



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 19-C-9000

THIS DOCUMENT APPLIES TO:

CITY OF CLARKSBURG, WEST VIRGINIA,
v.
ALLERGAN PLC, et al.

Civil Action No. 19-C-259 MSH

CITY OF NITRO, WEST VIRGINIA,
v.
ALLERGAN PLC, et al.

Civil Action No. 19-C-260 MSH

CITY OF RICHWOOD, WEST VIRGINIA,
v.
ALLERGAN PLC, et al.

Civil Action No. 19-C-261 MSH

CITY OF SOUTH CHARLESTON, WEST VIRGINIA,
v.
ALLERGAN PLC, et al.

Civil Action No. 19-C-262 MSH

CITY OF CITY OF WHITE SULPHUR
SPRINGS, WEST VIRGINIA,
v.
ALLERGAN PLC, et al.

Civil Action No. 19-C-263 MSH

TOWN OF BELLE, WEST VIRGINIA,
v.
ALLERGAN PLC, et al.

Civil Action No. 19-C-264 MSH

TOWN OF CEREDO, WEST VIRGINIA,
v.
ALLERGAN PLC, et al.

Civil Action No. 19-C-265 MSH

TOWN OF CHESAPEAKE, WEST VIRGINIA,
v.
ALLERGAN PLC, et al.

Civil Action No. 19-C-266 MSH

**ORDER REGARDING DEFENDANTS' MOTIONS TO DISMISS
PLAINTIFFS' THIRD CLAIM FOR RELIEF FOR FAILURE TO STATE A CLAIM**

Pending before the Court are the following motions to dismiss the Third Claim for Relief in Plaintiffs' Complaints for failure to state a claim:¹

1. *Certain Manufacturer Defendants' Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim* (Transaction ID 65696365);²
2. *The Actavis Generic Entities' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction ID 65697681 and 65699646);³
3. *Cephalon, Inc. and Teva Pharmaceuticals USA, Inc.'s Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction ID 65699520 and 65697714); and
4. *Johnson & Johnson and Janssen Pharmaceutical, Inc.'s Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim* (Transaction ID 65696560).⁴

¹ Per the parties' stipulation (Transaction ID # 65557477), the Moving Defendants' Motions apply "with equal force and validity" to the following cases: *City of Clarksburg* (No. 19-C-259 MSH), *City of Nitro* (No. 19-C-260 MSH), *City of Richwood* (No. 19-C-261 MSH), *City of South Charleston* (No. 19-C-262 MSH), *City of White Sulphur Springs* (19-C-263 MSH), *Town of Belle* (No. 19-C-264 MSH), *Town of Ceredo* (19-C-265 MSH), and *Town of Chesapeake* (19-C-266 MSH), therefore, the Court's Order applies to the Complaints filed in all of the above-styled civil actions.

² "Certain Manufacturer Defendants" are: Endo Health Solutions Inc.; Endo Pharmaceuticals Inc.; Par Pharmaceuticals, Inc.; Par Pharmaceutical Companies Inc. f/k/a Par Pharmaceutical Holdings, Inc.; Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc., Allergan Sales, LLC, and Allergan USA, Inc.; Amneal Pharmaceuticals LLC; Amneal Pharmaceuticals New York LLC; Impax Laboratories LLC; Cephalon Inc.; Teva Pharmaceuticals USA Inc.; Warner Chilcott Company, LLC; 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; SpecGx LLC; Mallinckrodt Brand Pharmaceuticals, Inc.; Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., and Johnson & Johnson.

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

³ The Actavis Generic Entities are: Defendants Warner Chilcott Company, LLC; 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.

⁴ "Janssen" refers collectively to Defendants Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.

The Third Claim for Relief in Plaintiffs' Complaints allege violation of West Virginia's Controlled Substances Act, W.Va. Code § 55-7-9. The motions have been fully briefed by the parties.⁵

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

⁵ 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.

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 Motions to Dismiss and all the briefing, the Presiding Judges take under advisement the above-referenced motions to dismiss Plaintiffs’ Third Claim for Relief – Violation of West Virginia Controlled Substances Act; W.Va. Code § 55-7-9.

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 6, 2020.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation