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MSP RECOVERY CLAIMS, SERIES LLC, a Delaware entity, MSPA CLAIMS 1, LLC, a Florida entity, and SERIES PMPI, a designated series of MAO-MSO RECOVERY II, LLC, a Delaware series limited liability company, Plaintiffs, v. WARNER CHILCOTT SALLES (US), LLC, a Delaware limited liability company; WARNER CHILCOTT PLC, n/k/a Allergen WC Holding Ireland Limited, a foreign entity; Allergan USA, Inc., a Delaware corporation; ALLERGAN SALES, LLC, a Delaware limited liability company; ALLERGAN GI, CORP., a Delaware corporation; and ALLERGAN PLC, a foreign entity, Defendants.	**SUPERIOR COURT OF NEW JERSEY** LAW DIVISION – BERGEN COUNTY DOCKET NO. **BER-L-6052-19** Civil Action **OPINION**

Argued: **March 13, 2020**
Decided: **March 26, 2020**

HONORABLE ROBERT C. WILSON, J.S.C.

Dennis M. Geier, Esq. appearing on behalf of plaintiff MSP Recovery Claims, MSPA Claims 1, LLC, and Series PMPI (from Cohen, Placitella & Roth, P.C.)

John R. Vales, Esq. and Kelly Lloyd Lankford, Esq. appearing on behalf of defendants Warner Chilcott Sales, Warner Chilcott PLC, Allergan WC, Allergan USA, Inc., Allergan Sales, LLC, Allergan GI, Corp., and Allergan PLC (from Dentons US LLP)

Matthew J. O'Connor, Esq., Andrew D. Lazerow, Esq., and Teresa S. Park, Esq. appearing on behalf of defendants Warner Chilcott Sales, Warner Chilcott PLC, Allergan WC, Allergan USA, Inc., Allergan Sales, LLC, Allergan GI, Corp., and Allergan PLC (from Covington & Burling LLP)

FACTUAL BACKGROUND

THIS MATTER arises out of allegations by the Plaintiff of health insurance fraud. MSP Recovery ("Plaintiff") alleges that Warner Chilcott ("Defendant") utilized a variety of fraudulent schemes to increase sales of their drugs. Doctors prescribed drugs that were purportedly unnecessary and in turn caused assignors to reimburse Defendant for these unnecessary prescriptions. There is some debate about when these allegedly fraudulent transactions occurred, but it was at the latest in August of 2013.

In March 2011 and June 2011, former employees of Warner Chilcott filed a *qui tam* lawsuit in Massachusetts federal court. In February 2018, identical Plaintiffs to this motion filed a lawsuit in the Massachusetts federal district court asserting claims under RICO, state consumer protection statutes, Massachusetts common law fraud, and unjust enrichment. The February 2018 motion largely mirrored the prior March and June 2011 motions. On March 22, 2019, the Massachusetts federal district court dismissed the Federal Complaint in its entirety based on both the merits and the statute of limitations.

The federal court concluded that Plaintiffs had notice of injury "no later than August 2013." The *qui tam* filings, along with variety of other filings, were publicly available by August 2013.

For the reasons set forth below, Defendants Warner Chilcott Sales, Warner Chilcot PLC, Allergan WC, Allergan USA, Inc., Allergan Sales, LLC, Motions to Dismiss are hereby **GRANTED**.

MOTION TO DISMISS STANDARD UNDER RULE 4:6-2(e)

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations "to ascertain whether the fundament of a

cause of action may be gleaned even from an obscure statement of claim. . . ." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id.

Under the New Jersey Court Rules, a complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See, NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The "test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts." Printing Mart, 116 N.J. at 746. However, "a court must dismiss the plaintiff's complaint if it has failed to articulate a legal basis entitling plaintiff to relief." Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

RULES OF LAW AND DECISION

I. The Statute of Limitations Bars Recovery

This Court is bound by the facts adjudicated by the Federal Court Order. The relevant statute of limitations in the claims brought by MSP Recovery is six years for both the common law fraud and consumer protection allegations. The instant claims are based on transactions that occurred prior to August 21, 2013 and are barred by New Jersey's statute of limitations. D'Angelo v. Miller Yacht Sales, 261 N.J. Super 683, 688 (App. Div. 1993).

Plaintiff asserts that the discovery rule saves the claims that accrued prior to August 2013. In New Jersey, the "application of the discovery rule is objective." Martinez v. Cooper Hosp.-Univ. Med. Ctr., 163 N.J. 45, 52 (2000). Courts seek to determine "whether the plaintiff knew or should have known of sufficient facts to start the statute of limitations running." Id. "[K]knowledge of fault for purposes of the discovery rule has a circumscribed meaning: it requires only the awareness of facts that would alert a reasonable person exercising ordinary diligence that a third party's conduct may have caused or contributed to the cause of the injury[.]"). Savage v. Old Bridge-Sayreville Medical Group, P.A., 134 N.J. 241, 248 (1993).

a. MSP Recovery Knew or Should Have Known of its Potential Claims

Plaintiff could have discovered the facts necessary to support their claims no later than August 2013. Inferences were being made as to Defendant's alleged wrongdoings as early as 2012 in news articles and SEC filings. By 2013, the *qui tam* complaints were publicly available. Warner Chilcott itself acknowledged these allegations in an SEC filing in May 2013. There was substantial media coverage surrounding the allegations being made against Warner Chilcott. The standard for the discovery rule is whether a claimant should have known of the facts pertinent to its claim. This is especially true when Plaintiff has a close, substantial involvement in the industry, as Plaintiff in this case has. MSP Recovery is in the business of recovering money from fraudulent medical claims.

The Court must conclude that MSP Recovery did not engage in the necessary fact-finding inquiries to support its claims until the statute of limitations had run. MSP Recovery had to act with reasonable diligence to pursue their claims. Therefore the Court finds that MSP Recovery knew or should have known of its claims by August 2013.

II. Claim Preclusion Bars Claims Arising from Post-2012 Transactions

Federal law mandates the preclusive effect of the federal district court's decision. Gannon v. American Home Products, Inc., 411 N.J. 454, 471 (2011). Claim preclusion applies when: "1. The earlier suit resulted in a final judgment on the merits, 2. The causes of action asserted in the earlier and later suits are sufficiently identical or related, and 3. The parties in the two suits are sufficiently identical or closely related." Airframe Sys., Inc. v. Raytheon Co., 601 F.3d 9, 14 (1st Cir. 2010).

Here the Massachusetts federal court dismissed Plaintiffs' claims arising from the transactions with prejudice. A dismissal with prejudice constitutes a final decision on the merits. New Jersey court have given *res judicata* effect to a federal court dismissal with prejudice pursuant to Rule 12(b)(6). Velazquez v. Franz, 123 N.J. 498, 507 (1991). A dismissal with prejudice due to procedural failings is a dismissal on the merits. Federated Dep't Stores, Inc. v. Moitie, 425 U.S. 394, 399 n.3 (1981).

The causes of action in the federal action and the instant state action are not identical. However, they are sufficiently similar to warrant claim preclusion. Claim preclusion analysis turns on "whether the causes of action arise out of a common nucleus of operative fact. Airframe Sys., 601 F.3d at 15. "Federal claim preclusion law bars parties from relitigating claims that could have been made in an earlier suit, not just claims that were actually made." Sch. Of Law at Andover, Inc. v. Am. Bar. Ass'n, 142 F.3d 26, 38 (1st Cir. 1998). The complaint in the instant case and the federal law have the same common nucleus of facts and are therefore subject to claim preclusion.

Finally, the parties are the same. The plaintiffs are the same and the assignors all overlap. For the reasons stated above, the Court must find that the doctrines of the statute of limitation and claim preclusion bar Plaintiffs from bringing this action.

CONCLUSION

For the aforementioned reasons, Defendants Motion to Dismiss is **GRANTED**.