



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 REGARDING TRIAL LOGISTICS

Admissibility of Evidence

The Court has been informed by the Discovery Commissioner that each party has submitted pre-trial admission motions, including a subset of motions *in limine*, in accordance with the *Order Referring Admissibility Disputes to Discovery Commissioner* (Transaction ID 67577033) (reconsideration denied) (Transaction ID 67628218). In consultation with the Discovery Commissioner, the Court adopts the following process as set forth in one of the leading commentaries on evidence:

In practice, considerations of waste of time, predictability and consistency lead most trial judges to apply the rules of evidence in a nonjury trial to exclude evidence that “is clearly inadmissible, privileged, or too time consuming in order to guard against reversal.” However, where the admissibility of evidence proffered at a bench trial is debatable, many experienced, cautious judges follow a practice calculated to minimize the risk of reversal. That practice is to provisionally admit all arguably admissible evidence, even if objected to, with the announcement that all admissibility questions are reserved until all the evidence is in. In considering any objections renewed by motion to strike at the end of the case, the judge leans toward admission rather than exclusion but seeks to find clearly admissible testimony on which to base her findings of fact. To minimize the risk of appellate reversal, a prudent trial judge makes it a practice to explicitly identify on the record the admissible evidence that she is basing her factual findings on. The practice lessens the time spent in arguing objections and helps ensure that appellate courts have in the record the evidence that was rejected as well as that which was admitted. A more complete trial record sometimes enables the appellate court to dispose of the case by entering a final judgment rather than merely remanding to the trial court for further proceedings.

MCCORMICK ON EVIDENCE § 60 (8th ed.). Adoption of the “**MCCORMICK Rule**” is consistent with the inherent authority given to the Court to adopt any procedures deemed appropriate to fairly and efficiently manage and resolve Mass Litigation, W. Va. Tr. Court R. 26.08(d).

Designated Number of Trial Days, Estimated Length of Trial, and Trial Schedule

Trial will be conducted Tuesday, July 5, 2022, through Friday, July 8, 2022, and thereafter Monday through Friday from 8:30 a.m. to 4:30 p.m. There will be a 30-minute break mid-morning; an hour lunch break; and a 30-minute break mid-afternoon. The Panel hereby amends the *Amended Case Management Order Relating to The Mass Litigation Panel Opioid Distributor Proceedings* (“Amended CMO”) ¶ 9 (Transaction ID 67474912) to allocate 26 days for trial, up to and including August 9, 2022.

Time Keeping

The parties shall file and serve a joint proposed time keeping order for the Court’s review **no later than 12:00 p.m. on Friday, June 3, 2022**. Each side shall have 72 hours to present their case, not including one day in total for opening statements, and one day in total for closing arguments.

Trial Testimony Presented by Video Deposition and Objections to Deposition Designations

The Presiding Judges and the parties will watch trial testimony presented by video deposition during the trial. The parties shall meet and confer to resolve objections to deposition designations and exhibits **no later than June 10, 2022**. As previously ordered by the Court:

Deposition designations and objections shall be completed and delivered to the Presiding Judges and Counsel to the Mass Litigation Panel **no later than 12:00 p.m. on Friday, June 17, 2022**. All objections to deposition designations shall be listed on a chart in page order regardless of who interposed the objection.

See Amended CMO ¶6.

The parties are expected to modify, edit, simplify, and limit their proposed video deposition testimony to only the witnesses and testimony needed to present their cases concisely. The parties shall limit their witnesses and the witnesses’ testimony to avoid

duplicative presentation of evidence. Video deposition testimony will count against the parties' hours.

The Court further advises the parties that most objections to deposition designations will be overruled. See the “**MCCORMICK Rule.**” The Court further **ORDERS** the parties to provide the Court with a list identifying the order in which all video depositions will be played **no later than 12:00 p.m. on Friday, June 17, 2022**, so the Court can prioritize rulings on deposition designations on a rolling basis, as needed by the parties.

Pretrial Memoranda

All parties shall file and serve their pretrial memoranda **no later than 12:00 p.m. on Friday, June 17, 2022**. See Amended CMO ¶ 7. The pretrial memoranda shall contain the following:

- a. Statement of the Case
- b. Issues of Fact
- c. Issues of Law
- d. Proposed Stipulations
- e. A Pre-Marked Exhibit List (NO reservations authorized) which shall consist of:
 - Joint Agreed Exhibit List
 - Plaintiff's List of Contested Exhibits
 - Defendants' List of Contested Exhibits
- f. Witness List (NO reservations authorized) which shall consist of:
 - **The parties are expected to modify, edit, simplify, and limit their witness lists to include only witnesses who will be called at trial. The parties are further expected to limit all witness testimony to present their cases concisely. The parties shall also limit their witnesses and the witnesses' testimony to avoid duplicative presentation of evidence.**

- The schedule of witnesses expected to be called the week of July 5, 2022, through July 8, 2022, shall be provided to the Presiding Judges and Counsel to the Mass Litigation Panel at the pretrial conference on June 24, 2022.
- At the conclusion of the evidence each Friday the schedule of witnesses for the following week shall be provided to the Presiding Judges and Counsel to the Mass Litigation Panel.

Order of Trial Presentation

City and County Plaintiffs
 AmerisourceBergen Drug Corporation
 Cardinal Health, Inc.
 McKesson Corporation

Proposed Findings of Fact and Conclusions of Law

The parties shall provide their proposed findings of fact and conclusion of law in Word Format to Counsel to the Mass Litigation Panel no later than five (5) business days after closing arguments are concluded.

Technology Issues

The parties shall meet, confer, and provide one detailed list of questions regarding technology use in the courtroom to Counsel to the Mass Litigation Panel via electronic mail message at kim.fields@courtswwv.gov no later than 12:00 p.m. on Friday, June 10, 2022.

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

It is so **ORDERED**.

ENTERED: May 24, 2022.

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

/s/ Derek C. Swope
 Presiding Judge
 Opioid Litigation