



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 19-C-9000

THIS DOCUMENT APPLIES TO:

CITY OF FAIRMONT, WEST VIRGINIA,

Plaintiff,

v.

Civil Action No. 20-C-55 MSH

ALLERGAN PLC, et al.,

Defendants.

CITY OF BECKLEY, WEST VIRGINIA,

Plaintiff,

v.

Civil Action No. 20-C-34 MSH

ALLERGAN PLC, et al.,

Defendants.

**ORDER REGARDING DEFENDANTS' MOTIONS TO DISMISS
PLAINTIFFS' THIRD CLAIM FOR RELIEF FOR FAILURE TO STATE A CLAIM**

Pending before the Court are the following motions to dismiss the Third Claim for Relief in Plaintiffs' Complaints for failure to state a claim:

1. *Certain Manufacturer Defendants' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction IDs 65835274) and *Certain Manufacturer Defendants' Motion to Dismiss Plaintiff's First Amended Complaint for Failure to State a Claim* (65841067);¹

¹ Moving Defendants in the *City of Fairmont* case are: Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales,

2. *The Actavis Generic Entities' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction IDs 65836921) and *The Actavis Generic Entities' Motion to Dismiss Plaintiff's First Amended Complaint for Failure to State a Claim* (Transaction ID 65842216);²
3. *Cephalon, Inc. and Teva Pharmaceuticals USA, Inc.'s Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction IDs 65837038); and *Cephalon, Inc. and Teva Pharmaceuticals USA, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint for Failure to State a Claim* (Transaction ID 65842367);
4. *Janssen Defendants' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction ID 65835406) and *Janssen Defendants' Motion to Dismiss Plaintiff's First Amended Complaint for Failure to State a Claim* (Transaction ID 65841100).³

LLC; Allergan USA, Inc.; Watson Laboratories, Inc.; Warner Chilcott Company, LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc.; Actavis Laboratories FL, Inc. f/k/a Watson Laboratories, Inc.-Florida.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals Inc.; Par Pharmaceutical Companies, Inc.; Par Pharmaceutical, Inc.; Amneal Pharmaceuticals LLC; and Noramco, Inc.

Moving Defendants in the *City of Beckley* case are: Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; Watson Laboratories Inc.; Warner Chilcott Company., LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc.; Actavis Laboratories FL, Inc.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals Inc.; Par Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc.; Amneal Pharmaceuticals LLC; and Noramco, Inc.

Noramco, Inc. ("Noramco") joins the Motions to the extent applicable and reserves all rights and defenses specific to it.

² The Actavis Generic Entities are: Defendants Warner Chilcott Company, LLC; Watson Laboratories Inc.; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc.; Actavis Laboratories FL, Inc.

³ "Janssen" refers collectively to Defendants Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals,

The Third Claim for Relief in Plaintiffs' Complaints allege violation of West Virginia's Controlled Substances Act, W.Va. Code § 55-7-9. The motions have been fully briefed by the parties.⁴

As explained by the Court in *John W. Lodge Distributing Co., Inc. v. Texaco, Inc.*, 161 W. Va. 603, 604-606, 245 S.E.2d 157, 158-159 (1978):

The purpose of a motion under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure is to test the formal sufficiency of the complaint. For purposes of the motion to dismiss, the complaint is construed in the light most favorable to plaintiff, and its allegations are to be taken as true. Since common law demurrers have been abolished, pleadings are now liberally construed so as to do substantial justice. W.Va. R.C.P. 8(f). The policy of the rule is thus to decide cases upon their merits, and if the complaint states a claim upon which relief can be granted under any legal theory, a motion under Rule 12(b)(6) must be denied.

* * *

In view of the liberal policy of the rules of pleading with regard to the construction of plaintiff's complaint, and in view of the policy of the rules favoring the determination of actions on the merits, the motion to dismiss for failure to state a claim should be viewed with disfavor and rarely granted. The standard which plaintiff must meet to overcome a Rule 12(b)(6) motion is a liberal standard, and few complaints fail to meet it. The plaintiff's burden in resisting a motion to dismiss is a relatively light one. *Williams v. Wheeling Steel Corp.*, 266 F.Supp. 651 (N.D.W.Va.1967)

A trial court considering a motion to dismiss under Rule 12(b)(6) must "liberally construe the complaint so as to do substantial justice." *Cantley v. Lincoln Co. Comm'n.*, 221 W. Va. 468,

Inc. n/k/a Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.

⁴ To the extent the parties incorporate by reference arguments previously stated in motions to dismiss filed in the *City of Clarksburg v. Allergan PLC, et al.*, Civil Action Nos. 19-C-259 MSH through 19-C-266 MSH, the Court incorporates by reference its *Order Regarding Defendants' Motions to Dismiss Plaintiffs' Third Claim for Relief for Failure to State a Claim* (Transaction ID 65993207), entered on October 6, 2020.

To the extent the parties incorporate by reference arguments previously stated in motions to dismiss filed in the *Town of Delbarton, et al. v. Cardinal Health, Inc., et al.*, Civil Action Nos. 20-C-16 MSH through 20-C-27 MSH, the Court incorporates by reference its *Order Regarding Defendants' Motions to Dismiss Count II of Plaintiffs' Complaint for Failure to State a Claim* (Transaction ID 65999707) entered on October 7, 2020.

470, 655 S.E.2d 490, 492 (2007) and West Virginia Rule of Civil Procedure, Rule 8(f). “The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* at Syl. pt. 2, *quoting* Syl. pt. 3, *Chapman v. Kane Transfer Company*, W.Va., 236 S.E.2d 207 (1977).

Having reviewed the Motions to Dismiss and all the briefing, the Presiding Judges take under advisement Defendants’ motions to dismiss Plaintiffs’ Third Claim for Relief – Violation of West Virginia Controlled Substances Act; W.Va. Code § 55-7-9.

All exceptions and objections are noted and preserved for the record.

A copy of this Order has been electronically served on all counsel of record this day via File & Serve*Xpress*.

It is so **ORDERED**.

ENTERED: October 20, 2020.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation