



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., §
MIKE HUNTER, §
ATTORNEY GENERAL OF OKLAHOMA, §
Plaintiff, §

vs. §

(1) PURDUE PHARMA L.P.; §
(2) PURDUE PHARMA, INC.; §
(3) THE PURDUE FREDERICK COMPANY; §
(4) TEVA PHARMACEUTICALS USA, INC.; §
(5) CEPHALON, INC.; §
(6) JOHNSON & JOHNSON; §
(7) JANSSEN PHARMACEUTICALS, INC.; §
(8) ORTHO-McNEIL-JANSSEN §
PHARMACEUTICALS, INC., n/k/a §
JANSSEN PHARMACEUTICALS, INC.; §
(9) JANSSEN PHARMACEUTICA, INC., §
n/k/a JANSSEN PHARMACEUTICALS, INC.; §
(10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, §
f/k/a ACTAVIS, INC., f/k/a WATSON §
PHARMACEUTICALS, INC.; §
(11) WATSON LABORATORIES, INC.; §
(12) ACTAVIS LLC; and §
(13) ACTAVIS PHARMA, INC., §
f/k/a WATSON PHARMA, INC., §
Defendants. §

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED In The
Office of the Court Clerk

JAN 30 2018

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

The Honorable Thad Balkman

JURY TRIAL DEMANDED

PLAINTIFF'S MOTION FOR APPOINTMENT OF SETTLEMENT MASTER

Plaintiff, the State of Oklahoma (the "State"), files this Motion For Appointment of Settlement Master. In support, the State respectfully shows the Court as follows:

I. The State Agreed to the Appointment of Judge Hetherington as Discovery Master

By Summary Order on January 11, 2018, the Court granted Defendants'¹ request to appoint a discovery master over the State's objection. The Court instructed the parties to cooperate in selecting a discovery master and submit a proposed Order. The Court also informed the parties that the Court had reserved a monthly setting on the Court's docket in order to manage, administer and proactively oversee the progress of this action.

Defendants advocated for the appointment of Judge William C. Hetherington, Jr. as discovery master. Pursuant to the Court's instructions, the State chose not to object to Defendants' request and agreed to their selection of Judge Hetherington. The parties filed a Notice and Proposed Order regarding the Discovery Master on Friday January 26, 2018.

II. The Court Should Appoint a Settlement Master to Facilitate, Administer and Oversee the Settlement Process in This Action

The State respectfully requests that the Court additionally appoint a special master for settlement purposes (hereinafter "Settlement Master") to immediately begin the facilitation, administration and oversight of settlement negotiations and procedure in this case. As explained below, this complex, multi-party action requires the appointment of a Settlement Master if this case is to be resolved in any manner short of final judgment and exhaustion of appeals on all issues.

An undeniable truth lies at the heart of this litigation: the number of Oklahoma citizens suffering from the opioid crisis increases each and every day. As Purdue admitted in the New York Times, there is a crisis. Everyone agrees that something must be done about it. Regardless of whether the legal claims, defenses or arguments raised by the parties in this action will ultimately be proven to have merit, the inescapable reality is that this case pertains to a public

¹ "Defendants" refers collectively to each of the named Defendants in this action.

health crisis that has and continues to devastate the lives of Oklahoma citizens. More Oklahoma citizens are losing their lives to the opioid epidemic every day. Current estimates project that 150 Americans die from opioid-related causes every day. And, as U.S. Attorney General Jeff Sessions has stated, “We are in the midst of the deadliest drug epidemic this country has ever seen.” Because of the sweeping nature of the epidemic, there are countless stakeholders in this action that go far beyond the named parties.

While the State is willing and able to try this case to judgment, such a judgment will not stop the fact that Oklahomans will lose loved ones to the opioid crisis between now and the date that any such judgment becomes final. As such, the prospect of a final judgment does not excuse the parties from exploring solutions now—at the same time they are litigating toward a May 2019 trial date—in an effort to create a meaningful solution to these immediate and indisputable problems. However, due to the complexity of the issues involved, any possibility of a meaningful resolution cannot be accomplished through a typical mediation at some unspecified date in the future. It cannot be an afterthought or come secondary to the substance of the litigation.

Rather, for any meaningful resolution to be reached, the process must begin now and continue until such a resolution is reached or this action is tried. This case is about more than money; the State also seeks injunctive relief and an abatement of the public nuisance. That requires finding real world solutions to abate and reverse the devastating effects opioids have had in Oklahoma. Any resolution short of a judgment will require months of cooperative planning to craft effective solutions that can be implemented quickly and correctly. That planning should begin now. The appointment of a Settlement Master to facilitate and administer such a process will enable the Court to ensure that the parties exhaust every effort to come together and find the right solutions.

Shortly after the parties' appearance before the Court during the January 11, 2018 hearing, U.S. District Judge Dan A. Polster, who is presiding over the federal MDL, appointed **three** settlement masters to start the settlement planning process in those cases.² Judge Polster explained that his primary objective in presiding over the MDL was "to do something meaningful to abate this crisis **and to do it in 2018.**"³ Recognizing the inevitably complex nature the negotiations required to reach any adequate settlement, Judge Polster **stayed all discovery and motion practice** to focus "everyone's present efforts on abatement and remediation of the opioid crisis rather than pointing fingers and litigating legal issues."⁴ To facilitate this process, Judge Polster appointed settlement masters to, among other things, meet separately and together with the parties and their counsel and assist the Court with mediating resolution of any part of the parties' disputes.⁵ The court's only focus will be on negotiating settlement.

Judge Polster recognized that the MDL Court has no jurisdiction over this case.⁶ Moreover, unlike the MDL cases, the present case has passed the motion practice stage, discovery is ongoing, and the Court has set a firm trial date in May 2019. The State has made it clear that it believes the May 2019 trial date is critical due to the nature of this public health crisis and the need to get a remedy. The State is fully committed to preparing its claims for trial and will be ready to pick a jury the first day of trial.

² See Appointment Order (Doc. No. 69), *In re: Nat'l Prescription Opiate Litig.*, Case No. 1:17-MD-2804-DAP (N.D. Ohio Jan. 11, 2018).

³ See Transcript of Proceedings (Doc. No. 58), *In re: Nat'l Prescription Opiate Litig.*, Case No. 1:17-md-02804-DAP (N.D. Ohio Jan. 9, 2018) (emphasis added).

⁴ See Minutes of Initial Pretrial Conference (Doc. No. 70), *In re: Nat'l Prescription Opiate Litig.*, Case No. 1:17-md-02804-DAP (N.D. Ohio Jan. 11, 2018)

⁵ Appointment Order (Doc. No. 69), *In re: Nat'l Prescription Opiate Litig.*, Case No. 1:17-MD-2804-DAP (N.D. Ohio Jan. 11, 2018).

⁶ See Transcript of Proceedings (Doc. No. 58), *In re: Nat'l Prescription Opiate Litig.*, Case No. 1:17-md-02804-DAP (N.D. Ohio Jan. 9, 2018).

However, the State also recognizes that, if a resolution with one or more Defendants is possible, that process must begin now. And, because the Defendants are involved in settlement discussions in other litigation, the State believes settlement discussions must begin in this case now.

The State respectfully submits that the appointment of a Settlement Master is appropriate and necessary in this case. Here, unlike in the MDL, discovery and motion practice will and should proceed. Thus, it is all the more necessary to focus the parties' time and attention, not simply on litigating, but on seeking a meaningful resolution during the course of litigation. Again, such a resolution must include unique, real-world solutions aimed at abating and remediating the Oklahoma opioid crisis. It will require the concerted and comprehensive efforts of the parties, their counsel, numerous third parties and this Court. It must take into account the interests of the countless stakeholders effected by this case. And, it will only materialize if it is the product of a well-organized and effectively-administered process that demands the early cooperation and devoted creativity of the numerous national and multinational entities and their counsel, who are currently before the Court.

Under the facts and circumstances involved here, an Order appointing a Settlement Master is both necessary and well within the Court's authority to efficiently manage its docket and appropriately administer justice. Indeed, the Oklahoma Supreme Court has long recognized a trial court's inherent authority to do so:

Courts are created for the purpose of administering justice under the law. In order to accomplish that purpose, a court must, through necessity, have the power to facilitate and expedite causes before it so long as the reasonable exercise of these inherent powers does not prejudice the rights of parties involved. . . . As Justice Cardozo held in *Landis v. North American Co.*, 299 U.S. 248, 57 S. Ct. 163, 81 L.Ed. 153, the power is inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants, . . . Every court has inherent power, exercisable in its sound discretion,

consistent within the Constitution and statutes, to control disposition of causes on its docket with economy of time and effort.

Hambright v. City of Cleveland, 1960 OK 184, ¶¶15-16, 360 P.2d 493, 496 (internal citations and quotations omitted); *see also, e.g., Winters v. City of Okla. City*, 1987 OK 63, ¶¶8-9, 740 P.2d 724, 726 (recognizing a trial court’s “inherent powers to manage its own affairs so as to achieve the orderly and timely disposition of cases[,]” which are “implicit in the existence of a judicial system, and are a necessary incident to the exercise of a court’s jurisdiction.”).

Moreover, as demonstrated by the Court’s decision to grant Defendants’ request to appoint a discovery master, the Oklahoma Legislature has endowed trial courts with the authority to “appoint a discovery master” to “perform duties related to discovery consented to by the parties,” or “address pretrial and posttrial discovery matters to facilitate effective and timely resolution.” 12 OKLA. STAT. §3225.1(A). Although, unlike its federal counterpart, this recent statute does not explicitly contemplate a “settlement master,”⁷ the purpose of this statute—arming trial courts with resources and wide discretion “to facilitate effective and timely resolution” of disputes—will be fully fulfilled by the appointment of a Settlement Master. *See id.* In short, the Court undoubtedly has the authority to appoint a Settlement Master.

Among any other specific authorities the Court deems appropriate, the State respectfully requests that the Court bestow upon the appointed Settlement Master the full authority to take such actions as he or she believes will advance and facilitate the meaningful resolution of all or any part of this action, specifically including, but not limited to, the authority to schedule, set, conduct, mediate and/or preside over any meetings, conferences, negotiations, mediations and/or information sessions with the parties and their counsel. Specifically, the State requests that the

⁷ *See* FED. R. CIV. P. 53 (not limiting the appointment of a “master” to a “discovery master”).

Court order the Settlement Master to conduct at least one such settlement meeting or conference with the parties and their counsel each month during the pendency of this action and submit a confidential status report to the Court in an *ex parte* manner to keep the Court apprised of the progress of the negotiations and the participation of the parties. The State also proposes that the cost of the Settlement Master be split between the parties.

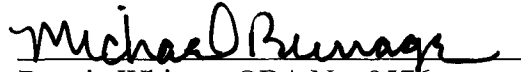
The State submits herewith a Proposed Order Appointing Settlement Master (attached hereto as Exhibit 1). The State's Proposed Order identifies and details the authority and responsibilities that the State requests the Court grant the Settlement Master. Similar to the process the Court utilized with respect to the appointment of the discovery master, the State respectfully requests that the Court grant the parties one week to submit the name and qualifications of one individual who each side proposes the Court appoint as Settlement Master. Upon the parties' submissions (one by the State and one by the Defendants), the State requests that the Court select one of these individuals (or another individual who the Court, in its discretion, finds appropriate) to be appointed as Settlement Master and enter the State's Proposed Order (Exhibit 1) appointing that individual to serve as Settlement Master.

III. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court grant the State's request to appoint a Settlement Master, afford the parties one week to submit the names of their proposed candidates to the Court, and enter the State's Proposed Order Appointing Settlement Master (attached hereto as Exhibit 1), appointing the individual the Court selects to serve as Settlement Master in this action.

