



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. 20-C-131 PNM

CVS HEALTH CORPORATION, A Delaware Corporation,
CVS PHARMACY, INC., a Rhode Island corporation,
CVS INDIANA, LLC, an Indiana corporation,
CVS RX SERVICES, INC., a New York corporation, and
CVS TN DISTRIBUTION LLC, a Delaware corporation,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE
DEFENDANTS' NOTICE OF NON-PARTY FAULT

Pending before the Mass Litigation Panel is *Plaintiff's Motion to Strike Defendants' Notice of Non-Party Fault* filed on July 29, 2021 (Transaction ID 66808617) by the State of West Virginia *ex rel.* Patrick Morrissey, Attorney General ("the State"). The Presiding Judges have reviewed the State's Motion (Transaction ID 66808617), Defendants' Opposition and Notice of Non-Party Fault (Transaction ID 66846433), and the State's Reply (Transaction ID 66862023), 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.

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: September 1, 2021.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation