

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WAYNE FARMS , LLC,)
Plaintiff,)

v.)

CASE NO.: _____

MCKESSON CORPORATION;)
CARDINAL HEALTH, INC.;)
AMERISOURCEBERGEN CORPORATION;)
TEVA PHARMACEUTICAL)
INDUSTRIES, LTD.;)
TEVA PHARMACEUTICALS USA, INC.;)
CEPHALON, INC.;)
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.;)
ENDO HEALTH SOLUTIONS INC.;)
ENDO PHARMACEUTICALS, INC.;)
ALLERGAN PLC f/k/a ACTAVIS PLC;)
ALLERGAN FINANCE, LLC;)
WATSON PHARMACEUTICALS, INC.)
n/k/a ACTAVIS, INC.;)
WATSON LABORATORIES, INC.;)
ACTAVIS LLC; ACTAVIS PHARMA, INC.)
f/k/a WATSON PHARMA, INC.;)
MALLINCKRODT, PLC d/b/a)
MALLINCKRODT PHARMACEUTICALS;)
MALLINCKRODT, LLC;)
CVS HEALTH CORPORATION;)
RITE-AID OF MARYLAND, INC.;)
RITE-AID CORP;)
WALGREENS BOOTS ALLIANCE, INC.;)
WAL-MART INC.;)
John Does 1-100;)
Defendants.)

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT

The Plaintiff, Wayne Farms LLC, a company providing health and welfare benefits to its employees and their families, (hereinafter referred to as "Wayne Farms"), by and through its attorneys, files this Complaint against the Defendants as follows:

INTRODUCTION

1. The addiction epidemic of prescription opioid abuse in the United States has caused businesses, including Wayne Farms, extraordinary economic damages. This opioid epidemic has financially damaged Wayne Farms. Wayne Farms seeks, in part, reimbursement of losses incurred as a result of the opioid epidemic including without limitation medical care, opioid-related illnesses, workers compensations and disability premium increases, employee downtime, employee retraining, employee counseling, and other costs.

2. Prescription opioids are deadlier than heroin, with related drug overdose deaths surpassing car accident deaths in the United States. The direct costs incurred by health and welfare funds, including Wayne Farms, are overwhelming.

3. This epidemic and its consequences could have been, and should have been, prevented by the Defendants who control the U.S. drug distribution industry and the Defendants who manufacture prescription opioids. These Defendants have profited greatly by allowing the geographic area that Wayne Farms serves to become flooded with prescription opioids.

4. The drug distribution industry is supposed to serve as a "check" in the drug delivery system by securing and monitoring opioids at every step of the stream of commerce, protecting them from theft and misuse, and refusing to fulfill suspicious or unusual orders by downstream pharmacies, doctors, clinics, or patients. Defendants woefully failed in this duty by consciously

ignoring known or knowable problems and data in their custody, control, and/or possession.

5. Defendants thus intentionally and negligently created conditions in which vast amounts of opioids have overflowed freely from and through the Defendants to innocent patients who became addicted, to opioid abusers, and even to illicit drug dealers.

6. Defendants' wrongful conduct has allowed millions of opioid pills to be diverted from legitimate channels of distribution into the illicit black market in quantities that have fueled the opioid epidemic in the Wayne Farms area – where the participants of Wayne Farms and their families live and work. This is "opioid diversion." Acting against their common law and statutory duties, Defendants have caused a black market in opioid pills and other opioid drugs in which opioid diversion is rampant.

7. For years, Defendants and their agents have had the ability to substantially reduce the death toll and adverse economic consequences of opioid diversion, including the deaths and health ruination of hundreds of thousands of citizens. Substantial expenditures by Wayne Farms in dealing with the problem have gone un-recouped and unreimbursed. All the Defendants share responsibility for perpetuating the epidemic.

8. Defendants have foreseeably caused damages to Wayne Farms, including the unreimbursed and/or un-recouped costs from the over-prescription of opioids.

9. Wayne Farms brings this civil action for injunctive relief, compensatory damages, statutory damages, and any other relief allowed by law against the Defendant opioid drug distributors, retailers, and manufacturers that, by their actions and omissions, knowingly or negligently have distributed, dispensed, and/or over-prescribed prescription opioid drugs in a manner that foreseeably injured, and continues to injure, Wayne Farms.

10. Plaintiff has strived to hold and manage its resources and assets and to only pay

reasonable expenses. To succeed and flourish Plaintiff strives to prevent waste or to otherwise prohibit asset dilution. As a result of the misconduct of Defendants, Plaintiff has suffered unnecessary and wasteful diversion and diminution of its assets.

PARTIES

11. The Plaintiff is a company and an employer providing health and welfare benefits and other benefits to its employees and their families. At all relevant times, Plaintiff's costs have increased directly or indirectly due to Defendants' Misconduct. Plaintiff has sustained injury as a result of Defendants' illegal and wrongful conduct alleged herein, including but not limited to, incurring unreimbursed costs related to the over-prescription of opioids.

12. McKesson Corporation ("McKesson") has its principal place of business in San Francisco, California, and is incorporated under the laws of Delaware. During all relevant times, McKesson has distributed substantial amounts of prescription opioids to providers and retailers in the geographic area of participants of Wayne Farms.

13. Cardinal Health, Inc. ("Cardinal") has its principal place of business in Ohio and is incorporated under the laws of Ohio. During all relevant times, Cardinal has distributed substantial amounts of prescription opioids to providers and retailers in the geographic area of participants of Wayne Farms.

14. AmerisourceBergen Corporation has its principal place of business in Pennsylvania and is incorporated under the laws of Delaware. During all relevant times, AmerisourceBergen has distributed substantial amounts of prescription opioids to providers and retailers in the geographic area of the participants of Wayne Farms.

15. McKesson, Cardinal, and AmerisourceBergen are collectively referred to hereinafter as "Distributor Defendants."

16. Cephalon, Inc. (“Cephalon”) is a Delaware corporation with its principal place of business in Frazer, Pennsylvania. Cephalon manufactures, promotes, sells, and distributes opioids such as Actiq and Fentora in the U.S., and Georgia. Actiq and Fentora have been approved by the FDA only for the “management of breakthrough cancer pain in patients 16 years of age and older who are already receiving and who are tolerant to opioid therapy for their underlying persistent cancer pain.” In 2008, Cephalon pled guilty to a criminal violation of the Federal Food, Drug and Cosmetic Act for its misleading promotion of Actiq and two other drugs and agreed to pay \$425 million.

17. Teva Pharmaceutical Industries, Ltd. (“Teva Ltd.”) is an Israeli corporation with its principal place of business in Petah Tikva, Israel. Teva Pharmaceuticals USA, Inc. (“Teva USA”) is a wholly-owned subsidiary of Teva Ltd. and is a Delaware corporation with its principal place of business in Pennsylvania. Teva USA acquired Cephalon in October 2011.

18. Teva Ltd., Teva USA, and Cephalon collaborate to market and sell Cephalon products in the U.S. Teva Ltd. conducts all sales and marketing activities for Cephalon in the U.S. through Teva USA. Teva Ltd. and Teva USA publicize Actiq and Fentora as Teva products. Teva USA sells all former Cephalon branded products through its “specialty medicines” division. The FDA-approved prescribing information and medication guide, which is distributed with Cephalon opioids marketed and sold in Georgia, discloses that the guide was submitted by Teva USA, and directs physicians to contact Teva USA to report adverse events. Teva Ltd. has directed Cephalon to disclose that it is a wholly-owned subsidiary of Teva Ltd. on prescription savings cards distributed in Georgia, indicating Teva Ltd. would be responsible for covering certain co-pay costs. All of Cephalon’s promotional websites, including those for Actiq and Fentora, prominently display Teva Ltd.’s logo. Teva Ltd.’s financial reports list Cephalon’s and Teva USA’s sales as its

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