



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
IN RE: OPIOID LITIGATION **Civil Action No. 21-C 9000 PHARM**
THIS DOCUMENT APPLIES TO ALL STATE CASES AGAINST PHARMACIES

PHARMACY DEFENDANTS' EXPEDITED MOTION TO EXTEND THE DEADLINES
FOR SERVING CERTAIN EXPERT REPORTS

CVS, Rite Aid, Walgreens, and Walmart (the "Pharmacy Defendants") respectfully move to extend the deadline to serve reports for experts who are responding to four of the State's thirteen expert witnesses—Gordon Smith, Rahul Gupta, Andrew Kolodny, and Lacey Keller—due to delays in receiving access to critical materials they use or rely on. The Pharmacy Defendants seek an extension to August 12.¹ The State consents to the August 12 extension for experts responding to Smith and Gupta, and it takes no position on an August 12 extension for experts responding to Kolodny and Keller.

On July 15, the State agreed to, and Discovery Commissioner Wilkes granted, an interim one-week extension (from July 25 to August 1) for reports from the Pharmacy Defendants' data, economics, and marketing experts to allow time for the Pharmacy Defendants' requested extension to be briefed. During a discovery conference on July 21, Discovery Commissioner Wilkes recommended an extension to August 15 for experts who are responding to Smith, Gupta, Kolodny, and Keller.

¹ The Pharmacy Defendants reserve the right to seek a further extension or to supplement their expert reports based on the State's production of new data and information. This includes Forensic Drug data that are relevant to the expert opinions of Gupta and Smith. Discovery Commissioner Wilkes ordered the State to produce that data by August 5. While the Pharmacy Defendants' experts will proceed in good faith to process and analyze this data expeditiously, it may not be feasible to complete an expert analysis between the time the State produces the data and August 12.

Granted Judge Alan D Moats Jul 27, 2022

The Pharmacy Defendants do not seek to extend the deadline for any other expert reports. Nor do they seek to extend any other pretrial deadlines.

In further support of this motion, the Pharmacy Defendants state as follows:

1. Smith relies on the Forensic Drug data, which has not been produced by the State. Discovery Commissioner Wilkes ordered the State to produce the data by August 5. This data is relevant to Pharmacies' experts response to Smith and Gupta (and possibly other State experts). Pharmacies' experts need additional time to consider that data.

2. Kolodny relies on approximately 4,000 documents. Most of the documents were not produced in this case, and the Pharmacy Defendants have been unable to locate approximately 1,700 of the documents in MDL productions they have access to. The Pharmacy Defendants requested copies of these documents from the State, but thus far the State has refused. The Pharmacy Defendants' experts responding to Kolodny need access to these materials and time to analyze them. Exacerbating the problem, on July 14, the State served a supplemental list of documents Kolodny is relying on. This list of additional documents is eight pages long and contains hundreds of new documents. Pharmacy Defendant experts responding to Kolodny need more time to review and consider these new documents, in addition to the other 1,700 documents.

3. Keller is the State's data expert. In response to the Pharmacy Defendants' discovery requests, the State previously served analyses challenging prescriptions filled by the Pharmacy Defendants and doctors they have filled for. Keller made changes to the methodologies used by the State, and those changes impacted the results as well as the sampling of prescriptions that the parties had agreed to. Some of the backup data that Keller produced with her report was unusable because it was missing certain fields. Keller also did not produce the code for certain of her data analyses, and some of the code she did produce had errors. It took the Pharmacy Defendants and their data

experts several weeks to work through these issues. As a result, experts responding to Keller also need more time to prepare their reports.²

For the foregoing reasons, the Pharmacy Defendants request an extension to August 12 to serve reports for experts responding to Smith, Gupta, Kolodny, or Keller.

Dated: July 26, 2022

Respectfully submitted,

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² The Pharmacies Defendants' request for an extension—and Discovery Commissioner Wilkes' recommendation for an extension—is based on already-existing deficiencies and delays associated with Keller's *original* report. On the evening of Friday, July 22, nearly seven weeks after the deadline for the State's expert reports and shortly before the deadline for the Pharmacy Defendants' expert reports, the State served a significant supplement to Keller's report. The State failed to disclose this supplement was forthcoming during the July 21 hearing before Discovery Commissioner Wilkes that addressed the Pharmacy Defendants' request for an extension to respond to Keller's report. The Pharmacy Defendants reserve the right to move to strike this supplement or to seek additional time to respond it.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 26th day of July, 2022, the foregoing “*Pharmacy Defendants’ Expedited Motion to Extend the Deadlines for Serving Certain Expert Reports*” was filed with the Clerk of the Court.

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