



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

v.

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

Defendants.

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

Case No. CJ-2017-816

JUN 19 2019

Judge Thad Balkman

In the office of the
Court Clerk MARILYN WILLIAMS

**DEFENDANTS JANSSEN PHARMACEUTICALS, INC. AND JOHNSON &
JOHNSON'S OFFER OF PROOF FOR EVIDENCE AND QUESTIONING RELATED
TO THE STATE'S ABATEMENT PLAN IN THE EXAMINATION OF GARY
MENDELL**

Defendants Janssen Pharmaceuticals, Inc. ("Janssen")¹ and Johnson & Johnson ("J&J," and together with Janssen, "Defendants") hereby submit an offer of proof in support of their objection to the State's offering, and the Court's admitting, testimony from Gary Mendell regarding the State's abatement plan.

At his deposition, Mr. Mendell was not prepared to render opinions on the State's abatement plan, depriving Defendants of their opportunity to cross-examine him in preparation for trial. According to Mr. Mendell, "the real issue is looking for an abatement plan for the state and going item by item and saying does this scope of work need to be done to save lives and is the cost . . . reasonably accurate. That's the exercise I would believe would need to be done."² But

¹ "Janssen" also refers to Janssen Pharmaceutical's predecessors, Ortho-McNeil-Janssen Pharmaceuticals, Inc. and Janssen Pharmaceutica, Inc.

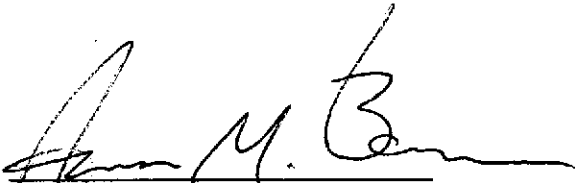
² Mendell Dep. Tr. at 137:13-22.

he admitted that he had not performed this analysis and instead proclaimed that he would “get into this in more detail in the coming months prior to trial.”³

At trial, Mr. Mendell answered numerous questions about the State’s abatement plan⁴— questions he was unable to answer at his deposition. Defendants submit pages 101, 117, 119, 129, 130, 131 and 137 of Mr. Mendell’s deposition transcript as an offer of proof in support of their objection to all evidence and questioning about the State’s abatement plan in the examination of Gary Mendell.

Dated: June 19, 2019

Respectfully submitted,

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³ Mendell Dep. Tr. at 130:9-131:16.

⁴ E.g., June 18, 2019 (am) Trial Tr. at 46:4-51:3, 83:13-86:16.

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Pharmaceutica, Inc. n/k/a Janssen
Pharmaceuticals, Inc., and Ortho-McNeil-
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Janssen Pharmaceuticals, Inc.*

ATTACHMENT

1	contribute to the opioid epidemic?	11:31:40
2	A. Sold or gave? Yes.	11:31:43
3	MR. WHITTEN: I haven't objected	11:31:53
4	once. I am sure you're having a lot	11:31:54
5	of fun. But we are going to move to	11:31:56
6	strike all of this relating to	11:31:58
7	causation.	11:32:00
8	You have his disclosure. He's	11:32:01
9	not going to testify about causation.	11:32:02
10	He's told you that. And you're	11:32:04
11	clearly reading from a script and	11:32:05
12	you're going on all of this causation	11:32:07
13	stuff. I am going to move to strike	11:32:08
14	it all. He's not going to testify	11:32:10
15	about causation. Probably going to	11:32:12
16	move to assess costs as well.	11:32:13
17	Just giving you a chance to save	11:32:15
18	a lot of time. He's going to testify	11:32:17
19	about abatement. That's it. Nothing	11:32:19
20	else.	11:32:21
21	MR. WEISBAND: I appreciate	11:32:25
22	that. I am going to continue with my	11:32:26
23	questioning, and if we have to take	11:32:28
24	anything up with the Court, we can do	11:32:28
25	so.	11:32:30

1 And that's what needs to happen 11:50:24
2 throughout this country, including the 11:50:26
3 State of Oklahoma. The problem is the 11:50:30
4 states don't have the funding to do that. 11:50:38
5 Q. How much is it going to cost to 11:50:46
6 abate the opioid epidemic in the State of 11:50:48
7 Oklahoma? 11:50:54
8 A. I haven't studied the State of 11:50:54
9 Oklahoma. 11:50:56
10 Q. It says in your disclosure that 11:50:56
11 you're expected to testify about the 11:50:58
12 measures and costs to abate the opioid 11:50:59
13 epidemic in the State of Oklahoma, 11:51:02
14 correct? 11:51:03
15 A. Yes. 11:51:03
16 Q. And sitting here today, you 11:51:04
17 can't tell me how much it would cost to 11:51:07
18 abate the opioid epidemic in Oklahoma? 11:51:09
19 A. The trial doesn't begin until 11:51:12
20 May 28th, so I plan to prepare in more 11:51:14
21 detail than I have today. 11:51:19
22 Q. And what do you plan to do to 11:51:21
23 determine the cost to abate the opioid 11:51:24
24 epidemic in the State of Oklahoma before 11:51:28
25 trial? 11:51:29

