

SEALED



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

SEALED

STATE OF OKLAHOMA, S.S.
CLEVELAND COUNTY
FILED In The Court Consideration
Office of the Court Clerk
MAY 02 2019

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

DEFENDANTS TEVA PHARMACEUTICALS USA, INC.,
CEPHALON, INC., WATSON LABORATORIES, INC., ACTAVIS LLC,
AND ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.'S
MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

EXHIBIT 49 FILED UNDER SEAL

EXHIBIT 49

1 preparing for today's deposition.

2 Q. So you don't know?

3 A. I believe --

4 MR. PATE: Object to form, misstates his
5 testimony --

6 Q. Correct? Do you know?

7 MR. PATE: Object to form, misstates his
8 testimony, asked and answered.

9 BY MR. BARTLE:

10 Q. Do you know? Can you tell me today as you
11 sit here, not -- which Teva entity manufactured which
12 pharmaceutical on that list?

13 A. I believe --

14 MR. PATE: Object to the form, asked and
15 answered.

16 Q. Can you do it today?

17 A. I believe --

18 Q. Can you tell --

19 MR. PATE: Object to form.

20 Q. -- me today?

21 MR. PATE: Can you ask the question just
22 once, Harvey, and let me object and then see if he
23 can answer it?

24 MR. BARTLE: Sure.

25 MR. PATE: You just keep asking it over and

1 over.

2 MR. BARTLE: Because he doesn't answer it.

3 MR. PATE: You're not even giving him a
4 chance to answer. Every time I object, you just ask
5 it again.

6 MR. BARTLE: Do you want me to ask it again?

7 THE WITNESS: You --

8 MR. PATE: Let me ask the question. Let's
9 get a clean record.

10 BY MR. BARTLE:

11 Q. Can you, sitting here today as the corporate
12 rep of Oklahoma, identify on that list which Teva
13 entity manufactured which product?

14 MR. PATE: Object to form, asked and
15 answered. Go ahead, Doctor, one more time.

16 A. The distinction between the different Teva
17 entities that manufacture different products, that's
18 a legal distinction. I'm -- I'm not a lawyer.

19 I believe that the answer to your question,
20 the -- the facts that can answer your question, the
21 sources are in Exhibit 3. There's quite a bit in
22 Exhibit 3, as you know. I have not memorized
23 everything in Exhibit 3, so, no, I am not able to
24 point to a specific opioid on this list and tell you
25 which Teva entity manufactured it.

1 Q. That's all you had to tell me five minutes
2 ago, and we'd be done.

3 MR. PATE: Well, let's just move on.

4 BY MR. BARTLE:

5 Q. Do you have Exhibit 12, Doctor, in front of
6 you?

7 A. I don't. Just give me a second. These are
8 a little bit out of order -- maybe not.

9 MR. PATE: They should be in order.

10 THE WITNESS: I think they are in order.
11 Thank you. Okay, that's good. Yes, I -- I do have
12 that. Let me just put this back in order, though.
13 Hold on a sec. Just a second. Okay, I'm ready.

14 Q. Okay. Was this doc -- was this document
15 ever received by the State of Oklahoma?

16 A. If you're asking me whether or not this
17 document was sent to an Oklahoma government agency,
18 I'm not -- I -- I don't know. It's possible that
19 within the many documents that we've received from
20 you, it's possible somewhere in Exhibit 3, we could
21 find evidence that this was, in fact, sent to an
22 Oklahoma government agency, but I'm -- I can't point
23 to a specific example where your client sent this to
24 the -- the State of Oklahoma.

25 Q. And when you're talking about my client,

1 influenced by a multifaceted campaign, and I --

2 Q. I'm only asking about Actavis Pharma.

3 A. -- I under -- I'm answering your question
4 about Actavis.

5 Q. No. Actavis Pharma. Actavis Pharma,
6 Doctor. If you don't know what Actavis Pharma did,
7 just say you don't know and we'll move on.

8 A. I --

9 Q. But if you know --

10 MR. PATE: That's not what he's saying.

11 Q. -- what Actavis Pharma did, not Actavis
12 Inc., not Actavis LLC, not Actavis PLC, not Allergan.
13 What -- I'm asking you about Actavis Pharma. So, if
14 you don't know about Actavis Pharma, just say, "I
15 don't know," and we'll move on.

16 A. So --

17 MR. PATE: Object to -- Hold on. That's not
18 a question. Let him ask his questions.

19 Q. Between 2007 and 2016, what facts does the
20 State of Oklahoma have that Actavis Pharma caused to
21 be submitted the 245 prescriptions for reimbursement
22 to the Oklahoma Health Care Authority identified in
23 paragraph 37 of the petition?

24 MR. PATE: Object to form, asked and
25 answered. Go ahead.

1 A. So, on Exhibit 3 are the sources for the
2 facts that you're asking for.

3 Q. Okay.

4 A. And there's quite a lot that goes into
5 Exhibit 3, and within Exhibit 3, within all of these
6 sources, are -- are facts that I believe can answer
7 your question. I have not memorized all of these
8 sources. I don't have all of these facts.

9 And I've described for you one example today
10 of marketing by Actavis that could have influenced
11 the prescribing of a Cephalon product in 2007 -- or
12 between 2007 and 2016, and I've explained that the
13 prescribing of opioids in the state of Oklahoma, that
14 the -- the change in the culture of prescribing that
15 would lead a doctor to prescribe a dangerous
16 immediate-release transmucosal fentanyl product to
17 someone much more likely to be harmed by the product
18 than helped by it, that change in the culture of
19 prescribing was not about the specific actions of a
20 specific drug company promoting a specific product.
21 It was a multifaceted campaign that would influence
22 that prescribing. And it really isn't possible to
23 point to what it was that got a doctor to
24 inappropriately prescribe your client's product.

25 The fact is, that most of those patients who

1 were prescribed transmucosal immediate-release
2 fentanyl products were not people with -- who were
3 opioid-tolerant, with breakthrough cancer pain. And
4 so, we know that the prescribing was inappropriate.
5 So the question is, Why did these doctors prescribe
6 inappropriately? Why did they do that?

7 And I don't think the answer to that
8 question boils down to a specific false promotion by
9 Cephalon for that specific product. I think the
10 reason these doctors who wanted to help their
11 patients actually harmed them is because they were
12 influenced by a multifaceted campaign.

13 MR. BARTLE: Got it. So --

14 MR. HARDY: Objection, nonresponsive.

15 MR. BARTLE: -- I'm going to object to that,
16 too, but let's go back to my question.

17 BY MR. BARTLE:

18 Q. As you sit here today, say for the documents
19 listed in Exhibit 3, which you say contain the facts,
20 are you aware of any facts -- State of Oklahoma aware
21 of any facts that Actavis Pharma took any action that
22 caused to be submitted, to the Oklahoma Health Care
23 Authority, the 245 prescriptions listed in paragraph
24 37?

25 MR. PATE: Object to form, asked and

1 answered. He just answered the question.

2 MR. BARTLE: He didn't answer it. He
3 didn't.

4 MR. PATE: You guys don't like the answer.
5 You can say nonresponsive --

6 MR. BARTLE: It's not that I don't like the
7 answer --

8 MR. PATE: -- all you want but --

9 MR. BARTLE: I'm telling you, we could get
10 through this very quickly.

11 MR. PATE: I'm not going to get into it with
12 you guys. Just ask your questions; I'll make
13 objections, all right? Asked and answered.

14 BY MR. BARTLE:

15 Q. Prior to 2016, as you sit here today, can
16 you identify for me specific facts that support the
17 assertion that Actavis Pharma caused to be submitted
18 approximately 245 prescriptions for reimbursement
19 identified through the Oklahoma Health Care Authority
20 that are identified in paragraph 37?

21 MR. PATE: Object to form, asked and
22 answered.

23 A. So, I think the question that you're asking,
24 for me to answer it -- For example, if I were to say
25 no, which I'm not saying. But the -- the answer to

1 influenced, and caused to be submitted to the
2 Oklahoma Health Care Authority, the 245 prescriptions
3 for reimbursement?

4 A. No, that is not --

5 MR. PATE: Object to form, misstates his
6 testimony. Go ahead, Doctor.

7 A. That is not what I'm saying. I'm saying
8 I've got facts, lots of facts, and they're in
9 Exhibit 3, and I have not memorized all of these
10 facts. So, I believe that, in giving you Exhibit 3,
11 I'm giving you these facts. If the -- you're asking
12 me whether I have memorized a fact that can respond
13 to this question, the answer is no.

14 Q. Are there facts outside of Exhibit 3?

15 A. Yes, I believe there are facts outside of
16 Exhibit 3.

17 Q. What facts are those?

18 A. I think that there are actions that have
19 been taken by your client and your clients and -- and
20 by other opioid manufacturers that may not yet have
21 been provided to the State of Oklahoma, or that are
22 not -- were not discovered by the State of Oklahoma.

23 Q. Can you turn to paragraph 40 on page 10?

24 A. (Witness complies.) Yes.

25 Q. What conduct by -- When did Watson cause

1 Oklahoma private insurers, businesses, and consumers
2 to pay millions of dollars for unnecessary and
3 excessive opioid prescriptions?

4 MR. PATE: Object to form, asked and
5 answered.

6 A. I'm -- I'm sorry. Were -- did you ask
7 about, specifically about, Watson?

8 Q. Yep. When did Watson's conduct cause
9 Oklahoma private insurers, businesses, and consumers
10 to pay millions of dollars for unnecessary or
11 excessive opioid prescriptions?

12 MR. PATE: Object to form, asked and
13 answered.

14 A. So, to answer about a question about the
15 role that a specific drug maker, the role that it may
16 have played in influencing opioid prescribing or in
17 causing Oklahoma private insurers, businesses and
18 consumers to pay millions of dollars for unnecessary
19 and -- or excessive opioid prescriptions, to answer
20 the role -- to answer the question about the role
21 that a particular drug maker may have played, the
22 answer to that question would be misleading to
23 people.

24 It would mislead a jury because the
25 excessive opioid prescribing, the millions that were

1 paid by private insurers and businesses and consumers
2 in the state of Oklahoma, they were not a response to
3 a specific action by a specific drug maker. They
4 were a response to a multifaceted campaign that went
5 beyond the actions taken by a specific drug company.

6 MR. HARDY: Objection, nonresponsive.

7 Q. Can you tell me when Watson Laboratories
8 conduct caused Oklahoma private insurers, businesses,
9 or consumers to pay millions of dollars for
10 unnecessary or excessive opioid prescriptions?

11 MR. PATE: Objection, asked and answered.

12 BY MR. BARTLE:

13 Q. No, you didn't. I'm asking you, Can you
14 tell me when?

15 MR. PATE: Objection, asked and answered --

16 A. Tell you when. You would like --

17 MR. PATE: -- outside the scope.

18 A. Are you asking me to give you a specific
19 date and time when Watson engaged in an action that
20 led to excessive prescribing of opioids in the state
21 of Oklahoma?

22 Q. No. I'm asking you to tell me a specific
23 instance of Watson Laboratories' conduct causing
24 Oklahoma private insurers, businesses, and/or
25 consumers to pay million of dollars for unnecessary

1 opioid prescriptions.

2 A. You're asking about a specific conduct --

3 Q. Yes.

4 A. -- taken by -- by Watson.

5 I'm not able to point to more examples than
6 I've already provided about the actions that Watson
7 may have taken or that about Watson's contribution to
8 this multifaceted campaign. I -- so, I -- I don't
9 have more examples to share with you about Watson's
10 specific role. I do believe that the question you're
11 asking, the answer to it would mislead people.

12 Q. Well, that's -- The question of whether or
13 not it'll mislead people is -- is -- is not for you
14 to decide. You just have to answer my question.

15 A. Okay.

16 Q. So, can you point to me, as you sit here
17 today, to the date of specific conduct by Watson
18 Laboratories that caused Oklahoma private insurers,
19 businesses and consumers to pay millions of dollars
20 for unnecessary or excessive opioid prescriptions?

21 MR. PATE: Object, asked and answered.

22 A. I don't believe that excessive opioid
23 prescribing was caused by a single company promoting
24 a single product. I think it was caused by multiple
25 opioid makers participating in a campaign to change

1 the culture of a prescribing.

2 Q. Have you -- In preparation for your
3 deposition today, did you talk to any representatives
4 from a private insurer in Oklahoma?

5 A. To prepare for today's deposition, I did not
6 speak with any private insurers about the excessive
7 opioid prescribing that they paid for.

8 Q. Did the State of Oklahoma talk to private
9 insurers in connection with conduct by Watson that
10 caused those private insurers to pay millions of
11 dollars for unnecessary or excessive opioid
12 prescriptions?

13 MR. PATE: Object to form, calls for
14 speculation. That's outside the scope of this
15 deposition.

16 MR. BARTLE: It's not outside the scope.
17 I'm allowed to ask about the factual basis of the
18 claims my clients that are in the petition.

19 MR. PATE: That's not what you asked him,
20 though, so same objection.

21 A. I don't know whether or not anyone from the
22 State of Oklahoma asked a private insurer about the
23 role that Watson played in the campaign to change the
24 culture of opioid prescribing in the United States.

25 BY MR. BARTLE:

1 Q. Is the -- is that -- is that the same answer
2 you would give if I asked you about the other four
3 Teva entities?

4 MR. PATE: Same objection. It's outside the
5 scope.

6 A. Yes.

7 Q. And when you say inappropriate medical --
8 You said the word -- You used the phrase
9 inappropriate opioid prescriptions throughout today,
10 haven't you, Doctor?

11 A. I have.

12 Q. And we talked yesterday, off-label
13 prescribing is not illegal, correct?

14 A. The prescribing of opioids is not illegal.

15 Q. Well, off-label -- You know what off-label
16 prescribing is, correct?

17 A. Yes, I know what off-label prescribing is.

18 Q. And a doctor is legally allowed, under the
19 law of Oklahoma, to prescribe an opioid off-label,
20 correct?

21 A. A doctor in the state of Oklahoma is allowed
22 to prescribe a medication off-label.

23 Q. And a doctor should only do so if he or she
24 believes that it's an appropriate prescription,
25 correct?

1 criminally promoting Actiq.

2 Q. Are you aware of any -- Exhibit 33, are you
3 aware of any doctor in the state of Oklahoma who's
4 seen that document?

5 A. So, this is a document that describes a way
6 in which your client wanted to illegally promote its
7 product, and so I highly doubt your client would have
8 wanted to -- a doctor to -- to see this.

9 Q. So answer my question.

10 A. No.

11 Q. Are you aware of any doctor who's seen that
12 document?

13 A. No, I don't know of any doctor in the state
14 of Oklahoma who has seen this internal communication.

15 Q. Are you aware of any --

16 MR. PATE: Are you talking about the email
17 or the attachment?

18 MR. BARTLE: Both.

19 A. Oh, I'm sorry. I can't speak to whether or
20 not a doctor would have seen the attachment to this
21 email. I'd -- So, it is -- it is certainly possible
22 that this email was shared -- Oh, and I believe,
23 actually, it may have been shared with doctors in the
24 state of Oklahoma.

25 Q. Has any doctor told you that they've seen

1 the second page of Exhibit 33?

2 A. No doctor in the state of Oklahoma called me
3 in 2005 and said, "Dr. Kolodny, I'm looking at this
4 deceptive information disseminated by Cephalon."
5 That -- I never got a call like that, as far as I can
6 tell, in 2005. I can't see why any doctor in
7 Oklahoma would have thought to give me a call to tell
8 me they were looking at this.

9 Q. Well --

10 A. But the answer --

11 Q. -- in preparation --

12 A. -- to your question is no.

13 Q. Well, in preparation for your deposition,
14 did you talk to any doctor who's seen the pamphlet
15 that's attached to Exhibit 33?

16 A. In preparation for this deposition, I didn't
17 contact any doctors and ask them whether or not they
18 had seen that document before.

19 Q. And what about patients? Did any patient --
20 In preparation for your deposition today, did you
21 talk to any patients who've seen the documents
22 attached to Exhibit 33?

23 A. I'm sorry. Can you repeat the question?

24 Q. In preparation for your deposition today,
25 did you speak to any patient who told you they saw

1 the document attached to Exhibit 33?

2 A. No, I have not talked with any patients who
3 have seen that document.

4 Q. And Exhibit 34, are you aware of any doctor
5 in the state of Oklahoma that's seen that document?

6 A. Exhibit 34 is an internal communication
7 outlining the way in which your sales force was
8 encouraged to encourage prescribers to prescribe its
9 products aggressively, and so this was not intended
10 for -- for doctors in Oklahoma to see.

11 But, no, no doctor in the state of Oklahoma
12 has told me that they saw an internal email from
13 Cephalon outlining how the sales force would be
14 compensated. And I suspect that many doctors in
15 Oklahoma would be surprised to learn that they were
16 targeted, and that the sales reps who were visiting
17 them were receiving a commission based on their
18 prescriptions. I think it would have surprised them
19 to see this. But, no, no doctor in the state of
20 Oklahoma has ever told me that they saw this internal
21 communication.

22 Q. Has any patient --

23 MR. PATE: Here's copies for you now.

24 Q. -- any patient in the state of Oklahoma --

25 A. I --