96th Annual National Conference of Bankruptcy Judges
October 19-22, 2022 Orlando, FL

The Devastating Impact of the Opioid Crisis featuring Pulitzer Prize Winning Journalist Eric Eyer

Eric W. Eyer, Mountain State Spotlight

Prof. Patrick C. McGinley, West Virginia University College of Law

Hon. Beth Buchanan, USBC, S.D. Ohio

NCBJ | National Conference of Bankruptcy Judges

The Devastating Impact of the Opioid Crisis featuring Pulitzer Prize Winning Journalist Eric Eyer

Table of Contents

Preface

In two years, out-of-state drug companies shipped nearly 9 million opioid pain pills to Kermit, West Virginia, a town with 382 people. The quintessential coal town, split by a pair of railroad tracks, was the home of Sav-Rite Pharmacy, which once had the dubious distinction of being among the country's top sellers of a highly addictive prescription painkiller called hydrocodone—packaged under brand names such as Lortab and Vicodin. Sav-Rite was the only game in town. The pharmacy's owner, Jim Wooley, sold used cars on the side, right there in the gravel lot beside Sav-Rite. It was quite a racket.

Kermit didn't have nearly enough customers to buy that many pain pills. You could step into just about any "pain management clinic" in the county and walk out with a bogus prescription for $150. Wooley—he pronounced it "OO-LEE"—had established a considerable footprint. Sav-Rite's clientele would travel from hundreds of miles away, from Ohio, North Carolina, Tennessee, and even Florida. Word spread fast and far when a pharmacy would fill any prescription so long as you paid in cash. When folks started asking questions about Wooley's booming business in the middle of nowhere, he had a ready answer. His customers were mostly tourists, just passing through Kermit, on their way to hunt or fish or ride four-wheelers in the mountains. But

it was Sav-Rite that had become the tourist destination. Cars and pickups were backed up, trying to squeeze into the drive-through lane, choking Highway 52 through town. Wooley was a salesman, through and through, and he recognized that a waiting customer wasn't a happy customer. So he dragged a camping trailer onto the parking lot and sold hot dogs and chips and soda pop out of it. The concessions were cheap, the customers were happy, and Wooley could make a few extra bucks outside the pharmacy to couple with the millions he was making inside selling opioids. To the tourists.

To keep pace with demand, he needed reliable suppliers. There was no shortage. One was McKesson Corporation. It ranked sixth in the Fortune 500. A couple of years back, McKesson's CEO was the highest-paid corporate executive in the land. And the company didn't hesitate to fill Jim Wooley's round-the-clock orders. In 2006 and 2007, McKesson shipped 5 million hydrocodone pills to Sav-Rite, no questions asked. The following year, when Wooley's actions started raising suspicions—he opened a sham pain clinic up the road where addicts would pick up rubber-stamped prescriptions that only Sav-Rite would honor—McKesson, like a good corporate citizen, cut the pharmacy off. For two years. Once the authorities stopped snooping around, however, the global drug distributor resumed deliveries of hydrocodone and other powerful pain medications to Sav-Rite. But then Wooley got arrested for filling bogus prescriptions, and, well, that terminated the business relationship for good. It was lucrative while it lasted. McKesson's CEO denied responsibility and faced no penalty. Wooley almost got off scot-free as well. Prosecutors recommended no prison time for the pharmacist-turned-entrepreneur.

Across West Virginia, other small towns like Kermit were also drowning in prescription painkillers. Thirty miles east, McKesson combined with wholesale drug giant Cardinal Health—the fourteenth-largest US company—and two regional distributors

to deliver 16.6 million pain pills over a decade to a single drugstore in Mount Gay, which has all of seventeen hundred residents. Those same companies, along with AmerisourceBergen—ranked twelfth in the Fortune 500—shipped 20.8 million prescription opioids to two pharmacies four blocks apart in Williamson, a town with twenty-nine hundred people, and only twenty miles from Kermit. Williamson was so overrun with painkillers that the locals started calling it Pilliamson. The white coats and blue suits made a fortune.

This was unbridled profiteering, yes, and it came with an undeniable public health cost. The pills were lethal. Take too many all at once, and you stopped breathing. People were taking hydrocodone and its more powerful cousin OxyContin, and they were accidentally overdosing in record numbers. Mingo County, where Kermit and Williamson are located, had one of the highest overdose death rates in the nation, according to the Centers for Disease Control. As the addiction crisis spread across the country, some health advocates sounded the alarm, but industry lobbyists snuffed out policymakers' efforts to stop the scourge. They found politicians willing to do their bidding. The regulators—the DEA, the pharmacy board—failed to do their jobs. Pablo Escobar and El Chapo couldn't have set things up any better. So the pills kept flowing, the number of deaths mounting. Federal laws and court orders kept the companies' dark secrets hidden from the public. They left nothing to chance. It was all too big. And, truth be told, they almost got away with it, the biggest heist amid the biggest public health crisis in US history. Almost.

But there was something the corporate pill peddlers didn't forecast, something that took them by surprise: an unlikely alliance between an ex-con and the crusading lawyer who couldn't keep her out of jail. Starting in 2007, they slung accusatory stones up, up, up the drug supply chain, from doctors to pharmacists to drug distributors.

As a statehouse reporter with the *Charleston Gazette-Mail*, I

stumbled into the middle of their legal battle in 2013, uncovering secrets and lies that set up a collision course with three of America's largest corporations. That summer, I received a tip that Cardinal Health had helped pay for the inaugural party of West Virginia's newly elected attorney general, Patrick Morrisey. Cardinal's lawyer had headed Morrisey's campaign transition team, and Morrisey's wife had lobbied for Cardinal in Washington, DC, pocketing millions of dollars for her K Street firm. The previous attorney general—a twenty-year incumbent—had sued Cardinal on behalf of the citizens of West Virginia. Now, Morrisey, after Cardinal's top executives helped bankroll his campaign, was overseeing the suit; lawyers close to the case contended he was trying to sabotage it. Morrisey insisted he had stepped aside from the lawsuit, but I unearthed letters showing he had met privately with Cardinal lawyers about it, and court documents and emails revealed he was giving staff "specific instructions" on how to handle the suit. In retaliation, Morrisey set out to derail my investigation with one of his own—against my employer, a tenacious small newspaper in financial peril. His benefactors were counting on him to slam shut the door. But after the paper successfully fought to unseal court documents that the drug distributors wanted to hide from the public, the attorney general handed over previously confidential records that showed the companies' insidious pursuit of profits. Along the way, I wrote hundreds of stories about the devastation and misery that opioids had inflicted upon our state. I kept digging for answers, the smaller articles snowballing into the larger story of how it happened, how drug companies flooded small towns with millions of prescription opioids, and how they got caught. It all began with a seemingly unremarkable death in a place called Mud Lick.

