



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

OCT 04 2018

In the office of the  
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816  
JURY TRIAL DEMANDED

**THE STATE'S MOTION TO RECONSIDER MAY 23, 2018 ORDER GRANTING NON-PARTY, STEPHEN A. IVES' OBJECTION AND MOTION TO QUASH SUBPOENA**

## I. INTRODUCTION

The State continues to learn more and more about the web of conspiracy and entanglement between Defendants. But, even within a single Defendant family—Purdue—the State apparently has only scratched the surface of the scope of its influence and deception. Purdue has been hiding information about companies it uses to profit from the opioid epidemic, companies like Rhodes Pharma that is owned by the Sacklers and was created in the months after Purdue pled guilty in 2007. *See* Sep. 18, 2018 Motion to Show Cause. Moreover, Purdue has openly sent a message to the public that it is on the verge of bankruptcy and has publicly appointed as its board chairman a well-known bankruptcy and restructuring lawyer, Stephen Miller. Indeed, multiple times in open court, Purdue remained silent when the State asserted that Purdue intends to file bankruptcy before this case goes to trial.

Meanwhile, Purdue profits distributed to the Sackler family are, in all likelihood, pouring in and out of Oklahoma at this very moment through Stephen A. Ives—a Sackler family money manager based in Oklahoma City.

The information the State has uncovered and Purdue's likely bankruptcy have resuscitated the need to depose Mr. Ives to find out the truth about what Purdue and its owners have been doing with this revenue, including what they have been doing with it in Oklahoma.

On April 9, 2018, the State served non-party, Stephen A. Ives, with a deposition subpoena. On April 17, 2018, Mr. Ives, through counsel, filed an Objection and Motion to Quash Plaintiff's Subpoena for Deposition Testimony arguing that he possessed no relevant knowledge and that the Subpoena *might* seek privileged information. On May 23, 2018, the State filed its opposition to Ives' Motion to Quash maintaining the right to seek relevant and non-privileged information. By order dated May 23, 2018, the Court concluded that the deposition was premature and sustained

the Motion to Quash. The State respectfully requests the Court reconsider that ruling and allow the deposition to proceed.

## II. LEGAL STANDARD

“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.” 12 O.S. §3226(B)(1). This includes deposition testimony of third-party witnesses under subpoena, even if the testimony is ultimately inadmissible. *See id.* at §2004.1. “It is not necessary that questions be limited to those which would be admissible in court.” *Unit Rig. & Equip Co. v. East*, 1973 OK 100 ¶ 4, 514 P.2d 396, 397. In particular, when seeking to quash a third-party subpoena, the Oklahoma Code of Civil Procedure narrowly provides:

On timely motion, the Court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,
- (2) requires a person to travel to a place beyond the limits allowed under paragraph 3 of subsection A of this section,
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies,
- (4) subjects a person to undue burden, or
- (5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

*Id.* at 2004.1(C)(3)(a). As explained herein, though the Court quashed the original subpoena to Mr. Ives, the circumstances have changed, and evidence now clearly demonstrates the necessity of deposing Mr. Ives and obtaining information in his possession.

### **III. ARGUMENT**

Mr. Ives originally argued the State's Subpoena should be quashed because (1) he does not possess any knowledge relevant to the litigation; (2) the Subpoena might seek information protected by the accountant-client privilege; and (3) the State could obtain the information through a Purdue witness. The Court, however, in its Order, only concluded that the deposition was premature. *See* May 23, 2018 Order at 3.

As the State returns to request reconsideration, it reiterates that alleged irrelevance is not a reason for quashing a deposition subpoena. The State further believes Mr. Ives possesses relevant knowledge, which the State is entitled to elicit. And, the State reiterates it does not intend to seek information protected by any applicable privilege. Finally, the State's attempt to seek information from an alternative avenue proved unsuccessful as Purdue claimed little to no knowledge over the topic. The Subpoena is ripe for reconsideration and the Court should Order Mr. Ives to comply with the deposition subpoena.

#### **a. The Subpoena Is No Longer Premature**

The Court acknowledged that while privilege may exist, discovery of non-privileged information was permitted. *See id.* The Court further recognized the State's suggestion that Mr. Ives could object to any potentially privileged information during the deposition. *See id.* However, the Court ultimately deemed a deposition of Mr. Ives to be premature—presumably due to the argument that the State could first seek the information from Purdue.

Mr. Ives stated that he was not the correct deponent for the deposition topic and that the State should seek "principals and employees of Defendants" who could "be the source of relevant information regarding each Defendant's accounting and financial functions." Ives' Objection and

Motion to Quash at 5. Mr. Ives further stated that, at best, his testimony would be redundant and needlessly cumulative. *Id.*

To be sure, the State now seeks relief following the deposition of Purdue regarding financial information. But, the State gained little information regarding certain aspects of Purdue's financial functions from its corporate representative, Keith Darragh. In fact, Darragh was unaware of any information in response to a significant amount of the questions involving Purdue's accounting and financial functions

Thus, the State requests the Court reconsider its ruling regarding the Subpoena of the proper party holding this information—Mr. Ives.

**b. Purdue Has Withheld Information Necessitating Deposing Stephen Ives**

Purdue's pattern of deceit has permeated its conduct and its litigation tactics. Not only did Purdue plead guilty to felony criminal misbranding in 2007, but it continued the same behavior for a decade to come. In fact, just months after the criminal plea, Purdue created a new company, Rhodes Pharma, to continue its fraudulent behavior and to continue profiting off its opioid empire by selling generic opioids. But, the State was not privy to such information until recently because Purdue did not disclose Rhodes Pharma through written discovery, depositions, or at any other point throughout the current litigation. This is precisely why a deposition of Mr. Ives proves so imperative. Had the State been granted an opportunity to depose Mr. Ives months ago, the State could have found out about Rhodes Pharma and money from it that the Sacklers have funneled through Oklahoma entities. However, the State still lacks a substantial amount of information on this front, and Purdue continues to claim little to no knowledge. But, who might have knowledge? Stephen A. Ives.

The Court's Order pointed out that at the time of the Order (May 23, 2018), there was "no prima facie showing that [Ives'] accounting services were sought for the purposes of committing a crime or designing and/or funding a fraudulent marketing program." Discovery Master's Order on May 23, 2018 at 3. "When and if there is [a prima facie showing], the communications will lose their confidential character and discovery through Mr. Ives will be possible." *Id.*

Purdue did not disclose Rhodes Pharma. Purdue's witness did not disclose other affiliated companies or lacked knowledge of them. Purdue claims little to no knowledge of its accounting or financial functions. Purdue is positioning itself to eventually file bankruptcy. And, Purdue may be using an Oklahoma accountant to funnel money out of the company.

On top of it all, Purdue has now made it known that it is strongly considering filing for bankruptcy. The State should not be forced to stand idly by while Purdue empties its profits to the Sacklers' pockets and then files for bankruptcy to avoid civil litigation.

A prima facie showing has been made. The State does not intend to depose Mr. Ives regarding privileged information, but even if it did, that privilege is lost. Any communications between Mr. Ives and the Sacklers, or Purdue, are not confidential or privileged due to the fraudulent nature. Further, because Purdue claims little to no knowledge of its accounting and financial functions, the State is entitled to depose Mr. Ives—the only other party with potential knowledge. Mr. Ives possesses relevant, non-privileged information, and the State has no other avenues to obtain it. The State is entitled to depose Mr. Ives.

#### **IV. CONCLUSION**

Wherefore, the State respectfully requests that the Court reconsider its ruling sustaining Mr. Ives' Objection and Motion to Quash the Subpoena for Deposition Testimony and instead Order Mr. Ives to comply with the Deposition Subpoena at his earliest convenience.

Dated: October 4, 2018

Respectfully submitted,



Mike Hunter, OBA No. 4503  
ATTORNEY GENERAL FOR  
THE STATE OF OKLAHOMA  
Abby Dillsaver, OBA No. 20675  
GENERAL COUNSEL TO  
THE ATTORNEY GENERAL  
Ethan A. Shaner, OBA No. 30916  
DEPUTY GENERAL COUNSEL  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
Telephone: (405) 521-3921  
Facsimile: (405) 521-6246  
Emails: [abby.dillsaver@oag.ok.gov](mailto:abby.dillsaver@oag.ok.gov)  
[ethan.shaner@oag.ok.gov](mailto:ethan.shaner@oag.ok.gov)

