



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE  
HUNTER, ATTORNEY GENERAL OF  
OKLAHOMA,

Plaintiff,

v.

PURDUE PHARMA L.P., et al.,

Defendants.

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master

William C. Hetherington, Jr.

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }  
FILED  
SEP 05 2018  
In the office of the  
Court Clerk MARILYN WILLIAMS

**PURDUE'S (1) RESPONSE TO THE STATE'S MOTION FOR PROTECTIVE ORDER  
AND (2) CROSS-MOTION FOR EXPEDITED CONSIDERATION**

The State has moved for a protective order that would delay three depositions that were noticed by Purdue in April and May of this year and were, after the case was remanded, re-issued and scheduled in a manner that afforded the State more than 30 days of notice. The State's motion is not without irony. At every opportunity, the State has come to this Court repeating its mantra that it is doing everything it can to push this case forward to meet the demands of the case schedule, insisting that the May 2019 trial date that it asked for is realistic, and claiming that Defendants are somehow delaying this case. The State has also complained that the deposition process is broken because Defendants have challenged their deposition notices in some form or fashion through motion practice. 8/10/18 Hr'g Tr. at 27:18-22, 29:19-24 (Beckworth). Yet now the State has itself filed motions (either to quash or for a protective order) addressing four of the five depositions noticed by Purdue.

Tellingly, even though it could have, the State did not file its motion in advance of the August 31 discovery conference and did not raise any of the issues presented in its motion at that conference. Nor did it even suggest at the conference that it would file such a motion. The State could have done any of these things but chose not to do so because it would conflict with its

messaging at the conference that it is doing everything it can to move the case along and that the trial date should not be moved. Instead, the State waited until hours after the conference to file its motion. Not only is the State playing games, but the timing of its motion is problematic because it concerns depositions that are scheduled as early as September 12. Given the belated nature of the State's filing, Purdue respectfully asks that this Court address the State's motion on an expedited basis. Purdue is available for a teleconference at this Court's convenience.

To be clear, it is the State, not Purdue that is impeding the discovery process, delaying the case, and making it difficult to accomplish the work needed to prepare for the May 2019 trial date through its failures to timely produce witnesses and documents. While the State has alleged broad theories of liability, it is standing in the way of allowing Purdue to take timely and appropriately noticed depositions on core issues in the case. These depositions are needed to help begin identifying additional areas of discovery needed for Purdue's defenses against the State's claims, by, for example, identifying additional documents, fact witnesses, and topics for State representatives. Compounding the problem, the State's document production remains woefully deficient despite this Court's orders compelling them to produce documents. In sharp contrast, Defendants have produced more than 6.4 million pages of documents to the State. Purdue alone has produced more than 3.4 million pages. Each Defendant has put up at least one corporate representative for deposition. Purdue has put up two witnesses to address three of the State's deposition topics.

Discovery is a two-way street. The State can seek discovery, but it also needs to respond to discovery. The State somehow has the ability to take the 30 depositions of Defendants' sales representatives that it has noticed for the month of September, but needs more time for all of the depositions Purdue has noticed either because its witnesses need more time to prepare or because

it has not even identified the appropriate witnesses. If the State is not devoting enough resources to responding to discovery, and is merely focusing on seeking discovery, then it should either reallocate or expand its resources, or request an appropriate extension of the trial date. Given the pace of the State's responses to discovery, the current trial date is not realistic.

As for the State's arguments that a protective order is needed to accommodate its witnesses' schedules, the irony here is especially thick. When Purdue asked the State to reschedule depositions to accommodate its witnesses' schedules, including pre-existing vacation plans, the State refused, notwithstanding its representations to the Court that the State "will work with the defendants to move dates around to accommodate schedules, which we've always maintained that we would do." *Id.* at 29:8-10 (Beckworth). Instead of working with Purdue on witness schedules, the State moved for sanctions on an "emergency" basis, forcing one of Purdue's witness to interrupt his long-planned vacation with his family. Now, the State feigns surprise and outrage when its request for the very same professional courtesies based on its witnesses' schedules are not well-received by Purdue. The State cannot make up the rules as it goes along or have the rules selectively applied when it suits them. After all, "in the law, what is sauce for the goose is normally sauce for the gander." *Heffernan v. City of Patterson*, 136 S. Ct. 1412, 1418 (2016) (Breyer, J., concurring).

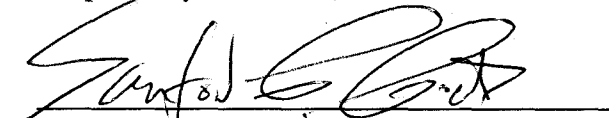
With respect to the deposition that Purdue noticed for September 12, the State contends that it "presents a conflict for Plaintiff's counsel" because there is a meeting with the Settlement Master on September 13 and 14 in New York. State's Br. at 2. With the way the State has noticed depositions, such scheduling issues are bound to happen again. In any event, the State's claimed scheduling conflict is belied by the fact that the State has noticed multiple depositions of Purdue's former employees to take place in Oklahoma on September 12, 13, and 14. The State

has made clear to the Court that its team can handle multiple litigation events in a single day: “[W]e have a bigger team than what you see here, but it's not huge, and we're going to have to have as many as two or three, four lawyers on a given day taking depositions in multiple locations. That's just what we're going to have to do.” 8/10/18 Hr'g Tr. at 31:3-8 (Beckworth). The State's counsel's claimed scheduling conflict does not justify delaying the September 12 deposition.

For these reasons, Purdue respectfully requests that the Court address the State's motion on an expedited basis, deny the State's motion, and order that the depositions that Purdue timely noticed for September 12, 19, and 20 proceed. To be clear, if the Court wants to give the State a few extra days for the depositions, Purdue is amenable to some short extensions along those lines. But the State's one-sided strategy in focusing its efforts on the discovery it seeks, while shirking its responsibilities to respond to Defendants' discovery requests, should not be rewarded. While Purdue certainly remains committed to working out deposition scheduling issues with the State to avoid motion practice, consistent with the Court's deposition protocol, the protocol can only work if it is based on professionalism, good faith, reasonable diligence, and candor throughout the discovery process. Neither the State's motion nor its pattern of conduct exhibit any of that, which not only undermines the protocol, but also jeopardizes the trial date.

DATED: September 4, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of September 2018, I caused a true and correct copy of the following:

**PURDUE'S RESPONSE TO THE STATE'S MOTION FOR PROTECTIVE ORDER**

to be served via email upon the counsel of record listed on the attached Service List.

A handwritten signature in black ink, appearing to read "Gordon E. Cook", is written over a horizontal line.

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