



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 }
CLEVELAND COUNTY } S.S.

FILED

APR 09 2019

In the office of the
Court Clerk MARILYN WILLIAMS

TEVA'S BRIEF ON SCHEDULING AND TRIAL ISSUES

Come now the Teva defendants and the Actavis defendants and submit this brief following up on the hearing before this Court on April 4, 2019.

I. JURY SUMMONS ISSUE

The parties are informed that jury the summonses have been sent for the May 28, 2019 trial date. On April 4, 2019, the State filed a Notice of Voluntary Dismissal of Certain Claims Without Prejudice ("Dismissal"). Based upon the Dismissal, the Teva and Activas defendants assume the

State is in agreement that (1) the State is not seeking punitive damages, (2) the State is not seeking future damages, and (3) that the alleged nuisance is not a permanent nuisance. That being the case, the Teva and Activas defendants have no objection to notifying the summoned jurors they will not be necessary. If any of these assumptions are incorrect, that could materially change the Teva and Activas defendants' position.

II. SEVERANCE

The Teva and Actavis defendants moved to be severed from all the remaining defendants in a Motion for Severance filed on February 26, 2019. The Johnson & Johnson defendants have likewise asked to be severed from Teva in a brief filed on March 22. The position of the Teva and Actavis defendants on severance has not changed as a result of the State's Dismissal filed April 4. The Teva and Actavis defendants request that the Court take up the severance issues at the hearing scheduled for April 11.

III. SCHEDULING ISSUES

The Teva and Actavis defendants hereby renew their objections that this case cannot be ready for trial on May 28, 2019, and a continuance is necessary. Anticipating that the Court does not want to entertain further argument regarding the trial date in this brief, this brief turns to additional issues.

A. DISCUSSION

A non-jury is more efficient. For example, some testimony can be presented on paper, some explanatory testimony which would be necessary for a jury, will not be necessary for the Court, etc. Also, many motions in limine will not be necessary. That said, for a trial of the size, complexity, and number of defendants at issue here, there remains a need for (1) a detailed scheduling process in order to get the case prepared for trial on May 28, and (2) a meaningful motion procedure.

Daubert hearings remain necessary because some Daubert rulings will be relevant to dispositive motions. Also, hours and perhaps days of testimony may be unnecessary if a particular expert is to be excluded. Further, as was evident in the State's comments at the hearing on April 4, there is uncertainty on whether experts relevant to the False Claims Act claims (Drs. Beaman and Gibson) may be offered at trial as witnesses nevertheless. There may be additional uncertainties as well. Daubert hearings will therefore be a valuable tool for the Court and the parties to determine in advance what will be allowed in the way of expert testimony.

Motions in limine will be significantly reduced if there is no jury. There will still be a need for motions in limine, however. There will be significant issues on which the parties will want to brief the Court about whether particular evidence should or should not be considered by the Court. Further, if certain evidence is going to turn out to be inadmissible based on a motion in limine, it is more efficient for the Court and the parties to know that before hearing hours of irrelevant testimony.

The **deposition designation and counter designation** process is easier without a jury. Nevertheless, there needs to be a process. The Court will not need to read or watch all of a witness's deposition. Much of the testimony is unquestionably irrelevant. Thus, there must be a process for the party offering the deposition to offer the specific portions it wants. Correspondingly, there needs to be a process for the other parties to counter designate portions they want the Court to review. Finally, there must be of a process for the parties to note objections to the testimony.

Dispositive motions remain a vital part of the process. First, it makes no sense for the Court to spend significant amounts of time and energy hearing testimony relating to a defendant that will be dismissed as a matter of law, for example. Second, the parties will want to brief the Court on the applicable law regarding whether there is any need to go forward in that respect.

B. CONDITIONS

The proposal below assumes the following conditions are acceptable to the Court:

1. The State, as it has previously announced twice, will not have Daubert motions.
2. Deposition designation dates are incorporated into the remaining schedule.
3. Requests for Admissions on document authentication which specifically identify the particular documents to be authenticated will be responded to within 15 days
4. The parties will email everything to each other the same day it is filed and filings will be made on or before the due date.
5. Exhibit lists will include bates numbers or copies of each exhibit.

C. PROPOSED SCHEDULE

The proposed schedule set forth below assumes this will be a non-jury trial. If it is to be a jury trial, this schedule will not work. The entire schedule would need to be moved earlier in time so that motions in limine and deposition designations can be dealt with earlier and completed on time for a jury trial.

Subject to the objections and conditions:

1. Wednesday, April 10
 - a. Daubert motions for April 26 hearing are due.
2. Thursday, April 11—Hearing
 - a. Actavis Motion for Summary Judgement regarding Generics
 - b. Motion to Sever
 - c. Motion to move trial to OU Law School
 - d. Teva's Objection to Discovery Master's Refusal to Compel Deposition on Corporate Representative Topic No. 17
3. Thursday, April 18
 - a. Responses due for Daubert motions to be heard April 26
4. Friday, April 19

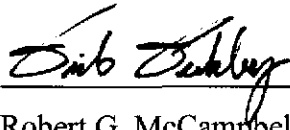
- a. Any additional Daubert motions due
5. Tuesday, April 23
 - a. Witness lists deadline
 - b. Dispositive motions deadline
6. Friday, April 26
 - a. Hearing on Daubert motions
 - b. Hearing on other matters as appropriate
 - c. Exhibit lists deadline
 - d. Motions in limine deadline
7. Monday, April 29
 - a. Responses to remaining Daubert motions due
8. Friday, May 3
 - a. Designation of witnesses to appear in person
 - b. Responses to in limine deadline
 - c. Responses to dispositive motions due
9. Monday, May 6
 - a. Hearing on second round of Daubert motions
 - b. Hearing on other matters as appropriate
 - c. In limine based on Exhibit and Witness Lists due
10. Thursday, May 9 – afternoon only
 - a. Hearing on dispositive motions
 - b. Hearing on in limine if time permits
11. Friday, May 10
 - a. Deposition designations due
12. Monday, May 13

- a. Stipulations to be filed by the parties
 - b. In limine responses (Exhibit & Witness lists) due
13. Tuesday, May 14
- a. Hearing on dispositive motions
 - b. Hearing on in limine if time permits
14. Wednesday, May 15
- a. Hearing on dispositive motions, if necessary
 - b. Hearing on motions in limine
15. Thursday, May 16
- a. Hearing – Pretrial Conference
16. Friday, May 17
- a. Hearing on outstanding matters
 - b. Deposition counter designations due
17. Tuesday, May 21
- a. Trial briefs due
 - b. Objections to deposition counter designations due
18. Thursday, May 23
- a. Hearing on outstanding matters
19. Friday, May 24
- a. Hearing on outstanding matters

IV. CONCLUSION

The Teva and Activas defendants seek a schedule which (a) is commensurate with the size and complexity of the case the State chose to bring, (b) allows for meaningful consideration of the pretrial motions, and (c) provides a practical path for the lawyers and the Court to get this massive and complicated case ready for trial.

Respectfully submitted,



Robert G. McCampbell, OBA No. 10390
Nicholas ("Nick") V. Merkley, OBA No. 20284
Leasa M. Stewart, OBA No. 18515
Kyle D. Evans, OBA No. 22135
Ashley E. Quinn, OBA No. 33251

GABLEGOTWALS

One Leadership Square, 15th Fl.
211 North Robinson
Oklahoma City, OK 73102-7255
T: +1.405.235.3314

E-mail: RMcCampbell@Gablelaw.com

E-mail: NMerkley@Gablelaw.com

E-mail: LStewart@gablelaw.com

E-mail: JCurran@Gablelaw.com

E-mail: AQuinn@Gablelaw.com

OF COUNSEL:

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

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street
Philadelphia, PA 19103-2921
T: +1.215.963.5000

E-mail: steven.reed@morganlewis.com

E-mail: harvey.bartle@morganlewis.com

E-mail: mark.fiore@morganlewis.com

E-mail: rebecca.hillyer@morganlewis.com

E-mail : evan.jacobs@morganlewis.com

Nancy L. Patterson

MORGAN, LEWIS & BOCKIUS LLP

1000 Louisiana St., Suite 4000
Houston, TX 77002-5006
T: +1.713.890.5195

E-mail: nancy.patterson@morganlewis.com

Brian M. Ercole

Melissa M. Coates

Martha A. Leibell

MORGAN, LEWIS & BOCKIUS LLP

200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
T: +1.305.415.3000
E-mail: brian.ercole@morganlewis.com
E-mail: melissa.coates@morganlewis.com
E-mail: martha.leibell@morganlewis.com

Collie T. James, IV
MORGAN, LEWIS & BOCKIUS LLP
600 Anton, Blvd., Suite 1800
Costa Mesa, CA 92626
T: +1.714.830.0600
E-mail: collie.james@morganlewis.com

Tinos Diamantatos
MORGAN, LEWIS & BOCKIUS LLP
77 W. Wacker Dr.
Chicago, IL 60601
T: +1.312.324.1000
E-mail: tinos.diamantatos@morganlewis.com

Steven A. Luxton
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
T: +1.202.739.3000
E-mail: steven.luxton@morganlewis.com

*Attorneys for Defendants Cephalon, Inc., Teva
Pharmaceuticals USA, Inc., Watson Laboratories,
Inc., Actavis LLC, and Actavis Pharma, Inc. f/k/a
Watson Pharma, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 9th day of April, 2019, to the following:

*Attorneys for
Plaintiff*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Britta E. Stanton
John D. Volney
John T. Cox, III
Eric W. Pinker
Jared D. Eisenberg
Jervonne D. Newsome
Ruben A. Garcia
Russell Guy Herman
Samuel Butler Hardy, IV
Alan Dabdoub
David S. Coale
LYNN PINKER COX & HURST
2100 Ross Avenue, Suite 2700
Dallas, TX 75201

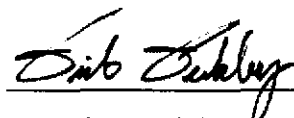
Erik W. Snapp
DECHERT, LLP
35 W. Wacker Drive, Ste. 3400
Chicago, IL 60601

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

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

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

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



Nicholas ("Nick") V. Merkley