



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: OPIOID LITIGATION**

**CIVIL ACTION NO. 19-C-9000**

**THIS DOCUMENT APPLIES TO:**

TOWN OF MADISON, WEST VIRGINIA

*Plaintiff,*

v.

Civil Action No. 20-C-31 MSH

ALLERGAN PLC FKA ACTAVIS PLC  
FKA ALLERGAN INC., et al.

*Defendants,*

TOWN OF STAR CITY, WEST VIRGINIA

*Plaintiff,*

v.

Civil Action No. 20-C-52 MSH

ALLERGAN PLC FKA ACTAVIS PLC  
FKA ALLERGAN INC., et al.

*Defendants,*

COUNTY OF PENDLETON, WEST VIRGINIA

*Plaintiff,*

v.

Civil Action No. 20-C-53 MSH

ALLERGAN PLC FKA ACTAVIS PLC  
FKA ALLERGAN INC., et al.

*Defendants,*

TOWN OF ROMNEY, WEST VIRGINIA

*Plaintiff,*

v.

Civil Action No. 20-C-54 MSH

ALLERGAN PLC FKA ACTAVIS PLC  
FKA ALLERGAN INC., et al.

*Defendants,*

**ORDER GRANTING MOTION TO STRIKE  
DEFENDANTS' NOTICES OF NON-PARTY FAULT**

Pending before the Mass Litigation Panel is *Plaintiffs' Motion to Strike Defendants' Notices of Non-Party Fault* (Transaction ID 66813576). The Presiding Judges have reviewed Defendants' Notices of Non-Party Fault<sup>1</sup>, Plaintiffs' Motion to Strike (Transaction ID 66813576), Defendants' Response (Transaction ID 67003519), Plaintiffs' Reply (Transaction ID 67021721), as well as the arguments and positions adopted and incorporated by reference by the parties.

The Supreme Court of Appeals of West Virginia has held that the Panel's ruling that public nuisance claims are not legal claims that would trigger the constitutional jury trial right or would be subject to comparative fault statutory amendments do not merit prohibition. *State ex rel. Amerisource Bergen Drug Corp. v. Moats*, 859 S.E.2d 374, 386 (W.Va. 2021). As stated by the Court:

We grant the extraordinary remedy of prohibition “to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts[.]” In view of the conflicting authorities outlined above, we cannot say now that the Panel's ruling—that Plaintiffs' public nuisance claims are not legal claims for damages that would trigger the constitutional jury trial right, or that are subject to the 2015 Act—is so clear-cut, or so plainly in contravention of a clear legal mandate as to merit issuance of the extraordinary remedy of prohibition on those grounds. For that reason, we deny the writ requested by Petition No. 20-0751, challenging the Panel's August 4, 2020, order as it relates to the applicability of the 2015 Act to the State's public nuisance claim. And, we deny in part the writ requested in Petition in No. 20-0694, insofar as it seeks relief from (1) the Panel's July 29, 2020, order granting Plaintiffs' motion to strike notices of non-party fault and (2) the portions of the Panels' orders of February 19, 2020, and July 23, 2020, denying Defendants' requests for a jury trial of Plaintiffs' public nuisance claims (liability only) on the grounds that those claims are legal, and not equitable.

*Id.* at 385-386 (internal citations omitted). The Supreme Court granted Defendants' petition only on the alternate ground “that the Panel cannot conduct a bench trial on liability for Plaintiffs' public

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<sup>1</sup> See, McKesson's Notices (Transaction IDs 66773711, 6773734, 66773727, 66774288); Noramco's Notices (Transaction IDs 66766460, 66766597, 66766646); Teva Defendants' Notice (Transaction ID 66763560); Allergan Defendants' Notice (Transaction ID 66763541); Par Pharmaceutical's Notice (Transaction ID 66763428); Janssen's Notice (Transaction ID 66763409); Endo's Notice (Transaction ID 66763369); Amneal's Notices (Transaction IDs 66761592, 66761612); Rite Aid's Notices (Transaction IDs 66166086, 66166096, 66166097, 66166077); Kroger's Notices (Transaction IDs 66165755, 66165793, 66165817, 66165833); Cardinal's Notice (Transaction ID 66164571); CVS's Notices (Transaction IDs 66162187, 66162185, 66162189); and AmerisourceBergen's Notice (Transaction ID 66160360).

nuisance claims without violating Defendants' right to try Plaintiffs' *other*, indisputably legal claims to a jury." *Id.* at 386 (emphasis in original.) Plaintiffs have now voluntarily dismissed all claims for relief, without prejudice, with the express exception of Plaintiffs' equitable claims for public nuisance. *Order Granting Plaintiffs' Rule 41(a)(2) Motion to Dismiss Certain Claims* (Transaction ID 66936677) entered on September 16, 2021.

Because the Panel concludes that W. Va. Code § 55-7-13d and its predecessor statute do not apply to Plaintiffs' equitable claims for abatement of public nuisance, Plaintiffs' Motion to Strike (Transaction ID 66813576) is **GRANTED** for the reasons set forth in the Panel's *Order Regarding Plaintiffs' Motion to Strike Defendants' Notices of Non-Party Fault* (Transaction ID 65807300) entered on July 29, 2020.

All objections and exceptions to the Panel's Order are noted and preserved 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:** October 20, 2021.

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

/s/ Derek C. Swope  
Presiding Judge  
Opioid Litigation