



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

Civil Action No. 21-C-9000 PHARM

THIS DOCUMENT APPLIES TO:

STATE OF WEST VIRGINIA *ex rel.*
PATRICK MORRISEY, Attorney General,
Plaintiff,

v.
WALGREENS BOOTS ALLIANCE, INC., *et al.*,
Defendants.

CIVIL ACTION NO. 20-C-82 PNM

STATE OF WEST VIRGINIA *ex rel.*
PATRICK MORRISEY, Attorney General,
Plaintiff,

v.
THE KROGER CO. *et al.*,
Defendants.

CIVIL ACTION NO. 22-C-111 PNM

ORDER SCHEDULING MEDIATION ON JANUARY 17-18, 2023

The Resolution Judges **ORDER** mediation of the above-styled cases filed by the State of West Virginia *ex rel.* Patrick Morrissey, Attorney General (“the State”) against Pharmacy Defendants Walgreens Boots Alliance, Inc., *et al.* (“Walgreens”) and The Kroger Co., *et al.* (“Kroger”) to be conducted **on January 17-18, 2023**. Mediation will be conducted 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 January 17, 2023.** All Required Participants must appear in person.

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 12:00 p.m. on January 3, 2023**. 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 Kimberley R. Fields,

Counsel to the Mass Litigation Panel.

REQUIRED PARTICIPANTS:

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

- (a) lead trial counsel for the State of West Virginia,
- (c) lead trial counsel for the Kroger Defendants and the Walgreens Defendants, and
- (d) a corporate representative for the Kroger Defendants and the Walgreens 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.

OBLIGATION OF GOOD FAITH PARTICIPATION

Required Participants shall be available and accessible throughout the mediation process to the Resolution Judges and to their respective co-counsel.

Lead trial counsel and any corporate 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.

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 to reassess their previous positions and to find creative means for resolving the dispute.

SIGN IN SHEET

Counsel for the State of West Virginia, the Walgreens Defendants, and the Kroger Defendants shall coordinate with one another and submit one, comprehensive sign in sheet containing the names, telephone numbers, and email addresses of all counsel and corporate representatives participating in the mediation to Counsel for the Mass Litigation Panel via electronic mail at kim.fields@courtsv.gov no later than **no later than 12:00 p.m. on January 3, 2023**.

MEET AND CONFER AND CONFIDENTIAL MEDIATION STATEMENTS:

The parties shall meet and confer to discuss their respective settlement positions **no later than December 13, 2022**. The State of West Virginia shall communicate settlement demands to the Pharmacy Defendants **no later than December 20, 2022**. The Walgreens Defendants and the Kroger Defendants shall respond to the State's settlement demands **no later than December 27, 2022**.

Each party shall deliver a confidential mediation statement to Lead Resolution Judge Joanna I. Tabit, Resolution Judge Jay M. Hoke, and Resolution Judge Gregory L. Howard via hand delivery, Federal Express, UPS, or any other express mail service with tracking capability **no later than 12:00 p.m. on January 10, 2023**, which shall discuss the issues the parties believe must be mediated to fully resolve their dispute.

The mediation statement shall state on its face “**CONFIDENTIAL MEDIATION STATEMENT**” and shall be placed in an envelope marked “**CONFIDENTIAL MEDIATION STATEMENT.**”

The mediation statement shall contain: 1) a **brief** discussion of settlement negotiations between the parties, including the latest demand made by the Plaintiff and Defendants' response to that demand, and an assessment as to why settlement has not been reached; and 2) 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 resolution.

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.**

EX PARTE CONTACTS

Before, during and after 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.

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: October 17, 2022.

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