



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

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED

OCT 22 2018

In the office of the
Court Clerk MARILYN WILLIAMS

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 22nd day of October, 2018, the above and entitled matter comes on for ruling by the undersigned having heard argument on October 18, 2018.

Rulings entered herein regarding the following Motions:

1. **Cephalon's Motion for State to Show Cause for Failure to Comply with Court Orders**

The undersigned entered rulings on August 31, 2018 overruling State's objections to the nature and number of interrogatories. The record and argument indicates that State

has complied with some production for interrogatories 1 through 6 and then at the October 3rd hearing the undersigned ordered State to fully answer interrogatories it can answer by October 9th. I further ordered that State identify interrogatories for which answers are being withheld.

The record indicates State has not responded to interrogatories numbered 7 through 16 contending Defendants have collectively exceeded the 30 interrogatory limit. The undersigned once again reiterates that in the interest of time and efficiency, it is best for the three Defendant groups to respond as a group to 30 interrogatories per group, however, as ordered before, when that is not possible, State is **required** to fully answer interrogatories limited to 30 per defendant sued.

The specific medications and damage formula defendant is interested in will be identified and fully developed in discovery as part of the State's expert testimony scheduling and the model they have chosen to proceed with. This will take place according to the scheduling order.

Therefore, I again order compliance and State is Ordered to fully answer to the extent possible, and in compliance with my previous orders protecting patient and physician personal information, interrogatories 1 through 6 and the motion is **Sustained** to that extent.

The undersigned enters the same Order for State to Respond to interrogatories 7 through 16 under the same conditions.

Responses to all of these interrogatories are Ordered to be fully completed and answered within 15 working days from the date of this Order and shall be State's final and complete answers subject to newly acquired evidence that must be produced.

2. State's Second Motion To Show Cause as to Purdue

This motion asks the undersigned to reenter my original Order (Withdrawn by October 5, 2018 Order) with regard to Rhodes entities. Now following argument, review of the record, testimony and pleadings, find State is entitled to full disclosure and discovery regarding Rhodes Pharma and Rhodes Technologies as affiliates related to Purdue Pharmaceutical and involved with Sackler family ownership. The testimony and record now before the undersigned demonstrates significant control over the creation of, reasons for its creation and daily control, such as "to provide a cost competitive API platform to support our Rhodes Pharmaceuticals generic dosage form initiative". Argument and evidence confirms that Rhodes Technologies and Rhodes Pharma fall within the definition of an "Affiliate" about which production is required. I further find pursuant to State's request, State is entitled in this context only, to complete discovery back to the point in time of Rhodes entity creation or 1996, whichever is earlier. I further find the evidence is insufficient to indicate Purdue Pharmaceutical was intentionally concealing or hiding the identity of these affiliates. The evidence is in dispute, however, documentary evidence had been produced to the State prior to depositions disclosing the existence of these entities.

Therefore, State's request to reenter my previously withdrawn order with regard to Rhodes entities is **Sustained** to this extent.

3. Purdue's Motion to Show Cause Against the State

Findings entered with regard to this motion overlap in part with agenda item number 1 as to Cephalon's motion. Again, the undersigned has previously ordered State to answer in full and allowed State to answer only 30 interrogatories from each Defendant group if possible. Regarding interrogatories numbered 7, 8 and 9, I have previously ordered State to answer with specificity and to the extent possible. Consistent with item number 1, final and complete answers to be provided within 15 working days subject to newly discovered evidence required to be produced.

The specific medications and damage formula will be identified and fully developed in discovery as part of the State's expert reports and testimony scheduling and the model they have chosen to proceed with. This will take place according to the scheduling order.

I agree with State's argument and I have encouraged a joint Defendant group interrogatory count of 30 interrogatories to be submitted to the State from the three groups and State to Defendant groups when possible. When a "joint" interrogatory request is made, the State is required to answer the 30 interrogatories to the group as a whole. The State is not required to then answer another set of interrogatories covering the same information propounded to it by individual members of the Defendant group, unless that individual Defendant has a **clearly** unique and independent grounds for separate inquiry following a meet and confer. Once again, as indicated above, in the interest of time and judicial efficiency, it is reasonable in this case to conduct discovery, for the most part, in a three-defendant group format.

Privacy and confidentiality orders have been entered and the issue ruled upon. Therefore, by this Order I order full compliance as to each numbered interrogatory properly propounded consistent with this Order, with State to fully comply within 15 working days from the date of this Order with final and complete responses subject to newly discovered evidence required to be produced.

Purdue's motion to show cause and requests made therein are **Sustained** to this extent.

4. State's Motion to Compel Depositions and Group Topics

The undersigned has reviewed this motion and Purdue's opposition to it, Teva group's response and opposition to it, redacted and unredacted versions containing argument and record evidence relevant to State's motion and, considered Janssen group's response and objection.

This issue concerns corporate designation of witnesses for topic testimony, scope and relevant topic grouping. State argues through this date, State has only been able to reach an agreement with Defendants for designation on topics number 39 and 41

currently scheduled with Janssen group for November 9th and has taken five other depositions (Briefs indicate State has taken depositions of 9 other corporate designated witness). Notices for all of these designated witness depositions have been out since prior to the attempted removal of this case to Federal jurisdiction and subsequent remand. State is asking for a scheduling order with time limitations and grouping of 42 topics for each of the three Defendant groups pursuant to State's Ex. B to the motion. The State and each of the three Defendant groups have submitted exhibits proposing a formula for topic grouping, timing and witness designation. Defendants generally argue State cannot dictate how Defendant groups join topics for each of their representatives and urge the undersigned to set a maximum total time limit for the completion of all corporate designated depositions adopting Defendant Group topic groupings.

Having heard arguments and reviewed each suggestion the following orders are entered:

- A. State is Ordered to specifically define each topic of requested inquiry and serve on counsel for each Defendant group (or a specific Defendant where a topic is unique to that Defendant) within **five (5)** working days following this Order;
- B. Each Defendant group, or individual Defendant, whichever is appropriate, is Ordered to group State defined topics and designate a corporate witness who can testify to as many topics or groupings as possible. While it is appropriate to allow Defendant groups or individual Defendants to group topics, I do so recognizing the potential for abuse but with a clear Order and expectation this will minimize designated witness deposition numbers and provide State with witnesses fully informed, knowledgeable and fully prepared to testify to the designated topic or topic grouping. Each Defendant group or individual Defendant is Ordered to designate corporate witnesses consistent with this Order and provide State with a corporate witness designation matrix pairing witnesses with topic or topic groupings and to so notify State no later than **ten (10)** working days following the receipt of State topic definitions;
- C. Some topics will justifiably require more deposition time than others. Generally, in similar type cases to this case, Courts have approved 6 to 10 hours of deposition time for a designated corporate witness. Under the circumstances of this case, State shall be limited to a total of **eighty (80)** hours to be divided up as State chooses. I recognize that some depositions are currently scheduled and ready to take place. However, review of these proposed depositions indicate they are offered by individual Defendants based upon their own topic definitions and groupings where topics have not been defined by State. In order to minimize delay, I encourage these depositions to proceed even though the above time limits for topic definitions and groupings have not expired.
- D. Regarding State topic witness designations, the record is unclear as to the total number of topics Defendants' wish to take. Purdue's brief indicates it defines

27 topics. Therefore, it is **ordered** that each Defendant group or individual Defendant shall define each topic with State ordered to designate a corporate witness matrix pairing witnesses with topic or topic groupings and notify each defendant group or individual defendant, according to the same deadlines set forth above in paragraph (B). The same **order** is entered regarding State designated witnesses who shall be witnesses fully informed, knowledgeable and prepared to testify. State is not required to designate any corporate witness for a Defendant defined topic that will be the subject of State's expert witness claim proof and damage model and State must so state in its topic designation matrix.

- E. It does appear from briefs and argument that some topics should be subject to written responses and certain Defendants have so offered. While encouraged, State has the right to accept or reject a written response for any particular topic. The same applies to Defendant groups or individual Defendants as to Defendant topics.

5. State's Motion To Reconsider April 25, 2018 Order on Relevant Time Period

State has developed and produced evidence requesting the undersigned to modify its April 25th order to reflect the general "relevant time period" to begin in 1996. State has established a relationship between Defendants and the marketing and promotional strategies some of which began taking shape and were established and ongoing as early as 1996 and moving forward. The relevant time period does cover and effect responses that have been given in various RFPs relating to creation of, funding and coordination of marketing and promotional strategies involving the sale of branded and unbranded opioid and other related drugs. Discovery therefore is relevant in this context only, back to the point in time when the evidence now shows those efforts began but no earlier than 1996. Under State's stated claims for relief and proposed proof model, State should not be limited to inquiry with regard to Oklahoma promotion, marketing and sales efforts and discovery involving Oklahoma relevant promotional representatives or entities. By this amendment, I do not intend to fully modify my previous order that was upheld by Judge Balkman. State is not allowed to request again or explore again from any Defendant group or individual Defendant records, documents and information State already has in its possession or has access to, and not related to marketing and promotional planning and strategies.

Therefore, State's request to modify is **Sustained** to this extent.

6. Purdue's Motion to Compel Witness Testimony from Department of Corrections

State has indicated in previous discovery that Department of Corrections does not prescribe opioids to prisoners. The record indicates there has been differing testimony and Defendants' Motions and argument support ordering testimony by way of deposition from knowledgeable personnel. Defendant's motion is **Sustained** and Defendants are

allowed to depose Joel McCurdy, Robin Murphy and Nate Brown to be scheduled within 30 working days of this Order. Prior to these depositions their Custodial Files are **Ordered** produced to Defendants in time for preparation.

Purdue's Motion to Compel is **Sustained**.

7. Purdue's Second Motion to Compel Documents

Purdue argues document production requested from various State agencies on January 12th with partial production from 17 State agencies and none from a list of 10 remaining agencies. The undersigned had previously ordered production on April 25th and August 31st as to Purdue's requests resulting in partial production. These orders did require State to produce under the rolling production process, at one time within seven days and to fully produce within 30 working days. Confidentiality orders regarding personal and private information were entered and will be more fully addressed in the "Watson" motion below.

State is **Ordered** to produce within 30 working days from the date of this order, final and complete responses and production, subject to newly discovered evidence required to be produced, relevant production in support of State's evidentiary proof model and Defendants' defense thereto, from the Office of the Medical Examiner, Oklahoma Department of Public Safety, Oklahoma State Board of Dentistry, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy and the Oklahoma State Board of Veterinary Medical Examiners, all subject to previous orders entered regarding protection of physician and patient privacy information. State argues in its brief that the Department of Public Safety and the Oklahoma State Bureau of Investigation possessed no documents relevant to this litigation. To that extent, State must so answer but is required to produce any documentation not found protected by our Protective Order, this order or any previous order. Regarding any Agency requests, information related directly to a criminal investigation to include investigative notes, reports, witness interview notes, contacts and transcripts are deemed protected work product.

Purdue's Second Motion to Compel is **Sustained** to that extent. The same is **Denied** as it relates to The Oklahoma Office of the Governor, the Oklahoma State Bureau of Investigation, the Oklahoma Legislature and the Oklahoma Worker's Compensation Commission involving protected "deliberative process privilege", consistent with the findings made here and to be made below regarding the "Watson" motion.

8. Purdue's Motion to Compel Custodial Files In Advance of Depositions

Sustained consistent with findings made in agenda item No. 6 above.

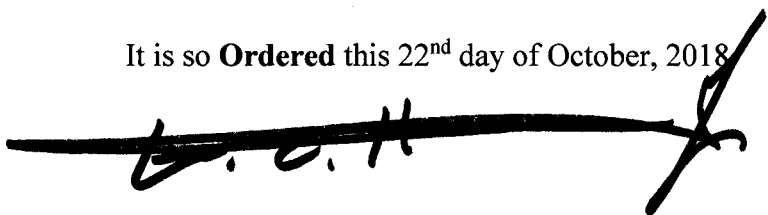
9. Watson Lab's Motion to Compel Investigatory Files

Watson argues it made 12 requests to obtain documents as to eight physicians, one medical center and "other unknown healthcare providers" relevant to their defense because State must prove Defendants' fraudulent promotion and misrepresentation either,

1. Caused provider to submit alleged false claims; 2. Caused provider to make a false statement material to each false claim or; 3. Caused the State to reimburse a particular prescription. Watson argues the Oklahoma Anti-Drug Diversion Act has no privilege provision and expressly authorizes the State to release information contained in the central repository. However, the Act provides that any information contained in the central repository shall be confidential and not open to the public, and, to the extent the State can permit access to the information, it shall be limited to release to a finite list of State and Federal agencies listed in the statute. Otherwise, disclosure is solely within the discretion of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs to control and only for specific purposes listed. The record does not support Watson's allegation that the State is relying on the same confidential information when taking depositions in this case. State argues it is not and will not rely on any confidential investigatory information that might be included in investigation files in this case. I must also weigh relevant access to this information against practical privacy considerations, and I have previously ordered the confidential information contained in these databases protected. Therefore, if the information Watson seeks is contained in databases I have previously dealt with, Watson has access to these databases with the personal information protected. The same considerations regarding Grand Jury information, transcripts etc., is also protected and can only be released by the Court presiding over a particular Grand Jury. Regarding the Oklahoma Medicaid Program Integrity Act, State has brought claims under this Act and it specifically allows for the Atty. Gen. to authorize release of confidential records, but, to the extent disclosure is essential to the public interest and effective law enforcement only. Any production of criminal investigatory files is likely to place ongoing criminal prosecutions or disciplinary actions in jeopardy. Investigative notes, reports, witness interviews, interview notes, contact information or transcripts are work product and protected. By their very nature they will contain prosecutor opinions and mental impressions that should be protected both in the criminal context and actions involving disciplinary proceedings. Again, State argues it will not rely on any confidential or privileged investigatory material for use in this case and the undersigned will watch carefully for any indication that State is violating this representation.

Therefore, Watson's Motion to Compel Investigatory Files is **Denied**.

It is so **Ordered** this 22nd day of October, 2018

A large, bold, handwritten signature in black ink, appearing to read 'W.C.H.', is written over a horizontal line. The signature is stylized and extends across most of the width of the page.

William C. Hetherington, Jr.

Special Discovery Master