



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-151 BNE

ENDO HEALTH SOLUTIONS INC., et al.,

Defendants.

**ORDER GRANTING THE STATE'S MOTION TO STRIKE
DEFENDANTS' NOTICES OF NONPARTY FAULT**

Pending before the Mass Litigation Panel is *The State's Motion to Strike Defendants' Notices of Nonparty Fault* (Transaction ID 65905257).¹ The Presiding Judges have reviewed the Notice of Defendants Endo Health Solutions Inc. and Endo Pharmaceuticals Inc. Regarding Nonparty Fault (Transaction ID 65877973), the Notice of Defendant Par Pharmaceutical, Inc. Regarding Nonparty Fault (Transaction ID 65878048), the State's Motion to Strike (Transaction ID 65905257), Defendants' Response (Transaction ID 65946324), the States' Reply (Transaction ID 65966385), 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,

¹ The States' Motion to Strike was also filed in *State of West Virginia ex rel. Patrick Morrisey v. Mallinckrodt LLC, et al.*, Civil Action No. 19-C-150 BNE, which is stayed pursuant to Defendant Mallinckrodt plc and its affiliated debtors, including Defendant SpecGX LLC's filing of voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code on October 12, 2020. *Notice of Suggestion of Pendency of Bankruptcy and Automatic Stay of Proceedings*, (Transaction ID 66012085). Consequently, this Order only applies to *State of West Virginia ex rel. Patrick Morrisey v. Endo Health Solutions Inc., et al.*, Civil Action No. 19-C-151 BNE.

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** as to Defendants Endo Health Solutions Inc., Endo Pharmaceuticals Inc., and Par Pharmaceutical, Inc. 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.

Defendants contend the statement in the State’s Motion to Strike that its “claims first arose prior to May 25, 2015” constitutes a judicial admission, which warrants reconsideration of the Court’s Order denying the Defendants’ motion to dismiss², on the basis that the State’s claims under the WVCCPA are time-barred because they are alleged to have occurred more than four years before the state fields its actions against Defendants. Resp. pp. 2-3. The State contends Defendants’ request is improperly filed, unfounded and should be denied. Reply p. 2.

The Panel finds that the State’s Complaint against Defendants contains facts dating prior to 2015 that form some of the basis of the State’s claims against each Defendant. *See, e.g.*, Endo

² See Order entered on September 15, 2020 (Transaction ID 65931446).

Complaint at ¶¶ 20, 21, 54, 55, 57-60, 63, 69, 70, 72, 74 (Transaction ID 65701964). Furthermore, the State argued in opposition to Defendants' motion to dismiss that its claims were not time barred, despite arising before 2015 because: 1) claims for equitable relief are not subject to a statute of limitations; 2) Defendants' unlawful acts are continuing; 3) the limitations period is tolled by the discovery rule; and 4) Defendants concealed their wrongdoing. *See* State's Mem. of Law in Opp'n to Defs' Mot. to Dismiss a pp. 7-12 (Transaction ID 65802875). Because the statement that State's claims arose prior to 2015 is not a new fact, the Panel will not reconsider its Order Denying Defendants' motion to dismiss.

For the reasons set forth above, *The State's Motion to Strike Defendants' Notices of Nonparty Fault* (Transaction ID 65905257) is **GRANTED** as to Defendants Endo Health Solutions Inc., Endo Pharmaceuticals Inc., and Par Pharmaceutical, Inc.

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: July 28, 2021.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation