



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.

CIVIL ACTION NO. 20-C-82 PNM

WALGREENS BOOTS ALLIANCE, INC.,
a Delaware Corporation;
WALGREEN CO., an Illinois corporation; and
WALGREEN EASTERN CO., INC.,
a New York corporation,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO STRIKE
WALGREEN'S UNTIMELY DISCLOSED OPINIONS OF KRISTY LUCAS**

Pending before the Court is *Plaintiff's Motion to Strike Walgreen's Untimely Disclosed Opinions of Kristy Lucas* (Transaction ID 68252754). Having reviewed Plaintiff's Motion and the September 23, 2022, Expert Supplemental Report of Kristy H. Lucas, attached as Exhibit A, *Walgreens' Opposition* (Transaction ID 68290473) and the July 25, 2022, Expert Report of Kristy H. Lucas, attached as Exhibit A, and Plaintiff's *Reply* (Transaction ID 68319086), the Court **DENIES** Plaintiff's Motion.

The Supreme Court of Appeals of West Virginia has held that a party is under a continuing duty to seasonably supplement its expert witness disclosures under Rule 26(e)(1) of the West Virginia Rules of Civil Procedure. *Syl. Pt. 1, State ex rel. Tallman v. Tucker*, 234 W. Va. 713, 769 S.E.2d 502, 504 (2015). Furthermore,

Factors that may assist a court in deciding whether to permit late supplemental expert witness disclosure include: (1) the explanation for making the supplemental disclosure at the time it was made; (2) the importance of the supplemental information to the proposed testimony of the expert, and the

expert's importance to the litigation; (3) potential prejudice to an opposing party; and (4) the availability of a continuance to mitigate any prejudice.

Id., Syl. Pt. 2.

The Court finds Walgreens' explanation for making the supplemental disclosure on September 23, 2022, is reasonable. Dr. Lucas' supplemental disclosure addresses the August 19, 2022, deposition of Walgreens' Rule 30(b)(7) corporate representative and additional Board of Pharmacy inspection reports related to Walgreens. Dr. Lucas' analysis of Board of Pharmacy inspection reports is certainly important to this litigation. More importantly, the State has suffered no prejudice because of Dr. Lucas' supplemental disclosure. The State is scheduled to depose Dr. Lucas concerning her supplemental disclosure on November 1, 2022, and trial is not scheduled to begin until June 5, 2023. The State is granted leave to supplement its expert reports to address Dr. Lucas' supplemental disclosure.

A copy of this Order has this day been served upon all counsel of record via File & Serve*Xpress*.

It is so **ORDERED**.

ENTERED: October 31, 2022.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation