REL: May 28, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1191001

Ex parte Abbott Laboratories and Abbott Laboratories, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: Mobile County Board of Health and Family Oriented Primary Health Care Clinic

v.

Mitchell "Chip" Fisher et al.)

(Mobile Circuit Court, CV-19-902806)

MENDHEIM, Justice.

Abbott Laboratories and Abbott Laboratories, Inc. (collectively referred to as "Abbott"), petition this Court for a writ of mandamus directing the Mobile Circuit Court to dismiss all claims asserted by the Mobile County Board of Health and the Family Oriented Primary Health Care Clinic (collectively referred to as "Mobile Health") against Abbott on the basis that those claims are barred by the rule of repose or by the applicable statute of limitations. We grant the petition and issue the writ.

I. Facts

Because this petition concerns a motion to dismiss under Rule 12(b)(6), Ala. R. Civ. P., the facts in the complaint[1] constitute the only operative facts for our review of the petition. See, e.g., Ex parte Alabama Dep't of Youth Servs., 880 So. 2d 393, 397 (Ala. 2003) ("Inasmuch as the issue before us is whether the trial court correctly denied a Rule 12(b)(6), Ala. R. Civ. P., motion to dismiss, '[t]his Court must accept the allegations of the complaint as true.' " (quoting Creola

[1]Except when otherwise indicated, for purposes of this opinion, "the complaint" includes both the original complaint filed on October 15, 2019, and the first amended complaint filed on February 11, 2020.

Land Dev., Inc. v. Bentbrooke Hous., L.L.C., 828 So. 2d 285, 288 (Ala. 2002))).

The Mobile County Board of Health is the public health department of Mobile County. The Family Oriented Primary Health Care Clinic is "a partnership between Family Oriented Primary Health Care Governing Council, Inc. and the Mobile County Health Department" that "provides comprehensive primary care and preventive care, including health, oral health, mental health, and substance abuse services to persons of all ages, regardless of their ability to pay and regardless of their health insurance status." Abbott Laboratories, Inc., is a subsidiary of Abbott Laboratories; the principal place of business for both is Abbott Park, Illinois.

Mobile Health alleged that Abbott had participated in the marketing of a specific prescription drug, OxyContin. OxyContin is

> "the trade name for oxycodone hydrochloride controlled-release tablets, an opioid analgesic drug. In 1995, the United States Food and Drug Administration ('FDA') approved OxyContin for the management of moderate to severe pain where use of an opioid analgesic is appropriate for more than a few days.
>
> "Oxycodone is a morphine-like drug that is highly addictive and is rated as a Schedule II narcotic, a designation given by the government that identifies a prescription

> medication as having a great potential for abuse. A Schedule II designation also means that the drug, while accepted for medical use, has severe restrictions, and abuse of the drug has a high potential to lead to severe psychological or physical dependence.
>
> "OxyContin is a patented timed-release formula that releases the narcotic incrementally over 12 hours.[2] This formulation distinguishes OxyContin from short-acting medications that must be taken more frequently. Because of the timed-release formulation, OxyContin contains more oxycodone than short-acting opioids."

Howland v. Purdue Pharma L.P., 104 Ohio St. 3d 584, 584, 821 N.E.2d 141, 142-43 (2004).

OxyContin was developed and manufactured by Purdue Pharma ("Purdue").[3] With respect to Purdue, the complaint alleged in part that,

> "[i]n 2007, Purdue settled criminal and civil charges against it for misbranding OxyContin and agreed to pay the United States $635 million -- one of the largest settlements with a drug company for marketing misconduct. In the same

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[2]Mobile Health asserted in the complaint that the claimed 12-hour time-release of OxyContin is false. It does agree, however, that OxyContin contains more oxycodone than other opioids.

[3]Purdue includes a conglomerate of entities, namely Purdue Pharma, L.P, Purdue Pharma, Inc., and The Purdue Frederick Company. The complaint stated that Purdue was "not joined as a defendant in this action due to the pendency of its bankruptcy filing in New York" but that it was "fully involved in all of the misconduct alleged herein."

> year, Purdue settled with 27 states for its Consumer Protection Act violations regarding Purdue's extensive off-label marketing of OxyContin and Purdue's failure to adequately disclose abuse and diversion risks associated with the drug. None of this stopped Purdue. In fact, Purdue continued to create the false perception that opioids were safe and effective for long-term use, even after being caught using unbranded marketing methods to circumvent the system. In short, Purdue paid the fine when caught and then continued business as usual, deceptively marketing and selling billions of dollars of opioids each year."

The complaint categorized Purdue as a "related entity" to "the Marketing Defendants," one of which is Abbott. Mobile Health alleged that, "[t]hrough a massive marketing campaign premised on false and incomplete information, the Marketing Defendants engineered a dramatic shift in how and when opioids are prescribed by the medical community and used by patients." More specifically, Mobile Health alleged, "[t]he Marketing Defendants relentlessly and methodically -- but untruthfully -- asserted that the risk of addiction was low when opioids were used to treat chronic pain and overstated the benefits and trivialized the risk of the long-term use of opioids." According to Mobile Health, "[t]he Marketing Defendants' goal was simple: dramatically increase sales by convincing doctors to prescribe opioids not only for the kind of severe pain

associated with cancer or short-term postoperative pain, but also for common chronic pain, such as back pain and arthritis." Mobile Health alleged that this marketing campaign "precipitated" an "opioid crisis" in the United States, and specifically in Alabama, because it caused an astronomical increase in the use of opioids by patients who quickly became dependent upon the drugs. In support of this assertion, Mobile Health cited a multitude of statistics in the complaint, including that "[t]he rate of death from opioid overdose has quadrupled during the past 15 years in the United States. Nonfatal opioid overdoses that require medical care in a hospital or emergency department have increased by a factor of six in the past 15 years."

With respect to Abbott's conduct, Mobile Health alleged:

> "143. Abbott was primarily engaged in the promotion and distribution of opioids nationally due to a co-promotional agreement with Purdue. Pursuant to that agreement, between 1996 and 2006, Abbott actively promoted, marketed, and distributed Purdue's opioid products as set forth above.
>
> "144. Abbott, as part of the co-promotional agreement, helped turn OxyContin into the largest selling opioid in the nation. Under the co-promotional agreement with Purdue, the more Abbott generated in sales, the higher the reward. Specifically, Abbott received twenty-five to thirty percent (25-30%) of all

> net sales for prescriptions written by doctors its sales force called on. This agreement was in operation from 1996-2002, following which Abbott continued to receive a residual payment of six percent (6%) of net sales up through at least 2006.
>
> "145. With Abbott's help, sales of OxyContin went from a mere $49 million in its first full year on the market to $1.2 billion in 2002. Over the life of the co-promotional agreement, Purdue paid Abbott nearly half a billion dollars."

(Emphasis added.)

Mobile Health asserted that it brought this action because of the burdens it has had to bear as a result of the "opioid epidemic."

> "36. Boards of health and their affiliated primary care providers -- legally and morally -- are compelled to act and treat patients with opioid- related conditions[50] and, as a result, are directly and monetarily damaged by the opioid epidemic. In addition to the cost of the opioid drugs themselves, boards of health and their affiliated primary care providers have incurred and continue to incur millions of dollars in damages for the costs of uncompensated care as a result of the unlawful marketing, distribution, and sale of opioids. Boards of health and their affiliated primary care providers directly and monetarily bear the brunt of the opioid crisis.
>
> "37. [Mobile Health is] struggling from the relentless and crushing financial burdens caused by the epidemic of opioid addiction.
>
> "38. The effects of the opioid epidemic on boards of health and their affiliated primary care providers may soon become even

greater. The coverage rules under the Affordable Care Act ('ACA') are in transition, thus creating the possibility of increased costs for boards of health for treatment of opioid-addicted patients admitted under the Emergency Medical Treatment and Labor Act ('EMTALA'), 42 U.S.C. § 395dd. Those increased costs would increase the likelihood that patients would seek treatment through boards of health and their primary care providers.

"39. [Mobile Health] encounter[s] patients with opioid addiction on a daily basis. [It] must deal with patients who have serious medical conditions that require extra care and expense because the patients are addicted to opioids.

"40. The statistics are startling. Adult hospitalizations due substantially to opioid-related medical conditions doubled from 2000 to 2012. From 2005 to 2014, emergency department visits exhibited a 99.4% cumulative increase. [Mobile Health has] experienced similar increases in the number of patients seen with opioid-related medical issues.

"41. Between 2005 and 2014, there was a dramatic increase nationally in hospitalizations involving opioids: the rate of opioid-related inpatient stays increased 64%, and the rate of opioid-related emergency department ('ED') visits nearly doubled. And, likewise, [Mobile Health has] experienced a similar increase in visits from patients with opioid-related medical issues.

"....

"43. The cost to treat those with opioid addiction has more than tripled in a decade, up to nearly $15 billion in 2012. Similarly, the number of patients hospitalized due to the effects of these drugs surged by more than 72% in 2012,

> although overall hospitalizations during that time stayed relatively flat. [Mobile Health has] experienced similar increases and similar associated increased costs.
>
> "44. Private insurance covers only a portion of those costs. The burden is carried by hospitals, boards of health, primary care providers, patients, and government programs. In 2012, hospitals provided almost $15 billion for opioid-related inpatient care, more than double of what they billed in 2002. A substantial portion of these costs were under-insured or unreimbursed.
>
> "45. In 2012, an average hospital stay for a patient with an opioid-related condition cost about $28,000 and only about 20% of the hospital stays related to those incidents were covered by private insurance. The number increased to $107,000 if there was an associated infection, with merely 14% covered by insurance.
>
> 46. Patients with complex opioid addiction-related histories (medically and psychosocially) often cannot get treatment at skilled nursing facilities if they are discharged by hospitals.
>
> "47. The cost of treating opioid overdose victims in hospital intensive care units jumped 58% in a seven-year span. Between 2009 and 2015, the average cost of care per opioid overdose admission increased from $58,000 to $92,400. This was during a period where the overall medical cost escalation was about 19%. This cost increase also highlights a troubling trend: overdose patients are arriving in worse shape, requiring longer stays and a higher level of treatment.
>
> "....

> "49. The rates of opioid abuse during pregnancy have increased nationally and in Alabama. There has been an almost four-fold increase in admissions to NICUs for NAS over the past decade: from seven cases per 1,000 NICU admissions in 2004, to 27 cases per 1,000 NICU admissions in 2012.
>
> "_____
>
> "[50]'Opioid-related conditions' include but are not limited to opioid addiction and overdose; psychiatric and mental health treatment; NAS or other opioid-related conditions of newborns; illnesses associated with opioid use, such as endocarditis, HCV, and HIV; surgical procedures that are more complex and expensive due to opioid addiction; illnesses or conditions claimed by a person with opioid addiction in order to obtain an opioid prescription; and any other condition identified in [Mobile Health's] records as related to opioid use and abuse."

(Emphasis added.)

On October 15, 2019, Mobile Health filed its original complaint in the Mobile Circuit Court against Abbott and numerous other defendants -- over 60 defendants in all -- alleging that they had caused a public nuisance in the form of an opioid epidemic:

> "1. The opioid epidemic is an ongoing crisis in Alabama. Opioid use has had tragic consequences for communities across Alabama, including those in Mobile, Baldwin, and Conecuh Counties. Thousands of people have died from opioid overdoses, and many thousands more suffer from Opioid use disorders and related health conditions in Alabama. The

misrepresentations by Defendants described herein regarding the risks and benefits of opioids enabled, and are continuing to enable, the widespread prescribing of opioids for common chronic pain conditions like lower back pain, arthritis, and headaches.

"....

"953. This [nuisance] claim is brought under the Alabama common law of nuisance. This claim is also brought pursuant to Ala. Code § 22-3-2(3), which instructs Plaintiff Mobile County Board of Health to abate nuisances.[4]

"....

"958. The nuisance created by Defendants is the over-saturation of opioids in the patient population of the geographic area served by [Mobile Health] for illegitimate purposes, as well as the adverse social, economic, and human health outcomes associated with widespread illegal opioid use."

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[4]Section 22-3-2(3), Ala. Code 1975, provides:

"It shall be the duty of the county boards of health in their respective counties and subject to the supervision and control of the State Board of Health:

"....

"(3) To investigate, through county health officers or quarantine officers, all nuisances to public health and, through said officers, to take proper steps for the abatement of such nuisances."

Mobile Health asserted against Abbott claims of negligence, wantonness, nuisance, unjust enrichment, fraud and deceit, and civil conspiracy. With respect to all of their claims against all the defendants, Mobile Health alleged:

> "918. [Mobile Health is] entitled to a tolling of any statutes of limitation because Defendants fraudulently concealed the existence of their causes of action from [it]. [Mobile Health] did not know, and did not have any reason to know, any of the facts regarding Defendants' marketing misconduct until the DEA's [Drug Enforcement Administration] ARCOS [Automated Reports and Consolidated Ordering System] data was released in 2019.[5] Until then, [Mobile Health was] not

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[5]In its brief supporting its motion to dismiss the complaint, Abbott explained:

> " 'Automated Reports and Consolidated Ordering System (ARCOS) is a data collection system in which manufacturers and distributors report their controlled substances transactions to the Drug Enforcement Administration (DEA). ARCOS provides an acquisition/distribution transactional records of applicable activities to the DEA involving certain controlled substances, in accordance with Title 21, United States Code, Section 827(d)(1), and Title 21, Code of Federal Regulations, Section 1304.33. This information is collected and compiled by DEA in accordance with law for determining quota, distribution trends, internal audits, and other analyses.' "

(Quoting United States Dep't of Justice, Drug Enf't Admin. Diversion

> aware that the opioid crisis was the result of massive and improper distribution of opioids in the counties that [it]

Control Div., https://www.deadiversion.usdoj.gov/arcos/retail_drug_summary/.)

In its brief to this Court, Abbott notes: "In July of 2019, Judge [Dan A.] Polster of the [Federal District Court for the] Northern District of Ohio ordered public release of ARCOS data from 2006 to 2012." Abbott's brief, p. 18 n.8.

As further context, we observe that on December 5, 2017, the United States Judicial Panel on Multidistrict Litigation ("JPML") ordered the transfer to the United States District Court for the Northern District of Ohio of 64 civil actions filed by cities, counties, and states pending in nine districts for centralized pretrial proceedings. See In re National Prescription Opiate Litig., 290 F. Supp. 3d 1375 (U.S. Jud. Panel Multidist. Litig. 2017). All of those actions alleged that "opioid manufacturers, opioid distributors, and opioid-selling pharmacies and retailers acted in concert to mislead medical professionals into prescribing, and millions of Americans into taking and often becoming addicted to, opiates." In re National Prescription Opiate Litig., 976 F.3d 664, 667 (6th Cir. 2020). The JPML concluded that "the actions involved common questions of fact, centralization would serve convenience of the parties and witnesses and promote just and efficient conduct of the litigation, and would substantially reduce the risk of duplicative discovery, minimize the possibility of inconsistent pretrial obligations, and prevent conflicting rulings on pretrial motions." Jason B. Binimow, Annotation, Opioid Marketing, Promoting, and Distributing Claims Against Manufacturers and Distributors, 39 A.L.R. 7th Art. 4, § 4 (2018). As of September 2020, "[t]he national prescription opioid [multidistrict litigation], consolidated in the District of Ohio, consists of over 1,300 public-entity-led lawsuits, primarily filed by cities and counties." 976 F.3d at 667.

> serve[s]. Also, [Mobile Health] did not know, and did not have any reason to know, of the Defendants' failures to report suspicious orders and otherwise prevent diversion of opioids in the three counties that [it] serve[s] until [it was] able to obtain in 2019 excerpts of pleadings, documents, and testimony produced in the MDL [multidistrict litigation[6]]. [Mobile Health] first became aware of allegations about Defendants' marketing practices from news articles in 2018. Without the ARCOS data, and without the information from the MDL, [Mobile Health was] unable to determine that [it] had a cause of action to pursue against Defendants."

On February 28, 2020, Abbott filed a motion to dismiss all the claims asserted against it, arguing, among other things, that the claims were barred by the 20-year common-law rule of repose and by the applicable statute of limitations. On March 11, 2020, Mobile Health filed an "Omnibus Response in Opposition to Motions to Dismiss" that responded to motions to dismiss filed by multiple defendants in the action, including Abbott. On April 1, 2020, Abbott filed a reply in support of its motion to dismiss.

On July 28, 2020, the circuit court entered an order denying the motions to dismiss of several defendants, including Abbott. The order did

[6]See note 5, supra.

not explain the circuit court's reasons for denying Abbott's motion to dismiss Mobile Health's claims against it. Abbott filed its mandamus petition on September 4, 2020.

II. Standard of Review

> "A writ of mandamus is an extraordinary remedy available only when the petitioner can demonstrate: ' "(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court." ' Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001))."

Ex parte Watters, 212 So. 3d 174, 180 (Ala. 2016).

"The general rule is that, subject to certain narrow exceptions, the denial of a motion to dismiss is not reviewable by petition for a writ of mandamus." Ex parte Brown, [Ms. 1190962, Jan. 22, 2021] ___ So. 3d ___, ___ (Ala. 2021). However,

> "[t]his Court has recognized that an appeal is an inadequate remedy in cases where it has determined that a defendant should not have been subjected to the inconvenience of litigation because it was clear from the face of the complaint that the defendant was entitled to a dismissal or to a judgment in its favor."

Ex parte Sanderson, 263 So. 3d 681, 687-88 (Ala. 2018) (citing Ex parte Hodge, 153 So. 3d 734 (Ala. 2014), and Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060 (Ala. 2014)). In particular, in Ex parte Hodge, this Court permitted mandamus review of a trial court's denial of a motion to dismiss contending that the plaintiff's malpractice claim was barred by the four-year statute of repose contained in § 6-5-482(a), Ala. Code 1975, when the applicability of that statute was clear from the face of the complaint. Cf. Ex parte Watters, 212 So. 3d at 182 (denying a mandamus petition because "it [was] not abundantly clear from the face of [the plaintiff's] complaint whether the survival statute dictate[d] dismissal of the legal-malpractice claim because the issue whether the claim sound[ed] in tort, in contract, or in both for that matter, [was] sharply disputed by the parties"). Thus, if it is clear from the face of Mobile Health's complaint that the claims against Abbott are barred by the rule of repose or the applicable statute of limitations, then Abbott is entitled to mandamus relief.

With respect to evaluating a trial court's denial of a Rule 12(b)(6) motion to dismiss,

> "[t]he appropriate standard of review ... is whether 'when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle [the pleader] to relief.' Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993); Raley v. Citibanc of Alabama/Andalusia, 474 So. 2d 640, 641 (Ala. 1985). This Court does not consider whether the plaintiff will ultimately prevail, but only whether the plaintiff may possibly prevail. Nance, 622 So. 2d at 299. A 'dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.' Nance, 622 So. 2d at 299; Garrett v. Hadden, 495 So. 2d 616, 617 (Ala. 1986); Hill v. Kraft, Inc., 496 So. 2d 768, 769 (Ala. 1986)."

Lyons v. River Rd. Constr., Inc., 858 So. 2d 257, 260 (Ala. 2003).

III. Analysis

In its brief to this Court, Abbott repeats the arguments from its motion to dismiss that Mobile Health's claims against it are barred by the 20-year rule of repose and by the applicable statute of limitations. Because we conclude that it is clear from the face of the complaint that Mobile Health's claims against Abbott are barred by the applicable statute of limitations, we address only that issue and pretermit discussion of whether the rule of repose likewise requires dismissal of the claims.

"The statute of limitations begins to run when the cause of action accrues, which this Court has held is the date the first legal injury occurs." Ex parte Integra LifeSciences Corp., 271 So. 3d 814, 818 (Ala. 2018). "A cause of action accrues as soon as the claimant is entitled to maintain an action, regardless of whether the full amount of the damage is apparent at the time of the first legal injury." Chandiwala v. Pate Constr. Co., 889 So. 2d 540, 543 (Ala. 2004).

The claim both parties focus on with respect to the statute of limitations is Mobile Health's nuisance claim. The statute of limitations for a nuisance claim is two years.[7] See, e.g., Ex parte Brian Nelson

[7]The applicable statute of limitations for most of Mobile Health's other claims against Abbott -- negligence, wantonness, and fraud and deceit -- is also two years. See, e.g., Ex parte Capstone Bldg. Corp., 96 So. 3d 77, 88 (Ala. 2012) ("We once again reaffirm the proposition that wantonness claims are governed by the two-year statute of limitations now embodied in § 6-2-38(l)[, Ala. Code 1975]."); Bush v. Ford Life Ins. Co., 682 So. 2d 46, 47 (Ala. 1996) ("The statute of limitations applicable to a negligence claim is two years."); Liberty Nat'l Life Ins. Co. v. McAllister, 675 So. 2d 1292, 1297 (Ala. 1995) ("A fraud action is subject to a two-year statute of limitations."). The same limitations period applies to the civil-conspiracy claims. See, e.g., Freeman v. Holyfield, 179 So. 3d 101, 105 (Ala. 2015). This Court has not decided whether the applicable limitations period for an unjust-enrichment claim is two years or six years. See Snider v. Morgan, 113 So. 3d 643, 655 (Ala. 2012) ("Our

Excavating, LLC, 25 So. 3d 1143, 1145 (Ala. 2009) (discussing "the two-year statute of limitations in § 6-2-38, Ala. Code 1975, for nuisance claims"). As Abbott observes, according to the complaint, Abbott last actively marketed OxyContin in 2002 and it received its last payments from its co-promotion agreement with Purdue in 2006, but Mobile Health commenced this action on October 15, 2019. Abbott therefore argues that from the face of the complaint Mobile Health commenced its action 11 years after the expiration of the applicable statute of limitations.

Mobile Health presents three arguments in response. First, it contends that it alleged that the public nuisance is a continuing tort and, thus, is not barred by the statute of limitations.

> "The Complaint shows that [Mobile Health] alleges that Abbott's tort was a continuing pattern of conduct that continued at least until the time that [Mobile Health] filed the lawsuit. See generally Complaint. Thus, under established

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research similarly confirms that there is a distinct absence of authority definitively stating the statute of limitations applicable to an unjust-enrichment claim. We need not, however, decide that issue here."). However, Mobile Health did not argue before the circuit court or in this Court that its unjust-enrichment claim against Abbott is within the statute of limitations absent tolling through fraud, an argument we address later in this opinion.

> Alabama law, the Complaint sufficiently alleges continuing tortious conduct and the statute of limitations does not bar this continuing nuisance claim."

Mobile Health's brief, p. 15. For support, Mobile Health cites such cases as Alabama Great Southern R.R. v. Denton, 239 Ala. 301, 305, 195 So. 218, 221 (1940), in which this Court stated: "We recognize that one maintaining a continuing public nuisance, as for example, one endangering the public health or public safety, cannot defend against a suit to abate same because of the lapse of time." See also Holz v. Lyles, 287 Ala. 280, 284, 251 So. 2d 583, 587 (1971) ("But one maintaining a continuing public nuisance cannot defend against a suit to abate the nuisance because of lapse of time ....").

Mobile Health is certainly correct that it generally alleged a continuous tort against the marketing defendants.

> "221. Each Marketing Defendant has conducted, and continues to conduct, a marketing scheme designed to persuade doctors and patients that opioids can and should be used for chronic pain, resulting in opioid treatment for a far broader group of patients who are much more likely to become addicted and suffer other adverse effects from the long-term use of opioids. In connection with this scheme, each Marketing Defendant spent, and continues to spend, millions of dollars on promotional activities and materials that falsely deny,

> trivialize, or materially understate the risks of opioids while overstating the benefits of using them for chronic pain."

However, the specific allegations against Abbott in the complaint do not mention conduct of any kind by Abbott after 2006. This is important because there must be a connection between the defendant's actions and the ongoing tort.

> "This Court has used the term 'continuous tort' to describe a defendant's repeated tortious conduct which has repeatedly and continuously injured a plaintiff. These cases can be analyzed by analogizing the plaintiffs' cause of action to the common law action of continuing trespass or trespass on the case.
>
> "This Court has held that a defendant's repeated wrongs to the plaintiff can constitute a 'continuous tort,' such as: (1) when an employer exposes its employee on a continuing basis to harmful substances and conditions [American Mut. Liability Ins. Co. v. Agricola Insurance Co., 236 Ala. 535, 183 So. 677 (1938)]; (2) when there is a 'single sustained method pursued in executing one general scheme,' as in a blasting case [Lehigh Portland Cement Co. v. Donaldson, 231 Ala. 242, 246, 164 So. 97 (1935)]; and (3) when a plaintiff landowner seeks damages for the contamination of a well or stream [Howell v. City of Dothan, 234 Ala. 158, 174 So. 624 (1937); Employers Insurance Company of Alabama v. Rives, 264 Ala. 310, 87 So. 2d 653 (1955); and Alabama Fuel & Iron Co. v. Vaughn, 203 Ala. 461, 83 So. 323 (1919)].
>
> "The stream and well pollution cases, the blasting cases, and the employer-employee cases are all cases in which this

> Court has held that the defendants committed a continuous tort. The cases are analogous to a continuing trespass in that the repeated actions of the defendants combined to create a single cause of action in tort."

Moon v. Harco Drugs, Inc., 435 So. 2d 218, 220-21 (Ala. 1983) (emphasis added). See also Continental Cas. Ins. Co. v. McDonald, 567 So. 2d 1208, 1216 (Ala. 1990) (holding that "an action such as this, arising from continuing dealings between the parties, will not be barred until two years after the last tortious act by the defendant" (emphasis added)). Holz and Denton contain this same idea by discussing a defendant's "maintaining a continuing public nuisance," indicating that the reason the statute of limitations does not expire for a continuous tort is because the defendant's conduct is ongoing within the period of the statute of limitations. Cf. Payton v. Monsanto Co., 801 So. 2d 829, 836 (Ala. 2001) (concluding that the plaintiff's "complaint describing continuing discharge of PCBs as of the time of the commencement of this action" allowed the claims to "survive a defense of limitations by proof of conduct occurring within the limitations period"); Alabama Power Co. v. Gielle, 373 So. 2d 851, 854 (Ala. Civ. App. 1979) ("A continuing trespass creates successive causes of

action, and damages may be recovered for the trespass occurring within the statutory period.").

In short, the fact that the alleged opioid epidemic itself was ongoing at the time Mobile Health filed its original complaint does not mean that Abbott's conduct in relation to the epidemic is not subject to the statute of limitations. As the Court explained in Payton:

> "Alabama law does not recognize a continuing tort in instances where there has been a single act followed by multiple consequences.[2]
>
> "_____
>
> "[2]Moon v. Harco Drugs, Inc., 435 So. 2d 218, 220-21 (Ala. 1983), discusses the concept of 'continuous tort,' describing it as a defendant's liability for repeated wrongs to the plaintiff. Then, the Court offers several illustrations, including 'when a plaintiff landowner seeks damages for the contamination of a well or stream.' Id. at 221. However, the three cases cited to support this proposition involve repetitive acts or ongoing wrongdoing; Howell v. City of Dothan, 234 Ala. 158, 174 So. 624 (1937) (ongoing discharge of sewage), Employers Insurance Co. of Alabama v. Rives, 264 Ala. 310, 87 So. 2d 653 (1955) (opinion refers to repetitive acts), Alabama Fuel & Iron Co. v. Vaughn, 203 Ala. 461, 83 So. 323 (1919) (damage resulting from the ongoing operations of a coal mine)."

801 So. 2d at 835 (emphasis added). There are no allegations of ongoing wrongdoing by Abbott within two years of the date Mobile Health filed its

original complaint. Therefore, Mobile Health's general allegation of a continuous public nuisance does not save its claims against Abbott from the statute-of-limitations bar.

Mobile Health's second argument is that its allegations of fraudulent concealment tolled the running of the statute of limitations. Section 6-2-3, Ala. Code 1975, provides:

> "In actions seeking relief on the ground of fraud where the statute has created a bar, the claim must not be considered as having accrued until the discovery by the aggrieved party of the fact constituting the fraud, after which he must have two years within which to prosecute his action."

With respect to the savings clause of § 6-2-3, this Court has stated:

> " 'When ... the plaintiff's complaint on its face is barred by the statute of limitations, the complaint must also show that he or she falls within the savings clause of § 6-2-3.' Miller v. Mobile County Bd. of Health, 409 So. 2d 420, 422 (Ala. 1981). '[T]he burden is upon he who claims the benefit of § 6-2-3 to show that he comes within it.' Amason v. First State Bank of Lineville, 369 So. 2d 547, 551 (Ala. 1979). However, a 'dismissal based on the statute of limitations is proper only if, from the face of the complaint, it is apparent that the tolling provisions do not apply.' Travis v. Ziter, 681 So. 2d 1348, 1351 (Ala. 1996).
>
> "This Court has held that to show that a plaintiff's claims fall within the savings clause of § 6-2-3 a complaint must allege the time and circumstances of the discovery of the cause

> of action. See, e.g., Angell v. Shannon, 455 So. 2d 823, 823-24 (Ala. 1984); Papastefan v. B & L Constr. Co., 356 So. 2d 158, 160 (Ala. 1978). The complaint must also allege the facts or circumstances by which the defendants concealed the cause of action or injury and what prevented the plaintiff from discovering the facts surrounding the injury. See, e.g., Smith v. National Sec. Ins. Co., 860 So. 2d 343, 345, 347 (Ala. 2003); Lowe v. East End Mem'l Hosp. & Health Ctrs., 477 So. 2d 339, 341-42 (Ala. 1985); Miller, 409 So. 2d at 422. See also Amason, 369 So. 2d at 550."

DGB, LLC v. Hinds, 55 So. 3d 218, 226 (Ala. 2010) (emphasis added).

Mobile Health contends that "the Complaint plainly alleges sufficient facts to toll the action under this principle," citing paragraph 918 of the first amended complaint. We quoted the entirety of that paragraph in the rendition of the facts, but the portion of that paragraph that alleges fraud consists of a single sentence: "[Mobile Health is] entitled to a tolling of any statutes of limitation because Defendants fraudulently concealed the existence of their causes of action from [it]." The remainder of the paragraph concerns the allegation that Mobile Health first learned about the misconduct of the marketing defendants in 2019 with the release of the "ARCOS data." That latter portion of paragraph 918 of the complaint provides details about the circumstances

of the time and discovery of the cause of action, but, as Hinds indicates, the plaintiff must also "allege the facts or circumstances by which the defendants concealed the cause of action." 55 So. 3d at 226. The complaint provides no details of fraud by Abbott that prevented Mobile Health from discovering Abbott's alleged misconduct before October 15, 2019. This Court discussed a similar failure by a plaintiff with respect to a particular defendant in Miller v. Mobile County Board of Health, 409 So. 2d 420, 422 (Ala. 1981):

> "The complaint fails to allege any of the facts or circumstances by which the [defendants] concealed the cause of action or injury. The complaint also fails to allege what prevented [the plaintiffs] from discovering facts surrounding the injury. See Amason v. First State Bank of Lineville, 369 So. 2d 547 (Ala. 1979); Garrett v. Raytheon Co., 368 So. 2d 516 (Ala. 1979). The plaintiffs make only generalized allegations to support their claim for fraudulent concealment. Although under modern rules of civil practice the pleadings only need to put the defending party on notice of the claims against him, Rule 9(b)[, Ala. R. Civ. P.,] qualifies the generalized pleadings permitted by Rule 8(a), [Ala. R. Civ. P.]. 'The pleading must show time, place and the contents or substance of the false representations, the facts misrepresented, and an identification of what has been obtained.' Rule 9(b), [Ala. R. Civ. P.], Committee Comments. The allegations contained in count 6 fail to meet the requirements of Rule 9. Thus, the trial court did not err in granting the motion to dismiss in favor of [one of the defendants]."

See also Smith v. National Sec. Ins. Co., 860 So. 2d 343, 347 (Ala. 2003) ("Here, as in Miller, Smith's complaint 'fails to allege any of the facts or circumstances by which the [defendants] concealed the cause of action or injury,' and 'fails to allege what prevented [Smith] from discovering facts surrounding the [fraud].' 409 So. 2d at 422. Smith's general reference to the alleged fraud as being 'of a continuing nature' is wholly lacking in specificity and equally deficient as a means of saving the action from the bar of the statute of limitations appearing on the face of the complaint.").

As with the plaintiffs' allegations in Miller and Smith, Mobile Health's complaint lacks any of the specificity required by Rule 9(b), Ala. R. Civ. P., for allegations of fraud against Abbott. Without such allegations, Mobile Health cannot meet its burden of demonstrating that its claims fall within the savings clause of § 6-2-3. Therefore, the applicable statutes of limitations on Mobile Health's claims against Abbott are not tolled by the existence of fraud.

Finally, Mobile Health contends that the statute of limitations should not apply because it could not have known about Abbott's misconduct without the "ARCOS data" that was released in the federal

multidistrict litigation in 2019. See note 5, supra. This is the thrust of paragraph 918 of the complaint. However, there are at least two problems with this contention. First, as Abbott observes, the complaint itself contradicts this allegation. Paragraph 72 of the complaint states:

> "72. Each Marketing Defendant knew that its misrepresentations of the risks and benefits of opioids were not supported by or were directly contrary to the scientific evidence. Indeed, the falsity of each Defendant's misrepresentations has been confirmed by the U.S. Food and Drug Administration ('FDA') and the CDC [Centers for Disease Control and Prevention], including by CDC's Guideline for Prescribing Opioids for Chronic Pain, issued in 2016 and approved by the FDA."

The footnote that accompanies paragraph 72 cites a Centers for Disease Control and Prevention Guideline published on February 4, 2016. More specifically with respect to Abbott, paragraph 146 of the complaint states:

> "146. Abbott and Purdue's conspiracy with Pharmacy Benefit Managers (PBMs) to drive opioid use is well established. As described in an October 28, 2016, article from Psychology Today entitled America's Opioid Epidemic:
>
> > "'Abbott and Purdue actively misled prescribers about the strength and safety of the painkiller [OxyContin]. To undermine the policy of requiring prior authorization, they offered lucrative rebates to middlemen such as Merck Medco [now Express Scripts] and other pharmacy benefits

> managers on condition that they eased availability of the drug and lowered co-pays. The records were part of a case brought by the state of West Virginia against both drug makers alleging inappropriate and illegal marketing of the drug as a cause of widespread addiction. ... One reason the documents are so troubling is that, in public at least, the drug maker was carefully assuring authorities that it was working with state authorities to curb abuse of OxyContin. Behind the scene, however, as one Purdue official openly acknowledged, the drug maker was "working with Medco (PBM) [now Express Scripts] to try and make parameters [for prescribing] less stringent." [American Society of Addiction Medicine, America's Opioid Epidemic -- Court released documents show drug makers blocked efforts to curb prescribing, Psychology Today (Oct. 28, 2016), https://www.psychologytoday.com/US/blog/side-effects/20l610/america-s-opioid-epidemic.]"

Thus, at least some of Abbott's conduct was known in 2016, rather than in 2019 as Mobile Health asserts. We also note that the history of OxyContin litigation further undermines this allegation. Suits in multiple jurisdictions against Purdue and Abbott related to their promotion and marketing of OxyContin date back to at least 2001 and have been filed consistently in the years since that time. See, e.g., McCallister v. Purdue Pharma L.P., 164 F. Supp. 2d 783 (S.D. W. Va. 2001); McCaulley v.

Purdue Pharma, L.P., 172 F. Supp. 2d 803 (W.D. Va. 2001); Wethington v. Purdue Pharma LP, 218 F.R.D. 577 (S.D. Ohio 2003); Labzda v. Purdue Pharma, L.P., 292 F. Supp. 2d 1346 (S.D. Fla. 2003); Foister v. Purdue Pharma, L.P., 295 F. Supp. 2d 693, 709 (E.D. Ky. 2003); Yurcic v. Purdue Pharma, L.P., 343 F. Supp. 2d 386 (M.D. Pa. 2004); Howland v. Purdue Pharma L.P., 104 Ohio St. 3d 584, 585, 821 N.E.2d 141, 143 (2004) (observing that "[t]he United States Drug Enforcement Agency ('DEA') also recognized problems associated with OxyContin, and reports linking OxyContin to various deaths and addiction problems began surfacing" in 2001); Griffith v. Purdue Pharma Co., No. 3:04-cv-10072-REL-RAW, July 29, 2005 (S.D. Iowa 2005) (not selected for publication in F. Supp.) (noting that "[t]his is one of over a hundred actions which have been filed in various jurisdictions involving the prescription analgesic OxyContin"); Hurtado v. Purdue Pharma Co., 6 Misc. 3d 1015(A), 800 N.Y.S.2d 347 (Sup. Ct. 2005) (table); Koenig v. Purdue Pharma Co., 435 F. Supp. 2d 551 (N.D. Tex. 2006); In re Oxycontin Antitrust Litig., 821 F. Supp. 2d 591 (S.D. N.Y. 2011).

Second, and more importantly, this Court has often noted that "[t]he plaintiff's ignorance of a tort or injury does not postpone the running of the statute of limitations until that tort is discovered." Payne v. Alabama Cemetery Ass'n, 413 So. 2d 1067, 1072 (Ala. 1982). See, e.g., Kelley v. Shropshire, 199 Ala. 602, 605, 75 So. 291, 292 (1917) (same). Mobile Health admitted in its response in opposition to Abbott's motion to dismiss that its "Complaint alleges that the opioid crisis began causing effects in the counties [Mobile Health] serve[s] in 2012 or 2013." Despite that fact, Mobile Health did not commence this action until October 2019. The lack of the availability of the "ARCOS data" simply does not legally excuse Mobile Health's belated filing of its complaint against Abbott.

In sum, it is clear from the face of Mobile Health's complaint that its claims against Abbott are barred by the applicable statutes of limitations because the latest date provided for Abbott's alleged conduct was 2006 but the original complaint was not filed until October 15, 2019. Mobile Health's arguments asserting a continuous tort, fraud, and ignorance of the torts fail to demonstrate that the applicable statutes of limitations do not bar Mobile Health's claims against Abbott. Accordingly, the circuit

court erred in denying Abbott's motion to dismiss the claims against it, and therefore the petition is due to be granted.

IV. Conclusion

The applicable statutes of limitations clearly bar Mobile Health's claims against Abbott. Therefore, we grant Abbott's petition for a writ of mandamus and direct the circuit court to enter an order dismissing Mobile Health's claims against Abbott.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, and Stewart, JJ., concur.

Mitchell, J., recuses himself.