

**In the Circuit Court of Boone County, West Virginia**

AMERISOURCEBERGEN DRUG )  
CORP., )  
BELLCO DRUG CORPORATION, )  
Plaintiffs, )  
)  
)  
vs.) )  
)  
ACE AMERICAN INSURANCE CO; ET )  
AL, )  
ACE PROPERTY & CASUALTY INS. )  
CO; ET AL, )  
AMERICAN GUARANTEE & LIABILITY )  
INS CO, )  
ENDURANCE AMERICAN INS CO, )  
ST PAUL FIRE & MARINE INS CO ET )  
AL, )  
Defendants )  
)

Case No. CC-03-2017-C-36

**Corrected Order Granting Plaintiffs' Motion for Injunction**

Now comes the Court and hereby GRANTS Plaintiffs' Motion for Injunction.

**OVERVIEW OF THE DISPUTE**

1. Plaintiff AmerisourceBergen Drug Corporation ("ABDC"), a wholesale pharmaceutical distributor, has been named as a defendant in hundreds of prescription opioid lawsuits filed by government entities, Native American Tribes, individuals, and third party payors, which seek to hold ABDC liable for damages related to the opioid crisis.[1]

2. In this action, ABDC seeks breach of contract damages and declaratory relief against the following insurers that issued primary and first layer excess insurance policies to AmerisourceBergen Corporation ("ABC"), which is ABDC's parent company, for the period from May 1, 2006 to May 1, 2013: St. Paul Fire and Marine Insurance Company, ACE American Insurance Company, ACE Property and Casualty Insurance Company, American Guarantee & Liability Insurance Company, and Endurance

American Insurance Company (collectively, "Insurer Defendants").[2] See Doc. ID 768-1, Complaint; Doc. ID 885-1, Amended Complaint.[3]

3. ABDC alleges the Insurer Defendants breached their duty to defend and indemnify ABDC against those prescription opioid lawsuits originally filed in state or federal courts in West Virginia, including those prescription opioid lawsuits that have been transferred to the National Opioid MDL. *Id.*

4. ABDC filed its Complaint in this action on March 16, 2017. See Doc. ID 768-1, Complaint. On July 18, 2018, pursuant to the Case Management Order then in effect, ABDC filed an Amended Complaint, which added an ABDC subsidiary, Bellco Drug Corporation ("Bellco"), as a plaintiff and identified additional West Virginia prescription opioid lawsuits that had been filed against ABDC since March 2017, for which ABDC sought coverage, including prescription opioid lawsuits that had been consolidated in the National Opioid MDL. See Doc. ID 885-1, Amended Complaint.

5. On February 22, 2018, the Court entered an agreed order bifurcating proceedings in this coverage action into two phases, and staying litigation with regard to phase two pending further rulings from this Court. See Doc. ID 862-1, Stay Order. The Stay Order contemplates a first phase of litigation regarding ABDC's claim for insurance coverage for the West Virginia Attorney General's prescription opioid lawsuit against ABDC, in which the Court would resolve key legal issues common to all prescription opioid lawsuits. In this way, ABDC's claim for coverage for the West Virginia Attorney General's prescription opioid lawsuit against ABDC would act as a bellwether. In the second phase of this litigation, the Court will apply its rulings from phase one to resolve coverage for all remaining prescription opioid lawsuits.

6. On November 5, 2020, St. Paul, one of the Insurer Defendants in this action, filed a collateral coverage lawsuit in the Superior Court of the State of California for the County of Orange (the "California Coverage Action"). See *St. Paul Fire & Marine*

*Ins. Co. et al. v. AmerisourceBergen Corp., et al.*, No. 30-2020-01168930-CU-IC-CXC (Cal. Super. Ct. - Orange Cnty.) (“CA Coverage Action Docket”), November 5, 2020, Complaint.

7. St. Paul’s Complaint in the California Coverage Action (the “California Complaint”) names all parties to this suit as defendants, and seeks declaratory judgment against all of the parties to this suit regarding ABDC’s entitlement to insurance coverage for the defense and indemnification of prescription opioid lawsuits filed against Plaintiffs and certain current and former subsidiaries of ABC. *See id.*

8. St. Paul’s California Coverage Action seeks rulings regarding issues and cases that have been pending before this Court since March 16, 2017, including issues and cases that are currently the subject of this Court’s February 22, 2018 Stay Order. For example, Count V of St. Paul’s California Complaint seeks a declaration regarding ABDC’s entitlement to insurance coverage for the defense and indemnification of the National Opioid MDL, which necessarily includes those West Virginia cases that have been transferred to the National Opioid MDL for common discovery with prescription opioid lawsuits filed in federal courts throughout the United States and its territories. *See id.*

9. On November 25, 2020, Plaintiffs filed a Motion for Injunction asking this Court to enjoin St. Paul and all other defendants from pursuing collateral coverage litigation relating to Plaintiffs’ entitlement to insurance coverage for the prescription opioid liabilities during the pendency of this first-filed coverage litigation. *See* Doc. ID 1320-1, Motion for Injunction.

10. On December 9, 2020, St. Paul filed a Memorandum of Law in Opposition to Plaintiffs’ Motion for Injunction (“St. Paul’s Opposition”). *See* W. Va. Coverage Action Docket, December 9, 2020 Memorandum of Law in Opposition to Plaintiffs’ Motion for Injunction (filed under seal).

11. On December 10, 2020, ACE joined in St. Paul's Opposition. *See* Doc. ID 1335-1, ACE Joinder to St. Paul's Opposition.

12. No other Insurer Defendant filed an opposition or joined in St. Paul's Opposition.

13. A hearing was held on the Motion for Injunction on December 14, 2020.

14. At the hearing, counsel for Plaintiffs and St. Paul presented argument on the Motion for Injunction. Counsel for ACE joined in St. Paul's argument. Counsel for Endurance and American Guarantee were present but did not present any argument.

15. The Court has considered the arguments and evidence of the parties submitted in connection with their briefing on Plaintiffs' Motion for Injunction as well as the arguments made during the December 14, 2020 Hearing on Plaintiffs' Motion for Injunction, and has also considered the letter dated January 4, 2021 from Ms. Hall and the letter dated January 5, 2021 from Mr. Mount, and in consideration of the same hereby **GRANTS** Plaintiffs' Motion for Injunction as stated more fully herein.

#### **FINDINGS OF FACT**[4]

##### **A. The Underlying Prescription Opioid Lawsuits**

16. On June 26, 2012, the West Virginia Attorney General filed lawsuits in this Court against ABDC and other pharmaceutical distributors, seeking to hold the distributors liable for damages incurred by the state of West Virginia stemming from opioid addiction and disease. *See State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. AmerisourceBergen Drug Corporation, et al.*, Civil Action No. 12-C-141 (Circuit Court, Boone County, West Virginia); *State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. Cardinal Health, Inc.*, Civil Action No. 12-C-140 (Circuit Court, Boone County, West Virginia); *State of West Virginia ex rel. Patrick Morrissey, Attorney General v. McKesson Corp.*, Civil Action No. 16-C-1 (Circuit Court,

Boone County, West Virginia).

17. This Court presided over the West Virginia Attorney General's lawsuit against ABDC (the "WVAG Lawsuit") until its final resolution. *See generally State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. AmerisourceBergen Drug Corporation, et al.*, Civil Action No. 12-C-141 (Circuit Court, Boone County, West Virginia).[5]

18. On December 1, 2016, ABDC and the State of West Virginia reached an agreement in principle on the material terms of a settlement to resolve the WVAG Lawsuit during a mediation ordered by this Court. *See* Doc. ID 1325-1, Order Denying Summary Judgment ¶ 8.

19. On January 9, 2017, ABDC and the State of West Virginia executed a Settlement Agreement and Release confirming the terms of the settlement of the WVAG Lawsuit, and providing that "all settlement monies" are to be deposited in a West Virginia Department of Health and Human Resources account "dedicated to drug abuse prevention, treatment, programming, and enforcement." *See id.* ¶¶ 9–12.

20. By statute the State was required to transfer the ABDC settlement payment into the "Ryan Brown Addiction Prevention and Recovery Fund" to be used for the purpose of funding "facilities to provide substance use disorder treatment services" or "facilities to provide recovery services." *See id.* ¶ 13.

21. The Court takes judicial notice that beginning after the December 1, 2016 mediation of the WVAG Lawsuit, West Virginia political subdivisions and other plaintiffs began filing prescription opioid lawsuits against Plaintiffs similar to the WVAG Lawsuit.[6]

22. The Court takes judicial notice that all West Virginia prescription opioid lawsuits pending in federal court for which Plaintiffs seek insurance coverage in this action are, or were, consolidated in the National Opioid MDL. *Compare In re National*

*Prescription Opiate Litigation*, 1:17-MD-2804 (N.D. Ohio); *with* Doc. ID 768-1, Complaint; Doc. ID 885-1, Amended Complaint.[7]

23. The Court takes judicial notice that, in addition to these West Virginia prescription opioid lawsuits, after the resolution of the WVAG Lawsuit thousands of state and local government entities, third party payors, individual and putative class action plaintiffs, and Native American Tribes filed prescription opioid lawsuits against ABDC, including hundreds of prescription opioid lawsuits that are currently consolidated in the National Opioid MDL. *E.g., In re Nat'l Prescription Opiate Litig.*, 956 F.3d 838, 841 (6th Cir. 2020) (noting the number of cases then-filed against manufacturers and distributors of prescription opioids); *see also In re National Prescription Opiate Litigation*, 1:17-MD-2804 (N.D. Ohio) (docketing cases).

**B. This Coverage Action**

24. On July 28, 2016, ABDC provided written notice of the WVAG Lawsuit to the Insurer Defendants and sought insurance coverage for the defense and indemnification of the WVAG Lawsuit from those insurers. *See* Doc. ID 1325-1, Order Denying Summary Judgment ¶ 15.

25. On or about December 1, 2016, ABDC and the State of West Virginia reached an agreement in principle during a court-ordered mediation on the material terms of a settlement to resolve the WVAG Lawsuit. *See id.* ¶ 16.

26. On December 2, 2016, ABDC sought confirmation from the Insurer Defendants that they consented to that settlement. *See id.* ¶ 17.

27. Later on December 2, 2016, St. Paul specifically denied ABDC's request for insurance coverage for the WVAG Lawsuit. *See id.* ¶ 18.

28. On March 16, 2017, ABDC filed its complaint for breach of contract and declaratory judgment against the Insurer Defendants in this Court seeking insurance coverage for the defense and indemnification of the WVAG Lawsuit and all other then-

pending prescription opioid lawsuits. *See* Doc. ID 768-1, Complaint.

29. On July 18, 2018, Plaintiffs filed an amended complaint for breach of contract and declaratory judgment in this action. *See* Doc. ID 885-1, Amended Complaint.

30. In the Amended Complaint, ABDC added Bellco as an additional Plaintiff, identified additional West Virginia prescription opioid lawsuits that had been filed against ABDC since the March 16, 2017 Complaint, and confirmed that certain of the prescription opioid lawsuits for which ABDC was seeking insurance coverage had been consolidated in the National Opioid MDL. *See generally id.*; *see also id.* at ¶¶ 90-91.

31. All Insurer Defendants have denied coverage for both the WVAG Lawsuit and all other prescription opioid lawsuits in this action. *See* Doc. ID 894-1, St. Paul Answer; Doc. ID 896-1, ACE Answer; Doc. ID 895-1, American Guarantee Answer; Doc. ID 893-1, Endurance Answer.

32. On February 22, 2018, this Court issued an agreed Bifurcation and Stay Order. *See* Doc. ID 862-1, Stay Order.

33. The Stay Order provides that litigation regarding Plaintiffs' entitlement to insurance coverage for these prescription opioid lawsuits will proceed in two phases. In the first phase, the parties will address ABDC's claim for insurance coverage for the WVAG Lawsuit. Once coverage for WVAG Lawsuit is resolved, the parties will proceed, if necessary, to litigate coverage for the remaining prescription opioid lawsuits. During that first phase, litigation for coverage for the remaining prescription opioid lawsuits is stayed. *See id.*

34. The Stay Order was entered to enable the parties and the Court to efficiently resolve the coverage issues for all prescription opioid lawsuits against ABDC and its affiliates by using the coverage dispute for the WVAG Lawsuit as a bellwether that will resolve the core coverage legal issues for prescription opioid lawsuits. Once

coverage for the WVAG Lawsuit is resolved, the rulings in that phase of these proceedings can then be applied to the remaining prescription opioid lawsuits pending against ABDC and its affiliates. *See id.*

35. The Stay Order remains in effect. *See id.*

36. ABDC and the Insurer Defendants have been actively litigating the core legal coverage issues for prescription opioid lawsuits for over three-and-a-half years.[8]

37. ABDC produced over ten million pages of documents in response to requests made by the Insurer Defendants, including all documents produced in all federal and state prescription opioid lawsuits nationwide. *See* W. Va. Coverage Action Docket, December 14, 2020 Reply in Support of Injunction, Exhibit 2 (filed under seal).

38. The parties have taken five Phase I corporate representative depositions. *See id.*

39. The parties have noticed fourteen additional depositions since 2018, with additional depositions to be noticed and taken in 2021. *See id.*

40. The Discovery Commissioner spent ten months addressing the parties' motions to compel and motions for protective order following the conclusion of written discovery. *See id.*

41. This Court has spent an additional nine months resolving complicated, multi-faceted discovery motions. *See id.*

42. On September 28, 2020, the Court resolved the last outstanding discovery disputes, adopting the Recommendations and Proposed Orders of the Discovery Commissioner with certain modifications, and addressing the scope of "other insured" discovery and ordering St. Paul to execute the Protective Order in the National Opioid MDL. *See* Doc. ID. 1270-1, Order Regarding Other Policyholder Discovery; Doc. ID 1268-1, Order Regarding use of Confidential MDL Documents; Doc. ID 1269-1, Order Adopting Discovery Commissioner's Proposed Orders.

43. Per the terms of the Court's August 2, 2019 Order on Procedure Regarding Discovery Commissioner Reports and Setting Status Conference, the parties were required to serve all final productions of documents and supplemental discovery responses within thirty days of the Court's September 28, 2020 Order. *See* Doc. ID 1071-1, Order on Procedure.

44. On July 22, 2019, St. Paul filed a Motion for Summary Judgment, arguing that the claims against St. Paul should be dismissed based on St. Paul's argument that the State of West Virginia did not seek damages for "bodily injury" in the WVAG Lawsuit. *See* Doc. ID 1061-1, Motion for Summary Judgment.

45. St. Paul described this question as a "threshold" issue that would address whether St. Paul would have responsibility for ABDC's "opioid-related costs." *See* 1064-1, Memorandum of Law, at 3.

46. American Guarantee joined the motion on August 12, 2019. *See* Doc. ID 1074-1, American Guarantee's Joinder.

47. This Court heard argument on St. Paul's Motion for Summary Judgment on January 23, 2020.

48. After the hearing on St. Paul's Motion for Summary Judgment, four different courts held that general liability policies provide coverage for the defense of prescription opioid lawsuits consolidated in the National Opioid MDL. *See Giant Eagle, Inc. v. Am. Guarantee and Liability Ins. Co.*, No. 2:19-cv-00904 (W.D. Pa. Nov. 9, 2020) (addressing coverage for prescription opioid lawsuits in the National Opioid MDL); *Rite Aid Corp. v. Ace Am. Ins. Co.*, No. N19C-04-150 (Del. Super. Ct. Sept 22, 2020) (addressing coverage for prescription opioid lawsuits in the National Opioid MDL); *Cincinnati Ins. Co. v. Discount Drug Mart, Inc.*, No. CV-19-913990 (Ohio Ct. Com. Pl. Sept. 8, 2020) (addressing coverage for prescription opioid lawsuits in the National Opioid MDL); *Acuity v. Masters Pharma., Inc.*, No. C-190176 (1st Appellate Dist. Ohio

June 24, 2020) (addressing coverage for prescription opioid lawsuits in the National Opioid MDL).

49. In addition, after the close of briefing on St. Paul's Motion for Summary Judgment, one court held that a general liability policy was required to indemnify a policyholder for the settlement of the WVAG Lawsuit. *See Cincinnati Ins. Co. v. H.D. Smith Wholesale Drug Co.*, 410 F. Supp. 3d 920 (C.D. Ill. Sept. 23, 2019).

50. Following each of these decisions, the parties submitted notices of supplemental authority and responses to the same.

51. On November 23, 2020, this Court issued an Order Denying St. Paul's Motion for Summary Judgment, holding that "insurance coverage is available under the general liability insurance coverage section of the St. Paul Policy for lawsuits by government entities seeking damages for injuries suffered by their citizens." *See* Doc. ID 1325-1, Order Denying Summary Judgment ¶¶ 82.

#### **C. St. Paul's Collateral California Coverage Action**

52. On November 5, 2020, approximately two weeks before this Court issued its order on St. Paul's Motion for Summary Judgment, St. Paul filed the California Coverage Action seeking a declaratory judgment as to its obligation to defend and indemnify ABDC for all prescription opioid lawsuits on a nationwide basis. *See* CA Coverage Action Docket, November 5, 2020 Complaint ¶¶ 3, 42-56.

53. St. Paul's California Coverage Action names as defendants all parties to this suit, including AmerisourceBergen Corporation, ABDC, Belco Drug Corporation, and all Insurer Defendants. *See id.* ¶¶ 15, 18, 22.

54. St. Paul's California Coverage Action seeks a declaration as to its rights and obligations under all insurance policies issued in this dispute, including those insurance policies issued by ACE, American Guarantee, and Endurance. *See id.* ¶ 22.

55. St. Paul's California Coverage Action only seeks declaratory relief and

does not assert breach of contract damages or any other affirmative claims for relief against any party. *See generally id.*

**D. Comparison of Parties and Insurance Policies in this Action and St. Paul's California Coverage Action**

56. As noted above, St. Paul names as a defendant in its California Coverage Action every party to this lawsuit, including ABDC and all Insurer Defendants. *Compare* Doc. ID 885-1, Amended Complaint; *with* CA Coverage Action Docket, November 5, 2020 Complaint.

57. St. Paul also names certain additional entities affiliated with ABDC in its California Coverage Action, which St. Paul identifies as "Bergen-Brunswig Affiliates," referring to a California corporation named Bergen Brunswig Corporation. *See* CA Coverage Action Docket, November 5, 2020 Complaint¶ 2.

58. Bergen Brunswig Corporation is not, however, a party to St. Paul's California Coverage Action. *See generally id.*

59. The Court notes that during the December 14, 2020 Hearing on this motion, counsel for St. Paul stressed that Bergen Brunswig Corporation is not addressed in the Complaint or Amended Complaint in this action.

60. The Court takes judicial notice, however, that in August 2001, Bergen Brunswig Corporation merged with and into AmeriSource Health Corporation, a Delaware corporation with its principal place of business in Pennsylvania. *See* ABC's December 28, 2001 SEC Form 10-K.

61. The Court takes judicial notice that AmeriSource Health Corporation was the surviving entity of the merger, and that Bergen Brunswig Corporation ceased to exist upon the completion of the merger in August 2001. *See id.*

62. The Court takes judicial notice that following the merger, AmeriSource Health Corporation changed its name to AmerisourceBergen Corporation ("ABC"). *See*

*id.*

63. The Court takes judicial notice that ABC has always been incorporated under the laws of Delaware with its principal place of business in Pennsylvania. *See id.*; ABC's November 19, 2020 SEC Form 10-K.

64. The Court takes judicial notice that the entities that St. Paul refers to as "Bergen-Brunswig Affiliates" in its California Complaint, including the ABDC and Bellco Drug Corporation Plaintiffs in this action, are actually the current or former subsidiaries of ABC. *See* ABC's November 19, 2020 SEC Form 10-K; Exhibit 21 to ABC's November 19, 2020 SEC Form 10-K; ABC's July 18, 2012 SEC Form S-3; ABC's November 27, 2007 SEC Form 10-K.

65. In the California Coverage Action, St. Paul seeks a judicial declaration regarding ABDC's right to insurance coverage for prescription opioid lawsuits under every insurance policy at issue in this lawsuit as well as certain other insurance policies issued to ABC and its subsidiaries between 1995 and 2018. *See* CA Coverage Action Docket, November 5, 2020 Complaint ¶ 39; *see also* Doc. ID 885-1, Amended Complaint, Exhibit A.

66. In addition to naming all Insurer Defendants in this lawsuit as defendants in the California Coverage Action, St. Paul also identifies as defendants in its California Complaint additional insurance companies that sold insurance policies to ABC and ABC's subsidiaries between 1995 and 2018. CA Coverage Action Docket, November 5, 2020 Complaint ¶¶ 22-25.

67. Many of those additional insurers are affiliates of the Insurer Defendants. For example, the Court takes judicial notice that all six plaintiffs in the California Coverage Action, including St. Paul, are subsidiaries of The Travelers Companies, Inc. *See* The Travelers Companies, Inc. February 13, 2020 SEC Form 10-K, Exhibit 21.1. The Court takes further judicial notice that ten defendants in the California Coverage

Action, including ACE, are subsidiaries of Chubb Limited; six defendants in the California Coverage Action, including American Guarantee, are subsidiaries of Zurich Insurance Group AG; and three defendants in the California Coverage Action, including Endurance, are subsidiaries of the Sompco Holdings Inc. Group. *See* Chubb Limited, February 27, 2020 SEC Form 10-K, Exhibit 21.1; Corporate Structures, 2018 Best's Insurance Reports - Property/Casualty, at p. 34, 39.

68. Moreover, from 1995 to 2018, St. Paul and ACE were the only insurers that issued primary layer insurance to ABC (from 2001 to 2018) or Bergen Brunswig Corporation (from 1995 to 2001). *See* CA Coverage Action Docket, November 5, 2020 Complaint ¶¶ 23(a), 23(e), 23(k), 23(dd).

69. St. Paul issued all primary layer insurance policies to ABC and its predecessor in interest, Bergen Brunswig Corporation, from 1996 to 2007.

70. ACE issued all primary layer insurance coverage to ABC covering the period from May 2007 to May 2018. *See* Doc. ID 885-1, Amended Complaint, Exhibit A.

71. During that period, the St. Paul and ACE policies' insuring agreements were identical in all material respects, in fact, with respect to the St. Paul policies, even the policy number was the same in every single year. Exemplars of the St. Paul insuring agreements are reproduced below:

St. Paul Policies Insuring Agreement (2002-2007)	St. Paul Policies Insuring Agreement (1996-2002)
<p><u>What This Agreement Covers</u></p> <p><b>Bodily injury and property damage liability.</b> We'll pay amounts any protected person is legally required to pay as damages for covered bodily injury or property damage that:</p> <ul style="list-style-type: none"> <li>• happens while this agreement is in effect; and</li> </ul>	<p><u>What This Agreement Covers</u></p> <p><b>Bodily injury and property damage liability.</b> We'll pay amounts any protected person is legally required to pay as damages for covered bodily injury, property damage, or premises damage that:</p> <ul style="list-style-type: none"> <li>• happens while this agreement is in effect; and</li> </ul>

<ul style="list-style-type: none"> <li>• is caused by an event.</li> </ul> <p><i>Protected person</i> means any person or organization that qualifies as a protected person under the Who Is Protected Under This Agreements section.</p> <p><i>Bodily injury</i> means any physical harm, including sickness or disease, to the physical health of other persons.</p> <p>We'll consider any of the following that happens at any time to be part of such physical harm, sickness, or disease, if it results in or from such physical harm, sickness, or disease:</p> <ul style="list-style-type: none"> <li>• Mental anguish, injury, or illness.</li> <li>• Emotional distress.</li> <li>• Care, loss of services, or death.</li> </ul>	<ul style="list-style-type: none"> <li>• is caused by an event.</li> </ul> <p><i>Protected person</i> means any person or organization that qualifies as a protected person under the Who Is Protected Under This Agreements section.</p> <p><i>Bodily injury</i> means any physical harm, including sickness or disease, to the physical health of other persons. It includes any of the following that results at any time from such physical harm, sickness, or disease:</p> <ul style="list-style-type: none"> <li>• Mental anguish, injury, or illness.</li> <li>• Emotional distress.</li> <li>• Care, loss of services, or death.</li> </ul>
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See W. Va. Coverage Action Docket, December 14, 2020 Reply in Support of Injunction, Exhibit 1 (filed under seal).

**E. Comparison of Underlying Liabilities in this Action and St. Paul's California Coverage Action**

72. In St. Paul's California Complaint, St. Paul seeks a declaration regarding ABDC's rights to coverage for all "Opioid Lawsuits," which St. Paul defines to include the National Opioid MDL and "hundreds" of prescription opioid lawsuits filed against ABDC on a nationwide basis. See CA Coverage Action Docket, November 5, 2020 Complaint ¶¶ 3, 42-56.

73. St. Paul states in a footnote that the prescription opioid lawsuits that are the subject of this West Virginia insurance coverage action are "not intended to be the subject of" the California Coverage Action. *Id.* ¶ 41 n.11.

74. However, in St. Paul's California Coverage Action St. Paul seeks a declaration regarding the "scope of obligations to defend and indemnify [ABC and its subsidiaries] against [the National] Opioid MDL." See *id.*, Count V.

75. All of the federal court actions for which Plaintiffs seek insurance

coverage in this action are, or were, consolidated in the National Opioid MDL. *See, supra*, ¶ 22.

76. The Court takes judicial notice that the MDL Court selected as bellwether trials two of the West Virginia cases ABDC identified in its March 16, 2017 Complaint and its July 18, 2018 Amended Complaints before this Court as prescription opioid lawsuits for which it was seeking insurance coverage in this action. *See City of Huntington v. AmerisourceBergen Drug Corp. et al.*, No. 3:17-cv-01362 (S.D. W. Va.); *Cabell Cnty. Comm'n v. AmerisourceBergen Corp. et al.*, No. 3:17-cv-01665 (S.D. W. Va.).

77. Moreover, it is well-established that transfer of cases to a multi-district litigation permits “centralization” of discovery in the court in which those cases are consolidated, such that “depositions can be noticed in all related cases,” “discovery can be used in other actions,” and “judges can direct the parties to coordinate pretrial discovery.” *See* Multidistrict Lit. Man. § 5:26 (Thompson Reuters 2020 update).

78. The Court takes judicial notice of orders issued in the National Opioid MDL that confirm this “centralization” of discovery is occurring in the National Opioid MDL and that the Joint Panel on Multidistrict Litigation has concluded the prescription opioid lawsuits “involve common questions of fact.”

79. The Court takes judicial notice of the United States Judicial Panel on Multidistrict Litigation’s December 12, 2017 Transfer Order, in which the Panel stated:

After considering the argument of counsel, we find that the actions in this litigation involve common questions of fact, and that centralization in the Northern District of Ohio will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Plaintiffs in the actions before us are cities, counties and states that allege that: (1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates. All actions involve common factual questions about, inter alia, the

manufacturing and distributor defendants' knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers' alleged improper marketing of such drugs.

See Dec. 12, 2017 Transfer Order at 3, filed in *In re National Prescription Opiate Litigation*, No. 1:17-md-2804 (N.D. Ohio) (ECF No. 1).

80. The Court takes judicial notice of the United States Judicial Panel on Multidistrict Litigation's December 12, 2017 Transfer Order, in which the Panel further stated that it had "been notified of potential tag-along actions brought by individuals, consumers, hospitals and third party payors." *See id.*

81. The Court takes judicial notice of the United States Judicial Panel on Multidistrict Litigation's February 2, 2018 Transfer Order, in which the panel began transferring those "tag-along actions" to the National Opioid MDL. *See* February 2, 2018 Transfer Order, filed in *In re National Prescription Opiate Litigation*, No. 1:17-md-2804 (N.D. Ohio) (ECF No. 113).

82. The Court takes judicial notice of the September 6, 2019 Discovery Ruling No. 22, issued in the National Opioid MDL, which states that the Court "agreed with the general principal that the MDL should serve as a central repository for all opioid-related discovery" and that the purpose "of having all opioid-related discovery produced in this MDL is a *decreased* burden for all parties, including Defendants, who can simply point any future Plaintiffs (including Plaintiffs in additional MDL Track cases, remanded cases, and even State court cases) to the MDL repositories." *See* Sept. 6, 2019 Discovery Ruling No. 22 at 1-2, filed in *In re National Prescription Opiate Litigation*, No. 1:17-md-2804 (N.D. Ohio) (ECF No. 2576).

83. The Court takes judicial notice of the September 6, 2019 Discovery Ruling No. 22, issued in the National Opioid MDL, which orders that "Defendants shall produce in discovery in this MDL copies of all sworn statements, testimony, video-taped testimony, written responses and discovery, expert reports, and other documents and

discovery that they produce in any court case, government investigation, or government hearing, regarding the marketing, sales, distribution, or dispensing of Opioids or Opioid Products, including any exhibits referred to in that testimony, on an ongoing basis.” See *id.* at 4.

84. The Court takes judicial notice of the September 29, 2019 Amendments to Case Management Order No. 2 Regarding Confidentiality and Protective Order in the National Opioid MDL, in which the MDL Court revised the protective order to permit disclosure of confidential and highly confidential information in the National Opioid MDL to allow production to:

Counsel for claimants in litigation pending outside this Litigation and arising from one or more Defendants’ manufacture, marketing, sale, distribution, or dispensing of opioid products for use in this or such other action in which the Producing Party is a Defendant in that litigation, provided that the proposed recipient agrees to be bound by this Protective Order and completed the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Plaintiffs’ Liaison Counsel shall disclose to all Defendants at the end of each month a cumulative list providing the identity of the counsel who have executed such acknowledgments and will receive Confidential and Highly Confidential Information pursuant to this Order and a list of the case name(s), number(s), and jurisdiction(s) in which that counsel represents other claimants.

See Sept. 29, 2019 Amendments to CMO No. 2 at 6-8, filed in *In re National Prescription Opiate Litigation*, No. 1:17-md-2804 (N.D. Ohio) (ECF No. 2688).

## CONCLUSIONS OF LAW

### A. Standard for Issuing Anti-Suit Injunction

85. Plaintiffs’ Motion for Injunction poses a single question of law: whether Plaintiffs are entitled to an order enjoining St. Paul and the Defendant Insurers from instituting or prosecuting any collateral coverage proceeding regarding the prescription opioid lawsuits during the pendency of this action.

86. “Every judge of a circuit court shall have general jurisdiction in awarding

injunctions, whether the judgment or proceeding enjoined be in or out of his circuit, or the party against whose proceedings the injunction be asked reside in or out of same." W. Va. Code § 53-5-4.

87. "A court having jurisdiction *in personam* may require the defendant to do, or refrain from doing, beyond its territorial jurisdiction, anything which it has power to require him to do or omit within the limits of its territory." *See Kessel v. Leavitt*, 204 W. Va. 95, 511 S.E.2d 720 (1998)(citing with approval Syl. Pt. 2, *State v. Fredlock*, 52 W. Va. 232, 43 S.E. 153 (1902)).

88. It is within the power of the Court to issue anti-suit injunctions directed at parties already before the Court, for the purposes of preventing the parties from engaging in inequitable or unfair tactics "on the ground that an unfair use is being made of the other legal forum":

The injunction is directed, not to the [other] court, but to the litigant parties, and in no manner denies the jurisdiction of the [other] legal tribunal. It merely seeks to control the person to whom it is addressed, and to prevent him from using the process of courts of law where it would be against conscience to allow him to proceed. It is granted on the ground that an unfair use is being made of the [other] legal forum, which, from circumstances of which equity alone can take cognizance, should be restrained lest an injury be committed wholly remediless at law.

*Fredlock*, 43 S.E. at 159.

89. As found by our Supreme Court, an anti-suit injunction is not directed at the other court, but rather it is directed at the parties appearing before this Court. *Id.*

90. Both federal and state courts around the country recognize that a court has the inherent power to enjoin persons subject to their jurisdiction from prosecuting foreign suits where necessary "to prevent vexatious or oppressive litigation" and where required to "protect the jurisdiction of the enjoining court, or to prevent the litigant's evasion of the important public policies of the forum." *E.g., Kaepa, Inc. v. Achilles*

*Corp.*, 76 F.3d 624, 626 (5th Cir. 1996) (affirming grant of anti-suit injunction); *Filler v. Lernout (In re Lernout & Hauspie Sec. Litig.)*, Nos. 00-cv-11589, 02-cv-10302, 02-cv-10303, 02-cv-10304, 2003 U.S. Dist. LEXIS 22466, at \*18 (D. Mass. Dec. 12, 2003) (issuing anti-suit injunction and collecting cases in support).

91. Where a later-filed lawsuit "seeks declaratory determination" of the same "core issue[s]," and gives rise to "multiplicity of suit[s] . . . having shaded potentials for vexation and harassment," "clear equity" justifies the imposition of an antisuit injunction for the "protection of multiple parties against the potential of multiple litigation, the result of which would be clearly vexatious or harassing to all." *See Forum Ins. Co. v. Bristol-Myers Squibb Co.*, 929 S.W.2d 114, 119-20 (Tex. App.--Beaumont 1996, writ denied) (affirming grant of antisuit injunction where various insurers named as defendants in an ongoing Texas coverage action filed a later declaratory judgment action on the same issues in New York).

92. The Court finds the reasoning and holdings of these courts to be consistent with our Supreme Court's decision in *Fredlock* and West Virginia law.

**B. There is Substantial Overlap between the West Virginia and California Actions**

93. The crux of the parties' dispute is whether there is sufficient overlap between St. Paul's California Coverage Action and this earlier-filed breach of contract action such that allowing the suits to continue in tandem will undermine the jurisdiction of this Court, interfere with this litigation, and cause irreparable harm to ABDC.

94. As outlined above, since March 16, 2017, this Court has presided over this action, in which ABDC seeks breach of contract damages and a declaration of its rights under primary layer and first layer excess insurance policies issued by St. Paul, ACE, American Guarantee, and Endurance for prescription opioid lawsuits filed against ABDC. *See* Doc. ID 768-1, Complaint.

95. In the California Coverage Action, St. Paul seeks a declaratory judgment (a) against ABDC, Bellco, ACE, American Guarantee, and Endurance, i.e., all of the parties to this dispute; (b) under all of the insurance policies at issue in this dispute; (c) regarding ABDC's and Bellco's rights, and the rights of certain of their affiliates, to insurance coverage under those same insurance policies; (d) for all prescription opioid lawsuits filed against ABDC, Bellco, and certain of their affiliates on a nationwide basis, including the National Opioid MDL.

96. St. Paul does name additional parties, insurance policies, and prescription opioid lawsuits in the California Coverage Action.

97. With respect to the additional policyholder parties named in California, however, St. Paul names only the Plaintiffs here, ABC (ABDC's parent), and certain additional current and former ABC subsidiaries.

98. Naming the parent holding company and certain affiliates of ABDC does not materially enlarge the scope of the California suit, a fact implicitly conceded by St. Paul in this action.

99. For example, there is no dispute that all of the insurance policies in this case were issued to ABC. *E.g.*, Doc. ID 894-1, St. Paul Answer ¶ 2.

100. ABDC's July 18, 2018 Amended Complaint identifies a West Virginia lawsuit for which ABDC seeks insurance coverage in which the entity being sued is ABC, rather than ABDC. *E.g.*, *Walter and Virginia Salmons, individually and as the next of friend of guardian of Minor W D. and on behalf of all others similarly situated v. Purdue Pharma L.P., et al.*, No. 2:18-cv-00385 (S.D. W. Va.).

101. Nevertheless, in the nearly four years this action has been pending, and two-and-one-half years since ABDC filed its Amended Complaint, St. Paul has never argued that ABC is a necessary party to this litigation or attempted to join ABC to this litigation.

102. To the extent ABC and the other ABC subsidiaries are necessary parties, they can be added to this case.

103. The California Coverage Action also names additional insurers and insurance policies that are not included in this lawsuit.

104. Many of those additional insurers are affiliates of the insurers already party in this dispute. *See, supra*, ¶ 67.

105. Even if they were not, the status of these insurers as excess insurers diminishes the import of these insurers to the present dispute.

106. The excess insurance policies St. Paul identifies in California are “follow form” policies that, in relevant part, incorporate the same terms and conditions of the primary layer policies issued by St. Paul and ACE that are before this Court.

107. In the California Coverage Action, coverage under those excess policies would be determined by evaluating the exact same policy terms and conditions that have been before this Court since March 17, 2017.

108. The fact that St. Paul has never sought to add any of the additional insurers or insurance policies identified in the California Coverage Action to this case suggests they are not essential to the resolution of either dispute.

109. To the extent those entities or policies are necessary, those entities and policies can be joined in this action as well.

110. In footnote 11 of St. Paul’s California Complaint, St. Paul states that the prescription opioid lawsuits at issue in this action are “not intended to be the subject of” its California Coverage Action. *See* CA Coverage Action Docket, November 5, 2020 Complaint ¶ 41 n.11.

111. The Court is unpersuaded that this carve-out creates a meaningful distinction between these disputes, or would meaningfully protect the jurisdiction of this Court and the orderly resolution of this dispute.

112. Count V of St. Paul's California Complaint seeks a declaration regarding ABDC's and its affiliates' rights to coverage for the defense and indemnification of the National Opioid MDL. *See id.*, Count V.

113. St. Paul asserts that the Court need not consider the National Opioid MDL in the resolution of Plaintiffs Motion for Injunction. *See W. Va. Coverage Action Docket, December 9, 2020 Memorandum of Law in Opposition to Plaintiffs' Motion for Injunction, at 8 n.5 (filed under seal).*

114. However, as explained above, many of the prescription opioid lawsuits for which ABDC seeks coverage in this action are, or have been, consolidated in the National Opioid MDL, including two of the cases the National Opioid MDL Court selected for bellwether trials.

115. Further, as set forth in this Court's findings of fact, the defense of the prescription opioid lawsuits assigned to the National Opioid MDL - as well as the cases pending in state proceedings - are being conducted in a consolidated and coordinated fashion. There is no practicable way, therefore, to segregate "West Virginia defense costs" or "West Virginia indemnity costs" from the defense and indemnity costs in the National Opioid MDL.

116. The declaration that St. Paul seeks in Count V of its California Complaint makes no effort to distinguish between "West Virginia defense costs" or "West Virginia indemnity costs" from the defense and indemnity costs in the National Opioid MDL, and St. Paul offers no explanation for how it would segregate the West Virginia liabilities from the National Opioid MDL.

117. A declaration that the defense and indemnification of claims in the National Opioid MDL is, or is not, covered - the declaration St. Paul seeks in Count V of its California Complaint - would necessarily call for a ruling on the precise coverage issues for the precise underlying cases that have been pending before this Court since

March 17, 2017.

118. Even to the extent the West Virginia liabilities could be segregated from the National Opioid MDL, the material underlying allegations for purposes of evaluating insurance coverage are identical among all prescription opioid lawsuits and would result in substantial overlap between the California Coverage Action and this coverage action.

119. The Court takes judicial notice that the Joint Panel on Multidistrict Litigation found that - whether brought by government entities, Indian Tribes, individuals, or third party payors - the prescription opioid lawsuits against ABDC and other pharmaceutical distributors, can all "be expected to implicate common fact questions as to the allegedly improper marketing and widespread diversion of opiates into state, counties, and cities across the nation, and discovery likely will be voluminous." *See* Dec. 12, 2017 Transfer Order at 3, filed in *In re National Prescription Opiate Litigation*, No. 1:17-md-2804 (N.D. Ohio) (ECF No. 1).

120. Both ABDC's Amended Complaint in this action, and St. Paul's California Complaint, presuppose that the coverage issues among all of the prescription opioid lawsuits largely overlap - which is why both parties consolidated the coverage issues for all such actions in their respective coverage suits.

121. That substantial overlap is also why this Court permitted St. Paul and the other Insurer Defendants in this suit to conduct nationwide discovery of ABDC, including by requiring ABDC to produce all documents, testimony, and trial exhibits from ABDC in every single prescription opioid lawsuit on a nationwide basis, resulting in ABDC producing over ten million pages of documents in phase one of this litigation. *See, e.g.*, First Report of Discovery Commissioner at 13-17, adopted with modification, Doc. ID. 1131-1, Order on Events of January 23, 2020 Hearing.

122. Given the substantial overlap in the underlying cases and the policy terms, the key coverage issues in dispute will necessarily be the same between this

action and St. Paul's California Coverage action, namely: (a) Do the prescription opioid lawsuits seek damages for bodily injury or property damage?[9] (b) Did ABDC expect or intend to cause those bodily injuries or property damage? (c) Does the "known loss" doctrine apply? (d) How should ABDC's damages be allocated? *Compare* CA Coverage Action Docket, November 5, 2020 Complaint ¶¶ 7, 30-36, 55-62; *with* Doc. ID 894-1, St. Paul Answer, First Affirmative Defense to Thirty-First Affirmative Defense.

123. Critically, the overlap in allegations, policy terms, parties, and, ultimately, coverage issues is why this Court issued its February 22, 2018 Stay Order: so the parties and the Court could, in a sensible and manageable way, address the common coverage issues applicable to all prescription opioid lawsuits by first addressing those issues in the context of the WVAG Lawsuit. *See generally* Doc. ID 862-1, Stay Order.

124. Whatever differences exist between this action and St. Paul's California Coverage Action, at a minimum, St. Paul is asking the California court to issue declarations governing the parties already before this Court, interpreting the exact same insurance policy language already before this Court, regarding the same type of cases already before this Court, and regarding the same cases on which this Court permitted the Insurer Defendants to take discovery, raising the identical coverage issues already pending before this Court, including coverage issues on which this Court has already issued rulings.

125. As a result, the Court holds these two actions involve "substantially identical issues and parties." *See First State Ins. Co. v. Minn. Mining & Mfg. Co.*, 535 N.W.2d 684, 688 (Minn. App. 1995) (affirming grant of antisuit injunction against later-filed state court suit in insurance coverage action because the later-filed action substantially overlapped with the earlier filed case).

### **C. An Anti-Suit Injunction is Necessary in These Circumstances**

126. Because this action and St. Paul's later-filed declaratory judgment action

involve “substantially identical issues and parties,” opening a new front on this coverage litigation nearly four years after ABDC first filed its breach of contract action “would impose upon all parties an additional economic burden that is both unnecessary and avoidable, would foster delay in many respects, and would create the risk of inconsistent adjudications leaving dispositive issues unresolved.” *See id.*

127. Permitting simultaneous, duplicative state court actions risks undermining the efficient resolution of this dispute because the parties could “‘cherry pick’ favorable rulings from each court as the litigation progressed, hindering the ability of each to proceed to judgment in its own case.” *See Am. Int’l Spec. Lines Ins. Co. v. Triton Energy Ltd.*, 52 S.W.3d 337, 342 (Tex. App.--Dallas 2001, pet. disp’d w.o.j.) (affirming grant of antisuit injunction against later-filed California declaratory judgment act filed by insurer).

128. The parties have already engaged in substantial, burdensome discovery in this case over the course of nearly four years, including the production of over 10 million pages of documents, and a first round of corporate representative depositions with multiple additional depositions already noticed.

129. To assist the parties, the Court and its appointed Discovery Commissioner have invested significant resources managing the discovery process, including by resolving multiple complex, multifaceted discovery motions filed by, and against, every party to this litigation regarding discovery of all prescription opioid lawsuits against ABDC and its affiliates on a nationwide basis, resulting in five comprehensive reports and recommended orders from the Discovery Commissioner and several additional discovery orders from this Court.

130. While discovery has been ongoing, the parties and the Court have also invested substantial efforts in resolving core, “threshold” coverage issues.

131. For example, when ruling on St. Paul’s Motion for Summary Judgment,

the Court determined that “insurance coverage is available under the general liability insurance coverage section of the St. Paul Policy for lawsuits by government entities seeking damages for injuries suffered by their citizens.” *See* Doc. ID 1325-1, Order Denying Summary Judgment ¶ 82.

132. Due to the overlap in policy terms and allegations in the underlying claims, the Court’s November 23, 2020 ruling should be broadly applicable to ABDC’s rights to coverage for all prescription opioid lawsuits, including those suits consolidated in the National Opioid MDL, under all insurance policies that could potentially apply to these liabilities.

133. In its California Complaint, however, St. Paul raises the same “damages for bodily injury” issue addressed in this Court’s summary judgment ruling. *See* CA Coverage Action Docket, November 5, 2020 Complaint ¶ 36.

134. Moreover, based on St. Paul’s statements at oral argument and the allegations in its California Coverage Action, it appears that St. Paul intends to litigate many (if not all) of the same issues it raised as affirmative defenses in this action to support its request for declaratory relief in the California Coverage Action.

135. St. Paul’s pursuit of contradictory rulings from a California court undermines principles of comity among the courts, will (if the California court issues a contrary ruling) put the parties in an impossible position of trying to reconcile conflicting rulings on substantially the same issues from different states, and will inevitably result in delay of the resolution of both this case and the underlying prescription opioid lawsuits.

136. Creating uncertainty as to the availability of insurance coverage and delaying resolution of these disputes creates both a private and public harm.

137. ABDC is entitled - after several years of litigation in this Court as to these issues - to a measure of certainty as to what, if any, insurance proceeds will be available to contribute to such a settlement.

138. During argument on this motion, St. Paul argued that ABDC's need for funding for a settlement and its defense is "just money," and does not justify the imposition of an anti-suit injunction.

139. However, the harm to ABDC goes beyond being deprived of funding to which it may be entitled.

140. All litigants have the right to an efficient resolution of their disputes. Permitting an insurer to use the artifice of a declaratory judgment action - because the insurer has not actually suffered a harm that would entitle it to bring an affirmative claim - to intentionally interfere with the orderly resolution of a dispute is an abuse of the judicial process which our Supreme Court has held is a valid basis for granting an anti-suit injunction to prevent that vexatious conduct. *See Fredlock*, 43 S.E. at 157; *see also, e.g., First State*, 535 N.W.2d at 688; *Kaepa, Inc.*, 76 F.3d at 626; *Filler*, 2003 U.S. Dist. LEXIS 22466, at \*18 (D. Mass. Dec. 12, 2003) (collecting cases).

141. The circumstances of St. Paul's collateral declaratory judgment action support the conclusion that St. Paul filed suit in California for improper purposes, namely, forum shopping and the disruption of the orderly resolution of this dispute.

142. In particular, St. Paul, a Connecticut insurer, filed suit in California nearly four years after this action was first filed without making any effort to join in this action any of the parties or insurance policies it now claims are essential to the resolution of this dispute.

143. St. Paul selected Orange County, California as its jurisdiction despite the fact that none of the eighty-three parties to its lawsuits are headquartered in California and only one of the eighty-three parties is incorporated in California (that party has its principal place of business in Texas). *See CA Coverage Action Docket*, November 5, 2020 Complaint ¶¶ 8-23(rrr).

144. Notwithstanding Bergen Brunswig Corporation's historical connection to

California, it is undisputed that Bergen Brunswig Corporation does not exist anymore, and has not existed since 2001, when it merged into a Delaware corporation headquartered in Pennsylvania to create ABC. *See* ABC's December 28, 2001 SEC Form 10-K.

145. Finally, the Court emphasizes the interest of this Court and the State of West Virginia in addressing these issues.

146. According to the West Virginia Department of Health & Human Resources 2020-2022 Substance Use Response Plan, dated January 20, 2020, "No state has been as profoundly affected by the substance use epidemic as West Virginia." *Id.* at 2.

147. West Virginia has a significant interest not only in the underlying actions, but also in determining whether insurance coverage will be available to contribute to the resolution of these issues without the interference of a California Court. *See, e.g., Sensient Colors, Inc. v. Allstate Ins. Co.*, 193 N.J. 373, 394 (2008) (holding that determining the availability of insurance proceeds to remedy harms in the state implicates compelling government interests in "the health and safety of [its] residents").

148. This Court is uniquely situated to hear this dispute by virtue of it being the first court in the nation to oversee a prescription opioid lawsuit brought by a government entity against a pharmaceutical distributor and one of the very few courts in the country to have brought such a case to a final resolution.[10]

149. ABDC filed a breach of contract action regarding these same parties, same issues, and same insurance policies in this Court nearly four years ago. This Court has expended significant resources overseeing this litigation and has gained a unique understanding of the parties and issues.

150. The Court further has an interest in protecting its own jurisdiction and preventing parties from engaging in conduct designed to disrupt the proceedings before the Court or undermine the rulings of this Court. *See Fredlock*, 43 S.E. at 157.

151. The Court's interest in protecting its own jurisdiction is heightened in this case in light of this Court's February 22, 2018 Stay Order.

152. That Stay Order, entered by joint motion, requires the litigation of insurance coverage for the prescription opioid lawsuits to proceed in phases, with the first phase addressing coverage for the WVAG Lawsuit. Only after the first phase is completed may the parties proceed, in this Court, with further litigation regarding coverage for prescription opioid lawsuits.

153. The Stay Order was entered at the request of all parties in recognition of the fact that resolving the coverage issues as to the WVAG Lawsuit first was the most efficient way to resolve the coverage disputes for all pending prescription opioid lawsuits.

154. St. Paul's California Coverage Action violates both the terms and the spirit of that Stay Order.

155. By seeking a declaration in California regarding the rights of ABDC and ABDC's affiliates to insurance coverage for the National Opioid MDL, St. Paul is necessarily litigating coverage for the exact cases that are the subject of the Stay Order and that are before this Court.

156. Moreover, St. Paul's California Coverage Action will inevitably result in unnecessary and improper delays in the resolution of this dispute that the Stay Order was designed to prevent. Multiplying the scope of the coverage dispute beyond the WVAG Lawsuit in the first instance will only serve to unnecessarily complicate the coverage issues and delay a resolution of this critically important dispute.

157. For all these reasons, the Court holds that an anti-suit injunction is warranted in these unique, limited circumstances and specifically finds that St. Paul has filed the California Coverage Action for improper purposes, namely, delay and forum shopping and further finds that permitting St. Paul to pursue a collateral action would

cause irreparable harm to ABDC and would undermine the important governmental and judicial interests of West Virginia and this Court.

**D. An Anti-Suit Injunction Will Not Impact Any Legitimate Interest of St. Paul**

158. While the issuance of the anti-suit injunction is necessary to protect the interests outlined in the preceding section, the Court finds that it would not impact any of St. Paul's legitimate interests.

159. The Court does not enjoin St. Paul from ever pursuing collateral litigation. Rather it enjoins St. Paul - and all other parties to this suit including ABDC - only from instituting a collateral coverage action until this suit is fully and finally resolved.

160. There is no harm to St. Paul in this delay because St. Paul has neither covered, nor agreed to provide any coverage for, any of the prescription opioid lawsuits filed against ABC, ABDC, or any other affiliated entity.

161. This is why St. Paul could only file a declaratory judgment action - St. Paul (unlike ABDC and its affiliates) has not been deprived of any legal or contractual rights that would entitle it to bring an affirmative claim.

162. In an abundance of caution, however, the Court will order the parties to meet-and-confer as to whether any amendment of the pleadings in this action is necessary to ensure that all issues, parties, and insurance policies the parties believe are necessary to protect their legitimate interests are included in this action.

**ORDER**

163. For the reasons set forth above, this Court hereby **GRANTS** Plaintiffs' Motion for Injunction pursuant to West Virginia Code § 53-5-1 *et seq.* and Rule 65 of the West Virginia Rules of Civil Procedure.

164. All parties are hereby enjoined from instituting or prosecuting any collateral litigation or other proceeding against one another relating to insurance coverage for the prescription opioid lawsuits against ABC, ABDC, or any other affiliated

entity.

165. This injunction shall remain in effect unless and until lifted by further order of this Court or until this action has concluded.

166. The parties are directed to meet-and-confer within 14 days of the date of this Order to discuss the amendment of the pleadings to add any parties, insurance policies, or underlying prescription opioid lawsuits they believe are necessary to the resolution of this dispute.

167. The parties shall present proposed amended pleadings for the Court's consideration within 21 days of the date of this Order.

- [1] Those prescription opioid lawsuits filed in, or removed to, federal court in West Virginia have been consolidated in a federal multidistrict litigation styled *In Re: National Prescription Opioid Litigation*, No. 1:17-md-02804 (N.D. Ohio) (the "National Opioid MDL"). See generally Docket, National Opioid MDL (listing prescription opioid lawsuits assigned to National Opioid MDL).
- [2] The Court refers to the Insurer Defendants in this action as follows: (i) St. Paul Fire and Marine Insurance Company is referred to as "St. Paul," (ii) ACE American Insurance Company and ACE Property and Casualty Insurance Company will collectively be referred to as "ACE," (iii) American Guarantee & Liability Insurance Company will be referred to as "American Guarantee," and (iv) Endurance American Insurance Company will be referred to as "Endurance."
- [3] All documents referred to by "Doc. ID" numbers refer to documents filed in this action, *AmerisourceBergen Drug Corporation v. ACE Am. Ins. Co.*, No. 17-C-36 (W. Va. Cir. Ct. - Boone County).
- [4] In addition to the evidence submitted in connection with the parties' briefing, the Court is entitled to take judicial notice of any fact that is not subject to reasonable dispute, including the dockets of other courts and public filings. See WVRE 201(b); *Arnold Agency v. W. Va. Lottery Comm'n*, 206 W. Va. 583, 596 (1999) ("a court may take judicial notice of the orders of another court"); *Yates v. Mun. Mortg. & Equity, LLC*, 744 F.3d 874, 881 (4th Cir. 2014) (taking judicial notice "of the content of relevant SEC filings and other publicly available documents included in the record"); *Acord v. Colane Co.*, No. 04-C-151-0, 2009 W.V. Cir. LEXIS 58 (W.V. Cir. Ct. - Logan Cty. Aug. 27, 2010) (taking judicial notice of corporate history based on a form 10-K-405 filing); *Formulak v. Bank of Charles Town*, No. 15-0643, 2016 W. Va. LEXIS 343, at \*4 n.2 (May 20, 2016) ("We take judicial notice of the docket sheet, the September 15, 2008, order of dismissal, and the answer filed by petitioner on April 13, 2010 in No. 07-C-392."); *State v. Hobbs*, 168 W. Va. 13, 41 (1981) ("After appellant Hobbs objected, the trial court took judicial notice of newspaper stories in question and allowed them to be introduced into the record.").

The Court further notes that certain facts have been established for purposes of this case in the course of the Court's November 23, 2020 Findings of Fact and Conclusions of Law in connection with St. Paul's Motion for Summary Judgment. The Court refers to those prior findings as warranted as "Order Denying Summary Judgment."

- [5] This Court also presided over the Attorney General's lawsuit against Cardinal Health for approximately five years and the Attorney General's lawsuit against McKesson Corporation for approximately three years. *See State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. Cardinal Health, Inc.*, Civil Action No. 12-C-140 (Circuit Court, Boone County, West Virginia); *State of West Virginia ex rel. Patrick Morrissey, Attorney General v. McKesson Corp.*, Civil Action No. 16-C-1 (Circuit Court, Boone County, West Virginia).
- [6] For ease of reference, the Court lists these cases at the conclusion of these Findings of Fact and Conclusions of Law in Appendix A.
- [7] For ease of reference, the Court lists those cases and the corresponding National Opioid MDL case number at the conclusion of these Findings of Fact and Conclusions of Law in Appendix B.
- [8] Bellco was not a defendant in the WVAG Lawsuit.
- [9] The Court already resolved this issue in its November 23, 2020 Order.
- [10] *See State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. AmerisourceBergen Drug Corporation, et al.*, Civil Action No. 12-C-141 (Circuit Court, Boone County, West Virginia); *State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. Cardinal Health, Inc.*, Civil Action No. 12-C-140 (Circuit Court, Boone County, West Virginia); *State of West Virginia ex rel. Patrick Morrissey, Attorney General v. McKesson Corp.*, Civil Action No. 16-C-1 (Circuit Court, Boone County, West Virginia).

