



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-104 BNE

TEVA PHARMACEUTICAL INDUSTRIES,
LTD, et al.,

Defendants.

ORDER

Pending before the Panel are two motions to dismiss Plaintiffs' First Amended Complaint ("Complaint")¹ for failure to state upon which relief can be granted, pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure: *Allergan Finance, LLC, Allergan USA, Inc., and Allergan Sales, LLC's Motion to Dismiss Plaintiff's Complaint*, (Transaction ID 64839046); and *The Teva and Actavis Generic Defendants' Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim* (Transaction ID 64841082). The Teva Defendants also move to dismiss Plaintiff's claims pursuant to Rule 9(b) of the West Virginia Rules of Civil Procedure. The motions have been fully briefed by the parties.²

¹ Plaintiff's *First Amended Complaint*, filed on December 20, 2019 (Transaction ID 64835533).

² To the extent Defendants re-state or rely on arguments previously stated in their 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 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.

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 above-listed Motions to Dismiss and all of the briefing, the Presiding Judges **FIND** that, construing the Complaint in the light most favorable to Plaintiff, and taking its allegations as true, the Complaint sufficiently states claims upon which relief can be granted, and the Defendants have not demonstrated that Plaintiff can prove no set of facts in

support of their claims which would entitle them to relief. Accordingly, the above-listed Motions to Dismiss pursuant to Rule 12(b)(6) are **DENIED**.

The Presiding Judges further **FIND** that, Plaintiff's false marketing claims against the Teva Defendants under the West Virginia Consumer Credit and Protection Act ("WVCCPA") and West Virginia public nuisance law are not subject to the heightened pleading requirements for fraud claims. Furthermore, even if the Plaintiff's claims were subject to a heightened pleading standard, the Presiding Judges **FIND** that the Plaintiffs' claims satisfy Rule 9. The Complaint contains numerous paragraphs describing the Teva Defendants' misleading marketing efforts and misrepresentations with sufficient particularity. Therefore, the Teva Defendants' motion to dismiss the Complaint pursuant to Rule 9(b) is also **DENIED**.

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*.

ENTERED: August 31, 2020.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation