



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 REAY SPENCE ON
BEHALF OF THE TOWN OF DELBARTON,
v.
CARDINAL HEALTH, INC., et al. Civil Action No. 20-C-16 MSH

COUNTY COMMISSION OF TUCKER
COUNTY,
v.
CARDINAL HEALTH, INC., et al. Civil Action No. 20-C-17 MSH

COUNTY COMMISSION OF HARDY COUNTY
v.
CARDINAL HEALTH, INC., et al. Civil Action No. 20-C-18 MSH

MAYOR SHEILA KESSLER ON BEHALF OF THE
TOWN OF MATEWAN,
v.
CARDINAL HEALTH, INC., et al. Civil Action No. 20-C-19 MSH

MAYOR VIRGINIA ANN MARTIN ON BEHALF OF
THE CITY OF MULLENS,
v.
CARDINAL HEALTH, INC., et al. Civil Action No. 20-C-20 MSH

MAYOR THOMAS EVANS, JR., ON BEHALF OF
THE TOWN OF OCEANA,
v.
CARDINAL HEALTH, INC., et al. Civil Action No. 20-C-21 MSH

COUNTY COMMISSION OF PRESTON COUNTY,
v.
CARDINAL HEALTH, INC., et al. Civil Action No. 20-C-22 MSH

MAYOR MAUREEN LASKY-SETCHELL ON
BEHALF OF THE CITY OF BELINGTON,
v.
CARDINAL HEALTH, INC., et al. Civil Action No. 20-C-23 MSH

MAYOR BRIAN BILLINGS ON BEHALF OF
THE CITY OF POINT PLEASANT,
v.
CARDINAL HEALTH, INC., et al.

Civil Action No. 20-C-24 MSH

MAYOR GARY A. MILLER ON BEHALF OF
THE TOWN OF JUNIOR,
v.
CARDINAL HEALTH, INC.

Civil Action No. 20-C-25 MSH

MAYOR DAVID WOOD ON BEHALF OF THE
CITY OF MOUNDSVILLE,
v.
CARDINAL HEALTH, INC., et al.

Civil Action No. 20-C-26 MSH

MAYOR HAROLD E. MILLER ON BEHALF OF
THE CITY OF WEIRTON,
v.
CARDINAL HEALTH, INC., et al.

Civil Action No. 20-C-27 MSH

**ORDER REGARDING AMNEAL PHARMACEUTICALS OF NEW YORK, LLC'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT FOR FAILURE TO STATE A CLAIM**

Pending before the Court is *Amneal Pharmaceuticals of New York, LLC's Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim* (Transaction ID 65699236). The motion has been fully briefed by the parties.¹

¹ 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 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 Motion 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 Plaintiffs can prove no set of facts in support of their claims which would entitle them to relief. Accordingly, the Presiding Judges **DENY** the *Amneal*

Pharmaceuticals of New York, LLC's Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim (Transaction ID 65699236) as to all Counts, except Count II – Violation of the West Virginia Uniform Controlled Substances Act; W.Va. Code § 60A-8-1 et seq.; W.Va. Code § 55-7-9, which the Court takes under advisement.

Plaintiffs bring causes of action for: Negligence & Negligent Marketing (Count I); Violation of the West Virginia Uniform Controlled Substances Act; W.Va. Code § 60A-8-1 et seq.; W.Va. Code § 55-7-9 (Count II); Unjust Enrichment (Count III); Public Nuisance (Count IV); Civil Conspiracy (Count V); and Punitive Damages (Count VI). The Presiding Judges further **FIND** that Plaintiffs' claims are not subject to the heightened pleading requirements for fraud claims under Rule 9(b) of the West Virginia Rules of Civil Procedure.

Even if Plaintiffs' claims were subject to a heightened pleading standard, the Presiding Judges **FIND** that Plaintiffs' Complaints contains numerous paragraphs describing the Manufacturing Defendants' misleading marketing efforts and misrepresentations with sufficient particularity. Therefore, the 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*.

It is so **ORDERED**.

ENTERED: September 28, 2020.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation