PART A

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

v.

(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.

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

DEFENDANTS TEVA PHARMACEUTICALS USA, INC., CEPHALON, INC., WATSON LABORATORIES, INC., ACTAVIS LLC, AND ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DEPOSITIONS

Plaintiff the State of Oklahoma ("Plaintiff") filed a Motion to Compel Depositions (the "Motion") of corporate representatives of Defendants Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc., f/k/a Watson Pharma, Inc. (collectively, the "Teva Defendants"), in which the State asks the Court to address the scheduling and scope of corporate depositions in this matter. For the reasons described herein, Plaintiff's motion should be denied.

I. INTRODUCTION

The State filed its Motion on the basis that the Defendants have "taken such unreasonable positions" with scheduling depositions that the State is "forced" to seek relief from the Court before completing the Court-ordered meet and confer process. *See* Motion at 1-2; *Transcript of August 31, 2018, Hearing* at 24, attached hereto as Exhibit A. That is not correct. The Teva Defendants have identified corporate designees available to testify to appropriate groupings of deposition topics, and offered a witness to testify on two consecutive days in November for twenty-one topics and are prepared to offer another two consecutive days in November for the remainder. But that is not enough for the State, which wants, in sum, to pick and choose what topics will be the subject of a witness's testimony, contrary to Oklahoma law, and no reasonable time limits. It is the State's unreasonable position and conduct in this case – in harassing witnesses, disregarding court orders and ignoring the scope of deposition notices – that necessitates court intervention.

Among other things, the State has routinely asked lay-witnesses highly personal, irrelevant and harassing questions, such as whether they would allow their children to take opioids, whether they feel personal responsibility for the opioid epidemic, and whether they feel

personal responsibility for patient deaths[1].

The State has also asked similarly inappropriate questions of corporate representatives, and has routinely demonstrated that it cannot be trusted to stay within a noticed deposition topic. For instance, the Teva Defendants previously moved for, and were granted, a protective order regarding the State's first corporate Notice regarding efforts to fight and abate the opioid epidemic. *See April 25, 2018, Order*, attached hereto as Exhibit B. In issuing this protective order, the Court limited the State's questioning to "factual information that is not subject to expert opinion, speculation, or legal opinion" regarding the Teva Defendants' efforts to abate the opioid epidemic. *Id.* Despite this clear directive, the State proceeded to ask approximately ***one-hundred-eighty*** questions to which Teva was forced to object on the basis that the State sought testimony beyond the scope of the deposition notice and protective order. Assuming, *arguendo*, that even half of these objections would be sustained, the State wasted, at minimum, several hours asking objectionable questions outside the scope of the noticed topic. The State also asked questions at this deposition – which was supposed to cover one, single topic – that address ***no less than twelve other topics*** that it has already noticed and for which it is now seeking additional testimony. In other words, the State has already covered twelve of the forty-three remaining topics in a single six-hour deposition. If left unchecked, the State will undoubtedly continue with its pattern of harassing, duplicative and irrelevant questioning.

Stated simply, it is the State, not the Defendants, whose conduct is patently unreasonable and necessitates Court intervention in setting the parameters on corporate depositions.

[1] The State has routinely asked sales representatives whether they feel personally responsible for patient deaths and other bad outcomes that are clearly caused by intervening criminal conduct of healthcare providers. Despite asking questions on this issue, the State has refused to disclose evidence in its possession regarding criminal and administrative proceedings that it has brought against doctors.

Accordingly, the Teva Defendants respectfully request that the Court impose reasonable limits on the timing and scope of the State's questions of corporate representatives and deny the State's Motion in full.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

On August 8, 2018, the State served forty-two Notices for Rule 3230(C)(5) Videotaped Depositions of Corporate Representatives of Teva Defendants (the "Notices"). *See August 8 Notices for Rule 3230(C)(5) Videotaped Depositions of Corporate Representatives*, attached hereto as Exhibit C. The Notices were unilaterally scheduled by the State on forty-two separate dates, with each Notice containing a single deposition topic. *Id.* On August 29, 2018, the Teva Defendants produced a corporate representative to testify pursuant to the Notice regarding "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." On September 10, 2018, the Teva Defendants served objections and responses to the remaining forty-one Notices, and offered to meet and confer regarding dates of availability and groups of topics for which they are willing to produce corporate representatives. *See September 10, 2018, Letter*, attached hereto as Exhibit D. On September 21, 2018, the parties held a meet and confer regarding deposition scheduling but failed to reach an agreement. *See Transcript of September 21, 2018, Meet and Confer*, attached hereto as Exhibit E. On September 24, 2018, the Teva Defendants identified twenty-one inter-related topics on which it would produce a witness, and offered to make the witness available for deposition on November 7 and 8, 2018. *See September 24, 2018, Letter*, attached hereto as Exhibit F. To date, the State has not accepted the Teva Defendants' offer, nor has it agreed to schedule any depositions of corporate representatives despite being offered multiple dates by the defendants. Subsequently, on October 1, 2018, the State served two additional Notices for Rule 3230(C)(5) Videotaped Depositions of Corporate

Representatives on the Teva Defendants, bringing the total number of outstanding Notices to the Teva Defendants to forty-three[2]. *See October 1, 2018, Notices for Rule 3230(C)(5) Videotaped Depositions of Corporate Representatives*, attached hereto as Exhibit G. On October 4, 2018, the Teva Defendants served objections and responses to the State's two October 1, 2018, Notices, and again offered to meet and confer regarding dates of availability and groups of topics for which they are willing to produce corporate representatives. *See October 4, 2018, Letter*, attached hereto as Exhibit H.

III. ARGUMENTS AND AUTHORITIES[3]

A. The Court Should Impose Reasonable Time and Topic Limitations on the Notices In Order to Prevent the State's Improper Conduct at Future Depositions.

The Court should impose reasonable limitations on the scope of the State's questioning, as well as the time in which it is permitted to conduct its depositions, in order to avoid further harassment of witnesses, repetitive questioning, and waste of the parties' time and resources. The Oklahoma Rules of Civil Procedure provide that depositions "shall not last more than six hours." Okla. Stat. tit. 12, § 3230(A)(3). In addition, the Rules provide for a single notice for a corporate deposition on all topics, Okla. Stat. tit. 12, § 3230(C)(5) ("A party may in **the notice** . . . name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity **the matters** on which

[2] As set forth above, the Teva Defendants already produced a corporate representative in response to one Notice, encompassing a single topic, on which the State questioned the witness for the full six-hour daily limit, and asked approximately 180 questions outside the scope of the noticed topic, as well as over 115 questions that covered other Noticed topics that the State now seek additional testimony on.

[3] Courts in Oklahoma look to cases construing Fed. R. Civ. P. 30(b)(6) when construing section 3230(C)(5) of the Oklahoma Discovery Code because the language is similar and Oklahoma's Discovery Code was drawn from the Federal Rules of Civil Procedure. *See Crest Infiniti, II, LP v. Swinton*, 2007 OK 77, 174 P.3d 996, 999.

examination is requested") (emphasis added). Despite the Teva Defendants' objection to the Notices insofar as they seek to compel forty-three separate witnesses to testify up to six hours each – for a total of two-hundred-fifty-eight deposition hours – in violation of the plain language of the rule, the Teva Defendants have made clear to the State that they are willing to produce appropriate witnesses, for appropriate groups of topics, for a reasonable amount of time beyond the six-hour limit. *See* Exh. E at 6:1-18.

The State has also protested that the defendants may not set the schedule or order in which the Notices are addressed at deposition. However, it is also plainly within the Teva Defendants' discretion as to which corporate representatives it designates to testify on a given Notice topic. *See* Okla. Stat. tit. 12, § 3230(C)(5) ("***The organization*** so named ***shall designate*** one or more officers, directors, or managing agents, or other persons who consent ***to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify***.") (emphasis added).

In light of the State's recalcitrance, the Court should impose reasonable time and subject-matter limitations on the Notices issued by the State in order to avoid the harassing, irrelevant and duplicative questions that the State has engaged in in every prior deposition in this case. Left unchecked, the State will continue the campaign of witness harassment and intimidation that it has engaged in thus far. By way of example, the State has asked nearly every lay-witness deponent – consisting almost entirely of sales representatives that were subpoenaed, presumably, to discuss their employment with defendants – whether they have ***personal*** responsibility for patient deaths and the opioid epidemic.

The State has also routinely asked sales representatives questions such as whether they have children (*See Deposition of Brian Vaughan*, 84:24-25, September 19, 2018, Attached hereto

as Exhibit I); and whether they feel personal responsibility for doctors' actions that led to patient deaths (*See* Exh. I at 200:22-24).

Equally as troubling is the State's conduct at its deposition of the Teva Defendants' corporate representative. There, the State asked approximately ***one-hundred-eighty*** questions that were beyond the scope of the deposition topic[4], which this Court specifically limited by way of its April 25, 2018 Order. Exh. B. And because the State did not need nearly the full six hours that it used in order to address a single topic, it took that opportunity to pose questions related to ***at least twelve other deposition topics*** covered by its existing Notices. For example at John Hassler's August 28, 2018, deposition, the State asked approximately five questions related to Notice No. 1 (Your involvement with, and contributions to, non-profit organizations and professional societies, including front groups)[5]; four questions related to Notice No. 2 (Your involvement with, and contributions to, KOLs regarding opioids and/or pain treatment)[6]; nine questions related to Notice No. 3 (Your use of branded marketing for opioids nationally and in Oklahoma, including the scope, strategy, purpose and goals with respect to such branded

[4] *See Deposition of John Hassler*, 11:13; 12: 15, 25; 15:19; 30:12; 37:9; 38:23; 39:19; 40:9, 18; 41:10, 14; 42:4, 18; 44:16, 21; 45:1, 8, 23; 46:11, 21; 47:5, 17; 48:23; 49:6, 12, 16, 24; 57:5, 24; 58:9, 16, 23; 59:6; 61:4, 22; 64:11; 69:13, 22, 25; 70:11; 71:4; 72:5; 81:10; 82:16; 83:8, 17; 85:11; 90:1; 91:25; 96:23; 104:4; 106:4, 14, 25; 110:14; 111:5; 114:13; 116:10; 117:1, 20; 118:14, 22; 119:6; 120:21; 121: 8, 19, 23; 122:8; 123:24; 124:4, 24; 125:21; 126:4, 17; 127:5; 128:13, 24; 129:23, 24; 130:9; 131:25; 132:6, 18; 133:6, 18; 134:2; 140:11; 147:13; 153:6; 156:1; 159:10, 19; 160:18; 161:25; 162:7; 164:1; 165:3; 166:3, 12, 17; 167:16; 168:8; 170:7, 16; 171:16; 172:8, 15; 174:8; 177:13; 178:23; 180:1; 181:2, 25; 182:11, 15; 183:2, 12; 184:4, 22; 185:4, 14; 186:4; 187:18; 189:11, 15; 190:6, 13; 191:17; 192:24; 194:9; 195:4; 196:7; 197:13, 19; 200:6, 15, 25; 201:10, 25; 202:17; 203:2; 204:18; 206:10; 216:2; 218:19; 219:19; 220:5, 23; 222:14; 223:11; 224:20; 226:8; 227:2; 228:11; 229:4; 230:17; 231:1, 24; 232:19; 233:22; 234:22; 235:17; 236:3, 24; 238:2; 239:13; 240:4, 15, 24; 241:8; 243:6; 245:3, 19; 246:1, 12; 247:1, 15, 25; 248:25; 249:9, 21; 252:3, August 28, 2018, attached hereto as Exhibit J.

[5] Exh. J at 172:19 – 173:10

[6] *Id.* at 66:3-16; 176:4-6

marketing)[7]; fourteen questions and an exhibit related to Notice No. 4 (Your use of unbranded marketing for opioids nationally and in Oklahoma, including the scope, strategy, purpose and goals with respect to such unbranded marketing)[8]; ten questions related to Notice No. 5 (Your use of continuing medical education regarding opioids nationally and in Oklahoma, including the scope, strategy, purpose and goals with respect to such continuing medical education)[9]; four questions related to Notice No. 6 (Research conducted, funded, directed and/or influenced by You, in whole or in part, related to opioid risks and/or efficacy)[10]; more than thirty questions related to Notice No. 10 (The scope, strategy, purpose and goals for Your opioid sales force, including without limitation: training policies and practices; sales tactics; compensation structures; incentive programs; award programs; sales quotas; methods for assigning sales representatives to particular regions; facilities and/or physicians; and Your use of such sales forces in Oklahoma)[11]; four questions related to Notice No. 13 (Your use and/or establishment of any opioid abuse and diversion program You established and implemented to identify Healthcare Professionals' and/or pharmacies' potential abuse or diversion of opioids)[12]; ten questions related to Notice No. 19 (Your educational and/or research grants provided by You to individuals or entities regarding opioids and/or pain treatment)[13]; ten question related to Notice No. 21 (Your role, influence, or support for any campaign or movement to declare pain as the "Fifth Vital Sign")[14]; one question related to Notice No. 29 (Your use of clinical trial companies regarding

[7] *Id.* at 98:22-25; 99:10-13; 103:24 – 104:14; 112:14 – 113-7; 187:14-16;
[8] *Id.* at 59:18 – 60:22; 99:25 – 102:9; 104:20-22; 112:14 – 113:7; 118:11-21; 187:14-16; 209:23-24; 219:1-3; Exhibit 2.
[9] *Id.* at 72:11 – 74-23; 93:9 – 23; 103:10 – 23
[10] *Id.* at 77:21 – 79-4;
[11] *Id.* at 30:8 – 19; 57:1 – 59:3; 118:3 – 119:9; 181:7 – 184:24; 215:24 – 219:23; Exhibit 4
[12] *Id.* at 72:19 – 22; 79:25; 89:18-19; 237:6-7;
[13] *Id.* at 73:17 – 74:22; 102:22 – 24; 103:10 – 104:15;
[14] *Id.* at 173:17 – 174:25; 178:12 – 181:6

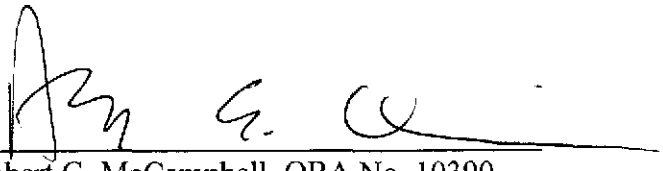
opioids and/or pain management)[15]; and fourteen questions related to Notice No. 37 (All drugs for the treatment of opioid overdose manufactured, owned, contemplated, developed, and/or in-development by You including the nature of each such opioid overdose drug, its intended use, the stage of development of each (e.g. released to market, in development, abandoned), and profits earned by You from the sale of any such drug in Oklahoma)[16].

In sum, the State asked more than ***one-hundred-fifteen*** questions that are duplicative of at least ***twelve*** existing Notices. Despite raising objections during the deposition, Teva's representative was permitted to answer these questions, and the State will therefore get a second bite at the apple with respect to at least twelve of the remaining forty-three deposition topics by virtue of its willful refusal to stay on topic and comply with the Court's order. For this reason, the Court must impose strict limitations on the scope and length of the State's Notices consistent with its prior orders and the Oklahoma Rules of Civil Procedure.

IV. CONCLUSION

For the foregoing reasons, the Teva Defendants respectfully request that this Court deny Plaintiff's Motion to Compel in its entirety.

Dated: October 11, 2018

By: 

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[15] *Id.* at 250:17-19
[16] *Id.* at 159:16 – 160:14; 162:16 – 164:24; 166:21 – 25

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 10th day of October, 2018, to the following:

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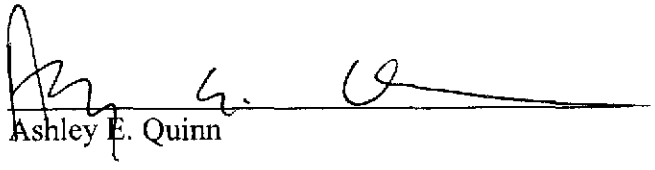

Ashley E. Quinn

EXHIBIT A

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 31, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

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P R O C E E D I N G S

THE COURT: So let's go on the record for today's hearing on discovery issues and other matters, I guess. Couple of things first, just to try to clean some things up. One is that I think we sort of didn't really clean up the scheduling order issue yesterday. That, I think, was sort of on the docket for yesterday and just sort of got overlooked. Everybody was doing other things with the issues Judge Balkman had to deal with.

He sent out a minute order, I think. I don't know if you all got it regarding that, and frankly, he told me he did that and went, Oops, mention that today, so I told him I would. I think that, you know, certainly, for you all's purposes and definitely for mine, I've got to have some clarity on what the deadlines are.

If you wouldn't mind as quickly as possible to sort of get that scheduling order cleaned up so I've particularly got hard, fast, firm deadlines for fact discovery, fact witnesses, and all that. That's of course critical of what I'm doing. And sort of follow that order.

And then if there's any kind of an issue that you can't agree on, either get it to him or me, if you can do that by agreement, and we'll resolve it. Whoever you can get to the quickest, I guess, by agreement, that would be nice.

We're still -- Judge Balkman is still getting some

pleadings that should be going to me delivered to his office. So I might again remind everyone that if it's discovery master pleadings, it just comes to me. They've got so much paper going through there, they don't need extra paper. So if you can try to keep staff advised that if it's discovery stuff, get it to me. If it's not, you know, it goes to him. But you get it.

I mean, another thing, this is sort of a silly thing I guess and it hadn't really entered my mind. But you know, I never wear a robe. I've had a couple of -- and I don't want to wear one. The one I've got is so hot, I could care less. It doesn't make me any smarter or, you know, I don't look any smarter, so I don't care.

But you know, that has to do with public perception, and that has to do with court decorum and things. And I've been reminded of that. And the hearings that we had earlier where the press wasn't even interested or involved doesn't make much difference. Well, I don't know. I mean, I could care less, and that darn robe is hot. So I don't know. I'm trying to decide what -- you all could care less, I'm sure.

But I am mentioning it to you because you all practice all over the country with special masters, and if anybody has an opinion about that, if you think that this is something that, to me, is insignificant as it could possibly be, is a big deal to public perception and decorum of courts, I'm more than

willing to put that hot thing on, I guess.

But anybody have any attitude or opinion about that one way or another, I would appreciate it. And I only mention it because I've had, surprisingly to me, several comments about it.

MR. CHEFFO: Your Honor?

THE COURT: Yeah, sure.

MR. CHEFFO: Mark Cheffo. I would just say I think it would be, probably for all the lawyers here, unusual for your Honor to feel like you needed to wear a robe, particularly in this setting. Judges -- in my experience, judges and special masters and discovery masters, particularly in these settings, even though it's serious, it's a little less formal than a trial or jury. So from our perspective, I think this is what we would expect your Honor to be wearing.

THE COURT: I appreciate it. Thank you. And of course, when we have these hearings, there's not -- virtually no cameras show up anyway, but that's okay.

What else. I'm going to make a suggestion, and I've thought a lot about this. I've been reading all, of course, what we've got set for today and all the transcripts regarding these meet and confers. I've written myself a note here, and I want to read it rather than ad lib it a little bit.

And this all has to do with an expedited protocol for dealing with these discovery issues; these notices, time

periods, response periods, objections, motions to quash, and actually getting to me to have a hearing. And I've, of course, read both propositions, and I'm not sure in terms of time today -- we're a little limited -- that I even need oral argument at all on that. That's why I want to bring it up first.

But here's what I'm thinking. So then I want to ask you all to break and take a minute after we talk about this, discuss it between yourselves, and then if you do need some short oral argument on this, let's do it.

It seems to me the meet and confers have more clearly defined what the State means, you know, by the different categories that have had some confusion, particularly as described in the transcripts that I was provided.

We're at the point where it appears to me counsel for both sides have more clarity on the relevant issues to be explored in discovery and documents or records that are necessary for fair and full discovery.

We have all these notices that are currently outstanding for sales representatives, et cetera, and the topics that the State is particularly interested in and as to each defendant, it appears to me that it might be a good idea to enter an order that each defendant group is to identify and designate representatives to testify to each topic or topics by a certain date.

And I want to stop there. From the State's perspective, you know, we're starting over here kind of. And where are you on that? I mean, do we just have notices out, objections made? I've got piles of them. We're here to talk about those. Do we have any clarity on --

Judge?

MR. BURRAGE: We've issued the notices on August the 8th for the sales reps and for the corporate designees, and there's been no objections filed. It's my understanding that we're going to address that issue today.

THE COURT: Okay.

MR. MERKLEY: We certainly disagree that we've waived any objections to those corporate representative depositions.

THE COURT: I know. Yeah, I know. I'm more interested that do we have the people identified and the topics identified, or are we still --

MR. BURRAGE: We have the topics identified.

MR. BARTLE: Judge, I think that raises a number of issues, including the one that I've had conversations with plaintiff's counsel about, which we agree to disagree.

It certainly relates to obviously the number of hours of the deposition that's going to be appropriate. We have 43 or 42 deposition notices, 256 hours of deposition that the State has identified. We don't think that's appropriate in this case.

We think that's -- especially given this compressed timeline, we don't think they're entitled to 256 hours of deposition testimony from my client. So I think we need to work out, one, the protocol; and then, two, how we're going to address the topics the State -- the appropriate topics the State has noticed so that we can get the appropriate testimony and prepare the witnesses.

We don't want to have witnesses who aren't prepared, Judge. We want to prepare our witnesses, we want to give them the answers, and we want to do this right. And that's our concern.

THE COURT: Yeah, I know. I know.

MR. CHEFFO: Your Honor, may I make a suggestion?

THE COURT: Sure.

MR. CHEFFO: We welcome that. Actually, I think -- I don't want to speak for the plaintiffs, but they're good lawyers. They've done this, right. They don't have any interest, I suppose, in wasting one more minute than they need to.

We certainly don't have any interest in having witnesses come down and be asked a bunch of questions on topics beyond -- in my experience, and I would just suggest that maybe we consider something like this here is, you're right, we have topics, right, we can agree on those, we can get them teed up.

If there's differences sometimes, you know, some things, a

30(b)(6), reasons why we disagree. And if you think it's appropriate, then you can do thumbs up or thumbs down.

But I think what's the most important thing is to have a process on both sides. I frankly think it'll make this much more efficient. It'll, I think, make it even more courteous in terms of -- I think there's a lot of time issues that cause the parties to have perhaps a little more disagreements than they might.

So in other words, one of the issues are, if there's discreet 30(b)(6) topics, right, a defendant may say, let's -- a traditional one -- what is your computer database systems, or how do you maintain documents, right. That could be a very discreet issue. And you put somebody up and they can deal with that.

Other topics may in fact overlap with which fact witnesses we talk about. So for example, picking on my client, Purdue. If it's someone that's going to talk about certain sales and marketing issues and you had somebody who was also going to be deposed, you would want to kind of dual purpose that. I think that would be in the interest of the plaintiffs as well. And they may have similar issues in terms of 30(b)(6) topics.

So -- and I don't know if I'm getting ahead of the Court on this. But where I thought you were going is to basically identify, have a process, to figure out what are legitimate 30(b)(6) topics. I think you can't have 300, 400 hours of just

30(b)(6). But whatever those reasonable limitations are, then identify.

And I think -- and this is what we're actually doing in the MDL. I know the Court's certainly not bound by the MDL, but there's a model there. There's 400 depositions that are going to happen, many of the same witnesses.

And what I think the process there is, there is production of documents. There is an identification of the 30(b)(6) topics. There's then a situation where we would then meet and confer if we disagree, but we would identify witnesses, and to put as calendar -- I think it would be more human, frankly for -- it's not about the lawyers, but it certainly helps certainly the witnesses -- so that we would have a calendar in place so that both parties could know, On September 19th, this is the deposition that's going to go. As opposed to what I think is happening right now, is somebody just on both sides spits out a notice, you know, I want a deposition in four days, we both say, Oh, we can't do that, and we come and we move to quash. That's not a workable solution. That's never going to get us ready for trial. All it's going to do is create paper and acrimony.

So to the extent that we can -- and I'm actually cautiously optimistic that if given an opportunity to try to work out something like this with the plaintiffs, and they'll have to tell me if they're receptive to this, that we actually

could do something that -- because I think one of our issues, and then I'll sit down, is just order and structure.

Because we're just feeling like, you know, a notice comes in, we have to prepare witnesses, we're doing other things. They then come down, they're asked topics, you know, well, well beyond. I mean, I don't want to get into the nitty-gritty of it. But someone was talking about abatement that was ordered; we produced a witness, and the topics are very, very broad.

So I think we need two things. We need a scheduling order, and then we need some kind of clarity about what the scope of those 30(b)(6) witnesses should be asked and testifying about.

MR. BURRAGE: Well, your Honor, we issued the notices that has the topics, and we haven't had a response.

THE COURT: Okay. Well, I was hoping to avoid some argument, but I'm not sure I can. Help me a little bit more with -- I want to go ahead and give me some argument. I want to start with you and Purdue and your proposal, a little more detail with what you just said regarding the structure of that.

MR. CHEFFO: Sure. May I?

THE COURT: Sure.

MR. CHEFFO: Thank you, your Honor. I think our proposal, I mean, personally, this is not anything that was, I don't think, new to Oklahoma or this state. This is kind of a typical proposal. And I think -- I don't know if your Honor

has it. This goes back a little bit. It's a one pager that I think we submitted, and I'm happy to --

THE COURT: I've got the letter. I've got the two responses.

MR. CHEFFO: Yeah, I think it's Mr. Coats' letter.

MR. MERKLEY: I think that's Sandy's letter.

MR. CHEFFO: It's just that one page letter.

THE COURT: Yeah, I do have it.

MR. CHEFFO: Okay. So I stand corrected, your Honor. This was kind of my note. This was in an e-mail that was sent.

THE COURT: The only thing I have from you all is the June 4th letter from Mr. Coats.

MR. CHEFFO: You know what? If you don't have a copy, your Honor, and they don't seem to have a copy, I can just walk through it quickly and let me see if I can just answer your Honor's questions. I think that --

MR. BURNS: Can I interrupt for just one second? I believe I have -- your Honor, this was the May 23rd e-mail that actually came from Mr. Merkley, which is our proposal and protocol that you guys were all copied on.

MR. MERKLEY: Just to clarify the record, your Honor. That was my initial e-mail, and then we synthesized it down to what Sandy proposed in his letter, which I think is what they've --

MR. BURNS: These are the two letters right here.

THE COURT: Yeah. I have those.

MR. CHEFFO: Okay. And we'll stand by -- if you have the letter, I think they're similar. I think what we're proposing, your Honor, is that there's probably three buckets. One is to have some kind of reasonable limitations on kind of the number and scope of hours.

And frankly, you know, we need some information too, so we don't want to make it too -- be too stingy with it. But I think certainly something less than 300 hours per each defendant.

I think what we would like to do is have some process where we kind of exchange information and have a few business days in order to determine which dates work and which schedules.

So in other words, before -- I think it's a key provision. Before we basically just either side just send out notices, we basically have a discussion. We would say, Okay, we would like to have a deposition of X witness, and then we would look at schedules and we would try and get that on schedule.

I think the other component with the 30(b)(6) is there's probably two different types. Sometimes, you know, we need to respond to a topic and it's relatively discreet, and you may have to find an employee, for example, and educate them on that specific topic.

We think that in those situations, the 30(b)(6) should be

limited to those topics. What's been happening, at least in my experience, is that they talk about those topics, but virtually everything else.

I do think that the party putting up the 30(b)(6) -- so it's not just defendants; it's the same for the plaintiffs as well -- should have an opportunity to then say also they're going to talk about 30(b)(6), but they're also going to be a fact witness, right. So, you know, the person designating would basically have -- and I think that's typically the way it's often done.

Because now what you're hearing -- and I think your Honor was sitting here. You heard a lot of, you know, beyond the scope, and that's just really cumbersome, because you have somebody who is, you know, either with the company a small period of time or doesn't know anything about sales and marketing or they're not a medical doctor and they're asking to define the opioid crisis.

You issued an order with respect to limiting the scope of the abatement. I think we understood what that was, was what you've done, what you're planning to do, and what you're doing right now. And again, I'm not being critical, other than I just disagree. It was, you know, what's necessary, lot of questions about, What do you think, wouldn't it help.

And the point really here is that we have a short period of time, a lot of witnesses, and it's really just not fair to

either side to have -- because what happens is one of two things; either a witness is unprepared and there's these gotcha moments, or more likely, there's a lot of speeches and questions and then people saying, That's outside the scope. So we spend six hours on a deposition that really should have taken two hours.

So our proposal, your Honor, is really -- it's based on process. It's to figure out which topics are appropriate, tee those up and identify them. To the extent that they are discreet, have the parties meet and confer and try to figure out a schedule that gets us from now until pretrial is over in May.

To the extent --

THE COURT: Well, am I correct or incorrect in my reading of these transcripts. I just said when I made my notes back there that the impression I got is that the topics that are to be explored have been pretty much agreed to or at least I think I said identified.

MR. CHEFFO: Yeah, I think they've been identified, but they may not have been agreed to. Like, there may be objections to the scope of them. So I mean, and even there, what's happening is the depositions are going so far beyond what the scope is that you have -- I mean, I'll just give you an example.

Yesterday there was a deposition you had ordered and Judge

Balkman had ordered to talk about the certified financial statements, which you talked about. And the witness was asked, How much, you know, do your lawyers make, all about foreign companies, asking questions that say, you know, I don't care who told you this, I want to know the answer to how much you've reserved, asking questions about the settlement process before Judge Polster, you know, for an employee who spent a lot of time looking at a stack of financial information, who's a controller and was with the company for four or five months.

Now, again, you know, they're very skilled lawyers. They'll have to figure out how they think it's the best way to prosecute their case. But from a judicial efficiency and economy, I don't think that's consistent with what the Court expected in terms of these roles.

And if basically the issue is for every one of these topics, the 30(b)(6), it becomes kind of a free-for-all on any possible topic. You know, what's addiction, is there a public health crisis. I mean, though are questions that are fair in the right context for a fact witness that can answer those questions or maybe even for a 30(b)(6) witness.

But you know, asking them to kind of get into privileged conversation -- I mean, there was a whole bunch of questions that I had to direct their answer where they were asking the witness, How much does Purdue pay my law firm. I mean, I've been doing this almost 30 years. I have never heard a lawyer

intentionally ask, you know, How much does your law firm get paid. I mean, the witness didn't know that. Or, How much does the chairman of the board get paid. I mean, this was a very discreet topic that you identified, that we briefed and ruled.

So I didn't want to get off topic on that, but I think it's important to understand really what we're facing, because I would encourage your Honor, if you have the time and the patience, to look at some of these 30(b)(6) transcripts. Read the whole thing. I think what you'll find is there's a lot of colloquy, right, and it's unavoidable if there's no structure.

So what I would suggest, your Honor, is that I think both sides recognize -- and we said there's a ton of legitimate discovery that needs to be done on both sides, a ton. We are never going to get it done if every tangential point becomes a six-hour deposition if we don't have a pathway to get there on both sides.

And I think, you know, we -- I would respectfully urge, ask, strongly request, you know, just some imposition and structure being imposed. And I think it'll make your Honor's life much easier if, you know, rather than get these constant calls and constant motions, if we basically do what I'm suggesting, which is to basically get a schedule in place. And this is what I frankly have done in almost every other litigation I've ever been involved in.

It's what we're doing in the MDL. It's what we're doing

in other state courts. We meet and confer, we figure out what witnesses, we talk about who's going to be -- you know, they give us a list, not just the 30(b)(6) topics, but they can identify certain people who they want to depose, the names of the people, so we can say John Smith, okay, got it. That person is also the best person to talk about these specific topics. So when they get there, they're prepared to talk about those.

So that fundamentally, I think, is what we're talking about, and I think I would just, you know, really rest on the details, because I think in the letter you received, it talks specifically about how this interplays with the Oklahoma statutory guidance of the depositions.

But fundamentally, it's some kind of limitation on timing. Its process and procedure that makes sense. It's reasonable scope of depositions. And if a party fairly then says, No, I think Mrs. Smith or Mr. Jones is an appropriate fact witness, and we'll cover this, then, you know, consistent with the rules and ethics, all bets are off and they can ask any questions.

But if the idea of 30(b)(6) -- it's not supposed to be a gotcha process where you put up an accountant and they try and bind the company on whether OxyContin is addictive, right. I mean, one is, I'm not even -- I can't even see a situation where those types of things would be admissible.

So we will be a lot better off, I think, as a group if we

have that type of structure, your Honor. Did I answer your questions?

THE COURT: Yeah. Yes, pretty much. Thank you. Judge?

MR. BURRAGE: Well, the structure part, your Honor, there does need to be some structure and so forth. But the underlying theme that I was hearing is there's got to be limitations on the 30(b)(6) witnesses. That argument's been made to Judge Balkman. That argument's been made to the Oklahoma Supreme Court.

And you know, I think we know how to take a 30(b)(6) deposition, but we're not -- if there's something that comes up in that deposition that may be relevant, we're entitled to ask it. And that's been the law in Oklahoma for a long time.

So what they're wanting you to do -- I can see it coming -- is put limitations on what can be asked at these depositions, and that's not the law.

Now --

THE COURT: Can I interrupt you there, Judge?

MR. BURRAGE: Yes.

THE COURT: I keep reading, and typically on your side of the pleadings, asking me to -- as to depositions on both sides, the depositions should not be limited to just the witnesses in the representative capacity, but their individual capacity.

MR. BURRAGE: And that's what he's suggesting, I think, that they could designate them for both capacities. That's what he just said.

THE COURT: Okay.

MR. BURRAGE: And we don't have a problem with that, your Honor.

THE COURT: Yeah, that's what I'm trying to get to, is that's sort of like --

MR. CHEFFO: I'm sorry to interrupt. I just want to clarify the point. I think what I'm suggesting is the party designating should have the option of doing it. So in other words, so if we take the deposition -- I think there's one of a corrections person next week, and they want to designate him on a 30(b)(6) topic of talking about corrections, but also as a fact witness, right, because the flip side would be if they don't, then we may need to take him as a fact witness, they could just designate him.

THE COURT: Yeah. That's what I'm trying to avoid here is having to take it twice. And I'm hearing you say limit. I'm hearing the State say let's not limit.

MR. CHEFFO: And what I'm trying to avoid is with this many topics, your Honor -- there are a number of topics. Now, many of these are going to overlap, right, so this is not going to be a huge problem. So in other words, there will be times where the person who we will put up will be an individual

person and will also testify in 30(b)(6) topics. But there will also be discreet 30(b)(6) topics where we just want to have time to educate someone, prepare them on those topics. Some of them go back 10, 15 years. And that should be the focus unless the party designates.

And what I'm suggesting is bilateral. I'm not trying to say this should only apply to the defendants, your Honor.

MR. BURRAGE: Well, but what he just said, Judge, is that they decide what they want the witness to testify to outside the 30(b)(6) designation. If something comes up in that deposition, the law says we're allowed to ask about it, and they don't get to be the arbiter or the ruler of what they're going to let them testify about on facts outside the 30(b)(6) notice. It's not right.

THE COURT: Okay.

MR. BURRAGE: So you know, I'm for a process, Judge. We've issued these notices. We haven't heard anything. And we're willing to talk to them about them and discuss them, discuss time limits, and discuss all those things. I'm not saying that we just issue notices.

THE COURT: I'm going to sort of shortcut it here a little bit, and I'm going to -- I started out to enter an order. But I think what I'm going to do is tell you what I would like to do and ask you to take notes here. And then I'm going to take a break and ask you all to visit about this a

little bit. Take about a ten-minute break, maybe 15 minutes at the most, and ask you to sort of get together to visit about this.

One, I think before noticing a deposition, I think you should confer and each other -- you know, and try to pick dates if you can for the depositions and topic, scope, 30(b)(6), fact, testimony getting discussed.

And if you cannot arrive at a conclusion and an agreement, what I'm going to do, what I would like to do is ask that the notice is limited to five business days, you know, which expands it from our 3-day notice provision, objection within 3 days, business days, of the notice, and a response, if required, within two days of an objection.

Then I want to put in place a way to where you can contact me day or night by cell phone, 405-413-2250, if there's an objection or we need discussion or rulings on topics and expanding things, and then I'll rule or ask for oral argument if I think I need it. Then the deposition is to be held within ten working days after a ruling.

Now, that doesn't -- you know, we've got to have document production and proper preparation before that for witnesses to be prepared, and I know that's an issue. But that gets a process structure started that I think is fair, speeds up things, helps things along a little.

And I want to sort of take a break and let you all talk

about that a minute. All right? Let's take a break and see if that would be helpful. Let's get back in here by a quarter till.

MR. BURRAGE: Thank you, your Honor.

MR. BECKWORTH: The ten days, is that business days also?

THE COURT: Yes. Ten business days.

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

THE COURT: All right. We're back on the record and I guess what we're trying to do is limit this to where stuff that comes to me can get to me quickly, but pretty much limited, I would hope, to topic and scope. And by the way, I think six hours is not unreasonable, and I don't mind saying six-hour limit. I'll go ahead and say that now. That's a long time, and I would think for most of these witnesses, you don't need six hours.

And even yesterday, I heard some questions that to me are obviously not questions that should be asked, period. That's just a waste of time. I can't stop that. I mean, it's going to happen during depositions, I guess. But I don't think that's unreasonable.

All right. Judge, you want to start with you and see what you think?

MR. BURRAGE: I think we've got some basic concepts

agreed upon, your Honor, that I would like to tell the Court about and then maybe get your guidance.

THE COURT: Okay.

MR. BURRAGE: But we've got all of these deposition notices that have been issued and that we're going to get together and see if we can reach a resolution on those deposition issues; scope, topic, amount of time, and so forth before May the -- or not May -- the 10th of next month.

And if we can't reach a resolution on those noticed depositions, then we will ask that you take it up and help us along with that.

THE COURT: All right. Yeah, of course.

MR. BURRAGE: With regard to depositions in the future, the protocol that you laid out we're agreeable to. The only thing that we will need to narrow it down is just meet and confer time. I mean, we would like some structure in that that we haven't talked about. But you know, either they or we send them an e-mail about it, they respond. We can't have an indefinite meet and confer time.

THE COURT: All right. Stop. That is a problem. I mean, he's right, because you all are busy, you've got things going on. And so it results in them sending a notice and here we go. How can we cure that?

MR. BURRAGE: We maybe can -- have agreed on a structure that may help that some, your Honor, is that we'll

designate someone on our side to be the contact person on this with an alternate. Each one of the defendants do the same thing so that we know who we can contact and get a response from. And that may help some, but it's still going to need to be addressed how long that period can go on and how it's done.

MR. CHEFFO: I think the good news is we're thinking we're in agreement on these topics. I think your Honor's proposal makes a lot of sense. We talked about it amongst ourselves and with the plaintiffs. They expressed the concern about this scheduling issue. Again, it works on both sides. I think we agreed to have a primary person, as the Judge said, and a secondary person.

You know, I think the rule of reason is going to have to apply here as we all get busy, right. If someone's dragging their feet, they don't respond, then obviously, you're one phone call away. We're going to endeavor in good faith. I think they are hopefully as well.

The goal here should really be ripe that by having this process, this meet and confer, far fewer things ever get to your Honor, right, because they come and say we want to depose Mr. Smith, and we're like, Okay, Mr. Smith's available on these dates. They're like, Fine, put him on the calendar and we're done.

THE COURT: All right. Good enough. That's done. I think that's a great idea. So we're going to designate folks,

maybe one alternate to deal with this. I'm going to set a three day limit working day.

MR. BURRAGE: On the meet and confer, your Honor?

THE COURT: Right.

MR. BURRAGE: That's reasonable. All right.

THE COURT: That's sort of our provision anyway. And let me give you another number in case I'm in a hearing or doing something else where my cell phone doesn't answer. 405-329-6600 is my office number, and Jaime, J-A-I-M-E, different spelling from this Jami, is the person that will get to me.

All right. Anything else on that?

MR. BURRAGE: No. The only other thing is that we don't want to be told that a certain witness is going to be in the MDL giving a deposition, we have to go up to the MDL to take the deposition. We don't want to have to do that. I think Judge Balkman and you have made it pretty clear we're not going to -- involved in that process.

THE COURT: It is clear, but, you know, there's nothing that comes good after the but part. But by the very nature of that, if there is a witness that's involved in the MDL giving depositions, you're going to end up waiting. It's gonna take time.

MR. BURRAGE: I don't know if we will or not. I mean --

THE COURT: If they're in a deposition, obviously, you've got to wait until they're through.

MR. BURRAGE: Yeah, I see what you're saying. I mean, we can talk about a date that we want to take it and notice it and so forth. And then whatever -- however the process works out. We just say we want all witnesses to follow this process. We don't want to have to be told that a certain witness is giving a deposition in the MDL a certain date and you've got to go to the MDL deposition if you want to depose them.

THE COURT: Right.

MR. CHEFFO: I think we understand the process here. I think it's good faith, and we're going to do that. And I know you're not -- I think the issue of how people get deposed is probably another day, another time, for some protocol. We understand completely.

It's been clear that this Court's not bound by the MDL. But there is -- and so again, I don't want to get into a snatch defeat here from the jaws of victory. There are just some practicalities, and those are things that ultimately will in some situations come before the Court. So I just want to make sure that we're previewing it.

If there is a person who is, you know, a retired person who is -- or working at some other company, and there's issues or they are being deposed -- there are 50, you know, states.

This is an important state.

THE COURT: Well, Counsel, that's the case with every single witness. I mean, we could -- all witnesses have issues. I mean, we just have to work around it the best we can, and I'm not going to be too sympathetic to, Well, he's got to work on his farm this week and can't, you know, he's got to -- I mean, if he's in another deposition or his wife's having a baby or something, fine. But we're in litigation here, and these witnesses have been identified pretty much by now or should be, and they need to get in and get a deposition and let's get this done.

MR. CHEFFO: And we do understand that. My only point, your Honor -- and I'm sorry if I was not clear. We understand it, we really do. My only point is that many of these depositions, like, for example, right now, I'll pick on my own client, Purdue, has about 250 employees left. The same witnesses, Mr. Smith, Mrs. Jones, whoever, are the same people this Court wants and the plaintiff wants but in 50 other states in the MDL. So again, we have to balance. We understand that you're not bound, but the rule of reason has to apply --

THE COURT: Of course.

MR. CHEFFO: -- so that we can -- because the idea of having somebody being deposed a hundred times on the same topic is just not workable in this Court or in any court. So we understand that they want to have an ability to schedule things

that work with the schedule here, and I just want to -- I'm just putting down a placeholder that that's a two-way street; that in order for someone to continue to do their job, they can't spend, you know, the next two years in dep prep to be deposed in every state. That's the only point. So we're trying to figure out how to work that with them.

And their claims may be different. It doesn't apply to a vast number of people. There's a lot of sales reps that they've been taking in Oklahoma. No issue. There will be people who have Oklahoma specific. They will be nonparties.

But there will be certain people who have national information, right, that is not specific only to Oklahoma; it applies to 50 States. And to basically require that person, him or her, to be deposed 50 times, I think, would just be frankly impossible for us.

MR. BURRAGE: Your Honor, we want to notice witnesses pursuant to the protocol we've agreed upon. We don't want to have to be told that this witness is giving a deposition in the MDL, if you want to depose them, you've got to participate in that process. We want to follow the schedule that we've agreed to.

THE COURT: What I'm hearing is, is that you're going to cooperate in this process that we're now agreeing to here, and as long as they don't have a deposition scheduled somewhere else, they can schedule it in this case.

MR. BURRAGE: That's fine, your Honor.

MR. CHEFFO: Again, I think what you're hearing is what you're saying. Look, I don't want to do hypotheticals right now, your Honor. I think part of the process is we take facts as they come. All I'm suggesting is if they notice it --

THE COURT: We'll be trying this case after I'm dead if that happens.

MR. CHEFFO: I understand. There's a process in place. I think I understand your Honor's guidance. We also have to accommodate where -- all of the other cases as well.

THE COURT: That's what I just said. Yeah. All right. Thank you.

MR. BURRAGE: We're agreeing on this process, your Honor, right here.

THE COURT: Yes.

MR. BURRAGE: Okay.

THE COURT: All right. Thank you.

Anything else on protocol for moving us along? All right. Thank you.

I think what we have next is -- and what we just did may modify this some, but I have I think Purdue's motion to compel next. Is that right?

MR. BURRAGE: There's one other -- could I back up just a second? There's one other thing that needs to be addressed, and that's the time of the appeal to Judge Balkman

to make a ruling.

THE COURT: Okay. Time of the appeal. Now, I don't have anything, I haven't read anything about that.

MR. BURRAGE: Three business days, five business days?

THE COURT: Oh, I see what you're saying. Yeah. Well, I'm trying to eliminate that, so I just didn't even think about it. That was his --

MR. BURRAGE: Me too. You know how Reggie is.

THE COURT: That was his --

MR. WHITTEN: Blame it on Reggie. It's the last point in our letter, Judge, and we're hoping there are no appeals but we've got to, you know, dot every i. You know I'm a detail guy.

THE COURT: And he will -- I mean, Judge Balkman -- he doesn't want them, and he's been real clear, don't ever let them happen. But I'll tell you what I'm going to say is get it to Judge Balkman within five working days.

MR. WHITTEN: Very good.

THE COURT: If that happens. Then it'll have to be Jami and Judge Balkman's decision as to how that happens, I guess.

MR. BURRAGE: Thank you, your Honor.

THE COURT: I can't control that.

Are we to Purdue's motion to compel? What do you think?

MR. LAFATA: Good morning, your Honor.

THE COURT: Good morning.

MR. LAFATA: In Purdue's motion to compel, we are again asking the Court for some help here. We have a very compressed schedule. We've been before you saying that the State has a large amount of work to do in discovery, and it appears that's not been happening.

So we've been seeing so far, for example, the Court will say -- we've asked the State for documents about the way that it determines how prescriptions are medically necessary. They're going to be guidelines and standard operating procedures, drafts of those things, memos about those things. And the State has unfortunately been very restrictive in producing documents from itself.

So far, your Honor, we've been seeing the vast majority of the documents, of all the documents the State has been producing, are coming from third parties. Very little is coming from the State of Oklahoma.

So when it stands up here at every hearing and says, there's a big crisis here, there's been a lot of activity, we should be seeing a lot of documents. We know, for example, that in the last time we've been before you that you ordered the State to produce these documents, and that has not been happening.

So we need to have a timeline to have this happening,

because the State really can't have it both ways. If we're going to have an accelerated trial schedule and line everything up, we need to have the documents in an accelerated schedule. They cannot wait until near the end of discovery and kind of dump everything on.

So the problem we've been having, your Honor, is we'll have depositions ready to go, but we don't have any documents from the State. And this has happened twice already. One of my co-defendants and one of ours, we said, We can't go forward with the depositions, you haven't given us any documents. We have to pull that down and reschedule it.

And I think we have an excellent protocol in place we've just talked about. We've said that these witnesses will go up when the documents are produced. I know that's an important component to that. But when the State is blockading its own documents, then that becomes a real obstacle. So we need to break that in this -- for these -- these are key topics, your Honor.

The topics we've presented to you really go to core components of their claims. You've already ordered they produce, it be produced, and nothing's been happening. So for example, we've got documents that explain the way in which the State is reimbursing for opioid prescriptions for chronic pain, how it adjudicated that, the back and forth of the people making that determination. We don't have any of that.

The documents that those people that make -- so the State is paying these claims, and it's doing that based on information it receives. We should be seeing the information it's getting. We should be seeing the back and forth in the State about deciding whether to pay a claim for opioids.

So the State has been, you know, a part of this process in paying for all these medications out in the state of Oklahoma. We should be seeing what they saw. We should be seeing their internal discussions and deliberations about why they paid what they did, and maybe for the circumstances or they didn't pay that, why that would be.

There's really a lot here, your Honor. It's very broad because this really goes to the heart of the case. And we're really not seeing anything. So it reminds me kind of last week when we were here for this hearing down the hall about an emergency and we really need the Court to step in and get this going.

You know, we're not saying that in these papers. What we're saying is that if we don't have some timeline here, then we're going to be in a real problem where we don't have what we need to answer the claims in the case and to take the depositions and move this forward.

There are also -- for example, your Honor, from 1995 to 2003, we know that Oklahoma Medicaid contracted with a number of outside managed care organizations. None of those documents

have been produced. We know that the employees of the State, about 180,000 of them, are in Health Choice, which is administered by the State of Oklahoma, administered by the plaintiff. There are HMOs they work with. None of that has been produced. We're not seeing any of that.

Since 1996, they have used different pharmacy benefit managers, a number of them. None of that has been produced. We don't see really any -- you know, without repeating myself, your Honor, there's a lot here that we should be seeing and nothing is coming across.

And I know that there are other motions we're going to be hearing today on the same subject. We want to take a deposition of a witness of the State, a representative witness, on how they determined to make reimbursements for these medications. They moved to quash that.

So they don't give us documents, they don't want to give us the witness, they won't answer even additional interrogatories on this. There really is a big wall the State is putting up on these key topics, and we need the Court's help to break through that and to get these things produced, the witnesses going, the discovery answered, because this goes to the heart of the case.

THE COURT: You know, just sort of for my help here, I'm looking at some of these motions that were filed earlier before the removal and the remand. So I want to be sure I'm

looking and what I've read for today is the same thing you're talking about.

MR. LAFATA: Sure.

THE COURT: Now, moving forward, it won't be quite as murky, but let me be sure, because I'm looking at your Purdue motion to compel that was filed August 17th.

MR. LAFATA: Yes, your Honor, that's right.

THE COURT: So we're specifically talking about, you know, the Request for Productions No. 1, 5, and 6?

MR. LAFATA: Yes, your Honor. On page 2 and 3 of that motion, those are the ones that you ordered already to be produced, and those we really need to have a time -- you know, 20 days, 30 days. They should be here already, really.

There have been instances in this courtroom where the State has said, We're willing to prioritize categories of documents as part of the rolling production. Really, this should be a high priority on the list.

We're talking about why did Oklahoma decide to pay for these opioid medications when it did determine that these were medically necessary; it determined that these were medically appropriate. Let's see all the documents the State relied on to make those determinations, the policies they used to make that determination.

And on page 3, there's an additional topic by Purdue Pharma LP about the system and service that Oklahoma used to

monitor prescribing activities of suspicious prescribing. Your Honor, there is a system that the State set up to look for suspicious prescribing, and we need to see the data that the State was getting, because it was getting advanced information about prescribing habits in its own borders. What did the State do about that? Did the State sit on it? Did the State do something?

These open up important questions that the defendants need to be able to inquire about to answer the State's claims. If the State comes in here and says, We didn't know anything about it, we should be able to see that from the data and the documents and the e-mails that they produce. But none of that is happening.

That's -- you know, I don't need to get into -- you know, repeat myself. But your Honor, we really need, I think, a guideline on timing of producing these documents complying with your order so that we can get these depositions done and get the process underway.

THE COURT: What was my order?

MR. LAFATA: Your Honor, that's all right. Your order was that the State be compelled to produce documents in response to The Purdue Frederick Company's Request for Production 1, 5, and 6, and that was, I think, entered on April 25th.

THE COURT: I didn't put any time limit on it?

That's what I was getting at.

MR. LAFATA: That's correct, you did not. You did not.

Now, April 25th was your order. We're now at the end of August. We asked for these in January, so we're 8 months into the year, and we are just in a huge deficit of documents here. The State has them.

THE COURT: And bear with me if I interrupt you all today and say -- you know how the Judge leans up like that (indicating), you know to sit down. It's probably a good time to sit down and let me get a response.

MR. LAFATA: Sure.

THE COURT: Thank you very much.

MR. BURRAGE: Your Honor, may I be excused for a few minutes?

THE COURT: Of course, sure.

MR. DUCK: Good morning, your Honor. Trey Duck for the State.

Your Honor, this isn't the first time that we've been here talking about the State's ability to produce documents and whether or not the State will produce documents. We have at all times promised that we would, and we will.

But I would like to back up for a minute and discuss the context of this renewed motion to compel that we're here on today. Months ago, the defendants chose to remove this case.

And we've heard the defendants say in this very court that that meant that all outstanding discovery was, quote, void.

Now, we were at a crossroads at that point in time. We had to decide -- even though we don't know what's going to happen to our case, even though we don't know what Court it's going to be in, and it could be in the MDL -- what should we do.

Should we continue to gather documents on behalf of the State? Should we continue to spend money, to spend time and resources going to get these documents, or should we just sit on our hands and say, Hey, sorry, defendants, you all removed, and that meant discovery was void.

Well, your Honor, we chose to move forward. We did spend time and money. I essentially lived up here for a few weeks while the case was sitting in federal court, going agency to agency, looking for documents, gathering documents, and talking to people.

The very documents that Mr. LaFata is interested in have been substantially gathered and reviewed. They are largely ready for production. But there is an issue that the defendants have raised about whether or not the State has to provide certain information related to patients and physicians.

They've told us they don't want to deal with that today. They want to file a formal motion on that topic.

THE COURT: Yeah. I mean, bear with me again,

interruption to try to help shorten things. I agree with that. I think that those do need to be reserved. That was down my list here a ways, but you've hit on it so let's deal with it now.

Let's deal with that as quickly as we can. Let's reserve that, and let's get that issue before me, however you choose to do it, as quickly as possible. But I think that takes care of it so we don't need to do anything else on that. But I do agree that that needs to be looked at closely I think.

MR. DUCK: Couldn't agree more, your Honor, and maybe that's something that before we leave here today, we can get a date certain by which the defendants can bring that up.

They've told us that they want to file a formal motion on that. We told them, Hey, you know, go for it, we'll give you time to do that. But we don't want to be in the position where we're waiting for them to tee this issue up, to produce these documents, and then we're called into court and they're complaining about why we haven't produced documents.

THE COURT: Yeah. I mean, I've read quite a bit about that from you all. Ten working days to tee that issue up?

MR. SPARKS: If I may. I believe my co-counsel, Steve Brody, spoke to this yesterday with some counsel for the plaintiff. I'm not sure, but I think we were looking toward providing briefing so we would be -- you would have time to

respond, we would have time to reply before the next regularly scheduled hearing.

THE COURT: Oh, by the way, do not let me forget to go over the dates with you all on this. There's some confusion on that, and I'll get up and leave and we'll forget that.

MR. SPARKS: And I just say that with a huge caveat, because I'm not Steve Brody, and so I don't want to bind him irrationally. But I believe that was discussed. Is that --

MR. WHITTEN: Well, we'll never confuse you with Steve Brody.

MR. SPARKS: And I'm sure he appreciates that.

THE COURT: You are not John F. Kennedy, right?

MR. WHITTEN: To be clear, we just learned this at the end of the hearing yesterday. I think you had already left. But Mr. Brody told me yesterday we are not going to hear this motion. That's the first we knew about it.

We were going to tee it up and have the Court decide it one way or the other today and even urged that they not do that. But they said, No, we want to file a more comprehensive brief on it. They've already briefed once. So we agreed with them. But Mr. Duck's point is that puts off the very production of these documents.

THE COURT: I'm very well aware of that. That restricts what you can do, and I get that. That's why I had it on the list here. But what's the quickest way to get that

done? I mean, five days, five working days?

MR. DUCK: That works for us. We'll have it briefed whenever you want us to have it briefed to you.

THE COURT: Five and five. Mr. Brody stand-in, tell Mr. Brody.

MR. SPARKS: So are we talking about the end of next week?

THE COURT: Yeah, to have the pleadings done, briefing done.

MR. SPARKS: We'll file our motion by Friday?

THE COURT: Of next week.

MR. SPARKS: Yes.

THE COURT: Yeah.

MR. DUCK: Okay. And we'll respond as soon as we possibly can, but I think you said within five days as well, so we'll do that.

THE COURT: Yes, five days of your receipt of their --

MR. DUCK: Yes, your Honor.

So another point on background that I don't really think I've ever explained to the Court, and if I have, I apologize; I just don't remember. A lot of time has passed since we've been in one of those hearings with your Honor.

But I don't think it's a surprise to the defendants, but Mr. Pate and I have been the ones that have largely been in

charge of helping the State gather these documents. This is not like a corporation where you go to the IT department and you say, We need help gathering all of the information for this list of custodians.

There is no centralized place for the State to go. And we must go to different buildings in different places to meet with different people, to meet with different leaders of different departments, all of whom have different IT departments, et cetera, et cetera.

And I'm not using that as an excuse, your Honor, at all. It's not an excuse. We are going to produce documents, and we've met with all those people. But what we hear a lot in these hearings is a comparison of what the defendants have done thus far in discovery versus what the State has done.

And another point on that is, your Honor, this production process simply will not be tit-for-tat. They can come in here all day and say, We've already produced a million documents. Well, your Honor, they've been in litigation on these issues for years. The documents we've received from most of the defendants have already been produced in other litigation. It was very easy, relatively easy, for them to produce it.

Now, that's not the case for the State. We're gathering this stuff from scratch. And even when we do that, the numbers probably won't match up. We simply don't -- we're not the companies that make these drugs. We're just not going to have

the same volume of information about them that the defendants have. But what we do have, we will produce within reason under the discovery rules.

Now, your Honor, we talked about the order that you previously made on these specific issues. And again, we've already gathered the vast majority of the documents that are at issue. We would love to produce them; we need to get their issue resolved. But your Honor also said a rolling basis, and we've continued to do that.

I would suggest that the defendants have not been producing documents on a rolling basis with the exception of a recent production we got this week from Teva. We have received very, very, very little from the defendants since your Honor required them to produce documents under a motion to compel.

Indeed, we have still not received the documents related to their Kentucky litigation, which they've got already packaged up, already Bates stamped, ready to go. They won't produce it.

So we understand that things take a while for people to produce. We haven't hassled them too much over that, and we certainly haven't re-raised the issue with the Court over and over again.

I just hear today, when they're accusing us of those things, it strikes me as particularly poignant that they can't even produce documents that they've got sitting on a shelf

somewhere.

So I'm happy to address more of the particular documents that they're talking about here. To date, your Honor, including productions from third parties, which we continue to go get through subpoenas, et cetera, we've produced over 500,000 pages of documents. We're going to continue to do that. Many of those happened after the case was remanded.

Now, as for third parties like the pharmacy benefits managers or other vendors that the State has that Mr. LaFata brought up, they have not been required to produce third party documents of the different people that they interact with.

In fact, your Honor, we've subpoenaed those people all over the United States, and we're producing the documents we get from those third parties to the defendants. So I hope they're not complaining that we're also giving them those documents.

What they shouldn't do here in this Court is accuse the State of failing to go after different third parties that they would like documents from. If they need documents from third parties that we haven't identified, they're welcome to subpoena those documents from third parties.

If they believe there are documents that the State is in possession, custody, and control of, however, come talk to us. So another point about this motion to compel, there was no meet and confer on this motion to compel to my recollection. I

certainly wasn't involved in one.

Many of these issues I could have told to Mr. LaFata on phone. In fact, I spoke to him prior to the hearing about another issue that needs to be resolved related to highly sensitive information under 42(C) of our part 2, which is a new issue that we're going to need to amend the HIPAA order for, and I think that we'll reach an agreement on that. I'm very confident we will.

But there are a number of issues that we could have just explained to the defendants, and I would hope that we would be required to go through the normal meet and confer process before filing a motion to compel in the future. We've committed to doing that. I believe that this Court required the parties to do that. And we'd just ask the defendants do that as well.

Unless your Honor has any specific questions, that is the status of where we are. We're a little behind the eight ball, Judge. They removed our case. They served this discovery six months after the case even started. We just got back here. This is our first discovery hearing on these issues. We're trying to catch up to do our best.

THE COURT: Okay. Thank you.

Mr. LaFata?

MR. LAFATA: Can I respond?

THE COURT: Sure.

MR. LAFATA: Just briefly to respond on a couple of points, your Honor, unless you have questions before I go?

THE COURT: No.

MR. LAFATA: Okay. Well, you know, I hear a couple things and some of it is encouraging. I hear counsel say, We have all these documents already, they're ready to go. So great. Let's have every single one that is not subject to the abuse treatment record provision. Let's get those produced. Let's get the ones that don't have medical information produced.

It can't possibly be the case that a hundred percent of this vast amount of documents they've worked on have patient information in them or the patient names in them. If you look at the requests that are the subject of this motion, they refer to methods criteria that the State is using to determine whether to pay for a claim. Those are going to be guidelines within the State's standard operating procedures, drafts of those guidelines. Those won't talk about individual patients.

So they say they have every single document ready to go. Let's get those produced next week. And then we can work out the briefing here on this other part, and then that can be ready to go too.

You know, I hear them saying that there was a removal and so everything stopped. Well, that's not what they said when we were back here after remand.

THE COURT: I know. Work day and night. I've seen the mattresses in the closets.

MR. LAFATA: I hear -- you know, I hear the State saying we have this May date, we want to keep this May date, let's get ready for it. We should be seeing stuff. They said they should be ready. So again, there shouldn't be a problem. If the State has contracts with pharmacy benefit managers, some of the -- the State picks up the phone, and they get the documents from the pharmacy benefit manager.

Look, I mean, I represent Purdue. Discovery takes work. I understand that. I've made -- I'm sympathetic to the amount of work it takes, but we're now on 8 months after we have asked for these documents for a year after the case was filed. I would expect the State to have done diligence in getting the memos about how it determines to pay for medical claims with all the claims that are paid into Oklahoma before doing that. So we really should be seeing these things.

THE COURT: Okay. I'm going to again rule that this motion to compel is sustained again as to numbers -- Request Nos. 1, 5, 6, and 3.

But I am sensitive, Mr. Duck, to where are you? I mean, I can say 10 days, 15 days. I mean, where are you? I want to give a fair opportunity -- because again, I've said this several times during the course of this process. But this is one of the things that can hold up what you want to have

happen, and that is get this thing to trial in May.

But I clearly understand the burden you have in getting this stuff, even does it exist. I mean, I get that. But we've now been at it for quite some time. How much more time do you need?

MR. DUCK: You're absolutely right. This is something that can hold us up. We don't want that to happen.

THE COURT: Because I'm not going to order them to produce people to be deposed, and I don't want you to misread this because you're going to get what you're going to get. And while I'm sensitive to not ordering depositions of people that aren't prepared so you just get, I don't know, I don't -- I get that.

But at a certain point, you're going to get the document you're going to get, and then I don't want you telling me, Oh, we don't have enough documents, so we don't want to produce this witness for a deposition. It's over at this point. I mean, once they produce this stuff to you, unless there is specific documents that you know you need for a particular witness to be properly prepared, then you need to subpoena them. And then if there's an argument about that, call me.

So I think what I'm trying to establish here is a deadline for getting this stuff to all defendants. And I'm sensitive to what your burden is. So help me.

MR. DUCK: Yeah. I think a little background on what

this substantial production we have seen ready to go is would be helpful for the Court. And I'll just say these documents are from the Oklahoma Health Care Authority. That is the vast majority of what they're asking for here.

These documents primarily relate to defendants' False Claims Act claim. We know that; they've stressed that. That's the kind of things that they want. So even though we were not told by defendants, we have made the Oklahoma Health Care Authority a primary focus in this case.

We have substantially completed gathering and reviewing for relevance and privilege those documents, and I mean attorney client privilege.

Here's the issue, Judge, boiled down to it on the privacy issues; not privilege issues, but the privacy issues. It's not like I've got two buckets of documents; one with all the documents with patient names and one with none. They're pilfered throughout. So we would have to re-review every single one of these documents and either redact or whatever the protocol may be. I don't want to argue that issue today because your Honor said you didn't want to hear it, and they want to file a motion.

If it were as simple as me simply giving Mr. LaFata the nonprivacy documents next week, we would do it. It's in our best interest to move this along, Judge. We've asked for this trial date. We want to keep this trial date. We're doing

everything we can. It's just simply not as simple as splitting them in two.

Now, one other point on how the Oklahoma Health Care Authority operates, how they make their decisions, why or how they cover opioids for chronic pain. Like every other agency at issue in this litigation, these are public entities. They are subject to public regulations that are published.

Now, they asked very similar questions in their interrogatories about these issues, and we provided them with pages of citations of where they should go to learn about how the Oklahoma Health Care Authority, which manages SoonerCare, the Medicaid program, makes its decision about when and why to cover a prescription for an opioid.

They are welcome to go look at that. If your Honor would like for us to print those regulations out and Bates stamp them and produce them, I'm sure that's something we could do. We thought we were saving everybody time by giving them direct citations to the regulations that apply to the Health Care Authority.

Now, on top of that, the Health Care Authority has a very, very robust website where they post all of these different flyers and papers and letters and explanations of how and why they do things. We actually did gather and produce all of those public documents even though we could have just sent them to the website.

Oftentimes, they complain that we've produced public documents. The fact of the matter is, your Honor, a lot of what the State has is public because it's the State. They have an obligation to make things public that companies don't have. So now, we do -- we are going beyond that, and we have gone beyond that. But they need to figure out the issue that they want to brief so we can get that resolved.

And they also need to understand that some of the things they're requesting may not exist, or some of the things they've requested have already been produced and are publicly available. If they would like to have a discussion with me or Mr. Pate or anyone else on our team about where to go to learn more about any of the agencies at issue in this case, we'll talk to them about it. But if they need us to produce the regulations, we'll do it. I think it's unnecessary, but we'll do it.

THE COURT: All right. Well, produce the regulations.

MR. DUCK: Yes, your Honor.

THE COURT: And then what I want to do is what I'm going to get briefing on is, you know, this -- the patient information, the personal patient information essentially is what I'm going to get briefing on.

What I'm asking you for is a deadline for production of everything else in terms of documents that you feel like you're

obligated under law in this case to give to them so that they can be properly prepared for deposition.

MR. DUCK: For everything in the case?

THE COURT: That's right.

MR. DUCK: That's going to be difficult. I wish I could give you an answer. I know it will be before the end of the discovery deadline.

THE COURT: All right. Let's limit it to this order, just what was ordered under this Purdue motion.

MR. DUCK: So it will entirely depend on what happens with this privacy issue. I mean, if we receive a certain type of ruling on this privacy issue, your Honor, directly, I could produce documents the next day.

Let me back up. If we get one type of ruling on the privacy issue, literally the next day, we could produce all of these documents. If we get a different type of ruling on the privacy issue -- and, again, we don't need to discuss it -- it could take us a month or longer to go through these documents.

THE COURT: All right.

Mr. LaFata, are you happy with that?

MR. LAFATA: Yes, your Honor. What I'm hearing is that -- and I guess we're going to get what they can provide that's not going to be subject to this ruling coming up. I mean, I just know that there are custodial files in the State's possession of internal communications that are not going to

have patient information. You can segregate those in a production, typically.

You don't need to review them to have doctor names in them. That stuff should be -- and you know, we have -- we can work things out with -- if the State accidentally produced something to me and said, Whoa, whoa, whoa, you know, I'll put it aside.

We can -- we don't need to operate under the rule of perfection, just rule of reason in our production with each other. We just need to get the documents.

THE COURT: Let's go ahead and give them everything that you can give them now that you're comfortable with that you have and have not produced, and do that within the next five working days, let's say. But then we're going to get these briefs in, and then I guess we'll go from there, but -- I see a question.

MR. DUCK: Yeah. Well, your Honor, I'm certainly not trying to be disrespectful or belabor this point at all. The issue is we have to know whether or not we are going to invest the substantial time and resources into going through all these documents to make this production. We are willing to do that if the Court orders us to do it.

But the best way for me to say this, I can't produce anything at all until we've got a ruling on this, and I hate that. I want to produce it. But I also don't want to get in

trouble with all the agencies that we're representing in this discovery process. I don't want to get in trouble with my client for producing HIPAA and protective information.

THE COURT: I get it. He's right. He's right. I can see that.

MR. LAFATA: It's just hard to believe there's not a single document --

THE COURT: Well --

MR. DUCK: I can give him one single document. I will go through the system myself, and I will find one single document that has no patient information and I'll give it to him.

THE COURT: Hey, listen, I've been dealing with the Veterans Administration Bureaucracy. I mean, it's -- okay. I get it. Let's get this briefing done and get it done as quickly as possible, and then -- I mean, you're on the fast side, so it's in your best interest to get this done.

MR. DUCK: You're right.

THE COURT: And so the quicker the better.

MR. DUCK: Yes, your Honor. Thank you.

MR. WHITTEN: Your Honor, as long as we're talking about this, there's a little hypocrisy here.

THE COURT: Oh, here it comes.

MR. WHITTEN: Well, where are the documents that you've ordered them to produce? They took a deposition -- I

wasn't there. They took a deposition this week where Mr. Beckworth is pulling out documents from the Kentucky lawsuit that he found on the internet. But they were ordered to produce those very documents to us.

So as long as we're talking about this, what's good for the goose is good for the gander. Why don't they turn over all the documents within a couple of days that you've already ordered them to do so? Where are they?

THE COURT: Yeah. I'm trying to go one motion at a time here. It's hard. All right. Anything else on Purdue's --

MR. LAFATA: No, your Honor. Thank you.

THE COURT: All right. Thank you.

Teva's motion to compel, please? And point me to the -- be sure I'm, again, on the right pleading.

MR. BARTLE: Your Honor, thank you very much. Harvey Bartle from Morgan Lewis & Bockius on behalf of Teva.

In this instance, we're asking the Court to compel the State to provide answers to Cephalon's second set of interrogatories.

THE COURT: All right. Time out. Just a second. Let me get to that, please. Filed August 17th?

MR. BARTLE: Yes, your Honor.

THE COURT: All right. Thank you. Go ahead, Mr. Bartle. Thank you.

MR. BARTLE: Thank you, your Honor. Your Honor, in Cephalon's second set of interrogatories, it asked for specific information about direct allegations contained in the State's complaint. Specifically, as a general matter, the interrogatories asked for information about specific 245 prescriptions listed in the State's complaint it alleges were medically unnecessary or excessive and that were the result of misrepresentations made by my clients that were relied upon by Health Care providers in Oklahoma and the State of Oklahoma and that the State of Oklahoma reimbursed.

The interrogatories specifically asked the State to identify of those 245 prescriptions, which ones were medically unnecessary and which were excessive, the State alleges.

Interrogatories asked the State specifically the basis for those, its reasons why it believes those prescriptions were medically unnecessary or excessive. It asks for the misrepresentation that the State alleges and Oklahoma Health Care provider or the State of Oklahoma relied upon in issuing and agreeing to reimburse those prescriptions.

Teva is -- or Cephalon, as it was here, is entitled to that information. Those are, one, contained within the State's complaint, direct quotes. And two, we're entitled under Oklahoma's law to discovery of nonprivileged information that is relevant to our claims and defenses. This is directly relevant to our claims and defenses.

Cephalon does not believe that there was any -- that any of those were unnecessary or excessive, number one. Number two, that any misrepresentation it made -- and it does not concede that it made any -- led to the issuance of those prescriptions. And three, that the State -- anyone in the State relied upon any misrepresentations.

The State's required, your Honor, under the fraud to prove by clear and convincing evidence that there was a material misrepresentation, that somebody relied upon it, and that there was damages. Any of those three, they can't prove fraud.

There might have even been an unnecessary -- say, for example, there's an unnecessary prescription that was issued. If there's no damage, then there's no fraud. We're entitled under the rules to obtain this information, and the State hasn't provided it.

They said -- I think their answer -- stock answer was, We believe it's more likely than not that a prescription that was in excess of three days or was not used for palliative care was unnecessary or excessive. That's not an answer to my question.

I asked -- we asked in Interrogatory No. 1: Identify of those 245. Not as the State says, Every prescription. Of those 245, tell me which ones were unnecessary or excessive.

Interrogatory No. 2: Tell me what's your basis. Did you talk to the doctor and ask him if it was unnecessary or excessive? I want to know. I want to be able to challenge, I

want to be able to test the State's allegations. And I'm entitled to do it.

The State has not responded to those, No. 1 and No. 2. And No. 3 -- for 3 through 6, they asked -- we'll say, we're going to provide documents to you. That's not an appropriate answer either. They have to prove fraud by clear and convincing evidence and with particularity.

If they can't prove that a misrepresentation was relied upon, then they can't prove fraud. And I'm entitled to test that. So we would ask the Court to grant our motion to compel the State to provide appropriate answers to Interrogatories 1 through 6.

With regard to Interrogatories 7 through 16, as we stated in our brief, Oklahoma rules specifically say that each party can serve on another party 30 interrogatories.

THE COURT: Yeah. I don't need anymore argument on that.

MR. BARTLE: Okay. Thank you, your Honor. If the Court doesn't need any other argument on that, I'll rely on my brief and my previous argument.

THE COURT: Thank you, Mr. Bartle, very much.

Mr. Duck?

MR. DUCK: Your Honor, I think the best place to start here is how the defendants seem to characterize or perceive what it is we have to do to win this case. And they

focus on fraud a lot. Our case isn't just about fraud. This is a public nuisance case as well.

Now, they're entitled to the information they need to defend themselves, and we want to provide that to them. We want to do it in a manner that is ordered by the Court and consistent with the scheduling order that's been entered by Judge Balkman and maybe tweaked here soon.

We have produced nine million lines of pharmacy claims data to the defendants for them to determine how many different opioid claims the State has reimbursed. Of those claims, certain prescriptions should never have been paid in the first place. That's what part of this case is about. It's the False Claims Act part of this case.

Your Honor, I'm not a physician. None of the lawyers on my team are physicians. And we have an ability to hire experts under the scheduling order to determine and help us make certain positions that we'll use in this case. Those deadlines have not yet passed.

What this interrogatory seeks in large part is expert testimony. And in fact, the entire question of whether or not any particular opioid prescription was, in fact, medically necessary or not, will come down to, I suspect, though I don't know, a battle of the experts. They, too, are going to put up an expert.

So your Honor, we would prefer not to be required to

include within our interrogatory responses many expert reports on all of the questions that Teva has sent us. We've got to prove the elements of our claims, Judge, but we don't have to prove them in the interrogatories that Teva sends to us.

We don't have to prove our case today. We don't have to prove our case at the end of fact discovery. We've got to prove our case at trial. And what they're asking for us to do is lay out the entirety of our arguments and our positions in interrogatories. That's not possible and it's not proper. We're still in the middle of discovery.

I'd love to answer all of his questions. That's what we're working on, Judge. We want to answer those same questions for ourselves. So we would just ask that your Honor look at the scheduling order, recognize that a lot of the questions that we're being asked of are suited for expert testimony.

We've hired experts. We're going to disclose the experts soon. There's a schedule in place. We'll get them that information, and we'll move forward according to the scheduling order.

