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 #6 TO EXCLUDE EVIDENCE REGARDING OR REFERENCES TO INDIVIDUAL OPIOID USERS

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 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

[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."

manner (whether in opening statements, questions to witnesses or experts, objections, closing arguments, or otherwise) information regarding the experiences of specific individuals with opioids, including but not limited to:

1. Any evidence, comments, or questioning regarding individual opioid users and the consequences resulting from their use of opioids;
2. Any personal stories or anecdotes shared by witnesses or counsel regarding friends or loved ones who allegedly suffered as the result of opioid use;
3. Any evidence, comments, or questioning regarding individual opioid users who are not identified by name;
4. Any evidence (including videos) containing testimonials from patients regarding opioid use;
5. Any testimony from or evidence regarding Lauren Cambra; and
6. Any testimony from Craig Box.

FACTUAL BACKGROUND

Before Judge Hetherington. Defendants sought discovery of information regarding individual patients who allegedly abused opioid and the doctors who prescribed them. Sept. 7, 2018 Defs.' Mot. to Compel Discovery. Defendants argued this information would "undermine the State's contention that Defendants' allegedly misleading promotional activities caused a nuisance." *Id.* at 6. In fact, Defendants stated:

> Prescriber and patient identities are . . . essential to Defendants' defenses against the State's nuisance theory. To prevail, the State must show that Defendants proximately caused a public nuisance. *Twyman v. GHK Corp.*, 2004 OK CIV APP 53, ¶ 52, 93 P.3d 51, 61. At . . . trial[] Defendants will vigorously contest causation. Obtaining prescriber and patient identities forms a central and irreplaceable part of Defendants' efforts to show why the State cannot satisfy this element of its claim.

Id. at 13. In response, the State claimed patient information was off-limits because "[a] person's medical history is some of the most private and protected information under the law. The patients have not put their medical history at issue. They are not parties to this case." Sept. 14,

2018 Resp. to Defs.' Mot. to Compel at 4. Throughout its response brief, the State argued that patients "deserved protection" from Defendants and from the spotlight of litigation. *Id.* at 5. It presented itself as the only plaintiff, which was to "bear the brunt of litigation's intrusive nature" because it and it alone "inject[ed] itself into the fray of litigation." *Id.* at 10-12. The Court agreed with the State. Judge Hetherington denied Defendants' motion to compel claims data under the rationale that, "as argued, State's proof approach does not require proof of individualized doctor and patient interaction as a global population of individualized proof . . . . The State of Oklahoma is the plaintiff, not individual patients." Oct. 10, 2018 Order of Special Discovery Master at 1-2.

Before This Court. Defendants objected to Judge Hetherington's ruling and brought the issue to this Court in the Defendants' Objections to the Special Discovery Master's Order, filed on October 17, 2018. Once again, the State opposed providing any patient information. *See* Oct. 24, 2018 Resp. to Defs.' Objections to the Special Discovery Master's Order. In particular, the State again argued that since it was proving its case in the aggregate, evidence on individual cases was irrelevant. "Because the case is being presented in an aggregate manner, individual discovery is unnecessary." *Id.* at 19. "The State will prove its case in the aggregate using statistical sampling. The production of individual names of prescribers and patients is unnecessary for Defendants to build their defense." *Id.* at 17.

The parties argued before this Court on November 29, 2018, and the State once again argued that discovery on individual patients was not necessary because the State was going to prove its case in the aggregate. The State argued repeatedly that since it was proving its case in the aggregate through statistics, evidence regarding individual patients was irrelevant.

- "[T]his request [for individuals' claims] is totally unnecessary based on the way the state intends to prosecute the case. . . . We don't represent a human being. We don't

represent a patient. We don't represent someone who took opioids. We represent the innocent State of Oklahoma and its taxpayers." Nov. 29, 2018 Hr'g Tr. at 40, Ex. 1.

- "We have the right to prove our case by statistical sampling. . . . But here, we have a False Claims Act, and the case allow an entity like the State of Oklahoma to prove its case by statistical sampling. We don't have a human client." *Id.* at 41.

- "And I said it then, and I'll say it now. We will either succeed in proving those false claims by a statistical sample, or we will fail. We will live or die on the statistical sample on these false claims cases." *Id.* at 48.

- "[W]e have stated our position. We'll either live or we'll die by the statistical sample. And so there is no need to forces all this burdensome, non-proportional, and confidential discovery on the State, the taxpayers, and all these individuals who do not want their medical records brought to attention." *Id.* at 72.

After hearing that argument from the State, this Court ruled in favor of the State and confirmed Judge Hetherington's ruling. *See* Dec. 4, 2018 Order. The State thus succeeded in denying Defendants discovery relating to individual opioid users.

Now, months after convincing this Court to deny discovery, the State no longer wishes to "live or die" by statistical analysis. Now, the State wants to use the individual patient stories it likes best. It is far too late to make this a case about individual patient stories.

Contrary to its prior arguments and the Court's rulings adopting them, the State now wants to reverse course and build its case around stories of individual opioid users and their families. Having avoided discovery regarding the universe of patients potentially at issue—discovery that would have permitted Defendants to develop a defense to the very strategy the State apparently seeks to employ, the State intends to utilize cherry-picked patient stories it particularly likes. Sometimes this patient information includes names and painful details—for example, a father's account of the death of a star football player or counsel's description of losing loved ones. Dep. of Craig Box;[2] Jan. 17, 2019 Hr'g Tr. at 19:17-20, Ex. 2. The State

[2] To respect Mr. Box's privacy, the Teva and Actavis Defendants do not attach a copy of his deposition as an exhibit to this Motion. If the Court would like to review the deposition, Defendants will provide it.

even offers video evidence of unsworn, testimonials by various patients—who were neither identified nor deposed as witnesses in this case, but who purport to share their own stories regarding opioid use.

The State clearly intends to use patients as a sword and a shield—whichever is convenient at any given time. Evidence regarding individual opioid users and their families is irrelevant, unfairly prejudicial, and judicially estopped. Moreover, much of the offered evidence constitutes inadmissible hearsay. It should all be excluded.

ARGUMENT AND AUTHORITIES

I. THE STATE SHOULD BE JUDICIALLY ESTOPPED FROM USING INDIVIDUAL PATIENT STORIES AT TRIAL AFTER SUCCESSFULLY LIMITING DISCOVERY TO STATISTICAL ISSUES.

"Under the doctrine of judicial estoppel, a party and his privies who have knowingly and deliberately assumed a particular position are estopped from assuming an inconsistent position to the prejudice of the adverse party." *Messler v. Simmons Gun Specialties, Inc.*, 1984 OK 35, 687 P.2d 121, 128 (quotation omitted). "This rule ordinarily applies to inconsistent positions assumed in the course of the same judicial proceedings, or in subsequent proceedings involving identical parties and questions." *Id.* It applies to inconsistent positions regarding the facts of a case, rather than alternative legal arguments. *See Barringer v. Baptist Healthcare of Okla.*, 2001 OK 29, ¶ 13, 22 P.3d 695, 699 (citing *Parker v. Elam*, 1992 OK 32, 829 P.2d 677, 680). A party is judicially estopped from changing factual positions if it "received some clear benefit or unfair advantage from maintaining its prior factual assertion in the same proceeding or a previous one." *Id.* at ¶ 19, 22 P.3d at 700.

Taking a position to gain an advantage in litigation then changing that position to achieve another advantage is "precisely the kind of 'playing fast and loose with the courts' that the judicial estoppel doctrine is designed to prevent." *Wagner v. Prof. Engineers in Calif. Gov.*, 354

F.3d 1036, 1048-50 (9th Cir. 2004) (quotation omitted) (judicial estoppel was proper where a party asserted it was not litigating a claim that would require administrative exhaustion to avoid dismissal and then later sought a decision on the merits of that claim). Numerous courts across the country have applied judicial estoppel where, as here, a party successfully stonewalled discovery based on a factual representation regarding the scope of its claims and then later took a contrary position that would make the thwarted discovery relevant at trial.

For example, in *Cox v. Continental Cas. Co.*, 703 Fed. App'x 491 (9th Cir. 2017), a defendant insurance company denied discovery of documents relating to plan coverage, assuring the trial court that the files were "'immaterial in cases like this one where coverage [wa]s not at issue." *Id.* at 495 (alteration in original). The court held judicial estoppel precluded the defendant from later asserting a defense that the policy was fraudulently obtained, which implicated the issue of plan coverage. *Id.* The Ninth Circuit affirmed, citing the insurer's "specific representation . . . made during discovery, as well as [the party's] apparent refusal to turn over [related] documents." *Id.* at 495-96.

Similarly, in *Fisher v. Blue Cross Blue Shield of Tex.*, 2017 WL 447202 (N.D. Tex. Feb. 1, 2017), the court held the plaintiff was judicially estopped from introducing evidence of industry standards at trial where it had opposed discovery of evidence regarding its communications with other insurers on the basis that it would not rely on such communications at trial. *Id.* at *4-5. Concluding that the plaintiffs' "inconsistent position smacks of gamesmanship and legal prestidigitation," the court held:

> Judicial estoppel forecloses Plaintiffs' later position that is inconsistent with their prior position and was relied upon by the magistrate judge in making her rulings regarding discovery on the issue. Allowing Plaintiffs to change their earlier position relied on by the court would have resulted in legal prejudice to Defendant.

Id. at *5; *see also Walker v. Life Ins. Co. of the Sw.*, 2014 WL 12577139, at *11-12 (C.D. Cal. Apr. 3, 2014) (where a party had asserted that discovery regarding particular evidence was irrelevant, judicial estoppel prevented the party's "clearly inconsistent" attempt to introduce the same evidence at trial); *The Coca-Cola Co. v. Pepsi-Cola Co.*, 500 F. Supp. 2d 1364, 1377-79 (N.D. Ga. 2007) (imposing judicial estoppel to bar party from taking a position in litigation that was "clearly inconsistent" with the party's "vigorous and successful resistance" to discovery on that issue).

Here, the State opposed discovery by assuring the Court that its case would be based only on statistics, not individuals. It argued that discovery regarding individual patients was improper because "[t]he patients have not put their medical history at issue. They are not parties to this case." Sept. 14, 2018 Resp. to Defs.' Mot. to Compel at 4. Throughout its motion, the State presented itself as the only plaintiff, rendering "discovery into [patient identities] . .highly inappropriate." *Id.* at 10-12. This argument prevailed. Judge Hetherington denied Defendants' motion to compel discovery regarding patient and prescriber identities, expressly adopting the State's argument that its claims did not "require proof of individualized doctor and patient interaction as a global population of individualized proof" because "[t]he State of Oklahoma is the plaintiff, not individual patients." Oct. 10, 2018 Order of Special Discovery Master. As a result, Defendants were denied discovery of information that would be essential to refuting or responding to evidence regarding individual patients.

For judicial estoppel to apply, Oklahoma law requires "a party and his privies [to] knowingly and deliberately assume[] a particular position." *Messler*, 1984 OK 35, 687 P.2d at 128. Here, the State knowingly and deliberately opposed discovery regarding individual patients and providers. Sept. 14, 2018 Resp. to Defs.' Mot. to Compel. The State "received some clear

benefit or unfair advantage from maintaining its prior factual assertion" *Barringer*, 2001 OK 29 at ¶ 19, 22 P.3d at 700, because it did not have to produce discovery on millions of patient claims. After successfully blocking discovery regarding the universe of patients, the State changed its prior position and now seeks to introduce evidence or anecdotes at trial regarding certain hand-selected cases and patients. If permitted to do so, this would cause serious prejudice to Defendants who were denied the opportunity to discover facts that might help them respond to that evidence. It would also hinder the Court's own ability to understand the full story regarding those individuals and to fulfill its fact-finding role. Judicial estoppel dictates that the State be limited to the statistical case it told the Court it would try, not the case regarding individual patients it disavowed in discovery.

II. INDIVIDUAL STORIES OR ANECDOTES ARE IRRELEVANT BECAUSE A PUBLIC NUISANCE CLAIM DOES NOT IMPLICATE HARM TO INDIVIDUALS.

The State's dismissal of all claims except its public nuisance claim underscores that this case is about consequences to ***the State***, not individuals. Public nuisance cases involve public issues: "A public nuisance is an unreasonable interference with a right ***common to the general public***." *Restatement (Second) of Torts* § 821B(1) (emphasis added). "The test for interference with a right common to the general public, as an element of a public nuisance, is not the number of persons annoyed but the possibility of annoyance to the public by the invasion of its rights." *Am. Jur. Nuisances* § 32. If a public right is impaired, the individual frequency and effects of that impairment do not matter:

> [W]hen a public highway is obstructed and all who make use of it are compelled to detour a mile, no distinction is to be made between those who travel the highway only once in the course of a month and the man who travels it twice a day over that entire period. For both there has been only interference with the public right of travel and resulting inconvenience, even though the interference and the inconvenience have been much greater in the one case than in the other.

Restatement (Second) of Torts § 821C, comment b.

Unique individual interests are inapposite to a public nuisance case. If an individual has a greatly heightened number of interactions with a public nuisance (*e.g.*, driving a public highway a dozen times a day), "that reason will almost invariably be based upon some special interest of his own, not common to the community." *Id.*, comment c. This special interest is not at issue in a public nuisance case; only the community-wide right is. *Id.* at § 821B(1). Evidence about any such special interest should not be admitted in a public nuisance case, as it is not relevant or helpful in considering the public interest. *See State v. Lead Indus. Ass'n, Inc.*, 951 A.2d 428, 441 (R.I. 2008). In *Lead Industries*, the state of Rhode Island sued lead paint manufacturers for public nuisance involving their products. The trial court granted the defendants' motion in limine to exclude all evidence regarding the presence or absence of lead paint in any individual Rhode Island property. *Id.* The court noted that "property specific evidence is irrelevant in connection with the issue of whether the cumulative effect of such pigments in all such buildings . . . was a public nuisance." *Id.* (quotation omitted).

Evidence is relevant if it has "any 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 (emphasis added). Here, the relevant facts involve the impact, if any, of Defendants' conduct on the public as a whole, not on specific individuals. Individual stories and anecdotes are thus irrelevant and should be excluded.

III. EVEN IF EVIDENCE REGARDING INDIVIDUAL OPIOID USERS WERE RELEVANT, ANY RELEVANCE IS OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE AND UNDUE DELAY.

Even if evidence or anecdotes regarding individual patients were otherwise relevant to the State's public nuisance claim, the Court should still exclude it under 12 O.S. § 2403 because any such relevance is clearly outweighed by the risks of prejudice and undue delay.

Despite the fact that this is now a bench trial, the televised nature of the trial presents a serious risk of prejudice not present in other non-jury proceedings. Although the Court should have the wisdom to disregard inflammatory and emotional evidence that does not directly bear on the public nuisance claim, the court of public opinion is unlikely to be so judicious. Injecting this evidence into the public domain could unfairly prejudice the reputations of Defendants or cause the public to second-guess a proper defense verdict handed down by the Court. Neither result furthers the interests of justice.