DATED: January 30, 2018

Respectfully submitted,



Reggie Whitten, OBA No. 9576
Michael Burrage, OBA No. 1350
WHITTEN BURRAGE
512 North Broadway Avenue, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Email: rwhitten@whittenburrage.com
mburrage@whittenburrage.com

Mike Hunter, OBA No. 4503
ATTORNEY GENERAL FOR THE STATE
OF OKLAHOMA
Abby Dillsaver, OBA No. 20675
GENERAL COUNSEL TO THE ATTORNEY
GENERAL
Ethan A. Shaner, OBA No. 30916
DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246
Email: abby.dilsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
NIX, PATTERSON & ROACH, LLP
512 North Broadway Avenue, Suite 200
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Email: bbeckworth@nixlaw.com
jangelovich@nixlaw.com

Glen Coffee, OBA No. 14563
GLEN COFFEE & ASSOCIATES, PLLC
915 North Robinson Avenue
Oklahoma City, OK 73102

Telephone: (405) 601-1616
Email: gcoffee@glenncofee.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, on January 30, 2018, to:

Sanford C. Coats, OBA No. 18268
Cullen D. Sweeney, OBA No. 30269
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010

Patrick J. Fitzgerald
R. Ryan Stoll
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
155 North Wacker Drive, Suite 2700
Chicago, Illinois 60606

Robert G. McCampbell, OBA No. 10390
Travis J. Jett, OBA No. 30601
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson
Oklahoma City, OK 73102-7255

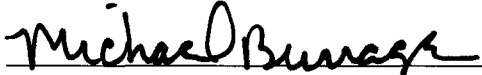
Steven A. Reed
Harvey Bartle IV
Jeremy A. Menkowitz
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

Brian M. Ercole
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
Benjamin H. Odom, OBA No. 10917
John H. Sparks, OBA No. 15661
ODOM, SPARKS & JONES PLLC

HiPoint Office Building
2500 McGee Drive Ste. 140
Oklahoma City, OK 73072

Charles C. Lifland
Jennifer D. Cardelus
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Stephen D. Brody
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006


Michael Burrage

**IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA**

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§
Defendants. §

Case No. CJ-2017-816
The Honorable Thad Balkman
JURY TRIAL DEMANDED

[PROPOSED] ORDER APPOINTING SETTLEMENT MASTER

Pursuant to the Court’s inherent authority and the Court’s analogous authority to appoint a discovery master under 12 OKLA. STAT. §3225.1, the Court finds as follows:

A. This complex, multi-party litigation involves numerous national and multinational entities and national counsel from across the country. The complexity of this action is demonstrated by the Court’s January 11, 2018 Order in which the Court: (i) found it appropriate



to exercise the Court's discretion to appoint a discovery master to administer the discovery matters that the Court anticipates will arise in this litigation; and (ii) reserved a specific setting on the Court's calendar each month for a status report from the parties to enable the Court to directly manage and ensure the efficient administration of justice in this action.

B. Moreover, and without commenting on whether any of the legal claims, defenses or arguments raised by the parties in this action will or will not ultimately be proven to have merit, the reality is that this action pertains to a nationwide public health crisis. Given these circumstances, any meaningful resolution of this litigation necessarily must comprehend real-world solutions aimed at abating and remediating this crisis. Such a result will require the concerted and comprehensive efforts of the parties, their counsel and this Court, and can only materialize if it is the product of a well-organized and administered process that both encourages and demands the cooperation and creativity of the numerous parties and counsel involved in this action.

C. Having considered these circumstances in great detail, as well as the Court's duty and strong desire to manage this litigation in a manner that is fair and just, while also efficient and expedient, the Court finds the appointment of a Settlement Master appropriate in this action. The Court further finds that ample authority supports the entry of such an Order in this action.

D. The Oklahoma Supreme Court has long recognized a trial court's inherent authority to exercise wide discretion in managing and controlling its docket to efficiently administer justice:

Courts are created for the purpose of administering justice under the law. In order to accomplish that purpose, a court must, through necessity, have the power to facilitate and expedite causes before it so long as the reasonable exercise of these inherent powers does not prejudice the rights of parties involved. . . . As Justice Cardozo held in *Landis v. North American Co.*, 299 U.S. 248, 57 S. Ct. 163, 81 L.Ed. 153, the power is inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants, . . . Every court has inherent power, exercisable in its sound discretion,

consistent within the Constitution and statutes, to control disposition of causes on its docket with economy of time and effort.

Hambright v. City of Cleveland, 1960 OK 184, ¶¶15-16, 360 P.2d 493, 496 (internal citations and quotations omitted); *see also, e.g., Winters v. City of Okla. City*, 1987 OK 63, ¶¶8-9, 740 P.2d 724, 726 (recognizing a trial court’s “inherent powers to manage its own affairs so as to achieve the orderly and timely disposition of cases[,]” which are “implicit in the existence of a judicial system, and are a necessary incident to the exercise of a court’s jurisdiction.”).

E. In addition, the Oklahoma Legislature specifically has endowed trial courts with the authority to “appoint a discovery master” to “perform duties related to discovery consented to by the parties,” or “address pretrial and posttrial discovery matters to facilitate effective and timely resolution.” 12 OKLA. STAT. §3225.1(A). Although, unlike its federal counterpart, this recent statute does not explicitly contemplate a “Settlement Master,”¹ the Court finds the purpose of the statute to be fulfilled by such an appointment under the circumstances of this case.

F. Specifically, the Court finds:

1. The appointment and referral of a Settlement Master is necessary here in the administration of justice due to the nature and complexity of this action, as well as the exceptional circumstances involved in this litigation;

2. The likely benefit of the appointment of a Settlement Master outweighs its burden or expense, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in this action, and the importance of the referred issues in resolving this action in a fair, efficient, expeditious and meaningful manner;

¹ See FED. R. CIV. P. 53 (not limiting the appointment of a “master” to a “discovery master”).

3. The appointment of a Settlement Master will not improperly burden the rights of the parties to access the courts;

4. The appointment of a Settlement Master will substantially assist the Court, the parties and their counsel in achieving the orderly and timely disposition of this action;

5. The appointment of a Settlement Master will not prejudice the rights of any of the parties to this action; and

6. The Court has considered the fairness of imposing the likely expenses on the parties and has and will continue to protect against unreasonable expense or delay in relation to the Court's appointment of a Settlement Master.

IT IS THEREFORE ORDERED THAT:

A. Under the Court's inherent authority and the authority provided by 12 OKLA. STAT. §3225.1, the Court hereby APPOINTS _____ as Settlement Master in this proceeding, in the interests of judicial economy and the currently-anticipated needs of the Court, the parties and counsel, to facilitate, administer and oversee the settlement negotiations and procedure in this action.

B. The Settlement Master shall proceed with all reasonable diligence in performing the Settlement Master's appointed duties.

C. The Settlement Master shall possess and may exercise the full authority to take such actions as the Settlement Master, in its sole discretion, reasonably believes will advance and facilitate the meaningful resolution of all or any part of this action, specifically including, but not limited to, the authority to schedule, set, conduct, mediate and/or preside over any meetings, conferences, negotiations, mediations and/or information sessions with the parties and their

counsel that the Settlement Master reasonably determines will facilitate the meaningful resolution of this action.

D. The Settlement Master shall be required to conduct at least one such settlement meeting or other conference with the parties and their counsel each month during the pendency of this action. This monthly meeting or conference must be attended (either in person or telephonically, subject to the Settlement Master's discretion) by at least: (i) one representative, who possesses full and complete settlement authority, from each named party; and (ii) one lead attorney representing each named party to the action. Following each such monthly meeting or conference, the Settlement Master shall submit a confidential status report or other communication to the Court in an *ex parte* manner to keep the Court apprised of the progress of the negotiations and the participation of the parties in these sessions.

E. The Settlement Master shall have the full and complete authority to require the submission of briefing or other information from the parties in any format regarding the parties' positions related to a potential settlement or resolution of this action, and to set reasonable briefing schedules for any such submissions at the Settlement Master's sole discretion.

F. The parties shall make readily available to the Settlement Master any and all individuals, documents, materials, programs, files, databases, services, facilities, filings and premises under their control that the Settlement Master requires to perform the Settlement Master's duties or functions under this Order.

