



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

CIVIL ACTION NO. 22-C-111 PNM

**ORDER SCHEDULING MEDIATION ON MARCH 27-28, 2023**

The Resolution Judges **ORDER** mediation of the above-styled case filed by the State of West Virginia *ex rel.* Patrick Morrissey, Attorney General (“the State”) against Pharmacy Defendant The Kroger Co., *et al.* (“Kroger”) to be conducted **on March 27-28, 2023**. Mediation will be conducted on the 17<sup>th</sup> Floor of the Chase Bank Building, located at 707 Virginia Street, East, Charleston, West Virginia 25301. **Mediation will begin at 9:00 a.m. on March 27, 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 March 17, 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,
- (b) lead trial counsel for the Kroger Defendants,

- (c) national settlement counsel for the Kroger Defendants,
- (d) a corporate representative for the Kroger 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, national settlement counsel, and the 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 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 lead trial counsel, national settlement counsel, and the corporate representative participating in the mediation to Counsel for the Mass Litigation Panel via electronic mail at [kim.fields@courtswwv.gov](mailto:kim.fields@courtswwv.gov) no later than **no later than 12:00 p.m. on March**

17, 2023.

**MEET AND CONFER AND CONFIDENTIAL MEDIATION STATUS REPORTS:**

The parties shall meet and confer to discuss their respective settlement positions **no later than March 10, 2023**. Each party shall deliver a confidential mediation status report to the Resolution Judges via hand delivery, Federal Express, UPS or any other express mail service with tracking capability **no later than March 17, 2023**.

The status report shall state on its face “**CONFIDENTIAL MEDIATION STATUS REPORT**” and shall be placed in an envelope marked “**CONFIDENTIAL MEDIATION STATUS REPORT.**”

The mediation status report shall provide: 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 as well as any suggestions regarding how the Resolution Judges may assist the parties in reaching resolution.

Mediation status reports **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 status reports 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:** February 8, 2023.

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