1	Q.	What is it?	11:52:59
2	A.	It's an abatement plan for the	11:52:59
3		State of Oklahoma.	11:53:19
4	Q.	And you've reviewed this before	11:53:19
5		today's deposition, haven't you?	11:53:21
6	A.	Yes.	11:53:22
7	Q.	How long did you spend	11:53:22
8		reviewing it?	11:53:24
9	A.	About an hour.	11:53:24
10	Q.	Okay. And let's go to the	11:53:28
11		first couple of pages.	11:53:32
12	A.	I would say actually probably	11:53:34
13		an hour and a half.	11:53:37
14	Q.	Okay. And the actual abatement	11:53:38
15		plan is, without exhibits, or with	11:53:47
16		appendixes, 70 pages, single spaced.	11:53:54
17	A.	Yes.	11:54:01
18	Q.	Let's look at the first couple	11:54:02
19		of pages of Christopher Room's	11:54:04
20		disclosure.	11:54:05
21	A.	Okay.	11:54:06
22	Q.	Have you met Christopher Room	11:54:06
23		before?	11:54:08
24	A.	I have not.	11:54:08
25	Q.	Are you familiar with	11:54:10

1	Q.	In your previous answer you	12:05:50
2		referenced an abatement plan for the	12:05:51
3		State of Oklahoma.	12:05:54
4	A.	Okay.	12:05:54
5	Q.	Well, I was going to ask, do	12:05:55
6		you plan on drafting an abatement plan	12:05:57
7		for the State of Oklahoma?	12:05:59
8	A.	No.	12:06:01
9	Q.	Okay. So when you said an	12:06:01
10		abatement plan for the State of Oklahoma,	12:06:04
11		were you referring to Exhibit S?	12:06:06
12	A.	Yes.	12:06:07
13	Q.	And you mentioned that you had	12:06:08
14		a chance to review Exhibit S, and that	12:06:20
15		you had some disagreements with it; is	12:06:24
16		that correct?	12:06:28
17	A.	Not disagreements. I felt	12:06:28
18		there were things missing.	12:06:30
19	Q.	Okay. What did you think was	12:06:31
20		missing?	12:06:33
21	A.	I don't see anything in that	12:06:33
22		plan related to ending or significantly	12:06:35
23		reducing public attitudes, i.e. stigma	12:06:38
24		for residents in the State of -- excuse	12:06:45
25		me, take out the word "residents." For	12:06:47

1 different segments of the population in 12:06:50
2 the State of Oklahoma. 12:06:52
3 Q. Anything else? 12:06:54
4 A. I haven't run the calculation, 12:06:55
5 but I eyeballed the number put in there 12:06:58
6 for providing naloxone where it's needed. 12:07:03
7 And the number looked to me to be very 12:07:06
8 low. 12:07:08
9 Q. Anything else? 12:07:09
10 A. Yes, I also didn't see SBIRT 12:07:13
11 for schools, the way it was done in 12:07:15
12 Massachusetts. 12:07:16
13 I also didn't see identified, 12:07:23
14 but I may have missed it, it talked about 12:07:26
15 adding to the workforce through loan 12:07:31
16 forgiveness and a few other areas. But 12:07:33
17 that's not what's needed. What's needed 12:07:35
18 is an emergency -- what's needed is an 12:07:37
19 emergency -- is emergency funding to 12:07:40
20 quickly add to the capacity. Not over a 12:07:44
21 period of years, but as I recommended, 12:07:48
22 very consistent to what I recommended in 12:07:53
23 the President's Commission, we need a 12:07:56
24 complete retraining of the workforce to 12:07:57
25 add to capacity immediately. Because the 12:08:00

1 last thing we want is someone to be 12:08:02
2 burying a child because a doctor wasn't 12:08:04
3 trained, we didn't have enough doctors 12:08:06
4 trained in the state or any state. 12:08:10
5 I also thought that retraining 12:08:13
6 or reeducating both a healthcare system 12:08:17
7 in the State of Oklahoma as well as 12:08:22
8 consumers on the risks and benefits of 12:08:25
9 opioids was not properly -- was not fully 12:08:29
10 scoped the way it should be. 12:08:32
11 And again I plan to get into 12:08:40
12 this in more detail in the coming months 12:08:42
13 prior to the trial, so I may have other 12:08:45
14 things. But this is my quick analysis as 12:08:46
15 of now. And those won't change. There 12:08:49
16 may be additions. 12:08:51
17 Q. Okay. I asked you earlier to 12:08:52
18 tell me how much it will cost to abate 12:09:01
19 the opioid epidemic in Oklahoma and you 12:09:03
20 weren't able to provide me an answer, 12:09:06
21 correct? 12:09:07
22 A. Correct. 12:09:08
23 Q. Okay. And how much will it 12:09:08
24 cost for any of the individual 12:09:11
25 initiatives that you described to abate 12:09:14

1	A.	That by itself would not cost	12:14:56
2		any money. But then when you eliminate	12:14:59
3		prior authorizations, you're increasing	12:15:01
4		access, so the cost of those medications	12:15:02
5		is clearly costing money.	12:15:04
6		But to actually sign a document	12:15:07
7		where there is no prior authorization to	12:15:09
8		eliminate it doesn't cause anything.	12:15:13
9		We can go -- I don't know if	12:15:18
10		you want to go item by item. It's up to	12:15:22
11		you. I just don't want to say blankly,	12:15:25
12		unless I go item by item.	12:15:31
13	Q.	I understand. I just want to	12:15:32
14		bring your attention to --	12:15:34
15	A.	I mean the real issue is	12:15:39
16		looking for an abatement plan for the	12:15:40
17		state and going item by item and saying	12:15:42
18		does this scope of work need to be done	12:15:45
19		to save lives and is the cost, the cost	12:15:47
20		reasonably accurate. That's the exercise	12:15:51
21		I would believe would need to be done and	12:15:55
22		I will be prepared when we go to trial.	12:15:57
23	MR. WEISBAND:	Let's take a	12:16:05
24		short break.	12:16:06
25	THE VIDEOGRAPHER:	The time is	12:16:06