It sounds like your Honor doesn't want to talk about the limits on the interrogatories?

THE COURT: Yeah, I think I'm pretty much ready on both.

MR. DUCK: But your Honor, we have produced the

information that they need right now, and we will produce the information that they're entitled to from our experts when it's due.

MR. BARTLE: May I just make --

THE COURT: Sure, Mr. Bartle.

MR. BARTLE: Your Honor, the State mistakes what these interrogatories are about. This isn't about how they're going to prove their case. This is how I'm going to defend this case --

THE COURT: I know.

MR. BARTLE: -- in front of a jury. And I will say this, Judge. We have got -- we got a 30(b)(6) topic from the State that said, All facts in support of your defenses. And now they say this is -- this is not expert testimony.

If they didn't have a good faith basis to allege that any of those 245 prescriptions, a factual basis, before they signed that complaint, then that's a serious problem.

THE COURT: Anything else?

MR. BARTLE: And if they didn't have a misrepresentation that led to those prescriptions that a physician relied upon and that a State of Oklahoma employee relied upon when the Attorney General of the State of Oklahoma signed that complaint, then that is a serious problem.

THE COURT: Anything else?

MR. BARTLE: No, your Honor.

THE COURT: Thank you. The order is as follows: As to 1 through 6, that request is sustained. And this is important wording, I think, please: To be produced by the State with sufficient particularity and to the extent possible in order to establish a prima facie case for each element of each claim to be tried in this case. As to the balance and generally as to interrogatories, the State has filed litigation against all of these pharmaceutical companies. Under our discovery code, the State cannot limit their production or answers to interrogatories to 30 as a group. The State is required to answer interrogatories, 30 per defendant, that has been sued, and is not entitled to a limit by group.

Anything else?

MR. BARTLE: No, your Honor. Thank you.

MR. DUCK: Just one point from us, your Honor, because I don't want to be back here again and being accused of not having explained this to your Honor before.

Our position is we tried to reach a compromise on the limitations themselves. That's not the only part of our position on that. And so since we're probably going to stand on this point absent a ruling today, I would like to raise it now so that we're not accused of not resolving this issue.

THE COURT: Okay.

MR. DUCK: Your Honor, we received joint interrogatories from the defendants. All of the defendants in

the case sent us joint interrogatories, to which the State responded. They sent joint document requests, to which the State is responding. And we simply want everyone to understand and the Court to rule that those joint requests are one for each defendant. Even though they're joint, that counts as one for every defendant.

MR. LAFATA: I don't believe it's -- I mean, I just had an argument where I'm referring to requests for production by Purdue Pharma LP. They were separate requests for each of my clients. I believe that's the case generally.

MR. BARTLE: Your Honor, Cephalon has issued -- prior to the second set, Cephalon had issued four. It wasn't on behalf of Johnson & Johnson. It wasn't on behalf of Purdue. It was four on behalf of Cephalon.

THE COURT: Well, you know, look, I recognize -- I'm just reciting what Oklahoma law requires. And again, I did not say this, but I'm very -- this is a unique case. And of course, you do have three groups of defendants. And while I do not want to enter orders that do not comply with Oklahoma law, as best as I possibly can, it is somewhat senseless I think in most circumstances -- well, many circumstances -- that it should be done by group.

I mean, to inundate the State with 30 interrogatories by each defendant for -- you know, that's senseless also. And so, you know, I'm going to see what happens. I recognize by

entering that order that I just entered it took the air out of the room a little bit, and I'm sensitive to that, but I have to do it. I mean, that's just the status of this litigation. But it is unique, so let's see what happens.

But I'm looking at this table over here to be reasonable, and it can be done by groups. It should be done by groups, in my view, but the law allows each defendant to make those interrogatory requests by --

MR. BARTLE: That's fine, your Honor. We agree.

MR. CHEFFO: We hear you loud and clear. This is not an effort to duplicate.

THE COURT: Okay. Well, I know, but it could -- that's what Mr. Duck's concerned about. It could turn into that overnight, and that bothers me.

MR. BECKWORTH: Judge Hetherington, Mr. Whitten and I were just talking. What you just said is utterly confusing, with all due respect. You just said that we have to respond to interrogatories from every one of these defendants, but you understand at the same time that they shouldn't send them from all of them. It's a little -- I'm sorry. It doesn't make sense to us what you just said, honestly.

THE COURT: Well, how can I fix it.

MR. CHEFFO: We understood -- I think I understood it loud and clear. It's to the extent -- well, let me articulate what I think you understood, is to the extent that there is a

document request, for example, right, that applies; no one is going to give the same things over and over. But to the extent that we have individual issues for our clients that are set but that are not duplicative, that's, I think, the way we both kind of governed ourselves.

So to the extent -- and we thought everyone would appreciate this. So if we say we want, you know, a database or whatever it is, that we don't have to give them, everybody three times. And if there's an interrogatory that would apply for everyone, we're not going to keep serving the same thing, right, so I think we hear you loud and clear.

THE COURT: I do not want to see an objection from Mr. Duck that says, I've gotten, well, 11 of the same requests to answer the same question about the same thing. I mean --

MR. DUCK: Your Honor, frankly --

THE COURT: That's absurd.

MR. DUCK: I actually wouldn't mind so much if it was just the exact same one over and over again, because we're going to talk to our client and the answer's going to be the same for everybody most likely.

What they're doing is a little bit different. They've got a joint defense agreement. They're all working together, and so they've assigned different issues to each of the different defendants.

So one of the Teva entities will ask a very specific

question to get an answer that they know will apply for all of the defendants. And one of the Purdue entities will ask a very particular question that they know will apply to all of the entities.

And so what happens is they end up getting a total of whatever, 400, however many interrogatories there are. That is what the issue is. If they sent me 30 interrogatories from all 13 defendants that were absolutely identical, we could answer those in a heartbeat, we would be done. I would welcome that. It's this divide and conquer approach that they've taken that is -- it's impossible, Judge. We can't do it.

In response, your Honor, we suggested that a compromise would be, Hey, we'll agree only to send each family 30. We could send 30 interrogatories to all 13 defendants according to your Honor's ruling here. That seems unnecessary to us. It also seems excessive to us. I don't know why we would do that other than to try to burden these defendants with discovery. But we're trying to get to trial.

So the State will commit to 30 interrogatories per defendant family. There are three defendant families in this lawsuit right now. We would love to have that in return. I understand that your Honor may not order that, and we'll abide by whatever you do.

But to answer 4 -- I'm not great at math, but to answer however many hundreds of interrogatories 13 times 30 comes up

with, it's impossible, Judge.

MR. ODOM: Your Honor, if I may.

THE COURT: Just a second. Give me time to think. It's a dilemma. I mean, I've recognized this from the beginning. And I just don't quite understand. I mean, I get -- I get it from the State's side.

MR. BARTLE: Your Honor, may I just make a point?

THE COURT: Well, Ben, go ahead.

MR. ODOM: Judge, you're right, and I've addressed this before this Court before too. It's 30 per party, you know, per individual defendant, and it's 390 in this case. But there are lawyers here in this room, law firms here in this room that were there at the liquor tax case up in Canadian County where there were 800 defendants, and we had to address the issue of 24,000 possible interrogatories.

THE COURT: Well, that isn't this case, Mr. Odom. I don't care about that.

MR. ODOM: But the point being that what we heard from them earlier was that we sent 26 joint interrogatories, therefore we could only ask four more, when we were actually trying to save them time and effort.

So I think the position that we need to make clear is that they don't already say, Well, you've already asked 26, each one of you has already asked 26. And what we were trying to do was simplify, streamline, and make it easier for them, and

everybody asked the one they would have asked so there wasn't any duplication.

I just want to make that clear for the record that we've tried to make it what we think your Honor wants, which is let's just get to it, simplify it, streamline it, and get to it.

MR. BARTLE: Your Honor, can I make this point too? I don't know how the answers to Cephalon's interrogatories will benefit Purdue or Johnson & Johnson. The State sued five of my clients.

THE COURT: Well, you're pretty creative.

MR. BARTLE: No, but they're alleging that each one of my clients is jointly and severally liable for the entirety --

THE COURT: Yeah, but --

MR. BARTLE: And I get it, Judge. And I'm not interested honestly in -- you know, this is going to elicit smirks. I'm not interested in wasting people's time, and I just want to get the answers to my questions with regard to my clients. I think they're entitled to that, and I appreciate that.

And we -- as Mr. Cheffo said, we hear the Court loud and clear on this. But these are key issues, and when you're trying to have Actavis or Watson or Cephalon be responsible under their view for the entirety of the opioid crisis in the state of Oklahoma, the Court needs to consider that when it's

considering our rights to defend ourselves.

We understand that, your Honor. We understand your ruling and we appreciate it. We understand what the Court had said in its guidance in connection with future interrogatories, but I just wanted to make that point. Thank you.

THE COURT: Has the brain trust met long enough here? Because I'm interested to listen.

MR. DUCK: I think that, your Honor, there needs to be some sort of --

THE COURT: You all want to take a break here for a minute? Angie would probably like a break anyway.

MR. WHITTEN: Well, before we take a break -- we probably could benefit on this issue by a break, but before we do that, your Honor, may I go back and have you read -- we were listening to you when you read your ruling where you sustained 1 through 6 and you used some language about prima facie. Do you mind reading that one more time so we can make sure we write it down verbatim before we take a break?

THE COURT: Oh, sure. Sustained to produce with sufficient particularity and to the extent possible in order to establish prima facie case for each element of each claim to be tried.

MR. WHITTEN: Yes, we may need a moment to confer on that. And your Honor, the medically unnecessary part, I want to make sure the Court understands, that only goes to the false

claims.

THE COURT: I understand that.

MR. WHITTEN: It doesn't go to the nuisance claim.

THE COURT: That's why I carefully worded it that way because you're going to be producing as to each element --

MR. WHITTEN: May I then -- again, I'm not trying to reargue it, but I do want the Court to understand we are choosing to prove the false claims part of our case by expert witnesses with a statistical sample. It's being worked on. It has not been finished. So we were playing by the rules the Court gave us. We had a scheduling order. I don't remember the exact date, but I think, I want to say, it's in January we are supposed to do an expert witness report that will give the results of the statistical sample.

You're not -- I'm asking now respectfully. You're not compelling us to turn over our expert witness statistical sample early or in response to this interrogatory?

THE COURT: Not at all.

MR. WHITTEN: Because we cannot.

THE COURT: Of course not, and not at all. No. This goes just to these -- I mean, this was specific as just to this Request 1 through 6, you know, today. But it has nothing to do with the expert model. I understand that. And I understand the distinction in terms of what you expect to present at trial.

MR. WHITTEN: Yes.

THE COURT: And so --

MR. WHITTEN: And we'll get to that, I think, later on another issue where they want to take a deposition on it. But so just for food for thought in the future, there is no single individual at the State of Oklahoma that knows how many prescriptions were medically unnecessary. Only our experts can determine that, and they will in due time, according to the Court's order. But if you're okay with it, may we take just a short break and confer?

THE COURT: Sure.

MR. WHITTEN: Thank you, your Honor.

MR. PATE: Can I ask one question, your Honor, I'm sorry, before we do that? We're just trying to understand what you read there.

When you say for each element of each claim to be tried, the interrogatories we understood Teva to be raising today don't relate to all causes of action that the State has brought.

THE COURT: I know. Then you don't have to respond to them.

MR. PATE: Just wanted to clarify.

MR. BARTLE: Your Honor, we would disagree that it doesn't apply to all causes of action.

THE COURT: I'm sorry, Mr. Bartle?

MR. BARTLE: We would disagree that it does not apply to all causes of action, given the State's pleading and how they've done this, but we'll wait to hear that --

THE COURT: Well, that's why I think you just need to be as specific as possible. Don't be general.

MR. BARTLE: Judge, I'm looking at 245 prescriptions. I'm trying to be as specific as I possibly can.

THE COURT: But you understand the State's position on your client's 245 prescriptions very clearly, as I do. So I think you're going to have to understand that they're not going to limit, and you're going to want it to be limited, and you're going to respond that way constantly because that's your defense. And I understand that.

Okay. But you need to be as specific as possible, and then let's see what happens, because --

MR. BARTLE: I'm trying to be as specific as I possibly can, your Honor.

THE COURT: Okay.

MR. BARTLE: We'll see what happens.

THE COURT: Okay.

MR. BARTLE: For the record, we didn't agree that it doesn't apply to all claims.

MR. WHITTEN: Can I address that first?

THE COURT: Well --

MR. WHITTEN: Nuisance does not require medically

unnecessary. It just doesn't.

THE COURT: Doesn't require medically unnecessary.

MR. CHEFFO: I know you want to take a break.

THE COURT: I don't. I'm fine. I could go all day.

MR. CHEFFO: Well, I think we would benefit probably by it. But I think the point was made that your Honor has ruled, and I know that we're kind of getting back into this again. But I think the one point for all of us to remember is that we understand the plaintiff has its prerogative, right. They say that they want to produce, do this through some kind of statistical model. We've heard that before. And again, we disagree, but this is not the time to challenge their expert, and we get that.

However, you also -- and I think your Honor in your ruling addressed this and I just want to be clear too. They can decide to prove their case how they want to but, ultimately, we need discovery, right, in order to -- not just respond to their expert, but in order to have our own expert reports. And that needs to be done now.

I think -- what I think -- I don't want to leave the Court with the impression -- and maybe you can stop me if you've got this, your Honor. But I think that this issue of kind of medically unnecessary, right, it's become a catch phrase as to only apply to the False Claim Act.

I think we have heard yesterday some of the issues that

Mr. Brody -- you know, we call it different things. But to the extent, for example, someone is claiming that you've created a public nuisance, right, at least as I understand the claim, is because you somehow did something that caused doctors to write prescriptions that they wouldn't have otherwise written, right. Because if no sales rep or no communication ever caused a doctor to write something, no harm, no foul.

If the doctor testifies, Hey, you know, someone brought me a pizza or whatever from a sales rep, I don't listen to that, this person absolutely needed this medicine, they continue and I continue to provide it today, those are issues.

Now, they may disagree with those, but those kind of issues all go to all of our defenses, right. Is there a public nuisance, is there -- all of their theme. So yes, it's more specific with the False Claims Act that you have to specifically identify each claim, but this entire scope, this is critical. This is the heart of the case.

This is what we've raised in all of these different jurisdictions, and Courts have acknowledged, because, again, they can prove their case however they want to, but we cannot be prohibited from having a defense.

And again, I think your Honor understands that, but I just want to be clear that, you know, we've kind of morphed into this just being a False Claim Act issue.

MR. BECKWORTH: Your Honor, just real quick. Number

one, you've got Purdue arguing something about Teva. They're working together here. That's what they're doing. They have a joint defense agreement. They won't give it to us, but we all know it's true. It's all in concert, just like a lot of their conduct is.

We have been trying to take depositions since May. We haven't been allowed to do it, not by your Honor except with a very few exceptions, not by them, not by their removal. We've got discovery pending against third parties, many of whom were directly co-conspirators with these defendants all over the country. We've got to deal with that in foreign courts. That's part of the burden we have as the State, but we've got to do it. We'll answer discovery. You tell us we gotta do it, we gotta do it.

