance, the parties can file a joint motion requesting that Judge Polster reconsider remanding all West Virginia cases to the Mass Litigation Panel.

Frequency of Future Status Conferences

Plaintiffs have requested monthly status conferences. Defendants have requested status conferences every 4 to 6 weeks, with status conferences commencing at 9:00 a.m. The Court will conduct its next status conference at **9:00 a.m. on May 8, 2020**, in Courtroom Four, also known as the Ceremonial Courtroom, on the second floor of the Kanawha County Courthouse, located at 409 Virginia Street, East, in Charleston, West Virginia. *Order Regarding Briefing of Motion to Reconsider and Scheduling May 8, 2020, Status Conference* (Transaction ID 64831105).

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

It is so **ORDERED**.

ENTERED: March 20, 2020.

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