



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.

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED

SEP 15 2017

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

DEFENDANTS' MOTION FOR PROTECTIVE ORDER
STAYING DISCOVERY UNTIL THE COURT RULES
ON DEFENDANTS' MOTIONS TO DISMISS AND BRIEF IN SUPPORT

MOTION

Defendants Purdue Pharma L.P., Purdue Pharma, Inc., The Purdue Frederick Company,
Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals,
Inc., Ortho-McNeil-Janssen, Pharmaceuticals, Inc., N/K/A Janssen Pharmaceuticals, Inc.,
Janssen Pharmaceutica, Inc., N/K/A Janssen Pharmaceuticals, Inc., , Watson Laboratories, Inc.,

Actavis LLC, and Actavis Pharma, Inc., f/k/a Watson Pharma, Inc. (collectively, "Defendants"), by and through their attorneys, file this Motion for Protective Order pursuant to 12 O.S. § 3226(C). Defendants seek a stay of discovery pending resolution of their forthcoming dispositive motions to dismiss, which, if granted, will end this case and obviate the need for any discovery.

Permitting discovery to proceed before the resolution of Defendants' motions would be unduly burdensome and oppressive to Defendants. Indeed, the Legislature has made the policy determination that, absent leave of court, discovery should not begin until after motions to dismiss are decided. 2017 Okla. Sess. Laws ch. 389, §§ 5-7. Although the act effectuating this determination will not take effect until November 1, 2017, it is inappropriate even now to force the immense burdens of early and potentially unnecessary discovery on Defendants.

BRIEF IN SUPPORT

In support of this Motion for Protective Order, Defendants show the following:

I. FACTUAL AND PROCEDURAL BACKGROUND.

1. On June 30, 2017, the State of Oklahoma, by and through its Attorney General ("the State") filed its Petition against thirteen distinct companies in four distinct corporate families. Following service of the Petition on certain named Defendants, the served Defendants and the State entered into a Stipulation, whereby the State agreed to extend until September 22, 2017 the date by which Defendants can move, plead or answer the Petition. Defendants intend to file motions to dismiss the Petition on numerous grounds (the "Motions to Dismiss"), including for failure to state a claim and, for some Defendants, lack of personal jurisdiction.

2. Following the entry of that Stipulation, the State served broad discovery requests.¹ Those requests—which consist of 28 requests for production and 13 interrogatories seeking over 20 years’ worth of information—take a scatter-shot approach, presumably in hopes of obtaining information to shore up its vague and inadequate Petition. The purpose of discovery is not to create a claim where none exists.

3. As described below, in light of the Defendants’ forthcoming Motions to Dismiss, discovery should be stayed for multiple independent reasons.²

II. THE COURT SHOULD ENTER A PROTECTIVE ORDER STAYING DISCOVERY PENDING RESOLUTION OF THE FORTHCOMING MOTIONS TO DISMISS.

4. Under the rules governing discovery in Oklahoma courts, a court may enter any order “to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense” in connection with discovery. 12 O.S. § 3226(C). Further, courts have express statutory authority to extend the deadlines for responding to written discovery, *Id.* §§ 3233(A) & 3234(B)(4)(a). Such an order extending Defendants’ discovery response until after the Court has resolved Defendants’ impending Motions to Dismiss is warranted here. First, if this Court grants Defendants’ Motions to Dismiss, this litigation will end. A stay will conserve the Court’s and the parties’ resources until it is determined whether discovery is even necessary. Even if not granted in full, a ruling on Defendants’ Motions to

¹ While the State contends it has served discovery requests on all Defendants, proper service on a number of the individual defendant entities has not been accomplished as of the date of this filing. Therefore, the Defendants expressly preserve and do not waive any right, objection, defense or privilege related to the State’s discovery requests.

² On September 1, 2017 counsel for Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc., f/k/a Watson Pharma, Inc., acting on behalf of the Defendants served in this Action conferred in good faith with counsel for the State in an attempt to resolve the instant dispute without court intervention. On September 5, 2017 counsel for Purdue Pharma L.P., Purdue Pharma, Inc. and The Purdue Frederick Company conferred in good faith with counsel for the State on this issue as well. The parties were unable to reach agreement.

Dismiss will streamline any issues for discovery—indeed, only after the Court has determined what (if any) claims will proceed against which (if any) defendants, could the parties determine whether Plaintiff’s requests seek relevant information, are proportionate to the needs of the case, and are otherwise appropriate.

5. Second, the Oklahoma Legislature recently stated that discovery should only proceed *after* a petition has been answered. 2017 Okla. Sess. Laws ch. 389, §§ 5-7 (to be codified at 12 O.S. §§ 3233(A), 3234(B), 3236(A)). On November 1, 2017, amended Rules of Civil Procedure will go into effect that will prohibit all parties, including the State, from doing what the State has done here: serve discovery requests without leave of court before a party has answered the petition. *Id.* While that statute is not yet effective, the logic and policy behind its adoption are no less viable today than they will be six weeks from now. One of the underlying principles of Oklahoma’s Pleading Code is that it “shall be construed to secure the just, speedy, and inexpensive determination of every action,” 12 O.S. § 2001, and this Court already has authority to extend the time to respond to written discovery, *id.* §§ 3233(A), 3234(B)(4)(a). Here, because Defendants will challenge the viability of each and every claim in the Petition by the agreed-to deadline, there is no colorable reason why discovery should not be stayed pending this Court’s rulings.

6. For each of these reasons, discovery should be stayed pending a ruling on the forthcoming dispositive motions.

A. STAYING DISCOVERY WILL CONSERVE THE PARTIES’ AND THE COURT’S RESOURCES AND AVOID UNDUE OR UNNECESSARY BURDENS AND EXPENSE.

7. As the Oklahoma Supreme Court has made clear, “judges should not hesitate to exercise appropriate control over the discovery process.” *Quinn v. City of Tulsa*, 1989 OK 112, ¶63, 777 P.2d 1331, 1342 (quoting *Herbert v. Lando*, 441 U.S. 153, 177 (1979)). Further,

consistent with 12 O.S. § 2001, district courts are instructed to not neglect their power to restrict discovery where “justice requires [protection for] a party or person from annoyance, harassment, embarrassment, oppression, or undue delay, burden or expense.” 12 O.S. § 3226(C); *see also Quinn*, 1989 OK 112, ¶ 63, 777 P.2d at 1342. Applying this principle, Oklahoma courts recognize that discovery should be limited where appropriate. *See, e.g., YWCA of Oklahoma City v. Melson*, 1997 OK 81, ¶ 25, 944 P.2d 304, 312 (“Upon [a party’s] motion for a protective order under the terms of 12 O.S. §3226 (C), the trial judge *should consider* whether the plaintiff’s discovery request is needlessly or excessively intrusive, burdensome, or oppressive . . . [and i]f so, discovery should be limited, and if need be, it may be disallowed”); *Sproles v. Gulfcor, Inc.*, 1999 OK CIV APP 81, n.1, 987 P.2d 454, 457 n.1 (staying discovery until after the court ruled on plaintiff’s motion to vacate default judgment).

8. Here, Defendants’ forthcoming Motions to Dismiss neither require nor justify the State’s discovery, as Defendants will challenge the viability of the Petition on its face. And, this Court will evaluate whether the State’s allegations state a cognizable claim under the applicable pleading standards set forth in § 2008(A)(1) and § 2009(B) of the Oklahoma Pleading Code. *See Dani v. Miller*, 2016 OK 35, ¶ 25, 374 P.3d 779, 791; *Gianfillippo v. Northland Cas. Co.*, 1993 OK 125, ¶ 11, 861 P.2d 308, 310-11. As such, discovery is not appropriate prior to the Court’s resolution of the Motions to Dismiss.

9. For these reasons, a stay of discovery pending the resolution of the Motions to Dismiss will conserve the resources of the parties. The burdens associated with collecting, reviewing and producing materials in response to the State’s extensive discovery requests—seeking documents dating back over twenty years—are substantial. Some of the requested information and documents are stored in electronic databases that have been taken offline and,

therefore, any effort to try to identify, collect, and export requested documents from those defunct databases will require massive cost, time, and business disruption. Moreover, even if it were possible, the sheer volume of documents that would need to be collected, reviewed, and analyzed would impose wholly disproportionate monetary and operational burdens on the Defendants. If, however, the Motions to Dismiss are granted, in whole or in part, there may be no need for discovery at all or the scope of discovery will be narrowed.

10. A discovery stay would also promote judicial economy and conserve the Court's resources by sparing the Court the burden of resolving potentially unnecessary discovery disputes. Those disputes could arise not only from the State's requests, but also from discovery requests that Defendants would have no choice but to serve on the State at this time if the Motion is not granted. Those requests would necessarily span a range of issues given the State's sweeping allegations and expansive claims for relief, which include recovery for alleged violations of Medicaid False Claims Act, Medicaid Program Integrity Act, and Consumer Protection Act, as well as public nuisance, fraud, and unjust enrichment.

11. Oklahoma state courts are instructed to look for guidance from federal cases, where appropriate, when construing the Oklahoma pleading rules, like 12 O.S. §§ 2008(A)(1), 2009(B), and 3226, that are patterned after the federal rules. *Gay v. Akin*, 1988 OK 150, n.18, 766 P.2d 985, 990 n. 18 (quoting Introductory Committee Comment to the Oklahoma Pleading Code and noting that “[w]here the text of the Federal Rules has been adopted in the Oklahoma Pleading Code, the construction placed on it by federal and state courts should be presumed to have been adopted as well”); *Heffron v. Dist. Ct. of Oklahoma Cnty.*, 2003 OK 75, ¶ 13, 77 P.3d 1069, 1076 (finding that it was appropriate to consider relevant federal case law interpreting Fed.

R. Civ. P. 26 to assist the court in its interpretation of pertinent subsections of 12 O.S. § 3226, which was modeled off Fed. R. Civ. P. 26).

12. To that end, one of the purposes of a motion to dismiss is “to avoid ginning up the costly machinery associated with our civil discovery regime [Fed. R. Civ. P. 26] on the basis of a largely groundless claim.” *Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1215 (10th Cir. 2011) (quotations omitted). Thus, “[a] stay of discovery until after resolution of a pending dispositive motion is appropriate ‘where the case is likely to be finally concluded as a result of the ruling thereon, where the facts sought through uncompleted discovery would not affect the resolution of the motion, or where discovery on all issues of the broad complaint would be wasteful and burdensome.’” *Ciempa v. Jones*, No. 11-CV-347-GKF-FHM, 2012 WL 1565284, at *3 (N.D. Okla. May 2, 2012) (quoting *Kutilek v. Gannon*, 132 F.R.D. 296, 298 (D. Kan. 1990)).

13. The same considerations apply here. If the Motions to Dismiss are granted because the State has not pled and cannot plead a cognizable claim against the Defendants, the Petition will be dismissed—and the case may end. Similarly, if the Motions to Dismiss are denied, the State will not be burdened or prejudiced as demonstrated by the Legislature’s recent enactment which sequences discovery after motions to dismiss are decided. Conversely, the burden of responding to the State’s broad discovery requests is significant for Defendants, and cannot be justified where, as Defendants will explain in their forthcoming motions, the claims are not viable and should be dismissed.

14. Because the State has no need for discovery to respond to Defendants’ Motions to Dismiss; because the motions, if granted, would dispose of the case; and because there will be no


prejudice the State, this Court should stay discovery pending resolution of the Motions to Dismiss.

B. FORCING THE DEFENDANTS TO MOVE FORWARD WITH DISCOVERY AT THIS JUNCTURE CONTRAVENES THE EXPRESS INTENT OF THE LEGISLATURE

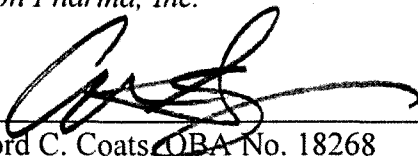
15. The Oklahoma Legislature has spoken on the need to and benefit of delaying discovery until the Court has had an opportunity to analyze whether a petition states a valid claim. Under the new Oklahoma Rules of Civil Procedure, which go into effect on November 1, 2017, parties will be prohibited from serving discovery requests without leave of court before a party has answered the petition. 2017 Okla. Sess. Laws ch. 389, §§ 5–7 (to be codified at 12 O.S. §§ 3233(A), 3234(B), 3236(A)). The procedure, therefore, is that trial courts will first resolve dispositive motions to dismiss before allowing burdensome and costly discovery to proceed. *See* 12 O.S. § 2012(A)(5).

16. The State's Petition is replete with conclusory allegations that lack the necessary facts to plead any fraud or other misconduct alleged. Further, the State has not pled any facts to establish that any of the Defendants caused the alleged harm or that the State has suffered a cognizable injury. As such, Defendants believe that their Motions to Dismiss will end the State's claims in their entirety, or, at a minimum, narrow what claims and issues will remain against what Defendants for purposes of discovery. The State should not be allowed to force the burdens of extensive discovery on the Defendants based upon allegations which cannot survive a motion to dismiss. Alternatively, if some claims survived a motion to dismiss, there is no harm or prejudice to the State in the slight delay until after a decision on Defendants' Motions to Dismiss.

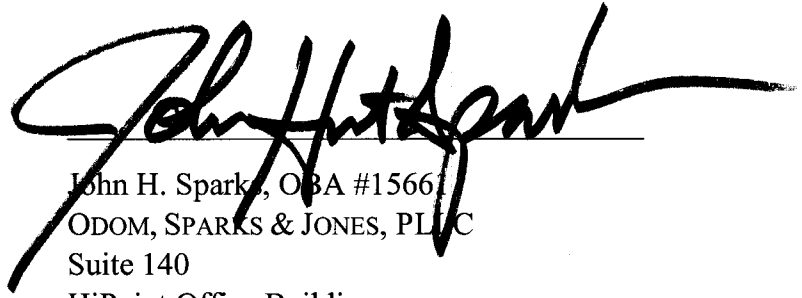
WHEREFORE, because the State's discovery requests to Defendants are unnecessary and overly burdensome, because Defendants' forthcoming Motions to Dismiss are potentially dispositive, because the Oklahoma Legislature has indicated that discovery is inappropriate prior to a ruling on dispositive motions, and because no prejudice will result from a stay, the interests of justice require that discovery in this action should be stayed until the Court rules on those motions.

By: 
Robert G. McCampbell, OBA No. 10390
Travis V. Jett, OBA 30601
GABLEGOTWALS
One Leadership Square, 15th Fl.
211 North Robinson
Oklahoma City, OK 73102-7255
Telephone: (405) 235-5567
Email: RMcCampbell@Gablelaw.com
TJett@Gablelaw.com

Attorneys for Defendants Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.

By: 
Sanford C. Coats, OBA No. 18268
Cullen D. Sweeney, OBA No. 30269
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102
Telephone: (405) 235-7700
Email: sandy.coats@crowedunlevy.com
cullen.sweeney@crowedunlevy.com

Attorneys for Defendants Purdue Pharma L.P., Purdue Pharma, Inc. and The Purdue Frederick Company.



John H. Sparks, OBA #15661
ODOM, SPARKS & JONES, PLLC
Suite 140
HiPoint Office Building
2500 McGee Drive
Norman, OK 73072
Telephone: (405) 701-1863
Facsimile: (405) 310-5394
sparksj@odomsparks.com

ATTORNEY FOR DEFENDANTS

**JOHNSON & JOHNSON, JANSSEN
PHARMACEUTICALS, INC.,
JANSSEN PHARMACEUTICA, INC.
N/K/A JANSSEN
PHARMACEUTICALS, INC., AND
ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC. N/K/A
JANSSEN PHARMACEUTICALS, INC.**

CERTIFICATE OF SERVICE

Pursuant to Okla. Stat. tit. 12, § 2005(D), this is to certify on September 15, 2017, a true and correct copy of the above and foregoing has been served via the United State Postal Service, First Class postage prepaid, to the following:

Mike Hunter
ATTORNEY GENERAL FOR
THE STATE OF OKLAHOMA
Abby Dillsaver
Ethan Shaner
GENERAL COUNSEL TO
THE ATTORNEY GENERAL
313 NE 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246
Emails: abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

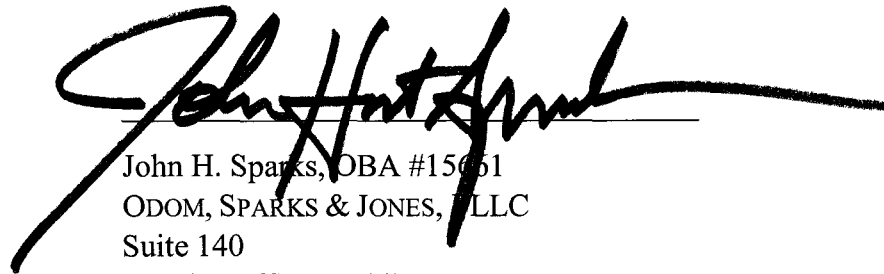
Michael Burrage
Reggie Whitten
WHITTEN BURRAGE
Suite 300
512 North Broadway Avenue
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: mburrage@whittenburrage.com
rwhitten@whittenburrage.com

Bradley Beckworth
Jeffrey Angelovich
NIX, PATTERSON & ROACH, LLP
Suite 200
512 North Broadway Avenue
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: bbeckworth@nixlaw.com
janglovich@npraustin.com

Glenn Coffee
GLENN COFFEE & ASSOCIATES, PLLC
915 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

Tracy Schumacher
SCHUMACHER & STANLEY, PLLC
114 East Main Street
Norman, OK 73072
(405) 701-1882
(405) 7015833 fax
tracy@schumacherstanley.com

ATTORNEYS FOR PLAINTIFFS



John H. Sparks, OBA #15061
ODOM, SPARKS & JONES, PLLC
Suite 140
HiPoint Office Building
2500 McGee Drive
Norman, OK 73072
Telephone: (405) 701-1863
Facsimile: (405) 310-5394
sparksj@odomsparks.com

ATTORNEY FOR DEFENDANTS

**JOHNSON & JOHNSON, JANSSEN
PHARMACEUTICALS, INC.,
JANSSEN PHARMACEUTICA, INC.
N/K/A JANSSEN
PHARMACEUTICALS, INC., AND
ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC. N/K/A
JANSSEN PHARMACEUTICALS, INC.**