



**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 RECONVENING MEDIATION**

Lead Resolution Judge Joanna I. Tabit, Resolution Judge Jay M. Hoke and Resolution Judge Gregory L. Howard will reconvene mediation on **August 26 and 27, 2020**, on the 17<sup>th</sup> 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 August 26, 2020.**

The Resolution Judges recognize the COVID-19 pandemic has caused travel restrictions to be placed on many parties and counsel who would otherwise participate in mediation in person, so they will be conducting mediation in a “hybrid” fashion, with some individuals required to appear in person and all others required to be available by telephone and/or video conference, as needed during mediation.

If a Required In-Person Participant cannot travel due to constraints caused by the COVID-19 pandemic, the Required In-Person Participant shall file and serve a motion seeking leave to participate in mediation via teleconference or videoconference **no later than August 17, 2020**. The motion shall be served on all counsel of record, Lead Resolution Judge Joanna I. Tabit, Resolution Judge Jay M. Hoke, Resolution Judge Gregory L. Howard, and the Mass Litigation Manager.

## **REQUIRED IN-PERSON PARTICIPANTS**

The following persons are required to participate in mediation **in person**:

### **Plaintiffs' Liaison Counsel:**

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### **Defendants' Liaison Counsel:**

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### **Plaintiffs' Lead Coordinating Counsel:**

#### **Co-Lead Coordinating Counsel for Cities/Counties:**

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#### **Co-Lead Coordinating Counsel for Hospitals:**

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#### **Lead Coordinating Counsel for the Attorney General:**

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**Defendants' Lead Coordinating Counsel:**

**Lead Coordinating Counsel for the Distributor Defendants:**

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**Lead Coordinating Counsel for the Manufacturer Defendants:**

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**Lead Coordinating Counsel for the Retail Pharmacy Defendants:**

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**Lead Coordinating Counsel for the State Agency Defendants:**

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**INVITED IN-PERSON PARTICIPANTS**

Lead trial counsel for the West Virginia Plaintiffs with cases pending in *In re: National Prescription Opiate Litigation*, No. 1:17-md-2804, United States District Court for the Northern

District of Ohio, Eastern Division (“MDL 2804”) are invited to participate in person when mediation is reconvened on August 26 and 27, 2020. Plaintiffs’ Liaison Counsel shall provide a copy of this Order to lead trial counsel for the West Virginia Plaintiffs with cases pending in MDL 2804 immediately.

**ALL OTHER PARTIES, COUNSEL, CORPORATE REPRESENTATIVES AND INSURER REPRESENTATIVES SHALL BE AVAILABLE TO PARTICIPATE IN MEDIATION BY TELECONFERENCE OR VIDEOCONFERENCE, AS NEEDED BY THE RESOLUTION JUDGES.**

**SIGN IN SHEET FOR IN-PERSON PARTICIPANTS**

**CONTACT SHEET FOR REMOTE PARTICIPANTS**

Liaison Counsel for Plaintiffs and Defendants shall coordinate with one another in order to submit one, comprehensive sign in sheet containing the names, email addresses and other contact information of all counsel participating in the mediation in person; and one comprehensive contact sheet containing the names, email addresses and other contact information of all other parties, counsel, corporate representatives and insurer representatives required to be available by teleconference or videoconference; to the Mass Litigation Manager via electronic mail at [kim.fields@courtsvw.gov](mailto:kim.fields@courtsvw.gov) no later than **August 17, 2020**.

**PRE-MEDIATION VIDEOCONFERENCE**

Liaison Counsel for the parties shall participate in a pre-mediation videoconference with the Resolution Judges at **12:00 p.m. on August 19, 2020**, to discuss any outstanding issues related to the mediation. The Mass Litigation Manager shall schedule the videoconference.

**SUPPLEMENTAL MEDIATION STATEMENTS**

Plaintiff’s Lead Coordinating Counsel and Defendants’ Lead Coordinating Counsel shall confer and coordinate with their respective co-counsel and shall submit supplemental mediation

statements to Lead Resolution Joanna I. Tabit, Resolution Judge Jay M. Hoke, and Resolution Judge Gregory L. Howard by no later than **August 17, 2020**, which shall discuss the issues the parties believe must be mediated in order to fully resolve the Opioid Litigation.

The parties are reminded that supplemental mediation statements are confidential. Each party must place their supplemental mediation statement in a sealed envelope marked, **“CONFIDENTIAL SUPPLEMENTAL MEDIATION STATEMENT.”** The supplemental mediation statements shall either be hand delivered, or delivered by Federal Express, UPS or any other express mail service with tracking capability to Lead Resolution Joanna I. Tabit, Resolution Judge Jay M. Hoke, and Resolution Judge Gregory L. Howard.

#### **EX PARTE CONTACTS**

Before, during and after the reconvened 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.

#### **CONFIDENTIALITY**

The parties are reminded that 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.

#### **OBLIGATION OF GOOD FAITH PARTICIPATION**

The required in-person participants shall attend the entire mediation in person and shall be available and accessible throughout the mediation process to the Resolution Judges and to their respective co-counsel. All other parties, counsel, corporate representatives and insurer representatives shall be available to participate in mediation by teleconference or

videoconference, as needed by the Resolution Judges.

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 knowledgeably 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.

### **MEMORIALIZATION OF SETTLEMENT**

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.

### **IMPOSITION OF SANCTIONS**

**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 & Serve*Xpress*.

It is so **ORDERED**.

**ENTER:** July 24, 2020.

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