



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-83 PNM

RITE AID CORPORATION, a Delaware corporation,
RITE AID OF MARYLAND, INC.
d/b/a RITE AID MID-ATLANTIC CUSTOMER
SUPPORT CENTER, a Maryland Corporation,

Defendants.

**ORDER GRANTING PLAINTIFFS' MOTION TO STRIKE
DEFENDANT'S 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 66808675) by the State of West Virginia, *ex rel.* Patrick Morrissey, Attorney General ("the State"). The Presiding Judges have reviewed Rite Aid of Maryland, Inc.'s ("Rite Aid") Notice of Non-Party Fault (Transaction ID 66845136)¹, the State's Motion (Transaction ID 66808675), Rite Aid's Opposition (Transaction ID 66845611), and the State's Reply (Transaction ID 66862043), 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

¹ Plaintiff's Motion was directed to the Notice of Non-Party Fault filed by both Rite Aid Corporation and Rite Aid of Maryland, Inc. (Transaction ID 66845136), both of whom were Defendants in the original Complaint. Since Plaintiffs' Motion was filed, the Complaint has been amended and Rite Aid Corporation has been voluntarily dismissed without prejudice (Transaction ID 66815276).

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 & ServeXpress.

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