



**IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA**

**IN RE: MARCELLUS SHALE LITIGATION  
MIDSTREAM CASES**

**CIVIL ACTION NO. 14-C-3001**

**THIS DOCUMENT APPLIES TO:**

**THE CORLEY TRIAL GROUP**

Gary Hall and Jodi Hall

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 17-C-2 MSH

James McKinney and Jennifer McKinney

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 17-C-2 MSH

Glenn Whisler and Sandra Whisler

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 17-C-2 MSH

Victor W. Woods, Jr. and Jessica L. Woods

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 17-C-238 MSH

**THE CONNOR-BERGER TRIAL GROUP**

Robert Carnahan and LeaAnn Carnahan

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 15-C-110 MSH

Joshua Nelson and Tracie Nelson

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 15-C-94 MSH

Brenda Rine

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 15-C-91 MSH

**THE NORTH CANTON COMPRESSOR STATION TRIAL GROUP**

Thomas V. Bates and Victoria A. Bates

v.

Antero Resources Corporation

Civil Action No. 16-C-22 DOD

Patrick M. Cayton  
v.  
Antero Resources Corporation

Civil Action No. 16-C-23 DOD

Jack C. Lamp and Linda M. Lamp  
v.  
Antero Resources Corporation

Civil Action No. 16-C-26 DOD

Michael W. Swiger and Jodi A. Swiger  
v.  
Antero Resources Corporation

Civil Action No. 16-C-27 DOD

### **THE LUMBERPORT BOOSTER STATION TRIAL GROUP**

Lawrence Curry and Linda Curry  
v.  
DTE Appalachia Gathering, LLC  
f/k/a M3 Appalachia Gathering, LLC

Civil Action No. 16-C-434 HRR

William R. Hurst and Brenda Hurst  
v.  
DTE Appalachia Gathering, LLC  
f/k/a M3 Appalachia Gathering, LLC

Civil Action No. 17-C-155 HRR

### **ORDER GOVERNING MEDIATION AND MEDIATION STATEMENTS**

Lead Resolution Judge Jay M. Hoke, Resolution Judge Joanna I. Tabit and Resolution Judge Debra Scudiere will conduct mediation of the above-captioned cases on **July 23, 2020, and July 24, 2020**, in Courtroom Four, also known as the Ceremonial Courtroom, located on the second floor of the Kanawha County Courthouse, 409 Virginia Street, East, in Charleston, West Virginia 25301. **Mediation will begin at 9:00 a.m. on July 23, 2020.**

If the Resolution Judges determine the COVID-19 pandemic necessitates conducting mediation using remote, video and/or telephonic technology to limit in-person contact, the Resolution Judges will notify the parties by separate order, including which technology will be used by the Resolution Judges and all Required Participants, and the procedures to be followed for conducting remote mediation.

**PRE-MEDIATION SETTLEMENT DEMAND AND RESPONSE**

1. No later than July 2, 2020, Counsel for Plaintiffs shall submit a settlement demand to Counsel for Defendants. A copy of Plaintiff's settlement demand shall be faxed to each of the Resolution Judges no later than July 2, 2020. No later than July 9, 2020, Counsel for Defendant shall submit a response to Plaintiffs' settlement demand to Counsel for Plaintiffs. A copy of Defendant's response shall be faxed to each of the Resolution Judges no later than July 9, 2020.

**PRE-MEDIATION CONFERENCE CALL**

2. Counsel for the parties shall participate in a pre-mediation conference call with the Resolution Judges at 12:00 p.m. on July 16, 2020, to discuss any outstanding issues related to the mediation. The Mass Litigation Manager will provide Counsel with the call in number and the Participant PIN for the conference call.

**REQUIRED PARTICIPANTS**

3. The following persons are required to attend the mediation in person:
- (a) lead trial Counsel for the Plaintiffs;
  - (c) lead trial Counsel for the Defendants;
  - (d) the corporate representative for the Defendants; and
  - (e) the insurer representatives for the Defendants.

**FAILURE OF ANY PERSON REQUIRED TO ATTEND MEDIATION IN PERSON SHALL SUBJECT THAT PERSON TO SANCTIONS, UP TO AND INCLUDING THE STRIKING OF PLEADINGS AND DISMISSAL, ABSENT GOOD CAUSE SHOWN.**

4. Plaintiffs may, but are not required to attend mediation, provided they have executed an authorization 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. A form authorization approved by the Resolution Judges is attached. A copy of each Plaintiff's executed authorization shall be delivered to the office of Mass Litigation Manager Kimberley R. Fields for receipt **no later than July 15, 2020.**

5. 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**

6. 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](mailto:kim.fields@courtswv.gov) no later than **July 15, 2020.**

7. 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](mailto: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 23, 2020, TO SIGN IN.**

## **CONFIDENTIALITY**

8. 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.

## **INFORMED CONSENT**

9. 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.

10. 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.

## MEDIATION STATEMENTS

11. Mediation statements containing all of the information required by Paragraph 14 shall be delivered to the offices of Lead Resolution Judge Jay M. Hoke, Resolution Judge Joanna I. Tabit, and Resolution Judge Debra Scudiere for receipt **no later than July 10, 2020**. Mediation Statements shall either be hand delivered to the Resolution Judges, or delivered to them by Federal Express, UPS or any other express mail service with tracking capability.

12. **Mediation statements are confidential.** Mediation statements shall state on their face “**CONFIDENTIAL MEDIATION STATEMENT**” and shall be placed in envelopes marked “**CONFIDENTIAL MEDIATION STATEMENT.**” Mediation statements **shall not** be filed with the Clerk’s office, **shall not** be exchanged among the parties or Counsel (unless the parties or Counsel so desire), **shall not** be provided to the Presiding Judges, and **shall not** become part of the record in this matter. **Mediation statements shall not be electronically filed and served since they are not part of the Court record.**

13. Mediation statements may be in memorandum or letter form. They must be double-spaced, in no less than 12-point font, and be **no longer than fifteen (15) pages**.

14. Mediation statements **must** contain the following information:

a) **Contact information:** all lead trial Counsel participating in the mediation shall provide: (1) a direct dial telephone work number; (2) a cell phone and/or home telephone number; and (3) an electronic mail address where lead trial Counsel can be reached.

b) **Parties:** identify the party/parties represented, describe their relationship, if any, to each other, and by whom each party is represented, including the identity of all representatives who will be participating on behalf of a party/parties during the mediation.

b) **Factual and Procedural History of the Case:** provide a brief summary of the factual and procedural history of the case, including a statement of the essential facts of the litigation, clearly indicating which material facts are not in dispute and which material facts remain in dispute. Plaintiffs shall provide their theories of liability and a one-page itemization of damages claimed, both liquidated and special, for each Plaintiff. Defendants shall provide their theories of defense and their position as to the damages claimed by Plaintiffs.

c) **Critical Deposition Testimony:** provide the deposition synopsis of any critical fact witness or expert witness, or in the alternative, a summary of the testimony of such fact witness or expert witness.

d) **Summary of Applicable Law:** provide a brief summary of the applicable law, including statutes, cases and standards.

e) **Strengths and Weaknesses of the Case:** provide an **honest** discussion of the strengths **and** weaknesses of the party's claims and/or defenses, the likelihood of a verdict in favor of the party, an opinion as to the probable verdict range, and an opinion as to the range of settlement value.

f) **Settlement Efforts:** provide a **brief** discussion of prior settlement negotiations and discussions between the parties, including any outstanding demand made by the Plaintiffs to settle the litigation, any response by the defendants to that demand, and an assessment as to why settlement has not been reached.

g) **Settlement Proposal:** provide the party's proposed term(s) of settlement, including any proposed terms that may be non-monetary, as well as any suggestions regarding how the Resolution Judges may assist the parties in reaching a resolution.

h) **Fees and Costs**: list separately (i) attorneys' fees and costs incurred to date; (ii) other fees and costs incurred to date; (iii) a good faith estimate of additional attorneys' fees and costs to be incurred if this matter is not settled; and (iv) a good faith estimate of additional other fees and costs to be incurred if this matter is not settled.

i) **Other Settlements**: if applicable, Plaintiff's Counsel shall provide the gross settlement amount of any other settlements.

j) **Other Matters**: in addition to the required topics described above, and provided that the mediation statement complies with the page limit stated above, Counsel are encouraged to address any other matters they believe may be of assistance to the Resolution Judges.

#### **EXHIBITS TO MEDIATION STATEMENT**

15. While Counsel may submit documents that will assist the Resolution Judges in understanding the issues and resolving the litigation as exhibits to the mediation statement, Counsel is cautioned to limit exhibits to only those documents Counsel believes will be crucial to resolution of the litigation.

#### **MEMORIALIZATION OF SETTLEMENT**

16. 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.

#### **EX PARTE CONTACTS**

17. 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**

18. 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 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.

### **IMPOSITION OF SANCTIONS**

19. **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.

ENTER: May 21, 2020.

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

**IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA**

**IN RE: MARCELLUS SHALE LITIGATION  
MIDSTREAM CASES**

**Civil Action No. 14-C-3001**

**SETTLEMENT AUTHORIZATION**

I, \_\_\_\_\_, understand that, for my attorney(s) to be able to settle my case, I must give my informed consent to them to enter into any settlement which might be reached at any time during the pendency of *In re: Marcellus Shale Litigation*, Civil Action No. 14-C-3001, Midstream Cases.

After explanation from my attorney(s) I understand and give my consent to enter into any settlement that might be reached during the pendency of the Marcellus Shale Litigation. I authorize my attorney(s) to act on my behalf during mediation or any other settlement negotiations, including full authority to negotiate settlement of my case, and to respond to developments during the mediation or settlement negotiation process.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

County of \_\_\_\_\_

State of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_