Michael Burrage, OBA No. 1350  
Reggie Whitten, OBA No. 9576  
WHITTEN BURRAGE  
512 N. Broadway Avenue, Suite 300  
Oklahoma City, OK 73102  
Telephone: (405) 516-7800  
Facsimile: (405) 516-7859  
Emails: [mburrage@whittenburrage.com](mailto:mburrage@whittenburrage.com)  
[rwhitten@whittenburrage.com](mailto:rwhitten@whittenburrage.com)

Bradley E. Beckworth, OBA No. 19982  
Jeffrey J. Angelovich, OBA No. 19981  
Trey Duck, OBA No. 33347  
NIX, PATTERSON & ROACH, LLP  
512 N. Broadway Avenue, Suite 200  
Oklahoma City, OK 73102  
Telephone: (405) 516-7800  
Facsimile: (405) 516-7859  
Emails: [bbeckworth@nixlaw.com](mailto:bbeckworth@nixlaw.com)  
[jangelovich@nixlaw.com](mailto:jangelovich@nixlaw.com)  
[tduck@nixlaw.com](mailto:tduck@nixlaw.com)

Glenn Coffee, OBA No. 14563  
GLENN COFFEE & ASSOCIATES, PLLC  
915 N. Robinson Ave.  
Oklahoma City, OK 73102  
Telephone: (405) 601-1616  
Email: [gcoffee@glenncoffee.com](mailto:gcoffee@glenncoffee.com)

**ATTORNEYS FOR PLAINTIFF**



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing was filed on October 4, 2018 and emailed to:

Sanford C. Coats  
Joshua D. Burns  
CROWE & DUNLEVY, P.C.  
Braniff Building  
324 N. Robinson Ave., Ste. 100  
Oklahoma City, OK 73102

Robert S. Hoff  
WIGGIN AND DANA LLP  
265 Church Street  
New Haven, CT 06510

Charles C. Lifland  
Jennifer D. Cardelus  
David K. Roberts  
Wallace M. Allan  
Sabrina H. Strong  
Esteban Rodriguez  
Houman Ehsan  
O'MELVENY & MYERS LLP  
400 S. Hope Street  
Los Angeles, CA 90071

Robert G. McCampbell  
Travis J. Jett  
Nicholas V. Merkle  
Ashley E. Quinn  
GABLEGOTWALS  
One Leadership Square, 15th Floor  
211 North Robinson  
Oklahoma City, OK 73102-7255

Brian M. Ercole  
MORGAN, LEWIS & BOCKIUS LLP  
200 S. Biscayne Blvd., Suite 5300  
Miami, FL 33131

Sheila Birnbaum  
Mark S. Cheffo  
Hayden A. Coleman  
Paul A. LaFata  
Marina L. Schwarz  
Lindsay Zanello  
Erik Snapp  
DECHERT LLP  
Three Bryant Park  
1095 Avenue of the Americas  
New York, NY 10036

Jonathan S. Tam  
DECHERT LLP  
One Bush Drive, Suite 1600  
San Francisco, CA 94104

Benjamin H. Odom  
John H. Sparks  
Michael W. Ridgeway  
David L. Kinney  
ODOM, SPARKS & JONES PLLC  
HiPoint Office Building  
2500 McGee Drive Ste. 140  
Norman, OK 73072

Steven A. Reed  
Harvey Bartle IV  
Jeremy A. Menkowitz  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Stephen D. Brody  
O'MELVENY & MYERS LLP

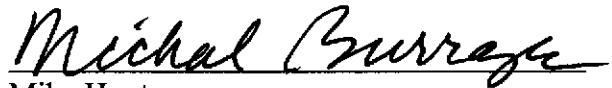
1625 Eye Street NW  
Washington, DC 20006

Mark A. Fiore  
MORGAN, LEWIS & BOCKIUS LLP  
502 Carnegie Center  
Princeton, NJ 08540

Daniel J. Franklin  
Ross Galin  
O'MELVENY & MYERS LLP  
7 Times Square  
New York, NY 10036

Amy Riley Lucas  
Lauren Stacy Rakow  
O'MELVENY & MYERS LLP  
1999 Avenue of the Stars, 8<sup>th</sup> Floor  
Los Angeles, California 90067

R. Richard Love, III  
CONNER & WINTERS , LLP  
4000 One Williams Center  
Tulsa, OK 74172  
Telephone: (918) 586-5679  
Email: [rlove@cwlaw.com](mailto:rlove@cwlaw.com)

  
Mike Hunter