

EXHIBIT B

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

MAYOR & CITY COUNCIL OF BALTIMORE CITY,

Plaintiff.

vs.

No. 24-C-18-0515

PURDUE PHARMA, L.P., ET AL,

Defendants.

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REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Rulings on the Motions)

Baltimore, Maryland

August 15, 2024
P.M. Session

BEFORE:

THE HONORABLE LAWRENCE P. FLETCHER-HILL, Associate
Judge

APPEARANCES:

For the Plaintiff:

MICHAEL KELSO, ESQ.

For the Defendants:

STEPHEN D. BRODY, ESQ. For Janssen
ANDREW STANNER, ESQ. For McKesson

Recorded by: DIGITAL MEDIA

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1 P R O C E E D I N G S

2 (1:33 P.M.)

3 (Via Zoom)

4 THE COURT: Good afternoon, everyone. We're
5 just waiting for a moment to get the livestream started.

6 COURT REPORTER: Testing, testing. Your
7 Honor, just making sure that everything is working on
8 the stream. You should be streaming, but I'm trying to
9 wait. I need about 30 seconds to make sure that the
10 audio is coming back on the stream.

11 THE COURT: All right. Very good.

12 COURT REPORTER: Your Honor, can you make me
13 the host again please?

14 THE COURT: Yes.

15 COURT REPORTER: Try again, Your Honor,
16 please.

17 THE COURT: I've lost the option of changing
18 host.

19 COURT REPORTER: Your Honor, hold tight for
20 just a moment please. Okay. Your Honor, you are back
21 in business.

22 THE COURT: Great. Thank you very much.

23 COURT REPORTER: Thank you.

24 THE COURT: All right. We're back on the
25 record in Mayor & City Council of Baltimore versus

1 Pursue Pharma, L.P. and others, 24-C-18-515. My name is
2 Larry Fletcher-Hill. This is a continuing hearing by
3 remote electronic means. Pursuant to Rule 16-208 no
4 electronic device may be used to receive, transmit or
5 record sound, visual images, data or other information.
6 An individual who does so willfully may be found in
7 contempt of court or sanctioned in accordance with the
8 rules.

9 All right. Counsel, I'm reconvening in order to
10 give you my decision on a number of new motions. Let me
11 first thank very sincerely all counsel. Your papers
12 have been excellent. They've been very informative on
13 all of the issues. I intend to rule this afternoon on
14 all of the dispositive motions and on all of the
15 defendants' motions to exclude expert witnesses of the
16 plaintiff. I am not going to rule at this point on the
17 plaintiff's motions to exclude defense expert witnesses.
18 I expect to do that in writing perhaps by very brief
19 orders over the next two weeks or so.

20 The rulings that I'm going to give you today are
21 necessarily brief. I cannot go in depth into all of the
22 issues, but I think it's important that you have the
23 decisions promptly so that you can plan the scope and
24 extent of the trial. I am not going to -- I have -- on
25 the dispositive motions I have the joint motion of all

1 defendants, I have the renewed motion for advance
2 determination which is essentially by all of the
3 defendants. Then I have the manufacturer defendants'
4 motion, the distributor defendants' motion and the
5 individual motions of several individual defendants or
6 groups of defendants.

7 I'm not going to try to trace all of the issues to
8 each specific motion, but rather to discuss the issues
9 more generally and then I'll issue separate orders,
10 written orders that relate to the individual motions
11 that have been filed. If I do not mention a particular
12 issue it's not because I have not considered it, but you
13 should consider that particular argument denied along
14 with the denial of the motion.

15 RULING ON THE CITY'S MOTION REGARDING NEGLIGENCE AND

16 PUBLIC NUISANCE-1:42 P.M.

17 In this case the City has remaining two claims.
18 One for public nuisance and one for negligence.
19 Overwhelmingly the briefing has been devoted to the
20 public nuisance claim and not the negligence claim. I
21 find at this point that the negligence claim is not
22 viable. I find that primarily because I do not see in
23 this circumstance any duty straightforward tort duty
24 aside from the public nuisance duty that the City can
25 claim is owed to it by any of the individual defendants.

1 I also find that the claim, the general claim for
2 negligence is barred by the economic loss doctrine and I
3 therefore will grant summary judgment for all defendants
4 on the negligence claim and this case will proceed
5 solely on the public nuisance claim.

6 I said this on August 5th or 6th, but my duty in
7 this case is to decide based on what Maryland law is how
8 I think that the Maryland Supreme Court because I am
9 confident that this case eventually will reach the
10 Maryland Supreme Court, what that court will do with the
11 issues in this case. This court has serious
12 reservations about the use of public nuisance claims to
13 address social problems of this breadth and complexity.

14 I think there is a reason for the separation
15 between the adjudicative process in courts and the
16 legislative or regulatory process that is available to
17 either branches of the government to address
18 particularly complex issues that society faces.
19 Adjudication of cases like this present very difficult
20 issues of causation which are the focus of much of the
21 defendants' motions in this case and very difficult
22 issues of the assessment of the damages or remedy when
23 the attempt by the City is to address a very broad
24 social problem.

25 I conclude ultimately that public nuisance in

1 Maryland is available to the City in this action to go
2 forward as a cause of action. However, I think the
3 reservations that other courts have expressed about
4 using public nuisance in this way may be adopted by the
5 Maryland Supreme Court, but also counsel for particular
6 attention to the way that a case of this sort is
7 adjudicated in a court as opposed to being considered at
8 the legislative level or at the regulatory level.

9 It is clear to me under Maryland law that the
10 Maryland Supreme Court has adopted the common law toward
11 public nuisance and that it has adopted it embracing the
12 restatement second definition which is provided in
13 Section 821(b) of the restatement second. Tadger is
14 perhaps the clearest case establishing the embrace of
15 that definition of the tort. Although Tadger does
16 relatively little I think to inform the outcome of this
17 particular case because of the nature of the allegations
18 there.

19 Ironically enough those allegations involved the
20 government's use of land rather than a private
21 defendant's use or affect on land, but the issues were
22 relatively narrow. Nevertheless, the Maryland Court of
23 Appeals there did both embrace the court's of private
24 nuisance and public nuisance and identified some of the
25 important differences between them.

1 The Maryland Supreme Court has not to this point
2 embraced the restatement third as it relates to a public
3 nuisance, but then the Maryland Supreme Court also has
4 not had any occasion to consider the restatement third
5 approach. I conclude at this point that current
6 Maryland law is to follow the restatement second which
7 recognizes in broad outline the cause of action brought
8 by the City here and to decide how those provisions of
9 the restatement apply particularly to this cause of
10 action.

11 Where the primary arguments of the defendants
12 against this case proceeding as a public nuisance case
13 is whether a public right has been affected in this
14 case. It is whether the City has alleged interference
15 with a public right. Tadger is clear at least as
16 indictum that -- and the restatement second is clear
17 that the public right for a public nuisance case does
18 not need to be connected to or affecting land
19 specifically or even common natural resources; air or
20 water specifically.

21 The restatement recognizes that the public right
22 may be a more general right based on public health or
23 even public safety. And I find that as a matter of law
24 the City has alleged interference with public rights
25 that relate to both the public health and the public

1 safety of residence of Baltimore City.

2 There's some interesting distinctions between
3 whether an affect on a collection of individual rights
4 can be recognized as a public nuisance. I think the
5 debate is -- is largely semantic, but I find that when
6 the alleged affect is sufficiently pervasive and
7 widespread, even if it is based on the affect on a
8 number of individuals, here individuals who have opioid
9 use disorder, it nevertheless can rise to the level of a
10 public right which can then be the subject of a public
11 nuisance action.

12 A great deal of the attention that the defendants
13 have brought to this case in their motions relates to
14 causation and particularly to the claim that the City's
15 plan is to prove causation in the aggregate without
16 delving into specifics. I find that to some extent that
17 is a false characterization of the City's projected case
18 based on its evidence. There is specific evidence
19 included in the City's proffered case, but it is true
20 that a great deal of the City's expert witnesses
21 proposed to proceed on an aggregate basis rather than
22 distinguishing particular individuals or individual
23 circumstances.

24 RULING ON THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT-

25 1:50 P.M.

1 At this point on summary judgment I'm evaluating
2 the City's case in the light most favorable to the City
3 assuming that the City will be able to prove the facts
4 that it has advanced and resolving any dispute of facts
5 in favor of the City to consider whether there is a
6 viable case as a matter of law to proceed to trial.

7 Now I conclude that the City must prove its case
8 against each individual defendant. That is that the
9 City must provide defendant specific evidence of
10 causation even if that is the application to a
11 particular defendant of a more generalized or aggregated
12 conclusion that one of the City's experts draws from the
13 facts that are provided to that expert or that are
14 proved by the City. The difficulty is in finding where
15 that intersection is between generalized or aggregate
16 proof and more specific proof to the individual
17 defendant.

18 It is an open inference to a juror presumably if a
19 defendant has not shown or the City has not shown that
20 there is -- there are any particular distinguishing
21 circumstances about that defendant's conduct that
22 generalized proof might be inferable to causation by
23 that specific defendant. But the City must consider
24 differences in the conduct of different defendants,
25 including manufacturers versus distributors obviously to

1 establish a fair basis for an inference of causal
2 liability from the conduct of that defendant to the
3 alleged ultimate public nuisance that the City claims.

4 The defendants make the argument that the City
5 cannot prove that the public nuisance is within their
6 control. That is that the instrumentality of the
7 nuisance is outside of their control. I reject that
8 argument as a basis for summary judgment. That does not
9 mean that the defendants can't defend themselves on the
10 basis that there is conduct beyond their control which
11 contributes to the public nuisance, but the allegations
12 here are sufficient to show that at some point in the
13 distribution chain the defendants controlled the opioids
14 that they distributed and that if that conduct can be
15 connected by a reasonably direct line to the public
16 nuisance that is alleged, then that proof may be
17 sufficient to establish the necessary causal connection.

18 Now in very general terms and I mean very general
19 terms, the distribution process here is from the
20 manufacturer who creates the medication, whether it's in
21 pill form or patch form or some other form, who then
22 distributes it to a distributor either characterized as
23 a wholesale distributor or in some other way. That the
24 distributors then sells to pharmacies or hospitals or
25 other outlets and those outlets are merely pharmacies

1 disperse or dispense the drugs to patients who have
2 obtained prescriptions from doctors for those drugs.
3 It's a heavily and closely regulated process and in fact
4 the regulations are the source or the primary duty that
5 the City alleges here.

6 The basic theory of liability that the City seeks
7 to impose against manufacturers has two parts. One
8 avenue is that the manufacturers marketed or promoted
9 their products in a dishonest or -- or inaccurate or
10 distorted way that caused prescribers to over prescribe
11 and oversupply opioids into the communities. That that
12 oversupply then caused harm within the community.

13 The City also alleges that manufacturers violated
14 their obligations under the regulations to monitor for
15 suspicious orders, to suspend those orders while there
16 was due diligence to investigate whether they should --
17 should be sold and failed in that opportunity to stop
18 diversion of opioids.

19 The primary theory of the City against the
20 defendants -- against the distributor defendants is
21 limited to the suspicious order monitoring function that
22 those defendants play. I don't believe there's any
23 allegation that distributors themselves promoted opioids
24 in a way that affected the downstream prescribing.

25 In very general terms I think if the City is able

1 to prove it, its theory against manufacturers that they
2 marketed opioids inappropriately and thereby caused an
3 oversupply and excess prescribing by doctors is a viable
4 causal theory. It bypasses certain steps in the
5 distribution chain because it involves an intentional
6 affect by the manufacturers on the prescribing practices
7 of physicians. I'm not saying that that's true. I'm
8 not saying that the City will be able to prove it, but I
9 think the City has advanced sufficient evidence to make
10 that a viable claim at trial.

11 I am far more skeptical of the legal liability of
12 the City's theory against manufacturers that is based on
13 the suspicious order monitoring of those manufacturers.
14 At this point I have not heard sufficient evidence as a
15 matter of law that would impose on the manufacturers the
16 duty to look all the way down the distribution line to
17 identify what would otherwise be classified or might be
18 classified as suspicious orders placed with
19 distributors.

20 I'm not going to grant summary judgment on that
21 theory at this point because the evidence is complex and
22 there may be particular evidence about a particular
23 defendant that the City is able to muster on that point,
24 but as with all of the other issues, I will be vigilant
25 at trial and ready to grant a motion for judgment if the

1 City fails to provide the kind of evidence that a -- on
2 which a reasonable juror could base the conclusion that
3 there is a duty of that sort placed on manufacturers.
4 Now that duty clearly is placed on distributors because
5 they are the ones who deal directly with pharmacies and
6 fulfilling the orders of those pharmacies.

7 As I said this morning I think there is a problem
8 in this case in the lack of a careful use of the term
9 diversion. As I understand it diversion could take any
10 number of forms. It could mean there is a corrupt
11 pharmacy or pharmacist who is selling opioids out the
12 back door without prescriptions to -- to in what are
13 plainly illegal transactions.

14 It could involve a corrupt physician who is writing
15 prescriptions where there's no conceivable medical need.
16 Again, completely disregarding medical obligations and
17 writing what are illegal prescriptions. It could
18 involve dishonest patients who are either deceiving
19 prescribers in order to obtain prescriptions or even
20 stealing prescriptions or forging prescriptions in order
21 to obtain opioids.

22 It also could involve actual prescriptions. I
23 don't want to use the term legitimate because I realize
24 that that faces a different theory between the City and
25 the defendants of whether the expansion in the

1 prescribing of opioids was -- was legitimate or was
2 driven by improper marketing by defendants. But it
3 could involve individuals who have actual prescriptions
4 obtained from physicians that at some level are good
5 faith prescriptions, but that nevertheless might lead to
6 what could be regarded as suspicious orders placed with
7 distributors.

8 Again, I think the City needs to be specific at
9 trial with its witnesses about exactly what forms of
10 diversion are being alleged because the aggregation of
11 diversion into one concept is not workable. And I think
12 the demands of causation in an adjudication context are
13 more particular than to simply allow, you know, very
14 broad concepts of what diversion is and that diversion
15 has occurred.

16 I also will comment at this point that I think it's
17 clear in the law that a defendant's liability must be
18 judged at the time it acts. That is based on the state
19 of its knowledge and based on where necessary the state
20 of the (inaudible one word) at the time that the
21 defendant actually acts and that hindsight cannot be
22 applied to a defendant's actions. Now obviously
23 knowledge changes and accumulates over time, so there
24 may be past actions that lead to a new state of
25 knowledge of a particular defendant, but I think it's

1 important to comment that the City must satisfy the
2 juror's ability to assess a defendant's knowledge at the
3 time that the defendant is acting.

4 RULING ON THE DEFENDANTS' MOTION ON CONTRIBUTORY

5 NEGLIGENCE-2:02 P.M.

6 The argument has been made by the defendants that
7 contributory negligence amounts to a defense in this
8 case. I rule that contributory negligence is not a
9 defense in a public nuisance action. That is partly
10 linked to my conclusion that joint and several liability
11 does not exist under a public nuisance action, but I
12 find that contributory negligence as it exists in
13 Maryland is linked to more ordinary common law
14 negligence actions and not to public nuisance actions.

15 That doesn't mean that some of the harm may not be
16 attributable to other actions, but I find that there's
17 no action by the City, primarily failure to regulate or
18 failure to enforce requirements that could be erected by
19 the defendants as a defense in law based on alleged
20 contributory negligence of the City.

21 I've said this a number of times in the course of
22 the argument, but let me confirm that I rule at this
23 point that the harm that is alleged in this case is
24 divisible. It is not the indivisible harm that is
25 found, for example, commonly in an asbestos case or

1 another toxic exposure case brought by an individual who
2 suffers a disease and Maryland law does not divide the
3 causation among several different tortfeasors, but
4 instead finds liability based on substantial causation
5 proved as to the particular defendant and -- and causing
6 that indivisible injury.

7 Here the City alleges an injury which is pervasive
8 and broad in the city, but it is necessarily made up of
9 potentially different causal paths, different
10 experiences by different individuals about how they have
11 come to have opioid use disorder and what that means for
12 the City's response to it. And this is quintessentially
13 a case where a jury can assess based on different
14 variations in the alleged conduct of defendants how
15 those defendants have contributed, if they have at all
16 to that public nuisance and in what degree.

17 So it is a very appropriate case where liability
18 does turn on substantial factor of causation, but may be
19 adjusted and apportioned among the defendants based on
20 their particular conduct including the periods when they
21 were involved with opioids, the nature of the products,
22 the volume of the products sold and other factors that
23 may be relevant to that decision.

24 RULING ON DEFENDANTS' MOTION REGARDING ROLE IN THE
25 MARKET DUE TO AMOUNT OF PRESCRIPTIONS WRITTEN-2:06 P.M.

1 That conclusion that the harm is divisible and
2 therefore can be apportioned I think carries a couple of
3 important conclusions for the case. One of them is that
4 the arguments by various defendants that their role in
5 causing this public nuisance, if any, is de minimus by
6 and large fail. There -- there may be a circumstance
7 where there's a defendant whose role is truly negligible
8 and therefore fails even substantial factor causation.

9 However, even defendants that can claim without
10 dispute a very small market share in opioids that were
11 sold in Baltimore City, may still have a significant
12 role in creating harm to the city if found -- found
13 responsible. And, therefore, for the most part I reject
14 any claim by a defendant that their role is de minimus
15 and therefore does not satisfy substantial factor of
16 causation.

17 It also as I've already alluded to carries the
18 consequence on the remedial side that just as
19 responsibility may be apportioned so also responsibility
20 for damages may be apportioned among defendants as well.
21 I do not decide at this point the difficult issue of
22 which party, which side bears the burden on proving
23 apportionment. There is certainly case law in Maryland
24 that would suggest that where liability can be
25 apportioned it is the defendant that bears the burden.

1 And I think there's also case law that suggests
2 that the plaintiff may bear that burden and to the
3 extent that it may be part of the plaintiff's burden to
4 prove causation, I think there still is a burden on the
5 plaintiff to prove the degree of responsibility of a
6 particular defendant in the case.

7 Now I'd like to comment generally on remedy because
8 I think this raises some of the most difficult issues in
9 the case. There are -- there are at least three
10 categories of remedy that have been advanced in this
11 action. One is past damages or damages for past conduct
12 that has already -- damages that have already occurred.
13 One is future damages, money damages for what the City
14 projects as reasonably probable to be incurred because
15 of the public nuisance and then the remedy of abatement.

16 The City has withdrawn any request for injunctive
17 relief against the defendants that would require the
18 defendants to alter their conduct. That is, for
19 example, if a distributor were held to be liable in
20 causing the public nuisance to an injunction to direct
21 the distributor either to stop distributing opioids or
22 to install certain controls or take certain actions to
23 affect its own business going forward. That form of
24 injunctive relief has been withdrawn by the City.

25 I do not find that the City has waived all

1 equitable relief by specifically withdrawing the request
2 for that type of injunction in the case. I do conclude
3 however that the abatement relief, if any, can be
4 ordered at the end of this case is equitable in nature.
5 And the most important consequence of that conclusion is
6 that it is relief if we reach that point in the case to
7 be framed and determined by the court in terms of what
8 relief is necessary to abate the public nuisance, if any
9 is proved after the jury trial portion of this case.

10 Because it is equitable in nature I will bifurcate
11 the case between a jury trial to determine liability of
12 the defendants and what damages, if any, should be
13 awarded based on that liability and between an abatement
14 phase which will be a bench trial to the court to
15 determine what abatement remedy, if any, is appropriate
16 in the case.

17 I find that Maryland law supports the concept of
18 monetary relief at the abatement stage. That is, in the
19 proper circumstances the court may determine that it is
20 not appropriate to have the defendant abate the public
21 nuisance, but that it is appropriate for either the City
22 or for other parties to act to abate the public nuisance
23 and to have the defendants pay the cost of that
24 abatement.

25 That may even reach the point of creating what the

1 City urges as -- as an abatement fund in order to carry
2 out those abatement activities. I'm not prejudging any
3 of those issues except to say that they are issues for
4 the court. They are not issues for the jury. And
5 therefore they will be decided after a separate phase of
6 the trial if we reach that point and that will be a
7 bench trial portion of the proceedings.

8 I'll comment a little bit further once we get to
9 some of the expert witnesses about my views on the scope
10 of damages that are available, but I will note at this
11 point a particularly difficult issue which is the
12 potential overlap between future damages and future
13 abatement costs. And I think that is an issue that I
14 may require further briefing or further submissions from
15 the parties on in order to clarify how much can be
16 presented in the jury trial portion of this case and how
17 much is reserved for the abatement portion.

18 RULING ON THE MOTION TO BIFURCATE-2:11 P.M.

19 There are separate procedural motions. One to
20 bifurcate the trial. That motion will be granted
21 because of the separation between the legal and
22 equitable issues to be decided and also the defendants'
23 conditional motion to remove the trial to another
24 Maryland jurisdiction. The basis for that motion which
25 is that jurors would be prejudice and unable to decide

1 fairly given the magnitude of what is -- is requested on
2 abatement is -- those reasons are moot now because of
3 separating the two phases and that motion will be
4 denied.

5 All right. Let me turn to some of the issues that
6 are specific or specifically made in the motion for
7 summary judgment by the distributor defendants. Most of
8 the issues raised there are -- are concerned with --
9 with causation and particularly the arguments that the
10 causal chain alleged here is too remote and too
11 attenuated to amount to either cause in fact or
12 proximate cause as a matter of law under Maryland law.

13 Again the primary theory that the City urges
14 against the distributor defendants is that they failed
15 to discharge their obligations under the Controlled
16 Substance Act to have sufficient suspicious order
17 monitoring programs in place and that had they had such
18 programs those would have prevented diversion or at
19 least the level of diversion that occurred of opioids
20 according to the City's allegations.

21 As I've stated earlier, I find that that chain of
22 causation is sufficiently proximate to be viable under
23 Maryland law. Even though the opioids leave the control
24 of the distributors once they sell them, the theory of
25 -- of the breach of the violation or the conduct that

1 leads to the public nuisance is that that relinquishing
2 of control and that it's done with a foreseeable -- that
3 it is foreseeable that opioids would get diverted on
4 that basis and that that harm could be prevented by the
5 distributors.

6 Again, I'm not finding that the City has proved
7 that, but that viewed in the light most favorable to the
8 City that the City has advanced sufficient proof that it
9 could prove it on these facts. It does not fail as a
10 matter of law.

11 The other argument that the distributors defendants
12 make is that the City's claims for punitive damages must
13 be dismissed or granted summary judgment in their favor
14 at this point. The standard in Maryland for punitive
15 damages is exceptionally high. It is actual malice
16 under the Zenobia case and subsequent cases. Subsequent
17 asbestos cases make clear that punitive damages can only
18 be awarded where there is actual knowledge at the time
19 and malice at least toward the class of plaintiffs by
20 the defendant at that time.

21 RULING ON THE MOTION FOR PUNITIVE DAMAGES-2:16 P.M.

22 I am very skeptical that the City will be able to
23 satisfy that standard in this case, but the City has
24 advanced at least anecdotal circumstances of callous
25 statements by certain defendants, of a sort of awareness

1 of the likelihood or possibility of diversion and
2 continuing to make sales even in the face of that. So I
3 will not grant summary judgment at this point on the
4 punitive damages claim. It is -- I will revisit that on
5 a motion for judgment at the close of either the
6 plaintiff's case or the close of all of the evidence in
7 terms of whether it goes to the jury.

8 All right. In terms of distributor defendants
9 there's also -- was a particular -- an individual motion
10 presented by the CVS defendants. That motion is now
11 moot because those two defendants have entered into a
12 settlement with the City.

13 RULING ON THE MOTIONS FOR SUMMARY JUDGMENT FOR

14 WALGREENS-2:17 P.M.

15 There was also the Walgreens defendant motion which
16 was argued this morning. Incorporating what I've
17 already said, Walgreens' arguments about the time period
18 during which it distributed opioids, about the volume
19 and about the scope of its activities distributing only
20 to Walgreens' pharmacies are all important factors that
21 bear on causation and if there is liability
22 apportionment of harm to those defendants. But I do not
23 find that they are complete defenses to liability and
24 therefore will deny summary judgment to the Walgreens
25 defendants on that argument.

1 Walgreens also argues that the statute of
2 limitations applies. I think that may be a viable
3 argument with respect to the negligence claim against
4 it, but I am granting summary judgment on the separate
5 basis that there's no duty in the Economic Loss Doctrine
6 with respect to the negligence claim.

7 I concluded that the public nuisance claim is not
8 subject to the statute of limitations in Maryland, that
9 this is a governmental claim brought by the City in its
10 governmental capacity and not as a proprietary or
11 private capacity and the damages it claims are for its
12 governmental activities. And therefore that it is not
13 subject to the statute of limitations with respect to
14 the public nuisance claim.

15 I've already denied the City's collateral estoppel
16 motion against Walgreens based on findings from the San
17 Francisco case.

18 Now in the manufacturer's motion for summary
19 judgment the manufacturers highlight the two theories
20 that have been advanced for their potential liability by
21 the City. I think I've already discussed those. I am
22 very skeptical of the suspicious order monitoring aspect
23 because I don't see at this point the basis as a matter
24 of law to impose the duty on a manufacturer to look all
25 the way down the distribution chain to identify

1 suspicious orders, but I will not grant summary judgment
2 on that part of the theory. I will consider motion for
3 judgment for the plaintiff's case if the evidence is not
4 been presented otherwise.

5 As I already stated I think the theory that certain
6 defendants engaged in marketing that affected the
7 prescribing behavior of physicians is a viable theory.
8 It -- it is more direct and proximate than the entire
9 chain of distribution because it reaches -- it alleges
10 that the manufacturers reached over distributors, over
11 pharmacies to the prescribing physicians to try to
12 influence inappropriately the volume of drugs being sold
13 through those prescriptions.

14 RULING ON THE MOTION FOR SUMMARY JUDGMENT FOR J&J AND
15 JANSSEN-2:21 P.M.

16 All right. Looking at some of the individual
17 manufacturers' motions. J&J, Johnson & Johnson and
18 Janssen Pharmaceuticals make a motion together. I may
19 not understand the -- the facts completely here, but I
20 will just note the issue that different corporate
21 defendants need to be examined separately unless there
22 is proof that they are acting conspiratorially or -- or
23 cooperatively in a way that establishes liability.

24 There -- the issue was raised about Noramco and
25 Tasmanian Alkaloids and whether evidence of their

1 existence or their sales of API could be attributed to
2 one of these defendants and lead to liability. I think
3 that evidence based on what I've heard is admissible
4 because it may relate to the motivation for J&J's
5 unbranded marketing which may fit the City's marketing
6 theory as attributable to J&J.

7 If I understand it correctly those subsidiaries
8 were subsidiaries of J&J. They were not subsidiaries of
9 Janssen. So it may be necessary to separate Janssen's
10 potential liability only in terms of the limited
11 products that Janssen was -- the limited branded
12 products that Janssen was manufacturing and
13 distributing.

14 At this point however I find that there is
15 sufficient evidence as to both J&J and Janssen advanced
16 by the City to defeat a motion for summary judgment by
17 those parties and their motion will be denied.

18 RULING ON THE MOTION FOR SUMMARY JUDGMENT AS TO
19 CEPHALON, TEVA, U.S.A. AND ACTAVIS GENERIC ENTITIES-

20 2:23 P.M.

21 The same issues arise in terms of the -- the
22 independent consideration of parties with respect to
23 Cephalon, Teva, U.S.A. and the Actavis generic entities
24 even though some of those parties came to be related
25 over time, the evidence at trial must carefully separate

1 the different time periods and the different activities
2 of which those companies were responsible so that the
3 jury can understand how their individual responsibility,
4 if any, plays out.

5 I do find, however, that even though that limits in
6 some significant ways the allegations with respect to
7 those companies that the City has advanced sufficient
8 evidence if believed by a jury to defeat summary
9 judgment for those different entities. And their
10 separate motions for summary judgment therefore will be
11 denied.

12 RULING ON THE MOTIONS REGARDING DR. JOHN KAPOOR-

13 2:24 P.M.

14 All right. That leads me finally I think to Dr.
15 Kapoor's motions made in the case. His first and
16 different argument from any other defendant is his claim
17 that this court lacks personal jurisdiction over him.
18 The -- the exercise of personal jurisdiction is very
19 well established in Maryland cases and in the federal
20 cases applying the due process restrictions on personal
21 jurisdiction as well.

22 There are two steps that the court has to
23 undertake. First, whether the allegations bring Dr.
24 Kapoor within the jurisdiction based on the Maryland
25 long arm statute and they do largely because the

1 Maryland long arm statute purports to extend personal
2 jurisdiction of Maryland Courts as far as the
3 constitution permits. And then second, whether the
4 exercise of personal jurisdiction is consistent with
5 constitutional minimum contacts.

6 Here the argument by the City is a claim for a
7 specific personal jurisdiction, not general personal
8 jurisdiction. There is no factual dispute that Dr.
9 Kapoor does not have the kind and extent of general
10 connections to Maryland that would be sufficient to
11 exercise general personal jurisdiction over him.
12 There's no dispute that he's never been a resident of
13 Maryland, that he doesn't have bank accounts here. If
14 he has ever traveled to Maryland that it has been only
15 brief and occasional.

16 Rather the argument is that his conduct, even if
17 undertaken from Arizona or elsewhere was sufficiently
18 targeted at the state of Maryland in order to establish
19 that he has purposely availed himself of activity within
20 Maryland and therefore can be hailed into court in a
21 Maryland Court to answer for that conduct.

22 I recognize that there is a difference between
23 personal liability of an officer or director of a
24 corporation and the exercise of personal jurisdiction.
25 It is necessary for the City to prove in order to prove

1 individual liability by Dr. Kapoor for the actions of
2 Insys that he was personally involved in that tortuous
3 conduct. The City has certainly alleged sufficient
4 facts to establish a prima facie case of his individual
5 involvement in Insys's activity in order to impose
6 individual liability. But that fact alone does not mean
7 that there's sufficient contacts with Maryland to
8 establish personal jurisdiction over Dr. Kapoor.

9 I find, and there's been some argument about the
10 Walden decision, the more recent Walden decision of the
11 Supreme Court and the broader and more established
12 Caldor decision of the Supreme Court, I do not find that
13 those are inconsistent at all. Walden relies on Caldor
14 and is simply a different application of the -- the
15 principles of Caldor.

16 In my judgment this case is more like Caldor than
17 like Walden and there are sufficient facts alleged by
18 the City if found to be true to find that Dr. Kapoor
19 purposely -- did purposely avail himself of the
20 jurisdiction of Maryland and that he can properly under
21 the constitution be called to answer in the courts of
22 Maryland for his conduct as it affected Maryland
23 residents.

24 In Walden the allegation was that the couple had
25 passed through Georgia on their way home to Nevada and

1 that money was seized from them from their luggage in
2 the airport in Atlanta wrongfully and that the federal
3 government held that money for some period of time
4 before it returned it to them. They then sued one of
5 the agents or police officers who had acted in Georgia,
6 sued him in Nevada based on a Bivens theory for his
7 personal liability for that conduct.

8 The court held that even though that officer may
9 have known that the plaintiffs were residents of Nevada
10 and that they were on their way home to Nevada when he
11 acted in Georgia that the knowledge of the harm to be
12 experienced by them in Nevada was not sufficient to
13 confer personal jurisdiction over that -- that agent or
14 officer to respond to suit in Nevada.

15 In Caldor in contrast the defendants were I think
16 the editor and author of an article that was allegedly
17 defamatory of a California resident. They were
18 residents of Florida and wrote the article in Florida
19 and perhaps did the editorial activities in Florida, but
20 they were sued in California to respond to that
21 defamation case. The court held there held that there
22 was sufficient contacts because of the distribution of
23 the National Inquirer in California and because of their
24 knowledge that their tort, if it was found to be a tort
25 of writing a defamatory article would be projected into

1 California and affect the California resident in her
2 reputation in that state.

3 Here it's undisputed that Dr. Kapoor, if he engaged
4 in the conduct that he is alleged to have engaged in,
5 knew that -- that his actions will be projected
6 throughout the United States by the actions of Insys.
7 The allegations if -- if proved by the City are very
8 detailed and -- and to show that he was deeply involved
9 in establishing both speaker programs and marketing to
10 physicians throughout the country.

11 There also is evidence that he specifically knew
12 that some of that activity was being directed into
13 Maryland. And I find that that is more like Caldor in
14 terms of the knowledge that the actions will actually be
15 taken -- carried out in Maryland with harm to Maryland
16 residents than it is like Walden.

17 I also think, I also draw some support from the
18 MaryCle case in the Maryland Courts although I do note
19 that that decision in dealt more with the personal
20 liability of the individual officer than it did as a
21 separate discussion of personal jurisdiction over that
22 individual. But I conclude that the court does have
23 personal jurisdiction over Dr. Kapoor and that he is
24 properly sued in this court.

25 I deny his motion for summary judgment on the basis

1 of the allegations viewed in the light most favorable to
2 the City which certainly support the theory of causing
3 physicians to improperly prescribe Insys products,
4 Subsys particularly to Maryland residents.

5 Then there are two procedural motions with respect
6 to Dr. Kapoor. One is his motion to bifurcate which I
7 think is really a motion to sever him from the upcoming
8 trial and the motion of the other defendants to sever
9 him from the trial that will occur in September. His
10 arguments are based primarily on the fact that this
11 court stayed discovery with respect to him until earlier
12 this year and that he has not had a full opportunity to
13 conduct discovery in his defense.

14 In the meantime the other defendants argue fairness
15 to them in terms of the uniqueness of the allegations
16 against Dr. Kapoor and the prejudice that they say would
17 result to them if the claims against them were tried at
18 the same time as the claims against Dr. Kapoor. I find
19 that there's an additional factor that is important here
20 which is that any inefficiencies of not trying Dr.
21 Kapoor at the same time as the other defendants are
22 diminished by the fact that there are other defendants
23 in this action that necessarily will not be part of the
24 trial in September. And I don't mean the defendants who
25 have settled, but defendants like Purdue Pharma, the

1 other individual defendants and other bankrupt entities
2 that are at the claim state against them.

3 Balancing all of the factors I'm going to grant Dr.
4 Kapoor's motion to sever and other defendants' motion to
5 sever the claims against Dr. Kapoor from this trial and
6 those claims will be held without adjudication for a
7 later proceeding.

8 Finally before proceeding with -- with the motions
9 to exclude there's also the settlement bar motion made
10 by the defendants, some of the defendants at least which
11 claims that -- that the settlement reached by the state
12 of Maryland is preclusive of the City proceeding. I
13 find no merit in those arguments. The City while it
14 derives its sovereignty from the state is a separate
15 governmental unit. It has particular interests in its
16 own costs and it's own experiences of the alleged public
17 nuisance in the city and I find that those are not
18 barred by the settlement reached by other parties.

19 There may be some abatement issues relating to
20 amounts paid through the settlements in the -- in the
21 state case, but those can be dealt with at the abatement
22 phase if we reach that phase and are not complete bars
23 to this action. So the settlement bar motion will be
24 denied.

25 All right. I think that completes all of the

1 dispositive motions. I'd like to take 15 minute break
2 at this point and then I will give you decisions on the
3 motions to exclude the plaintiff's expert witnesses.
4 That will also include some discussions of the contours
5 of the trial to come in September. During this break
6 the Zoom will remain open. The livestream will remain
7 open as well and let's resume at 2:50. All right.
8 Thank you all.

9 (Fifteen minute break.)

10 All right. We're back on the record. This again
11 is Mayor & City Council of Baltimore versus Purdue
12 Pharma, L.P. and others, 24-C-18-515. I want to
13 continue with giving you decisions on the plaintiff's --
14 defendants' motions rather to exclude plaintiff's expert
15 witnesses.

16 Let me say generally with respect to all these
17 motions that the nature of my decision here is certainly
18 not to assess the validity or the strength of the
19 ultimate opinions given by any of these purposed expert
20 witnesses. Rather it is -- it is only to examine on a
21 preliminary basis exercising the court's gatekeeper
22 function of whether the qualifications of the witness
23 are sufficient and whether the opinions proposed to be
24 given have an adequate and appropriate methodology
25 behind them and are based on a sufficient factual basis.

1 I said this at the beginning of the hearings, but I
2 have evaluated the motions and determined that it was
3 not necessary to hold an evidentiary hearing with
4 respect to these. The arguments confirmed that in my
5 mind and I feel comfortable on the written record having
6 sufficient information to rule on these motions.

7 There will be a few instances in which I will
8 exclude parts of the opinions of particular experts.
9 Those rulings like all rulings on motions in limine are
10 subject to reconsideration at trial based on the
11 totality of the evidence that is being presented, in
12 this case by the City or by -- by any party that is the
13 proponent of the expert. I will caution the parties
14 however very strongly that if I rule on a motion in
15 limine that certain evidence is not admissible and you
16 intend to ask me to reconsider that ruling and to allow
17 the evidence in the context of the trial, that request
18 must be made in advance either in writing or by
19 approaching the bench without simply trying to go into
20 the material and see if there is a new objection.

21 There will be instances on motions in limine where
22 I reserve ruling until the time of trial and I may give
23 specific instructions on what I don't want counsel to do
24 until I've had a chance to hear further on it, but on
25 these if I exclude the opinion it is off limits unless

1 the party, in this case the City, raises a motion for
2 reconsideration or approaches and argues that -- that I
3 should reconsider that ruling.

4 RULING ON THE MOTION TO EXCLUDE DR. MICHAEL BARNETT-

5 2:39 P.M.

6 All right. The first motion concerns the testimony
7 of Dr. Michael L. Bennett -- Barnett rather. He is a
8 physician and also a professor at the Harvard School of
9 Public Health. His primary opinions and his opinions
10 link to Dr. Leslie's opinions. His opinions primarily
11 relate to the scope or extent of medical appropriate
12 opioid prescribing and to issues of causation through
13 marketing and increased supply.

14 I find that Dr. Barnett has appropriate
15 qualifications to render those opinions. I am surprised
16 by his ability to condense these individualized
17 decisions to hard and fast categories and quantities,
18 but because I understand that his opinions are qualified
19 in his own words, as an estimate and as general maxima
20 rather than a sort of standard of care opinion in all
21 cases, I think they are permissible.

22 The disputes about either that approach to reaching
23 these opinions or to the conclusions reached better go
24 to the weight of his opinions and whether the jury
25 should accept them rather than to his qualifications to

1 render them or the methodology that supports them. The
2 motion to exclude Dr. Barnett therefore will be denied.
3 To exclude his opinions will be denied.

4 RULING ON THE MOTION TO EXCLUDE DOUGLAS LESLIE-2:41 P.M.

5 Next is Douglas Leslie, PhD who is a healthcare
6 economist who gives opinions or is projected to give
7 opinions that -- that build on Dr. Barnett's opinions
8 and essentially extrapolate or extend the -- the
9 individual prescribing limits that Dr. Barnett provides
10 to the population-wide level of prescribing in Baltimore
11 City. I find that Dr. Leslie has the appropriate
12 qualifications and has used an acceptable methodology to
13 reach those conclusions and that he has a factual basis.

14 It certainly is acceptable for one expert to build
15 on or use the opinion of another expert in order to
16 apply his own or her own -- derive his or her own
17 conclusions from that information. The motion therefore
18 with respect to Dr. Leslie will be denied.

19 RULING ON THE MOTION TO EXCLUDE RUTH CARTER-2:42 P.M.

20 Next, not necessarily the -- well, not in the order
21 that it was argued is Ruth Carter who is the first of
22 three witnesses relating to the suspicious order
23 monitoring systems. She is a former DEA official who
24 testifies primarily based on her experience and
25 expertise derived from working in that capacity with

1 diversion issues and other law enforcement.

2 Most of her opinions relating to suspicious order
3 monitoring are not challenged by the defendants, but
4 they do challenge four specific aspects of her opinion
5 -- opinions to be offered in this case. Let me go not
6 -- not necessarily those four specific issues, but the
7 motion will be granted with respect to certain opinions
8 that may be offered or may -- may come into play as part
9 Ms. Carter's testimony.

10 I find that she cannot testify that the particular
11 volume or type of opioids sold indicates medically
12 inappropriate prescribing. To do so she'd be giving a
13 medical opinion and she is not qualified as a physician
14 or even as a public health -- trained public health
15 official to render opinions concerning medically
16 appropriate prescribing.

17 Now her opinion in fact may be that levels of
18 suspicious orders indicate some form of diversion and
19 one of those types of diversion may be medical
20 inappropriate prescribing. I think that would be
21 different because that would be both -- would be based
22 on her knowledge of how opioids are or may be diverted
23 and not herself rendering an opinion that particular
24 orders were linked to improper, medically improper
25 prescriptions. But she can't give the actual medical

1 opinion.

2 Second, I find that Ms. Carter cannot testify that
3 a diversion actually occurred or likely occurred from
4 suspicious orders that she has identified as having been
5 orders that particular defendants should have flagged
6 and stopped. Unless those opinions are specifically
7 linked to investigations that she is aware of of
8 particular pharmacies or particular circumstances of
9 diversion.

10 Ms. Carter identifies and analyzes various
11 pharmacies and she has a factual basis I think to reach
12 the conclusion that certain suspicious orders likely
13 resulted in diversion if those orders went to those
14 pharmacies and she is aware of a factual basis of those
15 pharmacies being involved in forms of diversion. But in
16 the abstract without that specific factual basis I don't
17 think there's any foundation for her in her expertise to
18 reach the opinion that there was diversion or likely was
19 diversion resulting from suspicious orders in general.

20 And finally, Ms. Carter will not be allowed to
21 render any legal opinions. I don't think that she
22 intends to or that the City intends to try to elicit
23 legal opinions from her, but I just want to be clear in
24 ruling on that particular issue the defendants raise
25 that neither she nor any other expert is allowed to

1 opine on what the law is.

2 I deny the motion with respect to Ms. Carter's
3 testimony about pharmacies in Baltimore County. There's
4 a fair amount of discussion of that this morning during
5 the arguments. I am -- I am concerned with the validity
6 of the City relying on indiscriminate examination of
7 sales or shipments to any pharmacy in Baltimore County.
8 I think it is common sense that county -- that
9 pharmacies that are within the county, but within a
10 short distance from Baltimore City would have a certain
11 number of customers that come from Baltimore City to use
12 those pharmacies and fill prescriptions there.

13 I haven't heard from the City yet any kind of
14 systematic analysis of the extent to which that cross
15 border purchasing occurs. If it is simply a matter of
16 proof of conduct of the defendants that relates to those
17 pharmacies and may influence the city, I think it is
18 permissible. If it is the basis for opinions about the
19 apportionment of harm, it may be flawed and -- and may
20 not be permissible.

21 But at this point because Ms. Carter's testimony
22 seems to be the former based on the factual predicate
23 that there are customers who go to Baltimore County
24 pharmacies at least in close proximity to the city, I
25 will permit it. But this is one area in which there may

1 be further objections from the defendants depending on
2 use that the City is putting to that -- using that type
3 of information for.

4 RULING ON THE MOTION TO EXCLUDE GARY TUGGLE-2:48 P.M.

5 All right. The next motion is Gary Tuggle. Mr.
6 Tuggle is -- is quite similar in the profile of his
7 opinions and his expertise to Ms. Carter. He is --
8 derives his expertise primarily from his experience in
9 law enforcement both with the Baltimore Police
10 Department and with the DEA. His testimony may be
11 unlike Ms. Carter's. It's not clear to me exactly how
12 they dovetail.

