



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.

Case No. CJ-2017-816

Submitted to:
The Honorable Thad Balkman

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED
FEB 15 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**THE STATE'S RESPONSE TO THE COURT'S ORDER TO PROVIDE
BRIEFING ON THE LEGAL AUTHORITY TO SEVER CLAIMS AND
CONSOLIDATE ACTIONS**

On February 14, 2019, the Court orally ordered the parties to provide briefing on the Court's authority to sever claims and consolidate actions. The Court further specifically requested briefing on the potential of prejudice to Defendants arising from severance and consolidation. In accordance with that order, the State of Oklahoma ("the State") respectfully submits that the Court

possesses the inherent and statutory power to (1) sever claims into separate actions and (2) consolidate those actions for purposes of discovery and trial.

Authority

There can be no reasonable dispute that the Court possesses the inherent power and statutory authority to sever claims and consolidate actions for trial, and to manage its docket in this manner. *See, e.g., Winters v. City of Okla. City*, 1987 OK 63, ¶8, 740 P.2d 724, 726 (“Inherent powers [are] those which are necessary to the exercise of all others. These are the court’s inherent powers to manage its own affairs so as to achieve the orderly and timely disposition of cases. These powers are implicit in the existence of a judicial system, and are a necessary incident to the exercise of a court’s jurisdiction.”) (internal quotation omitted); *Hambright v. City of Cleveland*, 1960 OK 184, ¶16, 360 P.2d 493, 496 (“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.” (quoting 14 Am. Jur., Courts § 171)).

The Court’s statutory power to sever comes from 12 O.S. § 2021, which states “[a]ny claim against a party may be severed and proceeded with separately.” The Court’s statutory power to consolidate comes from 12 O.S. § 2018(C), which states “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

Severance and consolidation are perfectly allowable and common-sense tools the Court may use to control its docket and preserve a trial date. To be clear, such severance and consolidation does not change the prosecution and defense of the litigation. Pleadings will not

change. Existing petition and answers remain in effect. Motions will not change. All prior orders remain in full force and effect. Discovery master and settlement master processes do not change.

Severance and consolidation are purely docketing-control processes allowing a court to sever a case into separate cause numbers (for example, CJ-2017-816-1 and CJ-2017-816-2), and then consolidate those causes for discovery and trial. The State respectfully submits that severance and consolidation can occur through a single, simple order.

Lack of Prejudice

If severance and consolidation occur as described above, everything about this matter would remain the same. The Original Petition and all pleadings filed as of the date of the severance/consolidation order would remain the same. All orders issued to date remain the same. The Special Master and Settlement Master appointments remain the same. The Scheduling Order remains the same. The trial date remains the same. And the trial would remain the same. The only thing that would change is that some of the State's claims would bear a new cause number.

Because severance and consolidation are purely *procedural* mechanisms which allow a court to efficiently and economically control its docket—they do not affect the *substance* of the case—there necessarily can be no prejudice to Defendants.

CONCLUSION

Pursuant to 12 O.S. §§ 2021 and 2018(C) and the Court's inherent authority to efficiently manage the matters on the Court's docket, the Court undoubtedly possesses the power to sever and consolidate claims before it. Further, such severance and consolidation will not cause any prejudice to Defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on February 15, 2019 to:

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