



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**  
**IN RE: OPIOID LITIGATION** **CIVIL ACTION NO. 21-C-9000 MFR**

**THIS DOCUMENT APPLIES TO ALL MANUFACTURER CASES**

**JOINT STIPULATION & TRIAL EXHIBIT ORDER**

To facilitate the identification and exchange of trial exhibits, the parties jointly stipulate as follows:

**I. Trial Exhibits**

A. **Numbering Exhibits for Identification.** The parties shall assign unique exhibit numbers using the prefixes specified below. Each prefix group shall begin with the party-specific first digit, start at number 1 in the fifth digit place, and maintain a constant length of five numeric digits (including zero-digit padding).

Party	Exhibit Prefix	Beginning Exhibit Number
<b>Plaintiff</b>		
<b>Plaintiff</b>	P-WV-	P-WV-00001
<b>Defendants</b>		
<b>All Defendants</b>	DEF-WV-	DEF-WV-10001
<b>Actavis</b>	AC-WV-	AC-WV-20001
<b>Allergan</b>	AL-WV-	AL-WV-30001
<b>Cephalon</b>	CE-WV-	CE-WV-40001
<b>Janssen</b>	JAN-WV-	JAN-WV-50001
<b>Teva</b>	TE-WV-	TE-WV-70001

B. **Marking Exhibits for Identification.** Each exhibit will be marked with (1) an “Exhibit Sticker” that identifies the unique exhibit number; and (2) an “Exhibit Endorsement” that identifies the unique exhibit number and page number of each exhibit.

1. **Exhibit Stickers.** Each party will place an Exhibit Sticker on the first page of each exhibit in a location that does not overlap with or obstruct any text or content of the exhibit. Plaintiff's Exhibit Stickers shall be yellow, and Defendants' Exhibit Stickers shall be blue. The Exhibit Stickers shall identify the unique exhibit number. Electronically generated stickers shall be acceptable.
2. **Exhibit Endorsements.** Each party will include on each page of their exhibits an endorsement that identifies the unique exhibit number and page number of the exhibit. The page number shall maintain a constant length of five numeric digits (including zero-digit padding). The Exhibit Endorsement shall conform to the following format: [Exhibit Number]. [5-Digit Page Number] (*e.g.*, "P-WV-00001\_00001"; "DEF-WV-10001.00004").

C. **Production Format for Exhibits.**

1. **PDF Format.** All exhibits shall be properly marked and stickered (as specified in this stipulation), and individually produced in PDF format, to the extent an exhibit can reasonably be converted to PDF format and remain usable. The file name of each PDF exhibit shall correspond to the unique exhibit number.
2. **Native Format.** If a document cannot reasonably be converted to PDF format and remain usable (*e.g.*, Excel file, audio, video, animation), then the exhibit shall be produced in native format. The file name of a native file shall correspond to the unique exhibit number (*e.g.*, "DEF-WV-10042.xls"; "P-WV-00054.wav"). A slip-sheet (PDF) of the native document shall also be provided that includes the Bates number, confidentiality designation, and the trial exhibit sticker.
3. **Extracted Text for PDFs.** The parties are not required to provide extracted text for exhibits produced in PDF format, but all PDFs shall be OCR'd so they are otherwise searchable.

4. **Transcriptions for Audio and Video Recordings.** The parties shall provide written transcriptions for any audio and video files, and shall label such transcripts so they are easily traceable to the original media file (*e.g.*, P-WV-00054.wav-Transcript).

5. **Document Size.** The parties will not alter or shrink original documents to smaller than full page size. Where appropriate, and by agreement of all parties, a Party may enlarge an Exhibit.

D. **Method of Production.** The parties may produce their exhibits via a secure FTP site or production media (*e.g.*, external drive). If a party produces its exhibits via production media, that production media must be delivered to the other party by the deadline for doing so.

## II. **Trial Exhibit Lists**

A. **Format of Exhibit Lists.** The parties shall list their exhibits, in order, on a separate Excel spreadsheet, which shall include columns with the following headings (the “Exhibit List”). All Parties agree to the following columns, though only columns A-E are necessary for the initial exchange:

Column	Column Name	Description
A	Ex. No.	Parties’ unique exhibit numbers
B	Date	Date of exhibit
C	Description	Short description of exhibit
D	BegBates	First production Bates number of exhibit
E	EndBates	Last production Bates number of exhibit
F	Admission Stip.	Whether a document is subject to a stipulation that it is admissible
G	Plaintiff’s Authenticity Objections	Identification of Plaintiff’s authenticity objections to Defendants’ exhibit made on

		the record during proceedings, if any were made
<b>H</b>	Plaintiff's Other Objections	List of Plaintiff's non-authenticity objections to Defendants' exhibit made on the record during proceedings if any were made
<b>I</b>	Defendants' Authenticity Objections	List of Defendants' authenticity objections to Plaintiff's exhibit made on the record during proceedings if any were made
<b>J</b>	Defendants' Other Objections	List of Defendants' non-authenticity objections to Plaintiff's exhibit made on the record during proceedings if any were made
<b>K</b>	Offered	Whether the exhibit was offered at trial
<b>L</b>	Admitted	Whether the Court admitted the exhibit into evidence
<b>M</b>	Not Admitted	Whether the Court did not admit the exhibit from evidence

B. **Static Exhibit Numbers.** For tracking purposes, the parties shall maintain, and not change, the unique exhibit numbers assigned to the exhibits listed on their Exhibit Lists. If the parties make modifications to the documents or bates ranges listed for each unique exhibit on their list subsequent to initial exchange, the parties shall specify those modifications to all other parties in a timely manner.

C. **Family Exhibits.** The parties may list whole document families as a single entry on their Exhibit Lists but must separately identify the individual documents within the family exhibit intended for use on direct examination as part of the disclosure and objection process outlined in Section IV of this Stipulation. This provision does not apply to aggregate datasets, which are governed by sections II.D of this stipulation.

D. **Aggregate Datasets.** The parties may list as a single entry on their Exhibit Lists aggregate datasets that cannot reasonably be broken into individual entries—for example, the U.S. Drug Enforcement Agency data from its Automation of Reports and

Consolidated Orders System (ARCOS).

G. **W.Va. R. Evid. 1006 Summaries.** Each party intending to use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court (“Rule 1006 Summary”) must identify the Rule 1006 Summary on its Exhibit List with a brief description of the summary. All underlying documents shall be on the exhibit list. Seven days prior to its use, the offering party will provide the opposing party with the summary along with a listing by Bates number of all of the summarized documents and/or data pursuant to Rule 1006.

E. **Color Copies.** The party seeking to use a color copy in lieu of a black and white copy, whether on direct or cross examination, must specifically identify which exhibit(s) they are switching out and provide an electronic copy of the exhibit in color as it will be presented to the Court no later than 10 PM the night prior to use. The replacement color copy must be an exact copy of the branded exhibit.

### III. **Content of Exhibit Lists**

A. **Direct Examination Documents.** The parties must include on their Exhibit Lists all exhibits they intend to use on direct examination, but need not include on their Exhibit Lists documents that the parties use in re-direct examination.

B. **Expert Reliance Materials.** Except as otherwise expressly provided for in West Virginia Rule of Evidence 803(18), the parties must include on their respective exhibit lists any materials relied on by their experts in writing their reports the parties intend to admit into evidence during an expert’s direct examination. This does not affect the ability of an expert witness to refer to additional materials relied on in forming his/her opinions during an examination.

C. **Potential Trial Exhibits That Do Not Need To Be Listed on the Exhibit Lists.** The parties agree that the following groups of documents need not be listed on their Exhibit Lists but are nonetheless subject to the disclosure requirements set forth in Section IV of this Stipulation. To the extent the parties offer any of these groups of

documents as exhibits at trial, they will mark them for identification using the next available unique exhibit number and offer them into evidence in the ordinary course at trial, subject to objection from the opposing parties. The parties reserve their rights to object to the admissibility of these documents as trial exhibits on all other evidentiary grounds.

1. **Expert Reports.** Written reports from the parties' designated experts that were produced in this litigation. Expert Reports are intended to include the expert's CV and Appendices/Attachments if served with the Expert Report.
2. **Written Discovery Responses.** The parties' written responses to discovery including, but not limited to, Interrogatories and Requests for Admission in this litigation.
3. **Statutes and Regulations.** State and federal statutes and regulations (e.g., entries in the Federal Register).
4. **Demonstratives.** Demonstratives that parties intend to use at trial. Demonstratives should be disclosed to opposing counsel in accordance with the Parties' separate agreement for doing so.
5. **Cross Examination Exhibits.** Exhibits the Parties intend to use on cross-examination.
6. **Direct Examination Exhibits for Hostile or Adverse Witnesses.** Exhibits presented during the direct examination of any witness called as a hostile or adverse witness under West Virginia Rule of Evidence Rule 611(c).
7. **Academic Literature and Journal Articles.** Academic literature and studies, including medical journal articles, that are typically referred to during expert testimony but not submitted as evidence, do not need to be listed on the exhibit list.
8. **Other.** Exhibits used solely to impeach or refresh a witness's recollection, and exhibits used on rebuttal or sur-rebuttal.