## Appendix A

As referenced in Footnote 4 of the foregoing Findings of Fact and Conclusions of Law, the Court takes judicial notice of the following prescription opioid lawsuits filed in West Virginia state or federal courts against Plaintiffs:

- *Al Marino, Inc., individually, and on behalf of all others similarly situated v. Purdue Pharma L.P., et al.*, No. 2:19-cv-00723 (S.D. W.Va.) (the “Al Marino, Inc. Class Action”); N.D. Ohio (1:19-op-45976);
- *Andrew G. Riling and Beverly Riling, as next friends of A.P. Riling, a minor child under the age of 18 v. Purdue Pharma L.P., et al.*, No. 2:18-cv-01390 (S.D. W. Va.) (“the A.P. Riling Action”); N.D. Ohio (1:19-op-45056);
- *Berkeley County Council v. Purdue Pharmaceutical Products, LP, et al.*, No. 3:17-cv-143 (N.D. W. Va.) (the “Berkeley County Action”); N.D. Ohio (1:17-op-45171);
- *Bobbi Dawn Trent Bryant, on behalf of herself individually and on behalf of a class of similarly situated individuals, and Jennifer Lowe, on behalf of herself as widow and Administratrix of the Estate of Robert Lowe, deceased, and on behalf of a class of similarly situated individuals v. Purdue Pharma L.P., et al.*, (the “Bobbi Dawn Trent Bryant Action”); N.D. Ohio (1:19-op-45805);
- *Bobbie Lou Moore, individually and as next friend and guardian of minor R.R.C., on behalf of themselves and all others similarly situated v. Purdue Pharma L.P., et al.*, No. 2:18-cv-01231 (S.D. W. Va.) (the “Moore Class Action”); N.D. Ohio (1:18-op-46035);
- *Boone County v. AmerisourceBergen Drug Corp., et al.*, No. 2:17-cv-02028 (S.D. W. Va.) (the “Boone County Action”); N.D. Ohio (1:17-op-45061);
- *Brooke County Commission, et al., v. Purdue Pharma L.P., et al.*, Nos. 17-C-248, 17-C-249, 17-C-250, 17-C-251, 17-C-252, 17-C-253, 17-C-254, 17-C-255 (Marshall County Circuit Court, W. Va.) N.D. W. Va. (5:18-cv-9, 5:18-cv-10, 5:18-cv-11, 5:18-cv-12, 5:18-cv-13, 5:18-cv-14, 5:18-cv-15, and 5:18-cv-16) (the “Brooke County Action”);
- *Cabell County v. AmerisourceBergen Drug Corp., et al.*, No. 3:17-cv-01665 (S.D. W. Va.) (the “Cabell County Action”); N.D. Ohio (1:17-op-45053);
- *Calhoun County Commission, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00407 (S.D. W. Va.) (the “Calhoun County Action”); N.D. Ohio (1:18-op-45314);
- *The City of Beckley v. Allergan PL f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 20-C-34 (the “City of Beckley Action”); (Marshall County Circuit Court, W. Va.);
- *City of Bluefield, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 1:18-cv-00930 (S.D. W. Va.) (the “City of Bluefield Action”); N.D. Ohio (1:18-op-

45659);

- *City of Charles Town v. AmerisourceBergen Drug Corp., et al.*, No. 3:19-cv-00040 (N.D. W. Va.) (the “City of Charles Town Action”); N.D. Ohio (1:19-op-45250);
- *City of Charleston, West Virginia v. Rite Aid of Maryland, Inc., et al.*, No. 2:18-cv-00251 (S.D. W. Va.) (the “City of Charleston Action”); N.D. Ohio (1:18-op-45224);
- *City of Clarksburg, West Virginia v. Allergan PL f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 19-C-259H (Marshall County Circuit Court., W. Va.) (the “City of Clarksburg Action”);
- *Christy Dameron, as next friend of B.R. Dameron, a minor child under the age of 18, v. McKesson Corp. et al.*, No. 20-C-24, (Wyoming County Circuit Court, W. Va.); (the “Dameron Action”); N.D. Ohio (No. 1:20-op-45221)
- *City of Dunbar, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00597 (S.D. W. Va.) (the “City of Dunbar Action”); N.D. Ohio (1:18-op-45548);
- *City of Fairmont, West Virginia v. Allergan PL f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 20-C-55 (Marshall County Circuit Court, W.Va.) (the “City of Fairmont Action”);
- *City of Huntington v. AmerisourceBergen Drug Corp., et al.*, No. 17-C-38 (Cabell County Circuit Court, W.Va.) S.D. W. Va.(3:17-cv-01362) (the “City of Huntington Action”); N.D. Ohio (1:17-op-45054);
- *City of Hurricane, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 3:18-cv-00401 (S.D. W. Va.) (the “City of Hurricane Action”); N.D. Ohio (1:18-op-45293);
- *City of Kenova, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-01472 (S.D. W. Va.) (the “City of Kenova Action”); N.D. Ohio (1:18-op-46346);
- *City of Logan v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00434 (S.D. W. Va.) (the “City of Logan Action”); N.D. Ohio (1:18-op-45317);
- *City of Milton, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 3:18-cv-00435 (S.D. W. Va.) (the “City of Milton Action”); N.D. Ohio (1:18-op-45321);
- *City of Montgomery, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-01285 (S.D. W. Va.) (the “City of Montgomery Action”); N.D. Ohio (1:18-op-46128);
- *City of Nitro, West Virginia v. Allergan PLC f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 19-C-260H (Marshall County Circuit Court., W. Va.) (the “City of Nitro Action”);
- *City of Parkersburg, West Virginia v. AmerisourceBergen Drug Corporation, et al.*,

- No. 2:18-cv-00423 (S.D. W. Va.) (the “City of Parkersburg Action”); N.D. Ohio (1:18-op-45315);
- *City of Princeton, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 1:18-cv-01242 (S.D. W. Va.) (the “City of Princeton Action”); N.D. Ohio (1:18-op-46054);
  - *City of Richwood, West Virginia v. Allergan PLC f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 19-C-261H (Marshall County Circuit Court, W.Va.) (the “City of Richwood Action”);
  - *City of Saint Albans, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00370 (S.D. W. Va.) (the “City of Saint Albans Action”); N.D. Ohio (1:18-op-45269);
  - *City of Smithers, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00441 (S.D. W. Va.) (the “City of Smithers Action”); N.D. Ohio (1:18-op-45319);
  - *City of South Charleston, West Virginia v. Allergan PLC f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 19-C-262H (Marshall County Circuit Court, W. Va.) (the “City of South Charleston Action”);
  - *City of Summersville v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00431 (S.D. W. Va.) (the “City of Summersville Action”); N.D. Ohio (1:18-op-45316);
  - *City of Vienna, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:19-cv-00052 (S.D. W. Va.) (the “City of Vienna Action”); N.D. Ohio (1:19-op-45052);
  - *City of Welch v. McKesson Corp., et al.*, No. 17-C-18-M (McDowell County Circuit Court, W. Va.) S.D. W. Va. (1:17-cv-03364) (the “City of Welch Action”); N.D. Ohio (1:17-op-45065);
  - *City of White Sulphur Springs, West Virginia v. Allergan PLC f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 19-C-263H (Marshall County Circuit Court, W. Va.) (the “City of White Sulphur Springs Action”);
  - *City of Williamson v. West Virginia Board of Pharmacy, et al.*, No. 17 C-99 (Mingo Circuit Court, W. Va.); S.D. W. Va.(2:17-cv-03532) (the “City of Williamson Action”); N.D. Ohio (1:17-op-45057);
  - *City of Winfield, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 3:18-cv-00400 (S.D. W. Va.) (the “City of Winfield Action”); N.D. Ohio (1:18-op-45294);
  - *Clay County Commission v. Purdue Pharma, Inc., et al.*, No. 18-C-2 (Clay Circuit Court, W. Va.); S.D. W. Va.(2:18-cv-00413) (the “Clay County Action”); N.D. Ohio (1:18-op-45670);
  - *County Commission of Mingo County v. Purdue Pharma, L.P., et al.*, No. 18-C-2

(Mingo Circuit Court, W. Va.); S.D. W. Va. (2:18-cv-476) (the “Mingo County Action”); N.D. Ohio (1:18-op-45940);

- *County Commission of Putnam County v. AmerisourceBergen Drug Corp., et al.*, No. 3:18-cv-00350 (S.D. W. Va.) (the “Putnam County Action”); N.D. Ohio (1:18-op-45251);
- *County of Pendleton, West Virginia v. Allergan PL f/k/a Actavis PLC f/k/a Allergan Inc.*, No. 20-C-53 (Marshall County Circuit Court., W. Va.) (the “County of Pendleton Action”);
- *Fayette County v. Cardinal Health, Inc., et al.*, No. 2:17-cv-01957 (S.D. W. Va.) (the “Fayette County Action”); N.D. Ohio (1:17-op-45062);
- *Greenbrier County Commission v. AmerisourceBergen Drug Corporation, et al.*, No. 5:19-cv-84 (S.D. W. Va.) (the “Greenbrier County Commission Action”); N.D. Ohio (1:19-op-45080);
- *Jeffrey James, as next friend of P.R. James, a minor child under the age of 18 v. McKesson Corporation, et al.*, No. 20-C-237 (Kanawha County Circuit Court, W. Va.); (the “James Action”); N.D. Ohio (No. 1:20-op-45187);
- *Jefferson County Commission v. Purdue Pharmaceutical Products, LP, et al.*, No. 3:17-cv-144 (N.D. W. Va.) (the “Jefferson County Action”); N.D. Ohio (1:17-op-45170);
- *Jodi Shaffer, individually and as next friend and guardian of minor R.C., on behalf of themselves and all others similarly situated v. Purdue Pharma L.P., et al.*, No. 2:18-cv-01448 (S.D. W. Va.) (the “Shaffer Class Action”); N.D. Ohio (1:18-op-46302);
- *Kanawha County v. Rite Aid of Maryland, Inc., et al.*, No. 2:17-cv-01666 (S.D. W. Va.) (the “Kanawha County Action”); N.D. Ohio (1:17-op-45063);
- *Logan County v. Cardinal Health, Inc., et al.*, No. 2:17-cv-02296 (S.D. W. Va.) (the “Logan County Action”); N.D. Ohio (1:18-op-45000);
- *Mary Tilley, as next friend of K.B. Tilley, a minor child under the age of 18, v. Purdue Pharma L.P., et al.*, No. 2:19-cv-00566 (S.D. W. Va.) (the “Tilley Action”); N.D. Ohio (1:19-op-46166);
- *Mayor David Adkins, on Behalf of the Town of Hamlin v. Purdue Pharma L.P., et al.*, No. 18-C-9 (Lincoln County Circuit Court, W. Va.) S.D. W. Va. (No. 2:18-cv-477); (the “Town of Hamlin Action”); N.D. Ohio (No. 1:18-op-45386);
- *Mayor Don E. McCourt, on behalf of the Town of Addison aka The Town of Webster Springs v. Purdue Pharma, L.P., et al.*, No. 18-C-3 (Webster County Circuit Court, W. Va.) (dismissed Mar. 21, 2018) (the “Town of Addison Action”);
- *Mayor Elmer Ray Spence on behalf of The Town of Delbarton, et al. v. Cardinal Health Inc., et al.*, Nos. 20-C-16 – 20-C-27(H) (Marshall County Circuit Court, W. Va.) (the “Town of Delbarton Action”);

- *Mayor Farris Burton, on Behalf of the Town of West Hamlin v. Purdue Pharma L.P., et al.*, No. 18-C-8 (Lincoln County Circuit Court, W. Va.) S.D. W. Va. (2:18-cv-478) (the “Town of West Hamlin Action”); N.D. Ohio (1:18-op-45941);
- *Mayor Peggy Knotts Barney, on behalf of the City of Grafton, and Mayor Philip Bowers, on behalf of the City of Philippi v. Purdue Pharma, L.P., et al.*, Nos. 19-C-151; 19-C-152 (Marshall County Circuit Court, W. Va.) (the “Cities of Grafton and Philippi Action”);
- *Mayor Raaimie Barker, on behalf of the Town of Chapmanville v. Purdue Pharma, L.P., et al.*, No. S.D. W.Va. (No. 2:17-cv-03715) (the “Town of Chapmanville Action”) N.D. Ohio (No. 1:17-op-45055);
- *McDowell County v. McKesson Corp., et al.*, No. 16-C-137 (McDowell County Circuit Court, W. Va.) S.D. W. Va. (1:17-cv-00946) (the “McDowell County Action”); N.D. Ohio (1:17-op-45066);
- *Mercer County v. West Virginia Board of Pharmacy, et al.*, No. 17-C-236-DS (Mercer County Circuit Court, W. Va.) S.D. W. Va. (1:17 cv-03716) (the “Mercer County Action”); N.D. Ohio (1:17-op-45064);
- *Monongalia County Commission, et al. v. Purdue Pharma L.P., et al.*, No. 18-C-222 (Marshall County Circuit Court, W. Va.) (the “Monongalia County Action”);
- *Morgan County Commission v. Purdue Pharmaceutical Products, LP, et al.*, No. 3:18-cv-00044 (N.D. W. Va.) (the “Morgan County Action”); N.D. Ohio (1:18-op-45444);
- *Nicholas County Commission v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00421 (S.D. W. Va.) (the “Nicholas County Action”); N.D. Ohio (1:18-op-45314);
- *Pleasants County Commission, et al. v. Mylan Pharmaceuticals Inc., et al.*, No. 18-C-20 (Pleasants County Circuit Court, W. Va.) (dismissed Jan. 30, 2019) (the “Pleasants County Action”);
- *Raleigh County Commission v. CVS Indiana, L.L.C., et al.*, No. 5:17-CV-04484 (S.D. W. Va.) (the “Raleigh County Action”); N.D. Ohio (1:18-op-45108);
- *Roane County Commission, et al. v. Mylan Pharmaceuticals Inc., et al.*, Nos. 19-C-96; 19-C-97; 19-C-98; 19-C-99; 19-C-100; 19-C-101; 19-C-102; 19-C-103; 19-C-104; 19-C-105; 19-C-106; 19-C-107; 19-C-108 (Marshall County Circuit Court, W. Va.) (the “Mid-Ohio Valley Opioid Litigation Alliance Action”);
- *Stacey Harris, as Next Friend and Guardian of Baby N.M.B. v. McKesson Corporation, et al.*, No. 2:19-cv-00707 (S.D. W. Va.) (the “Harris Action”); N.D. Ohio (No. 1:20-op-45066);
- *State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General et al. v. AmerisourceBergen Drug Corp., et al.*, No. 12-C-141 (Boone County Circuit Court, W. Va. (settled) (the “WVAG Lawsuit”);

- *State of West Virginia ex rel. Patrick Morrissey, Attorney General v. McKesson Corp., et al.*, Civil Action No. 16-C-1 (Boone County Circuit Court, W. Va.) (settled)
- *The City of Buckhannon, West Virginia v. McKesson Corp., et al.*, No. 2:18-cv-01263 (S.D. W.Va.); (the “City of Buckhannon Action”); N.D. Ohio (No. 18-op-46085);
- *The County Commission of Barbour County v. Purdue Pharma, L.P., et al.*, No. 18-C-5 (Circuit Court of Barbour County, W. Va.) (dismissed Mar. 28, 2018) (the “Barbour County Action”);
- *The County Commission of Grant County; The County Commission of Mineral County; And The County Commission of Monroe County vs. Cardinal Health, Inc., et al.* Nos. 20-C-79-H, 20-C-80-H and 20-C-81-H (Marshall County Circuit Court, W. Va.) (the “County Commission of Grant County Action”);
- *The County Commission of Lincoln v. West Virginia Board of Pharmacy, et al.*, No. 17-C-46 (Lincoln County Circuit Court, W. Va.) S.D. W. Va. (2:17-cv-03366) (the “Lincoln County Action”); N.D. Ohio (1:17-op-45060);
- *The County Commission of Mason County, et al. v. Purdue Pharma, L.P., et al.*, Nos. 19-C-4; 19-C-5; 19-C-6; 19-C-7; 19-C-8; and 19-C-9 (Marshall County Circuit Court, W. Va.);(the “Mason County Action”);
- *The County Commission of Taylor County v. Purdue Pharma, L.P., et al.*, No. 18-C-10 (Taylor County Circuit Court, W. Va.); (dismissed Mar. 22, 2018) (the “Taylor County Action”);
- *Tiffany M. Dunford, as next friend of T. N. Dunford, a minor child under the age of 18 v. McKesson Corporation, et al.*, No. 20-C-235 (Kanawha County Circuit Court, W. Va.); (the “T. N. Dunford Action”); N.D. Ohio (No. 1:20-op-45186);
- *Town of Belle, West Virginia v. Allergan PLC f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 19-C-264H (Marshall County Circuit Court, W. Va.) (the “Town of Belle Action”);
- *Town of Ceredo, West Virginia v. Allergan PLC f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 19-C-265H (Marshall County Circuit Court, W. Va.) (the “Town of Ceredo Action”);
- *Town of Chesapeake, West Virginia v. Allergan PLC f/k/a Actavis PLC f/k/a Allergan Inc., et al.*,No. 19-C-266H (Marshall County Circuit Court, W. Va. (the “Town of Chesapeake Action”);
- *Town of Clendenin, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-01284 (S.D. W. Va.) (the “Town of Clendenin Action”); N.D. Ohio (1:18-op-46127);
- *Town of Eleanor, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 3:18-cv-00456 (S.D. W. Va.) (the “Town of Eleanor Action”); N.D. Ohio (1:18-op-45387);

- *Town of Fort Gay, West Virginia v. Rite Aid of Maryland, Inc., et al.*, No. 3:18-cv-00280 (S.D. W. Va.) (the “Town of Fort Gay Action”); N.D. Ohio (1:18-op-45225);
- *Town of Gauley Bridge, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-1392 (S.D. W. Va.) (the “Town of Gauley Bridge Action”); N.D. Ohio (1:18-op-46278);
- *Town of Gilbert v. West Virginia Board of Pharmacy, et al.*, No. 17 C 94 (Mingo County Circuit Court, W. Va.) S.D. W. Va. (2:17-cv-03369) (the “Town of Gilbert Action”); N.D. Ohio (1:17-op-45059);
- *Town of Glenville, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00448 (the “Town of Glenville Action”); N.D. Ohio (1:18-op-45384);
- *Town of Granville, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00443 (S.D. W. Va.) (the “Town of Granville Action”); N.D. Ohio (1:18-op-45320);
- *Town of Kermit v. McKesson Corp., et al.*, No. 17 C 13 (Mingo County Circuit Court, W. Va.) S.D. W. Va. (2:17 cv-03372) (the “Town of Kermit Action”); N.D. Ohio (1:17-op-45058);
- *Town of Madison, West Virginia v. Allergan PLC f/k/a Actavis PLC f/k/a Allergan, Inc., et al.*, No. 20-C-31(H) (Marshall County Circuit Court, W.Va.) (the “Town of Madison Action”);
- *Town of Man, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00463 (S.D. W. Va.); (dismissed Jan. 14, 2020) (the “Town of Man Action”); N.D. Ohio (1:18-op-45385);
- *Town of Quinwood v. AmerisourceBergen Drug Corporation, et al.*, No. 5:18-cv-00427 (S.D. W. Va.) (the “Town of Quinwood Action”); N.D. Ohio (1:18-op-45324);
- *Town of Rainelle v. AmerisourceBergen Drug Corporation, et al.*, No. 5:18-cv-00425 (S.D. W. Va.) (the “Town of Rainelle Action”); N.D. Ohio (1:18-op-45322);
- *Town of Romney, West Virginia v. Allergan PL f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 20-C-54 (Marshall County Circuit Court., W. Va.) (the “Town of Romney Action”);
- *Town of Rupert v. AmerisourceBergen Drug Corporation, et al.*, No. 5:18-cv-00426 (S.D. W. Va.) (the “Town of Rupert Action”); N.D. Ohio (1:18-op-45323);
- *Town of Sophia, West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-01286 (S.D. W. Va.) (the “Town of Sophia Action”); N.D. Ohio (1:18-op-46129);
- *Town of Star City, West Virginia v. Allergan PL f/k/a Actavis PLC f/k/a Allergan Inc., et al.*, No. 20-C-52 (Marshall County Circuit Court., W. Va.) (the “Town of Star City Action”);
- *Town of Whitesville, West Virginia v. AmerisourceBergen Drug Corporation, et al.*,

No. 2:18-cv-01287 (S.D. W. Va.) (the “Town of Whitesville Action”); N.D. Ohio (1:18-op-46130);

- *Walter and Virginia Salmons, individually and as the next friend or guardian of Minor W.D. and on behalf of all others similarly situated v. Purdue Pharma L.P., et al.*, No. 2:18-cv-00385 (S.D. W. Va.) (the “Salmons Class Action”); N.D. Ohio (1:18-op-45268);
- *Wayne County v. Rite Aid of Maryland, Inc., et al.*, No. 3:17-cv-01962 (S.D. W. Va.) (the “Wayne County Action”); N.D. Ohio (1:17-op-45052);
- *Webster County Commission v. Purdue Pharma, L.P., et al.*, No. 18-C-2 (Webster County Circuit Court, W. Va.) (dismissed Mar. 21, 2018) (the “Webster County Action”);
- *West Virginia University Hospitals Inc., et al., v. Purdue Pharma, L.P., et al.*, No. 19-C-69 (Circuit Court of Marshall County, W. Va.) (the “WVU Hospitals Action”); and
- *Wyoming County v. AmerisourceBergen Drug Corp., et al.*, No. 5:17-cv-02311 (S.D. W. Va.) (the “Wyoming County Action”); N.D. Ohio (1:17-op-45051).

## Appendix B

As referenced in Footnote 5 of the foregoing Findings of Fact and Conclusions of Law, the Court takes judicial notice of the following cases against Plaintiffs that were initiated in West Virginia federal court, or removed to federal court in West Virginia, and that were consolidated into the National Opioid MDL by a series of orders by Judge Polster beginning December 5, 2017 and continuing periodically through August 3, 2020:

- *Al Marino, Inc., v. Purdue Pharma L.P., et al.*, No. 2:19-cv-00723 (S.D. W. Va.); No. 1:19-op-45976 (N.D. Ohio)
- *Riling v. Purdue Pharma L.P. et al.*, No. 2:18-cv-01390 (S.D. W. Va.), No. 1:17-op-45171 (N.D. Ohio);
- *Berkeley Cnty. Council v. Purdue Pharma. Prods., LP et al.*, No. 3:17-cv-143 (N.D. W. Va.), No. 1:17-op-45171 (N.D. Ohio);
- *Bryant, et al. v. Purdue Pharma. L.P. et al.*, No. 1:19-op-45805 (N.D. Ohio);
- *Moore et al. v. Purdue Pharma L.P. et al.*, No. 2:18-cv-01231 (S.D. W. Va.), No. 1:18-op-46035 (N.D. Ohio);
- *Boone Cnty. v. AmerisourceBergen Drug Corp., et al.*, No. 2:17-cv-02028 (S.D. W. Va.), No. 1:17-op-45061 (N.D. Ohio);
- *Cabell Cnty. v. AmerisourceBergen Drug Corp., et al.*, No. 3:17-cv-01665 (S.D. W. Va.), No. 1:17-op-45053 (N.D. Ohio);
- *Calhoun Cnty. Comm'n v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00407 (S.D. W. Va.), No. 1:18-op-45314 (N.D. Ohio);
- *Mayor Raaimie Barker, on behalf of the Town of Chapmanville v. Purdue Pharma, L.P., et al.*, No. 2:17-cv-03715 (S.D. W. Va.), No. 1:17-op-45055 (N.D. Ohio);
- *City of Bluefield v. AmerisourceBergen Drug Corp., et al.*, No. 1:18-cv-00930 (S.D. W. Va.), No. 1:18-op-45659 (N.D. Ohio);
- *City of Charles Town v. AmerisourceBergen Drug Corp., et al.*, No. 3:19-cv-00040 (N.D. W. Va.), No. 1:19-op-45250 (N.D. Ohio);
- *City of Charleston, W. Va. v. Rite Aid of Md., Inc., et al.*, No. 2:18-cv-00251 (S.D. W. Va.), No. 1:18-op-45224 (N.D. Ohio);

