



STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED In The
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AUG 23 2018

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

<p>STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>PURDUE PHARMA L.P., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: right;">In the office of the Court Clerk MARILYN WILLIAMS</p> <p>Case No. CJ-2017-816 Judge Thad Balkman</p> <p>William C. Hetherington Special Discovery Master</p>
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**JANSSEN’S RESPONSE TO THE STATE’S
EMERGENCY MOTION TO SHOW CAUSE¹**

The State’s emergency motion to show cause should be denied. There is no basis for the relief sought by the State, and its effort to turn deposition scheduling issues that are routinely worked out by litigants into an “emergency” requiring motions practice and court intervention is antithetical to the efficient progress of this case.

On August 6 and 8, following remand, the State re-noticed 42 corporate-representative depositions of the Janssen defendants, unilaterally choosing dates beginning with August 28 and continuing through December 3.

Two days later, during the August 10 scheduling conference, the State stated that it noticed such a large number of depositions because it “listed the topics discr[et]ely,” and it indicated that it “hope[d] that one witness can testify on multiple topics, and that’ll cut down the number.” Ex.

¹ State’s August 22, 2018 Emergency Motion to Show Cause for Janssen’s Intentional Disregard of Court Order and Failure to Provide Witness as Ordered by the Court.

A at 34:19-23. It also said that it would “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.

Janssen wrote to the State on August 21 to advise that one of its corporate designees could address the abatement topic—as well as 12 additional topics—on October 10 (continuing to October 11 as necessary). Mot. Ex. A. Far from delaying things, this would have accelerated the pace of discovery by completing these 13 topics 47 days earlier than they would be completed if they occurred as noticed by the State. Indeed, the date proposed by Janssen preceded dates unilaterally selected by the State for 10 of the 13 topics. But the State never responded to Janssen’s letter: not a phone call, email, or letter. Instead, the State filed its “emergency” motion, taking the unfounded position that the Court had “ordered” the abatement deposition to occur before August 30.

This behavior is inexcusable. Discovery in this case will not work if the State refuses to engage in cooperative discussion of scheduling issues. Depositions cannot simply be set unilaterally, to be followed with “emergency” motions for show-cause orders.

This Court should deny the State’s motion and reinforce that professionalism and collegiality are required in the scheduling of the many depositions this case will entail.

I. PROCEDURAL HISTORY

The State originally noticed a corporate-representative deposition related to Janssen’s abatement efforts on April 2, 2018, for a deposition date of April 10. Janssen moved to quash this first deposition notice, and its motion was granted. Ex. B at 5 (electronic version of order sent to parties via email).

In light of the Court’s ruling that the State’s originally noticed topic was improper, the State then served a deposition notice with a *new*, revised abatement topic on May 4 (unilaterally selecting May 30 without checking to see whether a Janssen designee could be available that day).

Janssen advised the State that it could make a witness available for this new abatement topic on June 21, and the State served a superseding notice on May 31 setting the deposition for this agreed date. Ex. C. On June 13, the case was removed, and the case was not remanded until August 3. The June 21 deposition relating to the new abatement topic therefore never occurred.

On August 6, the State re-noticed the new abatement topic, again without first consulting with Janssen to see what dates might work, this time for August 28. Mot. Ex. D. The State also re-noticed 41 other corporate representative topics, choosing dates up to and including December 3, again without first contacting Janssen.

During the August 10 hearing, Judge Balkman ruled orally that “[t]hose depositions that were noticed before the removal that went through the process where you all presented arguments and that Judge Hetherington ruled on . . . all those before August 30th should go ahead.” Ex. A at 55:12-20. In a written order issued the same day, the Court held that “[p]reviously approved depositions prior to removal and set to occur before 8/30/18 are not void.” Ex. D.

In an August 21 letter, Janssen proposed October 10 as the date for the abatement deposition noticed post-remand, as well as for the depositions as to 12 additional topics noticed post-remand. *See* Mot. Ex. A. October 10 was earlier than the dates the State noticed for ten of the 13 topics, and Janssen’s proposal would thus accelerate the overall pace of discovery.

The State did not respond to Janssen’s letter and instead filed its “emergency” motion on August 22.

II. ARGUMENT

A. The August 10 Order Does Not Cover the Abatement Deposition Noticed for August 28.

Janssen fairly and reasonably read the Court’s August 10 Order as not applying to the deposition in question and not requiring that depositions occur before August 30. The Court orally

ruled that “[t]hose depositions that were noticed before the removal that went through the process where you all presented arguments and that Judge Hetherington ruled on . . . all those before August 30th should go ahead.” Ex. A at 55:12-20. In a written order issued the same day, the Court held that “[p]reviously approved depositions prior to removal and set to occur before 8/30/18 are not void.” Ex. D. This order should not require Janssen to make a witness available for the abatement topic on August 28, for several reasons.

First, the August 28 deposition was noticed on August 6, *after* removal. Mot. Ex. D.

Second, the August 28 date has never been approved by the Court or by Janssen.

Third, the topic of the August 28 deposition has never been approved by Judge Hetherington. To the contrary, Judge Hetherington granted Janssen’s motion to quash the State’s prior effort to notice a related deposition topic. Ex. B.

Because the August 10 Order applies only to depositions noticed *before* removal and to depositions specifically approved by the Court, Janssen’s effort to negotiate deposition dates with the State should not be seen as a violation of the Court’s August 10 Order.

Moreover, the August 10 Order does not mandate that depositions occur by August 30, as the State claims. Mot. at 6. The Order merely provides that the deposition notices are not void, and that the depositions should go forward at some time. Janssen has offered to make a witness available on the abatement topic, as well as 12 others, on October 10. Mot. Ex. A.

B. Janssen Sought in Good Faith to Schedule Depositions, and the State Responded with a Bad-Faith Motion for Sanctions

Janssen has acted in good faith to schedule the abatement deposition, as well as other depositions, on mutually agreeable dates. In accordance with the State’s promise that it would “work with the defendants to move dates around to accommodate schedules,” Ex. A at 29:8-10, Janssen wrote to the State on August 21 to address deposition scheduling, Mot. Ex. A. It proposed

that one of its corporate designees could address the abatement topic—as well as 12 additional topics—on October 10 (continuing to October 11 as necessary). *Id.* This offer meant that 10 of the topics would be completed earlier than requested by the State—in some cases as many as seven weeks earlier. Rather than responding to this letter, the State filed an unfounded motion for sanctions. Discovery in this case is doomed to fail if the State unilaterally notices depositions, refuses to respond to good-faith scheduling communications, and immediately proceeds to motions practice.

In addition, the State's request for sanctions is wholly unfounded. Janssen incorporates by reference Purdue's arguments in opposition to this request. *See* Purdue Response at Section III (August 22, 2018).

III. CONCLUSION

For all the foregoing reasons, the Court should deny the State's motion.

Dated: August 23, 2018

Respectfully submitted,

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CERTIFICATE OF MAILING

Pursuant to Okla. Stat. tit. 12, § 2005(D), this is to certify on August 23rd, 2018, a true and correct copy of the above and foregoing has been served via the United States Postal Service, First Class postage prepaid, to the following:

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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

vs.)

Case No. CJ-2017-816

- (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;)
- (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.)

TRANSCRIPT OF PROCEEDINGS
HAD ON AUGUST 10, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN
DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR



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THE COURT: Good morning. I understand we have some that will join us by telephone. We're going to conference in those. I have an e-mail that Kim Jones sent from Odom Sparks. Is everybody that wants to be here that's not here going to connect through this number?

MR. SPARKS: It's my understanding.

THE COURT: Okay. We'll use this phone because I think it'll be easier for Angie to hear.

(Brief pause.)

THE COURT: Good morning. This is Judge Thad Balkman in Cleveland County. Is anybody else on the call?

MR. BRODY: Hi. Good morning, Judge Balkman. This is Steve Brody.

THE COURT: Okay. Good morning, Mr. Brody.

MR. SPARKS: That may be it. I'm not sure.

THE COURT: Okay. If others join the call, I'm sure they can announce themselves.

What I thought I would do, instead of just going around the room like we've done in the past and having people enter appearances, if you have something you would like to say, we'll just ask you at that time to state your name and which party you represent.

I want to welcome everybody here. I know some of you traveled great distances, and I appreciate that. And that's

1 have on the calendar to do them.

2 Mr. Brody sent a letter about this last night. We filled
3 up a lot of dates on the calendar, but we've all been given
4 fair, due process notice about what the calendar would look
5 like through May of 2019. And so we took the initiative to
6 start noticing depositions, and many of these depositions we
7 don't even have all the documents yet, but we're going to do
8 what we've got to do. That's what we have.

9 As Mr. Whitten said today, we're not entitled to perfect
10 discovery; we're going to do the best that we can. So we've
11 noticed up these depositions.

12 What has happened is that a lot of them just don't get to
13 happen at all. So if I may approach?

14 THE COURT: Sure.

15 MR. BECKWORTH: What we've done is show the topic
16 choice of depositions that we're going to have, who the
17 defendant is -- I've got three more of these; I won't burden
18 you with them -- who the deponent is, and when the date was
19 supposed to happen.

20 Because of motion practice and because of this removal,
21 every one of those depositions is gone. We lost it. They
22 don't get to -- we don't get to have those dates back. So what
23 we did is as soon as we got your Honor's -- or the remand
24 order, we went back to the schedule of everybody that we had
25 noticed with corporate rep depositions and reissued them.

1 I don't agree that the discovery was voided when they
2 removed. I do agree that it wasn't permitted to go forward
3 during that time, but we're not there anymore. We're under
4 your rules and the State's rules; no longer the federal rules.

5 But be that as it may, we reissued the notices. We've
6 given dates for every one of these depositions, and those are
7 the dates that they need to happen on.

8 Now, we will work with the defendants to move dates around
9 to accommodate schedules, which we've always maintained that we
10 would do. We broke these corporate rep depositions into topic
11 areas, discreet topic areas, but it may very well be that one
12 witness could cover ten of them. We don't know if there are
13 going to be 50 depositions or 12.

14 If they have witnesses that can testify on multiple
15 topics, of course we will relieve them from those notices and
16 do those all at a single date that we can all work out. But
17 the content and substance of these depositions has been duly noticed,
18 and we need to be able to move forward.

19 If we were to leave these notices under the old manner
20 that things were happening in this case, I think we would be
21 met with somewhere between 20 and 80 motions to quash. And I
22 think they would be done seriatim by the defendants in a way
23 that drag this out or drag this out such that we wouldn't be
24 having a trial in 2025, much less 2019.

25 I don't fault them for doing that. That's just the way

1 the business occurs. But that is indeed what has been the
2 practice and will continue to be the practice.

3 So I think we've given you a copy of all the ones that are
4 noticed. And my proposal would be to the extent the defendants
5 want to move to quash these depositions, that we go ahead and
6 have that motion done, and we'll respond quickly and have that
7 on the 30th too if Judge Hetherington or your Honor can handle
8 that. That's the only way this is going to work.

9 And you know, frankly, I've talked to Mr. Whitten and
10 Judge Burrage about this a lot. The rules state that you serve
11 a notice or you serve a subpoena, there's a time period in
12 which to respond, and then you move forward. That's what we've
13 got to deal with here. There's too much work to be done to
14 keep dragging this out.

15 I think that there'll be other subpoenas issued on us and
16 that we'll issue on them that we can deal with in due course,
17 but this is the bulk of the work that we have to do. On top of
18 this, I don't know that your Honor's fully aware of the
19 individual reps, but the bottom quarter or third of that page
20 is an example.

21 We got the identities of people that we believed were
22 sales reps that had relevant knowledge, and we went out and
23 subpoenaed them. Some of them weren't the right people. Some
24 of them don't have the knowledge that, you know, we're looking
25 for. Some of them have retained different ones of the defense

1 a really great job working through these issues and letting
2 both sides air whatever they want to do and then try and make a
3 reasoned response. But what I know now is that having motion
4 after motion after motion on 14 and 30-day schedules and then
5 having rehearings and then having appeals to your Honor, that
6 doesn't work. It just doesn't work.

7 So our proposal would be, at least again with respect to
8 all the depositions that we've noticed to date, and if they
9 want to deal with any that they've noticed to us, if we're
10 going to have motion practice on them, you've given us -- I
11 don't know how many days it is until the 30th. It's almost
12 three weeks I guess. That's a lot of time.

13 And if Judge Hetherington, you can do it, I would suggest
14 we have an omnibus hearing on all those. Find out which ones
15 we can take, find out which ones we can't, and then after that,
16 once we know, we can work on dates and everything else if they
17 need to move things around. That's the only way I see this
18 working.

19 THE COURT: Beyond the four pages of individuals that
20 are in this exhibit, what is your guesstimate of how many
21 others you intend to depose?

22 MR. BECKWORTH: Well, we don't have fact witness
23 names for sure yet because we're still getting documents and
24 all that. I don't know. I really don't. Man, I hope we can
25 keep it in the two dozen range.

1 Also, you know, one thing that we're dealing with is that
2 we had to go to foreign courts, i.e., not in Oklahoma, to get
3 third parties. And so we're going to have to deal with some of
4 those third parties, and we have to go and we've got a process
5 with Judge Hetherington for letters rogatory. And we'll go
6 take those depositions as if and as we notice them. I don't
7 think there are going to be a ton of those.

8 Mr. Pate may be able to help me, or actually
9 Mr. Leonoudakis. We subpoenaed about two dozen third parties.
10 We've given the defendants copies as soon as we get them of
11 whatever we've gotten from them. We're going through those
12 documents, and we'll determine whether we need a rep or
13 individual of those.

14 I'm pretty positive there's going to be 6 to 12 of those
15 individuals, and I don't know if they'll be individual
16 depositions or corporate rep or both. But that's what I think.
17 And we're going to fill most of the calendar. It's just what
18 we have to do.

19 Now, this list of deposition notices, it goes on forever.
20 But again, a lot of the length and the number is due to the
21 fact that we've listed the topics discreetly. I do think and I
22 would hope that one witness can testify on multiple topics, and
23 that'll cut down the number.

24 I also would say, your Honor, I think this is critical.
25 There were several depositions that we were allowed to take

1 after defeating a motion to quash, and some of those
2 depositions were to happen with literally I think a day or two
3 after the removal was filed.

4 We have re-noticed those to happen next week. There's
5 depositions that we've currently scheduled for August 22nd right on
6 through the 29th. I believe every one of those was one that a
7 motion -- the motion practice had already been ruled upon. So
8 they're clean as far as the dispute has been resolved by Judge
9 Hetherington.

10 So we plan to go forward with those as noticed. And those
11 would be the ones on the far right column that go to August
12 30th. I think -- I don't know, Reggie, if you've got anything
13 else, but I could be real dramatic about it, your Honor, but
14 the truth is it's pretty mundane.

15 We've got a job to do. You've ordered us to do it. And
16 we can't do it if we're beating our heads into a wall. And
17 that is exactly what happened. And I don't mean that
18 colloquially or disrespectful to these guys. They're doing
19 their job. But we have to be able to move forward here.

20 To be in this case as long as we've been in it and not be
21 able to have taken but one deposition, that just doesn't work.
22 And that's not because of the removal; that's because of the
23 process and the way they've acted about it.

24 And the last thing I'll say is with respect to due process
25 or what they're claiming about getting information from us,

1 expedited process with regard to the discovery.

2 MR. BARTLE: Your Honor, I think we also submitted
3 opposed competing process to Judge Hetherington, and that
4 obviously was taken off the table with the removal. But I
5 certainly would -- we would welcome the opportunity to talk
6 about an appropriate deposition process, because we think
7 that's the way this case is going to get resolved.

8 That's how everything's going to work. We have to have a
9 process in place to where we are in agreement. As to that,
10 probably the processes are different we propose, but we do
11 agree there has to be a process. And we certainly would
12 welcome the opportunity to go back to Judge Hetherington and
13 reconsider those and have argument and discuss it.

14 MR. BURRAGE: We don't think it's relevant to these
15 depositions. These depositions have been noticed, and they're
16 set and ready to go. And I would urge the Court to keep the
17 30th day, and let's resolve any issues on these depositions.
18 We've got -- we need to do that, Judge.

19 MR. ODOM: Your Honor, we'll visit with counsel
20 because I don't know that we've received all of those new
21 notice dates. Some of them, yes, but others we're looking at.

22 I know we're short on time here today, but just a question
23 for all of us here: How long are we going to be allocated on
24 the 30th? Are we going to be going from 10:00 until noon, or
25 are we set for longer than that? Just so we can all kind of

1 plan it internally.

2 THE COURT: I hate to say this, but as long as you
3 need.

4 MR. ODOM: Okay. Thank you, Judge.

5 THE COURT: You don't have to take me up on it,
6 though.

7 We're going to take a break, just give you a chance to go
8 to the bathroom, whatever you need to do. Let's be back here
9 at 12:20.

10 (A recess was taken, after which the following
11 transpired in open court, all parties present:)

12 THE COURT: All right. Here's what I think we will
13 do. Those depositions that were noticed before the removal
14 that went through the process where you all presented arguments
15 and that Judge Hetherington ruled on, I'm going to decide that
16 those are not void, that they should proceed; that all those
17 before August 30th should go ahead. I'm going to instruct the
18 parties to move forward with those. All others that were
19 pending will be void and will have to be taken up again as if
20 new.

21 Previously, I had stated that I wanted you to come back
22 here on August 30th, and I think we said at 1:00 -- or maybe
23 10:00 or 11:00. I'm going to move that to 1:00 p.m. on the
24 30th, because there's obviously a lot of discovery issues that
25 the parties need to sort through and probably will be

1 influenced by my decision on the bifurcation motion.

2 Judge Hetherington will be available Friday, the 31st, in
3 the morning. So I'm trying to make it easy where you're here
4 the afternoon of the 30th and again the morning of the 31st.
5 And so all discovery matters -- well, any pending motions, but
6 particularly the process that was discussed. I think Judge
7 Burrage and the defendants talked about it and Mr. Coats had
8 talked about they had submitted things prior to the removal.
9 You'll have an opportunity to discuss those and argue those
10 with Judge Hetherington at that time.

11 Just for planning purposes, I want to give you some dates
12 that will be available. Again, you don't have to use them all,
13 but just if you want to have these dates on your calendars in
14 case you need to take up matters related to discovery with
15 Judge Hetherington or with me.

16 September 20th and October 18th, I think I've previously
17 given you those dates, but if not, I am now.

18 Also, November 29th, December 20th, January 17th, February
19 14th. That's Valentine's Day. That's not a good day to be
20 here, but maybe we'll have more love for each other that day.
21 March 14th, April 11th, and I believe there's a status
22 conference May 16th.

23 MR. COATS: So these are before your Honor?

24 THE COURT: Yes. These would be before me, or Judge
25 Hetherington will also be available. But I'm making myself

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

vs.)

Case No. CJ-2017-816

Judge Thad Balkman

- (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;)
(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.)

ORDERS OF SPECIAL DISCOVERY MASTER ON APRIL 19th 2018 MOTION
REQUESTS

On April 19, 2018, the above and entitled matter was heard before the undersigned on the parties' various motions, objections and requests for relief. The undersigned Special Discovery Master having reviewed the pleadings, heard oral arguments and being fully advised in the premises finds as follows:

Purdue's Motion To Compel Production Of Documents



Purdue seeks to compel production of documents responsive to RFPs requested in its first set of requests for production. Purdue Pharma L.P. seeks production of documents numbered two, four, six, seven, eight, and nine. Purdue Fredrick Co. seeks production of documents responsive to requests number one, five, six and seven. Plaintiff, State of Oklahoma, ex. rel. Attorney General of Oklahoma (State) has filed its objection thereto and request to strike as moot.

- A. State's objection and motion to strike as moot is **overruled**. Specific finding is made that under the claims made in this petition, details of medical necessity and reimbursable claims under the Oklahoma Medicaid system, State's claims review and reimbursement process and the identity of State personnel with knowledge about efforts to prevent opioid abuse and diversion are all relevant or potentially relevant areas of inquiry in this case. State argues the only documents that will be withheld or objected to are privileged and confidential information. Therefore, both Purdue Pharma L.P. and Purdue Frederick Company's motion to compel are **sustained** to be produced as soon as practically possible under the agreed "rolling production" process. The undersigned acknowledges State's argument that its objections have been withdrawn. Nevertheless, production is **ordered** consistent with findings made herein:

Purdue Pharma L.P.

1. RFP No. 2 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
2. RFP No. 4 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
3. RFP No. 6 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
4. RFP No. 7 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
5. RFP No. 8 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
6. RFP No. 9 - State's objection withdrawn during meet and confer, motion to compel **sustained**.

Purdue Frederick Co.

1. RFP No. 1 – State’s objection withdrawn during meet and confer, motion to compel **sustained**;
2. RFP No. 5 – State’s objection withdrawn during meet and confer, motion to compel **sustained**;
3. RFP No. 6 – State’s objection withdrawn during meet and confer, motion to compel **sustained**;
4. RFP No. 7 – State’s objection withdrawn during meet and confer, motion to compel **sustained**.

State’s Second Motion To Compel

State has served notice for corporate designee depositions as described in exhibits one through six of State’s motion:

1. The open letter published by or on behalf of the Purdue Defendants in the New York Times on Thursday, December 14, 2017, entitled, "We manufacture prescription opioids. How could we not help fight the prescription and illicit opioid abuse crisis?" ("Open letter"), including but not limited to all actions taken by Purdue Defendants in support of the recommendations and initiatives identified in the Open Letter, and the reasons the Open Letter was written and published.
2. The Purdue Defendants’ decision to discontinue marketing or promoting opioids to prescribers.
3. The J&J Defendants’ past and present relationship with Tasmanian Alkaloids, the corporate structure and management of Tasmanian Alkaloids during its affiliation with any J&J Defendants, and the terms of any asset purchase agreement, acquisition agreement, and/or purchase and sale agreement by and between any J&J Defendants and Tasmanian Alkaloids, including terms related to the assumption of liability.
- 4.-6. All actions available or necessary to address, fight, update and/or reverse the opioid epidemic. (One Notice For Each Defendant Group)

To these notices, the three Defendant groups have filed requests for protective orders and to quash the deposition notices, to which State has responded. The following Orders are entered with regard thereto:

1. Open Letter (Purdue)

State has described with reasonable particularity two areas of inquiry with regard to this "Open Letter": 1. All actions taken by the Purdue Defendants in support of the recommendations and initiatives identified in the Open Letter; 2. The reasons the Open Letter was written and published. State shall be limited to these two areas of inquiry to include any follow-up inquiry that may become reasonably necessary to identify the exact actions taken, who took them, when and where. To this extent, State's motion to compel is **sustained** and Defendants' opposition thereto and request to quash the notice is **overruled**.

2. Purdue Defendants' decision to discontinue marketing or promoting opioids to prescribers.

State's motion to compel is **sustained** and Defendants' request to quash the notice on this topic is **overruled** as a fact witness could produce likely relevant evidence as it relates to decisions to discontinue marketing and promoting opioids.

3. J&J Defendants/Tasmanian Alkaloids

Finding is entered that State has pled with reasonable particularity the relationship between J&J Defendants and Tasmanian Alkaloids (Not a party to this litigation) during a portion of the relevant time period in this litigation. As a former subsidiary of Johnson & Johnson, Tasmanian Alkaloids manufactured the poppy-based opiate ingredient used in many of the United States marketed and distributed opioids. The J&J Defendants had a direct financial interest in the sale of the opioid products generally, not just limited to their own branded opioids. That places J&J Defendants in a position of having a financial interest in opioids generally and possible motive relevant to issues raised in this case.

State's motion to compel is **sustained** and Defendants' request to quash the notice on this topic is **overruled**.

4-6. Abatement Actions

State gives notice to each Defendant group to depose a corporate designee regarding fact testimony similar to the line of inquiry requested of Purdue Defendants in item notice No. 1. The added fact with regard to Purdue Defendants' being the "Open Letter". These notices are necessarily limited to fact testimony and as argument indicated, cannot include opinion testimony that seeks to elicit a legal opinion on a primary issue a finder of fact may have to determine and that is an action plan, factually and legally, fashioned to abate the opioid crisis. Certain Defendants through negotiations in other cases have agreed to disclose factual efforts that are currently under way and actions planned and expected to take place in the future to seek to abate the opioid crisis. Settlement negotiations are privileged, and there is a strong public policy disfavoring intrusion into confidential and privileged settlement discussions. 12 O.S. § 2408; Fed. R. Evid. 408; *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 980 (6th Cir. 2003). Further, expert witnesses do not have to be determined and disclosed until the deadline of September 14, 2018, with expert depositions to be completed by January 25, 2019.

Therefore, each Defendant groups' request for a Protective Order and to Quash the notice as drafted is **sustained** and should State so desire, new deposition notices to issue to fact witnesses to be designated by each Defendant group for inquiry by State into factual efforts that are currently under way and actions planned and expected to take place in the future which seek to address, fight or abate the opioid crisis.

April 4, 2018 Order of Special Discovery Master On State's First Motion to Compel.

Defendant groups have filed objections to and requests to strike or modify the above referred-to discovery order. Argument was heard and considered at the April 19, 2008 hearing and the following orders are entered:

1. Review of the record indicates State did not move to compel RFP No. 17 and objections to and requests to strike any findings made by the undersigned with regard to RFP No. 17 are **sustained**. Further, the undersigned recognizes that certain Defendants have already produced and there are agreements for future production relevant to the RFPs in question. Any rulings, orders or modifications to previous orders with regard RFPs take into consideration this reality and the ongoing "rolling production" process. Nothing in the undersigned's orders here-in are meant to require duplication of production.

A. With regard to findings made numbered “1” through “7” of the April 4th Order, the following findings are entered:

1. Regarding finding numbered “3”, the finding the likely relevant time period for Purdue defendants is from the original OxyContin release date of May 1, 1996 to present is amended in part to specific findings that will be made below as to each State requested RFP and Purdue Defendants' request to modify is **sustained** to that extent.
2. The balance of the findings made numbered “1” through “7” of the April 4th Order remain unchanged and any Defendant requests to modify or strike are **overruled**.

B. Requests For Production, State’s First Motion To Compel

RFP No. 1 – Defendants’ various motions to strike or modify are **overruled** subject to the previous ruling that Defendants must specifically identify any category of documents from other cases they intend to withhold as non-public or confidential governmental investigations or regulatory actions;

RFP No. 2 – Defendants’ various motions to strike or modify are **overruled** subject to the previous ruling that Defendants must specifically identify any category of documents from other cases they intend to withhold as non-public or confidential governmental investigations or regulatory actions;

RFP No. 3 – This RFP in conjunction with RFP 4 and in part 5 seek discovery of sales, training and marketing materials that did help define the pharmaceutical industry's approach to sales, relevant to the claims made in this case. Regarding document discovery concerning sales, training and education materials for opioid sales representatives, the relevant time period is found to be from May 1, 1996, the commencement of the marketing of the original OxyContin as it relates to Purdue, and the known marketing start dates for the balance of the Defendant groups. Such production as to Purdue may be restricted to materials in Purdues’ possession, possession of its current employees, and its third-party sales representatives under promotional contracts on and after 1996 and relevant to branded or un-branded advertisements and/or marketing materials. Therefore, Defendants' various motions to strike or modify are **sustained** in part and **overruled** in part;

RFP No. 4 – Purdue is **ordered** to produce training and education materials provided to medical liaisons, retained or funded by You concerning medical liaisons with health care professionals, KOLs, and front groups regarding opioids and/or pain treatment for branded and unbranded materials beginning in 2004 and thereafter. Other Defendants are so **ordered** beginning with their relevant marketing time period. Therefore, Defendant groups' various motions to strike or modify are **sustained** in part and **overruled** in part;

RFP No. 5 – Defendants are **ordered** to produce related communications relevant to RFP 4, 5, 7 and 9 currently in their possession, Purdue beginning in 2004 and thereafter and other Defendants' beginning with the relevant marketing time period. Therefore, Defendant groups' various motions to strike or modify are **sustained** in part and **overruled** in part;

RFP No. 6 – Defendant groups' motions to strike or modify are **sustained** in part and **overruled** in part, in that production shall be **ordered** of all branded or un-branded advertisements and/or marketing materials published by You concerning opioids, including, without limitation all videos, pamphlets, brochures, presentations and treatment guidelines. Purdue beginning in 2004 and thereafter and other Defendants' beginning with the relevant marketing time period. Drafts of such materials are **not ordered** located or produced;

RFP No. 7 – Defendant groups' motions to strike is **sustained** as this RFP is now included in Orders entered in RFPs 3, 4, 5 and 6;

RFP No. 8 – Defendant groups' motions to strike is **sustained** as this RFP is now included in Orders entered in RFPs 3, 4, 5 and 6;

RFP No. 9 – Defendant groups' motions to strike is **sustained** as this RFP is now included in Orders entered in RFPs 3, 4, 5 and 6;

RFP No. 10,11 – Defendant groups' motion to strike or modify is **sustained** in part and **overruled** in part as to RFP 10 and 11. Defendant groups are **ordered** to produce documentation reflecting amount spent by You on advertising and marketing related to branded or unbranded opioid advertising, and to KOLs and other Front Groups, Purdue beginning in 2004 and thereafter and other Defendant groups beginning with the relevant marketing date;

RFP No. 12 – Defendant groups’ motion to strike or modify is **sustained** in part in that Defendant groups are ordered to produce all organizational charts identifying your employees involved in (1) the sale, promotion marketing and advertising of your opioids, Purdue since May 1, 1996 and other Defendant groups since the relevant marketing date; and (2) communication with Healthcare Professionals, KOLs and Front Groups regarding opioids, including OxyContin and pain treatment, Purdue beginning in 2004 and other Defendant groups beginning with the relevant marketing date;

RFP No. 13 – Defendant groups’ motion to modify or strike is **sustained** in part and **overruled** in part in that a search for all communications between you and trade groups, trade associations, nonprofit organizations and/or other third-party organizations concerning opioids and/or pain treatment since 1996 is overly burdensome on Purdue and likely impossible to comply with. Production of communications from Purdue relevant to this RFP and currently in the possession of Purdue is **ordered** produced from and since 2006. As to other Defendant groups, such communications in their possession are **ordered** produced beginning with the relevant marketing date;

RFP No. 14 – Regarding communications between you and other opioid manufacturers, distributors, wholesalers, pharmacies and/or BPMs as described in this RFP and RFP 15, communications may be relevant to State’s conspiracy allegations. Defendant groups’ motion to modify or strike is **sustained** in part and **overruled** in part in that a search for all communications referred to in RFP 14 and 15 since 1996 is overly burdensome. Production of communications as described in RFP 14 and 15 and currently in the possession of Purdue is **ordered** produced from and after 2004. As to other Defendant groups, such communications in their possession are ordered produced beginning with the relevant marketing date;

RFP No. 16 – Defendant group’s motion to modify or strike is **overruled**;

RFP No. 18 – Defendant groups’ motions to strike is **sustained** as this RFP is now included in Orders entered in RFPs 4, 5, 10 and 12;

RFP No. 19 – Defendants’ motion to strike or modify the undersigned’s April 4, 2018 Order is **overruled**;

RFP No. 20 – Purdue has now produced or agreed to produce documents concerning the concept of "pseudoaddiction" or "pseudo-addiction". Purdue has also agreed to identify custodians of responsive communications and search for documents to produce, relevant to "pseudoaddiction" or "pseudo-addiction". Therefore, Defendants' request to strike or modify is **sustained** subject to State producing future evidence sufficient to demonstrate failure to produce or to expand the scope of this RFP;

RFP No. 21 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 22 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 23 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 24 – This RFP does seek production of virtually every document and communication generated by potentially hundreds of individuals in Purdue's and other Defendants' departments responsible for scientific research, studies, journal articles, and/or clinical trials regarding opioids and/or pain treatment, including all drafts. This request is found to be overly broad and burdensome. Therefore, Defendants' motion to strike or modify this RFP is **sustained** and the April 4, 2018 ruling is **ordered** stricken and State's request to compel is **denied** in this RFP's current form;

RFP No. 25 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 26 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 27 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 28 - Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**.

Entered this 25th day of April, 2018,

William C. Hetherington, Jr.
Special Discovery Master

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;)
- (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.)

Case No. CJ-2017-816
Judge Thad Balkman

Special Master:
William Hetherington

NOTICE FOR 3230(C)(5) VIDEOTAPED DEPOSITION OF CORPORATE
REPRESENTATIVE(S) OF J&J DEFENDANTS



TO:

VIA email

Benjamin H. Odom, OBA No. 10917
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COUNSEL FOR THE J&J DEFENDANTS

Please take notice that, on the date and at the time indicated below, Plaintiff will take the deposition(s) upon oral examination of the corporate representative(s) of Defendant, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, the "J&J Defendants") in accordance with 12 O.S. §3230(C)(5). The J&J Defendants shall designate one or more officers, directors, managing agents, or other persons who consent to testify on the J&J Defendants' behalf regarding the subject matters identified in Appendix A.

The oral and video deposition(s) will occur as follows:

DATE	TIME	LOCATION
June 21, 2018	9:00 a.m.	512 N. Broadway Ave. Ste. 300 Oklahoma City, OK 73102

Said depositions are to be used as evidence in the trial of the above cause, the same to be taken before a qualified reporter and shall be recorded by videotape. Said depositions when so taken and returned according to law may be used as evidence in the trial of this cause and the

taking of the same will be adjourned and continue from day-to-day until completed, at the same place until it is completed.

PLEASE TAKE FURTHER NOTICE that each such officer, agent or other person produced by the J&J Defendants to so testify under 12 O.S. §3230(C)(5) has an affirmative duty to have first reviewed all documents, reports, and other matters known or reasonably available to the J&J Defendants, along with all potential witnesses known or reasonable available to the J&J Defendant in order to provide informed binding answers at the deposition(s).

Dated: May 31, 2018



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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on May 31, 2018 to:

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1625 Eye Street NW
Washington, DC 20006



Trey Duck

Appendix A

The matters on which examination is requested are itemized below. The J&J Defendants must designate persons to testify as to each subject of testimony. This designation must be delivered to Plaintiff prior to or at the commencement of the taking of the deposition. *See* 12 O.S. §3230(C)(5).

1. All actions and efforts previously taken, currently under way, and actions planned and expected to take place in the future which seek to address, fight or abate the opioid crisis.

IN THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA
CLEVELAND COUNTY, S.S.

STATE OF OK, AG OFFC OK

FILED

MIKE HUNTER, REGGIE WHITTEN

Plaintiff(s)

AUG 10 2018

Attorney(s) for Plaintiff(s)

CJ-2017-816 TB

- VS -

Case No.

PURDUE PHARMA L.P.

At the office of the
Court Clerk

SANFORD COATS, BEN ODOM,

Defendant(s)

MARILYN WILLIAMS

KELLEN SWEENEY

Attorney(s) for Defendant(s)

SUMMARY ORDER

Date: 8/10/18 Court Reporter AT Judge: TB

Parties appear for status conference.
The case remains set for trial May 28,
2019. The State's request for amended
scheduling order and motion for separate
trials will be heard August 30, 2018
at 1:00 PM.

Discovery matters will be heard by
Discovery Master Judge Hetherington August
31, 2018 at 9:00 am.

Previously noticed and approved depositions prior
to removal and set to occur before 8/30/18
are not void. All others to be taken up
at 8/31/18 hearing.

Chad Ballwe
JUDGE



IN THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA
STATE OF OK, AG OFFC OK
STATE OF OKLAHOMA
CLEVELAND COUNTY J.S.S.
FILED
MIKE HUNTER, REGGIE WHITTEN

Plaintiff(s)
AUG 10 2018

Attorney(s) for Plaintiff(s)
Case No. CJ-2017-816 TB

- vs -
PURDUE PHARMA L Pincas
SANFORD COATS, BEN ODOM
Cullen Sweeney
COURT CLERK MARIELYN WILLIAMS
Attorney(s) for Defendant(s)

SUMMARY ORDER

Date: 8/10/18 Court Reporter Judge: TB

The court has reserved the following dates for oral arguments on motions, to begin at 9:00 AM:

- September 20, 2018
- October 18, 2018
- November 29, 2018
- December 20, 2018
- January 17, 2019
- February 14, 2019
- March 14, 2019
- April 11, 2019
- May 16, 2019 (Status Conference)

Bob Ballma
JUDGE