But your order sounds very much like you're asking us to marshal an awful lot of evidence within whatever time period we have to respond to that way, way before that's due, way before it's --

THE COURT: No.

MR. BECKWORTH: -- and also, let's just sit back a second and remember what happened in this very courtroom. We asked to take a deposition on abatement, and they said just the issue of abatement is an expert issue that they should never have to testify about. And you granted that motion.

We only got to ask what they thought they had done in the

past or might do in the future. So we've got to have a level playing field here. We are fighting an uphill battle against companies who have done everything they could to keep us from getting anything, and it's just not right. It's not.

If you want to hold our feet to the fire, you've got to hold theirs too. It isn't right.

MR. CHEFFO: I'll be happy to send you the transcript from yesterday about what was said. We've gotten way far afield now from the issue. We're on a speech of conspiracies. Of course, we talk about these issues and we all work together. We're all professionals. And there's a lot of people jumping up and down.

I think the point I was raising is that it goes to this critically important -- we have produced and we'll continue to produce millions and millions of pages of documents. Hopefully they will as well. You've given us a path forward for the depositions, so I think that hopefully will be a nonissue as we go forward. If it's not, we'll continue to come back to you.

But what we really need and I think now is to probably take a break and see if we can come together on the issue that I think we hopefully can reach some resolution on.

MR. WHITTEN: Well, that's not why we asked for a break. We asked for a break to confer because --

THE COURT: Yeah, I know.

MR. WHITTEN: -- we cannot produce something that

doesn't exist.

THE COURT: I want you all to talk about this because I knew this was going to cause problems.

MR. WHITTEN: Well, we can't produce something that doesn't exist.

THE COURT: That's right. That's right. But here's the point. You're going to produce what you're going to produce, and then they're going to come back to me and say, Oh, it's not specific enough. Well, at some point, I'm going to say, You got what you got.

MR. WHITTEN: Well, and we'll be -- I told you then and I'll tell you again, we're going to give them our statistical sample on a platter for the False Claims Act. This is not a summary judgment hearing, but nuisance -- the elements of nuisance, it's strict liability. Negligence has nothing to do with it. Medically unnecessary has nothing to do with it.

And I challenge what he said about No harm, no foul. There was no opioid epidemic until 1996 when they started falsely advertising, and now we have the world's largest opioid epidemic. It is a harm, it is a foul, and I find that statement offensive.

MR. CHEFFO: I think Vietnam, there was an epidemic, but we don't need to argue that today. Do you want us to take a break, your Honor?

THE COURT: I do. Please.

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

THE COURT: You know, I guess as inarticulate as I'm being on this, and I apologize, Mr. Beckworth; I guess it gets confusing. But I think very simply I'm just trying to comply with Oklahoma law, but figure out how to get this to work that's unique to this case.

MR. WHITTEN: I understand, your Honor, and thank you for giving us that break because it gave us a moment to confer. I've never been a judge like you or Judge Burrage, so I would probably be a terrible judge. But it is essential that we understand what you said. We don't have the benefit of a written order, and I thank you for reading what you said back to us.

But what I would like to do now first, if the Court will permit, is just let us make sure we do understand; and then second, we have another issue we may want to take up if we do understand it correctly.

Here's our problem with this, if we understood it correctly. They worded their interrogatory one way, but you introduced a new element into it when you used the words -- well, I'll just read the whole thing: Sustained to produce with sufficient particularity and to the extent possible in order to establish a prima facie case for each element of each claim to be tried.

Let me just stop right there, your Honor. That has never been ordered in the state of Oklahoma ever. It is not in the discovery code. It is not in any of the case law as long as I've been practicing and Judge Burrage has been practicing. What I think --

THE COURT: Okay.

MR. WHITTEN: -- I don't know if you meant it, but I think you've done, you've essentially made this almost a summary judgment or a hybrid of summary judgment. If you're simply meaning to order us to produce or answer what we have and we'll stand on what we have, that's fine. That is consistent. But this prima facie case business is brand new to the State of Oklahoma.

THE COURT: Here's what I was trying to do. And that certainly was not -- I'm not -- that's not the point. The point is, is to try to get as much evidence by way of interrogatories to be able to allow their witnesses -- I was trying to help you all get them ready for deposition so we don't have any more deposition delay. Not putting any kind of a summary judgment standard on you of any kind.

And I can see your -- I guess I can see your concern. Let me think this through a minute. But --

MR. WHITTEN: That helps, just what you said, your Honor. And I think what we're going to do, if this is okay with the Court, you have sustained it as they --

THE COURT: Here's what I'm going to do, Mr. Whitten. I'm sorry, I'm interrupting you.

MR. WHITTEN: No, go ahead.

THE COURT: You're probably right. I'm probably making more of a legal -- I don't want to establish a legally binding order that somehow backs up later on you. I didn't think that through well enough. You're probably right. So let's take out, To establish a prima facie case for each element of each claim to be tried; and just insert in there, To the extent possible for each topic that is to be the subject of the specific deposition.

MR. BARTLE: Your Honor, I think we're -- in our view, depositions and interrogatories are separate.

THE COURT: Of course. My goal is to try to get answers to interrogatories and production of documents that allows for you to be ready so we don't have delay on depositions.

MR. BARTLE: But my goal for the interrogatory and I think the appropriateness of interrogatory really is to a binding answer from the State to a question irregardless of a deposition. So I'm entitled to an answer to that question that has nothing to do with deposition.

THE COURT: How does that order not give you that?

MR. BARTLE: Because it relates to, you know, possible for each dispute that is to be the subject of the

deposition. I don't necessarily have to take a deposition if they answer the interrogatory. So the only thing I would ask, and I appreciate Mr. Whitten's concern, just order the State to answer interrogatory. That's it.

THE COURT: But I've already done that, and it isn't working. See, that's the problem.

MR. BARTLE: Well, I don't know if you have before. This is the first motion to compel on this. We would just ask you to sustain the objection, sustain the motion to compel, and order the State to provide the information the best they can. If they can't, then it says that in its interrogatory.

MR. WHITTEN: I can live with that if you're simply ordering us -- which I heard that part and we don't quarrel -- you have sustained 1 through 6 and you said, quote, To the extent possible. And we will answer it.

THE COURT: Let's leave it at that. Let's end it with Extent possible and leave it at that, because what that does, I guess, is to the extent possible and leaving it at that, you're going to get what you're going to get.

MR. BARTLE: If it's inappropriate, I'll come back to you. We'll deal with it later. But I would like the answer.

THE COURT: Well, of course, I'm trying to avoid some of that, but --

MR. BARTLE: I understand, your Honor.

THE COURT: You're going to get what you're going to

get.

MR. BARTLE: I get it, Judge. I don't want to concede right now that I'm going to accept what I'm going to get.

THE COURT: I know. I know.

MR. BARTLE: They would like me to.

THE COURT: Never --

MR. WHITTEN: He's not bound to accept it; of course not.

THE COURT: I know he's not.

MR. WHITTEN: And we're not asking for that.

MR. BARTLE: And that's my only point, Judge.

THE COURT: I just do not want to get in this continuing mill of not having depositions because we don't have enough information to prepare our witnesses. And at some point, that's going to -- deaf ears is going to happen.

MR. BARTLE: I got it.

THE COURT: And it's, again, balancing Oklahoma law with the realities of this case, and it isn't easy. But -- okay. Do we have an understanding?

MR. BARTLE: Yes, your Honor.

THE COURT: They're going to answer it to the extent they can, and at that point, while I'm saying you may have to live with it, you may not, and you may come back to me and say we don't have enough. I understand that. But at some point, I

may say, You got what you got. Done.

MR. BARTLE: Your Honor, I appreciate that. Thank you.

THE COURT: All right. Thank you.

MR. DUCK: One more thing, your Honor. And I appreciate that your job increasingly feels like a game of Whack a Mole, but hopefully I'm the last mole on this issue.

This is pretty simple. There are a couple of instances in these interrogatories that do raise this patient information issue. Can we agree that it'll be the same with the documents?

THE COURT: Yes.

MR. DUCK: We've got to resolve that issue first. We're not going to respond on the patient things until we get it figured out?

THE COURT: Yeah. I thought that was clear before, but if that needs more --

MR. BARTLE: That's fine, your Honor. They can answer it except for that.

THE COURT: Okay. Thank you.

MR. DUCK: And then did we resolve the limits issue? How many limits with the --

THE COURT: Well, I'm not sure we did. Again, I entered an order under Oklahoma law, but if I -- I mean, if you all want to talk about that more, I guess --

MR. DUCK: If we can reach an agreement to propose to

you, then that's a suggestion of yours?

THE COURT: Yeah.

MR. DUCK: As it stand right now, though, the State could be subject to 390 interrogatories?

THE COURT: I guess under Oklahoma law, yes. You sued them, I didn't, you know. But to make the State do that is ridiculous. I mean, there's three groups. I understand there's some specific things that you may need to have separate and apart and additionally to the three groups. Mr. Bartle has a point there. But they're not that frequent. I mean, they're not going to be that much. I would hope it's three groups and in interrogatories, and that's all you have to answer.

MR. DUCK: Hope you're right, Judge.

THE COURT: We'll see.

MR. DUCK: Thank you.

THE COURT: All right. Next is State's motion to quash Purdue's deposition notice.

MR. WHITTEN: Well, your Honor, I think to some extent, we talked about the issues in this motion to quash. You've read the brief, and I can tell you're up on the issues. So it's Exhibit A to their --

THE COURT: Mr. Whitten, let me get to that, please.

MR. WHITTEN: You betcha. It's their notice on -- well, it doesn't have a date on the front page. You just tell me when you find it, Judge.

THE COURT: Well, now, the one I pulled up that I hope is the one you're talking about is the August 17th, which I'm not sure this is correct on this one. That's State's motion to quash and motion for protective order in response to Purdue's 3230(C)(5) deposition notice.

MR. WHITTEN: Yes, that's right. Drew tells me that's right. They filed their notice on August 9th. If you don't have their Exhibit A, I have it.

THE COURT: I do. I've got to get to it, but I do.

MR. WHITTEN: You bet. Just tell me, Judge, when you're ready.

THE COURT: Okay. Go ahead.

MR. WHITTEN: So, your Honor, they want a witness to testify about the allegedly, quote, unnecessary or excessive, end quote, prescriptions of Purdue's opioids that were prescribed to Oklahoma patients and reimbursed by you or on your behalf, any of your programs, or an Oklahoma agency because of or as a result of Purdue's allegedly false, inaccurate, or misleading representations about the risks and benefits of opioids and/or omission of information.

So that's what -- they want one person to come and testify about that. And as we have already discussed in the last motion, this is premature. It is premature to have a corporate rep from the State and expect them to testify on that issue until we get to expert disclosures and expert reports. And

then we will be able to do exactly that.

So we ask the Court to quash this and let us do this according to the scheduling order. And I might point out it's the same scheduling order that they agreed to. So they are trying to charge the State of Oklahoma with the job of knowing the identity of each and every medically unnecessary or excessive prescription as a result of their marketing misrepresentations.

This notice should be quashed. And we cited a number of cases starting on page 5 of our brief. And I won't read all of these, your Honor, but it's case after case after case. These are out of state cases. I think some are federal. But this starts on page 5 and goes for the next couple of pages.

But corporate witnesses are not required to provide expert testimony. A party may properly resist a corporate deposition on the grounds that the information sought is more appropriately discoverable through expert testimony.

Indeed, your Honor, in a great moment of hypocrisy, they do have a joint defense agreement between all of them, and Janssen filed a motion to quash and for protective order on April 9th in this same court. They argued that expert testimony was not the proper subject of a corporate rep depo, and it's not.

Now, can they get this? Yes, at the appropriate time. We agreed we would do an expert report. The Court signed the

order. We've been working diligently towards that, and we have said all along we will produce this very thing to them on a platter. We'll give them a report, and we'll do it.

Now, the medically unnecessary, we're kind of back to this. I hate to get into -- I know the Court doesn't necessarily want to decide legal issues that you may have to decide at some point, or Judge Balkman may have to decide at some point, but that's not before the Court today.

Our point is that medically unnecessary applies to the False Claims Act. There are approximately, I think, nine million prescriptions at issue. I do not think Judge Balkman is going to allow either side -- if either side wanted to try -- have nine million mini trials over each prescription.

We intend to do a statistical sample. We'll argue this at the appropriate time. It's not today. But statistical sampling has been allowed in False Claims Act cases, and at the appropriate time, we will reveal that.

But we cannot be compelled to produce what does not yet exist. We cannot be compelled to produce what the Court has already sanctioned us to properly produce, according to the scheduling order. And I believe that date is in January.

We will be ready then. We'll have an expert ready to go. They'll have the report. There'll be no problem that the Court talked about where people aren't ready for a depo. We'll give them the report. We'll follow Oklahoma law, which is well

established on what goes in these reports, and they will be able to properly prepare for trial in May of 2019.

So this deposition is premature, and we would respectfully ask that the Court quash it until a later date. Thank you.

THE COURT: Thank you, Mr. Whitten.

Mr. LaFata?

MR. LAFATA: Your Honor, thank you. So this is the third sort of issue we've been bringing to you in this hearing today where we're hearing from the State, we don't want to provide any discovery on an issue. So the first motion that I discussed with you were documents. We don't want -- we're resisting giving you the documents on medically necessary -- on the way you determine what is medically necessary.

The State of Oklahoma has been paying for each of those prescriptions. They independently determined that each of these were medically necessary, and they paid them. They studied that issue, they came to their own decision, they issued the money, and they did that over and over again. So the people in Oklahoma were being paid for these medications.

This is the core of their claims. So they like to say, for example, that nuisance isn't related to that, that the element of nuisance involves unlawful acts. They're intertwined. And that was sort of the result of the ruling yesterday on bifurcation.

So they say they don't want to give any documents. Then

we have a big disagreement about giving interrogatories about elements in their case. Now we're with a witness. So there's a real pattern here, your Honor, about we're just not going to tell you the information you need to challenge the State's claims about, how are they determined -- how the State determined which prescriptions were medically necessary or not medically necessary.

In Footnote 1 of our response brief, we quote for the Court the parts in the petition where the State alleges that they were unnecessary and excessive opioid prescriptions. What was the State's factual basis for these allegations?

The State of Oklahoma has people in its government making these decisions all the time. Are they saying that those people are experts, that we cannot talk to them? We quoted from the law on page 4, the Oklahoma Administrative Code, which identifies the particular individuals in the state that make -- that determine whether treatment is medically necessary.

We kind of gave the State a little suggestion that, Hey, there's people here that maybe know the answer to this question; maybe you can prepare and designate one of these people. The chief executive officer of the Oklahoma Health Care Authority, the deputy administrator for health policy, the Medicaid operations State medicaid director, anyone from the advisory committee on medical care. They have all these people to choose from. These are not expert witnesses. These are

fact witnesses.

One important distinction, your Honor, in deciding whether a prescription is medically necessary, is a judgment made by the State, not by an expert witness. And this is -- in many cases, this is a contractual term of art. It's not a judgment made by a physician.