Finally, this trial will be long enough without expanding a lawsuit alleging harm to ***the State*** to include a parade of allegations regarding harms to individual patients. Such evidence would unduly delay resolution of this case and should be excluded.

IV. VIDEO EVIDENCE OF PATIENT TESTIMONIALS SHOULD BE EXCLUDED.

The State apparently intends to present documentary-like videos to the Court containing patient testimonials regarding opioids. For example, the State frequently refers to video produced by Purdue called "I Got My Life Back." *See, e.g.,* Nov. 29, 2018 Hr'g Tr. at 52-53, Ex. 1. As an initial matter, Purdue is no longer a party to this action and that video should be excluded on that basis alone. *See* The Teva Defs.' and Actavis Defs.' Motion in Limine #4 Regarding Purdue Evidence, filed April 26, 2019. Further, as discussed above, ***any*** individual stories—regardless of the medium through which they are told—are irrelevant and should the State should be judicially estopped from relying upon them.

In addition, this type of evidence, which "brings to life" stories of individuals who were not listed as witnesses in this case and thus not deposed by the parties, is especially problematic. These video testimonials are textbook hearsay, *i.e.,* unsworn, out-of-court statements offered to prove the truth of the matter asserted. 12 O.S. § 2801(A)(3). They should be excluded.

V. THE COURT SHOULD EXCLUDE EVIDENCE REGARDING LAUREN CAMBRA

The State deposed Lauren Cambra, a former Oxycontin user, on November 11, 2018. In 1997, Ms. Cambra appeared in a promotional video at Purdue's request. The State argues she has since suffered harmful effects from the Oxycontin. Nov. 29, 2018 Hr'g Tr. at 52-53, Ex. 1.

Ms. Cambra's testimony and story should be excluded from this trial for numerous reasons. First, Purdue is no longer a party to this case and this evidence has absolutely nothing to do with the Teva or Actavis Defendants. The opioids Ms. Cambra took were Oxycontin (Cambra Dep. at 11:2-16, 13:5-8, 46:7-9, 59:2-7, Ex. 3), Percocet (*id.* at 178:13-22, 179:12-16, 190:1-18, 193:11-22), and Percodan (*id.* at 178:13-22, 179:12-16, 237:1-10), none of which were manufactured by any of the remaining Defendants in this case. Second, as discussed above pursuant to the State's representations to the Court and positions in litigation, Ms. Cambra's story should not be permitted since the State is going to prove its case in the aggregate using statistics. Finally, the State should not be allowed to cherry pick Ms. Cambra as a patient story it wants to feature while the State succeeded in prohibiting Defendants from gaining access to individual patient information.

VI. THE STATE SHOULD NOT BE PERMITTED TO INTRODUCE THE TESTIMONY OF CRAIG BOX.

The State also seeks to offer the testimony of Craig Box[3] concerning the tragic death of his son, Austin Box, a well-known football player at the University of Oklahoma. The public Medical Examiner report indicated that Mr. Box's son's death was accidental and was due to probable mixed drug toxicity. Box Dep. at 48:2-49:9.

[3] Mr. Box has practiced law in Oklahoma for 35 years, Box Dep. at 6:8-10, and is listed by the State as a witness on the "impact of the opioid crisis." Mr. Box voluntarily agreed to testify in this case as a witness for the State. *Id.* at 7:13-25.

The Teva and Actavis Defendants have no desire to intrude on a matter the Box family may prefer to keep private. However, (1) Mr. Box volunteered to be a witness for the State, (2) Mr. Box, an attorney, refused to answer questions at deposition which were unquestionably relevant and not privileged, (3) Mr. Box and the State were warned that if Mr. Box was going to be a witness, they could expect a motion from the defense, Box Dep. at 66:13-23, (4) the State recently listed Mr. Box as a witness it intends to call at trial, and (5) the only opioid prescription Austin Box received was for a drug manufactured by Purdue, not by any of the Defendants remaining in the case. Thus, Defendants are forced to make this motion.

A. MR. BOX'S TESTIMONY IS NOT RELEVANT.

Mr. Box's testimony is not relevant because he testified his son was not prescribed a drug manufactured by any of the remaining Defendants. Mr. Box testified he was only aware of one opioid prescription his son received. In August or September 2010, Austin Box was prescribed OxyContin after suffering a ruptured disk in his back. Box Dep. at 18:17-19:13; 24:22-26:10; 29:11-14. The Purdue Defendants manufactured OxyContin. *See* Pet. ¶ 14. Mr. Box testified he was "certain" that his son had not been prescribed any pain medication other than OxyContin. Box Dep. at 29:11-14. This fact alone establishes that Mr. Box's testimony has no legal relevance in a case in which Purdue is no longer a Defendant.

Indeed, Mr. Box testified very specifically that he had no knowledge and no foundation to think any drug manufacturer had engaged in anything inappropriate. For example:

> Q. All right. A little broader question. With respect to any pharmaceutical manufacturer, do you have any knowledge or foundation of any manufacturer doing anything inappropriate?
>
> ***
>
> A. THE WITNESS: I'll give you the same answer I gave earlier, Counsel, which is I'm here to testify about the impact on myself and my family.

