

IN THE CIRCUIT COURT FOR CAMPBELL COUNTY AT
JACKSBORO, TENNESSEE

JARED EFFLER, in his official capacity as
District Attorney General for the Eighth
Judicial District and on behalf of all
political subdivisions therein, *et al*,

Plaintiffs,

Case No. 16596

v.

PURDUE PHARMA, L.P., *et al*,

Defendants.

**ORDER GRANTING MOTION TO DISMISS DISTRICT
ATTORNEYS' CLAIMS AND DENYING PLAINTIFFS' MOTION
TO SUBSTITUTE**

THIS MATTER, pursuant to Tenn. R. Civ. P. 12.02 and 12.08, came before the Court 24 February 2021 on a Motion to Dismiss the District Attorneys' claims for lack of Subject Matter Jurisdiction by the Defendants, ENDO PHARMACEUTICALS INC., ENDO HEALTH SOLUTIONS INC., TEVA PHARMACCUTICALS USA, INC. and TIMOTHY GOWDER (collectively, "Defendants"), and on a Motion to Substitute by the Plaintiffs, pursuant to Tenn. R. Civ. P. 17.01(Rule 17.01). After reviewing the pleadings of the parties and after oral arguments via zoom, the court GRANTS the Defendants' motion to Dismiss and DENIES the Plaintiffs' motion to Substitute.

PARTIES

1. The Plaintiffs include seven District Attorneys suing on behalf of counties and cities within their respective districts to recover monies that those counties and cities spent to address the abuse and misuse of opioid medications. (There are also two Baby Doe plaintiffs.)

2. The Defendants include pharmaceutical companies that manufacture, among other items, prescription opioid medications for pain treatment and Timothy Gowder, individually.

BACKGROUND

3. The Tennessee Supreme Court, on December 17, 2020, held that the District Attorneys, in this matter, lack standing to bring an action for damages under the Tennessee Drug Dealers Liability Act (DDLA). Defendants move for dismissal of the District Attorneys' claims.

4. Notwithstanding the Tennessee Supreme Court's decision, the Plaintiffs, pursuant to Rule 17.01, move to substitute the Counties of Claiborne, Union, Fentress, Grainger, Cocke, Rhea, Bledsoe, Sequatchie, Grundy, Marion, Franklin, and Knox and the City of Knoxville in place of the District Attorneys. Further, the Plaintiffs seek a sixty-day grace period to substitute additional parties for the District Attorneys.

5. The Defendants argue, consistent with the Supreme Court decision, that because of the statutory construction of the DDLA, the court has no subject matter jurisdiction and, therefore, dismissal of the District Attorneys' claims is mandatory and the court cannot consider a Rule 17.01 motion. In other words, the remedy of substitution is unavailable to the Plaintiffs.

6. The Plaintiffs disagree, arguing that substitution is a viable option and should be considered by the court.

7. If Rule 17.01 is available, the court should deny the Plaintiffs' motion for substitution, argue the Defendants. The Defendants argue the naming of the District Attorneys as real parties in interest under the DDLA was a strategic decision rather than a "mistake." The parties in interest, who may bring an action under the DDLA, according to Tennessee Code Annotated (TCA) 29-38-106 (a), do not include the District Attorneys but include governmental entities; the statute is unambiguous, according to the Defendants, as to who may bring an action under the DDLA.

8. The Plaintiffs counter, claiming that the naming of the District Attorneys as real parties in interest was reasonable under the statutory construction of the DDLA. In fact, the Plaintiffs point to another trial court and the Court of Appeals who agreed with their position.

9. Further, the Defendants argue that Rule 17.01 requires substitution within a reasonable period after objection. Defendants, in February 2018, objected to the District Attorneys' standing—their ability to maintain an action under the DDLA. Shortly thereafter, the Attorney General for the State of Tennessee objected to the District Attorneys' standing under the DDLA. Filing a motion to substitute three years after objection to standing is unreasonable under Rule 17.01, and, argue the Defendants, the court should deny substitution.

10. Plaintiffs disagree. Because of the Court of Appeals' holding—that the District Attorneys had standing to bring a suit under the DDLA—the Plaintiffs argue the time for filing a Rule 17.01 motion to substitute was triggered by the Supreme Court's decision in December 2020 and not by the Defendants' objections in February 2018. Therefore, the motion is reasonable and timely, argue the Plaintiffs.

11. The Defendants raise the issue of prejudice as additional grounds to deny the motion to substitute, however, the court finds no merit in this claim.

LEGAL STANDARD

12. TCA 29-38-106 provides for who is allowed to bring an action for damages under the DDLA. Specifically, TCA 29-38-106 (a)(4) provides: that a “governmental entity...that funds a drug treatment program or employee assistance program for the individual drug user, or that otherwise expended money on behalf of the individual drug user” may bring an action under the DDLA.

13. Rule 17.01 provides:

Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, bailee, trustee of an express trust, a party to whose rights another is subrogated, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought; and when a statute so provides an action for the use or benefit of another shall be brought in the name of this State. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time

has been allowed after objection for ratification or commencement by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

DISCUSSION

14. The Tennessee Supreme Court held that under the “plain language” of the DDLA, “District Attorneys lack standing to bring an action under the [DDLA] as individual plaintiffs.” Because the DDLA statutorily creates a cause of action and provides who may bring an action for damages, standing becomes “interwoven” with subject matter jurisdiction. Therefore, having no standing to bring an action under the DDLA, depriving the court of subject matter jurisdiction, the District Attorneys lack standing to move for substitution.

15. The Plaintiffs acknowledged that governmental entities, pursuant to TCA 29-38-106(a), had standing to bring their own DDLA lawsuits and that several localities have already filed their own opioid lawsuits. Considering the plain language in TCA 29-38-106(a), it is difficult to contemplate that a mistake was made as to who may bring an action for damages under the DDLA.

16. The Defendants objected to the District Attorneys having standing under the DDLA in February 2018; shortly thereafter, the Attorney General of Tennessee objected to the District Attorneys’ standing, also. Over the past three years, the Plaintiffs have failed to add or substitute any other additional parties. The language in Rule 17.01 provides that a motion for substitution must be made within a “reasonable time...after objection.” In other words, the reasonableness is measured from when the adverse party makes a formal objection—February 2018. Considering that the standing objection occurred three years ago, the motion to substitute is untimely.

CONCLUSION

17. After consideration of the pleadings and oral arguments via zoom, the court holds that dismissal is mandatory and substitution is unavailable.

18. If, however, substitution is available, the court holds the District Attorneys did not satisfy the requirements for substitution per Rule 17.01.

Therefore, the Defendants' motion to dismiss is GRANTED and the Plaintiffs' motion to substitute is DENIED.

IT IS SO ORDERED

DATED this 26th day of February, 2021

A handwritten signature in black ink that reads "John D. McAfee". The signature is written in a cursive style with a large initial "J" and "M".

John D. McAfee
Circuit Judge (8th Dist.)