



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

FILED  
MAY 01 2019

STATE OF OKLAHOMA, ex rel., MIKE )  
HUNTER, ATTORNEY GENERAL OF )  
OKLAHOMA, )  
 )  
Plaintiff, )  
v. )  
 )  
PURDUE PHARMA L.P., et al., )  
 )  
Defendants. )

In the office of the  
Court Clerk MARILYN WILLIAMS  
  
Case No. CJ-2017-816  
  
Honorable Thad Balkman  
  
Special Discovery Master:  
William C. Hetherington, Jr.

**MOVANT COMANCHE COUNTY'S REPLY TO  
THE STATE OF OKLAHOMA'S OPPOSITION TO COMANCHE COUNTY'S  
MOTION TO INTERVENE**

The State's response to Comanche County's motion is long on hyperbole but short on facts. However, there are several unavoidable truths here for the State: (1) contrary to the arguments of its privately retained litigation counsel, the State continues to make public statements confirming its remaining claims purport to cover the interests of cities and counties (*see infra* at 1-2); (2) despite repeated discussions with the State, there has been an utter lack of transparency with cities and counties concerning the State's abatement model and use of their claims (*see infra* at 3-4); and (3) this lack of notice left Comanche County in the dark about the impact of this litigation on its claims, consigning Comanche County to glean the issues from public filings and hearing transcripts (*see infra* at 3-4). In other words, the State laid behind the log about its abatement model for cities and counties and now tries to claim the benefit of delay it caused. Understandably, Comanche County was left with no choice but to seek intervention and it timely did so under the conditions created by the State.

**I. Comanche County has a significant interest in this Case as a result of the State's now admitted abatement model.**

The baseless statement that Comanche County does not have an interest in the State's case defies common sense and the Attorney General's statements to the contrary. While counsel for the State attempts to disguise their arguments with speculative and inflammatory statements, the Office of the Attorney General, as opposed to the writings of its privately retained counsel, has publicly stated that the \$12.5 million allocation to cities and counties from the Purdue Settlement was to "go towards providing funds to directly *abate* and address the opioid epidemic's effects in Oklahoma's cities and counties."<sup>1</sup> Attorney General Mike Hunter has publicly stated the same, including recently at the Association of County Commissioners of Oklahoma, where he said that the allocation of funds to cities and counties from the Purdue Settlement was a "down payment" and that there would be more to come after the bench trial, if successful. Furthermore, the Attorney General is, at the very moment this briefing is occurring, discussing allocation with retained counsel for dozens of cities and counties. So, far from "speculation," Comanche County has recently learned directly from the horse's mouth that the State does intend to litigate its interests in this case. The State's assertion that Comanche County's interests in this litigation "remain conjecture," is simply false.

Another red herring from the State is the attempt to draw a distinction between the equitable nature of abatement being sought by the State and compensatory damages sought by Comanche County in the context of public nuisance. To be clear, Comanche County is also seeking abatement of the opioid nuisance within its county limits based on the same conduct of the Defendants in the State's case. Not only does Comanche County undoubtedly have interests

---

<sup>1</sup> Gerszewski, Alex, [Attorney General Hunter Announces Historic \\$270 Million Settlement with Purdue Pharma, \\$200 Million to Establish Endowment for OSU Center for Wellness](http://www.oag.ok.gov/attorney-general-hunter-announces-historic-270-million-settlement-with-purdue-pharma-200-million-to-establish-endowment-for-osu-center-for-wellness), March 26, 2019, available at <http://www.oag.ok.gov/attorney-general-hunter-announces-historic-270-million-settlement-with-purdue-pharma-200-million-to-establish-endowment-for-osu-center-for-wellness> (emphasis added).

in the State's case, but those interests have also been impaired by the Purdue Settlement and are being impeded with the remaining equitable claim of abatement *currently* being pursued by the State.

**II. Comanche County acted timely under the circumstances created by the State and is not adequately represented.**

“The timeliness of a motion to intervene is determined, not by reference to the date on which the suit began or the date on which the would-be intervenors learned that it was pending, but rather by reference to the date when the movants learned that intervention was needed to protect their interests.” *NAACP v. New York*, 413 U.S. 345, 374 (1973). “The analysis is contextual; absolute measures of timeliness should be ignored.” *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001).

The State, however, seeks just the opposite, pointing to the filing date of its lawsuit and absolute measures of time as the most important factors. But the context tells a different story. The first inkling Comanche County had that the State was asserting its claims was a third party subpoena issued to it by Purdue in January 2019, approximately ninety days before Comanche County filed its motion. That subpoena was far from clear as to the State's abatement model and actual overlap with Comanche County's claims. *See* State's Response at 13 (“Certain documents that would allow Purdue to determine *whether* Movants were claiming any categories of damages that overlapped with those being claimed by the State”) (emphasis added).

The subpoena proves Comanche County's point: even Purdue, an original litigant in this case participating in extensive discovery, was unable to ascertain *whether* there was overlap. But, according to the State, somehow Comanche County was supposed to immediately seek intervention? Comanche County did not sit idly by. It engaged in extensive discussions with the State and Purdue to ascertain if there was overlap, but the information flow was a one-way street;

Comanche County was forced to produce documents and information, but none were shared with it. Comanche County remained in the dark, at the State’s control.

Then, the Purdue Settlement was publicly announced without warning on March 26, 2019, all while the State continued to tight-hole its abatement model. In this public announcement, Comanche County first learned the State was in fact asserting the claims of cities and counties.<sup>2</sup> *See supra* at n. 1 (The Purdue Settlement provides “funds to directly *abate* and address the opioid epidemic’s effects *in Oklahoma’s cities and counties.*” (emphasis added)). Nevertheless, Comanche County *still* engaged in discussions with the State after this announcement, but the State continued to withhold its abatement model. Left with no other choice, Comanche County filed its Motion to Intervene less than three weeks after the public announcement, hardly dilatory and not a “wait-and-see” approach.

Courts do not reward litigants when their conduct causes the delay in seeking intervention. *See Clark v. Sandusky*, 205 F. 2d 915, 918 (7th Cir. 1953) (“petitioner avers that she was prevented from filing her application [for intervention] at any earlier date by the action of plaintiffs and their attorneys...we think petitioner’s application reflected due diligence”). The State cannot, on the one hand, withhold its abatement model such that even Purdue didn’t know whether there was overlap, then on the other, claim Comanche County should’ve somehow divined this conclusion from afar.

The State also attempts to frame Comanche County’s strategy as some sort of “manipulation” or “gamesmanship.” Not true. The main concern of Comanche County is that once the opioid epidemic is ‘abated’ by the State here, Comanche County will have its right to seek abatement extinguished. There is no other way to describe Comanche County other than a

---

<sup>2</sup> The Purdue Settlement also includes injunctive relief that is applicable to Purdue across the entire State, including Comanche County. Certainly, this impairs Comanche’s County’s ability to seek injunctive relief.

necessary party who will be unable to protect its interests in the ultimate objective of abating the opioid epidemic if the abatement is disposed of with the State's case based upon Comanche County's rights. The State also admits that one of three factors driving the Purdue Settlement was the vast majority of the settlement funds going to a national center. So, roughly 73% of the settlement went to one national center that will be inaccessible to most Oklahomans and does nothing to combat the opioid crisis for the first responders and individuals battling the epidemic in counties across Oklahoma. The abatement of the opioid epidemic must begin where its impact is greatest, *i.e.*, in cities and counties across Oklahoma. Thus, Comanche County's interests are not only being impaired, but the State has not and cannot adequately protect those interests.

To ensure that it was not prejudicial to the parties, and to eliminate any procedural hurdles for allowing intervention and/or a delay of the trial,<sup>3</sup> Comanche County attached its Intervenor Petition and drafted it in a manner exactly consistent with the State's Petition and dismissal of all claims except public nuisance (with the exception of including the Purdue entities). Finally, counsel for Comanche dismissed the entirety of its case in Comanche County *without prejudice* of re-filing within one year.<sup>4</sup> There is no reason trial will be delayed by this intervention.

### CONCLUSION

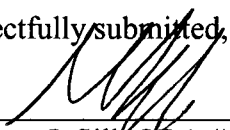
In sum, Comanche County did not delay and acted prudently when it learned the true nature of the State's claims and because the prejudice Comanche County will suffer is significantly greater than the prejudice to the parties, the Court should grant intervention.

---

<sup>3</sup> Counsel for the State fails to notify the Court that Comanche County's Motion to Intervene and attached proposed Intervenor Petition was filed a day *before* this Court ruled that there was no right to a jury trial based on the equitable claim by the State.

<sup>4</sup> Prior to the dismissal, the case was pending in Comanche County and was not removed by any of the Defendants.

Respectfully submitted,



---

Matthew J. Sill, OBA #21547  
Harrison C. Lujan, OBA #30154  
Fulmer Sill Law Group  
P.O. Box 2448  
1101 N. Broadway Ave., Suite 102  
Oklahoma City, OK 73103  
Phone/Fax: 405-510-0077  
msill@fulmersill.com  
hlujan@fulmersill.com

-and-

John P. Zelbst, OBA No. 9991  
Zelbst, Holmes & Butler  
411 SW 6th St.  
Lawton, OK 73501  
Telephone: (580) 248-4844  
Facsimile: (580) 248-6916  
zelbst@zelbst.com

-and-

Reagan E. Bradford, OBA No. 22072  
The Lanier Law Firm, PC  
431 W. Main Street, Suite D  
Oklahoma City, Oklahoma 73102  
Reagan.Bradford@LanierLawFirm.com

W. Mark Lanier, TX Bar No. 11934600  
The Lanier Law Firm, PC  
6810 FM 1960 West  
Houston, TX 77069  
Telephone: (713) 659-5200  
Facsimile: (713) 659-2204  
WML@LanierLawFirm.com  
(*Pro Hac Vice* to be filed)

*Attorneys for Movant Comanche County*

**CERTIFICATE OF MAILING**

I hereby certify that on the ~~1st~~<sup>2nd</sup> day of May, 2019, a true and correct copy of the above and foregoing document was mailed, postage prepaid to:

Sanford C. Coats  
Joshua D. Burns  
Cullen D. Sweeney  
CROWE & DUNLEVY, P.C.  
Braniff Building  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102  
sandy.coats@crowedunlevy.com  
joshua.burns@crowedunley.com

*Counsel for Purdue Pharma, L.P.,  
Purdue Pharma Inc., and The Purdue  
Frederick Company Inc.*

Sheila Birnbaum  
Mark S. Cheffo  
Erik Snapp  
Hayden A. Coleman  
Paul A. LaFata  
Benjamin McAnaney  
Jonathan S. Tam  
Lindsay N. Zanello  
Bert L. Wolff  
Marina L. Schwartz  
Mara C. Cusker Gonzalez  
DECHERT, LLP  
Three Bryant Park  
1095 Avenue of the Americas  
New York, NY 10036  
sheila.birnbaum@dechert.com  
mark.cheffo@dechert.com  
hayden.coleman@dechert.com  
paul.lafata@dechert.com  
jonathan.tam@dechert.com  
benjamin.mcananey@dechert.com  
erik.snapp@dechert.com  
lindsay.zanello@dechert.com  
bert.wolff@dechert.com  
marina.schwarz@dechert.com  
maracusker.gonzalez@dechert.com

Michael Burrage  
Reggie Whitten  
J. Revell Parish  
WHITTEN BURRAGE  
512 N. Broadway Ave., Suite 300  
Oklahoma City, OK 73102  
mburrage@whittenburrage.com  
rwhitten@whittenburrage.com  
rparish@whittenburrage.com

*Counsel for Plaintiff the State of Oklahoma,  
ex rel., Mike Hunter, Attorney General of  
Oklahoma*

Mike Hunter  
Abby Dillsaver  
Ethan A. Shaner  
Oklahoma Office of the Attorney General  
313 NE 21st St.  
Oklahoma City, OK 73105  
abby.dillsaver@oag.ok.gov  
ethan.shaner@oag.ok.gov

Glenn Coffee  
GLENN COFFEE & ASSOCIATES, PLLC  
915 N. Robinson Ave.  
Oklahoma City, OK 73102  
gcoffee@glenncoffee.com

*Counsel for Plaintiff the State of Oklahoma,  
ex rel., Mike Hunter, Attorney General of  
Oklahoma*

Jae Hong Lee  
DECHERT, LLP  
One Bush Street, 16th Floor  
San Francisco, CA 94104  
jae.lee@dechert.com

Rachel M. Rosenberg  
Chelsea M. Nichols  
Cory A. Ward  
Meghan R. Kelly  
DECHERT LLP  
Cira Centre, 2929 Arch Street  
Philadelphia, PA 19104  
Rachel.rosenberg@dechert.com

*Counsel for Purdue Pharma, L.P.,  
Purdue Pharma Inc., and The Purdue  
Frederick Company Inc.*

Bradley E. Beckworth  
Jeffrey J. Angelovich  
Michael Angelovich  
Lloyd "Trey" Nolan Duck, III  
Andrew Pate  
Lisa Baldwin  
Nathan B. Hall  
Brooke A. Churchman  
Ross Leonoudakis  
Robert Winn Cutler  
NIX, PATTERSON & ROACH, LLP  
512 N. Broadway Ave., Suite 200  
Oklahoma City, OK 73102  
bbeckworth@nixlaw.com  
jangelovich@mpaustin.com  
mangelovich@nixlaw.com  
tduck@nixlaw.com  
dpate@nixlaw.com  
lbaldwin@nixlaw.com  
nhall@nixlaw.com  
bchurchman@nixlaw.com  
codyhill@nixlaw.com

*Counsel for Plaintiff the State of Oklahoma,*

Benjamin H. Odom  
John H. Sparks  
Michael W. Ridgeway  
David L. Kinney  
ODOM, SPARKS & JONES PLLC  
HiPoint Office Building  
2500 McGee Drive, Ste. 140  
Oklahoma City, OK 73072  
odomb@odomsparks.com  
sparksj@odomsparks.com  
ridgewaym@odomsparks.com  
kinneyd@odomsparks.com

*Counsel for Defendants Janssen  
Pharmaceuticals, Inc., Johnson & Johnson,  
Janssen Pharmaceutica, Inc. n/k/a Janssen  
Pharmaceuticals, Inc., and Ortho-McNeil-  
Janssen Pharmaceuticals, Inc. n/k/a Janssen  
Pharmaceuticals, Inc.*

Britta Erin Stanton  
John D. Volney  
Eric Wolf Pinker  
John Thomas Cox III  
Jared D. Eisenberg  
Jervonne D. Newsome  
Patrick B. Disbennett  
Elizabeth Y. Ryan  
Andrea M. Evans Brown  
Samuel B. Hardy IV  
Ruben A. Garcia  
LYNN PINKER COX & HURST, LLP  
2100 Ross Ave., Suite 2700  
Dallas, TX 75201  
bstanton@lynnllp.com  
jvolney@lynnllp.com  
epinker@lynnllp.com  
tcox@lynnllp.com  
jeisenberg@lynnllp.com  
jnewsome@lynnllp.com  
pdisbennett@lynnllp.com  
eryan@lynnllp.com  
sbrown@lynnllp.com  
rgarcia@lynnllp.com



*ex rel., Mike Hunter, Attorney General of  
Oklahoma*

Larry D. Ottaway  
Amy Sherry Fischer  
FOLIART, HUFF, OTTAWAY & BOTTOM  
201 Robert S. Kerr Ave., 12th Floor  
Oklahoma City, OK 73102  
larryottaway@oklahomacounsel.com  
amyfischer@oklahomacounsel.com

*Counsel for Defendants Janssen  
Pharmaceuticals, Inc., Johnson & Johnson,  
Janssen Pharmaceutica, Inc. n/k/a Janssen  
Pharmaceuticals, Inc., and Ortho-McNeil-  
Janssen Pharmaceuticals, Inc. n/k/a Janssen  
Pharmaceuticals, Inc.*

Robert G. McCampbell  
Nicholas V. Merkley  
Ashley E. Quinn  
Jeffrey A. Curran  
Leasa M. Steward  
GABLEGOTWALS  
One Leadership Square, 15th Fl.  
211 N. Robinson  
Oklahoma City, OK 73102  
RMcCampbell@Gablelaw.com  
NMerkley@Gablelaw.com  
AQuinn@Gablelaw.com  
jcurran@gablelaw.com  
lstewart@gablelaw.com

*Attorneys for Defendants Cephalon, Inc.,  
Teva  
Pharmaceuticals USA, Inc., Watson  
Laboratories, Inc., Actavis LLC, and Actavis  
Pharma, Inc. f/k/a Watson Pharma, Inc.*

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

*Counsel for Purdue Pharma, L.P.,  
Purdue Pharma Inc., and The Purdue  
Frederick Company Inc.*

Stephen D. Brody  
David K. Roberts  
O'MELVENY & MYERS LLP  
1625 Eye Street NW  
Washington, DC 20006  
sbrody@omm.com  
droberts2@omm.com

*Counsel for Defendants Janssen  
Pharmaceuticals, Inc., Johnson & Johnson,  
Janssen Pharmaceutica, Inc. n/k/a Janssen  
Pharmaceuticals, Inc., and Ortho-McNeil-  
Janssen Pharmaceuticals, Inc. n/k/a Janssen  
Pharmaceuticals, Inc.*

Steven A. Reed  
Harvey Bartle IV  
Rebecca Hillyer  
Lindsey T. Mills  
Mark A. Fiore  
Evan K. Jacobs

jcardelus@omm.com

Jeffrey Allen Barker  
O'MELVENY & MYERS LLP  
610 Newport Center Drive  
Newport Beach, CA 92660  
Tel: 949-823-6900  
Fax: 949-823-6994  
jbarker@omm.com


Amy Riley Lucas  
Lauren S. Rakow  
Jennifer D. Cardelus  
O'MELVENY & MYERS LLP  
1999 Avenue of the Stars, 8th Floor  
Los Angeles, CA 90067  
alucas@omm.com  
lrakow@omm.com

*Counsel for Defendants Janssen  
Pharmaceuticals, Inc., Johnson & Johnson,  
Janssen Pharmaceutica, Inc. n/k/a Janssen  
Pharmaceuticals, Inc., and Ortho-McNeil-  
Janssen Pharmaceuticals, Inc. n/k/a Janssen  
Pharmaceuticals, Inc.*

MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
steven.reed@morganlewis.com  
harvey.bartle@morganlewis.com  
rebeccahillyer@morganlewis.com  
lindsey.mills@morganlewis.com  
evan.jacobs@morganlewis.com  
lindsey.mills@morganlewis.com

Brian M. Ercole  
MORGAN, LEWIS & BOCKIUS LLP  
200 S. Biscayne Blvd., Suite 5300  
Miami, FL 33131  
brian.ercole@morganlewis.com

*Attorneys for Defendants Cephalon, Inc.,  
Teva  
Pharmaceuticals USA, Inc., Watson  
Laboratories, Inc., Actavis LLC, and Actavis  
Pharma, Inc. f/k/a Watson Pharma, Inc.*



---

Matthew J. Sill