Timeline: Key dates/Death in Mud Lick

1989: Kermit, West Virginia, named "The Most Corrupt Town in America," after the FBI uncovers a massive drug, bribery and vote-buying ring run by the notorious Preece clan of Mingo County. Debbie Preece is among the family members convicted and sent to federal prison.

2005: Coal miner William "Bull" Preece dies after an OxyContin overdose. His sister, Debbie Preece, seeks to avenge his death.

2006: Amid a rise of overdose deaths, the U.S. Drug Enforcement Administration puts drug distributors, such as McKesson and Cardinal Health, on notice that they're responsible for flagging and shutting off pharmacies ordering a suspicious number of prescription opioids.

May 2007: McKesson employee alerts higher-ups about suspect orders for pain pills from Sav-Rite Pharmacy in Kermit, but company ignores warning.

July 2007: Debbie Preece contacts Jim Cagle, who represented her two decades earlier when she was convicted and sent to jail for her role in the family's notorious drug empire. Cagle helps Debbie file a wrongful death suit on behalf of Bull against Kermit/Sav-Rite pharmacist Jim Wooley and Dr. Donald Kiser.

June 2008: Private investigator, hired by Cagle, shoots undercover footage of drug deals in Sav-Rite Pharmacy parking lot. Cagle sends copy of tape to DEA agent.

March 2009: Federal agents storm Sav-Rite. Undercover agents report Rx bags being thrown over counter, courtesy popcorn, registers stuffed with cash.

.

July 2009: Sav-Rite agrees to settle wrongful death suit. Debbie rounds up 29 recovering addicts who, represented by Cagle, file lawsuits against doctors and pharmacies. She's diagnosed with cancer.

Fall 2009: Debbie Preece follows prescription drug delivery truck and has plate traced to Cardinal Health.

March 2012: Cardinal Health lobbyist Denise Henry Morrisey (while her husband, Patrick Morrisey is running for attorney general in West Virginia) gives federal lawmakers

scripted questions to ask the DEA at a congressional hearing on the nation's prescription drug problem. The questions aim to deflect blame away from distributors like Cardinal.

May 2012: While driving south on the West Virginia Turnpike, Cagle chases down cigar-chomping old friend, Rod "Bulldog" Jackson. They agree to go to West Virginia Attorney General Darrell McGraw about suing wholesale drug distributors. McGraw files lawsuits against Cardinal Health and other companies.

November 2012: Patrick Morrisey, who never practiced law in West Virginia, becomes the state's first Republican attorney general since the 1930s. Cardinal Health execs shower him with campaign cash.

July 2013: I receive tips about Cardinal Health helping to pay for Morrisey's inaugural party, and that Morrisey was now trying to sabotage the case. He threatens to sue me and the newspaper for libel if we publish a story about his conflicts.

May 2015: The Gazette-Mail takes Morrisey to court to pry loose documents related to the state's lawsuit against Cardinal Health. In the courtroom, Morrisey's Russian-born lawyer argues against the release of emails about his boss' role in the state lawsuit. The newspaper's unpaid attorney argues the public has the right to see the emails.

July 2015: Morrisey launches antitrust investigation against the Gazette-Mail, demanding we turn over personnel files and financial records. He sends a subpoena to newsroom.

October 2015: An anonymous whistleblower drops a package in my mailbox at home. It's one of the emails Morrisey fought so hard to keep secret. It shows he took part in the Cardinal lawsuit while the company paid his wife. Morrisey's general counsel threatens "sanctions" against me and the newspaper if we publish an article about his boss and the email.

April 2016: The Gazette-Mail goes to court against the distributors. An army of their big-city corporate lawyers fight to block the newspaper's motion to intervene in the case and unseal court documents that disclose pill shipment numbers in some West Virginia towns.

July 2016: I'm diagnosed with Parkinson's disease. I start boxing classes with others who have PD at a sweaty gym in the worst part of town. It's beside a drug rehab center.

December 2016: Using the state Freedom of Information Act, I obtain hundreds of pages of DEA spreadsheets that detail distributors' sales to pharmacies across WV. We're the first media outlet ever to get its hands on this data. It shows that the companies saturated the state

with 780 million pain pills during a time when overdose deaths spiked. Kermit alone was flooded with nearly 9 million prescription painkillers in just two years.

January 2017: Just a week before a trial is set to start, West Virginia Gov. Earl Ray Tomblin announces $36 million settlement with Cardinal and other distributors. He wants to put all proceeds in a special account to be used for addiction treatment, but Morrisey refuses. AG diverts millions to his office slush fund.

January 2017: Debbie Preece gives me a list of people she knows who have died of drug overdoses – 61 people. It's the first time we meet. I'm in Kermit because the town just filed a nuisance suit against the drug distributors. It's the first of what would snowball into 2,500 similar lawsuits nationwide that seek to hold drug companies accountable for the opioid epidemic.

May 2017: A congressional committee starts an investigation into pill dumping in West Virginia. House panel demands distributors and DEA turn over records.

August 2017: Another of Debbie Preece's brothers, Timmy Dale, dies of an overdose. Tomahawk Preece is first medic on scene but unable to revive him. Kermit fire department doesn't have overdose-reversing drug Narcan.

January 2018: The Gazette-Mail goes bankrupt. We're to be sold to a news chain that cuts to the bone and endorsed Donald Trump. It's a dark day. We hatch a devious plan to scare off the newspaper chain that planned to buy us, and miraculously, it works. New owner is the publisher of the Huntington (WV) Herald-Dispatch.

May 2018: Reminiscent of the tobacco hearings before Congress in the 1990s, five drug firm CEOs testify on Capitol Hill. All but one say their companies weren't responsible for the opioid epidemic.

May 2018: I accompany Debbie to the Preece family burial plot. Debbie wonders if her 12-year crusade has made a difference. The drug CEOs didn't have to go to jail. But she did. As we leave, I notice an unmarked, dirt-covered grave beside Timmy Dale's grave. The gravediggers were only three-feet down when they hit something unexpected. May 2018

June 2018 to January 2020: The Gazette-Mail and I start a new effort to unseal DEA data for the entire nation. DEA and distributors join forces in opposition. Federal judge rules against us. The newspaper appeals. Federal appeals court rules in our favor, making public the painkiller shipment data for the entire nation. It's a remarkable victory for a tiny newspaper in coal country.

Media outlets across the U.S. take the baton from us, using the unsealed data to write dozens of stories about how their states, their communities, were saturated by prescription opioids. Nationally, the companies shipped 100 billion painkillers over nine years. The data provides a roadmap to the opioid crisis.

For Good Cause Shown

Professor Patrick C. McGinley
Judge Charles H. Haden II Professor of Law
West Virginia University College of Law

> Upon motion by a party or by the person from whom discovery is sought . . . and *for good cause shown*, the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . .
>
> F.R.C.P. 26(c) (Protective Orders)

I. Introduction

This essay reflects upon what my counsel and I learned as we worked closely with Pulitzer Prize-winning journalist Eric Eyre while litigating prescription opioid cases as counsel for his newspaper, THE CHARLESTON GAZETTE-MAIL[1]

Actually, our *pro bono* participation in these cases yielded many surprises and teaching moments. Here, I discuss only one of those – the ability of opioid company defendants to use state and federal rules of civil procedure and common customary trial court support of parties who have reached amicable litigation settlements.

Slowly, over time, my co-counsel Suzanne Weise and I came to realize that these common ways for facilitating efficient litigation and settlements played a major role in concealing the American opioid epidemic from the world.[2]

[1] When West Virginia College of Law Professor Suzanne Weise and I began our representation in 2016, the newspaper was the CHARLESTON GAZETTE; subsequently it became the *Charleston Gazette-Mail*. We represented the newspaper in state and federal cases seeking disclosure of information relating to the opioid epidemic.

[2] The problematic nature of court enforced confidentiality has received attention of legal scholars and investigative reporters. See e.g., Dustin B. Benham, *Foundational and Contemporary Court Confidentiality,* 86 MO. L. REV. 211(2021), https://scholarship.law.missouri.edu/mlr/vol86/iss1/6/, 214-216 (2021); Andrew D. Goldstein, *Sealing and Revealing: Rethinking The Rules Governing Public Access To Information Generated Through Litigation*, 81 CHI.-KENT L. REV. 375 (2006); M. Conlin, D, Levine, L, Girion, *Why big business can count on courts to keep its deadly secrets*. Reuters (Dec. 19, 2019), https://www.reuters.com/investigates/special-report/usa-courts-secrecy-lobbyist/

Eric Eyre's reporting and his book, DEATH IN MUD LICK, reveal that pharmaceutical companies, as well as law enforcement, doctors, pharmacies, Congress, state, and federal regulators, all bear some responsibility for the nationwide opioid health crisis. When all was said and done, Eric's Pulitzer prize-winning reporting and the Gazette's Sixth Circuit victory revealed the astronomical number of highly addictive painkiller pills – 110 billion – had flooded West Virginia and the nation from 2006-2014.

Beginning in the late 1990s and continuing over more than two decades, a growing tsunami of addictive opioid pills were inundating cities, small towns, and rural areas in virtually every region of the country. Doctors, opioid manufacturers, distributors, and retail pharmacies were profiting from these drugs in record amounts.

How could nine million opioid pills submerge the tiny hamlet of Kermit, West Virginia, in two years and no one noticed? People were literally dying in the streets from opioid overdoses in Kermit and other coalfield towns.[3] Cars with license plates from many states were strung around a city block in Kermit and other small towns. The occupants were in line for one purpose - waiting to pay in cash for painkillers to a "pharmacy" that sold literally nothing else. How did the vast deadly epidemic grow and expand with such obvious signs of massive drug diversion?

[3]In the brief Professor Weise and I submitted to the Boone County trial court requesting unsealing of the state's Second Amended Complaint, we asserted:

> To say that it is generally known within the jurisdiction of the 25th judicial circuit that to say there is a serious and unprecedented crisis of opiate addiction among our citizens is an understatement. Virtually everyone in the region acknowledges it. It is impossible to ignore. The President of the United States came to our state Capital because West Virginia is recognized nationally as being ravaged by the epidemic. Everyone in this jurisdiction knows someone who has died of an overdose. The epidemic infects our culture and society from top to bottom. The Governor's brother suffers from addiction. We find the victims' bodies in our best homes and on our best streets and in low-income neighborhoods. We see the addicted on our streets at all hours.

II. The West Virginia Cases

A. First Questions

Neither my counsel nor I had experience with regulation of pharmaceuticals when Eric called me in the Spring of 2016. He asked me to find a way to unseal complaints filed in 2012 by the State Attorney General in a southern West Virginia County trial court. Essentially, Suzanne Weise and I were tasked with intervening on behalf of the state's most influential newspaper to vindicate the First Amendment's promise and the public's right to know.

We were confused. Our first question: Why were the Complaints sealed?[4] The Attorney General had sued opioid distributors on behalf of all West Virginians alleging unlawful conduct contributing to West Virginia's horrendous numbers of opioid addiction and overdose deaths. Why were the state's citizens barred from knowing the nature of the allegations of unlawful conduct cited in the sealed complaints? After all, the complaints had been filed on their behalf and the court was asked to award millions of dollars of damages to the state. [5]

We knew that sealing some documents in a filed court record occurred occasionally. But, the law of West Virginia and most other states holds that "the public has a presumptive right of access to filed court records, the trial court may limit this right only if there is a *compelling countervailing public interest in . . . sealing of the documents required to protect that*

[4]The West Virginia Attorney General had filed two different complaints against prescription opioid distributors. The defendants in one case included the FORTUNE 500 AmerisourceBergen and smaller distributors; the second case targeted only Cardinal Health, another top the FORTUNE 500 company. The fundamental allegations and law of both complaints were essentially the same.

[5]In 2018, West Virginia's Attorney General sued McKesson Corp. McKesson, Cardinal Health and AmerisourceBergen, which combined had delivered more than 33 billion opioid pills the West Virginia from 2006 to 2012. See generally, Higham, Horwitz, *Rich 76 billion opioid pills: Newly released federal data unmasks the epidemic*, Wash. Post (July 16, 2019); https://www.washingtonpost.com/investigations/76-billion-opioid-pills-newly-released-federal-data-unmasks-the-epidemic/2019/07/16/5f29fd62-a73e-11e9-86dd-d7f0e60391e9_story.html

interest." *Garden State Newspapers, Inc., v. Hoke* 520 S.E.2d 186, 196, 205 W.Va. 611, 621 (1999) (emphasis supplied).

What conceivable "*compelling countervailing public interests*" did the defendants assert to persuade the court to seal the complaints? The two complaints explained the basis for the Attorney General's suit seeking millions of dollars of damages from two opioid distributors. Why had public access to the complaints been blocked?

B. First Answers

Working with Eric while digging deeper into the facts of the cases, we began to discern answers to the questions posed above. It didn't take long to begin to unravel answers to these questions.

Importantly, the sealed court records at issue were *amended* complaints. After the original complaint was filed by the West Virginia Attorney, the opioid distributor defendants agreed to provide responses to the state's discovery requests - conditioned on the entry of a blanket agreed protective order.[6] Subsequently, the Boone County judge signed the order. As

[6]Protective Orders are the price plaintiffs have come to accept to prevent defendants from using every available device to greatly lengthen and increase the cost of discovery for plaintiffs. One Commentator has observed,

> several incentives drive parties to keep information confidential. First, company-defendants want to avoid the reputation harm, and related commercial injury, caused by the release of confidential information. This is true even if the defendant has a potential defense to a claim . . . because of the risk that the media or public might misconstrue the information. Second, defendants are incentivized to stifle similar claims, even if those claims are meritorious.[12] Assuming a repeating case context, potential claimants could feed off information from the first case or other similar cases. More cases to defend means more money in defense costs and judgment liability. Additionally, more cases--particularly meritorious cases--will likely cause the defendant greater reputation injury.

Dustin B Benham, *Foundational And Contemporary Court Confidentiality,* 86 Mo.L.Rev 211, 214-216 (2021).

often is the custom in many federal and state courts, Judge Thompson made no finding of good cause pursuant to the West Virginia Rules of Civil Procedure 26(c).[7]

To obtain information in discovery, the state's and the defendants' lawyers agreed to a broad protective order severely limiting information divulged in discovery that could be disclosed to the public. Although the West Virginia (and Federal) Rules of Civil Procedure permit a court to enter a protective order "for good cause shown," it has been the custom of state and federal courts to enter protective orders agreed to by the parties without making an independent judicial finding of good cause as the rules require.

As discovery progressed, the distributor defendants disclosed damaging facts relating to their conduct. That information would inform the public of the nature of the state's claims far beyond the general allegations of the original complaint. Fearing public disclosure of the new information might violate the terms of the protective order, the state's lawyers filed the Second Amended Complaint under seal.

Subsequently, following the terms of the protective order, the state moved the court to unseal the Second Amended Complaint.[8] Their motion argued that the people of West Virginia, a state with the highest *per capita* opioid overdose deaths, had a right to know the contents of the amended complaint.

---

[7]W.Va.R.Civ.Pro.26 (c) Protective orders states: Upon motion by a party or by the person from whom discovery is sought, . . . and ***for good cause shown***, ***the court*** in which the action is pending . . . ***may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . .*** (emphasis supplied). The West Virginia rule is almost identical to federal rule 26(c).

[8] The Protective Order provided that "if any Party or attorney wishes to use any confidential or highly confidential information or materials as an exhibit or as evidence at a hearing or trial, s/he must provide reasonable notice to the party that produced the information or material. The Parties and/or attorneys shall then attempt to resolve the issue of continued confidentiality by either (a) removing the confidential or highly confidential designation entirely, or (b) creating a mutually acceptable redacted version that suffices for purposes of the hearing or trial." Protective Order at 6-7.

When we filed a motion to intervene and to unseal the Second Amended Complaints, the defendants were required to show Rule 26(c) good cause as a basis for maintaining the protective order. The defendants claimed that the newspapers sought to discover certain "highly confidential information alleged in the Second Amended Complaint." They also represented that unsealing the Second Amended Complaint would "harm their 'business competitive position.'"[9]

Judge Thompson rejected these allegations, finding "no evidence in support of [their] conclusory representation that the unsealing "will harm its' business competitive position or taint the jury pool." The AmerisourceBergen defendant made a last-ditch effort to protect what it knew

[9] The defendants vigorously challenged unsealing the complaint, arguing:

> If Plaintiffs are permitted to file the SAC ["Second Amended Complaint"] publicly without redaction of this sensitive sales information, both [Defendants] and its customers will suffer competitive harm. The release of sale and customer data would enable [Defendants'] competitors to identify pharmacies with which [Defendants] has conducted business and would provide customers' purchasing histories. This information would allow competitors to target existing [Defendants] customers and attempt to take that business from [Defendants]. Competitors could use this information to create financial or other incentives for customers based on specific products and quantities purchased, placing [Defendants] at a significant competitive disadvantage. Release of such information would also be competitively harmful to [Defendants'] customers. A competing pharmacy could use information about the distribution of controlled substances to better understand and assess the business of its competitors who are [Defendants'] customers.
>
> Moreover, release of sales information could also negatively impact [Defendants'] diversion control efforts. Release of this information could alert potential diverters to customer locations, volumes of controlled substances at customers, and the likelihood that the customer would have controlled substances on hand.
>
> Contrary to Plaintiffs' assertions, the fact that the data in question concerns the years 2007-2012 is irrelevant. Sales data does not become less sensitive with the passage of time. Competitors can use historical data to forecast current and future market trends and to predict future potential growth by class of trade, geographic area, or customer profile. Moreover, [Defendants] has long-term relationships with most of its customers and, therefore, customer sales information from several years prior is just as valuable to a competitor as current customer information. Historical sales data could also provide a potential diverter with key information about a pharmacy's purchasing profile, which could then be used to target a pharmacy or region for purposes of diversion.

AmerisourceBergen Drug Corporation's Response In Opposition To Plaintiffs' Motion To Unseal The Second Amended Complaint, at 7-8.

was the most damning information in the state's Second Amended Complaint. In its memorandum of law,

> [defendant] notes for the Court's information that the [Second Amended Complaint] allegations comprise 14,499 words; the portion of the [Complaint] directed specifically at [defendant] contains 651 words, and ***[defendant] proposes to redact only 18 words under Protective Order.*** [emphasis supplied].[10]

How could a mere 18 words cause such grievous harm to the defendant opioid distributors, as had been alleged as the basis for refusing to lift the protective order and disclose the complaint to the public? What 18 words would cause such extraordinary harm?

We were totally at a loss to understand this argument – until the words were disclosed during a telephonic hearing. The *words*, AmerisourceBergen's counsel explained were *numbers*.

