

Order

Michigan Supreme Court
Lansing, Michigan

September 18, 2013

Robert P. Young, Jr.,
Chief Justice

146791-3 & (104)(106)(110)(113)(114)

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

STATE OF MICHIGAN *ex rel.* MARCIA
GURGANUS,
Plaintiff-Appellee,

v

SC: 146791
COA: 299997
Kent CC: 09-003411-CZ

CVS CAREMARK CORPORATION, CVS
PHARMACY, INC., CAREMARK, L.L.C.,
CAREMARK MICHIGAN SPECIALTY
PHARMACY, L.L.C., CAREMARK
MICHIGAN SPECIALTY PHARMACY
HOLDING, L.L.C., CVS MICHIGAN, L.L.C.,
WOODWARD DETROIT CVS, L.L.C.,
REVCO DISCOUNT DRUG CENTERS, INC.,
K MART HOLDING CORPORATION, SEARS
HOLDINGS CORPORATION, SEARS
HOLDINGS MANAGEMENT
CORPORATION, SEARS, ROEBUCK &
COMPANY, RITE AID OF MICHIGAN, INC.,
PERRY DRUG STORES, INC., TARGET
CORPORATION, KROGER COMPANY OF
MICHIGAN, KROGER COMPANY,
WALGREEN COMPANY, and WAL-MART
STORES, INC.,
Defendants-Appellants.

CITY OF LANSING and DICKINSON PRESS,
INC.,

Plaintiffs-Appellees,
Cross-Appellants,

v

SC: 146792
COA: 299998
Kent CC: 09-007827-CZ

RITE AID OF MICHIGAN, INC., and PERRY
DRUG STORES, INC.,
Defendants-Appellants,
Cross-Appellees.

CITY OF LANSING, DICKINSON PRESS,
INC., and SCOTT MURPHY,
Plaintiffs-Appellees,
Cross-Appellants,

v

SC: 146793

COA: 299999
Kent CC: 10-000619-CZ

CVS CAREMARK CORPORATION, CVS PHARMACY, INC., CAREMARK, L.L.C., CAREMARK MICHIGAN SPECIALTY PHARMACY, L.L.C., CAREMARK MICHIGAN SPECIALTY PHARMACY HOLDING, L.L.C., CVS MICHIGAN, L.L.C., WOODWARD DETROIT CVS, L.L.C., REVCO DISCOUNT DRUG CENTERS, INC., KMART HOLDING CORPORATION, SEARS HOLDINGS CORPORATION, SEARS HOLDINGS MANAGEMENT CORPORATION, SEARS, ROEBUCK & COMPANY, TARGET CORPORATION, KROGER COMPANY OF MICHIGAN, KROGER COMPANY, WALGREEN COMPANY, and WAL-MART STORES, INC.,

Defendants-Appellants,
Cross-Appellees.

On order of the Court, the application for leave to appeal the January 22, 2013 judgment of the Court of Appeals and the application for leave to appeal as cross-appellants are considered. The application for leave to appeal is GRANTED. The application for leave to appeal as cross-appellants is GRANTED, limited to the issue of whether there is a private cause of action under MCL 333.17755(2). The parties shall include among the issues to be briefed: (1) whether MCL 333.17755(2) provides an implied private cause of action; (2) what is meant by the requirement that a pharmacist shall “pass on the savings in cost” when the pharmacist dispenses a generically equivalent drug product and what constitutes a violation of that requirement; (3) whether this requirement is limited to transactions involving a substitution of a generic drug for a name brand drug, and in this regard, whether § 17755(2) must be read in conjunction with the other subsections of MCL 333.17755; (4) whether submission of a charge for the dispensing of a generic drug that is in violation of this requirement constitutes the making of a false claim under the Medicaid False Claim Act (MFCA), MCL 400.601 *et seq.* or the Health Care False Claim Act (HCFCFA), MCL 752.1001 *et seq.*; (5) whether use of the remedies provided by the MFCA and the HCFCFA is available when Part 177 of the

Michigan Public Health Code, MCL 333.17701 *et seq.* provides administrative remedies for violations of MCL 333.17755; (6) whether the plaintiffs satisfied the heightened pleading requirement applicable to these actions under MCR 2.112(B)(1); and (7) whether plaintiff Marcia Gurganus is qualified to bring a qui tam action in light of the limitations found at MCL 400.610a(13).

The motions for leave to file briefs amicus curiae are GRANTED. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 18, 2013

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk