



IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA  
STATE OF OKLAHOMA  
CLEVELAND COUNTY, OKLAHOMA

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

Plaintiff,

v.

PURDUE PHARMA L.P.; *et al.*

Defendants.

FILED  
APR 01 2019

In the office of the  
Court Clerk MARILYN WILLIAMS

For Judge Balkman's  
Consideration

Case No. CJ-2017-816  
Honorable Thad Balkman

William C. Hetherington  
Special Discovery Master

**OBJECTION TO SCHEDULE CHANGES  
AND REQUEST TO BE HEARD**

Come now the Teva and Actavis defendants and respectfully object to the schedule of pretrial proceedings the parties received from the Court on Friday, March 29. Further, the defendants asks the Court to confirm to the parties that it will not cancel the hearing currently scheduled for April 11.

**A. OBJECTION**

On Friday, March 29, the parties received a notice regarding the schedule for certain pretrial events, and a copy is attached as Exhibit 1. The defendants renew and continue their objection to starting trial on May 28, 2019. The untenable nature of the schedule is yet another indication that there is not time to get this case ready for trial by May 28. Anticipating that the Court will not want to postpone the trial date, the defendants set forth more specific objections below and request that the Court consider the objections in making scheduling decisions.

1. Daubert First. The Daubert motions should come before the dispositive motions. For certain of the dispositive motions, those motions will be dependent upon the outcome of Daubert motions. Depending upon how the court rules on a Daubert motion, some or all of the State's claims could be subject to dismissal. The defendants are already prejudiced because the schedule does not allow the Daubert motions to be decided before the deadline for making dispositive motions. The defendants will be further prejudiced if all the dispositive motions are considered first, without the parties or the Court knowing what will happen with respect to Daubert motions.

2. Daubert Response Time. The schedule provides Daubert motions to be due on Thursday, May 9 with responses due Monday, May 13, and Daubert hearings starting Tuesday, May 14. The time for response is one business day. On March 1, 2019, the Court held a hearing by telephone on the State's request to cancel a hearing date on April 18 for Daubert motions. In response to the defendants' argument that there could be as many as 35 Daubert motions, Tr. 3/1/19 at p. 12 and 15, the State argued that there would be fewer Daubert motions than anticipated because the State would not file any. "MR. WHITTEN: \* \* \* But the plaintiffs are going to have no Daubert motions . . . ." Tr. 3/1/19 at p. 15. The Court granted the motion and postponed the hearing date into May. Now, the Court should hold the State to its representation that it will have no Daubert motions. The Court and other litigants are entitled to rely on a party's representations to the Court. *Barringer v. Baptist Healthcare*, 2001 OK 29, 22 P.3d 695, 699, *see also Vehicle Mkt. Research v. Mitchell*, 767 F.3d 987, 992-93 (10<sup>th</sup> Cir. 2014) (Judicial estoppel prevents a party from "changing positions according to the exigencies of the moment."). If the Court will hold the State to its representation that it will have no Daubert motions, the defendants have no objection to the response time set forth. If the Court will not hold the State to its

representation, then the defendants object that a Daubert response time of one business day is insufficient.

3. No Provision for Daubert Witnesses. It is not unusual that a court will need testimony in connection with a Daubert motion. On February 14, 2019, in discussing scheduling issues with the Court, the defendants asked that the Court provide notice of which witnesses the Court would want to hear from, and the Court, without objection, agreed to do so. Tr. 2/14/19 at p.81. For Daubert motions filed Thursday, May 9, and responded to Monday, May 13, there will not be time for the Court to read the briefs, decide if it needs live testimony, and have the relevant expert in Norman to testify when Daubert hearings start on May 14.

4. No Deposition Designation Schedule. The schedule makes no provision for designation of deposition testimony to be used at trial and for ruling on objections to that testimony. The objections to deposition testimony must be ruled on in advance of trial outside the hearing of the jury. It is not only important in order to avoid prejudice to the defendants, but is required by law. “In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being presented to the jury by any means . . . .” 12 O.S. 2104(C) Further, the schedule must allow time for the videos to be edited according the rulings of the Court and distributed to the parties to review the edits in advance of the video being played in front of the jury. The Teva and Actavis defendants have separately moved for the Court to implement a Deposition Designation Protocol and incorporate those arguments here.

5. In Limine Must Precede Deposition Rulings. Many of the objections to deposition testimony will hinge upon rulings to be made on motions in limine. Thus, the motions in limine need to be ruled upon before the process of ruling on deposition testimony is completed. Because in limine motions will not be completed until one business day before trial, there will not be time

to (a) make rulings on deposition testimony, (b) edit the videos in accordance to those rulings, and (c) distribute the edited videos to the other parties for review in advance of being published to the jury.

**B. APRIL 11 HEARING**

Anticipating another motion of the State to cancel a hearing, the defendants request that the Court confirm it will not cancel the hearing set for April 11. First, the court cancelled the hearing scheduled for March 14 at the plaintiff's request and over the defendants' objection. The matters to be heard that day have now been pushed to the hearing on April 11. The Court should not cancel that hearing also.

Second, there are important matters to be decided on April 11:

1. On February 26, Cephalon, Inc. filed a motion for partial summary judgment arising from the Release the State gave Cephalon as part of an earlier settlement of the same issues presented here. That motion is briefed, is not dependent on a Daubert motion, and is ready for hearing.

2. The Actavis defendants moved for summary judgment because generic manufacturers do not promote generic opioids. That State's response is due Monday, April 1. That motion is not dependent on a Daubert motion, and will be ready for hearing.

3. On February 21, the defendants moved to have the trial held at O.U. Law School. That motion is briefed and ready for hearing.

4. The Teva and Actavis defendants moved for severance on February 26. The State failed to file a response brief on March 22 as ordered. On March 28, the Court ordered the State to respond by April 2. Ex. 2, attached. That schedule allows "briefing to be completed, leading to the April 11, 2019 hearing date on all severance and consolidation motions." Order, 3/28/19 at p.1.

5. The Teva defendants will file today a Motion for Entry of Order on Deposition Designation Protocol. Because of the urgency of getting that process started in light of the rapidly approaching trial date, the Court should issue an expedited ruling on that motion. However, if the Court has not granted the motion before April 11, the Court should hear from the parties on that issue.

6. The Court should issue an expedited ruling on the issues addressed in this brief because of the urgency of the scheduling issues. However, if the Court has not addressed the scheduling issues before April 11, the Court should hear from the parties on those issues.

**C. CONCLUSION**

In *Bell v. Burson*, 402 U.S. 535, 541-542 (1971), the Court held that “The hearing required by the Due Process Clause must be ‘meaningful’ and ‘appropriate to the nature of the case.’” Citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) and *Mullane v. Central Hanover Bank and Trust*, 339 U.S. 306, 313. In this instance, where the State chose to bring a massive and complex case against thirteen defendants simultaneously, the Court should order a schedule which provides the defendants with meaningful hearings appropriate to the nature of the case.



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was emailed this 1<sup>st</sup> day of April 2019, to the following:

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Robert G. McCampbell

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# **EXHIBIT 1**

## **Robert McCampbell**

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**From:** Welbourne, Jami <Jami.Welbourne@oscn.net>  
**Sent:** Friday, March 29, 2019 3:17 PM  
**To:** Michael Burrage; rwhitten@whittenburrage.com; Mike Hunter; Abbi Slaton; Ethan Shaner; Brad Beckworth; Glenn Coffee; Robert McCampbell; Travis Jett; Nicholas V. Merkley; steven.reed@morganlewis.com; harvey.bartle@morganlewis.com; JEREMY.MENKOWITZ@MORGANLEWIS.COM; brian.ercole@morganlewis.com; Ottaway, Larry; John Sparks; odomb@odomsparks.com; Email;; sbrody@omm.com  
**Subject:** Scheduling filing deadlines and hearing dates

Counsel:

Judge Balkman has asked me to share with you these filing deadlines and hearing dates leading up to the May 28th trial date. Please place these dates on your calendars and advise if there are additional matters that need to be scheduled.

All proposed Juror Questionnaires submitted to the Court and exchanged with opposing parties by April 12. Hearing on Juror Questionnaire April 26th.

All dispositive motions filed by April 19th and briefing completed by May 1st. Hearings on dispositive motions May 6th 9-5.

All Daubert motions filed by May 9th and briefing completed by May 13th. Hearings on Daubert motions May 14th, 16th and 17th.

All Motions in Limine filed by May 16th and hearings on Motions in Limine May 17th, May 23rd, and May 24th.

Thank you,  
Jami

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# **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  
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**

MAR 28 2019

In the office of the  
Court Clerk MARILYN WILLIAMS

ORDER

On March 1, 2019 this Court ordered the parties to submit briefs on the topic of severance and gave the parties a deadline of March 22, 2019 for briefing to be completed, leading to the April 11, 2019 hearing date on all severance and consolidation motions. The State has requested additional time to submit its briefs, citing "convenience of scheduling" and arguing that such an extension will not prejudice any party. The Teva Defendants object to the request, arguing the State has failed to demonstrate cause for an extension and asks the Court to deem their Motion for Severance confessed pursuant to Rule 4(e).

The State's Motion to Extend Briefing Deadlines is not a mere notice as the Teva Defendants claim. The State's two page motion contains a brief argument outlining the reason for its request, an argument which is satisfactory to the Court and therefore the State's Motion to Extend

Briefing Deadlines until April 2, 2019 is GRANTED. The Teva Defendants' objections are overruled and their request to deem their motion confessed is DENIED.

IT IS SO ORDERED!

  
Thad Balkman, District Judge

**CERTIFICATE OF SERVICE**

This is to certify that on the 28th day of March, 2019, a true and correct copy of the above and foregoing instrument was emailed to the following:

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