



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, 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

Judge Thad Balkman

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

JUN 14 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**AMICUS BRIEF OR IN THE ALTERNATIVE MOTION FOR INTERVENTION AS A MATTER
OF RIGHT PURSUANT TO 12 O.S. 2011, SECTION 2024**

COME NOW, the Honorable J. Kevin Stitt, in his official capacity as Governor of the State of Oklahoma, Charles A. McCall, in his official capacity as Speaker of the Oklahoma House of Representatives, and Greg Treat, in his official capacity as the President Pro Tempore of the Oklahoma State Senate (“Applicants”), all in their capacity as elected officials representing the people of the State of Oklahoma on whose behalf the Attorney General filed the above entitled suit and request (i) permission of the Court to consider this amicus brief in the above styled cause, or in the alternative (ii) an Order allowing intervention as a matter of right pursuant 12 O.S. 2011, Section 2024.

Introduction

Applicants are aware of a pending settlement agreement as between the State of Oklahoma and Teva Pharmaceuticals USA, Inc. and its subsidiaries and affiliates (the “Teva Defendants”). Applicants file this Brief to address questions raised by this Court regarding the payment of monies by the Teva Defendants as part of its settlement with the State of Oklahoma.

Applicants have reviewed the terms of the Consent Judgment and the Settlement Agreement (unexecuted documents attached as Exhibits 2 and 3 and hereinafter referred to as the “Settlement Documents”), which it is understood were not fully executed as of May 24, 2019---the date the Governor signed HB 2751 with its Emergency Clause. A true and correct copy of the signed version of Enrolled House Bill No. 2751 of the 1st Session of the 57th Oklahoma Legislature. (the “Act”) is attached as Exhibit 1 to this Application and Motion. A brief review of the Settlement Documents will show that they conflict with the specific terms of the Act.

Prior to the 57th Oklahoma Legislature, the law (74 O.S. Sec. 18b A. 11) read, in relevant part, as follows:

“The duties of the Attorney General as the chief law officer of the state shall be:

....

11. To pay into the State Treasury, immediately upon its receipt, all monies received by the Attorney General belonging to the state;”

The State of Oklahoma, as represented by the above-named elected officials, has always taken the above statute to clearly mean that monies resulting from any litigation filed on behalf of the State of Oklahoma shall be paid into the treasury.

Following a previous settlement in this case, pursuant to which the bulk of the settlement proceeds are not being paid to the State Treasury, and to ensure that there was no ambiguity going forward with respect to future settlements in this case, or any other case, the Legislature passed the Act which was intended to make as clear as possible that all proceeds from the settlement of any lawsuit, whatever the cause of action, were to be paid directly to the state treasury. The Act amends 74 O.S. 2011, Section 18b A. 11, a section of law that governs many of the duties of the Attorney General of the State of Oklahoma. As stated, this section of law was specifically amended in the 2019 Session and the measure contained the Emergency Clause which made the Act effective immediately upon the signature of the Governor on May 24, 2019. Therefore, whether this Court looks to the previous law in effect prior to May 24, 2019, or to the law as amended by the Act, Applicants believe and assert that any proceeds received from settling claims in this case must be paid directly into the state treasury.

Moreover, Applicants assert that there is no statutory authority to enter into any type of settlement agreement which causes monies to be paid to any person or entity other than to the State Treasury as required by the amended version of 74 O.S. Section 18b. Additionally, the Settlement Documents impermissibly attempt to direct (appropriate) the money belonging to the State of Oklahoma. As the Court is aware, the Oklahoma Constitution spells out three separate branches of Government, the Legislative, the Executive, and the Judicial. Specifically, the Constitution provides as follows:

The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.

Oklahoma Constitution Art. IV § 1. Departments of government - Separation and distinction

Further it provided that the appropriation of state funds is the exclusive purview of the legislature specifically stating as follows:

No money shall ever be paid out of the treasury of this State, nor any of its funds, nor any of the funds under its management, except in pursuance of an appropriation by law, nor unless such payments be made within two and one-half years after the passage of such appropriation act, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

Oklahoma Constitution Art. V § 55. Appropriations - Necessity and requisites.

The Supreme has made clear, “Except for the reservation of the power of initiative and referendum, the state's policy-making power is vested exclusively in the Legislature.” Oklahoma Educ. Ass'n v. State ex rel. Oklahoma Legislature, 2007 OK 30, ¶ 20, 158 P.3d 1058, 1065. Further, that fiscal policy is “exclusively within the Legislature's power. Article V, section 55 of the Oklahoma Constitution vests the Legislature with the function of appropriating funds.” *Id.* As such any agreement which attempts to circumvent the Legislature’s authority by directing the funds in any way would be unconstitutional. Finally, the Supreme Court held in Calvey v. Daxon, 2000 OK 17, ¶ 21, 997 P.2d 164, 171 and reiterated in Oklahoma Educ. Ass'n as follows:

This Court has no authority to consider the desirability, wisdom, or practicability of fiscal legislation. It is not our prerogative to question the sagacity of the expressed policy. Whether an act is wise or unwise, whether it is based on sound economic theory or whether it is the best means to achieve the desired result are matters for legislative determination. This Court, may not, based on its perception of how the State should conduct its business dealings, direct legislative decision making.

Oklahoma Educ. Ass'n v. State ex rel. Oklahoma Legislature, 2007 OK 30, ¶ 24, 158 P.3d 1058, 1066

But, should there be any concern of the Court concerning how the settlement proceeds in this matter will be applied, Applicants represent to this Court that the funds obtained by this settlement, and any additional funds obtained through the litigation, shall be used for “abatement” of the nuisance caused by the defendants as part of a comprehensive plan with input from all stakeholders; however, it is

unconstitutional for any settlement agreement to direct how, when or where the legislature appropriates state monies.

Applicants request that the Court require that any Settlement Agreement, Consent Order or Judgment in the pending case comply with the requirements of 74 O.S. Section 18b, as amended. Further, any language directing in any way the payment of said funds are an unconstitutional breach of the separation of powers.

To be clear, it is the intent and commitment of Applicants to expend the above settlement funds and any other monies attributable to this lawsuit for the abatement of the nuisance related to the Opioid crisis, but to do so in a statutorily legal and constitutional way. Additionally, it is the understanding of the Applicants that the Attorney General has executed agreements with private counsel and that private counsel is to receive a portion of the settlement funds. It is the belief of the Applicants that those funds due to private counsel are not claimed by the state and therefore do not need to be paid into the treasury.

If the Court determines that the Applicants must be made parties to the action in order to submit the Amicus Brief or for other reasons, then the Applicants respectfully submit that each one of them and all collectively are entitled to intervene as a matter of right pursuant to 12 O.S. 2011, Section 2024 (A) (2).

Each of the Applicants performs an essential role in the preparation or execution of the budget of the State of Oklahoma. Each of the Applicants asserts that the payment of monies pursuant to any type of settlement has an impact on resources available to the State of Oklahoma related not only to the requested relief sought from the Defendants but also bears on the methods by which decisions are made regarding the allocation of the funds which could be made available pursuant to an order, a judgment or a settlement agreement.

Applicants are all (and individually in their respective official capacities) concerned that payment of monies pursuant to an order, judgment or settlement agreement to a destination other than the State Treasury as required by 74 O.S. 2011, Section 18b, violates the State Constitution and State law, and could

place the funds at risk - and such risk can be eliminated by payment of the funds directly to the State Treasury as required by law.

Wherefore, 74 O.S. Section 18b is clear with regard to the method and timing of payment resulting from the lawsuit---payment must be made first to the State Treasury. No exception is provided. It does not appear that the terms of the Settlement Documents are consistent with either prior law, or with the newly amended version of 74 O.S. Section 18b, as there is no language which provides for a transfer of any amount of the settlement proceeds to the State Treasury. Further, any language directing in any way the payment of said funds is an unconstitutional breach of the separation of powers.

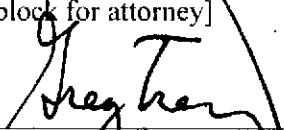
Respectfully submitted,



Honorable Kevin Stitt
Governor of the State of Oklahoma
[signature block for attorney]



Honorable Charles McCall
Speaker of the Oklahoma House of Representatives
[signature block for attorney]



Honorable Greg Treat
President Pro Tempore of the Oklahoma State Senate
[signature block for attorney]

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