

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
TWELFTH DIVISION

MCKESSON MEDICAL-SURGICAL, INC.

PLAINTIFF

vs.

Case No. 60cv-17-1960

STATE OF ARKANSAS;
ARKANSAS DEPARTMENT OF CORRECTION;
ASA HUTCHINSON, in his official capacity as
Governor of Arkansas; and
WENDY KELLEY, in her official capacity as
Director of the Arkansas Department of Correction

DEFENDANTS

DEFENDANTS' MOTION TO DISMISS

The State of Arkansas, the Arkansas Department of Correction, Asa Hutchinson in his official capacity as Governor of Arkansas, and Wendy Kelley in her official capacity as Director of the Arkansas Department of Correction (collectively “ADC” or the “State”), state as follows for their Motion to Dismiss the Complaint filed by McKesson Medical-Surgical, Inc.:

1. McKesson’s complaint essentially alleges that McKesson made a mistake nine months ago when it sold vecuronium bromide to the ADC, a drug that can be used in lethal injection under Arkansas law. McKesson asks that the ADC be enjoined from using the drug it purchased from McKesson in lethal-injection executions, and that the ADC be ordered to return the drug to McKesson. McKesson’s complaint fails as a matter of law and should be dismissed with prejudice¹ under Ark. R. Civ. P. 12(b)(6) for failure to state facts upon which relief can be granted.

¹ As the Court is well aware, McKesson already took a voluntary dismissal under Ark. R. Civ. P. 41 in Case No. 60cv-17-1921. The second dismissal should be with prejudice.

2. The Defendants contend that their Motion to Change Venue (and their Motion to Dismiss) should be acted upon before the Court considers McKesson's request for preliminary injunctive relief. McKesson's request for preliminary injunctive relief should be heard by the transferee court, which the Defendants have an absolute statutory right to transfer to.

3. The relief McKesson seeks amounts to a stay of executions—but this Court lacks jurisdiction to grant a stay of executions as a matter of settled Arkansas law. The complaint should be dismissed accordingly.

4. McKesson seeks to control the actions of the State through its complaint—the complaint is therefore barred by sovereign immunity and should be dismissed accordingly.

5. The complaint fails to state a viable cause of action as a matter of law and should be dismissed accordingly.

6. For the reasons set forth in this Motion and the supporting Brief filed contemporaneously herewith, the complaint should be dismissed with prejudice for failure to state facts upon which relief can be granted. Ark. R. Civ. P. 12(b)(6).

WHEREFORE, the Defendants pray that McKesson's complaint is dismissed with prejudice, and for all other just and appropriate relief.

Respectfully submitted,

Leslie Rutledge
Arkansas Attorney General

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CERTIFICATE OF SERVICE

I, Colin Jorgensen, do hereby certify that on this 19th day of April, 2017, I filed the foregoing document via the eFlex electronic filing system, and I served a copy on the following via email:

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