



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 } S.S.
CLEVELAND COUNTY }

FILED
APR 26 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**TEVA DEFENDANTS' AND ACTAVIS DEFENDANTS'
MOTION IN LIMINE #3 TO IMPOSE RULES ON COURTROOM CONDUCT
AND ESTABLISH TRIAL PROCEDURES**

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 require all counsel in this matter to abide by the following rules and procedures in the conduct of this trial.

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."

A. REFRAIN FROM ADDRESSING DEFENSE COUNSEL

At hearings in this case, counsel for the State has repeatedly addressed questions or statements directly to defense counsel. The local rules of many judicial districts expressly prohibit this type of practice. *See, e.g.*, Rules of the Seventh and Twenty-Sixth Judicial Districts, Rule 40(9), (10) (requiring attorneys to “[a]void personal references to opposing counsel” and “[a]ddress arguments to the judge or jury and not opposing counsel”); Rules of the Fourteenth Judicial District, Rule 9(2) (“Arguments shall be addressed to the Court and not to opposing counsel.”). Further, the Oklahoma Evidence Code refers to the questioning of “witnesses,” not counsel. 12 O.S. § 2611(A). The Court should instruct Plaintiff’s counsel to refrain from directing questions, comments, or arguments to Defendants’ counsel.

B. NO NEED FOR OBJECTIONS BY ALL DEFENDANTS

There are numerous Defendants in this case, with two separate sets of defense counsel. If the Court requires Defendants to make individual objections at trial to questioning, testimony, and exhibits, it will unnecessarily prolong the proceeding. In order to save time and avoid redundancy, Defendants ask that the Court adopt a rule deeming that an objection made by a single Defendant will be construed to be an objection on behalf of all Defendants.

C. REFRAIN FROM CHARACTERIZING PREVIOUS TESTIMONY

Counsel should not be permitted to characterize or criticize a witness’s testimony. Nor should counsel be allowed to comment upon any differences between a witness’s prior testimony and his or her testimony at trial. For example, counsel should be precluded from telling the witness that he or she has “already admitted” a fact or has “changed” his or her testimony. *Cf. Crider v. People*, 186 P.3d 39, 44 (Colo. 2008) (en banc) (“[T]here should be no question that it is improper in this jurisdiction for an attorney to characterize a witness’s testimony . . . with any form of the word ‘lie.’”). A witness’s prior testimony speaks for itself, and if counsel believes

there is a deviation from that testimony, the attorney may attempt to impeach the witness with the testimony without editorial comment.

D. REFRAIN FROM MAKING GENERAL REFERENCES TO “DEFENDANTS”

The State chose to bring claims against 13 separate Defendants, nine of whom remain as parties in this case. These are nine separate legal entities. Even those Defendants within the same corporate family are distinct entities who are not responsible for the actions of their affiliates. *See Kenkel v. Parker*, 2015 OK 81, ¶ 12, 362 P.3d 1145, 1149 (“A basic tenet of American corporate law is that the corporation and its shareholders are distinct, separate entities.”); *Gilbert v. Sec. Fin. Corp. of Okla., Inc.*, 2006 OK 58, ¶ 22, 152 P.3d 165, 175 (“Corporations are distinct legal entities and generally one corporation will not be held responsible for the acts of another.”), *abrogated on other grounds by Montgomery v. Airbus Helicopters, Inc.*, 2018 OK 17, 414 P.3d 824. The State has made no showing that the corporate veil of any of the Defendants should be pierced. The alleged liability for each Defendant must be determined based only on the actions of that Defendant. Accordingly, the Court should require the State to differentiate between Defendants during trial and refrain from referring generally to “Defendants” without specifying the “Defendant” or “Defendants” to whom they are referring.

E. OBTAIN APPROVAL OF DEMONSTRATIVE EXHIBITS OR “PROPS” PRIOR TO TRIAL

To avoid surprises and ensure the orderly conduct of the trial, the Court should require the parties to show any demonstrative exhibits or “props” to opposing counsel 10 days prior to trial. The importance of such a rule is demonstrated by the fact that some courts include such a provision in their standing orders. *See, e.g.*, Judge Daman Cantrell’s form scheduling order, judgecantrell.com/images/SchedulingOrder2010.pdf (requiring all exhibits “including demonstrative exhibits” to be exchanged between the parties 10 days prior to trial). If there is an

objection, the party sponsoring the exhibit should be required to obtain Court approval prior to displaying it at trial.

Although such steps generally would not be necessary in a non-jury trial, the televised nature of this trial presents an atmosphere ripe for theatrics and grandstanding. Further, this trial should not be a tool to prejudice Defendants in the court of public opinion.

