



compensatory damages, 2) that State's claim for fraud, and 3) the State's claim for unjust enrichment, and 4) the State's claim for punitive damages, which the State proposes will still take place on the scheduled May, 2019, dates; Phase II would consist of a separate, subsequent jury trial of the State's remaining claims for violation of the Oklahoma Medicaid False Claims and Oklahoma Medicaid Program Integrity Acts.

## **I. INTRODUCTION**

Bifurcation is necessary to prevent any further delay in abating and remedying the worst public health crisis in the State's history. The number of Oklahomans suffering from the opioid epidemic increases every day. Since 2009 in Oklahoma, the epidemic has killed more people than vehicular accidents. Nearly 10 Oklahomans die **every week**. The process to abate and reverse the devastating effects of this public nuisance must start as soon as possible. Accordingly, the Court set this case for trial in May of 2019. The President has declared the opioid addiction crisis a National Public Health Emergency. The Oklahoma Commission on Opioid Abuse has determined that swift, extensive and immediate action is required to help abate this crisis in Oklahoma. Indeed, even the Defendants agree that the opioid crisis is serious public health issue must be addressed:

**“We manufacture prescription opioids. How could we not help fight the prescription and illicit opioid abuse crisis.”** – Purdue Pharma full-page advertisement in the New York Times, December 14, 2017

**“... we recognize opioid abuse and addiction is a serious public health issue that must be addressed.”** - William Foster, spokesperson for Janssen Pharmaceuticals<sup>1</sup>

**“But the fact remains that regardless of how big this crisis is—and make no mistake, nobody here is going to tell you, your Honor, that there isn't a crisis involving opioids and other illicit drugs in this country. Nobody's going to tell you that it's not serious. Hopefully, nobody in here is going to tell you that they don't care. And we'll tell you that we care.”** – Steven A. Reed, counsel for Teva

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<sup>1</sup> <http://www.nbc4i.com/local-news/city-of-columbus-files-suit-against-25-drug-companies-claiming-damages-for-opioid-epidemic/1096326084>. (Posted December 15, 2017)

Defendants, December 5, 2017 Hearing on Defendants' Motions to Dismiss transcript at 57:3-9.

Due to the dire nature of this crisis, the need for immediate resolution of any abatement issues the Defendants may be legally responsible for, and the complex nature of this case, it is essential that the State be allowed to present its nuisance claim without further delay. Bifurcation mitigates the risk of delay by allowing the parties to focus their discovery and other pre-trial efforts on Phase I, the primary goal of which is to develop an abatement plan and remedy the opioid crisis in Oklahoma.

Accordingly, and for the reasons discussed below, the State respectfully requests that the Court bifurcate the State's public nuisance, fraud, unjust enrichment, and punitive damages claims from the remaining claims stated in State's Original Petition.

## **II. ARGUMENT AND AUTHORITIES**

12 OKLA. STAT. § 2018(D)<sup>2</sup> permits the Court to order separate trials of one or more issues or claims "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy." And the choice to bifurcate is left to the discretion of the trial court, and will be disturbed only where there is a clear abuse of discretion. *Faulkenberry v. Kansas City Southern Ry. Co.*, Okl., 661 P.2d 510, 513 (1983), *cert. denied*, 464 U.S. 850, 104 S. Ct. 159, 78 L. Ed. 2d 146 (1983).

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<sup>2</sup> **D. SEPARATE TRIALS.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury. 12 Okla. Stat. § 2018(D)

Further, Rule 5 empowers Oklahoma district courts to manage and control their dockets in ways that promote judicial efficiency and the quick, cost-effective resolution of cases. Specifically, district courts are encouraged to take steps that:

1. Expedite the disposition of the action
2. Establish early and continuing control so that the case will not be protracted because of lack of management;
3. Discourage wasteful pretrial activities;
4. Improve the quality of the trial through more thorough preparation; and,
5. Facilitate the settlement of the case.

12 OKLA. STAT., Ch. 2, Appx., Rule 5.

The State of Oklahoma is suffering the worst health crisis in the State's history. With every day that passes, more Oklahomans become addicted and die as a result of the opioid crisis. Thus, the State must begin the process of abating and reversing the devastating effects of this epidemic as soon as possible. Any delay is literally a matter of life and death. Due to the complex, multi-party nature of this case—which requires extensive discovery involving numerous experts and hundreds of third-parties—the risk for delay is substantial. Bifurcation can help avoid that delay—and the substantial resultant prejudice—by allowing the parties to focus all of their efforts on resolving the State's claim for public nuisance first and foremost. In short, bifurcation prevents delay that will ensue if the parties have to prepare all claims for trial at once and, because the State seeks to try its nuisance claims first—claims which seek injunctive relief to permanently abate the conduct causing this epidemic—bifurcation also potentially helps avoid countless preventable deaths.

Bifurcation will prejudice no one because the parties and Court already have agreed to the May 2019 trial date and have been working toward that date. By bifurcating the trial in the manner described, the parties will be able to streamline this process and work more efficiently and with

less time and expense. Further, bifurcation is necessary to prevent the State from suffering prejudice if trial is delayed for any reason.

Bifurcation also will promote judicial economy and expedite resolution of the case. Bifurcation will allow the parties to streamline their discovery and pretrial efforts to focus on the claims and defenses at issue in the Phase I trial. Because of the nature of the State's claims, resolution of the State's public nuisance claim will undoubtedly inform all parties as to the merits of the claims in Phase II and will encourage resolution of any remaining claims. Because a second trial may be unnecessary, the parties and the Court may benefit from a bifurcated trial process. Moreover, even if Phase II is still necessary, the evidence and arguments will be streamlined and the presentations at trial will be more efficient. Put simply, bifurcation would not result in any significant inconvenience or inefficiency.

### **III. CONCLUSION**

For the foregoing reasons, the State request that the Court grant the State's Motion for Separate Trials.

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