



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 19-C-9000

THIS DOCUMENT APPLIES TO:

**ROANE COUNTY COMMISSION, et al.,
Plaintiffs,**

v.

**MYLAN PHARMACEUTICALS, INC., et al.,
Defendants.**

**CIVIL ACTION NOS. 19-C-96 MSH
19-C-97 MSH
19-C-98 MSH
19-C-99 MSH
19-C-100 MSH
19-C-101 MSH
19-C-102 MSH
19-C-103 MSH
19-C-104 MSH
19-C-105 MSH
19-C-106 MSH
19-C-107 MSH
19-C-108 MSH**

ORDER REGARDING DEFENDANT FRUTH PHARMACY'S MOTION TO DISMISS

Pending before the Court is *Defendant Fruth Pharmacy's Motion to Dismiss* (Transaction ID 64447776) filed in the above-styled civil actions pursuant to Rules 8(a)(1) and 12(b)(6) of the West Virginia Rules of Civil Procedure. The motion has been fully briefed by the parties. Although Defendant Fruth Pharmacy did not move to dismiss Count VII of the Complaint – Negligence Per Se, Plaintiffs have stated in other Responses they intend to withdraw Count VII of the Complaint and are not opposing other Defendants' arguments regarding that Count. *See, e.g., Plaintiffs Memorandum of Law Opposing Manufacturer Defendants Joint Motion to Dismiss* (Transaction ID 64517303). Therefore, the Court **GRANTS** any pending motions to dismiss Count VII - Negligence Per Se.

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 instant motion to dismiss and all of the briefing, and having conferred with one another to ensure uniformity of their decision, as contemplated by *Rule 26.07(a)* of the *West Virginia Trial Court Rules*, the Presiding Judges unanimously **FIND** that, construing the Complaint in the light most favorable to Plaintiffs, and taking the 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 unanimously

DENY *Defendant Fruth Pharmacy's Motion to Dismiss* (Transaction ID 64447776), as to all other Counts of the Complaint. 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: February 6, 2020.

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