



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 19-C-9000

**THIS DOCUMENT APPLIES TO THE PHASE I TRIAL AGAINST THE
MANUFACTURER DEFENDANTS SCHEDULED TO BEGIN ON APRIL 4, 2022,
THE PHASE I TRIAL AGAINST THE DISTRIBUTOR DEFENDANTS SCHEDULED
TO BEGIN ON JULY 5, 2022, AND THE PHASE I TRIAL AGAINST THE
PHARMACY DEFENDANTS SCHEDULED TO BEGIN ON SEPTEMBER 12, 2022**

**ORDER AFFIRMING IN PART AND MODIFYING IN PART
JANUARY 4, 2022 AND JANUARY 12, 2022 DISCOVERY ORDERS**

Pending before the Mass Litigation Panel (“Panel”) are the following objections and responses to the Discovery Commissioner’s *Order Granting City/County Plaintiffs’ Motion to Compel Distributor Defendants to Disclose Due Diligence Files* (Transaction ID 67207971) entered on January 4, 2022 (“January 4, 2022 Discovery Order”), and objection and response to the Discovery Commissioner’s *Order Denying Distributor Defendants’ Motion to Compel Responses to Aggregate Discovery Requests* (Transaction ID 67228292) entered on January 12, 2022 (“January 12, 2022 Discovery Order”):

1. *Distributor Defendants’ Appeal of Discovery Commissioner’s Order Granting City/County Plaintiffs’ Motion to Compel Distributor Defendants to Disclose Due Diligence Files* (Transaction ID 67225805) filed on January 11, 2022.
2. *Plaintiffs’ Coordinator’s Partial Objection to Discovery Commissioner’s Findings Regarding Trial Phase I Factual Issue in January 4, 2022 Discovery Order* (Transaction ID 67226008) filed on January 11, 2022.
3. *City/County Plaintiffs’ Response to West Virginia Attorney General’s Partial Objection and Distributor Defendants’ Appeal of Discovery Commissioner’s Order Granting City/County Plaintiffs’ Motion to Compel Distributor Defendants to Disclose Due Diligence Files* (Transaction ID 67238257) filed on January 17, 2022.
4. *Reply in Support of Distributor Defendants’ Appeal of Discovery Commissioner’s Order Granting City/County Plaintiffs’ Motion to Disclose Due Diligence Files* (Transaction ID 67254527) filed on January 21, 2022.
5. *Distributor Defendants’ Objection to Order Denying Defendants’ Motion to Compel Responses to Aggregate Discovery Requests* (Transaction ID 67274043) filed on January 19, 2022.

6. *City/County Plaintiffs' Response to Distributor Defendants' Motion to Compel Responses to Aggregate Discovery Requests* (Transaction ID 67253553) filed on January 21, 2022.

The Panel has directed the Phase I liability proceedings be conducted in a coordinated fashion:

The Panel intends to conduct expedited bench trials and conclude the liability phase of all public nuisance cases by the end of 2022 including the Manufacturer Cases, the Distributor Cases, and the Dispenser Cases. If one or more Defendants are found to be liable, the Panel will then set an expedited bench trial on causation and abatement. The Panel intends to hear evidence on a single, state-wide abatement remedy and will consider allocation of fault amongst those Defendants found liable for purposes of inchoate contribution. If abatement is warranted, the Panel will consider an award of attorney fees as a component of any equitable remedy which will replace enforcement of contingency fees.¹

Accordingly, notwithstanding the fact that the January 4, 2022 and January 12, 2022, Discovery Orders resolved discovery disputes that arose in the Distributor Cases, the Discovery Commissioner's findings and this Order apply to the Phase I trial against the Manufacturer Defendants scheduled to begin on April 4, 2022, the Phase I trial against the Distributor Defendants scheduled to begin on July 5, 2022, and the Phase I trial against the Pharmacy Defendants scheduled to begin on September 12, 2022.

As stated in Paragraph 12 of the Panel's Order entered on October 27, 2021:

General causation will be addressed in the Phase I trials of liability for public nuisance against the Manufacturers, Distributors and Pharmacies. If general causation is proved in any of the Phase I trials, then specific causation will be addressed in a Phase II, statewide abatement trial. Phase I general causation will address whether Defendants' conduct caused the oversupply and diversion of opioids in West Virginia. Phase II will address causation of opioid epidemic harms in Plaintiffs' communities that relate to the equitable remedy of abatement.²

¹ Order entered September 30, 2021 (Transaction ID 66980151), p. 1; Order entered October 27, 2021 (Transaction ID 67047934), p. 7.

² (Transaction ID 67047934), pp. 7-8.

Consistent with that Order, the Panel **MODIFIES** the Factual Issues which will be tried during the Phase I trial against the Manufacturer Defendants scheduled to begin on April 4, 2022, the Phase I trial against the Distributor Defendants scheduled to begin on July 5, 2022, and the Phase I trial against the Pharmacy Defendants scheduled to begin on September 12, 2022, as follows:

Factual Issue #1: Whether the Defendants engaged in wrongful conduct which caused the alleged oversupply and diversion of opioids throughout West Virginia?

Factual Issue #2: Whether the alleged oversupply and diversion of opioids throughout West Virginia is a public nuisance, which is broadly defined as an unreasonable interference with a right common to the general public – public health and safety?

The Panel **FINDS** that Limiting Phase I to these factual issues conserves judicial resources, promotes judicial economy and is consistent with the framework established by the Panel.

As also ordered by the Panel on October 27, 2021, “WVCCPA liability, civil penalties, disgorgement, and injunctive relief based upon the Manufacturer and Pharmacy Defendants’ alleged violation of the WVCCPA should be decided in Phase I of those respective trials.”³

The Panel **AFFIRMS** all other aspects of the Discovery Commissioner’s January 4, 2022, Discovery Order and January 12, 2022, Discovery Order.

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

It is so **ORDERED**.

ENTERED: January 25, 2022.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation

³ *Id.*, p. 9.