

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

THE CITY OF HUNTINGTON,

Plaintiff,

v.

Civil Action No. 3:17-01362

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

CABELL COUNTY COMMISSION,

Plaintiff,

v.

Civil Action No. 3:17-01665

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These two cases are related to thousands of other lawsuits that have been filed throughout the country in recent years relating to the opioid crisis. The Opioid MDL (MDL 2804) was created by the Judicial Panel on Multidistrict Litigation (JPML) in December of 2017 after the JPML determined that a large number of cases should be centralized for pretrial proceedings in the Northern District of Ohio to coordinate the resolution of these actions. In re Nat'l Prescription Opiate Litig., 290 F.

Supp. 3d 1375, 1378 (J.P.M.L. 2017). These two cases, designated in the MDL as "Track Two" cases, were remanded to this court for further proceedings.

A bench trial was held on May 3, 2021, through July 12, 2021. Closing arguments were held on July 27 and July 28, 2021. Set forth herein are the court's findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52.

Because this case was tried before the court as a bench trial, the court's findings are presumed to be based on admissible evidence. See Fishing Fleet, Inc. v. Trident Ins., 598 F.2d 925, 929 (5th Cir. 1979); see also Harris v. Rivera, 454 U.S. 339, 346 (1981) ("In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions."); Chicago Title Ins. v. IMG Exeter Assocs. Ltd., 985 F.2d 553, 1993 WL 27392 at *4 (4th Cir. 1993) ("[A] judge presiding over a bench trial is presumed to consider only relevant, admissible evidence.") (unpublished). Accordingly, the court finds it unnecessary to rule on each separate evidentiary objection raised by the parties. The court has considered those objections relating to the evidence supporting the findings contained herein and, to the extent such objections relate to the evidence which the court cites in support of its findings, such objections are hereby overruled.

Plaintiffs, a West Virginia city and a West Virginia county, proceeded in this case on a single cause of action, public nuisance, against three wholesale distributors of medical products. According to plaintiffs, defendants' wholesale distribution of prescription opioids in Huntington and Cabell County created an opioid epidemic, which has caused a public nuisance in those localities. Plaintiffs contend that they seek relief in the form of abatement of the alleged nuisance.

Though they may disagree as to certain particulars, the parties agree that there is an opioid epidemic in the United States, as well as the City of Huntington and Cabell County. The parties further agree that the epidemic was fueled, at least in part, by prescription opioids. As the MDL court described it:

It is accurate to describe the opioid epidemic as a man-made plague, twenty years in the making. The pain, death, and heartache it has wrought cannot be overstated. As this Court has previously stated, it is hard to find anyone . . . who does not have a family member, a friend, a parent of a friend, or a child of a friend who has not been affected.

In re Nat'l Prescription Opiate Litig., No. 1:17-MD-2804, 2018 WL 6628898, at *21 (N.D. Ohio Dec. 19, 2018).

FINDINGS OF FACT

I. Background

The plaintiffs are The City of Huntington ("City of Huntington" or "Huntington"), a West Virginia city, and the

County Commission of Cabell County ("Cabell County" or "Cabell"), a West Virginia county commission (collectively, "plaintiffs" or "Cabell/Huntington"). See Third Amend. Compl. ¶¶ 26-30 (ECF No. 80). The defendants are AmerisourceBergen Drug Corporation ("ABDC"), Cardinal Health, Inc. ("Cardinal Health" or "Cardinal"), and McKesson Corporation ("McKesson") (collectively, "defendants"). See id. at ¶¶ 127-30, 133-36, 140-43.¹

¹ Plaintiffs' complaint also names as defendants the following entities that were severed from this trial but remain part of the litigation: Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Inc., Rhodes Pharmaceuticals L.P., Rhodes Technologies, Inc., Richard S. Sackler, M.D., Katha A. Sackler, Jonathan D. Sackler, Mortimer D.A. Sackler, Ilene Sackler Lefcourt, Beverly Sackler, Theresa Sackler, David A. Sackler, Allergan PLC f/k/a Actavis PLC f/k/a Allergan Inc., Allergan Finance LLC f/k/a Actavis Inc. f/k/a Watson Pharmaceuticals, Inc., Allergan Sales, LLC, Allergan USA, Inc., Watson Laboratories, Inc., Warner Chilcott Company, LLC, Actavis Pharma, Inc. f/k/a Watson Pharma, Inc., Actavis South Atlantic LLC, Actavis Elizabeth LLC, Actavis Mid Atlantic LLC, Actavis Totowa LLC, Actavis LLC, Actavis Kadian LLC, Actavis Laboratories UT, Inc., Actavis Laboratories FL, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Noramco, 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., Par Pharmaceutical, Inc., Par Pharmaceutical Companies, Inc. f/k/a Par Pharmaceutical Holdings, Inc., Teva Pharmaceutical Industries LTD., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Mallinckrodt PLC, Mallinckrodt LLC, SpecGx LLC, KVK-Tech, Inc., Amneal Pharmaceuticals, LLC, Amneal Pharmaceuticals, Inc., Impax Laboratories, LLC, Amneal Pharmaceuticals of New York LLC, CVS Health Corporation, CVS Indiana L.L.C., CVS Rx Services, Inc., CVS Tennessee Distribution, L.L.C., CVS Pharmacy, Inc., West Virginia CVS Pharmacy, LLC, Rite Aid Corporation, Rite Aid of Maryland, Inc., d/b/a Rite Aid Mid-Atlantic Customer Support

The Third Amended Complaint is the operative pleading.

Defendants are wholesale distributors of pharmaceutical and other products, including prescription and over-the-counter (OTC) medicines, as well as health and beauty aids. Defendants distribute a full line of medical products and supplies to pharmacies and hospitals across the United States.

Chris Zimmerman of ABDC described the important role that wholesale distributors play in maintaining an efficient supply chain between manufacturers and pharmacies:

[T]here's 2,000 manufacturers . . . that we buy products from where we purchase -- we carry anywhere from 60,000 different items within our warehouses and . . . we have over 16,000 pharmacy customers.

So, what we do, without a distributor, each one of those 2,000 manufacturers have to ship direct to the pharmacy. And those pharmacies would have to place 2,000 separate orders. They'd have to receive 2,000 separate receipts at the door each day. And that's just the product going out.

There's also the setup of the customers. The manufacturers only have to set up a few distributors and sell their products to the distributors. And then, we handle all the pharmacies, making sure that they have an appropriate license . . .

Center, Inc., Rite Aid of West Virginia, Inc., Walgreens Boots Alliance, Inc., Walgreen Eastern Co., Inc., Walgreen Co., H.D. Smith Wholesale Drug Co., Kroger Limited Partnership I, Kroger Limited Partnership II, Walmart Inc., Wal-Mart Stores East d/b/a Wal-Mart Pharmacy Warehouse #46, Wal-Mart Pharmacy Warehouse #45, Wal-Mart Pharmacy Warehouse, Express Scripts Holding Company, Express Scripts, Inc., Caremark Rx, LLC, Optum, Inc., OptumRx Inc., and Tasmanian Alkaloids Pty. LTD. See Third Amend. Compl. ¶¶ 42-123, 146-299.

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