



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., )  
MIKE HUNTER, )  
ATTORNEY GENERAL OF OKLAHOMA, )

Plaintiff, )

vs. )

Case No. CJ-2017-816  
Judge Thad Balkman

- (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. )

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }

FILED  
FEB 22 2019

In the office of the  
Court Clerk MARILYN WILLIAMS

**PURDUE’S RESPONSE TO THE PROPOSAL TO ASSIGN UNIQUE CASE NUMBERS  
TO EACH DEFENDANT FAMILY AND TO CONSOLIDATE ACTIONS**

Purdue respectfully submits this response to the February 14 order for briefing on the Court’s authority to sever claims and consolidate actions. Initially, Purdue notes that severance means something different than what the State’s private attorneys propose. As 12 O.S. § 2021 provides, “[a]ny claim against a party may be severed and *proceeded with separately*.” Here, by contrast, the proposal is not to sever and proceed to separate trials, but rather to assign separate

case numbers to each defendant family and then reconsolidate the cases for a unified trial. The State's attorneys cite no instance where an Oklahoma court used such an unorthodox procedural two-step. This unprecedented procedural tactic is fueled by concerns of the State's attorneys, who for months have represented to this Court that Purdue is on the verge of declaring bankruptcy. Even at last week's hearing, the State's attorneys suggested Purdue would file bankruptcy this week. Yet Purdue is still here—ready, willing, and eager to prove in this Court that the State's claims are baseless.

Purdue has no objection if the Court wants to sever the claims and proceed to separate trials for the Purdue, Janssen, and Teva defendants. But Purdue objects to the proposal to reconsolidate the cases for a unified trial. This is no simple procedural device. Rather, it implicates significant substantive rights of the parties. Purdue submits that it would be premature to rule on the scope, format, and contours of trial, with fact discovery still underway, and with the evidentiary record in development. Whether these cases can be tried together is an issue that needs separate briefing and careful consideration, after the close of discovery. Doing anything else risks great prejudice to Purdue and the other defendants.

At an appropriate time, with the benefit of complete discovery, the Court could consider whether it is possible to hold a consolidated trial that will be fair to all parties. The potential for unfairness is obvious. A trial that runs 2-3 months will impose a significant burden on the jury. The hearsay evidence offered against one defendant will not be admissible against another. There is no guarantee that limiting instructions will prevent juror confusion and protect the rights of the parties in a trial of this scope and length. Each defendant has a Due Process right to present an individual defense and cross-examine witnesses, which cannot be ignored in the name of expedience. There are other threshold procedural and substantive considerations for the Court,

such as what questions should appear on a jury questionnaire, how the Court will conduct *voir dire* and seat a jury while protecting the right of each defendant to meaningfully participate in the process and exercise challenges, or even something as mundane as how the courtroom will accommodate multiple sets of lawyers representing different clients. At last week's hearing, the State's lawyers suggested it was premature to consider these trial issues now. Purdue submits that for similar reasons, it is premature to consider whether the cases should be tried separately or together—at least until discovery has closed and the Court has had the opportunity to consider full briefing on the consolidation issue.

Dated: February 22, 2019



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**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2019, the foregoing was served via email upon the counsel of record listed on the attached Service List.

  
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