



STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

FILED
OCT 05 2018

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

Plaintiff,

v.

PURDUE PHARMA L.P., *et al.*,

Defendants.

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

Judge Thad Balkman

William C. Hetherington

Special Discovery Master

**DEFENDANTS' RESPONSE TO THE STATE'S NOTICE OF AUTHORITY
REGARDING STATE OF TEXAS V. THE AMERICAN TOBACCO COMPANY, ET AL.**

The Special Master has reviewed the parties' briefs and considered extensive oral argument on Defendants' Motion to Compel Discovery Regarding Claims Data ("Mot."). The Special Master has also noted the importance of a ruling on the motion without further delay. For that reason, Defendants submit only a brief response¹ to the State's October 2, 2018 Notice of Authority ("Notice"), which was served late in the afternoon before the hearing on Defendants' motion. That 265-page submission attaches various 20-year old briefs and orders from *State of Texas v. The American Tobacco Company et al.* ("*Am. Tobacco*") that were readily available online via PACER² at the time the State filed its response to Defendants' motion on September 14. They

¹ The brevity of this submission should eliminate the need for any additional briefing on the motion before it is decided by the Court.

² During the October 3, 2018 hearing on Defendants' motion, the State suggested that it had to travel to the courthouse to retrieve the attachments to its supplemental submission from paper files. Defendants accessed all of the files electronically via PACER, where they remain available to this day.

were not cited by the State then, but that is not surprising. The references to the tobacco case are nothing more than another effort at misdirection.

The question before this Court is whether Defendants are entitled to Medicaid and other *claims data* in the State's possession. Mot. at 2-5. In the motion before the court in *Am. Tobacco*, the defendants sought *depositions* of *every* Public Assistance Recipient for which the State of Texas sought to recoup medical expenses, and "additional information regarding the individual recipients" beyond what was available in claims data tapes. Notice Ex. F at 14-15. That the *Am. Tobacco* court denied defendants those depositions and additional records has no bearing on whether the State here is required to provide plainly relevant (and easily accessible) information in its possession. The State's noticed authority is irrelevant to this dispute.

The State also cites *Am. Tobacco* for the idea that its undisclosed "statistical sampling" methodology will be a viable means of proving its claims here. But the issue of whether the State can use statistical sampling to prove its case is not before the Court on Defendants' motion. No matter how the State attempts to prove its case, Defendants are entitled to relevant discovery so that they can adequately defend it. Moreover, the *Am. Tobacco* court *did not find* "that the use of statistical sampling was sufficient to prove causation," as the State has wrongly suggested. Notice at 5. The court's only "finding" was that "the motions [were] not well taken." Notice Ex. C at 1. And contrary to the State of Oklahoma's assertions, the State of Texas conceded that its statistical models "do not purport to address the causal nexus between the Defendants' bad acts and smoking behavior." Notice Ex. E at 13. Rather, its models "pertain[ed] solely to" estimating smoking-attributable health care expenditures. *Id.* So in addition to addressing an issue that is not before

this Court, the State's noticed authority serves only to *affirm* the limited utility of statistical models.³

Defendants' access to complete claims data is critically important. Among other things, patient and prescriber identities can be compared to marketing and promotional activity (*see, e.g.*, Pet. ¶¶ 6, 34), utilization of other services (including things like treatment for addiction, overdose, law enforcement, emergency services) that the State alleges were necessary because of wrongful conduct by Defendants (*see, e.g., id.* at ¶¶ 42, 44), or records from the State medical examiner's office (*see, e.g., id.* at ¶ 5). Receipt of this information is critical to defending this case. It is relevant, not privileged (in fact, specifically discoverable pursuant to the HIPAA protective order entered by the Court), and proportional to the needs of this case. Okla. Stat. Ann. tit. 12, § 3226(B)(1)(a).

Respectfully submitted,

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³ To the extent *Am. Tobacco* were to stand for the proposition for which the State cites it, it is contrary to the overwhelming weight of authority in similar cases. *See Mot.* at 10 n.11.

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CERTIFICATE OF MAILING

Pursuant to Okla. Stat. tit. 12, § 2005(D), this is to certify on October 5th, 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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