The court rejected AmerisourceBergen's claim that "the controlled substance distribution information constitutes 'trade secrets' such that it should remain under seal," concluding instead,

> the historical controlled substances distribution information alleged in the Second Amended Complaint has at best only speculative value to competitors, as the identity of pharmacies who might be buyers is not secret, and amounts of specific controlled substances distributed four or more years ago to specific pharmacies or locales over specified time periods, without any sales pricing or profit information, would, . . . be unlikely to have such substantial competitive value that the public interest in access to court documents would be overcome.[11]

In rejecting Cardinal Health's opposition to unsealing the Second Amended Complaint, the Boone County trial judge concluded that the "grounds advanced for the protective order are not shown with the specificity that is required. The grounds advanced for

[10][AmerisourceBergen]*Motion to modify and amend order Unsealing second amended complaint pending in camera hearing,* Civ. Action No. 12-C-141 (Boone Cty. W. Va. Cir. Ct., May 18, 2016).
[11]*Court Order With Respect To Platintiffs' Motion To Unseal The Second Amended Complaint And The Gazette's Motion To Intervene*, *State of West Virginia ex rel. Patrick Morrisey, Atty Gen., et al*., v. *AmerisourceBergen*, ¶ 8, Civ. Action No. 12-C-141 (Boone Cty. W. Va. Cir. Ct., May 6, 2016).

the order are not framed with specific or articulated reasoning that shows that specific harm will befall Cardinal if the order does not remain in effect."[12]

The Boone County Circuit Judge emphatically rejected the defendants' arguments that the information hidden from the public pursuant to agreed protective orders in a sealed pleading constituted "trade secrets" and "confidential business information." The previously sealed Second Amended Complaint was released shortly after the court's orders to unseal.

When Eric shared the *18 words* with us, it became clear why the defendants fought so hard to block their public disclosure. The *words* were actually *numbers* – numbers of opioid pills distributed in West Virginia from 2007 to 2012. The numbers totaled 780,000,000.[13] Eric broke down the numbers for GAZETTE-MAIL readers. For example, distributors shipped "nearly 9 million highly addictive — and potentially lethal — hydrocodone pills over two years to a single pharmacy" located in tiny Kermit West Virginia, a village of 393 people.[14]

---

[12] *Order With Respect To The Charleston Gazette-Mail's Motion To Intervene And To Unseal Plaintiffs' Second Amended Complaint*, ¶ 27, Cir. Ct. Boone Cty. W.Va. (Nov. 4, 2016). *State of West Virginia ex rel. Patrick Morrisey, Atty Gen., et al*., v. *AmerisourceBergen*, ¶ 22, Civ. Action No. 12-C-140.

[13]When Eric penned his Pulitzer stories in 2016, he reported that 780 million pills had been distributed in West Virginia. That number stunned us – it took our breath away. It was easy to extrapolate that many billions of addictive opioid meds had swamped the country – we just didn't know the actual quantity.

[14] Some of the other numbers and related details included:

> Cardinal Health said it shipped 3.4 billion doses of medication in West Virginia between 2007 and 2012. So hydrocodone and oxycodone sales made up about 17 percent of the company's shipments. In Southern West Virginia, many of the pharmacies that received the largest shipments of prescription opioids were small, independent drugstores like ones in Raleigh and Wyoming counties that ordered 600,000 to 1.1 million oxycodone pills a year. Or they were locally owned pharmacies in Mingo and Logan counties, where wholesalers distributed 1.4 million to 4.7 million hydrocodone pills annually. By contrast, the Wal-Mart at Charleston's Southridge Centre, one of the retail giant's busiest stores in West Virginia, was shipped about 5,000 oxycodone and 9,500 hydrocodone pills each year.

Eric Eyre, *780M pills, 1,728 deaths*, Charleston Gazette-Mail (December 18, 2016). https://www.pulitzer.org/winners/eric-eyre

Those numbers signaled that every player in the prescription opioid supply chain was aware - early on - that the enormous quantities of pills were a root cause of the evolving nationwide opioid epidemic. Keeping those numbers secret was the key to corporate profits to continue rolling in for two decades. The profits did not enrich only shareholders; corporate executives also cashed in. Eric reported that over a four-year period the CEOs of McKesson, Cardinal Health and AmerisourceBergen collectively received salaries and other compensation of more than $450 million.[15] Protective orders, sealed settlements and court records helped make it happen.

III. The MDL Protective Order

Eric Eyre had translated the meaning of the *18 words* for the public. Observing the immediate impact of the public disclosure, the opioid distributors folded on December 29, 2016, only nine days after publication of Eric's Pulitzer Prize-winning articles were published. Opioid distributors AmerisourceBergen and Cardinal Health settled the West Virginia cases for $36 million.[16]

The news of public disclosure of information secreted in sealed complaints filed in a coalfield court spread like a tsunami. Within weeks, lawsuits mimicking the cases brought by the West Virginia Attorney General were filed in state and federal courts around the country. Ultimately, more than three thousand complaints were filed by state, counties, and cities across the country. The plaintiffs in these cases sought huge monetary damages from

[15] *Id.*

[16] Filed in 2012, the lawsuits had been litigated for four and a half years through terms of two West Virginia Attorneys General. Eric Eyre, *2 drug distributors to pay 36 M to settle WV painkiller lawsuits*, CHARLESTON GAZETTE (Jan. 9, 2017); https://www.wvgazettemail.com/news/health/2-drug-distributors-to-pay-36m-to-settle-wv-painkiller-lawsuits/article_b43534bd-b020-5f56-b9f3-f74270a54c07.html

companies alleged to have some responsibility for the spread of highly addictive prescription opioids to American communities.

A large majority of those cases were transferred by The Judicial Panel on Multidistrict Litigation to the United States District Court for the Northern District of Ohio. In the Spring of 2017, Eric and the editors of the *Charleston Gazette-Mail* contacted us again. The MDL plaintiffs had successfully subpoenaed the entire Drug Enforcement Administration ARCOS database for use in their cases.[17] Was there a way to force the disclosure of the DEA's national ARCOS database?

The DEA had disclosed part of the database to the plaintiff in the West Virginia cases. No articulable harm had accrued to either the distributors nor to state or federal law enforcement efforts because of the *Charleston Gazette-Mail* stories that had disclosed the numbers of prescription opioid pills that made West Virginia the state with the highest rate of overdose deaths in the country.[18] Why shouldn't the entire ARCOS database be disclosed to the country?

The main obstacle again was a blanket protective order. The ARCOS data that had found its way into complaints filed in the MDL had similarly been redacted. Complaints citing the data had been sealed. Previously, the West Virginia court had rejected essentially the same specious business confidentiality arguments in holding that the opioid distributors had not shown good cause for sealing the Second Amended Complaint.

---

[17]Not surprisingly, the opioid company defendants objected to disclosing the database to the plaintiffs – on essentially the same grounds that Judge Thompson had rejected in the Boone County cases – confidential, privileged commercial business information and trade secrets., The DEA objected to the subpoena on grounds that disclosure would interfere with its law enforcement activities. What did surprise us was that the federal agency embraced and supported the drug company defendants' confidential commercial business information argument.

[18] DEA Intelligence Report, *The West Virginia Drug Situation* (DEA-WAS-DIR-024-17) (May 2017), https://www.dea.gov/sites/default/files/2018-07/DEA-WAS-DIR-024-17%20West%20Virginia%20Drug%20Situation%20-UNCLASSIFIED.pdf

Suzanne and I proceeded to design a plan to intervene in the MDL for the sole purpose of obtaining the "numbers" of addictive opioid pills that had been distributed and sold in communities in every state.

Judge Polster, the district court judge presiding over the MDL opioid litigation, had rejected the privileged confidential business arguments made when the opioid company defendants opposed the plaintiffs' DEA subpoena. We hoped the court would similarly reject keeping the ARCOS data secret and find that good cause did not support the agreed protective order.

In the West Virginia cases and in virtually every case in which opioid companies had been sued for damages over two decades, protective orders had not been supported by a judicial finding of good cause. The MDL protective order was no different. Judge Polster had not made a finding of good cause under Rule 26(c).

When protective orders are challenged by third party intervenors, the proponents of the order most *show good cause* why sealed pleadings and information produced in discovery should not be disclosed to the public. It was clear to us that the opioid companies again had nothing but speculation to support their claims of severe harm to their confidential business interests. We were optimistic.

Our optimism was misplaced. Judge Polster rejected out-of-hand our request to make the national ARCOS data available to the public:

> The decision of the West Virginia court on how to supervise its civil cases does not have any precedential effect on how the undersigned supervises discovery in this MDL. Third, in the West Virginia cases, the Charleston Gazette-Mail asked the court to unseal second amended complaints; here, the Media is asking the Counties to disclose the federal government's entire ARCOS dataset produced within the confines of a protective order in the course of discovery in this MDL . . . .

"[T]aking into consideration the arguments set forth in the briefs filed by the Media, Track One Plaintiffs, the United States and the Defendants – *[the Court] finds that good cause does in fact exist for the Protective Order's prohibition against disclosure of ARCOS data to the Media.*"[19]

After analyzing the court's opinion, we believed that an appeal to the United States Court of Appeals for the Sixth Circuit could succeed. The fatal flaw in the district court's decision we advised our client was that the opioid company defendants had not, indeed could not, provide evidence of good cause. The defendants could not show that the disclosure of the West Virginia ARCOS data – 780 million pills swamping West Virginia –had harmed the opioid companies' competitive business interests.

On appeal, the Sixth Circuit agreed. It held that good cause had not been shown for barring disclosure of the ARCOS data pursuant to the MDL protective order. Nor had good cause been shown for sealing hundreds of filed court records including those referencing the ARCOS data. The court observed,

> Defendants have not alleged any harm resulting from the publication of the ARCOS data [the Gazette-Mail] received from the West Virginia Attorney General in 2016. Defendants underscore the speculative nature of the harm they assert in stating that '[i]t likely is too soon in any event to draw firm conclusions about the competitive harm caused by those earlier disclosures.' Defendants have offered no new reasons on appeal to question the district court's analysis of their interest in nondisclosure,[13] and we conclude that Defendants' interests are far outweighed by the specific, concrete interest Intervenors and the public have in disclosure of the ARCOS data.

In re National Prescription Opiate Litigation, 927 F.3d 919, 937-938 (6th Cir. 2019). The court emphasized the importance of a court requiring proponents of agreed protective orders to make a showing of good cause in cases involving substantial public interests:

[19] *In re National Prescription Opiate Litigation*, 325 F.Supp.3d 833, 838 (2018) (emphasis supplied).

> The reporting on the ARCOS data that HDM received from the West Virginia Attorney General resulted in no demonstrated commercial harm to Defendants and no demonstrated interference with law enforcement interests; but this reporting did result in a Pulitzer Prize, a Congressional Committee report, and a broader public understanding of the scope, context, and causes of the opioid epidemic. Further disclosure of the ARCOS data is warranted because the DEA and Defendants have failed to demonstrate "good cause" not to disclose the data to Intervenors. As the district court acknowledged, "[s]unlight is said to be the best of disinfectants," and the ARCOS data and the insight it will provide into the opioid epidemic should be brought to light.

The Sixth Circuit remanded the case to the district court and ordered the public disclosure of the entire ARCOS database from 2006-2014.

The new data revealed that one billion prescription opioid pills had primed the opioid epidemic in West Virginia. Prescription opioids had killed thousands and addicted tens of thousands of the state's citizens. The nation also learned that 110 billion opioid pills had been dumped in the other forty-nine states – an incomprehensible number to most Americans.

Like the "18 words" the West Virginia defendants sought to keep secret from the public – 110,000,000,000 -- is a "word" all the companies in the prescription opioid supply chain wanted to keep from the public. They had returned to the failed "*confidential business information*" argument they could not support with facts. Reflecting on this claim, one might be prompted to ask – how could anyone seriously contend the ARCOS "words" would constitute *good cause* under Rule 26(c) for keeping DEA data secret from the public?

IV. Additional Reflections on Protective Orders and Good Cause in Opioid Cases

A. Unsupported Claims of "Confidential Business Information" and "Trade Secrets" Rejected for Lack of Good Cause

Given our experience litigating the issue of public access to information relating to the opioid epidemic, I was asked to teach a seminar addressing the issues raised in those cases. In researching in preparation for teaching the "Prescription Opioid Litigation Seminar," I found

other court opinions that also had rejected prescription opioid company defendants' attempt to use specious claims of "confidential business information" for lack of good cause.[20]

My research also led me to conclude that in virtually every case over two decades involving a plaintiff who sued an opioid company for damages. In those cases a protective order had been entered using substantially similar language including: "protection of trade secrets" and "confidential business information" that resulted in concealment of information that did not qualify for such protection.[21] For example, in *Commonwealth of Massachusetts v. Purdue Pharma, Inc*., 35 Mass.L.Rptr. 427 (2019), certain paragraphs in an Amended Complaint had been designated by Purdue Pharma as confidential because they allegedly involved "proprietary confidential studies" or "confidential business negotiations." The Massachusetts trial court reviewed the designated paragraphs. It found the paragraphs

> do not involve trade secrets but rather appear to be discussions of tactics that could be used to promote the sales of OxyContin (particularly in higher doses), to encourage doctors to prescribe the drug over longer periods of time, and to circumvent safeguards put in place to stop illegal prescriptions. . . Purdue has been given ample opportunity to explain why this information should be regarded as legitimately proprietary or as a trade secret deserving of this Court's protection. No such explanation has been offered, even though six weeks have gone by since Purdue first became aware of what the Amended Complaint contained.[22]

[20]Those cases involved more than numbers, For example, corporate opioid marketing and other strategies. The defendants in those cases argued that information they disclosed in discovery could not be revealed to the public. Those cases involved agreed protective orders entered by courts without a showing of good cause. They also concerned sealed court records and settlement agreements hidden from the public because opioid companies asserted that the secreted information was "confidential business information."

[21] For an overview of settlements in early opioid cases, see Rebecca L. Haffajee, *The Public Health Value of Opioid Litigation*, 48 *Journal of Law, Medicine & Ethics*, 279–92 (2020).

[22]The court explained why good cause did not support the sealing of the complaint containing allegedly confidential business information:

> the answer to the question of whether good cause exists . . . is even clearer. First . . . Opioid use in Massachusetts and elsewhere has indeed reached epidemic proportions, carrying with it real human and economic costs. The Commonwealth alleges that the defendants are responsible for that crisis, and the public has a right to know the basis for its allegations. Second, the redacted

The very first case brought by a government against an opioid company was filed by the State of West Virginia. In that case, evidence produced in discovery by the defendant, Purdue Pharma, led a West Virginia trial court judge to reject Purdue's motion to dismiss, siding with the state's assertion that "the material could convince a jury that Purdue's sales pitch was full of dangerous lies."[23]

However, the court sealed the evidence on which the ruling relied. When Purdue and the state subsequently settled, "the evidence remained hidden, out of sight to regulators, doctors and patients" until it was "leaked to the media many years later."[24] "Over the next few years, as OxyContin sales and opioid-related deaths climbed, *more than a dozen other judges overseeing similar lawsuits against Purdue took the same tack, keeping the company's records secret*."[25]

Purdue Pharma has been sued numerous times since the settlement of the West Virginia case cited above. One commentator reports that:

> Despite the years of litigation, Connecticut-based Purdue has successfully kept millions of company records out of view through judicial secrecy orders or settlement agreements mandating their destruction. In the Kentucky case, 17 million pages of documents were produced during the litigation. As part of the settlement agreement, the Kentucky attorney general destroyed its copies of documents provided by Purdue.[26]

> information has not been previously disclosed—perhaps explaining why defendants so strenuously object to its being revealed now. Finally, the disclosure of the information—while it may prove embarrassing for some of the defendants—is not intensely personal or private. In essence, the information describes the inner workings of a company and discussions about company business among its directors, officers and employees. *Any interest in keeping this information secret is hardly compelling and certainly not enough to overcome the presumption of public access.*

Id.

[23] *Id.*

[24] *Id.*

[25] *Id.* (Emphasis supplied).

[26] David Armstrong, *Judge expects to rule next week on unsealing secret OxyContin documents,* STET (May 6, 2016).

B. Good Cause for Sealing Court Records

In the Fall of 2020 Professor Weise and I received a call from a reporter seeking disclosure of records maintained under seal for a decade and a half in a West Virginia trial court after a settlement had been reached. *McCallister* v. *Purdue Pharma L.C.,* Civ. Action No. 1-C-238 (Cir. Ct. of Putnam County W.Va.). The case may have been the first class action seeking damages from Purdue Pharma for actions relating to its marketing of opioids, including oxycodone and other prescription opioids in West Virginia. The allegations in the 2001 case mirror pleadings in numerous cases filed in other jurisdictions over a decade and a half.[27]

Ultimately, we agreed to represent the WASHINGTON POST, Home Box Office, Inc., and P.K Productions, Inc. It was yet another situation in which a broad protective order led to sealing all court records in a case.[28] Again, the trial court had not made findings of good cause under Rule 26(c) prior to ordering all court records to be sealed. The case was unique in that the records were 15-20 years old, and the defendant was on the verge of being dissolved as part of bankruptcy court proceedings. Purdue asserted that "[t]he Court's file . . . includes more than 1,100 separate sealed docket entries . . . commercial information that the parties designated as confidential and subject to protection under the Court's Protective Order and the approved Settlement Agreement."[29]

---

[27]The complaint alleged that "Purdue . . . encouraged widespread use of OxyContin for off-label uses and doses, while misleading Plaintiffs, both by misrepresentation and omission, about the safety and effectiveness of the drug [and] . . . encouraged and enlisted physicians and others to mislead Plaintiffs to purchase and take the drug while withholding information about its dangers, particularly its addictiveness." *McCallister* v. *Purdue Pharma L.C.,* 164 F.Supp.2d 783, 787 (S.D. W. Va. 2001).

[28]Even filed records were sealed that had originally been public before a settlement was reached by the plaintiffs and Purdue.

[29] *Purdue Response In Opposition To PK Films, LLC, The Washington Post and Home Box Office, Inc.'s Motion To Intervene, Unseal Court Records, And Vacate The Consent Protective Order* (filed Jan. 27, 2021).

In the case, counsel for the plaintiffs provided insight into the reason protective orders and settlement agreements so effectively blocked disclosure of opioid company defendants wrongdoing for two decades. A zoom hearing on the Intervenor media companies motion to intervene, unseal court records and vacate the twenty-year-old protective order was held. During oral argument the plaintiffs' lawyer explained an important reason why his clients had agreed to seal all court records filed in the case:

> [T]he settlement agreement, which was approved by the Court, ***one of the terms of the settlement agreement required the parties to keep all of that information secret and not disclose information that was produced in discovery . . . that is something that we agreed to in exchange for a, you know, rather large settlement.***
>
> ***This was not a $5,000 car wreck case. There was a lot of consideration paid by Purdue from that they asked a lot from us, and one of the things was our agreement to keep this stuff confidential, which ended up in a settlement agreement that's a record of this case and subject to a court order.***
>
> So I just want to be clear to everybody that that obligation exists apart from the protective order and apart from the sealing order . . . .[30]

After *in camera* review of the sealed court records by a Special Master, the Putnam County Court ordered all the filed records unsealed with minor exceptions relating to personal and medical information. The court adopted the reasoning of the Master regarding the public's right to know, notwithstanding the twenty-year-old protective order:

> The instant case is a single wave in a torrent of conduct. This conduct potentially contributed to an epidemic that continues to ravage the people of West Virginia. The public's interest in disclosure of the Court file is immense. The public has a right to know what happened in its Court.

Special Discovery Commissioner's Report and Recommendations, (Case No. 01 -C-238) (May 19, 2021) (adopted by the court, May 22, 2021).

[30] *McCallister* v. *Purdue Pharma L.C., Transcript of Proceedings Held before the Hon. Phillip M. Stowers, Judge, on the Motion to Intervene* at 46 (Jan. 29, 2021).

V. Final Thoughts

In *In re National Prescription Opiate Litigation*, the Sixth Circuit explained the importance of judicial review of sealing court records in cases involving the public interest:

> This strong presumption in favor of openness is only overcome if a party "can show a compelling reason why certain documents or portions thereof should be sealed, [and] the seal itself [is] narrowly tailored to serve that reason." *Id.* Further, "the greater the public interest in the litigation's subject matter, the greater the showing necessary to overcome the presumption of access."[31] *Id.*

Rule 26(c)'s good cause requirement applies to protection of information produced by a party in discovery. The Court of Appeals emphasized that a protective order shall only be entered upon a showing of "good cause" by the party seeking the protection:

> To show good cause for a protective order, the moving party is required to make "a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." A district court abuses its discretion where it "ma[kes] neither factual findings nor legal arguments supporting the need for" the order.[32]

We had a recurring thought throughout our representation of media clients seeking to unseal court records and vacate restrictive court protective orders. In each case, opioid company defendants claimed protective orders and sealing of court records were necessary to prevent serious harm to their confidential competitive business interests.

We wondered, what if the information generated in early court cases like the 2001 West Virginia cases discussed above had been disclosed to the public instead of hidden by protective orders and in sealed records? Clearly corporate strategies to sell prescription opioids as non-addictive, and the number of pills sold by a pharmacies five or ten years earlier did not deserve to

[31] 927 F.3d 919, 938-9394 (6th Cir. 2019) (citations omitted).
[32] *Id*. at 929-930 (citations omitted).

be hidden from the public based on a bogus claim of a need to protect confidential business information.

What if courts had required proponents of sealing and protective orders to comply with Rule 26(c)'s good cause mandate? And, what if in cases spanning almost two decades, courts had required opioid company defendants to show a compelling interest before court records were sealed?

The Sixth Circuit emphasized that despite Rule 26(c), "it is common practice for parties to stipulate to [protective] orders" and blanket protective orders "allow the parties to determine in the first instance whether particular materials fall within the order's protection" with no judicial finding of good cause.[33] How many tens of thousands of Americans might have been saved from death or addiction if we had known that billions of addictive prescription opioid pills were quietly inundating communities across the land?

[33] *Id.*

and is listed as No. 28 in the Forbe's list of Fortune 500 companies.

(ii) Records supplied as discovery by this Defendant reflect that in the five(5) years of records provided, Amerisourcebergen Drug Corp. distributed the following quantities, more or less to West Virginia pharmacies:

- [redacted]alprazolam
- [redacted]amphetamine
- [redacted]Klonopin
- [redacted]diazepam
- [redacted]hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others)
- [redacted]opana
- [redacted]oxycodone
- [redacted]oxycontin

Other controlled substances widely known to be abused were also distributed as well as various quantities of some of the aforementioned substances in liquid form.

The foregoing numbers which are far beyond the number of distributions of controlled substances as would be reasonably distributed to a population of 1.85 million, indicate that for every West Virginian, including children, this Defendant distributed

[redacted] hydrocodone tablets (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) during the period identified. For oxycodone, oxycontin and opana combined the figure would be [redacted] tablets per person.

(iii) Amerisourcebergen was a distributor of substantial quantities of controlled substances to Tug Valley Pharmacy in Williamson, West Virginia. This pill mill pharmacy was located within yards of two notorious pill mill physicians and their operations in the town of Williamson. Doctors named Diane Shafer, Katherine Hoover, and William Ryckman operated pill mill clinics whose voluminous illegal prescriptions written for non-medical purposes were filled daily by this pharmacy to which Amerisourcebergen was distributing. This Defendant's records as supplied during discovery indicate that they distributed to Tug Valley Pharmacy a total of [redacted] hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) tablets during the calendar year 2009 for an average supply of [redacted] tablets per month. The operations of Drs. Hoover, Ryckman and Shafer were closed by State and federal law enforcement in 2010 which was followed by criminal prosecutions and asset seizures.

During the same period of 2009 in which this Defendant was distributing hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) to Tug Valley, [redacted]

[redacted] was likewise distributing large quantities of hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) to Tug Valley Pharmacy as is set forth more particularly infra.

(iv) This Defendant also distributed controlled substances in large quantities to a "drive-in" pill mill pharmacy located in Boone County. According to the discovery there were approximately [redacted] transactions with this pill mill. From the discovery which was provided both by this Defendant and by [redacted] it is known that on the dates of July 16 and July 17, 2012 Defendant Amerisourcebergen Drug Corp. distributed [redacted] hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) tablets to this "drive-in" pill mill pharmacy. On these same two dates [redacted] distributed [redacted] hydrocodone tablets (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) to this same pill mill.

Further, in the months of July, 2012 this Defendant distributed [redacted] Oxycodone tablets to this "drive-in" pill mill when [redacted] distributed a combined total of [redacted] tablets of oxycodone, oxycotin and opana to the same pharmacy in July.

(v) It is the industry standard that the distributor of controlled substances shall "know its customer." Due diligence in this regard is both expected and required to include an awareness of other suppliers of controlled substances to this company's customers. This standard was disregarded

(dd) [redacted]

(ee) [redacted] On these same two dates another of these Defendants, Amerisourcebergen Drug Corp. distributed [redacted]

hydrocodone tablets to this same "drive in" pharmacy.

(ff) [redacted] During that same month Defendant Amerisourcebergen Drug Corp. distributed [redacted] Oxycodone tablets to that pill mill pharmacy.

As the proximate result of the acts and omissions heretofore identified, the State of West Virginia and the Plaintiff agencies named herein have incurred substantial losses, costs, and damages and will continue to incur substantial losses, costs, and damages in the future.

15. d. [redacted]