



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

JUN 17 2019

In the office of the  
Court Clerk MARILYN WILLIAMS

**THE STATE'S RESPONSE TO DEFENDANTS JANSSEN PHARMACEUTICALS, INC.  
AND JOHNSON AND JOHNSON'S MOTION FOR ORDER PROHIBITING COUNSEL  
FROM MAKING FACTUAL ASSERTIONS COUCHED AS QUESTIONS**

Defendants' Motion is another in a string of filings where Defendants have improperly asked the Court to make blanket rulings without any context or evidentiary support. It is a waste of the Court's time.

Evidentiary rulings on the type of issues raised here depend on the particular content of the evidence and argument, as well as the context in which the party seeks to introduce it. It is simply impossible to make a substantive ruling on any piece of putative questioning, argument, testimony or evidence at this juncture without additional information. Therefore, a blanket ruling of the type Defendants seek here would be premature and improper.

Moreover, the specific line of questioning that prompted this Motion was appropriate and designed to elicit relevant testimony. Defendants' Motion should be denied.

### **ARGUMENT**

First, the State disputes any notion that its questioning of Kimberly Deem-Eshleman regarding the *Growing Pains* website was improper. At the time Ms. Deem-Eshleman was questioned about the site, it had indeed been inaccessible. It was available up until trial started, and then it was not. Thus, there was a factual basis to inquire about what happened to the site. And, as Defendants' corporate representative, the State was permitted to treat Ms. Deem-Eshleman as a hostile witness—meaning it was allowed to ask those question in a leading fashion. (*i.e.*, “isn't it true you all pulled the plug?”). *See* Okla. Stat. tit. 12, § 2611. Therefore, the State's questioning of Ms. Deem-Eshleman was proper.

Second, Defendants have not been prejudiced in any way by such questioning. As the Court has repeatedly reminded defense counsel, if Defendants feel any question is improper, they may object and seek a ruling from this Court on whether such testimony will be allowed. The witnesses (if permitted to answer) can then testify, including testifying on whether they have the requisite knowledge to answer the particular question. Defendants may also clarify that testimony during their turn with the witness—as J&J's counsel has repeatedly reminded the State's witnesses over the past week. Moreover, as the Court has further advised Defendants, Defendants will have the

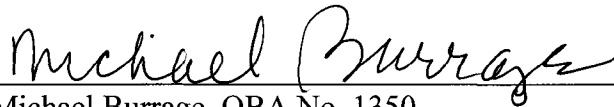
opportunity to rehabilitate any testimony during the presentation of their case. In any event, the Court should (again) refuse Defendants' ongoing request to handcuff the State's case-in-chief and adopt a categorical rule regarding the course of this trial.

Third, Defendants are now attempting to offer blatant hearsay to refute trial testimony. To support their Motion, Defendants attach an affidavit from an individual who apparently resides in Mexico. Motion at Exhibit A. Defendants undoubtedly offer this affidavit for truth of the matters asserted therein and to rebut trial testimony. This is wholly improper. If Defendants want to bring this witness to testify and seek leave to amend their witness list as a result, the State can consider that request. But, as it stands, this affidavit is hearsay and cannot have any impact on trial testimony.

### CONCLUSION

For the foregoing reasons, Defendants' Motion should be denied.

Respectfully submitted,



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