



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: WATER CONTAMINATION LITIGATION CIVIL ACTION NO. 16-C-6000

THIS DOCUMENT APPLIES TO ALL CASES

AGREED AMENDED PROTECTIVE ORDER

By signing this Protective Order, the parties have agreed to be bound by its terms and to request its entry by the Lead Presiding Judge. It is hereby **ORDERED** as follows:

I. DISCOVERY PHASE

- A. If a party or an attorney for a party has a good faith belief that certain documents or other materials (including digital information) subject to disclosure pursuant to a discovery or other request, are confidential and should not be disclosed other than in connection with this action and pursuant to this Protective Order, the party or attorney shall mark each such document or other material as “**CONFIDENTIAL.**” All medical records or summaries of medical records are deemed “**CONFIDENTIAL**” records even without being so marked.
- B. If a non-party receives a subpoena in connection with this matter seeking documents or tangible things and the requested documents or tangible things contain confidential information, then the non-party may designate such material as “**CONFIDENTIAL**” in accordance with the preceding paragraph, I.A. Non-party confidential information designated as such, or any copy, excerpt, or summary thereof, or the information contained therein, shall be subject to all of the conditions and limitations set forth in this Protective Order. Any non-party that desires to protect its claim of confidentiality by adhering to these procedures submits to the jurisdiction of this Court with regard to any proceedings related to

the non-party's claim of confidentiality and bears the burden of establishing its claim to confidentiality in such proceedings.

- C. If a party or an attorney for a party disputes whether a document or other material should be marked "**CONFIDENTIAL**," the parties and/or attorneys shall attempt to resolve the dispute between themselves. If they are unsuccessful, the party or attorney challenging the "**CONFIDENTIAL**" designation shall do so by filing an appropriate motion.
- D. No party, attorney or other person subject to this Protective Order shall distribute, transmit, or otherwise divulge any document or other material which is marked "**CONFIDENTIAL**," or the contents thereof, except in accordance with this Protective Order. Court personnel are not subject to this Protective Order while engaged in the performance of their official duties.
- E. Any document or other material which is marked "**CONFIDENTIAL**," or the contents thereof, may be used by a party, attorney, expert witness, consultant, insurer, or other person to whom disclosure is made, only for the purpose of this action or any action construing the insurance coverage owed to address claims made in this action. Nothing contained in this Protective Order shall prevent the use of any document or other material which is marked "**CONFIDENTIAL**," or the contents thereof, at any discovery deposition taken in this action or any action construing the insurance coverage owed to address claims made in this action.
- F. If a party or attorney or insurer wishes to disclose any document or other material which is marked "**CONFIDENTIAL**," or the contents thereof, to any person actively engaged in working on this action or any action construing the insurance

coverage owed to address claims made in this action (e.g., expert witness, paralegal, associate, consultant, outside counsel, other insurer, arbitrator, mediator, or settlement officer, court personnel), the person making the disclosure shall do the following:

1. Provide a copy of this Protective Order to the person to whom disclosure is made;
2. Inform the person to whom disclosure is made that s/he is bound by this Protective Order;
3. Require the person to whom disclosure is made to sign an acknowledgement and receipt of this Protective Order;
4. Instruct the person to whom disclosure is made to return any document or other material which is marked “**CONFIDENTIAL**” at the conclusion of the case, including notes or memoranda made from “**CONFIDENTIAL**” material;
5. Maintain a list of persons to whom disclosure was made and the “**CONFIDENTIAL**” materials which were disclosed to that person; and
6. At the conclusion of the action, gather the “**CONFIDENTIAL**” materials, copies thereof, and related notes and memoranda, and return them to the party or attorney who originally disclosed them, with a certificate of compliance with the terms of this Protective Order.

II. POST-DISCOVERY PHASE

If any party or attorney wishes to file, or use as an exhibit or as evidence at a hearing or trial, any “**CONFIDENTIAL**” document or material, s/he must provide reasonable notice to the

party or non-party that produced the document or material. The parties, non-parties and/or attorneys shall then attempt to resolve the matter of continued confidentiality by either (a) removing the “CONFIDENTIAL” marking, or (b) creating a mutually acceptable redacted version that suffices for purposes of the case. If an amicable resolution proves unsuccessful, the parties, non-parties and/or attorneys may present the issue to the court for resolution. The proponent of continued confidentiality will have the burden of persuasion that the document or material should be withheld from the public record.

It is so **ORDERED**:

ENTER: March 14, 2017.

/s/ Alan D. Moats
Lead Presiding Judge
Water Contamination Litigation

Prepared by:

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