> I have no knowledge with respect to what you're asking and I intend to offer no opinion, other than what – as I have stated, what I have learned from the media over the years.

Box Dep. at 75:19-76:5; *see also id.* at 70:7-72:4 (testifying he has no knowledge of improper conduct by the Teva and Actavis Defendants); *id.* at 95:8-97:9 (same as to the Janssen Defendants).

Evidence is only "relevant" and admissible if it has any 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; *see Witt v. Martin*, 1983 OK CIV APP 33, 672 P.2d 312, 320 ("'[E]vidence is relevant if it legally tends to prove some matter in issue or tends to make a proposition in issue more or less probable . . . .'"). Because Mr. Box offers no testimony regarding the conduct or products of the remaining Defendants, his testimony is not relevant and should be excluded.

B. MR. BOX'S TESTIMONY SHOULD BE EXCLUDED BECAUSE IT IS UNFAIRLY PREJUDICIAL TO ASSOCIATE DEFENDANTS WITH AUSTIN BOX'S DEATH.

Even if Mr. Box's testimony were remotely relevant to the issues remaining in this case, it should still be precluded under 12 O.S. § 2403. Not only would the testimony unnecessarily lengthen the trial, but it would also present serious risk of unfair prejudice to Defendants. Austin Box was a very popular, star OU football player with a magnetic personality. Box Dep. at 44:1-21. After his death, he was memorialized by his coaches and teammates. Now the trial will be held in the same city in which Austin Box was a football star. Given the emotion and affections surrounding Austin Box, permitting even the inference in this televised trial that Defendants bear any responsibility for his death would be highly and unfairly prejudicial to Defendants, especially in light of the fact that there is ***no*** evidence they played any role whatsoever.

C. MR. BOX'S TESTIMONY SHOULD ALSO BE EXCLUDED BECAUSE HE REFUSED TO ANSWER A CRITICAL QUESTION DURING HIS DEPOSITION.

At deposition, Mr. Box was asked about previously published media reports. After Austin Box's death, Mr. and Mrs. Box obtained his cell phone. Based on text messages on the phone, they could identify a person with knowledge who provided the drugs that caused Austin Box's death. Box Dep. at 62:2-24. In a media report Mr. Box does not contest, he said it was "fairly evident" what was going on. *Id.* at 62:2-65:8. He described the information as "very devastating" because it was a person close to his son. *Id.* at 64:9-25. Finally, Mr. Box testified he had reported the matter to the El Reno police, *id.* at 62:2-20; 64:9-18; 65:18-21, and urged them to investigate, *id.* at 60:16-61:4. Nevertheless, at his deposition, Mr. Box refused on multiple occasions to reveal the name of the person who could provide this important information. *Id.* at 63:13-66:23.

If Mr. Box were permitted to testify despite the reasons set forth above, then Defendants would be entitled to rebut any suggestion that they are responsible for his son's death by showing that a third party apparently engaged in criminal activity in supplying the prescription drugs to him. This unidentified third party—not Defendants—likely caused Austin Box's death. It is manifestly unfair to introduce Mr. Box's testimony that is so inherently prejudicial to the Defendants while denying them discovery necessary to identify the third party who might have independently caused Austin Box's death.

It is fundamentally unfair to publicly tar these Defendants on television with the inference that they are somehow responsible for Austin Box's death while denying them discovery regarding the third party who might actually bear that responsibility.

CONCLUSION

The State charted its own course for this case by unequivocally arguing that only statistics—not individual stories—matter. It prevailed on this position and succeeded in denying Defendants the ability to defend individual patient stories or to discover evidence regarding patients who benefitted from prescription opioids. Further, the State's sole remaining claim is based on alleged public—not individual—harm. The Court should hold the State to its in-Court representations. In addition, these individual stories are irrelevant, unfairly prejudicial, and often hearsay. They should be excluded from the trial in this case.

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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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:

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EXHIBIT 1

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.	Case No. CJ-2017-816

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS
HAD ON NOVEMBER 29, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN, DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

confidential, highly protected patient data. These are patients who are not party to this case. They have not sued. They have not placed their personal injury or their mental or physical condition into issue, like we see in our typical case.

Number five, this request is totally unnecessary based on the way the State intends to prosecute the case. And I don't know if you remember this, Judge; it's been many months, and I can't tell you the exact date. But I volunteered maybe six or nine months ago in a hearing before you -- I believe this was well before you appointed Judge Hetherington as the special master. And there were no secrets, and I was under no obligation to say it. But I went ahead and told you and the folks in the room here how we intended to try our case.

We don't represent a human being. We don't represent a patient. We don't represent someone who took opioids. We represent the innocent State of Oklahoma and its taxpayers. And the State of Oklahoma is required to pay for these prescriptions.

So that's totally different from a case where a plaintiff walks in here -- and you've tried many of those -- where they, you know, I hurt my back or I hurt my neck. Once they put their medical condition into issue, they've waived it. And you know, typically, the patient is asked questions about their medical records, and the doctor can testify as well. That's not what we have here.

We have the right to prove our case by statistical sampling, and I'm sure you've seen those cases. The law -- there's numerous cases saying that when a state or any other entity that has a false claims law like, for example, the City of Chicago has their own false claims law.

But here, we have a False Claims Act, and the cases allow an entity like the State of Oklahoma to prove its case by statistical sampling. We don't have a human client. And so in addition to that, when you just have one client or let's say you had two plaintiffs in one case, it is rather simple to try that case. We've all done it.

But here, we're talking about -- and they know this, we furnished them the data -- over 9 million prescriptions, over 900,000 human beings in the state of Oklahoma that were prescribed opioids, and over 42,000 doctors. That's what we're dealing with.

We intend, and I told you months ago, to take a statistically meaningful sample. I don't have the hard and fast numbers before me today, but that's all expert testimony, and it will be provided pursuant to the Court's scheduling order. They'll get all this. They'll be able to defend it. And they've tried cases like this before, and I have too.

And that statistically meaningful sample, we will be able to tell how many of those were false claims. It's very simple. And indeed -- I even told them the case we were relying upon in

juxtapose the two and they can ask Dr. No. 1, I want to talk to your patient, Sally Smith. That's wrong.

The way we've proposed doing it has been approved by the Oklahoma Supreme Court in Burgess. It has been approved by all these False Claims Act cases. And that's the only way this case can go to trial.

And I said it then, and I'll say it now. We will either succeed in proving those false claims by a statistical sample, or we will fail. We will live or die on the statistical sample on these false claims cases. And that's how it should be.

I want to move on now and talk about -- let me check my notes here, your Honor. It may be time for me to turn it over to my colleague here. Oh, I had one other point.

I believe we filed this in this case as a -- I don't know if your Honor has seen it -- but as additional authority, we have placed in front of the Court previously the Tobacco litigation in the state of Texas.

The very same question there. I don't remember the numbers, but it was a huge number of people, they wanted the same thing; the patients' names, doctors' names, and records for all those smokers, and that was denied by the trial court. And that case, now, it didn't go up on appeal, but it settled on the eve of trial.

But my point is that's a federal Judge that did look at this issue. They had the same problem. Are you going to call

say, Doctor, did you know that the State of Oklahoma has filed a lawsuit against us; they're wanting to cut down on opioid prescriptions, they think you've been overprescribing, would you be willing to help us. And by the way, Doctor, do you have some patients, some good pain patients, that you think could be advocates for us that would waive their HIPAA protections and come in and testify about how good these drugs are. Could you do that for us, Doctor?

The defendants are free to do that. They can subpoena doctors. They can call doctors. They can get their hands on this information.

How do we know that? Judge, a couple weeks ago, I took a deposition of a woman named Lauren Cambra. She lives in Raleigh, North Carolina. In 1997, Purdue contacted her doctor, her pain doctor, and said, Dr. Spanos, we would like for you to be in a promotional video, and can you identify five or six of your patients that are doing well on OxyContin that would be willing to be on that video as well.

And he found five or six. One of them was Lauren Cambra. She was on that video and a follow-up video a few years later called, I got my life back. They blasted this video all over the nation, and we know it came into Oklahoma.

Judge, Lauren Cambra became addicted to OxyContin, lost everything. Lost her house, lost her job. She had to literally rebuild her life from the ground up. Now, it's

defendants' choice if they want to go do that exact same model and find patients who are willing to sit in that chair and say, These drugs have benefitted me. They can do that. What they've been doing for decades is convincing doctors to prescribe these drugs by using exemplar patients. They can do it. And that's why they want this data.

And so they handed you an order just now. We hadn't seen it. It's two pages. I just read it. Judge, in our view, we've discussed it here, that order is deceptive. It says on its face that you can, you know, be the gatekeeper on whether or not they will ultimately contact any of these patients. But make no mistake, that's what they want to do. They want to get their foot in the door with an order like that.

But you'll notice in the last paragraph it says, Without leave of Court. And if that order is signed, the way it's written right now, next week, or whenever they get the data and they run it, you will have a request in front of you and probably every week after that, asking your permission for these defendants to go contact patients in the state of Oklahoma based on data that the State safeguards.

Now, if your Honor does not intend to grant those requests, then we can take out any of that language about without leave of Court. There's no need for it. If the defendants truly don't want to contact any of these patients, then they will agree that we can take out that language,

Dunlevy case. They were there. Crowe was in this case.

That was vigorously objected to that you could do this by statistical sampling. When you look at the footnote in the Supreme Court of Oklahoma, it said we could use statistical sampling to prove a case like this, even a case that involved fraud and bad faith. It was a very significant opinion. There's no ifs, ands, or buts about it. It is a relevant opinion.

And we have stated our position. We'll either live or we'll die by the statistical sample. And so there is no need to force all this burdensome, nonproportional, and confidential discovery on the State, the taxpayers, and all these individuals who do not want their medical records brought to attention.

The last thing I'll just say, not one word was said about the document that I brought out where Mr. Brody's client said that it is stigmatizing to have the use of opioids come out. I can see why he doesn't want to talk about that. That just furthers my argument.

My medical records are mine. I don't have to turn them over. And everybody in this room has the same right. They don't have to turn them over unless they place them at issue. But that doesn't mean the State of Oklahoma is without a remedy. They have a right to pursue a False Claims Act and prove it by statistical sampling.

EXHIBIT 2

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
(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.	)	

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TRANSCRIPT OF PROCEEDINGS

HAD ON JANUARY 17, 2019

AT THE CLEVELAND COUNTY COURTHOUSE

BEFORE THE HONORABLE THAD BALKMAN, DISTRICT JUDGE

AND WILLIAM C. HETHERINGTON, JR.,

RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

the MDL. This is a direct quote: It is accurate to describe the opioid epidemic as a manmade plague. 20 years in the making, the pain, death, and heartache it has brought cannot be overstated. And as this Court has previously stated, it is hard to find anyone in Ohio who does not have a family member, a friend, a parent of a friend, or child of a friend who has not been affected.

That opioid epidemic, it is a manmade plague, and its origins started a little bit before that speech Richard Sackler gave. But the Sacklers started it and he predicted it. Flower words, yes, but truer words have never been spoken. We're going to bury the competition in an avalanche, and we're going to have the same thing as a lot of other natural disasters.

Now, Judge Polster was talking about what happens in Ohio, but I think your Honor and everybody in this courtroom knows that the way this problem has touched us all is similar in Oklahoma. My friend, my mentor, Reggie Whitten, lost his son to this problem. I've lost a partner and a very close friend to it. And I'm sure many others have the same thing going on in their life. It's real, and it's still happening.

What does that have to do with the motion before you today. Well, this manmade plague was started by Purdue with the assistance of Johnson & Johnson. It's been perpetuated by all the defendants in this case. And this company, Purdue, ought to be named Sackler, because we're going to walk through

EXHIBIT 3

IN THE DISTRICT 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., f/k/a JANSSEN PHARMACEUTICALS, INC.; (9) JANSSEN PHARMACEUTICA, INC., f/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, 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.	Case Number CJ-2017-816

Videotaped Deposition of LAUREN INEZ NEVINS CAMBRA

(Taken on behalf of Plaintiff)

Raleigh, North Carolina

Thursday, November 15, 2018

Reported in Stenotype by
Lauren M. McIntee, RPR, CRR
Transcript produced by computer-aided transcription

long-lasting 12-hour medication."

So, "And I think I would like to start you on this. I think it would really make a difference for you. Are you willing to do it?" Absolutely. Wrote me my prescription. And I could not believe it. It did. It helped.

Q. What was the name of that drug?

A. OxyContin.

Q. And how long did you take OxyContin?

A. 8 years, 10 -- oh, long time. I -- I wish I could tell you the -- I -- come on, it's 20 years ago. I know I was on at least 8.

Q. Okay.

A. At least, I believe. It was a long time.

Q. When you were first prescribed OxyContin --

A. Yes.

Q. -- by Dr. Spanos, were you afraid that you would become addicted to OxyContin?

A. Absolutely not. I wasn't addicted to the pain medication that I was previously taking. I wouldn't have any reason to think that I would become addict -- I wasn't addicted. I would have a flare-up. I would take medicine five days, sometimes seven days. The -- I would be better, and then I would go months and I was fine.

MR. DUCK: Let's go off the record.

(Recess taken 10:09 a.m. to 10:10 a.m.)

THE VIDEOGRAPHER: We're back on 10:10.

BY MR. DUCK:

Q. Okay. Ms. Cambra, you mentioned that you took OxyContin once in the morning and once at night?

A. Yes.

Q. Did you ever deviate from that?

A. I couldn't, no. Problem with the medication is deviating, which means you would have to take more than -- than the two prescribed in a day. And if you did, that meant you were at the end of your prescription. You would be out of medicine, and then you would go through those withdrawals. So you were careful about writing -- you know, taking your prescriptions every 12 hours like clockwork. Could not deviate. Because I never wanted to go a 12-hour period or a 24-hour period without the medicine.

Q. Is it fair to say that you always took OxyContin exactly the way Dr. Spanos prescribed it?

A. Absolutely --

MR. VOLNEY: Objection, leading.

BY MR. DUCK:

Q. You can answer the question.

A. I always took OxyContin the way he told me to

day, 7 days a week. It's -- you know, 365 days a year. It was -- that's not what my life was like prior to OxyContin. It was only when I needed help that I sought the medica- -- you know, some type of opioids to take care of -- to relieve the pain when Tylenol and Motrin and those things didn't work, or muscle relaxers.

Q. After you took OxyContin for a period of time, did you become an addict?

A. Yes. Yes, I became an addict. Yes.

Q. Okay. Let's now move onto Clip 3.

A. Click go.

(Video begins.)

"DR. SPANOS: There's another serious misconception, and that's about the medicines that we use for pain. There's no question that our best, strongest pain medicines are the opioids, but these are the same drugs that have a reputation for causing addiction and other terrible things."

THE WITNESS: You think?

"DR. SPANOS: Now, in fact, the rate of addiction amongst pain patients treated by doctors is much less than one percent."

THE WITNESS: Oh, my God.

"DR. SPANOS: They don't wear out. They go on working. They do not have serious medical side

sleepy?

A. I would -- yes, OxyContin was making me drowsy and sleepy. I had other pain medications prior. What I was doing, I didn't have these problems because I didn't take them every single day. So that's the only thing that I can attribute it to, was OxyContin, taking it every day, twice a day for all those years, yes.

Q. And the clip you just watched, Clip 4, did you hear Dr. Spanos say that the side effects of opioids are safe?

A. They're safe, sedation, nausea, constipation. And they subside. You treat the constipation, but the nausea and the sedation usually subside after a week or two, I think he said. After being on the medication, it subsides. But when you're on these high doses of this thing, how could they possibly subside? Well, it didn't for me.

MR. VOLNEY: Objection, non-responsive.

BY MR. DUCK:

Q. You mentioned the three side effects that Dr. Spanos mentioned. Were those sedation, nausea, and constipation?

A. Yes. That's what I believe that's what I heard him say.

Q. And in that clip, and you've seen the

Q. -- in that respect?

A. Exactly. Yes. Uh-uh.

Q. Now, some of the testimony earlier wasn't clear to me, so I want to get an idea of what your history is with using pain medications. And I want to start out first by talking about before 1996. I understand from your testimony you had moderate to severe back pain?

A. Yes.

Q. And for a period of time, you had gone to doctors and obtained prescriptions for pain medications?

A. Uh-huh.

Q. Were any of those pain medications that you were prescribed before you met up with Dr. Spanos, were they narcotic painkillers?

A. Yes.

Q. And were any of those opioid painkillers?

A. Yes.

Q. What were they?

A. Usually, Percodan or Percocet.

Q. Percodan or Percocet?

A. Uh-huh. One has Tylenol. One does not.

Q. And were you given, like, 30-day supplies of those pills?

A. Never. They would never give you a 30-day

supply. Usually, it was -- you get a 10-day supply if you were lucky.

Q. Were you aware --

A. You know, I believe.

Q. -- before 1996 that there was a -- an addiction danger with respect to opioid medications?

A. No.

MR. DUCK: Objection to form.

BY MR. VOLNEY:

Q. No?

A. No.

Q. Had any of the doctors that -- who had prescribed you Percocet or Percodan talked to you about the addiction danger of opioid medications?

MR. DUCK: Objection to form.

A. No. No.

BY MR. VOLNEY:

Q. You -- you testified earlier and then there's part of this transcript --

A. Uh-huh.

Q. -- that's Exhibit 3 where you talked about going to see doctors --

A. Uh-huh.

Q. -- to try to obtain pain medication?

A. Uh-huh.

A. Yes. He gave me the Percocet for break-through pain. He would tell me that he always gave me a prescription for that just to hold and just in case I had break-through pain. It came when -- not in the beginning, but it came when the OxyContin wasn't strong enough, when it started -- became a -- build up a tolerance --

BY MR. VOLNEY:

Q. Right.

A. -- that's when I would take -- that's when I would have that. And then he would increase. And so then I wouldn't have to take the OxyContin -- I mean, the -- yeah, the OxyContin. No, the --

Q. Percocet?

A. -- Percocet. I wouldn't have to. And then when it stopped working again, he gave me that break-through in the middle of the day if I needed to take something until the new dosage built up in me, yes.

Q. Okay. So after you've severed your physician-patient relationship with Dr. Spanos, did you then ever go see any other doctor for the purpose of obtaining pain medication?

A. Absolutely.

MR. DUCK: Objection to form.

BY MR. VOLNEY:

Because I had to get permission, because I had to wear this neck brace and everything, to work from home, become a telecommuter because I couldn't drive. I couldn't turn my head either way. So I could only sit like this and work. So that was, I believe, in 2009.

Q. Okay. Since 2009, have you taken any narcotic painkillers?

A. Yes, yes.

Q. What --

A. I have.

Q. What --

MR. DUCK: Objection to form.

BY MR. VOLNEY:

Q. -- painkillers have you taken?

MR. DUCK: Objection to form.

A. Percocet.

BY MR. VOLNEY:

Q. Percocet?

A. Yes.

Q. And how often do you take Percocet?

A. Currently? Or do you want to know from that time or you want to know as of today, right now?

Q. Give me the progression --

A. Okay.

Q. -- from 2009.

Q. And that's not restricted just to OxyContin, correct?

A. It is not restricted. From all the articles that I've read and everything that I can get my hands on, it's not just restricted to OxyContin. It's fentanyl, and then there's this new one that they've just came out that is even ten times stronger than fentanyl. And it's -- but you never heard about this crazy stuff when you were on these small doses of Percocets and Percodans and never had an issue.

Q. So my question is, though, despite knowing those risks being applicable to opioids generally, you continue to take opioid medications for your chronic pain, correct?

A. I do.

MR. DUCK: Objection to form.

A. I do.

BY MR. EHSAN:

Q. Because you and your doctor have made a decision that it's the -- benefits outweigh the risks?

A. Absolutely.

MR. DUCK: Objection to form.

A. At this point, yes.

BY MR. EHSAN:

Q. And that's a decision you would like to be