IV. **Procedure for Exhibit Disclosure and Objections**

A. **Exhibit Disclosure and Objection Process.** In order to streamline the process of the Court's ruling on objections to exhibits, the Parties do not anticipate that the Court will rule on objections to exhibits prior to the commencement of trial, other than as may be requested in any motion *in limine*. During trial, objections to exhibits shall be addressed as follows: The Party calling a witness to testify (the "Calling Party") shall use its best efforts to disclose to all other Parties a good faith list of all exhibits the Calling Party intends to use on direct examination with a witness by 12:00 p.m. the day prior to anticipated use. To the extent the Calling Party identifies additional exhibits it intends to use with a witness after this 12:00 p.m. disclosure, they are permitted to supplement the disclosure no later than 5 pm the day before if the number of additional exhibits is reasonable. The Calling Party need not disclose documents intended to be used on re-direct examination, even if such re-direct occurs on a different day than the original direct examination. Objections to the disclosed exhibits are due to the Calling Party by 8:00 p.m. on the day prior to anticipated use at trial. This provision shall apply only to exhibits presented on direct examination by the Calling Party and does not apply to exhibits presented by any other Party during examination of a witness first called to testify by another Party. This provision also does not apply to exhibits presented during the examination of any witness called as a hostile or adverse witness under West Virginia Rule of Evidence Rule 611(c). The Parties expect the Court to rule on objections to exhibits presented on cross-examination and any examination of a hostile or adverse witness under West Virginia Rule of Evidence Rule 611(c) during the ordinary course at trial. By way of example, if a Party intends to call a witness to testify on a Monday, the Calling Party shall disclose to all other Parties the list of exhibits it intends to use on Monday on direct examination of that witness by 12:00 p.m. on Sunday. Objections to those exhibits, if any, would be due to the Calling Party by 8:00 p.m. on Sunday.

V. **Deadlines**

<b>Deadline</b>	<b>Event</b>
<b>Wednesday, March 16</b>	The parties exchange Exhibit Lists by no later than 5 pm ET. The parties shall complete the following columns, as applicable and defined in Section II.A, for their Exhibit List: A–E.
<b>Thursday, March 24</b>	The parties exchange marked and stickered copies of their exhibits, in accordance with Section I of this stipulation.  The parties shall also exchange Bates numbered copies of the exhibits on their Exhibit List that have not previously been produced with Bates numbers.
<b>Monday, March 21</b>	Parties shall prepare a joint exhibit list which shall be part of the Pretrial Memoranda that is to be filed and served no later than 12:00 p.m. ET. Objections to exhibits used during trial will occur on a rolling basis, as described in Section IV.
<b>Monday, April 4</b>	Trial begins  At the beginning of each trial day, each party shall provide a notebook of pre-marked exhibits they anticipate using on direct examination to the Presiding Judge and to Counsel to the Mass Litigation Panel. Each party shall provide copies of exhibits they use on cross examination, re-direct, and direct examination of any witness called as a hostile or adverse witness under West Virginia Rule of Evidence Rule 611(c) to the Presiding Judge, Counsel to the Mass Litigation Panel, and counsel for opposing parties on a real-time basis prior to use with a witness.

VI. **Reservation of Rights**

- A. The parties reserve the right to object to the introduction and/or admissibility of any document listed on any exhibit list.
- B. The parties agree that the inclusion of any exhibit on the exhibit list does not itself waive or affect any prior confidentiality designation in this litigation.
- C. The parties agree that the inclusion of a particular document on a party's exhibit list is not intended to be a waiver of that party's right to object to the introduction and/or admissibility of that document for any purpose.



D. The parties reserve the right to use any and all documents or materials listed by another party in this litigation on their exhibit list, even if any such party settles, is severed, or is otherwise dismissed.

E. The parties reserve the right to modify, withdraw, or supplement their trial exhibit lists prior to and during trial, but in any event must comply with the disclosure requirements set forth in Section IV of this Stipulation. The parties' right to modify, withdraw, or supplement their trial exhibit list include but is not limited to the following circumstances:

1. upon receipt of other parties' exhibit lists, witness lists, and/or amendments to deposition designations or counter-designations;
2. in the event that additional relevant documents or materials are produced in this action, identified in supplemental expert reports, or discovered subsequent to the date of service of their exhibit lists;
3. for purposes of adding any medical or scientific literature, or other data, or regulatory filings or communications issued or published after the date of submission;
4. as required to cure an evidentiary objection;
5. in response to Plaintiff or Defendants proffering any documents they have not listed on their Exhibit Lists;
6. in the event the parties pursue claims, defenses, or theories not set forth in their pleadings to date;
7. in response to rulings of the Court on pretrial motions, including any expert motions, Motions for Summary Judgment, or motions *in limine*, or any other Court decisions that affect the scope of evidence in this trial;
8. as necessary based on the future severance, settlement and/or dismissal involving any party; and
9. as necessary to include deposition exhibits that are relevant to deposition

testimony that has been designated for trial.

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:** March 15, 2022.

/s/ Derek C. Swope  
Presiding Judge  
Opioid Litigation