



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;
- (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.

For Judge Balkman's
Consideration

Case No. CJ-2017-816
Honorable Thad Balkman

STATE OF OKLAHOMA
CLEVELAND COUNTY, S.S.

FILED

FEB 21 2019

In the office of the
Court Clerk MARILYN WILLIAMS

MOTION TO HOLD TRIAL AT O.U. COLLEGE OF LAW
AND BRIEF IN SUPPORT

MOTION

Teva Pharmaceuticals USA, Inc., on behalf of all of the defendants, moves that the trial of this matter be held at the courtroom at the University of Oklahoma College of Law.

The courtroom at the law school will allow for a substantially more efficient proceeding with respect to the logistics for jurors, witnesses, the court, and the parties. Moreover, conducting this trial into the courtroom at the Cleveland County Courthouse substantially impairs the defendants' right to a fair trial. In contrast, the State will not suffer prejudice if trial is held at the law school.

BRIEF IN SUPPORT

I. COURT ROOM LOGISTICS

Multiple logistical type issues will arise at trial because the State chose to bring such a massive case against three manufacturers simultaneously. There will be an unusual number of lawyers, media representatives, witnesses and spectators in the courthouse and that significantly increases the possibility of a problematic interaction between a juror and an attorney, trial participant, media representative, or a spectator. At the law school, most of these issues can be avoided.

The technological capabilities at the law school are superior to those available at the Cleveland County Courthouse. For example, the jury box at the law school allows each juror to have a screen on which documents can be shown during the course of the trial. By contrast, at the Cleveland County Courthouse, documents would have to be displayed on a large screen in the courtroom which would likely block some participants' view and which would be yet another item packed into an already small space. As is referenced in the proposed Order regarding the use of cameras in the courtroom, the Court will require that the use of cameras not interfere with the solemnity of the proceeding. This goal can more easily be achieved given the additional space and the enclosed overhead media observations boxes available at the law school courtroom.

Parking at the law school is free and is located directly across the street from the building making it more convenient for jurors, witnesses, court personnel, the public and the parties.

II. SHEPPARD V. MAXWELL ANALYSIS

The seminal case on a court's duty to provide an environment suitable to the administration of justice is *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966). That case resulted in the reversal of a nine-week trial because of the "carnival

atmosphere" in the courtroom, *id.* at 358, in which "bedlam reigned at the courthouse." *Id.* at 355. This brief shows how the problems highlighted by the *Sheppard* court can be solved by moving trial to the University of Oklahoma College of Law.

A. Problem: Size and Layout of Courtroom. The *Sheppard* court noted that the courtroom was too small, *id.* at 342, for the highly publicized nine-week trial. *Id.* at 344. For example, "confidential talk among Sheppard and his counsel [was] almost impossible during the proceedings. They frequently had to leave the courtroom to obtain privacy." *Id.* at 344.

Solution: The courtroom at the law school is much larger and will allow adequate space for the State's counsel, as well as counsel for the three defendant groups to be able to confidentially discuss the case during the course of the trial. It is particularly important here because it will allow counsel for each defendant group to confidentially discuss matters outside the hearing of the other defendants, the State, members of the jury, the public and media. Each defendant group is entitled to be separately represented and is exercising that right. The right to separate counsel will be significantly abridged if counsel for a given defendant cannot have confidential consultations.

Further, the law school can accommodate three separate defense tables for the three defendant groups. Courts have recognized the rights of defendants to have separate counsel table. See *Tri-R Systems v. Friedman and Son*, 94 F.R.D. 726,728 (D. Colo. 1982), noting that allowing separate trials for defendants alleviated the "spillover effect" in a joint trial, and *Corogan v. Methodist Hospital*, 160 F.R.D 55:57 (E.D. PA 1995), where the court noted that "separate counsel tables minimized any spillover effect." That is particularly important in this case.

B. Problem: Courthouse Facilities. The Court in *Sheppard* also noted that the courthouse facilities were inadequate in size and arrangement. "Representatives of the news

media also used all the rooms on the courtroom floor" *Id.* at 343. "Station WSRS was permitted to set up broadcasting facilities on the third floor of the courthouse next door to the jury room, where the jury rested during recesses in the trial and deliberated." *Id.* at 343. "[N]ewsreel cameras were occasionally used to take motion pictures of the participants in the trial, including the jury and the judge. Indeed, one television broadcast carried a staged interview of the judge as he entered the courthouse." *Id.* at p.343.

At the courthouse, in this case, the jury room, the courtroom, and the entrance to the court's chambers are all located on a narrow hallway approximately 45 feet by 6 feet. The jury room opens right on to the same small hallway which will be used every day by counsel, spectators, the media, etc., which materially increases the possibility that a witness, lawyer, spectator or media member will say or do something unintended or inappropriate within the hearing of a juror.

Solution: At the law school, however, the jury room is in a hallway which can easily be blocked off to be accessible only to court personnel and jurors. The jury would have its own room with an entrance which is separate from the entrance to the courtroom for attorneys, spectators, the media, etc. The news media can have their own space, with an entrance on a separate floor to the media box looking into the courtroom from the back.

The jury room and related facilities at the law school are superior to those available at the Cleveland Courthouse. The jury room at the law school also has access to private restrooms and a coffee bar area for the members of the jury. As this is anticipated to be a lengthy trial, these amenities will provide the jury members with a more comfortable experience.

C. Problem: Access to Courtroom. In *Sheppard*, there was also problem with access to the courtroom. "In the corridors outside the courtroom there was a host of photographers and

television personnel with flash cameras, portable lights and motion picture cameras. This group photographed the prospective jurors during selection of the jury. After the trial opened, the witnesses, counsel, and jurors were photographed and televised whenever they entered or left the courtroom." *Id.* at 343-44. When the court spoke with counsel in chambers, "news media representatives so packed the judge's anteroom that counsel could hardly return from the chambers to the courtroom." *Id.* at 344. "Participants in the trial, including the jury, were forced to run a gauntlet of reporters and photographers each time they entered or left the courtroom." *Id.* at 355.

The Cleveland County Courthouse has only one narrow hallway which will be used by (a) jurors, (b) counsel, (c) witnesses, (d) media, (e) court personnel, and (f) other participants and spectators. Even if the Court does not allow the media into the Court's anteroom, the entrance to the anteroom is from the same hallway. The problems encountered in the *Sheppard* case will inevitably be repeated in this case with the court, counsel, jurors, witnesses, court personnel, media representatives and others all jammed into the same narrow hallway.

Solution: The law school, on the other hand, has a separate hallway which can be used by the Court, jurors and witnesses to enter the courtroom without having to be approached by third parties and without having to interact with counsel. Also, the media can use the entrance on a different floor of the law school to enter the press room. The jurors can leave the courtroom through that hallway, enter the jury room during breaks, and return to the courtroom without having to "run a gauntlet." *Sheppard.* at 355.

D. Problem: News Media in the Courtroom. The news media created a distraction within the courtroom in *Sheppard*. "The courtroom remained crowded to capacity with representatives of news media. Their movement in and out of the courtroom often caused so

much confusion that, despite the loud-speaker system installed in the courtroom, it was difficult for the witnesses and counsel to be heard." *Id.* at 344.

Solution: The law school has a press room at the back of the courtroom which is behind glass. The media can enter and exit without disturbing the proceedings. They can observe the proceedings, share thoughts with each other, and type reports without their noise distracting from the court proceedings. Although the news media is entitled to report on the trial, that function "must not be allowed to divert the trial from the 'very purpose of court system * * * to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.'" *Sheppard*, at 350-51, *quoting Cox v. Louisiana*, 379 U.S. 559, 583 (1965) (Black, J. dissenting).

III. ADDITIONAL PREJUDICE TO THE DEFENDANTS

A. Gamesmanship. By choosing to bring a massive case against three manufacturers simultaneously, the State has created a situation where the size of the courtroom at the Cleveland County Courthouse will unfortunately be insufficient.

The problems, moreover, are asymmetric since there is only one plaintiff, but three separate defendant groups. That means there are three sets of lawyers and support staff for each of the three defendant groups that need to be accommodated. The result in the courthouse would be that an excessive number of people would be jammed into an unreasonably small amount of space on the *defendants'* side of the courtroom, but not on the *plaintiff's* side of the courtroom. The State's proposal that this trial could occur at the courthouse is sheer gamesmanship. The State merely wants to force the defendants, their counsel and support staff into a physically uncomfortable and unwieldy situation.

B. Confusion. A second notable area of prejudice will arise if this trial is conducted at the Cleveland County Courthouse. Specifically, there will be a significant risk of confusion on

the part of the jurors concerning who represents which defendant given that the defendants will all be packed into one side of the courtroom most likely at a single defense counsel table.

This is exacerbated by the fact that the State has persisted in referring to “the defendants” as though they are one when in fact, they are separate defendants comprised of separate corporate entities with separate factual and legal defenses to the claims being asserted by the State. Each defendant made exact this point at the motion to dismiss stage, and explained that because in the Petition the State persisted in referring to “the defendants” instead of identifying which defendant was at issue in any particular instance, it was prejudicial. *Defendants’ Joint Motion to Dismiss* (filed 9/22/17) at p. 6-8 and *Defendants’ Joint Reply Brief in Support of Their Motion to Dismiss* (filed 11/27/17) at p. 10-13. Now, each defendant will be faced with a more significant problem. As the trial takes place and the State’s counsel gestures to the defendants’ side of the room or makes allegations about what “the defendants” did, the physical layout of the courtroom will add to the confusion because, by necessity, defense counsel would all be packed in together.

IV. SECURITY

Any security concerns can also be readily addressed at the law school courtroom. If the State is concerned about the fact that the law school would not have adequate security, the defendants will agree to pay for reasonable and appropriate security at the law school. Indeed, as outlined above, the law school already provides a more secure setting than the courthouse, particularly for jurors and witnesses.

V. NO PREJUDICE TO STATE

There is no prejudice to the State if trial is held in the courtroom at the law school.

VI. CONCLUSION

"The carnival atmosphere at trial could easily have been avoided since the courtroom and courthouse premises are subject to the control of the court." *Sheppard* at 358. "The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences." *Sheppard*. at 363.

"A trial judge is responsible for the just outcome of a trial and has broad discretion in its conduct." *Cities Service Company vs. Gulf Oil*, 1999 OK 14, ¶43, 980 P.2d 116. Because the courtroom at the University of Oklahoma College of Law is substantially better suited for a case of this size and complexity and to avoid the obvious prejudice to the defendants as discussed herein, the defendants respectfully request that the Court enter an order setting the location of the trial for the University of Oklahoma College of Law courtroom.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 21 day of February, 2019, to the following:

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