13 Combines with that of Leslie Schafer, Dr. Leslie
14 Schafer in terms of identifying suspicious order
15 monitoring or suspicious orders that should have been
16 monitored in the City's view by the distributor
17 defendants.

18 I find that Mr. Tuggle has sufficient law
19 enforcement experience to amount to giving expertise in
20 the area of that experience and it is certainly
21 acceptable for him to combine his work with the work of
22 Dr. Schafer on a more abstract statistical or applied
23 economics level. I will however grant the motion in
24 part with respect to Mr. Tuggle on the same issues, some
25 of the same issues with respect to Ms. Carter. That is

1 Mr. Tuggle cannot testify that any particular
2 prescriptions or any suspicious orders connected to
3 medically inappropriate prescriptions because he doesn't
4 have any medical expertise.

5 He also cannot testify that suspicious orders in
6 particular caused or were likely to cause diversion
7 unless that testimony is based on a factual basis of
8 investigating actual pharmacies or actual prescribers
9 that connected with those suspicious orders and he may
10 not give legal opinions.

11 In addition, as I'll explain a little more fully in
12 a moment, he may not give any opinions concerning the
13 fifth mode of analyzing suspicious orders that was
14 developed or -- it was developed by Dr. Schafer. And
15 I'll explain that in a moment with respect to Dr.
16 Schafer.

17 Dr. Schafer is an applied economist or a
18 statistician who has no expertise relating to opioids or
19 the -- or the distribution of opioids, but her function
20 in the City's case was to before cases examine
21 statistical methods that were developed by Greylock
22 McKinnon and then in a fifth case to develop her own
23 statistical method to apply to this problem.

24 As I understand them the four methodologies that
25 Greylock McKinnon developed and that Mr. Tuggle then

1 approves by his review relate to a six month look back
2 by a distributor from a particular order that is under
3 consideration to the volume of orders that were made by
4 that pharmacy within the preceding 180 days or six
5 months. And then applying different criteria to
6 determine whether those should be regarded as outliers.

7 I find nothing wrong in Dr. -- Dr. Schafer
8 certainly has the expertise to evaluate these
9 methodologies as standard methodologies for identifying
10 outliers. She does not have the expertise to identify
11 them as suspicious orders, but I don't understand that
12 she does that except perhaps as a semantic shortcut.
13 And I will permit her -- her testimony within the area
14 of her expertise in statistics to testify to how those
15 four methodologies work.

16 I however will exclude her testimony with respect
17 to the fifth methodology that she developed which is
18 based on 2006 sales and then a comparison of any sale
19 that occurred in -- in several subsequent years in
20 comparison to those 2006 sales. I find that there is no
21 factual basis for the validity of that methodology to
22 apply to the suspicious order problem.

23 I -- I understand this to have been derived perhaps
24 from Mr. Tuggle's request or from her idea to look back
25 to a baseline year in order to separate the effect that

1 -- that increased sales may have on not identifying
2 outliers, but I just find no -- no basis in any
3 knowledge on her part of opioid sales or any logic for
4 using 2006 in such a fundamental way for -- for
5 identifying outliers when the goal is to posit a system
6 that a distributor could have used for this purpose in
7 evaluating outliers. So I will exclude her opinions
8 concerning that fifth method and that exclusion carries
9 over to Mr. Tuggle as well and to Ms. Carter to the
10 extent that she adopts it or uses it as well, but I
11 don't believe that she does.

12 RULING ON THE MOTION TO EXCLUDE HAROLD POLLACK-2:55 P.M.

13 All right. Next is Harold Pollack and I think he
14 is not a physician, but a public health professor. His
15 testimony concerns the foundation for the City's claim
16 of increased policing costs. I'm going to deny the
17 motion concerning his approach. I think that however
18 debatable it is based on the weight to be attached to
19 the opinion it is based on methodology that he uses in
20 his work and that other social scientists of his sort
21 would use.

22 What I am not deciding at this point is whether
23 it's relevant or not to the larger case and that relates
24 to more fundamental issues that I'll get to with Mr.
25 Padula in a moment about the extent of the City's claim

1 for what it claims is policing costs caused by the
2 public nuisance. And so I am reserving on whether there
3 may be limitations on Professor Pollack's opinions on
4 that subject.

5 RULING ON THE MOTION TO EXCLUDE WILLIAM V. PADULA-

6 2:57 P.M.

7 Next is the motion to exclude the opinions of
8 William V. Padula. He is also a professor. Well, he is
9 a professor of health economics and is the primary
10 damages expert for the City to calculate out the costs
11 that the City allegedly has incurred in the past and
12 will incur in the future as a result of the public
13 nuisance that the City alleges.

14 Here again like Professor Pollack I think that
15 Professor Padula's methodology is adequate to survive a
16 motion to exclude his testimony altogether, but I have
17 serious reservations about the scope of the damages that
18 the City is claiming through -- through his
19 calculations. I reject the defendants' argument that
20 the so-called opportunity cost approach is not a
21 permissible one for the City to advance. It's certainly
22 not the only way that these costs could be approached.

23 But my concern is more fundamentally -- the best
24 way that I think of it is the ripples of alleged harm.
25 It is -- it is possible to see almost infinite layers or

1 rings of harm if the City proves its case in terms of an
2 increase in opioid use disorder deriving from the
3 defendants' conduct. But I think part of the sensible
4 restrictions on a case of this type if the problem is
5 approached through adjudication are limitations on the
6 scope of the damages that could be derived from it.

7 And I have grave concerns at this point about
8 attributing the scope of criminal activity and therefore
9 policing activity that both Professor Pollack and
10 Professor Padula attribute to this particular public
11 nuisance. I think those are more issues of law than
12 issues of their expertise and I specifically reserve
13 ruling on whether certain elements of the damages
14 claimed are permissible in this case as opposed to the
15 more immediate notions of responding to overdoses and
16 seeking to treat opioid use disorder to the extent that
17 it is increased by the public nuisance alleged by the
18 City.

19 RULING ON THE MOTION TO EXCLUDE G. CALEB ALEXANDER-

20 3:00 P.M.

21 Finally is -- is Professor G. Caleb Alexander who's
22 an epidemiology professor here in Baltimore and his
23 expertise or his opinions in this case are related to
24 the causation aspects for manufacturers in terms of
25 marketing and -- and affects on prescription levels.

1 I'm hoping my notes are accurate. That I haven't
2 confused the experts that are involved here. I may
3 check back to make sure that I'm accurately describing
4 this.

5 But I think that Professor Alexander is certainly
6 qualified and applies appropriate methodology even if
7 the defendants or even a jury could disagree with it and
8 the issues raised relate more to the weight to be
9 attached to his opinions rather than to their -- their
10 validity as a matter of law. So I will deny the motion
11 with respect to Professor Alexander.

12 All right. Again, I may have to check one of those
13 issues before issuing the orders with respect to these
14 motions.

15 And now the one thing I would like to accomplish
16 today in addition to those rulings is to hear from the
17 parties on a trial length estimate. So I'll hear from
18 the City first. I'm sorry to put Mr. Kelso or anyone
19 else on the spot. Although I did forecast this in the
20 previous hearing last week. Assuming that the case goes
21 forward to trial with the current defendants and it is
22 now a bifurcated case that separates the issues of
23 abatement remedy, including the cost of the abatement
24 remedy for a separate proceeding, how long do you think
25 the City needs to present its case -- case in chief on

1 liability?

2 MR. KELSO: Your Honor, at this point I think
3 we're looking at something in the range with a
4 bifurcated trial of six weeks for our liability and
5 damages case for the City.

