



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 FAIRMONT, WEST VIRGINIA,

Plaintiff,

v.

Civil Action No. 20-C-55 MSH

ALLERGAN PLC, et al.,

Defendants.

CITY OF BECKLEY, WEST VIRGINIA,

Plaintiff,

v.

Civil Action No. 20-C-34 MSH

ALLERGAN PLC, et al.,

Defendants.

**ORDER REGARDING DISTRIBUTORS'¹ MOTIONS
TO DISMISS CIVIL CONSPIRACY CLAIMS**

Pending before the Court is *Distributors' Motion to Dismiss the City's Civil Conspiracy Claim* (Transaction ID 65837074) and Memorandum of Law in Support (Transaction ID 65837163), and *Defendant Anda, Inc.'s Joinder in Distributors' Motion to Dismiss the City's Civil Conspiracy Claim* (Transaction ID 65837139) filed in the *City of Fairmont* case. Also pending before the Court is *Distributors' Motion to Dismiss the City's Civil Conspiracy Claim* (Transaction ID 65837615), *Defendant Anda, Inc.'s Joinder in Distributors' Motion to Dismiss the City's Civil Conspiracy Claim* (Transaction ID 65842458), and *Defendant H.D. Smith, LLC, f/k/a H.D. Smith*

¹ Distributors are: AmersourceBergen Drug Corporation and Cardinal Health, Inc.

Wholesale Drug Co.’s Motion to Dismiss and Joinder in Distributors’ Motion to Dismiss the City’s Civil Conspiracy Claim (Transaction ID 65837886) filed in the *City of Beckley* case. Defendants move to dismiss with prejudice Plaintiffs’ civil conspiracy claims (Fifth Claim for Relief), as well as all of Plaintiffs’ other claims for the reasons previously given in the Defendants’ several motions to dismiss.² The motions have been fully briefed by the parties.

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):

² To the extent the parties incorporate by reference or adopt arguments previously stated in motions to dismiss filed in the *City of Clarksburg v. Allergan PLC, et al.*, Civil Action Nos. 19-C-259 MSH through 19-C-266 MSH, the Court incorporates by reference the *Order Regarding Distributor Defendants’ Motions to Dismiss Civil Conspiracy Claim* (Transaction ID 65972719), filed on September 29, 2020.

To the extent the parties incorporate by reference or adopt arguments previously stated in motions to dismiss filed in the *Town of Delbarton, et al. v. Cardinal Health, Inc., et al.*, Civil Action Nos. 20-C-16 MSH through 20-C-27 MSH, the Court incorporates by reference the *Order Regarding Distributor Defendants’ Motions to Dismiss Civil Conspiracy Claim* (Transaction ID 66000959), filed on October 8, 2020.

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.

To the extent a party re-states or relies on arguments previously stated in the motion to dismiss filed in *County Commission of Mason County, et al. v. Purdue Pharma L.P., et al.*, Civil Action Nos. 19-C-4 MSH through 19-C-9 MSH, the Court incorporates by reference the Order denying Defendants AmerisourceBergen Drug Corporation, Cardinal Health, Inc. and McKesson Corporation’s Motion to Dismiss Plaintiffs’ Complaint filed on February 5, 2020 (Transaction ID No. 64681554). To the extent a party re-states or relies on arguments previously stated in the motion to dismiss filed in *Mayor Peggy Knotts Barney, on behalf of the City of Grafton v. Purdue Pharma, L.P., et al.*, Civil Action No. 19-C-151 MSH and *Mayor Phillip Bowers, on behalf of the City of Philippi*, Civil Action No. 19-C-152 MSH, the Court incorporates by reference the Order denying Defendants AmerisourceBergen Drug Corporation, Cardinal Health, Inc. and Cardinal Health 110, LLC’s Motion to Dismiss Plaintiffs’ Complaint filed on February 5, 2020 (Transaction ID 64681576).

To the extent a party re-states or relies on arguments previously stated in motions to dismiss filed in *West Virginia University Hospitals, Inc., et al. v. Purdue Pharma L.P., et al.*, Civil Action Nos. 19-C-69 MSH through 19-C-88 MSH and 19-C-134 MSH through 19-C-139 MSH, the Court incorporates by reference the Order denying the motions (Transaction ID 64738952) filed on February 19, 2020.

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 Motions to Dismiss, Joinders and all of the briefing, the Presiding Judges **FIND** that, construing the Complaints in the light most favorable to Plaintiffs, and taking the allegations as true, the Complaints sufficiently state claims upon which relief can be granted, and 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 above-listed motions to dismiss are **DENIED** as to all Counts except Plaintiffs' Third Claim for Relief – Violation of West Virginia Controlled Substances Act; W.Va. Code § 55-7-9, which the Court takes under advisement.

The Presiding Judges further **FIND** that Plaintiffs' claims for common law public nuisance (First Claim for Relief), negligence (Second Claim for Relief), violation of West Virginia Controlled Substances Act; W.Va. Code § 55-7-9 (Third Claim for Relief), unjust enrichment (Fourth Claim for Relief), civil conspiracy (Fifth Claim for Relief), and punitive damages (Sixth Claim for Relief) are not subject to the heightened pleading requirements for fraud claims under Rule 9(b) of the West Virginia Rules of Civil Procedure. Inasmuch as these claims are all governed by Rule 8(a) of the West Virginia Rules of Civil Procedure, Plaintiffs' allegations satisfy the requirements of Rule 8(a) with respect to Plaintiffs' Fifth Claim for Relief and, therefore, Defendants' motions to dismiss Plaintiffs' Civil Conspiracy Claims are **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: October 20, 2020.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation