



APR 16 2019

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

In the office of the
Court Clerk MARILYN WILLIAMS

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

Plaintiff,

For Judge Balkman's
Consideration

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.

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

**STATE OF OKLAHOMA'S MOTION FOR ENTRY OF PROPOSED
SUPPLEMENTAL SCHEDULING ORDER**

Pursuant to the Court's request on April 10, 2019, the State submits the attached proposed supplemental scheduling order (Exhibit A).

The State's proposal takes into account the efficiencies that can be achieved through a bench trial. For example, a bench trial eliminates the need for motions in limine altogether. A motion in limine is a pretrial motion asking the court to prohibit evidence so highly prejudicial that a curative instruction cannot cure the detrimental effect on the jury. *Messler v. Simmons Gun Specialties, Inc.*, 1984 OK 35, 687 P.2d 121. This is why many courts have held that "[i]n a bench

trial, [motions in limine] are unnecessary, as the Court can and does readily exclude from its consideration inappropriate evidence of whatever ilk.” *Carroll v. United States*, 2017 WL 187552, at *1 n.3 (W.D. Okla. Jan. 17, 2017) (quoting *Cramer v. Sabine Transp. Co.*, 141 F. Supp. 2d 727, 733 (S.D. Tex. 2001)); see also *Serby v. First Alert, Inc.*, 2015 WL 4494827 (E.D.N.Y. July 22, 2015) (the risk of juror confusion or potential prejudice is not a factor in a bench trial, negating the usefulness of motions in limine). Further “[i]f the judge is the trier of fact, the prejudice arises through the motion in limine itself. For this reason, motions in limine are usually ineffective to avoid prejudice in bench trials. In addition, in bench trials, trial judges are frequently unwilling to exclude evidence. If they ultimately determine that the evidence is inadmissible, they can disregard it when formulating the findings of fact. This factor also militates against use of motions in limine in bench trials.” Judge Robert E. Bacharach, *Franchising Law Symposium: Developments in Oklahoma Law: Motions in Limine in Oklahoma State and Federal Courts*, 24 OKLA. CITY U.L. REV. 113, 117 (1999).

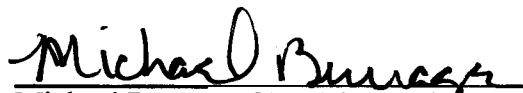
Likewise, the State’s proposal limits the total number of hearings required to prepare this case for trial. To the extent additional hearings are required for *Daubert* or Motions in Limine, those hearing should be streamlined for the reasons described above.

Finally, Defendants propose that the pre-trial deadline for the Exhibit List be final and that neither party be allowed to admit any exhibit into evidence not included on that list. As the Court is aware, there is an enormous amount of discovery in this case. While the State agrees that both sides should make a good faith effort to identify the exhibits they intend to present at trial by the proposed deadline, limiting the parties to that list is unnecessarily restrictive. This case is extremely complex, and the parties should be allowed to respond to new issues as they arise during

trial. Thus, the State proposes that the parties be allowed at trial to present additional documents produced by the opposing party, pursuant to the Oklahoma Rules of Evidence.

For the reasons described herein, the State respectfully requests the Court adopt the State's proposed supplemental scheduling order.

DATE: April 16, 2019


Michael Burrage, OBA No. 1350
Reggie Whitten, OBA No. 9576
J. Revell Parrish, OBA No. 30205
WHITTEN BURRAGE
512 N. Broadway Avenue, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: mburrage@whittenburrage.com
rwhitten@whittenburrage.com
rparrish@whittenburrage.com

Mike Hunter, OBA No. 4503
ATTORNEY GENERAL FOR
THE STATE OF OKLAHOMA
Abby Dillsaver, OBA No. 20675
GENERAL COUNSEL TO
THE ATTORNEY GENERAL
Ethan A. Shaner, OBA No. 30916
DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246
Emails: abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Michael Angelovich, *pro hac vice*
Lisa Baldwin, OBA No. 32947
Trey Duck, OBA No. 33347
Drew Pate, *pro hac vice*
Brooke A. Churchman, OBA No. 31964
Nathan B. Hall, OBA No. 32790

Ross Leonoudakis, *pro hac vice*
Robert Winn Cutler, *pro hac vice*
Cody Hill, *pro hac vice*
NIX PATTERSON, LLP
512 N. Broadway Avenue, Suite 200
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: bbeckworth@nixlaw.com
jangelovich@nixlaw.com
mangelovich@nixlaw.com
lbaldwin@nixlaw.com
tduck@nixlaw.com
dpate@nixlaw.com
bchurchman@nixlaw.com
nhall@nixlaw.com
codyhill@nixlaw.com

Glenn Coffee, OBA No. 14563
GLENN COFFEE & ASSOCIATES, PLLC
915 N. Robinson Ave.
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on April 16, 2019 to:

Johnson & Johnson, Janssen Pharmaceuticals Inc, Ortho McNeil Janssen Pharmaceuticals Inc., Janssen Pharmaceuticals Inc., Janssen Pharmaceutica Inc.:

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

O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Larry D. Ottaway
Amy Sherry Fischer
FOLIART, HUFF, OTTAWAY &
BOTTOM
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, OK 73102

Michael Yoder
Jeffrey Barker
Amy J. Laurendau
O'MELVENY & MYERS LLP
610 Newport Center Drive
Newport Beach, CA 92660

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

Daniel J. Franklin
Ross Galin
Desirae Krislie Cubero Tongco
Vincent Weisbnad
O'MELVENY & MYERS LLP
7 Times Square
New York, NY 10036

Charles C. Lifland
Jennifer D. Cardelus
Wallace M. Allan
Sabrina H. Strong
Esteban Rodriguez
Houman Ehsan

Amy Riley Lucas
Jessica Waddle
O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 9006

Allergan Plc, Actavis Plc, Actavis Inc., Watson Laboratories Inc., Watson Pharmaceuticals Inc., Actavis Llc, Actavis Pharma Inc., Watson Pharma Inc.:

Robert G. McCampbell
Travis J. Jett

Nicholas V. Merkle
Ashley E. Quinn

Jeffrey A. Curran
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson
Oklahoma City, OK 73102-7255

Brian M. Ercole
Martha Leibell
Melissa Coates
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131

Steven A. Reed
Harvey Bartle IV
Jeremy A. Menkowitz
Evan K. Jacobs
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

Mark A. Fiore
MORGAN, LEWIS & BOCKIUS LLP
502 Carnegie Center
Princeton, NJ 08540

Steven Andrew Luxton
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Michael R. Berman

**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

[PROPOSED] SUPPLEMENTAL SCHEDULING ORDER

Event	Deadline
Daubert motions for April 26 hearing	April 16, 2019 at noon
Parties to exchange list of witnesses to be called live including the identities of any corporate witnesses Defendants will have available during Plaintiff's case in chief, with copy to Court	April 19, 2019 at 4:00 p.m.
Responses due for Daubert motions to be heard April 26	April 23, 2019 at noon
Dispositive motions deadline	April 23, 2019
Hearing	April 26, 2019

EXHIBIT

tabbles

A

Witness lists deadline	April 26, 2019
Responses to dispositive motions due	May 3, 2019
Hearing	May 6, 2019
Deposition Designations due	May 8, 2019
Exhibit lists deadline*	May 13, 2019
Stipulations to be filed by the parties	May 13, 2019
Deposition counter designations due	May 14, 2019
Hearing	May 16, 2019
Objections to deposition counter designations due	May 20, 2019
Trial briefs due	May 21, 2019

*Any document produced by a Party in the litigation may be used at trial subject to the Oklahoma Rules of Evidence.

IT IS SO ORDERED April ____, 2019.

JUDGE OF THE DISTRICT COURT