



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

JOINT TRIAL EXHIBIT DISCLOSURE 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 same numbering and format that was used for exhibits in the manufacturer trial or other trials involving one or more of the pharmacy defendants may also be employed here. Otherwise, the parties shall assign unique exhibit numbers using the prefixes specified below. Each prefix group shall begin with the party-specific first digits, 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
Plaintiff		
Plaintiff	P-WV-	P-00001 for exhibits previously identified using this numbering convention in other trials involving one or more of the pharmacy defendants P-WV-00001 for exhibits previously identified in the manufacturer trial P-WV-07565 for exhibits that were not previously identified in previous trials
Defendants		
All Defendants	DEF-WV-	DEF-MDL-00001 for exhibits previously identified using this numbering convention in other trials involving one or more of the pharmacy defendants DEF-WV-00001 for exhibits that were not previously identified in previous trials

CVS	CVS-WV-	CVS-MDL-00001 for exhibits previously identified using this numbering convention in other trials involving one or more of the pharmacy defendants CVS-WV-00001 for exhibits that were not identified in previous trials
Walgreens	WAG-WV-	WAG-MDL-00001 for exhibits previously identified using this numbering convention in other trials involving one or more of the pharmacy defendants WAG-WV-00001 for exhibits that were not identified in previous trials
Walmart	WMT-WV-	WMT-MDL-00001 for exhibits previously identified using this numbering convention in other trials involving one or more of the pharmacy defendants WMT-WV-00001 for exhibits that were not identified in previous trials

B. Branding Exhibits for Identification. Each exhibit will be branded 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 branded 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 (if applicable), 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 OCRed 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 producing branded exhibits. If a party produces its exhibits in a manner that requires extraction or download, that party will provide the exhibits in a .zip file or other format that permits downloading multiple exhibits at once, rather than requiring the download of each exhibit individually.

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 Objections	List of Plaintiff's objections to Defendants' exhibit made on the record during proceedings if any were made
H	Defendants' Objections	List of Defendants' objections to Plaintiff's exhibit made on the record during proceedings if any were made
I	Offered	Whether the exhibit was offered at trial
J	Admitted	Whether the Court admitted the exhibit into evidence
K	Not Admitted	Whether the Court excluded 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. To the extent a party seeks to add new documents unrelated to a prior exhibit, such documents must be given new exhibit numbers. The parties may make limited, non-substantive corrections to their Exhibit Lists, for example to make a good faith correction to a typographical error in the BegBates and/or EndBates listed for a specific exhibit or to correct errors in descriptions or document ranges included in the exhibits (i.e. to ensure the branded exhibit matches the document description), but the parties may not assign a previously assigned exhibit number to a new document that does not match the description in the prior version of the exhibit list. Any such corrections shall be identified for all other parties in a timely manner.

C. Family and Composite Exhibits. The parties may list whole document families as a single entry on their Exhibit Lists, but, if the family comprises more than ten (10) individual documents (e.g., a cover email with 10 attachments), the parties must separately list as individual exhibits each document the party intends to use at trial as part of the disclosure process specified in Section V below. This provision does not apply to

aggregate datasets or compilation exhibits, which are governed by sections II.D and II.E 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).

E. **Compilation Exhibits.** The parties may list documents of similar type and category intended to serve as evidence under a single entry, provided that (i) the exhibit shall be specifically and separately identified on the exhibit list (e.g., ingredient limit reports), and (ii) the offering party shall identify the Bates range(s) of the individual documents comprising the exhibit on an attachment to or separate tab of the party's Exhibit List. The offering party shall separately identify the individual documents within the compilation exhibit that they intend to use on initial examination pursuant to Section V in accordance with the disclosure procedure outlined in that section.

F. **W.Va. R. Evid. 1006 Summaries.** The parties must list on their Exhibit Lists all writings, recordings, or photographs that will be presented as a summary, chart, or calculation pursuant to West Virginia Rule of Evidence 1006 ("Rule 1006 Summary"), but not the actual Rule 1006 Summaries themselves. Such writings, recordings, or photographs may be listed as compilation exhibits, subject to the provisions of Section II.E of this stipulation. While the Rule 1006 Summaries themselves need not be listed on Exhibit Lists, they are subject to the disclosure requirements in Section V of this stipulation.

G. **Color Copies and/or Non-Substantive Corrections.** A party seeking to use a color copy of an exhibit in lieu of a black and white copy, or to substitute an exhibit image for the purpose of making some other correction that does not substantively alter the exhibit's content (e.g., correcting the placement of an exhibit stamp that obscured content), 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 p.m. the night prior to use. The replacement exhibit must otherwise be an exact copy of the branded exhibit.

III. Content of Exhibit Lists

A. **Documents Introduced by the Party Sponsoring the Witness.** The parties must include on their Exhibit Lists all exhibits they intend to use, other than for impeachment or rebuttal, on direct examinations of any witness called by that party.

B. **Expert Reliance Materials.** The parties must include on their respective Exhibit Lists individual entries for all exhibits the parties intend to mark as exhibits during an expert's direct examination. This does not affect the ability of an expert witness to refer to his or her report or materials relied on in forming his/her opinions during an examination. However, to the extent any document from an expert's file will be offered

or read into evidence during an expert witness examination, that document must have its own unique identifying exhibit number and must be disclosed on the party's Exhibit List.

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 V 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 or use at trial of these documents on all evidentiary grounds.

1. **Expert Reports.** Written reports from the parties' designated experts that were produced in this litigation or in other opioid litigations. 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 served in this litigation.
3. **Statutes and Regulations.** State and federal statutes and regulations.
4. **Demonstratives.** Demonstratives that parties intend to use at trial shall be disclosed to opposing counsel in accordance with Section V of this stipulation.
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 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, except that such documents should be assigned an exhibit number prior to examination if they are to be used during direct examination of an expert witness. This provision does not alter the required scope of expert disclosures.
8. **Rule 1006 Summaries.** Rule 1006 Summaries need not be listed on the parties' Exhibit Lists, subject to Section II.F of this stipulation. Rule 1006 Summaries shall be disclosed to opposing counsel in accordance with Section V of this stipulation.

9. **Exhibits Used for Impeachment, Rebuttal, or Refreshing Recollection.** Exhibits used solely to impeach or refresh a witness's recollection, and exhibits used on rebuttal or sur-rebuttal.

IV. Deadlines

Deadline	Event
Friday, September 9 by 12:00 pm ET	Consistent with the <i>Order Regarding Modifications to Case Schedule</i> entered May 3, 2022, the parties shall exchange and file Exhibit Lists by no later than 12:00 pm ET, including the information required for columns A-E of the Exhibit List, as defined in Section II.A of this stipulation, and any attachments required in support of compilation exhibits, as described in Section II.E of this stipulation.
Wednesday, September 14	<p>The parties shall exchange any documents on their respective Exhibit Lists not previously produced in this case or in federal MDL No. 2804 (N.D. Ohio). Such exhibits shall be named with their exhibit numbers but need not be branded or stickered until the deadline for the exchange of branded and stickered exhibits. In the event that either party includes on its Exhibit List a document produced in other opioid litigation that the opposing parties cannot locate after reasonable diligence, the offering party shall provide a copy of such documents, named with their exhibit numbers, within three (3) days of a request that such documents be provided.</p> <p>The parties shall meet and confer to identify joint agreed exhibits and contested exhibits to be included in the parties' Pretrial Memorandum, as required by the <i>Order Regarding Trial Logistics</i> entered July 20, 2022.</p>
Wednesday, September 14 at 12:00 pm ET	Consistent with the <i>Order Regarding Trial Logistics</i> entered July 20, 2022, the parties' pretrial memorandum must include a Joint Agreed Exhibit List, Plaintiff's List of Contested Exhibits, and Defendants' List of Contested Exhibits. Memoranda must be filed no later than 12:00 pm ET. (Objections to exhibits used during trial will occur on a rolling basis, as described in Section V.)
Wednesday, September 21	The parties shall exchange branded and stickered copies of their exhibits, in accordance with Section I of this stipulation.

Deadline	Event
Monday, September 26	<p>Trial begins</p> <p>Each party shall provide copies of exhibits they use on examination of any witness to the Presiding Judge and Counsel to each opposing party on a real-time basis prior to use with a witness. At the end of each trial day, each party shall ensure a complete list of the exhibits used by the party each day and copies of the branded exhibits used each day is provided to Counsel to each opposing party and to the Presiding Judge or courtroom deputy.</p>

V. Procedure for Exhibit Disclosures and Objections at Trial

A. **No Pre-Trial Objection Rulings.** 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*.

B. **Pre-Disclosure of Exhibits for Initial Examination.** During trial 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 initial examination of the 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 PM disclosure, it is permitted to supplement the disclosure no later than 5:00 PM the same day provided that the number of additional exhibits is reasonable. The Calling Party need not disclose documents: (i) intended to be used on re-direct examination, even if such re-direct occurs on a different day than the original direct examination; (ii) to be used with an adverse or hostile witness called pursuant to Rule 611(c) of the West Virginia Rules of Evidence; or (iii) intended to be used solely for rebuttal or impeachment. Objections to the disclosed exhibits are due to the Calling Party by 9:00 p.m. on the day prior to anticipated use at trial, and the Parties expect that the Court will address those objections at the start of the subsequent trial day. The Parties expect the Court to rule on objections to exhibits presented on cross-examination and any documents used for impeachment or rebuttal 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 initial examination of that witness by 12:00 p.m. on Sunday and may provide a limited supplement by 5:00 pm on Sunday. Objections to those exhibits, if any, would be due to the Calling Party by 9:00 p.m. on Sunday.

For the avoidance of doubt, this provision does not require any party to pre-disclose the documents it intends to use during the rebuttal examination of a witness the Calling Party calls as an adverse or hostile witness pursuant to Rule 611(c) of the West Virginia Rules of Evidence.

C. **Other Exhibits.** Exhibits used during an examination of a witness that are not included on a party's Exhibit List and therefore not branded according to Section I of this stipulation (such as exhibits used during cross-examination, for impeachment or rebuttal, to refresh a witness's recollection) shall be clearly identified for the trial record and assigned an exhibit number during trial. Any party using a previously unbranded exhibit at trial shall provide adequate copies to the Panel and opposing parties prior to using such exhibit at trial. The parties will meet and confer at the end of each trial day to identify a complete set of all exhibits used that day along with record copies of any exhibits not included on a party's Exhibit List and shall ensure a complete set of record copies are electronically available to all Parties by the end of each trial week.

D. **Pre-Disclosure of Rule 1006 Summaries.** The parties will disclose to counsel for all opposing parties any Rule 1006 Summaries they plan to use at trial at least seven (7) calendar days prior to their use at trial. The disclosures shall include the exhibit numbers from the Exhibit List corresponding to the exhibits that are summarized in the Rule 1006 Summary. Any objections to Rule 1006 Summaries shall be provided no later than 9:00 pm on the fourth (4th) calendar day after their service.

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, including their own Exhibit List(s).

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 withdraw or add exhibits to their Exhibit Lists, where the need for such exhibits was not reasonably foreseen, as may be necessary during trial, so long as the addition and disclosure of such exhibits occurs in a manner consistent with the deadlines in this stipulation, and by no later than 7:00 p.m. ET the evening prior to use at trial. A party adding exhibits to or withdrawing exhibits from its Exhibit List must specifically identify the entry or entries that have been added or withdrawn.

A copy of this Order has this day been electronically served on all counsel of record via

File & ServeXpress.

It is so **ORDERED**.

ENTERED: September 12, 2022.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation