



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 21-C-9000 DISTRIBUTOR

THIS DOCUMENT APPLIES TO ALL DISTRIBUTOR CASES

**ORDER DENYING DISTRIBUTOR DEFENDANTS' MOTION FOR
PROTECTIVE ORDER REGARDING DEPOSITIONS OF FACT WITNESSES**

On the 18th day of February 2022, came the Distributor Defendants and City/County Plaintiffs for a hearing before the Discovery Commissioner on *Distributor Defendants' Motion for Protective Order Regarding Depositions of Fact Witnesses* (Transaction ID 67322588). Having reviewed and considered the Motion and the *City/County Plaintiffs' Collective Response to Distributor Defendants' Motion for Protective Order Regarding Depositions of Fact Witnesses* (Transaction ID 67324309), together with the oral arguments of counsel, the Discovery Commissioner hereby **ORDERS** that *Distributor Defendants' Motion for Protective Order Regarding Depositions of Fact Witnesses* (Transaction ID 67322588) is **DENIED**.

The Discovery Commissioner declines to re-visit prior rulings regarding the scope of discovery for Phase 1b. The parties are reminded that the Panel has formulated the following factual issues to be resolved in the Phase 1b trial against the Distributor Defendants:

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

See *Order Affirming in Part and Modifying in Part January 4, 2022 and January 12, 2022 Discovery Orders* (Transaction ID 67261539) (Jan. 25, 2022). These factual issues are not dispositive of whether the Distributor Defendants are liable for public nuisance in that the issue of specific causation is reserved for Phase 2. Defendant Distributors will have ample opportunity to

take discovery with respect to affirmative defenses, alternative causation, contribution by other tortfeasors, pharmacy-specific matters, comparative fault, and mitigation of damages at a later stage(s) of litigation. These are not permissible areas of discovery during Phase 1b. See Order Denying Distributor Defendants' Motion to Compel Responses to Aggregate Discovery Requests (Transaction ID 67228292) (affirmed by Transaction ID 67261539).

Distributor Defendants may not seek individualized discovery from the 63 litigating City/County Plaintiffs, or from third parties, on topics that fall outside the permissible scope of Phase 1b. The rulings set forth in the *Order Granting City/County Plaintiffs' Motion to Compel Distributor Defendants to Disclose Due Diligence Files* (Transaction ID 67207971) ("Discovery Order 1") and *Order Denying Distributor Defendants' Motion to Compel Responses to Aggregate Discovery Requests* (Transaction ID 67228292) ("Discovery Order 2") remain intact and apply to Phase 1b. Distributor Defendants' objections are preserved for the record.

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

ENTERED: February 22, 2022.

/s/ Christopher C. Wilkes
Discovery Commissioner