G. The Settlement Master shall have the authority to meet separately and together with various groups of the Settlement Master's choosing to facilitate communications between and amongst the parties, any relevant outside entities and the Court. This authority includes the authority to engage in *ex parte* communications with the parties and the parties' counsel at the

Settlement Master's sole discretion. Specifically, the Settlement Master shall have the authority to communicate *ex parte*: (i) with the Court at the Settlement Master's discretion, without providing notice to the parties, regarding logistics, the nature of the Settlement Master's activities, management of the litigation, the status and/or progress of the Settlement Master's efforts and activities, and any other appropriate procedural matters related to the Settlement Master's duties and authorities set forth in this Order; and (ii) with any party or the party's counsel, as the Settlement Master deems appropriate, for the purpose of mediating or negotiating a resolution of part or all of any dispute related to this case. However, the Settlement Master shall not communicate to the Court any substantive matter the Settlement Master learns during any *ex parte* communication between the Settlement Master and any party.

H. The Court may direct the Settlement Master to undertake additional duties as the case progresses.

I. The Settlement Master shall not file any materials, reports or other submissions publicly with the Court, unless the Court specifically instructs the Settlement Master to do so. Unless specifically ordered by the Court, the parties shall not file with the Court any submissions, briefing or other materials requested from the parties by the Settlement Master.

J. The Settlement Master need not preserve for the record any documents received by the Settlement Master from counsel or the parties to this action.

K. The parties and their counsel, including their successors in office, agents, and employees, shall provide full cooperation with the Settlement Master, and any staff or consultant employed by the Settlement Master, and observe faithfully the requirements of this Order and any instructions or requests from the Settlement Master.

L. Although the Court does not anticipate the need for the Settlement Master to file any order, report or recommendation with the Court due to the nature of the Settlement Master's duties, should any such order, report or recommendation be filed, any party may file objections to it or a motion to adopt or modify it no later than fourteen (14) days after the order, report or recommendation was filed. If no objection or motion to adopt or modify is filed, the Court may approve the Settlement Master's order, report or recommendation without further notice or hearing. If an objection or motion to adopt or modify is filed within the time permitted, any opposing party may file a response and the matter will be set to be heard before the Court at the Court's next monthly docket call setting for this case. Should such a dispute arise, the Court will: (i) review for clear error all objections to findings of fact made or recommended by the Settlement Master; (ii) decide de novo all objections to conclusions of law made or recommended by the Settlement Master; and (iii) set aside the Settlement Master's rulings on procedural matters only for an abuse of discretion.

M. The Settlement Master shall be paid by the hour for work done pursuant to this Order, and shall be reimbursed for all reasonable expenses incurred. The Settlement Master shall incur only such fees and expenses as may reasonably be necessary to fulfill the Settlement Master's duties under this Order, or such other Orders as the Court may issue. The Settlement Master shall maintain normal billing records of the time spent on this matter, with reasonably detailed descriptions of the itemized activities and matters worked upon. However, unless specifically instructed by the Court to do so, the Settlement Master shall not disclose these descriptions of the activities the Settlement Master performed to the parties.

N. The Settlement Master's costs shall be divided equally amongst the parties, such that the State and each corporate family of Defendants pays an equal share of the Settlement

Master's fees and expenses. For example, Purdue Pharma L.P., Purdue Pharma, Inc., and The Purdue Frederick Company will constitute one corporate family (the "Purdue Family"). The Purdue Family will pay an equal percentage of the Settlement Master's fees and expenses as each other corporate family and the State. That is, if there are four corporate-family Defendant groups, each such group will pay 1/5th of the Settlement Master's fees and expenses, and the State will pay 1/5th of the Settlement Master's fees and expenses. The Settlement Master shall bill the parties in equal amounts on a monthly basis for fees and expenses, and the parties shall pay the Settlement Master's bills promptly.

O. The Court may amend this Order at any time after notice to the parties and opportunity to be heard.

P. The Settlement Master shall execute and file an oath, stating that the Settlement Master will faithfully execute the duties imposed by this Order and any amendments thereto.

Q. The Settlement Master shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

R. This Order shall become effective immediately upon the later of the filing of (i) this Order, or (ii) the Settlement Master's oath, and shall remain in effect until further Order of the Court.

IT IS SO ORDERED.

THE HONORABLE THAD BALKMAN
OKLAHOMA DISTRICT COURT OF CLEVELAND COUNTY