F. REFRAIN FROM COMMENTING ON ALLEGED DEFICIENCIES IN DEFENDANTS' CASE RESULTING FROM THWARTED DISCOVERY REQUESTS

Defendants have filed numerous motions to compel in this case. On some topics, the Court accepted the State's argument that discovery should not be allowed. The Court should prohibit the State's counsel from commenting regarding Defendants' failure to introduce evidence at trial when Defendants sought—but did not receive—discovery of the evidence at issue. For example, the State should not be permitted to argue Defendants failed to identify any patients who benefitted from opioids when it was the State who prevented Defendants from discovering the names of those patients. *See* The Teva Defs.' and Actavis Defs.' Motion in Limine #6 to Exclude Evidence Regarding or References to Individual Opioid Users, filed April 26, 2019.

The State should not be allowed to assert consequences arising from Defendants' products when the State prevented Defendants from discovering the truth. For instance, although the State speculates that Defendants' products caused Oklahomans to become addicted, the State refused to allow Defendants to find out if any patient taking Defendants' products were also in the poisoning database. As the State conceded, by using identifying numbers instead of patient names, the data could easily have been "cross walked" so that it would be known if a patient was in both databases. The State failed to provide this information despite Court orders to do so. *See*

The Teva Defs.' and Actavis Defs.' Motion in Limine #7 to Exclude Evidence Regarding the Alleged Consequences of These Defs.' Medicines, filed April 26, 2019.

As a corollary, the State should not be allowed to take advantage of the fact that only the State has access to the information. Indeed, the State may have looked at the cross walked data and, not liking the results, declined to provide it for that reason. For whatever, the State successfully refused to provide the data. Having done so, the State should not be allowed to employ the gamesmanship of asserting the patients that became addicted when the State's discovery positions prevented Defendants from learning the actual facts.

Similarly, the State asserts that Oklahoma doctors (a) did not understand that opioids were addictive, (b) did not understand the properties of the drugs they were prescribing and (c) were deceived into making prescriptions that were not necessary. However, because the State successfully refused to provide the names of the doctors at issue, the doctors were given no opportunity to defend themselves and their decision making. Similarly, Defendants were denied the opportunity to discover whether the allegations were true as to any particular doctor.

Had the doctors' names been provided, Defendants could easily have discovered whether the assertions were true as to any doctor. However, because the State adamantly refused to allow the discovery, the facts are known only to the State. It would be fundamentally unfair to allow the State to make assertions that the doctors did not understand or were deceived when the State systematically denied attempts to discover whether the assertions were true.

G. INFORM WITNESSES OF LIMINE RULINGS

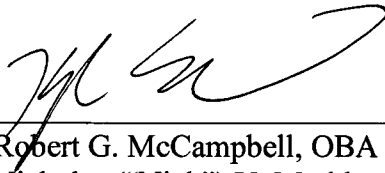
The Court should instruct counsel to inform all witnesses of the limine rulings in this case to ensure that they, too, adhere to the Court's rulings.

CONCLUSION

For the foregoing reasons, the Teva Defendants and Actavis Defendants ask that the Court grant this Motion in Limine and adopt these rules of courtroom conduct and trial procedures.

Dated April 26, 2019

Respectfully submitted,



Robert G. McCampbell, OBA No. 10390
Nicholas (“Nick”) V. Merkley, OBA No. 20284
Leasa M. Stewart, OBA No. 18515
Jeffrey A. Curran, OBA No. 12255
Kyle D. Evans, OBA No. 22135
Ashley E. Quinn, OBA No. 33251

GABLEGOTWALS

One Leadership Square, 15th Fl.
211 North Robinson
Oklahoma City, OK 73102-7255
T: +1.405.235.3314
E-mail: RMcCampbell@Gablelaw.com
E-mail: NMerkeley@Gablelaw.com
E-mail: LStewart@gablelaw.com
E-mail: JCurran@Gablelaw.com
E-mail: KEvans@gablelaw.com
E-mail: AQuinn@Gablelaw.com

OF COUNSEL:

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

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street
Philadelphia, PA 19103-2921
T: +1.215.963.5000
E-mail: steven.reed@morganlewis.com
E-mail: harvey.bartle@morganlewis.com
E-mail: mark.fiore@morganlewis.com

E-mail: rebecca.hillyer@morganlewis.com

E-mail : evan.jacobs@morganlewis.com

Nancy L. Patterson

MORGAN, LEWIS & BOCKIUS LLP

1000 Louisiana St., Suite 4000

Houston, TX 77002-5006

T: +1.713.890.5195

E-mail: nancy.patterson@morganlewis.com

Brian M. Ercole

Melissa M. Coates

Martha A. Leibell

MORGAN, LEWIS & BOCKIUS LLP

200 S. Biscayne Blvd., Suite 5300

Miami, FL 33131

T: +1.305.415.3000

E-mail: brian.ercole@morganlewis.com

E-mail: melissa.coates@morganlewis.com

E-mail: martha.leibell@morganlewis.com

Collie T. James, IV

MORGAN, LEWIS & BOCKIUS LLP

600 Anton, Blvd., Suite 1800

Costa Mesa, CA 92626

T: +1.714.830.0600

E-mail: collie.james@morganlewis.com

Tinos Diamantatos

MORGAN, LEWIS & BOCKIUS LLP

77 W. Wacker Dr.

Chicago, IL 60601

T: +1.312.324.1000

E-mail: tinos.diamantatos@morganlewis.com

Steven A. Luxton

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Ave., NW

Washington, DC 20004

T: +1.202.739.3000

E-mail: steven.luxton@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.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 26th day of April 2019, to the following:

***Attorneys for
Plaintiff***

Mike Hunter, Attorney General
Abby Dillsaver, General Counsel
Ethan Shaner, Dep. Gen. Counsel
ATTORNEY GENERAL'S OFFICE
313 N.E. 21st Street
Oklahoma City, OK 73105

Bradley Beckworth
Jeffrey Angelovich
Lloyd Nolan Duck, III
Andrew G. Pate
Lisa Baldwin
Brooke A. Churchman
Nathan B. Hall
NIX, PATTERSON & ROACH
512 N. Broadway Ave., Ste. 200
Oklahoma City, OK 73102

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

Michael Burrage
Reggie Whitten
J. Revell Parrish
WHITTEN BURRAGE
512 N. Broadway Ave., Ste. 300
Oklahoma City, OK 73102

Robert Winn Cutler
Ross E Leonoudakis
NIX PATTERSON & ROACH
3600 N. Capital of Texas Hwy.
Suite B350
Austin, TX 78746

*Attorneys for
Johnson & Johnson,
Janssen
Pharmaceutica, Inc.,
N/K/A Janssen
Pharmaceuticals,
Inc., and Ortho-
McNeil-Janssen
Pharmaceuticals,
Inc. N/K/A Janssen
Pharmaceuticals,
Inc.*

John H. Sparks
Benjamin H. Odom
Michael W. Ridgeway
David L. Kinney
ODOM SPARKS & JONES
2500 McGee Drive, Suite 140
Norman, OK 73072

Charles C. Lifland
Jennifer D. Cardelus
Wallace M. Allan
Sabrina H. Strong
Houman Ehsan
Esteban Rodriguez
Justine M. Daniels
O'MELVENY & MEYERS
400 S. Hope Street, 18th Floor
Los Angeles, CA 90071

Stephen D. Brody
David Roberts
Emilie K. Winckel
O'MELVENY & MEYERS
1625 Eye Street NW
Washington, DC 20006

Daniel J. Franklin
Ross B Galin
Desirae Krislie Cubero Tongco
Vincent S. Weisband
O'MELVENY & MEYERS
7 Times Square
New York, NY 10036

Amy R. Lucas
Lauren S. Rakow
Jessica L. Waddle
O'MELVENY & MEYERS
1999 Ave. of the Stars, 8th Fl.
Los Angeles, CA 90067

Jeffrey A. Barker
Amy J. Laurendeau
Michael Yoder
O'MELVENY & MEYERS
610 Newport Center Drive
Newport Beach, CA 92660

Larry D. Ottaway
Amy Sherry Fischer
Andrew Bowman
Steven J. Johnson
Kaitlyn Dunn
Jordyn L. Cartmell
FOLIART, HUFF, OTTAWAY & BOTTOM
201 Robert S. Kerr Ave., 12th Fl.
Oklahoma City, OK 73102

***Attorneys for Purdue
Pharma, LP,
Purdue Pharma, Inc.
and The Purdue
Frederick Company***

Sheila L. Birnbaum
Mark S. Cheffo
Hayden Adam Coleman
Paul LaFata
Jonathan S. Tam
Lindsay N. Zanello
Bert L. Wolff
Mara C. Cusker Gonzalez
DECHERT, LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

William W. Oxley
DECHERT LLP
U.S. Bank Tower
633 West 5th Street, Suite 4900
Los Angeles, CA 90071

Britta E. Stanton
John D. Volney
John T. Cox, III
Eric W. Pinker
Jared D. Eisenberg
Jervonne D. Newsome
Ruben A. Garcia
Russell Guy Herman
Samuel Butler Hardy, IV
Alan Dabdoub
David S. Coale

LYNN PINKER COX & HURST
2100 Ross Avenue, Suite 2700
Dallas, TX 75201

Erik W. Snapp
DECHERT, LLP
35 W. Wacker Drive, Ste. 3400
Chicago, IL 60601

Meghan R. Kelly
Benjamin F. McAnaney
Hope S. Freiwald
Will W. Sachse
DECHERT, LLP
2929 Arch Street
Philadelphia, PA 19104

Jonathan S. Tam
Jae Hong Lee
DECHERT, LLP
One Bush Street, 16th Floor
San Francisco, CA 94104

Robert S. Hoff
WIGGIN & DANA, LLP
265 Church Street
New Haven, CT 06510

Sanford C. Coats
Joshua Burns
CROWE & DUNLEVY
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102

