



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

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

Plaintiff,

v.

- (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.

**For Judge Balkman's
Consideration**

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED
APR 26 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**TEVA DEFENDANTS' AND ACTAVIS DEFENDANTS'
MOTION IN LIMINE #10 TO EXCLUDE EVIDENCE REGARDING
DEFENDANTS' POLITICAL ACTIVITY AND
ALLEGED PUBLIC RELATIONS CAMPAIGNS**

Teva Pharmaceuticals USA, Inc. ("Teva USA"), Cephalon, Inc. ("Cephalon"), Watson Laboratories, Inc. ("Watson"), Actavis LLC ("Actavis LLC"), and Actavis Pharma, Inc. ("Actavis Pharma")¹ move this Court to preclude the State from referring to or otherwise

¹ Cephalon and Teva USA are referred to as the "Teva Defendants." Watson, Actavis, LLC, and Actavis Pharma are referred to as the "Actavis Defendants."

offering at trial, information or evidence in any form (whether through direct or cross-examination, expert testimony or through exhibits of any type) and from presenting in any manner (whether in opening statements, questions to witnesses or experts, objections, closing arguments, or otherwise) the following:

A. ANY EVIDENCE THAT DEFENDANTS ENGAGED IN POLITICAL AND LOBBYING ACTIVITIES

The State has indicated it may seek to introduce evidence at trial regarding Defendants' efforts to lobby Oklahoma elected officials or otherwise influence state laws, rules, and regulations regarding opioid use in Oklahoma. Evidence is relevant (and thus, admissible) only if it has a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." 12 O.S. § 2401. Evidence regarding the lawful political and lobbying activity of Defendants does not make any proposition at issue in this case any more or less likely. It does not support the State's claim that Defendants made false representations in marketing their opioids, or that opioids manufactured by Defendants were linked in any way to the adverse events forming the bases for the State's public nuisance claim. It is simply not relevant in this case.

Further, even if it the evidence had some limited relevance, the relevance would be substantially outweighed by the dangers of undue delay and unfair prejudice. This trial will consume enough of the Court's and the parties' time and resources without permitting the State to waste time alleging Defendants' political activities. In addition, if the Court allows this evidence, it will suggest to the public viewing the televised trial that there is something nefarious or unlawful about Defendants' engaging in public advocacy and urging their elected officials to adopt the laws and regulations supported by Defendants. This is not the case. Defendants' political and lobbying activities are legitimate and legal. The State should not be permitted to imply the opposite.

Finally, the evidence should be excluded under the *Noerr-Pennington* doctrine. The doctrine “protects the First Amendment right to petition the government for changes in the law.” *DataTreasury Corp. v. Wells Fargo & Co.*, 2010 WL 11538713, at *15 (E.D. Tex. Feb. 26, 2010) (citing *United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 669 (1965)). Permitting evidence of Defendants’ efforts to influence the government would “risk substantial chilling of the First Amendment activities of Defendants and of others. The First Amendment and the *Noerr-Pennington* doctrine therefore justify excluding such” evidence. *Id.*

B. ANY SUGGESTION THAT DEFENDANTS TOOK ANY ACTIONS IN THE 2018 CAMPAIGN FOR OKLAHOMA ATTORNEY GENERAL.

Attorney General Mike Hunter was elected in the November 2018 election. The State has implied that Defendants played some role in opposing his election. Specifically, the State cites a proposal allegedly prepared by a media consultant for Purdue relating to the campaign. Even if these allegations were true and were not inadmissible hearsay, there is no evidence that Purdue accepted the proposal or that the remaining Defendants even received it. Indeed, there is no evidence whatsoever that the current Defendants in this action took *any* action with respect to the campaign for Oklahoma Attorney General. If the State is permitted to offer this baseless accusation at trial and to imply that Defendants waged some sort of campaign against Attorney General Hunter, this would be not only irrelevant, but it would also be highly prejudicial to Defendants in the court of public opinion. The State should be precluded from suggesting at trial that Defendants played any role in the Attorney General campaign.

C. ANY SUGGESTION THAT DEFENDANTS TOOK STEPS TO WAGE A NEGATIVE PUBLIC RELATIONS CAMPAIGN AGAINST ATTORNEY GENERAL HUNTER.

The State’s counsel has indicated that he heard one of the Defendants contacted a public relations firm, seeking to wage a negative PR campaign against Attorney General Hunter. The State has not specified which Defendant allegedly made this contact. It has not produced any

evidence supporting it or proffered a witness with first-hand knowledge of the purported efforts. This is nothing more than a rumor and blatant hearsay. Further, the story is irrelevant to any issue in this case. The State should be precluded from making any reference to this wholly unsupported—and almost certainly untrue—allegation at trial.

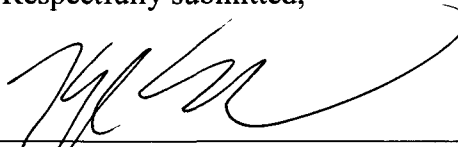
CONCLUSION

In this televised and very public trial, it would be unfairly prejudicial to allow the State to make allegations about alleged political activity, particularly given the lack of evidence regarding the State's allegations.

For the foregoing reasons, the Teva Defendants and Actavis Defendants ask that the Court grant this Motion in Limine and instruct the State and all counsel not to mention, refer to, interrogate about, or attempt to convey in any manner, either directly or indirectly, any of these matters, and further instruct the State and all counsel to warn and caution each of their witnesses to follow the same instructions.

Dated April 26, 2019

Respectfully submitted,



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