



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

**IN RE: OPIOID LITIGATION**

**CIVIL ACTION NO. 19-C-9000**

**THIS DOCUMENT APPLIES TO:**

MAYOR ELMER RAY SPENCE ON  
BEHALF OF THE TOWN OF DELBARTON, et al.,

Plaintiffs,

v. Civil Action Nos. 20-C-16 MSH through 20-C-27 MSH

CARDINAL HEALTH, INC., et al.,

Defendants.

**ORDER REGARDING DEFENDANTS' MOTIONS TO DISMISS  
COUNT II OF PLAINTIFFS' COMPLAINT FOR FAILURE TO STATE A CLAIM**

Pending before the Court are the following motions to dismiss the Count II of Plaintiffs' Complaint under West Virginia Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted:

1. *Certain Manufacturer Defendants' Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim* (Transaction ID 65700815);<sup>1</sup>

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<sup>1</sup> Moving Defendants are Johnson & Johnson; Janssen Pharmaceuticals, Inc., f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc. and f/k/a Janssen Pharmaceutica, Inc.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Watson Laboratories Inc.; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc.; Actavis Laboratories FL, Inc.; Mallinckrodt LLC; Mallinckrodt Brand Pharmaceuticals, Inc.; Mallinckrodt Enterprises LLC; SpecGx LLC; Amneal Pharmaceuticals of New York, LLC; Noramco, Inc.; Endo Pharmaceuticals, Inc.; Par Pharmaceutical Companies, Inc.; Par Pharmaceutical Inc.; Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; and Warner Chilcott Sales (US), LLC.

Noramco, Inc. ("Noramco") joins this Motion to the extent applicable and reserves all rights and defenses specific to it.

Endo Health Solutions Inc. is recognized *nunc pro tunc* as a Moving Party to this motion pursuant to Agreed Order entered on August 4, 2020 (Transaction ID 65820736).

2. *The Actavis Generic Entities' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction ID 65700014);<sup>2</sup>
3. *Cephalon, Inc. and Teva Pharmaceuticals USA, Inc.'s Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction ID 65699965); and
4. *Janssen Defendants' Motion to Strike and Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim* (Transaction ID 65701181).<sup>3</sup>

The Janssen Defendants also move to strike Paragraphs 356-367 and 369 of Plaintiffs' Complaint as immaterial and impertinent to Plaintiffs' claims for relief under Rule 12(f) of the West Virginia Rule of Civil Procedure because these allegations concern Tasmanian Alkaloids, a past subsidiary of Johnson & Johnson and not a Defendant in Plaintiffs' Complaint, and which Plaintiffs accuse of no wrongdoing. Mem. p. 5. Plaintiffs contend the Janssen Defendants had a vested interest in the success of Tasmanian Alkaloids from 1994 until 2016; Tasmanian Alkaloids was a key part of the Janssen Defendants' pain management franchise; and Tasmanian Alkaloids was a primary supplier of Active Pharmaceutical Ingredients to a number of opioid manufacturers, including the Janssen Defendants. Resp. p. 11.

Count II of Plaintiffs' Complaint alleges violation of the West Virginia Uniform Controlled Substances Act; W.Va. Code § 60A-8-1 et seq.; W.Va. Code § 55-7-9. The motions have been fully briefed by the parties.<sup>4</sup>

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<sup>2</sup> The Actavis Generic Entities are: Defendants Watson Laboratories Inc.; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc.; and Actavis Laboratories FL, Inc.

<sup>3</sup> "Janssen Defendants" refers collectively to Defendants Johnson & Johnson; Janssen Pharmaceuticals, Inc., f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc. and f/k/a Janssen Pharmaceutica, Inc.

<sup>4</sup> To the extent a party re-states or relies on arguments previously stated in 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

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.

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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).

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Orders denying motions to dismiss, entered on December 28, 2018, in *Brooke Co.*, petitions for writ of prohibition refused, June 6, 2019, Orders, State ex. rel. Cardinal Health v. Honorable David W. Hummel, Jr., et al., No. 19-0204, State ex. rel. Purdue Pharma, et al. v. Honorable David W. Hummel, Jr., et al., No. 19-0205, State ex. rel. AmerisourceBergen Drug Corporation, et al. v. Honorable David W. Hummel, Jr., et al., No. 19-0210; and the Orders denying motions to dismiss 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.

Having reviewed the Motions to Dismiss and all the briefing, the Presiding Judges take under advisement the above-referenced motions to dismiss Count II of Plaintiffs' Complaint – Violation of the West Virginia Uniform Controlled Substances Act; W.Va. Code § 60A-8-1 et seq.; W.Va. Code § 55-7-9.

The Court may strike pleadings in the Complaint only if the Janssen Defendants demonstrate the allegations are “redundant, immaterial, impertinent, or scandalous.” W. Va. R. Civ. P. 12(f). Because the Presiding Judges **FIND** that Plaintiff's allegations, on their face, are not redundant, immaterial, impertinent or scandalous, the Court **DENIES** the Janssen Defendants' motion to strike allegations in Plaintiffs' Complaint regarding Tasmanian Alkaloids.

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:** October 7, 2020.

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

/s/ Derek C. Swope  
Presiding Judge  
Opioid Litigation