



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 19-C-9000

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER REGARDING THE WEST VIRGINIA FIRST QUALIFIED
SETTLEMENT FUND CUSTODIAL BANK AND ADMINISTRATOR DUTIES**

Pursuant to the Mass Litigation Panel's *Order Establishing West Virginia First Qualified Settlement Fund and Appointing Settlement Fund Administrator* (Transaction ID 68247796), counsel for the State, Co-Lead Counsel for City and County Plaintiffs, and Lead Counsel for the Manufacturer Defendants, Distributor Defendants, and Pharmacy Defendants who have settled with the State of West Virginia and the City and County Plaintiffs ("Settling Defendants") submitted a Joint Report and Recommendation concerning the financial institution that will hold any moneys deposited into the West Virginia First Qualified Settlement Fund ("the West Virginia First QSF" or "the Fund") after November 21, 2022, ("Custodial Bank") including any future Opioid Litigation settlement funds, and the terms and conditions of the duties of the Fund Administrator ("Administrator"). *Joint Report and Recommendation to the Panel Concerning Qualified Settlement Fund Custodial Bank and Administrator Duties* (Transaction ID 68413269).

Having reviewed and considered the Joint Report and Recommendation, the Panel

ORDERS:

1. The Huntington National Bank ("Huntington Bank") is appointed to serve as the Custodial Bank for the West Virginia First QSF on an ongoing basis.
2. The Custodial Bank shall maintain all necessary bank accounts, and shall receive funds, invest funds, and disburse funds as directed by the Administrator.
3. The West Virginia First QSF shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured

- by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation, or (b) secured by instruments backed by the full faith and credit of the United States Government.
4. A Qualified Settlement Fund (“QSF”) may exist only so long as it takes to disburse the funds it receives. Therefore, the West Virginia First QSF shall exist until the final distribution of all monies paid into the Fund. At the time of the final distribution of funds from the West Virginia First QSF, the Custodial Bank shall submit a final status report to the Administrator, which shall be filed with the Panel and served on all counsel of record.
 5. The Panel appoints John Jenkins of Smith Cochran Hicks, PLLC, to serve as Administrator of West Virginia First QSF (including as the “administrator” for purposes of Treasury Regulations Section 1.468B-2(k)(3)) on an ongoing basis.
 6. The duties of the Administrator shall be governed by the Settlement Agreements, the West Virginia First Memorandum of Understanding (“the West Virginia First MOU”), and orders of the Panel, as applicable.
 7. The Administrator is authorized to perform general management duties for the West Virginia First QSF, including receipt of funds, distribution of funds, accounting, and tax reporting.
 8. In addition to general management duties, the Administrator is authorized to:
 - a. Obtain necessary tax identification numbers and provide such tax identification numbers to the parties.
 - b. Open and maintain necessary bank accounts with the Custodial Bank.

- c. Work with parties to obtain payment instructions.
 - d. Allocate and distribute funds pursuant to the terms of each settlement agreement, the West Virginia First MOU, and the Panel's orders.
 - e. Maintain accounting of all funds.
 - f. Be responsible for all tax withholding requirements for the Fund.
 - g. Pay, or cause to be paid, any taxes, including estimated and withholding taxes, and any interest and penalties, if any, owed by the Fund.
 - h. Prepare and file any tax returns, tax reporting forms or other tax filings required to be filed by the Fund (in a manner consistent with the Fund's treatment as a "qualified settlement fund" within the meaning of Treasury Regulations Section 1.468B-1) and provide such returns, forms, or filings to the parties pursuant to the terms of each individual settlement agreement.
 - i. Respond to any questions from, or audits by, the Internal Revenue Service or any state or local tax authority regarding any such taxes or tax returns.
 - j. Take appropriate steps to wind down the Fund.
 - k. Determine the best investment strategies for all funds, after consultation with the parties, and provided that all settlement funds are placed into investment vehicles backed by the full faith and credit of the United States Government.
9. If Mr. Jenkins resigns or is removed for any reason, the managing member of Mr. Jenkins' firm shall take over the engagement as Administrator for the West Virginia First QSF to ensure its continued operation.
10. All expenses and costs incurred in connection with operation of or taxation of the Fund, including, without limitation, expenses of tax attorneys, accountants, and the

Administrator's fees, shall be paid from interest earned on the Fund and shall be considered administrative costs.

11. The Administrator and the Custodial Bank shall prepare a detailed accounting and quarterly report of the Fund ("the Quarterly Report") which shall include:
 - a. All administrative costs including fees and expenses tracked, as practical, on a per-settlement or per Settling Defendant basis.
 - b. The Administrator's costs and fees.
 - c. The cost of any vendors and services the Administrator determines to be necessary and appropriate to conduct and complete his work.
 - d. Funds on hand for each Settling Defendant.
 - e. The West Virginia First QSF's investment performance.
12. The Administrator shall file and serve the Quarterly Report along with the Administrator's request for payment or reimbursement from the Fund of administrative costs and a proposed order in the Opioid Litigation Master Case File, Civil Action No. 19-C-9000, on all counsel of record, the Presiding Judges and Counsel to the Mass Litigation Panel. Any objection to the Quarterly Report and request for payment or reimbursement from the Fund shall be filed and served in the Opioid Litigation Master Case File, Civil Action No. 19-C-9000, on all counsel of record, the Presiding Judges and Counsel to the Mass Litigation Panel no later than ten (10) days after the Quarterly Report is filed and shall be linked to the Quarterly Report.¹

¹ All e-filed documents or pleadings directly related to a previously e-filed document or pleading must be "linked" together using the "linked document feature." See *Electronic Filing and Service Case Management Order* (Transaction ID 63504553), Section 8, pages 5-6.

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

It is so **ORDERED**.

ENTERED: December 7, 2022.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation