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Meet The Attorneys Facing Off In The Oklahoma Opioid Trial

By **Daniel Siegal**

Law360 (May 24, 2019, 4:50 PM EDT) -- A landmark trial over the pharmaceutical industry's responsibility for the opioid crisis is about to get underway in Oklahoma, and it will give some of the Sooner State's sharpest legal minds a chance to showcase their skills by either opposing or working with BigLaw partners in front of a national audience.

Oklahoma Attorney General Mike Hunter has accused Johnson & Johnson, its subsidiary Janssen Pharmaceuticals Inc. and generic-drug maker Teva Pharmaceutical Industries Ltd. of **creating a public nuisance** by exaggerating the benefits of narcotic painkillers and minimizing their addiction risks.



Oklahoma Attorney General Mike Hunter, left, meets with his trial team, which includes Brad Beckworth of Nix Patterson; Mike Burrage of Whitten Burrage; Abby Dillsaver, general counsel for the Oklahoma attorney general's office; Reggie Whitten of Whitten Burrage; and Trey Duck of Nix Patterson.

The stakes for the companies are high. Purdue Pharma LP, the maker of OxyContin, **settled the state's claims** against it for \$270 million in March.

Hunter's office won't be leading the prosecution. Instead, he has tapped a trio of outside lawyers who each carry personal knowledge of the dangers of drug addiction: Mike Burrage and Reggie Whitten of Whitten Burrage and Nix Patterson LLP partner Bradley Beckworth. The trio and their

firms are working on a contingency fee basis.

For its part, J&J is represented by O'Melveny & Myers LLP partner Sabrina Strong and Larry Ottaway and Amy Fischer of Foliart Huff Ottaway & Bottom. Teva's trial team will be led by Robert McCampbell of GableGotwals and Morgan Lewis & Bockius LLP partner Nancy Patterson.

The matchup between the state — represented by a pair of boutiques — and two multibillion-dollar global pharmaceutical companies — represented by global firms — might appear to recall David and Goliath. But longtime Oklahoma attorneys see it as a more even fight, saying both sides are represented by the state's top trial talent.

For the State of Oklahoma

Burrage and Whitten are Oklahoma through and through, having both grown up in the state and earned their undergraduate degrees from the University of Oklahoma. Both men also earned their law degrees from the school, in 1974 and 1980, respectively.

Burrage served as a federal judge from 1996 to 2001 and launched his Oklahoma City firm with Whitten in 2008, the same year the duo secured a \$130 million verdict for a class of Farmers Insurance policyholders in a trial over allegations that the insurer wasn't paying full benefits.

Burrage and Whitten will be joined by their frequent trial partner, Beckworth, who is based in Austin, Texas. Beckworth attended Texas A&M University and graduated from Baylor Law School in 1997.

In 2015, the trio represented the Choctaw Nation and the Chickasaw Nation in a suit alleging the government failed in its responsibility to protect the tribes' trust land. That suit ended with the government **paying a \$186 million settlement** to the tribes.

Former U.S. Attorney for the Western District of Oklahoma Dan Webber, now a partner at Oklahoma City firm Ryan Whaley Coldiron Jantzen Peters & Webber, said Burrage hides his smarts behind an easy-going demeanor crafted in the small town of Antlers, in southeast Oklahoma.

"Mike Burrage will do everything he can to make you believe he's not the smartest person in the room, but he might be the smartest person in the room," Webber said. "He wants to portray himself as the country lawyer from Pushmataha County. He's very quiet, very reserved, but he's always thinking."

Tom Strickland, co-chair of WilmerHale's energy, environment and natural resources practice, worked with the trio on the Choctaw Nation and Chickasaw Nation case and echoed Webber's assessment of Burrage.

"He has great stature, but he doesn't wear that on his shirtsleeve, he doesn't wear the fact that he was a judge. He's always trying to get you to call him just 'Mike,' not 'Judge Burrage,'" he said.

Strickland touted the way Burrage, Whitten and Beckworth work as a team, saying the younger Beckworth's "fighter pilot" approach in court plays off of Burrage's experience and gravitas.

Burrage, Whitten and Beckworth said they have an extra connection to the opioid marketing case because they have each seen the impact of drug addiction firsthand. Burrage lost a niece to opioid addiction and Beckworth also has a family member that has struggled with drug addiction, according to Whitten. Whitten said his own son lost his life in a 2002 traffic accident caused by his alcohol and prescription drug addiction.

"We all have a history of being touched by this terrible disease," Whitten said. "Attorney General Hunter knew about our trial history ... but I think when you combine that with our history of dealing with loved ones with addiction, I think that's what tipped it over the edge for him."

Burrage said the trio is comfortable with what might appear to be long odds: Their team comprises roughly a dozen attorneys, while the defendants have had more than 80 attorneys make an appearance in the case.

"Going against these national firms is nothing new to us," he said. "[Purdue] pretty much told us they were going to roll over us like an 18-wheeler, and I think they've had to reevaluate that."

For J&J

J&J is being represented by Strong, an O'Melveny partner based in Los Angeles. She was part of the team that successfully defended live entertainment giant AEG in a \$1.5 billion suit brought by pop star Michael Jackson's heirs, who had alleged the concert promoter was responsible for his death because it hired the doctor found to be complicit in Jackson's overdose. A California jury in 2013 found **AEG was not liable** for Jackson's death.

Strong's former partner at O'Melveny, Michael Maddigan, said he's heard multiple judges who were observing the Jackson trial say at seminars that Strong was the best trial lawyer in that courtroom.

Maddigan, now managing partner of Hogan Lovells' Los Angeles office, said Strong is both intelligent and personable, and has skills that shine in a multiple-defendant case that requires coordination between teams of attorneys.

"She's very smart and very focused. She seems to focus on what's important," he said.

For its Oklahoma representation, J&J turned to Ottaway and Fischer, who have also been representing the company in many of the suits accusing its subsidiary Ethicon of selling defective pelvic mesh devices.

Ottaway is one of the most highly respected trial attorneys in Oklahoma, according to Mark Bialick of Durbin Larimore Bialick PC, who said he has tried cases both against and with Ottaway.

"Larry is just very smooth. He's very smooth, very thorough. Very, very knowledgeable on medicine," Bialick said.

For Teva

Leading the charge for Teva is McCampbell of GableGotwals, who served as U.S. attorney for the Western District of Oklahoma from 2001 through 2005.

At GableGotwals, McCampbell was part of the team that convinced the Supreme Court of Oklahoma in 2017 to find the state's \$1.50 "smoking cessation fee" on cigarette packs **was unconstitutional**.

Webber, who was replaced as U.S. attorney by McCampbell in 2001, said it spoke volumes about McCampbell's character that he kept his predecessor on as his first assistant.

"Robert [McCampbell] is very honest and he's very straightforward and he has an extraordinary

ability to take complex matters, to boil them down to simple decision points," Webber added. "And I think that resonates well with judges."

Webber noted that the Oklahoma City native, who went to Vanderbilt University and earned his law degree from Yale Law School in 1983, doesn't go for the small-town lawyer approach favored by Burrage and isn't afraid to show off his smarts in court.

Teva is also represented by Houston-based Morgan Lewis partner Patterson, who has three decades of experience trying cases. In October, she helped **secure a \$292.2 million arbitration award** for PepsiCo in an asbestos liability dispute with electrical equipment supplier Cooper Industries, and got the award upheld in Texas court.

Patterson started out defending employment suits at Fulbright & Jaworski LLP, but has moved into a range of complex litigation related to product liability and insurance issues. She said she loves the challenge of tackling a complicated case with large legal teams.

Patterson said she didn't go to a "blue blood" school, graduating from the University of Missouri and getting her law degree from Dallas' Southern Methodist University in 1988. She noted that joining Fulbright's employment department set her up to get real trial experience early in her career.

A 1991 amendment to the Civil Rights Act created a wave of Title VII jury trials, and Patterson said she was in the right place at the right time to take advantage.

"There were no jury trials in old Title VII days. There were a couple of us young lawyers who were eager and willing to go start trying these jury cases that, candidly, some of the partners weren't terribly eager to do," she said. "It was truly a situation of being in the right place at the right time. ... I tried a ton of cases as a young lawyer."

The case is Oklahoma ex rel. Hunter v. Purdue Pharma LP et al., case number CJ-2017-816, in the District Court of Cleveland County of the State of Oklahoma.

--Additional reporting by Jeff Overley, Keith Goldberg, Michelle Casady and Andrew Westney. Editing by Kelly Duncan and Aaron Pelc.

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