6 THE COURT: Six weeks with a City only case?

7 MR. KELSO: Yes, Your Honor. At this point I
8 think six weeks.

9 THE COURT: Does that build in reasonable
10 cross examination?

11 MR. KELSO: I'm sorry, for -- of -- by the
12 City of the defendants' witnesses or vice versa?

13 THE COURT: No, no. By the defendants of the
14 City's witnesses.

15 MR. KELSO: Yes, I believe so.

16 THE COURT: All right. Anyone for the
17 defendants have -- I don't know if you've had a chance
18 to talk together at all, but if you were -- and I
19 realize that I haven't ruled on your expert witnesses
20 yet, but if you were opposing the City's case how long
21 do you think that that defense case will take?

22 MR. BRODY: Your Honor, if I may. This is
23 Steve Brody. We -- for Janssen and Johnson & Johnson --
24 we have not had the opportunity to run that down
25 definitively with all defendants, but I -- I did have a

1 question. I heard from Mr. Kelso six weeks for
2 liability and damages, but the question goes to given
3 our understanding that this is going to be a bifurcated
4 proceeding, are we simply for purposes of the jury phase
5 of the trial going to be looking at the City's evidence
6 on liability and the defense against liability?
7 Followed by a second phase where if there is a liability
8 finding at that point, the City would put on its
9 abatement cost case.

10 THE COURT: No, because the jury is -- the
11 City has a jury right as to damages. So to the extent
12 that the claim is for legal damages, that is part of the
13 jury phase and the bifurcation will be a separate
14 abatement phase.

15 MR. KELSO: Your Honor, perhaps what I would
16 suggest at this point is based on the court's rulings
17 today is we take some of these back, we confer with the
18 defendants about this and get something to the court in
19 relatively short order and maybe we can reach some
20 agreements on and maybe not, but at the very least to
21 have concrete proposals by both sides.

22 THE COURT: Okay. Well, just to clarify Mr.
23 Brody's question that what I envision is an initial
24 phase with a jury that will decide both liability and if
25 they find liability, you know, in the same phase past

1 damages and any future damages that the City can prove.
2 Now the -- the overlap between abatement remedy and
3 future damages is still there for discussion, but it
4 would be a liability and damages trial with the jury so
5 that then the jury's duty would be finished. Then we
6 would have some period of a break and then proceed with
7 an abatement if there is -- if liability is found with
8 an abatement only trial, it would be a bench trial.

9 And -- and one reason I'm asking for the estimates
10 in particular is so that we can set a date for that
11 second phase that is safe enough to make sure that the
12 first phase is finished.

13 MR. STANNER: Your Honor, Andrew Stanner for
14 McKesson. Certainly we're happy to confer with the
15 City, but I wonder if the court has any guidance about
16 how long -- six weeks sounds like an extremely long time
17 to keep a jury for the plaintiff's case and then a
18 defense case to follow. So we -- we would hope that we
19 can move much faster than that if -- through the
20 plaintiff's case. Now I understand a lot of their case
21 might be time attributable to us. We would be perfectly
22 amenable to, you know, keeping time in that way, but six
23 weeks for them plus however many additional weeks for
24 the defense is keeping the jury for an extremely long
25 time.

1 THE COURT: Well, I agree. You know it is --
2 it's going to be very hard to find a jury to sit for
3 that length. Maybe the federal courts do it all the
4 time, but maybe it would be better for me to let the
5 parties have some discussion of this in terms of even
6 just blocking out, you know, number of witnesses and how
7 quickly you can go through those witnesses because even
8 if the Defense case is -- is half that, you know, we're
9 at a nine week trial which is extraordinarily long.

10 And -- and I understand that the City wants to --
11 is trying to be cautious and is expecting ad nauseam
12 cross examination and -- and therefore, you know,
13 padding its estimates, but I really would like a tight,
14 realistic estimate. And also as I said in my memorandum
15 about the trial logistics, I want to potentially build
16 in some time off for the jury. Not necessarily every
17 week, but I would for -- and I think some of it is
18 necessary.

19 For example, I was just thinking recently that, you
20 know, we'll probably want two days off between the
21 plaintiff's case the defense case for motions and the
22 jury wouldn't be coming in. So, you know, they're going
23 to be the off dates that I've already given you plus
24 potentially some other time just so jurors can take care
25 of their personal affairs in the course of the trial.

1 But -- but nine weeks is awfully long.

2 MR. KELSO: We understand. We hear the court.
3 I think I'd certainly like an opportunity to confer with
4 our team and our client. I think we'd like the
5 opportunity to confer with the defendants as well and
6 hopefully we can be back to the court in relatively
7 short order.

8 THE COURT: Okay. I will be monitoring things
9 next week, but I'm not in chambers next week. So you
10 don't have to rush it to -- you know if you could get me
11 something like in ten days or so. I realize that the
12 defendants right now don't know if, you know, some of
13 your experts may get excluded, exactly how many
14 witnesses you will have, but I think it would be
15 sensible for you to confer about that.

16 I will also tell you that I -- I am assigned to go
17 to family next week, so I want to get this finished by
18 the end of this year. The trial time finished. And so
19 that's part of my thinking in terms of scheduling
20 because we have to get the jury trial in and then have
21 an abatement -- time for an abatement proceeding with,
22 you know, some short break between them.

23 Certainly the evidence that is presented during the
24 trial will apply to the abatement phase as well, but I
25 was hoping that the jury phase may be shortened somewhat

1 by the lack of need to present Sherman for example and
2 other certain witnesses.

3 MR. STANNER: Your Honor, just to clarify --
4 Andrew Stanner again -- you mean the end of this
5 calendar year you are off this calendar so we need to be
6 able to finish both of these before whatever the court
7 breaks for presumably the Christmas holiday?

8 THE COURT: I mean it's not absolute because
9 I'm still here sitting. It's just that if -- if I have
10 to sit in this case then -- then the administrative
11 judge has to cover my docket in family which is not a
12 desirable thing. So I am trying to arrange it so that
13 we have enough trial time to finish it in 2024.

14 MR. STANNER: Yes, sir.

15 THE COURT: All right. All right. Thank you
16 all very much. There will be written orders coming out
17 and then I also will decide the plaintiff's motions to
18 exclude defendants' experts in writing and I'll get
19 those out as quickly as I can for you.

20 We already have the hearing dates setup for motions
21 in limine, but we'll probably also want to have at least
22 one conference date just for planning, scheduling
23 purposes then may build out of the estimates that you're
24 going to give me.

25 MR. BRODY: Thank you, Your Honor.

1 THE COURT: All right.

2 MS. SWIFT: Thank you, Your Honor.

3 MR. KELSO: Thank you, Your Honor.

4 THE COURT: Thank you all very much. That

5 concludes the proceedings for today and thank you all

6 for your time.

7 MR. BRODY: Thank you.

8 (The proceedings were concluded at 3:26 p.m.)

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REPORTER'S CERTIFICATE

I, Christopher W. Metcalf, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that the proceedings in the matter of Mayor & City Council of Baltimore City versus Purdue Pharma, L.P., et al, Number 24-C-18-0515 on August 15, 2024 before the Honorable Lawrence P. Fletcher-Hill, Associate Judge were recorded by digital media.

I further certify that the page numbers 1 through 55 constitute the official transcript of the proceedings as transcribed by me from said digital media to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 15th day of August, 2024.



Christopher W. Metcalf
Official Court Reporter