



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 DEFENDANTS RITE AID OF WEST VIRGINIA, INC.,
RITE AID OF MARYLAND, INC., CVS INDIANA, LLC, KROGER LIMITED
PARTNERSHIP, II, FRUTH PHARMACY, INC., WALGREEN CO., AND WAL-MART
STORES EAST, LP'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Pending before the Court is *Defendants Rite Aid of West Virginia, Inc., Rite Aid of Maryland, Inc., CVS Indiana, LLC, Kroger Limited Partnership, II, Fruth Pharmacy, Inc., Walgreen Co., and Wal-Mart Stores East, LP's Motion to Dismiss Plaintiffs' Complaint* (Transaction ID 64447731) filed in the above-styled civil actions pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. The motion has been fully briefed by the parties.¹

¹ To the extent Defendants Rite Aid of Maryland, Inc. and Wal-Mart Stores East, LP have incorporated by reference arguments previously stated in the Pharmacy Defendants' Motion to Dismiss filed in *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 its *Order Denying the Pharmacy Defendants' Motion to Dismiss Plaintiffs' Complaint* (Transaction ID 64374772), 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.

Plaintiffs do not oppose the motion as it pertains to the Count VII - Negligence Per Se. Therefore, the Court **GRANTS** the motion to dismiss the 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** *Defendants Rite Aid of West Virginia, Inc., Rite Aid of Maryland, Inc., CVS Indiana, LLC, Kroger Limited Partnership, II, Fruth Pharmacy, Inc., Walgreen Co., and Wal-Mart Stores East, LP's Motion to Dismiss Plaintiffs' Complaint* (Transaction ID 64447731) 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 & ServeXpress.

It is so **ORDERED**.

ENTERED: February 6, 2020.

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