



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 19-C-9000

THIS DOCUMENT APPLIES TO:

**MAYOR PEGGY KNOTTS BARNEY, ON
BEHALF OF THE CITY OF GRAFTON, and
MAYOR PHILIP BOWERS, ON BEHALF OF
THE CITY OF PHILIPPI,**

Plaintiffs,

v.

**Civil Action Nos. 19-C-151 MSH
and 19-C-152 MSH**

PURDUE PHARMA, L.P., et al.,

Defendants.

**ORDER REGARDING DEFENDANTS AMERISOURCEBERGEN
DRUG CORPORATION, CARDINAL HEALTH, INC., AND CARDINAL
HEALTH 110, LLC'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Pending before the Court is a motion to dismiss Plaintiffs' Complaint filed in the above-styled civil actions by Defendants AmerisourceBergen Drug Corporation, Cardinal Health, Inc. and Cardinal Health 110, LLC pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure (Transaction ID 64607513). The motion has been fully briefed by the parties.¹

¹ To the extent Defendants AmerisourceBergen Drug Corporation, Cardinal Health, Inc. and Cardinal Health 110, LLC have incorporated by reference arguments previously stated in the Distributor Defendants' Motions to Dismiss filed in *Brooke County Commission, et al. v. Purdue Pharma L.P., et al.*, Civil Action Nos. 17-C-248 MSH through 17-C-255 MSH ("*Brooke County*"), and *Monongalia County Commission, et al. v. Purdue Pharma L.P., et al.*, Civil Action Nos. 18-C-222 MSH and 18-C-233 MSH through 18-C-236 MSH ("*Monongalia County*"), the Court incorporates by reference the *Order Denying AmerisourceBergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation's Motion to Dismiss*, entered on December 28, 2019, in *Brooke County*, petition for writ of prohibition refused, June 6, 2019, Order, State ex rel. AmerisourceBergen Drug Corporation, et al. v. Honorable David W. Hummel, Jr., No. 19-0210; and the *Order Denying the Distributor Defendants' Motion to Dismiss Plaintiffs' Complaint* (Transaction ID 64374611) entered on October 31, 2019, in *Monongalia County*, petition for writ of prohibition refused, February 3, 2020, Order, State ex rel. AmerisourceBergen Drug Corporation, et al. v. Honorable Alan D. Moats, et al., No. 19-1051.

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, 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 motion to dismiss and all of the briefing, and having conferred with one another to ensure uniformity of their decision, as contemplated by *Rule 26.07(a)* of the *West Virginia Trial Court Rules*, the Presiding Judges unanimously **FIND** that, construing the Complaint in the light most favorable to Plaintiffs, and taking the allegations as true, the Complaint sufficiently states claims upon which relief can be granted, and the Defendants have not

demonstrated that Plaintiffs can prove no set of facts in support of their claims which would entitle them to relief. Accordingly, the Presiding Judges unanimously **DENY** the motion to dismiss Plaintiffs' Complaint filed in the above-styled civil actions by Defendants AmerisourceBergen Drug Corporation, Cardinal Health, Inc. and Cardinal Health 110, LLC (Transaction ID 64607513) as to all Counts, except Count IV – W.Va. Code §§ 60A-8-1 and 55-7-9, and Count VII – Intentional Acts and Omissions, which the Court takes under advisement.

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: February 5, 2020.

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