



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: OPIOID LITIGATION**

**Civil Action No. 19-C-9000**

**THIS DOCUMENT APPLIES TO ALL CASES REGARDING  
REMNANT MANUFACTURER AND PHARMACY DEFENDANTS**

**ORDER SCHEDULING EARLY MEDIATION ON NOVEMBER 9-10, 2022**

The Resolution Judges have determined that early mediation of all cases filed by Plaintiffs against the following Manufacturer and Pharmacy Defendants is appropriate:

**Amneal Pharmaceuticals, Inc.  
Amneal Pharmaceuticals LLC  
Amneal Pharmaceuticals of New York, LLC  
Impax Laboratories, LLC**

**Mylan Pharmaceuticals, Inc.**

**Kroger Co.  
Kroger Limited Partnership I  
Kroger Limited Partnership II**

**Fruth Pharmacy, Inc.**

**Goodwin Drug Company**

**Bypass Pharmacy, Inc.**

**Rhodes Pharmaceuticals LP**

**Rhonda's Pharmacy, LLC**

Accordingly, Lead Resolution Judge Joanna I. Tabit, Resolution Judge Jay M. Hoke, and Resolution Judge Gregory L. Howard **ORDER** mediation of all such cases to be conducted on **November 9-10, 2022**. 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 25701. **Mediation will begin at 9:00 a.m. on November 9, 2022**. 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 October 26, 2022.** 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:**

1. The following persons are required to attend mediation **in person**:
  - (a) lead trial counsel for the Plaintiffs who have sued the above-listed Defendants,
  - (c) lead trial counsel for each of the above-listed Defendants,
  - (d) the corporate representative for each of the above-listed Defendants, and
  - (e) the insurer representative for each of the above-listed 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.**

2. Lead trial counsel and any corporate representative or insurer 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.

**SIGN IN SHEET**

3. Counsel for the parties shall coordinate with one another to prepare **one sign in sheet** containing the party or parties represented, the name, e-mail address, cell phone number, and a signature line for each Required Participant. The sign in sheet shall be submitted to Counsel for the Mass Litigation Panel via e-mail at [kim.fields@courtswwv.gov](mailto:kim.fields@courtswwv.gov) **no later than 12:00 p.m. on October 26, 2022.**

**REQUIRED PARTICIPANTS MUST ARRIVE AT MEDIATION NO LATER THAN**

**8:30 A.M. ON NOVEMBER 9, 2022, TO SIGN IN.**

**CONFIDENTIALITY**

6. 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.

**MEET AND CONFER AND CONFIDENTIAL MEDIATION STATEMENTS:**

7. The parties shall meet and confer to discuss their respective settlement positions **no later than October 3, 2022**. Counsel for Plaintiffs who have sued the above-listed Defendants shall communicate settlement demands to the above-listed Defendants **no later than October 10, 2022**. The above-listed Defendants shall respond to the State's settlement demands **no later than October 17, 2022**.

8. Each party is **ORDERED** to deliver a confidential mediation statement to the Resolution Judges by hand delivery, Federal Express, UPS, or any other express mail service with tracking capability **no later than October 31, 2022**.

9. Mediation statements shall state on their face **"CONFIDENTIAL MEDIATION STATEMENT"** and shall be placed in an envelope marked **"CONFIDENTIAL MEDIATION STATEMENT."** Mediation statements **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 statements shall not be electronically filed and served since they are not part of the Court record.**

10. Mediation statements may be in memorandum or letter form. They must be double-

spaced, in no less than 12-point font, and be **no longer than fifteen (15) pages**.

11. Mediation statements **must** contain the following information:

a) **Contact information**: all lead trial counsel participating in the mediation shall provide: (1) a direct dial telephone work number; (2) a cell phone number; and (3) an e-mail address where lead trial counsel can be reached.

b) **Parties**: identify the party/parties represented, describe their relationship, if any, to each other, and by whom each party is represented, including the identity of all representatives who will be participating on behalf of a party/parties during the mediation.

b) **Factual and Procedural History of the Case**: provide a brief summary of the factual and procedural history of the case, including a statement of the essential facts of the litigation, clearly indicating which material facts are not in dispute and which material facts remain in dispute.

c) **Critical Deposition Testimony**: provide the deposition synopsis of any critical fact witness or expert witness, or in the alternative, a summary of the testimony of such fact witness or expert witness.

d) **Summary of Applicable Law**: provide a brief summary of the applicable law, including statutes, cases and standards.

e) **Strengths and Weaknesses of the Case**: provide an **honest** discussion of the strengths **and** weaknesses of the party's claims and/or defenses, the likelihood of a verdict in favor of the party, an opinion as to the probable verdict range, and an opinion as to the range of settlement value.

f) **Settlement Efforts**: The mediation statement shall contain: 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, including any proposed terms that may be non-monetary, as well as any suggestions regarding how the Resolution Judges may assist the parties in reaching resolution.

g) **Fees and Costs**: list separately (i) attorneys' fees and costs incurred to date; (ii) other fees and costs incurred to date; (iii) a good faith estimate of additional attorneys' fees and costs to be incurred if this matter is not settled; and (iv) a good faith estimate of additional other fees and costs to be incurred if this matter is not settled.

h) **Other Settlements**: if applicable, Plaintiff's counsel shall provide the gross settlement amount of any other settlements.

i) **Other Matters**: in addition to the required topics described above, and provided that the mediation statement complies with the page limit stated above, counsel are encouraged to address any other matters they believe may be of assistance to the Resolution Judges.

12. While counsel may submit documents that will assist the Resolution Judges in understanding the issues and resolving the litigation as exhibits to the mediation statement, counsel is cautioned to limit exhibits to only those documents counsel believes will be crucial to resolution of the litigation.

### **MEMORIALIZATION OF SETTLEMENT**

13. 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.

### **EX PARTE CONTACTS**

14. Before, during and after the scheduled 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.

### **OBLIGATION OF GOOD FAITH PARTICIPATION**

15. All Required Participants shall attend the entire mediation in person and shall be available and accessible throughout 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.

### **IMPOSITION OF SANCTIONS**

16. **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 & ServeXpress.

It is so **ORDERED**.

**ENTERED:** July 18, 2022.

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