



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 21-C-9000 MFR

THIS DOCUMENT APPLIES TO:

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY, Attorney General

Plaintiff,

v.

TEVA PHARMACEUTICAL
INDUSTRIES, LTD; *et al.*

Defendants.

Civil Action No. 19-C-104 BNE

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY, Attorney General

Plaintiff,

v.

JANSSEN PHARMACEUTICALS, INC.;
et al.

Defendants.

Civil Action No. 19-C-105 BNE

**ORDER REGARDING DISCOVERY COMMISSIONER'S ORDER DENYING
DEFENDANTS' MOTIONS TO COMPEL PRODUCTION OF EVIDENCE
ON THE EFFECT OF MANUFACTURER DEFENDANTS' MARKETING**

The Panel has reviewed the following objections and responses to the Discovery Commissioner's *Order Denying Defendants' Motion to Compel the Production of Evidence on the Alleged Effect of Manufacturer Defendants' Marketing* (Transaction ID 67228909) entered on January 12, 2022 ("Marketing Discovery Order"):

1. Manufacturer Defendants'¹ Appeal (Transaction IDs 67247282 and 67246874) filed in the above-styled civil actions on January 19, 2022.
2. Plaintiff's² Response (Transaction ID 67266791) filed in the above-styled civil actions on January 26, 2022.
3. Manufacturer Defendants' Reply (Transaction IDs 67282381 and 67281074) filed in the above-styled civil actions on February 1, 2022.

The Panel has also reviewed the transcript of the hearing conducted by the Discovery Commissioner on December 22, 2021, regarding the various Motions to Compel Production of Evidence on the Effect of Defendants' Marketing (Transaction IDs 67109918, 67123858, 67124037, 67146419, 67146468). Because the scope of discovery and relevance of certain evidence are questions of law, the standard of review is *de novo*.³

Having reviewed the foregoing, and consistent with Judge Polster's ruling in MDL 2804⁴ and *City of Chicago v. Purdue Pharma, L.P.*⁵ the Panel **AFFIRMS** the Marketing Discovery Order with the following modification: the State shall amend its response to the disputed discovery requests within ten (10) days of the entry of this Order to certify: (1) the State will not

¹ For purposes of this appeal, "Manufacturer Defendants" means Defendants Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Teva Pharmaceuticals USA, Inc. ("Teva"); Cephalon, Inc. ("Cephalon"); 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. (f/k/a Watson Laboratories, Inc.-Salt Lake City), and Actavis Laboratories FL, Inc. (f/k/a Watson Laboratories, Inc.-Florida) (collectively, the "Actavis Generic Entities"); Allergan Finance, LLC; Allergan USA, Inc.; and Allergan Sales, LLC (collectively, "Allergan").

² Plaintiff, the State of West Virginia *ex rel.* Patrick Morrissey, Attorney General ("the State").

³Syl. Pt. 2, *Mountaineer Fire & Rescue Equipment, LLC v. City National Bank of West Virginia*, 244 W.Va. 508, 854 S.E. 2d 870, 876 (2020) ("An interpretation of the *West Virginia Rules of Civil Procedure* presents a question of law subject to *de novo* review.") Syl. Pt. 1, *Gentry v. Mangum*, 195 W.Va. 512, 514, 466 S.E. 2d 171, 173 (1995) ("An interpretation of the *West Virginia Rules of Evidence* presents a question of law subject to *de novo* review.")

⁴ *In re: National Prescription Opiate Litigation*, No. 1:17-md-2804 (N.D. Ohio October 16, 2018) Doc #1047.

⁵ 2020 WL 3578497 (N.D. Ill. July 1, 2020).

assert, either in expert opinions or factual presentations at trial, that any individual prescriber was misled by any Manufacturer Defendant's marketing, or that any individual prescription for an opioid medication was medically unnecessary; and (2) the State will rely, at trial and in expert opinions, solely on a theory of aggregate proof.

Any objections to this Order are noted and preserved for the record.

It is so **ORDERED**.

ENTERED: February 10, 2022.

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation