



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 19-C-9000

THIS DOCUMENT APPLIES TO:

THE TOWN OF MADISON, WEST
VIRGINIA,

Plaintiff,

v.

ALLERGAN PLC, et al.,

Defendants.

Civil Action No. 20-C-31 MSH

THE TOWN OF STAR CITY, WEST
VIRGINIA,

Plaintiff,

v.

ALLERGAN PLC, et al.,

Defendants.

Civil Action No. 20-C-52 MSH

THE COUNTY OF PENDLETON, WEST
VIRGINIA,

Plaintiff,

v.

ALLERGAN PLC, et al.,

Defendants.

Civil Action No. 20-C-53 MSH

THE TOWN OF ROMNEY, WEST VIRGINIA,

Plaintiff,

v.

ALLERGAN PLC, et al.,

Defendants.

Civil Action No. 20-C-54 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 dismiss¹ the Third Claim for Relief in Plaintiffs' Complaints for failure to state a claim:

1. *Certain Manufacturer Defendants' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction ID 65930324)²
2. *The Actavis Generic Entities' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim* (Transaction ID 65902239);³

¹ Per the parties' Stipulations, the motions to dismiss apply "with equal force and validity" to: *Town of Star City*, Civil Action No. 20-C-52 MSH; *County of Pendleton*, Civil Action No. 20-C-53 MSH; and *Town of Romney*, Civil Action No. 20-C-54 MSH.

² "Certain Manufacturer Defendants" are: Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; and Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; Watson Laboratories, Inc.; Warner Chilcott Company, LLC; 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. f/k/a Watson Laboratories, Inc.-Florida.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals Inc.; Par Pharmaceutical Companies, Inc.; Par Pharmaceutical Inc.; Amneal Pharmaceuticals LLC; Amneal Pharmaceuticals of New York, LLC; Impax Laboratories, LLC; Mallinckrodt LLC; SpecGx LLC; Mallinckrodt Brand Pharmaceuticals, Inc.; and Noramco, Inc. Noramco, Inc. ("Noramco") joined this Motion to the extent applicable and reserved 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

3. *Cephalon, Inc. and Teva Pharmaceuticals USA, Inc.’s Motion to Dismiss Plaintiff’s Complaint for Failure to State a Claim* (Transaction ID 65902140); and
4. *Janssen Defendants’ Motion to Strike and Motion to Dismiss Plaintiff’s Complaint for Failure to State a Claim* (Transaction ID 65930616).⁴

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

The Janssen Defendants also separately move to strike Paragraphs 208-210 and 212 of Plaintiffs’ Complaint as immaterial and impertinent to Plaintiffs’ claims for relief under Rule 12(f) of the West Virginia Rule of Civil Procedure. The Janssen Defendants contend these allegations concern Tasmanian Alkaloids, which is a past subsidiary of Johnson & Johnson and not a Defendant here, and which Plaintiffs accuse of no wrongdoing. Mem. p. 5.

Plaintiffs allege Tasmanian Alkaloids, a subsidiary of the Janssen Defendants, was responsible for processing the active pharmaceutical ingredients (“API”) for other Manufacturer

LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc.; and Actavis Laboratories FL, Inc.

⁴ “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.

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.

Defendants' prescription opioids. (Complt, ¶ 208) and Resp. p.10. They allege the Janssen Defendants profited not only from the sale of their own opioid products, but also from the sale of API to other Manufacturer Defendants. (Complt. ¶¶ 211-212, 214) and Resp. p. 11. Plaintiffs contend their allegations regarding Tasmanian Alkaloids show the Janssen Defendants in particular had an incentive to engage in concerted action with the other Manufacturer Defendants because the Janssen Defendants profited from the other Manufacturers' increased opioid sales through its sales of the API needed to meet increased demand. (Complt. ¶ 212) *Id.*

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 Motions to Dismiss and all the briefing, the Presiding Judges take under advisement Defendants’ motions to dismiss Plaintiffs’ Third Claim for Relief – Violation of West Virginia Controlled Substances Act; 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 26, 2020.

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

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation