



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

**ORDER ESTABLISHING PROCEDURE FOR TIMEKEEPING AT TRIAL
IN THE STATE OPIOID MANUFACTURER PROCEEDINGS**

Pending before the Court is the parties' *Joint Motion for Order Establishing Procedure for Timekeeping in the State Opioid Manufacturer Proceedings* (Transaction ID 67448679). Finding good cause shown, the Court **GRANTS** the parties' motion. To coordinate the allotment of time and procedure for timekeeping in trial, the Court **ORDERS** the schedule and procedure set forth below.

1. Pursuant to the Order Regarding Trial Logistics for the State Opioid Manufacturer Proceedings dated February 15, 2022 (Transaction ID 67317192), the Panel reserved two months for trial. It also indicated that each trial day will begin at 9:00 a.m. and end at 5:00 p.m., and there will be a 10-minute break mid-morning; an hour lunch break; and a 10-minute break mid-afternoon. Pursuant to Judge Swope's pretrial direction, the trial is scheduled for 37 business days. There are 37 business days in which to conduct the trial between April 4, 2022 and May 27, 2022, and each business day is scheduled for 6 hours and 40 minutes, totaling 246 hours and 40 minutes to be allocated between the parties.

2. One business day (6 hours, 40 minutes) shall be reserved for parties' opening statements.

3. Two business days (13 hours, 20 minutes) shall be reserved for the parties' closing arguments.

4. The remaining 34 business days (226 hours and 40 minutes) shall be divided equally with 50% of time allocated to Plaintiff and 50% of time allocated to Defendants. Plaintiff shall be

allocated 113 hours and 20 minutes and the Defendants shall be allocated 113 hours and 20 minutes.

5. Purely logistical matters addressed at breaks or at the beginning or end of any given trial day shall not be included in the time allocations of either side. Such time will equally reduce both the Plaintiff's and the Defendants' allotted time set forth in paragraph 4. The following aspects of trial will count against the speaking side's time allocation, with time starting when the Court allows the speaking party to proceed:

- a. Live witness examinations;
- b. Deposition designations, consistent with the procedures set forth in paragraphs 8 and 9 below;
- c. Arguments on trial motions; and
- d. Objections related to evidentiary matters.

6. If the Court has no objection, for live proceedings (including live testimony by remote means), each side shall maintain their own calculations of the time spent by either side. The calculation will start when the examining attorney is allowed to proceed, with time counting against the examining side. In the event of an objection, time spent arguing the objection shall count against the speaker (*i.e.*, time spent arguing in favor of the objection shall count against the side making the objection, and time spent arguing against the objection shall count against the side opposing the objection). The calculation shall not include periods when the Court is speaking or when a witness is sworn in. Each side shall use its best efforts and maintain its calculations in good faith in accordance with the procedures set forth in this paragraph.

7. At 7 PM of each trial day, the parties shall exchange their calculations of (a) the time spent by Plaintiff ("Plaintiff's Time") and (b) the time spent by Defendants ("Defendants' Time"). If the State's calculations and Defendants' calculations within a category are within 15

minutes of each other, the parties shall average their respective calculations, and that average shall constitute the official tally for that day. If the State's calculations and Defendants' calculations within a category are more than 15 minutes apart, the parties shall attempt to reach agreement, including by referencing the timestamps on the transcript (if any exist), by referencing the recording of court proceedings (if available), or by requesting that an official transcript be prepared, if necessary. If agreement cannot be reached, the parties will seek the Court's guidance.

8. For video deposition testimony, the proffering party shall use deposition designation software (*e.g.*, OnCue) to identify "run times" for the proffering party's designations and the opposing party's designations. The run time for the proffering party's designations shall count against the proffering party. The run time for the opposing party's designations (including all completeness and counter-designations) shall count against the opposing party. At its election, the opposing party may use its own deposition designation software to check the proffering party's run times. If the opposing party's estimates differ from the proffering party's estimates by more than five (5) minutes, the opposing party may request a meet-and-confer.

9. For deposition testimony by witnesses whose testimony was not videotaped, the parties shall each generate estimates of run times using automated means, including by reference to publicly available "script timers" set to an average speaking speed. The parties should use their best efforts to eliminate non-spoken words appearing in the transcript (such as a listing of page/line numbers, identification of the speaker, or the letters "Q" and "A" indicating a question and answer). The procedures governing reconciliation of live time set forth in paragraph 7 above shall apply to reconciliation of the parties' estimates of non-video deposition time (*i.e.* averaging any difference in time estimates that is under 15 minutes).

10. Each morning, the parties shall jointly submit to the Court a chart that lists (a) the time spent by the Plaintiff and Defendants to date, (b) the total time spent by the Plaintiff and Defendants to date, and (c) the total time that the Plaintiff and Defendants have remaining to date.

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: April 4, 2022.

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation