NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

JEW
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mrt

NUMBER 2017 CA 0498

THE STATE OF LOUISIANA, EX REL.
JAMES D. "BUDDY" CALDWELL,
ATTORNEY GENERAL

VERSUS

TAKEDA PHARMACEUTICALS AMERICA, INC.;
TAKEDA PHARMACEUTICALS U.S.A., INC.;
TAKEDA GLOBAL RESEARCH & DEVELOPMENT
CENTER, INC.; TAKEDA PHARMACEUTICAL
COMPANY LIMITED; TAKEDA PHARMACEUTICALS
INTERNATIONAL, INC.; ELI LILLY AND COMPANY;
AND LILLY USA, LLC

Judgment Rendered: OCT 03 2018

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 637447

Honorable R. Michael Caldwell, Judge

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Takeda Pharmaceuticals, U.S.A.,
Inc.; Takeda Global Research &
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Pharmaceutical Company Limited;
Takeda Pharmaceuticals
International, Inc.; Eli Lilly and
Company; and Lilly USA, LLC

* * * * * *

BEFORE: McCLENDON, WELCH, CRAIN, THERIOT, AND PENZATO, JJ.

WELCH, J.

The State of Louisiana, through its Attorney General ("the State"), appeals a judgment partially sustaining a peremptory exception raising the objection of no cause of action, partially sustaining a peremptory exception raising the objection of no right of action, and dismissing all of the State's claims against the defendants. The defendants have answered the appeal, seeking to have the objection of no cause of action sustained in its entirety. Because we find that the portion of the judgment on appeal partially sustaining the peremptory exception raising the objection of no cause of action and dismissing those claims of the State, as well as an earlier judgment sustaining the objection of no cause of action and ordering the State to amend its petition, are directly contrary to this Court's holding in the previous opinion in this matter, **State ex rel. Caldwell v. Takeda Pharmaceuticals America, Inc.**, 2015-1413 (La. App. 1st Cir. 4/15/16) (*unpublished*)("**State v. Takeda**"), we vacate the earlier judgment and those portions of the judgment on appeal and we deny the answer to appeal based on law of the case. In addition, pursuant to this Court's recent holding in **State, by and through Caldwell v. Astra Zeneca AB**, 2016-1073, pp. 6-10 (La. App. 1st Cir. 4/11/18)___ So.3d ___,___, we reverse those portions of the judgment on appeal partially sustaining the peremptory exception raising the objection of no right of action and dismissing those claims of the State with prejudice.

BACKGROUND

We borrow the relevant facts from our previous opinion in this matter, **Takeda**, 2015-1413 at p. 1:

> On February 27, 2015, the State filed the instant suit for damages, naming as defendants: Takeda Pharmaceuticals America, Inc.; Takeda Pharmaceuticals U.S.A., Inc.; Takeda Global Research & Development Center, Inc.; Takeda Pharmaceutical Company Limited; Takeda Pharmaceutical International, Inc.; Eli Lilly and Company; and Lilly USA, Inc. According to the petition, the defendants are in the business of researching, designing, developing, licensing,

manufacturing, packaging, labeling, marketing, promoting, distributing, and selling the prescription drug known as Actos and other pioglitazone hydrochloride-containing medicines, which are used for the treatment of Type 2 Diabetes Mellitus. The defendants marketed, promoted, distributed, and sold Actos in Louisiana, and the State, through its Medicaid program, purchased and reimbursed Actos, which had been prescribed for and dispensed to Louisiana Medicaid recipients.

In the petition, the State asserted that research and studies had revealed that Actos significantly increased the risk of bladder cancer and that the defendants knew or should have known of these risks. Despite this knowledge, the State claimed that the defendants undertook a campaign of fraud and misrepresentation to mislead the State for years, including Louisiana's Pharmacy and Therapeutics Committee ("P & T Committee"), the State entity responsible for managing Louisiana's Medicaid prescription drug formulary. The State further claimed that relying on the defendants' misrepresentations, omissions, and unlawful measures, the P & T Committee maintained Actos on its "Preferred Drug List" instead of demoting Actos to the "Prior Authorization List." The State also claimed that had it and its consumers, physicians, health care providers, and prescribers known the increased risk of bladder cancer associated with Actos, the medication would not have been prescribed in the quantity that it was, and the State would not have reimbursed or paid for Actos in the quantity that it did. Based on these allegations, the State sought to recover damages based on various theories of legal recovery including fraud; redhibition; unjust enrichment; and violations of the Louisiana Unfair Trade Practices Act ("LUTPA"), set forth in La. R.S. 51:1405, *et seq.*, and the Louisiana Medical Assistance Programs Integrity Law ("MAPIL"), set forth in La. R.S. 46:437.1, *et seq.*

In response to the petition, the defendants filed peremptory exceptions raising the objections of no cause of action, *res judicata,* and no right of action, and dilatory exceptions raising the objections of vagueness or ambiguity and nonconformity of the petition with the requirements of La. C.C.P. art. 891. After a hearing, the trial court rendered judgment overruling the dilatory exceptions raising the objections of vagueness or ambiguity and non-conformity of the petition and overruling the peremptory exceptions raising the objections of *res judicata* and no right of action. With respect to the peremptory exception raising the objection of no cause of action, the trial court overruled that objection with regard to the State's claim of fraud, and it sustained the objection and dismissed the redhibition, unjust enrichment, LUTPA, and MAPIL claims. A judgment in accordance with the trial court's ruling was signed on August 14, 2015, and ... the State ... appealed.

On appeal, this Court reversed the judgment of the trial court, finding that the trial court had improperly sustained a partial exception of no cause of action.

Takeda, 2015-1413 at p. 3. In doing so, this Court first recognized the well-settled precepts that generally, an exception of no cause of action should not be maintained in part and that if there are two or more theories of recovery that arise out of the operative facts of a single transaction or occurrence, a partial judgment on an exception of no cause of action should not be rendered to dismiss a theory of recovery. **Takeda**, 2015-1413 at p. 2; see **Everything on Wheels Subaru, Inc. v. Subaru South, Inc.**, 616 So.2d 1234, 1236 and 1239 (La. 1993).

This Court then noted that the State's claims against the defendants were based on the factual allegations that the defendants knew or should have known of the increased risk of bladder cancer associated with Actos, and that they fraudulently misrepresented and misled the State for years regarding the drug, which caused the State to reimburse and pay for a larger quantity of the drug than it would have had it not been misled. **Takeda**, 2015-1413 at p. 3. This Court further noted that the State asserted it was entitled to damages from the defendants based on four distinct theories of recovery—fraud, redhibition, and violations of LUTPA and MAPIL.[1] *Id.*

This Court then held that "[t]he trial court found, *and we agree, that the State has stated a cause of action against the defendants based on fraud* ... [and that] based on our *de novo* review of the State's petition, *we find that the claims against the defendants arise out of the same operative facts of a single transaction or occurrence.*" *Id.* (Emphasis added). Accordingly, this Court concluded that "[s]ince the State asserted a cause of action for fraud, ... a judgment partially maintaining an exception of no cause of action with respect to the State's redhibition, LUTPA, and MAPIL claims was improper[,]" and that "[t]he exception should have been overruled[.] *Id.* Therefore, this Court reversed the

[1] We note that the State also sought to recover from the defendants based on the theory of unjust enrichment, which the trial court also dismissed; however, the State did not challenge the trial court's ruling in that regard on appeal. **Takeda**, 2015-1413 at p. 1 n.2.

judgment of the trial court insofar as it sustained the exception of no cause of action and dismissed the State's claims based on redhibition and violations of LUTPA and MAPIL. *Id.* This Court then remanded the matter for further proceedings. *Id.*

On remand, the defendants filed another peremptory exception raising the objection of no cause of action ("the second objection of no cause of action"), and alternatively a motion for summary judgment. Notwithstanding this Court's *express determination* in **Takeda**, 2015-1413 at p. 3, that *the State had stated a cause of action for fraud*, the defendants, in their second objection of no cause of action, sought the dismissal of all of the State's claims, including its fraud claim.[2] Alternatively, the defendants sought summary judgment dismissing all of the State's claims on the basis that all of the State's claims were either foreclosed or not actionable as a matter of law, and therefore, there were no issues of fact that could support a judgment in favor of the State.

