



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

**IN RE: OPIOID LITIGATION**

**Civil Action No. 19-C-9000**

**THIS DOCUMENT APPLIES TO:**

**STATE OF WEST VIRGINIA ex rel.  
PATRICK MORRISEY, Attorney General,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 19-C-104 BNE**

**TEVA PHARMACEUTICAL INDUSTRIES,  
LTD, et al.,**

**Defendants.**

**ORDER GRANTING THE STATE’S MOTION TO STRIKE SPECIALLY-APPEARING  
DEFENDANT TEVA PHARMACEUTICAL INDUSTRIES LTD.’S  
NOTICE REGARDING POTENTIAL NONPARTY FAULT**

Pending before the Mass Litigation Panel is *The State’s Motion to Strike Specially-Appearing Defendant Teva Pharmaceutical Industries Ltd.’s Notice Regarding Potential Nonparty Fault Under W. Va. Code 55-7-13d* (Transaction ID 66143010). The Presiding Judges have reviewed the Notice Regarding Potential Nonparty Fault filed by Specially-Appearing Teva Pharmaceuticals Industries LTD (“Teva Ltd.”) (Transaction ID 66094945), the State’s Motion to Strike (Transaction ID 66143010), Teva Ltd.’s Opposition (Transaction ID 66778852) and the States’ Reply (Transaction ID 66798237), as well as the arguments and positions adopted and incorporated by reference by the parties.

Because the State seeks abatement of a public nuisance and civil penalties and equitable relief under the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101, *et seq.* (“WVCCPA”), not damages, the Panel concludes that W. Va. Code § 55-7-13d and its predecessor statute are not applicable. Therefore, the State’s Motion to Strike is **GRANTED** for

the reasons set forth in the Panel's *Order Regarding the State's Motion to Strike Defendants' Notices of Non-Party Fault* (Transaction ID 65820504), entered on August 4, 2020.

Defendants did not challenge that portion of the Panel's August 4, 2020, Order regarding the WVCCPA in Petition No. 20-0751. *State ex rel. Amerisource Bergen Drug Corp., et al. v. Hon. Alan D. Moats, et al.*, Petition No. 20-0694, and *State ex rel. Johnson & Johnson, et al. v. Hon. Alan D. Moats, et al.*, Petition No. 20-0751 (consolidated), Slip Op. at fn. 19 (W. Va. Sup. Ct. June 11, 2021). Moreover, the Supreme Court of Appeals of West Virginia denied the writ requested by Petition No. 20-0751, challenging the Panel's August 4, 2020, Order as it relates to the applicability of W. Va. Code § 55-7-13d to the State's public nuisance claim, finding the Panel's determination did not merit the extraordinary remedy of a writ of prohibition. *Id.* at 18. Furthermore, the Supreme Court's decision to grant in part Petition No. 20-0694 does not apply to the State. *Id.* at fn. 55.

Teva Ltd.'s argument that the Panel should not grant the State's Motion to Strike because Teva Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction is pending is unavailing. Opposition, pp. 2 and 4. On July 19, 2021, the Panel Ordered Teva Ltd.'s Motion to Dismiss held in abeyance while jurisdictional discovery is conducted (Transaction ID 66778018). Furthermore, a pending motion to dismiss has not prevented the Panel from granting a previously filed motion to strike.<sup>1</sup>

Equally unavailing is Teva Ltd.'s argument that the Panel should wait to rule on the State's Motion to Strike because the Supreme Court's Opinion noted future discovery may provide additional information regarding the Plaintiffs' public nuisance claims and abatement remedy. Opposition, pp. 2 and 4; *State ex rel. Amerisource Bergen Drug Corp., et al. v. Hon.*

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<sup>1</sup> The Panel granted the State's Motion to Strike Defendants' Notices of Non-Party Fault on August 4, 2020 (Transaction ID 65820504). However, the Teva Defendants' Motion to Dismiss was not denied until August 31, 2020 (Transaction ID 65887418).

*Alan D. Moats, et al.*, Petition No. 20-0694, and *State ex rel. Johnson & Johnson, et al. v. Hon. Alan D. Moats, et al.*, Petition No. 20-0751 (consolidated), Slip Op. at fn. 54. There is no reason for the Panel to delay ruling on the State’s Motion to Strike based on the Panel’s prior Order entered on August 4, 2020, and the Supreme Court’s opinion denying Petition No. 20-0751 on this issue. The Supreme Court’s discussion regarding discovery of Plaintiffs’ public nuisance claims and abatement remedy does not suggest the Panel should wait to rule on Motions to Strike until after such discovery is complete. *Id.*

Because there is no basis for the Panel to deny or delay its decision on the State’s Motion to Strike, for the reasons set forth above, the Motion to Strike is **GRANTED**.

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 & Serve*Xpress*.

It is so **ORDERED**.

**ENTERED:** July 27, 2021.

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

/s/ Derek C. Swope  
Presiding Judge  
Opioid Litigation