



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: CARBON MONOXIDE EXPOSURE LITIGATION Civil Action No. 14-C-8000

FIFTH ORDER RECONVENING MEDIATION

Mediation of the Carbon Monoxide Exposure Litigation is **ORDERED** to be reconvened on **March 26, 2015, and March 27, 2015**, in the Courtroom of the Honorable Booker T. Stephens, McDowell County Courthouse, Main Courthouse, Court and Wyoming Streets, Welch, West Virginia 24801. **Mediation will begin at 9:00 a.m., on March 26, 2015**, and will be conducted by Lead Resolution Judge Booker T. Stephens, with the assistance of Resolution Judge Derek C. Swope, and Resolution Judge David W. Hummel, Jr.

REQUIRED PARTICIPANTS

1. The following persons are required to attend mediation **in person**:
 - (a) lead trial counsel for each Plaintiff who has not settled;
 - (c) lead trial counsel for each Defendant not previously excused by the Resolution Judges from further participation in mediation;
 - (d) the corporate representative for each Defendant not previously excused by the Resolution Judges from further participation in mediation; and
 - (e) the insurer representative for each Defendant not previously excused by the Resolution Judges from further participation in mediation.

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. Plaintiffs may, but are not required to attend mediation, provided they have executed authorizations giving their attorney **full authority** to act on their behalf, including full authority

to negotiate settlement of their case, and to respond to developments during the mediation process.

3. 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.

**COUNSEL, CORPORATE REPRESENTATIVES AND INSURER REPRESENTATIVES
MUST ARRIVE AT MEDIATION BY NO LATER THAN 8:45 A.M. ON MARCH 26,
2015, TO SIGN IN.**

INFORMED CONSENT

4. Lead trial counsel for Plaintiffs must obtain Plaintiffs' informed consent to any settlement reached. When the terms of an aggregate or mass tort settlement in civil litigation do not determine individual amounts to be distributed to, or paid by, each client, or are not based upon individual case-by-case negotiations, detailed disclosures are required before obtaining each client's consent to settle. For example, if a lump sum is offered in an aggregate or mass tort settlement, an attorney must, before obtaining the client's consent to the settlement, disclose to each client the number of his or her clients participating, specifics of each client's claims relevant to the settlement, the method of dividing the lump sum, and the settlement amount each client is to receive. In addition, the attorney must disclose, to each client, prior to obtaining the client's consent, the total attorney fees and costs to be paid, payments to be made other than to clients, the method by which the costs are to be apportioned among the clients, and the settlement amount each client is to receive.

5. If an aggregate settlement is reached, Plaintiffs' counsel will be required to provide to the

Presiding Judges documentation showing the client is informed of and agrees to the attorney's method of allocation and distribution of settlement proceeds; documentation showing an accounting of the individual client's settlement allocation and distribution; and documentation showing authorization by the client to enter into the proposed settlement.

CONFIDENTIALITY

6. **The contents of mediation statements and mediation discussions, including any resolution or settlement shall remain confidential, shall not be used in the present litigation nor any other litigation (whether presently pending or filed in the future), and shall not be construed as nor constitute an admission. Breach of this provision shall subject the violator to sanctions.**

EX PARTE CONTACTS

7. 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

8. Except for individual Plaintiffs who have provided executed authorizations to their counsel, 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 knowledgably in a mutual effort to examine and resolve issues. The Resolution Judges encourage all participants to keep an open mind in order to reassess their

previous positions and to find creative means for resolving the dispute.

IMPOSITION OF SANCTIONS

9. **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.

ENTER: February 23, 2015

/s/ Booker T. Stephens
Lead Resolution Judge
Carbon Monoxide Exposure Litigation