



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 AFFIRMING DISCOVERY COMMISSIONER'S ORDER DENYING
DISTRIBUTOR DEFENDANTS' MOTION FOR PROTECTIVE
ORDER REGARDING DEPOSITIONS OF FACT WITNESSES
AND DENYING MOTION FOR CLARIFICATION

Pending before the Mass Litigation Panel ("Panel") is the *Distributor Defendants*¹ *Appeal of Discovery Commissioner's Order Denying Distributor Defendants' Motion for Protective Order Regarding Depositions of Fact Witnesses and Motion for Clarification* (Transaction ID 67349889) filed on February 27, 2022. In addition to the Distributor Defendants' Appeal, the Panel has reviewed the Discovery Commissioner's Order entered on February 22, 2022 (Transaction ID 67332885) ("February 22 Order"); the City/County Plaintiffs' Response to the Distributor Defendants' Appeal (Transaction ID 67389758) filed on March 12, 2022; and the Distributor Defendants' Reply Brief (Transaction ID 67398149) filed on March 16, 2022.

Having reviewed all the briefing, the Panel **AFFIRMS** the Discovery Commissioner's February 22, 2022, Order and sees no need for clarification of that Order. Accordingly, Defendants' motion for clarification is **DENIED**.

As stated in Paragraph 12 of the Panel's Order entered on October 27, 2021:

General causation will be addressed in the Phase I trials of liability for public nuisance against the Manufacturers, Distributors and Pharmacies. If general causation is proved in any of the Phase I trials, then specific causation will be addressed in a Phase II, statewide abatement trial. Phase I general causation will address whether Defendants' conduct caused the oversupply and diversion of opioids in West Virginia. Phase II will address causation of opioid epidemic

¹ Distributor Defendants are AmerisourceBergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation.

harms in Plaintiffs' communities that relate to the equitable remedy of abatement.²

As further stated in the Panel's January 25, 2022, Order (Transaction ID 67261539), the factual issues which will be tried in the Phase I trial against the Distributor Defendants scheduled to begin on July 5, 2022, are:

Factual Issue #1: Whether the Defendants engaged in wrongful conduct which caused the alleged oversupply and diversion of opioids throughout West Virginia?

Factual Issue #2: Whether the alleged oversupply and diversion of opioids throughout West Virginia is a public nuisance, which is broadly defined as an unreasonable interference with a right common to the general public – public health and safety?³

These Orders were the subject of a petition for writ of prohibition filed by the Distributor Defendants on December 7, 2021, and a supplemental brief filed on February 4, 2022. The petition was refused by the Supreme Court of Appeals of West Virginia on March 17, 2022. *State of West Virginia ex rel. AmerisourceBergen Drug Corporation, et al. v. Hon. Alan D. Moats, et al.*, No. 21-0986 (March 17, 2022).

Distributor Defendants' objections are noted for the record.

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

It is so **ORDERED**.

ENTERED: March 31, 2022.

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation

² (Transaction ID 67047934), pp. 7-8.

³ (Transaction ID 67261539) p. 3.