

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

CHRISTOPHER FAIN,
individually and on behalf of all others
similarly situated, *et al.*,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740
HON. ROBERT C. CHAMBERS

STIPULATION FOR VIRTUAL DEPOSITIONS

Plaintiffs Christopher Fain, Zachary Martell, and Brian McNemar (“Plaintiffs”), together with Defendants William Crouch; Cynthia Beane; West Virginia Department of Health and Human Resources, Bureau for Medical Services; Ted Cheatham; and The Health Plan of West Virginia, Inc. (“Defendants”) (collectively “the Parties”), stipulate and agree to the following parameters to govern all virtual depositions in above-captioned matter.

1. Depositions referred to herein as “virtual” are those in which all who intend to participate—the Parties, their attorneys, and the witness—will all appear electronically and separately on the court reporter’s preferred video-conferencing platform. In other words, the court reporter will not be physically present with the witness, the witness’s attorney (when applicable) will not be physically present with the witness, and the questioning attorney will not be physically present with the witness.

2. The deponent, court reporter, examining counsel, and deponent’s counsel (when applicable) shall be visible on the platform to all other participants.

3. The deponent, court reporter, examining counsel, and deponent's counsel (when applicable) shall attend unmuted at all times when on the record. All other persons attending the deposition shall make their presence known to all other participants, but they shall keep their microphones on mute unless they wish to speak, and after having spoken, they shall go back on mute.

4. No counsel shall engage in private communications, including through text message, email, or a chat feature inside or outside of the videoconferencing system, with any deponent while the deposition is on the record. In the event counsel intends to initiate a private communication with any deponent for the purpose of determining whether a privilege should be asserted, counsel shall state their intention on the record before initiating communication. Nothing in the paragraph is meant to alter any applicable rules governing communications with witnesses during a deposition.

5. Exhibits will be handled in one of the following ways.

- a. Option 1: Exhibits shall be shared with the witness, court reporter, and opposing counsel by publishing on the conferencing platform during the deposition. When possible on the platform used, at the witness's request, the witness shall be given control so that they may adequately review the document before questioning regarding the document. A copy of all marked exhibits will subsequently be sent to the court reporter by examining counsel, and carbon copied to the opposing party, in PDF format after the deposition concludes.
- b. Option 2: Exhibits shall be pre-marked by examining counsel and electronically transmitted in PDF format to the court reporter before the

deposition begins, and carbon copied to the opposing party. During the deposition, the exhibits shall be shared with the witness, court reporter, and opposing counsel by publishing on the conferencing platform. When possible on the platform used, at the witness's request, the witness shall be given control so that they may adequately review the document before questioning regarding the document.

6. Virtual depositions shall be recorded by stenographic means consistent with the requirements of Rule 30(b)(3), but given the COVID-19 pandemic, the court reporter cannot be physically present with the deponent. The Parties agree not to challenge the validity of any oath administered by the court reporter on the basis that it was issued remotely.

7. The Parties agree that this virtual deposition may be used at a trial or hearing to the same extent that an in-person deposition may be used at a trial or hearing, and the Parties agree not to object to the use of this deposition on the basis that it was taken remotely. The Parties reserve all other objections to the use of any deposition testimony at trial.

8. The Parties shall bear their own costs in obtaining a transcript and/or video record of the deposition (if one is taken).

9. The Parties may amend this stipulation without formal amendment through a written agreement, including emails between counsel for the Parties.

Dated: August 27, 2021

Respectfully submitted,

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