After a hearing, the trial court sustained the defendant's second objection of no cause of action with respect to *all* of the State's claims against the defendants.

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[2] The defendants, in their memorandum in support of the exception and motion for summary judgment, maintained that this court "declined" to address the merits of the substantive legal issues raised by the objection of no cause of action, that this Court "left wholly undisturbed the ***substantive legal grounds*** for the trial court's dismissal of the State's redhibition, LUTPA, and MAPIL claims, and that to "remedy the procedural anomaly raised by [this Court,]" it was urging the objection of no cause of action so as to obtain a dismissal of all of the State's claims, including the fraud claim. However, we find the defendants have misinterpreted this Court's prior opinion in **Takeda**. This Court did not remand for another peremptory exception raising the objection of no cause of action as to all the State's claim, including fraud. To the contrary, this Court specifically found that the State had stated a cause of action for fraud, and that the State's cause of action for fraud arose out of the same operative facts of a single transaction or occurrence that gave rise to the State's redhibition, LUTPA, and MAPIL claims; thus, a partial exception of no cause of action was improper. **State v. Takeda**, 2015-1413 at p. 3.

Furthermore, this Court did not "decline" to address the substantive legal grounds or leave the trial court's determinations regarding the substantive legal grounds "undisturbed." Rather, given the reversible procedural error made by the trial court, it was not necessary for this Court to address the substantive legal issues presented by the exception of no cause of action and any judicial pronouncement as to the merits of those substantive legal issues would have been an impermissible advisory opinion. It is well settled that courts will not decide abstract, hypothetical, or moot controversies, or render advisory opinions with respect to such controversies. See **LaPointe v. Vermilion Parish School Bd.**, 2015-0432 (La. 6/30/15), 173 So.3d 1152, 1159.

However, the trial court granted the State thirty days from the date of the hearing to amend its petition, failure of which would result in the dismissal of the State's petition. See La. C.C.P. art. 934.[3] A judgment in accordance with the trial court's ruling was signed on September 19, 2016.[4]

On October 6, 2016, the State filed an amended petition for damages. In response, the defendants filed another peremptory exception raising the objections of no cause of action ("the third objection of no cause of action") and no right of action. With respect to the third objection of no cause of action, the defendants again maintained that based on the facts alleged in the State's amended petition, the law provided no grounds for recovery by the State and that all of the State's claims against the defendants should be dismissed. With respect to the objection of no right of action, the defendants, citing **State v. Abbott Laboratories, Inc.**, 2015-1854, 2015-1626 (La. App. 1st Cir. 10/21/16), 208 So.3d 384, 389, writs denied, 2017-0125, 2017-0149 (La. 3/13/17), 216 So.3d 802, 808, argued that the right to bring the actions asserted by the State did not belong to the Attorney General, but rather to the state agency, *i.e.*, the Louisiana Department of Health and Hospitals ("DHH").[5]

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[3] Louisiana Code of Civil Procedure article 934 provides that "[w]hen the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. If the grounds of the objection raised through the exception cannot be so removed, or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed."

[4] We note that the trial court's September 19, 2016 judgment is silent with respect to the defendants' alternative motion for summary judgment. Ordinarily, since the trial court sustained an objection of no cause of action, an alternative motion for summary judgment would have been rendered moot. However, in this case, the judgment of the trial court did not provide that the alternative motion for summary judgment was moot, but rather, the judgment was silent as to that claim. It is well-settled that silence in a judgment of the trial court as to any issue, claim, or demand placed before the court is deemed a rejection of the claim and the relief sought is presumed to be denied. See **L.J.D. v. M.V.S.**, 2016-0008 (La. App. 1st Cir. 1/25/17), 212 So.3d 581, 584. Accordingly we deem the silence in the trial court's judgment with respect to the defendants' alternative motion for summary judgment as a denial of that motion.

[5] DHH has been renamed the Department of Health. See 2016 La. Acts 300 § 1, eff. June 2, 2016, amending La. R.S. 36:251.

After a hearing, on February 8, 2017, the trial court rendered and signed a judgment, which: (1) sustained the objection of no cause of action and no right of action as to unjust enrichment and redhibition claims and dismissed those claims; (2) sustained the objection of no cause of action as to the LUTPA and MAPIL claims and dismissed those claims; and (3)(a) overruled the objection of no cause of action as to the fraud claim, (b) stated that it was overruling the objection of no cause of action as to the fraud claim (and thus granting a partial no cause of action) on the basis that it was based on factual allegations separate from the State's other claims, and (c) sustained the objection of no right of action as to the fraud claim and dismissed that claim. The trial court's judgment was silent with respect to the objection of no right of action on the State's LUTPA and MAPIL claims; as such, the objection of no right of action with respect to the State's LUTPA and MAPIL claim is deemed overruled.[6]

The State has appealed the February 8, 2017 judgment, challenging the trial court's ruling on both the objections of no cause of action and the objection of no right of action. The defendants have answered the appeal, seeking to reverse the trial court's judgment insofar as it overruled the objection of no cause of action with respect to the State's fraud claim (*i.e.* seeking to have the objection of no cause of action sustained in its entirety).

DISCUSSION

As previously set forth, in **Takeda**, 2015-1413 at p.3., this Court specifically held that the State, in its original petition for damages, stated a cause of action for fraud and that all of the State's claims against the defendants therein arose out of the same operative facts of a single transaction or occurrence. Hence, it was improper to sustain a partial objection of no cause of action. *Id.* Our holdings in

[6] As previously noted, silence in a judgment of the trial court as to any issue, claim, or demand placed before the court is deemed a rejection of the claim and the relief sought is presumed to be denied. See **L.J.D.**, 212 So.3d at 584.

Takeda, 2015-1413 at p. 3 are "law of the case," were binding on the trial court on remand, and will not be re-considered by this court in this appeal.[7]

Based on our review of the record, we find that the September 19, 2016 judgment of the trial court, which sustained the objection of no cause of action as to *all* of the State's claims in its original petition, including fraud, and ordered the State to amend its petition, is contrary to the express holding of this court in **Takeda**, 2015-1413 at p. 3, that the State had stated a cause of action for fraud. Although the record before us does not reveal why the trial court failed to follow and issued a ruling that was contrary to this Court's express holding, the trial court's error appears to have been based on the defendant's argument that this Court's decision meant that the State's fraud claim must be dismissed in order for this Court to entertain the appeal of the objection of no cause of action. However,

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[7] The law of the case doctrine embodies the principle that an appellate court generally does not revisit its own rulings of law on a subsequent appeal in the same case. See **Trans Louisiana Gas Co. v. Louisiana Ins. Guar. Ass'n**, 96-1477 (La. App. 1st Cir. 5/9/97), 693 So.2d 893, 896. It is a discretionary guide that relates to (a) the binding force of a trial judge's ruling during the later stages of trial; (b) the conclusive effects of appellate rulings at trial on remand; and (c) the rule that an appellate court ordinarily will not reconsider its own rulings of law on a subsequent appeal in the same case. **Jones v. McDonald's Corp.**, 97-2287 (La. App. 1st Cir. 11/6/98), 723 So.2d 492, 494, writ not considered, 98-3057 (La. 2/5/99), 737 So.2d 738, citing **Louisiana Land and Exploration Co. v. Verdin**, 95-2579 (La. App. 1st Cir. 9/27/96), 681 So.2d 63, 65, writ denied, 96-2629 (La. 12/13/96), 692 So.2d 1067, cert. denied, 520 U.S. 1212, 117 S.Ct. 1696, 137 L.Ed.2d 822 (1997). The law of the case doctrine applies to all prior rulings or decisions of an appellate court or the supreme court in the same case, not merely those arising from the full appeal process. **Jones**, 723 So.2d at 494, citing **Brumfield v. Dyson**, 418 So.2d 21, 23 (La. App. 1st Cir.), writ denied, 422 So.2d 162 (La. 1982).

The reasoning behind the law of the case doctrine is to avoid re-litigation of the same issue, to promote consistency of result in the same litigation, and to promote efficiency and fairness to both parties by affording a single opportunity for the argument and decision of the matter at issue. **Jones**, 723 So.2d at 494, citing **Louisiana Land and Exploration Co.**, 681 So.2d at 65. Re-argument in the same case of a previously decided point will be barred where there is simply no doubt as to the correctness of the earlier ruling; the doctrine is not applied in cases of palpable error or where, if the law of the case were applied, manifest injustice would occur. **Jones**, 723 So.2d at 494, citing **Glenwood Hospital, Inc. v. Louisiana Hospital Services, Inc.**, 419 So.2d 1269, 1271 (La. App. 1st Cir. 1982). In this case, we find no such error nor does the application of the doctrine effectuate manifest injustice; therefore, our prior holding in **State v. Takeda**, 2015-1413 at p. 3 that the State, in its original petition for damages, stated a cause of action for fraud and that all of the State's claims against the defendants therein arose out of the same operative facts of a single transaction or occurrence is law of the case.

that is a misinterpretation of our decision; it was not this Court's intent to remand for another objection of no cause of action dismissing all of the State's claims, because this Court expressly found that the State had stated a cause of action for fraud. Therefore, because we find that the trial court's September 19, 2016 judgment is contrary to the express holding of this court in **Takeda**, 2015-1413 at p. 3 and since the misinterpretation of that decision resulted in the assertion of and sustaining of an objection of no cause of action, the trial court's September 19, 2016 judgment must be vacated. See La. C.C.P. art. 2164.[8]

In addition, we also find that, with respect to the third objection of no cause of action, the February 8, 2017 judgment on appeal, partially sustaining the peremptory exception raising the objection of no cause of action (*i.e.*, sustaining the objection as to the unjust enrichment, redhibition, LUTPA, and MAPIL claims and overruling that objection as to fraud because the factual allegations with respect to that claim were separate and distinct from the State's other claims), is likewise contrary to this Court's express holding in **Takeda**, 2015-1413 at p. 3 that all of the State's claims against the defendants arose out of the same operative facts. Hence, for the same reasons set forth in **Takeda**, 2015-1413 at p. 3, we find that the trial court improperly sustained a partial objection of no cause of action. Accordingly, we also vacate those portions of the February 8, 2017 judgment that sustained the defendants' (third) peremptory exception raising the objection of no cause of action with respect to the State's claims for unjust enrichment, redhibition, LUTPA, and MAPIL and that dismissed those claims.

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[8] See also **Brooks v. Maggio**, 34,889 (La. App. 2nd Cir. 8/22/01), 793 So.2d 481, 483 (the misinterpretation of the appellate court's prior ruling by both the trial court and the parties deprived a litigant of the opportunity to pursue an action and appeared to result in the dismissal of the action and assertion of an exception, and thus, vacating the trial court's judgment and remanding the matter was warranted); **ANR Pipeline Co. v. Louisiana Tax Com'n**, 2007-2282 (La. App. 1st Cir. 10/17/08), 997 So.2d 105, 110-111, writ denied, 2009-0025 (La. 3/6/09), 3 So.3d 484 (the misinterpretation of the appellate court's prior ruling by the trial court formed the basis of a preliminary injunction, and thus, the preliminary injunction was issued in error and had to be vacated and the matter remanded for further proceedings).

Furthermore, by our ruling herein, we make no expression as to whether the State has (or has not) stated a cause of action for unjust enrichment, redhibition, LUTPA, and MAPIL claims. Louisiana is a fact pleading jurisdiction; other than fraud, which must be pled with particularity, the State was not required to allege its theory of recovery in its petition. See La. C.C.P. arts. 854 and 856; **Ramey v. DeCaire**, 2003-1299 (La. 3/19/04), 869 So.2d 114, 118. Rather, the issue, on the objection of no cause of action, was whether, based on the facts alleged in the State's petition, the law affords the State any remedy. See **Everything on Wheels Subaru, Inc.**, 616 So.2d at 1238. In **Takeda**, 2015-1413 at p. 3, this court held that the State had stated a cause of action for fraud; thus, the State's petition asserts a cause of action for which the law affords a remedy and the objection of no cause of action was without merit. Our determination therein is law of the case, and we will not reconsider that ruling in this appeal. For this reason, we render judgment overruling the defendants' peremptory exception raising the objection of no cause of action and we deny the defendants' answer to appeal.

Lastly, with respect to the issue of the objection of no right of action, we find this Court's recent decision in **Astra Zeneca AB**, 2016-1073, pp. 6-10, ___ So.3d at ___, to be controlling. Therein, this Court recognized that the Louisiana Code of Civil Procedure does not provide for a partial peremptory exception raising the objection of no right of action, and thus, if a plaintiff had a right of action as to any one of the theories or demands for relief set out in his petition, the objection of no right of action should be overruled. **Astra Zeneca AB**, 2016-1073 at p. 6, ___ So.3d at ___. In addition, this Court noted that where the plaintiff pleads multiple theories of recovery based on a single occurrence or set of operative facts, the partial grant of any exception of no right of action, which attacks only one theory of recovery and which does not dismiss a party, would be invalid as an impermissible partial judgment. *Id.* Lastly, in **Astra Zeneca AB**,

2016-1073 at p. 10, ___ So.3d at ___, this Court overruled **Abbott**, 208 So.3d at 384 (upon which the defendants relied on in urging the objection of no right of action), to the extent that it recognized a partial sustaining of the objection of no right of action when the claims arise from the same set of operative facts.

In **Abbott**, 208 So.3d at 386, the State filed suit against several pharmaceutical manufacturers, distributors, marketers, and sellers alleging that those defendants had engaged in an unlawful and deceptive scheme to receive Medicaid payments for drugs that were not eligible for Medicaid payments. The State asserted claims based on LUTPA and MAPIL, as well as claims for fraud, redhibition, unjust enrichment, and negligent misrepresentation. **Abbott**, 208 So.3d at 386-387. The State sought an accounting of the profits or gains from the unlawful scheme, as well as damages, statutory fines, penalties, attorney fees, costs, and other equitable relief. **Abbott**, 208 So.3d at 387. In response, the defendants filed a peremptory exception raising the objection of no right of action, asserting that the State, represented by the Attorney General, did not have the right to bring the claims asserted because the right to bring those claims belonged to the state agency, *i.e.* DHH. *Id.* The trial court sustained the objection and dismissed the State's suit in its entirety, and the State appealed. *Id.*

On appeal, this Court found that the Louisiana Legislature expressly gave the Attorney General the right to bring its claims under both LUTPA and MAPIL, and therefore, reversed the judgment of the trial court insofar as it sustained the objection of no right of action as to the State's claims based on MAPIL and LUTPA. **Abbott**, 208 So.3d at 390. However, this Court further found no authority for the State to bring its claims outside of LUTPA and MAPIL for fraud, redhibition, unjust enrichment, and negligent misrepresentation, and that the right to bring those actions belonged to DHH. *Id.* Thus, this Court affirmed that portion of the trial court judgment sustaining the objection of no right of action as to the

State's claims for fraud, redhibition, unjust enrichment, and negligent misrepresentation. *Id.* However, as previously set forth, this aspect of **Abbott**, 208 So.3d at 384 (recognizing a partial objection of no right of action when the claims arise from the same set of operative facts) was expressly overruled by this Court in **Astra Zeneca AB**, 2016-1073 at p. 10, ___ So.3d at ___.

As previously noted, the trial court's judgment was silent with respect to the objection of no right of action on the State's LUTPA and MAPIL claims, which we deemed to be an overruling of that objection. Pursuant to that aspect of this Court's holding in **Abbott**, 208 So.3d at 390, which was not overruled by **Astra Zeneca AB**, 2016-1073 at p. 10, ___ So.3d at ___ (*i.e.*, that the Attorney General had the right to bring claims under LUTPA and MAPIL) we find no error in the trial court's implicit determination that the State had a right of action as to the State's claims based on LUTPA and MAPIL. Furthermore, and having concluded that the State has a right of action under LUTPA and MAPIL, and given that its claims against the defendants based on LUTPA, MAPIL, redhibition, and fraud arise from the same set of operative facts, see **Takeda**, 2015-1413 at p. 3, we must conclude that a judgment partially sustaining the objection of no right of action with respect to the State's claims based on fraud, redhibition, and unjust enrichment was improper. See **Astra Zeneca AB**, 2016-1073 at p. 10, ___ So.3d ___. The exception of no right of action should have been overruled. Accordingly, we reverse the February 8, 2017 judgment of the trial court insofar as it sustained the objection of no right of action and dismissed the State's claims based on fraud, redhibition, and unjust enrichment.

CONCLUSION

For all of the above and foregoing reasons, the trial court's September 19, 2016 judgment is vacated; that portion of the February 8, 2017 judgment sustaining the defendants' objection of no cause of action as to the State's claims based on

LUTPA, MAPIL, unjust enrichment, and redhibition and dismissing those claims and overruling the defendants' objection of no cause of action as to the State's fraud claim based on factual allegations separate from the State's other claims is vacated; judgment is entered overruling the defendants' peremptory exception of no cause of action; we reverse that portion of the February 8, 2017 judgment of the trial court sustaining the objection of no right of action with respect to the State's claims based on fraud, redhibition, and unjust enrichment, and we reverse that portion of the February 8, 2017 judgment of the trial court dismissing the State's claim based on fraud; we deny the answer to appeal.

All costs of this appeal are assessed to the defendants/appellants, Takeda Pharmaceuticals America, Inc.; Takeda Pharmaceuticals U.S.A., Inc.; Takeda Global Research & Development Center, Inc.; Takeda Pharmaceutical Company Limited; Takeda Pharmaceutical International, Inc.; Eli Lilly and Company; and Lilly USA, Inc.

SEPTEMBER 19, 2016 JUDGMENT VACATED; FEBRUARY 8, 2017 JUDGMENT VACATED IN PART, REVERSED IN PART; JUDGMENT RENDERED; ANSWER TO APPEAL DENIED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 0498

**STATE OF LOUISIANA, EX REL.
JAMES D. "BUDDY" CALDWELL,
ATTORNEY GENERAL**

VERSUS

**TAKEDA PHARMACEUTICALS AMERICA, INC.;
TAKEDA PHARMACEUTICALS U.S.A., INC.;
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CENTER, INC.; TAKEDA PHARMACEUTICAL COMPANY
LIMITED; TAKEDA PHARMACEUTICALS INTERNATIONAL, INC.;
ELI LILLY AND COMPANY; AND LILLY USA, LLC**

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PMC dwg JEW

McClendon, J., dissents.

Under this unique factual scenario, where all claims have been dismissed in the same judgment through partial exceptions of no cause and no right of action, this court should consider the merits of those partial exceptions together on appeal rather than using technical rules of procedure to reverse the trial court's judgment.

The primary objective of all procedural rules should be to secure to parties the full measure of their substantive rights. **Unwired Telecom Corp. v. Parish of Calcasieu**, 03-0732 (La. 1/19/05), 903 So.2d 392, 400. Rules of procedure exist for the sake of substantive law and to implement substantive rights, not as an end in and of itself. **Id.** Under the system of fact pleading prevalent in Louisiana, the procedure relevant to pleading is the "handmaid rather than the mistress" of justice. **Id.** Therefore, I respectfully dissent.

STATE OF LOUISIANA, EX REL. JAMES D. "BUDDY" CALDWELL, ATTORNEY GENERAL

VERSUS

TAKEDA PHARMACEUTICALS AMERICA, INC., *ET AL.*

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 0498

CRAIN, J., dissenting.

The judicially-crafted proscription of partial exceptions of no cause and no right of action is premised on longstanding jurisprudence holding that "a suit will not be dismissed on exceptions of no right and no cause of action . . . where the allegations of fact set forth a right and a cause of action as to any part of the demand." *See C. W. Greeson Co. v. Harnischfeger Corp.*, 219 La. 1006, 1019-20, 54 So. 2d 528, 532 (1951); *Schackai v. Messa*, 223 La. 626, 628, 66 So. 2d 573, 573 (1953). Here, in contrast to *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So. 2d 1234 (La. 1993), and *State v. Astra Zeneca AB*, 16-1073 (La. App. 1 Cir. 4/11/18), 249 So. 3d 38, the allegations of the petition fail to establish both a cause of action and a right of action for any one claim asserted by the plaintiff. Nothing in *Everything on Wheels* or *Astra Zeneca* suggests such a petition should be maintained. I would affirm the trial court's judgment dismissing the state's suit with prejudice.