

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

THE CITY OF HUNTINGTON,

Plaintiff,

v.

CIVIL ACTION NO. 3:17-01362

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,

Defendants.

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CABELL COUNTY COMMISSION,

Plaintiff,

v.

CIVIL ACTION NO. 3:17-01665

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,

Defendants.

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MEMORANDUM OPINION AND ORDER

On December 3, 2020, the court granted defendants' motion to continue the trial in this matter that was scheduled to begin on January 4, 2021. (ECF No. 1188). The court granted defendants' motion to continue, which was premised on the health risks associated with holding a twelve-week trial during the COVID-19 pandemic, for the same reasons expressed in the court's earlier order continuing the trial. See ECF No. 1170. Defendants asked that the trial be continued to April 19, 2021. See ECF No. 1181.

At a pretrial conference held on January 6, 2021, the court indicated its intent to start trial, in person, on May 3, 2021. Defendants objected to the date, which was two weeks later than the one they had earlier requested, pointing to various media reports about delays in the distribution and dispensing of COVID-19 vaccines. However, in setting a trial date, the court's focus is on the ability to hold a trial safely. And, delays in widespread vaccinations or not, there is every indication that West Virginia will be in better shape in May than it is in January.

Therefore, trial of this matter is hereby **SCHEDULED** for May 3, 2021. The parties will make their opening statements on that day and the presentation of evidence will start on May 4, 2021. The bench trial and the pretrial conference will be conducted in accordance with accepted safety protocols. Each of the five parties will be permitted to have five individuals present in the courtroom for the trial, for a total of twenty-five lawyers and support personnel at any time. All counsel and trial personnel will be required to wear masks at all times while in the courthouse and while in the courtroom, and observe the social distancing guidelines that are marked in the courtroom and the courthouse itself. A designated safe area will be set aside for witnesses. Each day the respective parties will be required to certify that all individuals who will be present in the courtroom

are symptom-free. Further protocols and adjustments may be made in order to respond to conditions and circumstances that may arise.

These restrictions, including limitations on in-person attendance in the courthouse, are imposed solely to limit the potential spread of and/or exposure to the virus. However, mindful of the presumption of openness that accompanies courtroom proceedings, trial proceedings will be made available electronically so that the respective trial teams, members of the public, members of the press, and other interested parties can observe the proceedings. To make use of this technology, use one of the following methods:

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Persons using remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. See Local Rule Civ. P. 83.10. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the court.

The Clerk is directed to send copies of this Order to those counsel of record who have registered to receive an electronic NEF.

**IT IS SO ORDERED** this 12th day of January, 2021.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge