



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

IN RE: MARCELLUS SHALE LITIGATION

Civil Action No. 14-C-3000

THIS DOCUMENT APPLIES TO ALL WELL PAD CASES

ORDER RECONVENING MEDIATION ON JULY 24, 2020

Mediation of all Well Pad Cases in the Marcellus Shale Litigation will be reconvened on **July 24, 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 July 24, 2020**, and will be conducted by Lead Resolution Judge Jay M. Hoke, with the assistance of Resolution Judge Joanna I. Tabit.

REQUIRED PARTICIPANTS

1. 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.
2. If a Required Participant cannot travel due to constraints caused by the COVID-19 pandemic, the Required Participant shall file and serve a motion seeking leave to participate in mediation via teleconference or videoconference **no later than July 9, 2020**. The motion shall be served on all counsel of record, Lead Resolution Judge Jay M. Hoke, Resolution Judge Joanna I. Tabit, and the Mass Litigation Manager.
3. Plaintiffs may, but are not required to attend mediation, provided they have executed authorizations 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.

SIGN IN SHEET

5. Counsel for Plaintiffs and for the Defendants shall coordinate with one another to submit **one sign in sheet** containing the names and contact information of all Counsel, corporate representatives and insurer representatives participating in the mediation to the Mass Litigation Manager via electronic mail at kim.fields@courtswv.gov no later than **July 15, 2020**.

6. If individual Plaintiffs plan to attend mediation, Counsel for Plaintiffs shall coordinate with one another to submit one Plaintiff sign with the name of the Plaintiff, Civil Action Number, the name of the Plaintiff's Trial Group, Plaintiff's counsel, and a space for the Plaintiff to sign his or her name to the Mass Litigation Manager via electronic mail at kim.fields@courtswv.gov no later than **July 15, 2020**.

PARTIES, COUNSEL AND REPRESENTATIVES MUST ARRIVE NO LATER THAN 8:30 A.M. ON JULY 24, 2020, TO SIGN IN.

PRE-MEDIATION SETTLEMENT DEMAND AND RESPONSE

7. Counsel for Plaintiffs shall submit a settlement demand to counsel for Defendants, and shall fax a copy of Plaintiffs' settlement demand to Lead Resolution Judge Jay M. Hoke and Resolution Judge Joanna I. Tabit **no later than July 2, 2020**. Counsel for Defendants shall submit a response to Plaintiffs' settlement demand to counsel for Plaintiffs, and shall fax a copy of Defendants' response to Lead Resolution Judge Jay M. Hoke and Resolution Judge Joanna I.

Tabit **no later than July 9, 2020**.

SUPPLEMENTAL MEDIATION STATEMENTS

8. Each party is **ORDERED** to deliver a supplemental mediation statement to Lead Resolution Judge Jay M. Hoke and Resolution Judge Joanna I. Tabit **no later than July 10, 2020**, discussing all remaining issues that must be mediated in order to fully resolve these cases. The 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 be delivered to the Resolution Judges by hand delivery, Federal Express, UPS or any other express mail service with tracking capability.

PRE-MEDIATION CONFERENCE CALL

9. Liaison Counsel for the parties shall participate in a pre-mediation conference call with the Resolution Judges at **12:30 p.m. on July 16, 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.

INFORMED CONSENT

10. 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.

11. 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.

CONFIDENTIALITY

12. **The contents of mediation statements and mediation discussions, including any resolution or settlement shall remain confidential, shall not be used in the present litigation nor any other litigation (whether presently pending or filed in the future), and shall not be construed as nor constitute an admission. Breach of this provision shall subject the violator to sanctions.**

EX PARTE CONTACTS

13. 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

14. Except for individual Plaintiffs who have provided executed authorizations to their counsel, 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

15. **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.

This Order has been electronically served on all counsel of record this day via File & Serve*Xpress*.

It is so **ORDERED**.

ENTERED: June 12, 2020.

/s/ Jay M. Hoke
Lead Resolution Judge
Marcellus Shale Litigation