- *Dameron v. McKesson Corp., et al.*, No. 20-C-24 (Cir. Ct. Wyoming Cnty); No. 1:20-op-45221 (N.D. Ohio);
- *City of Dunbar v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00597 (S.D. W. Va.), No. 1:18-op-45548 (N.D. Ohio);
- *City of Huntington v. AmerisourceBergen Drug Corp., et al.*, No. 17-C-38 (Cir. Ct. Cabell Cnty.), No. 3:17-cv-01362 (S.D. W. Va.), No. 1:17-op-45054 (N.D. Ohio);
- *City of Hurricane v. AmerisourceBergen Drug Corp., et al.*, No. 3:18-cv-00401 (S.D. W. Va.), No. 1:18-op-45293 (N.D. Ohio);
- *City of Kenova v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-01472 (S.D. W. Va.), No. 1:18-op-46346 (N.D. Ohio);
- *City of Logan v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00434 (S.D. W. Va.), No. 1:18-op-45317 (N.D. Ohio);
- *City of Milton v. AmerisourceBergen Drug Corp., et al.*, No. 3:18-cv-00435 (S.D. W. Va.), No. 1:18-op-45321 (N.D. Ohio);
- *City of Montgomery v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-01285 (S.D. W. Va.), No. 1:18-op-46128 (N.D. Ohio);
- *City of Parkersburg v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00423 (S.D. W. Va.), No. 1:18-op-45315 (N.D. Ohio);
- *City of Princeton v. AmerisourceBergen Drug Corp., et al.*, No. 1:18-cv-01242 (S.D. W. Va.), No. 1:18-op-46054 (N.D. Ohio);
- *City of St. Albans v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00441 (S.D. W. Va.), No. 1:18-op-45269 (N.D. Ohio);
- *City of Smithers v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00441 (S.D. W. Va.), No. 1:18-op-45319 (N.D. Ohio);
- *City of Summersville v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00431 (S.D. W. Va.), No. 1:18-op-45316 (N.D. Ohio);
- *City of Vienna v. AmerisourceBergen Drug Corp., et al.*, No. 2:19-cv-00052 (S.D. W. Va.), No. 1:19-op-45052 (N.D. Ohio);
- *City of Welch v. McKesson Corp., et al.*, No. 17-C-18-M (Cir. Ct. McDowell Cty), No. 1:17-cv-003364 (S.D. W. Va.), No. 1:17-op-45065 (N.D. Ohio);
- *City of Williamson v. W. Va. Bd. of Pharma., et al.*, No. 17 C-99 (Cir. Ct. Mingo Cnty.), No. 2:17-cv-03532 (S.D. W. Va.), No. 1:17-op-45057 (N.D. Ohio);
- *City of Winfield v. AmerisourceBergen Drug Corp., et al.*, No. 3:18-cv-00400

(S.D. W. Va.), No. 1:18-op-45294 (N.D. Ohio);

- *Clay Cnty. Comm'n v. Purdue Pharma, Inc., et al.*, No. 18-C-2 (Cir. Ct. Clay Cnty.), No. 2:18-cv-00413 (S.D. W. Va.), No. 1:18-op-45670 (N.D. Ohio);
- *Mingo Cnty. Comm'n v. Purdue Pharma, Inc., et al.*, No. 18-C-2 (Cir. Ct. Mingo Cnty.), No. 2:18-cv-476 (S.D. W. Va.), No. 1:18-op-45940 (N.D. Ohio);
- *Putnam Cnty. Comm'n v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00350 (S.D. W. Va.), No. 1:18-op-45251 (N.D. Ohio);
- *Fayette Cnty. v. Cardinal Health, Inc., et al.*, No. 2:17-cv-01957 (S.D. W. Va.), No. 1:17-op-45062 (N.D. Ohio);
- *Greenbrier Cnty. Comm'n v. AmerisourceBergen Drug Corp., et al.*, No. 5:19-cv-84 (S.D. W. Va.), No. 1:19-op-45080 (N.D. Ohio);
- *James v. McKesson Corp., et al.*, No. 20-C-237 (Cir. Ct. Kanawha Cnty.); No. 1:20-op-45187 (N.D. Ohio);
- *Jefferson Cnty. Comm'n v. Purdue Pharma Prods, LP, et al.*, No. 3:17-cv-144 (N.D. W. Va.), No. 1:17-op-45170 (N.D. Ohio);
- *Shaffer v. Purdue Pharma L.P., et al.*, No. 2:18-cv-01448 (S.D. W. Va.), No. 1:18-op-46302 (N.D. Ohio);
- *Kanawha Cnty. v. Rite Aid of Md., Inc., et al.*, No. 17-cv-01666 (S.D. W. Va.), No. 1:17-op-45063 (N.D. Ohio);
- *Logan Cnty. v. Cardinal Health, Inc., et al.*, No. 2:17-cv-02296 (S.D. W. Va.), No. 1:18-op-45000 (N.D. Ohio);
- *Tilley v. Purdue Pharma L.P., et al.*, No. 2:19-cv-00566 (S.D. W. Va.), No. 1:19-op-46166 (N.D. Ohio);
- *Adkins v. Purdue Pharma L.P., et al.*, No. 19-C-9 (Cir. Ct. Lincoln Cnty.), No. 2:18-cv-477 (S.D. W. Va.); No. 1:18-op-45386 (N.D. Ohio)
- *Burton v. Purdue Pharma L.P., et al.*, No. 18-C-8 (Cir. Ct. Lincoln Cnty.), No. 2:18-cv-478 (S.D. W. Va.), No. 1:18-op-45940 (N.D. Ohio);
- *McDowell Cnty. v. McKesson Corp., et al.*, No. 16-C-137 (Cir. Ct. McDowell Cnty.), No. 1:17-cv-00946 (S.D. W. Va.), No. 1:17-op-45066 (N.D. Ohio);
- *Mercer Cnty. v. W. Va. Bd. of Pharma., et al.*, No. 17-C-236-DS (Cir. Ct. Mercer Cnty.), No. 1:17-cv-03716 (S.D. W. Va.), No. 1:17-op-45064 (N.D. Ohio);
- *Morgan Cnty. Comm'n v. Purdue Pharma Prods., LP, et al.*, No. 3:18-cv-00044 (N.D. W. Va.), No. 1:18-op-45444 (N.D. Ohio);

- *Nicholas Cnty. Comm'n v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00421 (S.D. W. Va.), No. 1:18-op-45314 (N.D. Ohio);
- *Raleigh Cnty. Comm'n v. CVS Indiana, L.L.C., et al.*, No. 5:17-CV-04484 (S.D. W. Va.), No. 1:18-op-45108 (N.D. Ohio);
- *Harris v. McKesson Corporation, et al.*, No. 2:19-cv-00707 (S.D. W. Va.), No. 1:20-op-45066 (N.D. Ohio);
- *City of Buckhannon v. McKesson Corp., et al.*, No. 2:18-cv-01263 (S.D. W. Va.); No. 1:18-op-46085 (N.D. Ohio)
- *Lincoln Cnty. Comm'n v. W. Va. Bd. of Pharma., et al.*, No. 17-C-46 (Cir. Ct. Lincoln Cnty.), No. 2:17-cv-03366 (S.D. W. Va.), No. 1:17-op-45060 (N.D. Ohio);
- *Dunford v. McKesson Corporation, et al.*, No. 20-C-235 (Cir. Ct. Kanawha Cnty.); No. No. 1:20-op 45186 (N.D. Ohio)
- *Town of Clendenin v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-01284 (S.D. W. Va.), No. 1:18-op-46127 (N.D. Ohio);
- *Town of Eleanor v. AmerisourceBergen Drug Corp., et al.*, No. 3:18-cv-00456 (S.D. W. Va.), No. 1:18-op-45387 (N.D. Ohio);
- *Town of Fort Gay v. Rite Aid of Md., Inc., et al.*, No. 3:18-cv-00280 (S.D. W. Va.), No. 1:18-op-45225 (N.D. Ohio);
- *Town of Gauley Bridge v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-1392 (S.D. W. Va.), No. 1:18-46278 (N.D. Ohio);
- *Town of Gilbert v. W. Va. Bd. of Pharma., et al.*, No. 17 C 94 (Cir. Ct. Mingo Cnty.), No. 2:17-cv-03369 (S.D. W. Va.), No. 1:17-op-45059 (N.D. Ohio);
- *Town of Glenville v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00443 (S.D. W. Va.), No. 1:18-op-45320 (N.D. Ohio);
- *Town of Granville v. AmerisourceBergen Drug Corporation, et al.*, No. 2:18-cv-00443 (S.D. W. Va.), 1:18-op-45320 (N.D. Ohio)
- *Town of Kermit v. McKesson Corp., et al.*, No. 17 C 13 (Cir. Ct. Mingo Cnty.), No. 2:17-cv-03372 (S.D. W. Va.), No. 1:17-op-45058 (N.D. Ohio);
- *Town of Man v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-00463 (S.D. W. Va.), No. 1:18-op-45385 (N.D. Ohio) (dismissed Jan. 14, 2020);
- *Town of Quinwood v. AmerisourceBergen Drug Corp., et al.*, No. 5:18-cv-00427 (S.D. W. Va.), No. 1:18-op-45324 (N.D. Ohio);
- *Town of Rainelle v. AmerisourceBergen Drug Corp., et al.*, No. 5:18-cv-00425

(S.D. W. Va.), No. 1:18-op-45322 (N.D. Ohio);

- *Town of Rupert v. AmerisourceBergen Drug Corp., et al.*, No. 5:18-cv-00426 (S.D. W. Va.), No. 1:18-op-45323 (N.D. Ohio);
- *Town of Sophia v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-01286 (S.D. W. Va.), No. 1:18-op-46129 (N.D. Ohio);
- *Town of Whitesville v. AmerisourceBergen Drug Corp., et al.*, No. 2:18-cv-01287 (S.D. W. Va.), No. 1:18-op-46130 (N.D. Ohio);
- *Salmons et al. v. Purdue Pharma., L.P., et al.*, No. 2:18-cv-00385 (S.D. W. Va.), No. 1:18-op-45268 (N.D. Ohio);
- *Wayne Cnty. v. Rite Aid. of Md., Inc., et al.*, No. 3:17-cv-01962 (S.D. W. Va.), No. 1:17-op-45052 (N.D. Ohio);
- *Wyoming Cnty. v. AmerisourceBergen Drug Corp., et al.*, No. 5:17-cv-02311 (S.D. W. Va.), No. 1:17-op-45051 (N.D. Ohio).

**/s/ William S. Thompson**  
Circuit Court Judge  
25th Judicial Circuit

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