We quote some case law in here for the Court where a physician recommended that a medical treatment for a certain special water and Health Care facility be reimbursed by the State. So the expert said, Reimburse for this medical care. The State of Oklahoma said, No, we're not going to reimburse for it. They file a lawsuit to challenge that, and the Court said, That's a decision that the State makes in its own discretion, and we're not going to review it.

So there we had -- that case stands for a proposition the State is making this determination. So we need a witness to testify on behalf of Oklahoma to explain how it determined which prescriptions were medically necessary and which were not medically necessary.

They made those determinations. They had that information presumably before they filed this petition. And there are individuals who work for the State with this knowledge. So I'm a little surprised to hear a response from the State saying, We can't even touch this until statisticians get ahold of it. Statisticians are not any of these individuals. The law sets

forth who makes this determination. The State has these people.

Unless there are other questions, I think this is really -- I mean, the State has said that there are in the millions of prescriptions here. I think one other point of discovery is to narrow down the issues we have to litigate as part of the benefit of discovery.

I think I heard counsel say that this information does not exist. I have a hard time believing that when we have a petition here alleging that it is, we have Oklahoma law saying that it does exist, and they have people with this knowledge.

And the final point is the Court's ruling on whether the abatement testimony involved expert evidence is a different situation. Here's why. I think the Court drew a distinction between a perspective opinion about what actions would be necessary to abate the nuisance, kind of prospectively. And the Court said, That's opinion testimony, but you're allowed to give testimony on what actually happened, what you actually did in the past. And we presented a witness who did that. The State should be able to do the same thing, and that's what we're asking for.

THE COURT: All right. Thank you, Mr. LaFata.

MR. WHITTEN: I'll respond very briefly. First, it has been ably demonstrated by Purdue they are very good at selling opioids. They do not work for the State of Oklahoma

and never have. They do not know how this works. We can prove what I'm about to say.

But the State of Oklahoma does not determine that prescriptions are medically necessary. What he says shows a tremendous lack of understanding of how it works. Indeed, I think the citizens of the State of Oklahoma when they go to fill prescriptions would be very disappointed if the State had to go in and second guess their doctors. That does not happen. It doesn't work that way. They are presumptively considered to be something the State is to pay for.

On the payment issue, the State has no choice. They are absolutely obligated to pay for these prescriptions that are submitted. They have to.

Now, it's the second time today that they've talked about us being able to -- we should be able to prove our case. I just want to remind the Court that we did get by a motion to dismiss in this case, so we're past that point. Are they going to have a chance to file a summary judgment? Yes. But that's not the issue today.

The issue today is, who is going to tell them which of these prescriptions are medically unnecessary. The answer is, our expert witnesses, and they will do it in accordance with the order that the Court signed and that they agreed to.

The last thing I just want to say, it's the second time today I've heard them hint -- two different lawyers from out of

state have hinted that we may not know about Rule 11. We know about Rule 11. We've practiced here. This isn't our first rodeo.

Now, so they may say, Well, gee, how did you know you had a lawsuit to comply with Rule 11 to file this lawsuit. I can answer that. We knew because after they lied to every doctor in the state of Oklahoma and said these opioids were not addictive, the bodies started to pile up.

It took a few years, but people did start to notice. Over 300,000 people have died. People are dying daily. So we're not stupid. We know they lied. Purdue pled guilty to intentionally misbranding the drug. The bodies have piled up. But that does not tell us how many of these were medically unnecessary.

We have decided to follow the law, and today's not the day to brief it. But trust me on this for the moment, your Honor. In False Claims Act cases, we are allowed to prove -- instead of having a mini trial over nine million prescriptions, we are allowed to use a statistical sample.

Now, if I'm wrong about that, I'm sure we'll pay the price later. But that's not today.

THE COURT: Can you tell me exactly -- I mean, I was digging through here, and I can't remember, the deposition notice was -- you did not -- I mean, there has never been anybody designated yet by the State for the argument that or

reason you've made in your argument, correct? I mean, the request to quash is just a motion to quash?

MR. WHITTEN: It is a motion to quash.

THE COURT: They did not make any specific request to depose any particular person?

MR. WHITTEN: They did not. They've asked us to designate the person who can answer, but it is unanswerable at this point until we're done with our experts.

Now, I can't stop them. If they want to look on the website and start taking a bunch of depositions of various people that work at the State, they're still not going to get the answer because the experts have simply not done it. And we will do it.

And look, your Honor, we're either going to live or die on the False Claims Act by a statistical sample. We don't need a statistical sample, and we have no intention of doing one on the nuisance claim. So this deposition is premature.

They're going to get to take the deposition of our experts, but in accordance with the scheduling order.

THE COURT: Mr. LaFata?

MR. LAFATA: Thank you. Briefly, your Honor. I need to correct what I think was an inadvertent, perhaps misstatement of the law. It's quoted in our brief on pages 4 to 5. The Oklahoma Health Care Authority -- I'm quoting -- Shall serve as the final authority pertaining to all

determinations of medical necessity, Oklahoma Administrative Code 317:30-3-1, Paragraph F.

Moreover, the Oklahoma Court of Appeals has stated in Pharmcare Oklahoma vs. State Health Care Authority, quote: The OHCA shall serve as the final arbiter on issues of medical necessity.

This side of the room has the answers to the questions that we need to find out. We need the facts in order to provide expert evidence in defense of these cases. The State has these facts. The process is to give them a notice of a deposition of a representative witness who can answer these questions so we can answer them with facts and address the defenses in the case.

They say that this is a ubiquitous problem, that opioid problem is all over. It should make it easier to provide some of these facts. Makes it more available to them. I hear all day long, today, a lot of references to websites; why don't you just go on the website.

You know, your Honor, if I had come here and said, Purdue has stuff online, why don't you just go get it yourself, that wouldn't be acceptable. So really, that's not going to work. What we need to get is a witness to sit in a chair -- your Honor, I remember standing before you and with respect to an interrogatory on finances, and I explained that the company did not have the information that was being requested. And I was

ordered to provide an answer to that in response and to produce a witness to talk about it. We did those things.

This is core to the case. The law in Oklahoma says that this side of the room has the answers to the questions, and we need it for this.

THE COURT: Here's what I'm going to do. This is an important one, and this one does kind of get to the core of things. And I mean, it is an important deposition, and I understand what's going on. But I am going to find that this is premature. And I'm going to sustain the request to quash it at this point. I want to see how this thing develops a little bit more.

I know you all have an interest in getting to that as quickly as you possibly can and get a commitment, and I understand that and I understand why.

I'm looking -- this is a search for the truth for all of us, that we're ethically bound by that. I think I want to see how this develops. I want to see what goes on here for a while. I think it is likely -- and let me read what I've written down here so I don't unartfully do it again, I guess.

It's likely relevant to the State's stated claim for relief, which does require maybe expert proof. I know part of it's going to for sure. And I think I'm not going to say anymore, other than I want to see how this develops.

MR. LAFATA: Yes, sir. And I hear you, and I want to

inquire about we had proposed as an initial step perhaps an alternative on page 6 of our brief to get at least a witness to talk about the standards, the practices, and the policies to determine whether prescriptions are necessary; that the State applied in determining whether they're necessary. And that's distinct, I think, from the initial proposal here.

THE COURT: Well, I mean, go ahead and finish. I'm sorry.

MR. LAFATA: Sure. I was just going to offer that that at least -- we say we should at least be permitted to start. We've been sued by saying you caused medically unnecessary prescriptions. Let's at least get testimony on what are the State's policies for deciding whether something is medically necessary or not. That should be almost a kind of hornbook type of question for this type of case.

THE COURT: Well --

MR. WHITTEN: Well, your Honor, he's asking you to rewrite their notice. If they want to write a new notice that's totally different, fine.

THE COURT: Let's leave it alone for now. I understand what you're doing, and let's leave it alone for now. Now, remind me when this comes up later what I said here today, because -- don't let me forget. And you won't, I'm sure. But I think that's enough. I want to see what develops.

MR. LAFATA: And then we'll kind of consider it again

later?

THE COURT: Yes.

MR. LAFATA: All right.

MR. BURNS: Your Honor, could I get just a little bit of clarification on that point? I assume you're not asking us to wait until the point of expert reports; just some later point?

THE COURT: No. Just some later point. No. I'm not going to force you to run up against the expert deadline. And that's what you're concerned about, and I'm not going to do that.

MR. BURNS: Thank you.

THE COURT: And at some point, we'll see --

MR. LAFATA: When we get the documents they have ready and the interrogatory responses --

THE COURT: That's what I'm hoping.

I think what we have left is Purdue's motion to quash subpoenas of certain sales reps. Same for Teva. Ready for that?

MR. ODOM: Your Honor, you also wanted to be reminded that you're going to clean up the dates for the future hearings.

THE COURT: Yes, thank you. Don't let me forget that.

MR. BURNS: I think I'm going to make your day, your

Honor. I believe that we are withdrawing the motion to quash with respect to the Purdue folks. Those were -- we had made that motion on the basis that they were current employees of Purdue that had been subpoenaed. They are now former employees of Purdue, and therefore I think they'll be handled in the same method as the other sales rep depositions are being handled.

This is without waiver to whatever rights may be asserted by those former employees' counsel. I mean, we're obviously not waiving the rights of those individuals, but we're not still asserting our motion to quash because they're former employees now rather than current employees.

THE COURT: Well, does that take care of the entire request to quash -- I mean, the entire subpoena?

MR. BURNS: For the Purdue --

THE COURT: For Purdue.

MR. BURNS: -- individuals, that's correct, I think, unless there's anything to argue about.

THE COURT: All right. Thank you.

MR. DUCK: No argument here.

THE COURT: Teva.

MR. MERKLEY: Okay. Judge, this started out, these are the motions that were filed on August 23rd, which would be --

THE COURT: Thank you very much. Thank you for that.

MR. MERKLEY: -- the motions to quash for nonparty

Pamela Costa, Tim Mullen, and Brian Vaughan.

The State served these subpoena duces tecum on what are two current employees and one former employee, and we represent those individuals. And we have notified the State of that.

We've moved to quash the demand for only the documents, not the deposition. We're going to work with the State. We'll give them the deposition. I think we can actually give them the deposition on the date's they've provided. We're working through that.

The State only opposed the motion for two of the employees, and that's Ms. Pam Costa and Mr. Tim Mullen. So we believe the State doesn't oppose the motion with respect to Mr. Brian Vaughan.

MR. PATE: Your Honor, I don't want to interrupt. I just want to state that that's not our position. We do oppose it. They didn't file that motion timely. We think all the issues are the same, so we're happy to address Mr. Vaughn along with Ms. Costa and everybody else.

But they didn't file their motion in time for this hearing, and so we do oppose that one. It's the same exact issues, though, your Honor.

MR. MERKLEY: They were all filed the same day. But he's right, they're the same issue; I'm happy to argue them all the same.

Basically, your Honor, there are three reasons why the

subpoena's demand for documents must be quashed. First, a nonparty employee cannot be compelled to produce documents belonging to her employer, particularly when the employer is the party to the case.

Second, relatedly requiring a nonparty employee to produce documents that can just as easily be obtained from a party places an undue burden on the employee. Case law is clear on that issue.

And third, the categories of documents that are sought, your Honor, encompasses every document in the employee's possession, custody, or control related to her employment. So every document she can possibly find or come up with related to her employment. And that includes documents that are confidential and totally irrelevant. Case law also says that kind of request is inappropriate.

To start out, your Honor, first on the issue of a nonparty employee cannot be compelled to produce documents belonging to her employer. There's a case that I brought that's particularly on point. If I may approach?

THE COURT: Yes.

MR. MERKLEY: And that is the Bostian case, your Honor. And I'm certain I'll refer to it as Bostonian a number of times because I just -- I can't get it right. So I apologize in advance. But it's Bostian, and that's the case out of the Northern District of Oklahoma.

And in Bostian, you'll see there in the highlighted sections, the Court found that it's inappropriate to subpoena documents from an employee. When the employer is a party to the case, the appropriate way to get the documents is go get them from the employer.

The State -- and the case is real clear on that point, and that's directly on point, your Honor. The State attempts to distinguish it on three grounds, first arguing that Bostian is limited to documents subpoenaed from a current employee. The Court doesn't limit its holdings specifically to a current employee.

That's what was involved there. But the logic applies the same. Since the documents belong to the defendant party, they are appropriately obtained directly from the defendant party pursuant to Rule 34.

That recognizes the common sense rule that if the party has them, go get them from the party. Don't put an obligation to an employee to go gather them up.

Second, the State attempts to argue that any document in the nonparty's control makes it fair game for a subpoena because -- and essentially distinguishing between control and legal ownership.

Your Honor, as you can see from the quotes that are highlighted, that's the very argument that the Bostian court rejected when it said -- and it specifically says, The Court

rejects the argument that the employee should be required to produce documents under the subpoena rule just because he had control of them.

Finally, the State attempts to distinguish the case, your Honor, on the grounds that what Bostian really dealt with was the subpoena to take a deposition and the hundred mile rule. As you can see in the last sentence of the last paragraph before I start the quotes on -- the highlighted quotes on page 2, the Court's hundred mile analysis was pertinent to the deposition, not the request to produce the documents. The Court found the documents belonged to the party, make the party produce them.

Second argument, your Honor, under Oklahoma law requiring a nonparty employee to produce documents that can be just as easily obtained from a party, clearly places an undue burden on a nonparty employee. We cite three cases there on page 4 of our reply. Did you get the reply, your Honor?

THE COURT: I'm looking. Hold on a second. I know I did, but hold on.

MR. MERKLEY: It was filed August 28th.

THE COURT: I have 15 of them here. Hold on. Here it is. Go ahead.

MR. MERKLEY: So in the motion, and then on page 4 of that reply, your Honor, we cite three cases directly on point. The Quinn case --

THE COURT: I'm sorry. Give me a page again?

MR. MERKLEY: Page 4 of the reply. Three cases directly on point. The Quinn case, the Raymond case, and the EpiPen case. And the Quinn case out of the Supreme Court of Oklahoma affirmatively denying discovery of a nonparty that could have been obtained from a party.

The State doesn't address those cases. Instead, argues that Teva's attorneys do not have standing to object for a burden on a nonemployee or a nonparty. Your Honor, as I said before, we represent also the individuals, and we've notified the State of that. And regardless, even the case that the State cites in its brief, the Khumba Film case, recognizes that for a nonparty, you can object based on undue burden. And duplicative discovery on a nonparty imposes an undue burden, and the documents should be obtained from the employer.

Finally, your Honor, the last point, and I'll try to go through it quickly. There's no question, and in fact the State actually concedes, that the subpoena's request for documents is grossly overbroad and seeks irrelevant documents.

As I said before, it asked for everything ever involved with the witness's employment. It makes no attempt whatsoever to limit it to documents pertaining to the marketing or sale of opioids or anything pertaining to this case specifically.

The State argues, Well, the documents might lead to the disclosure of admissible evidence. But you can't go in and say

it just might lead to the disclosure of admissible evidence. You've got to be able to articulate how the documents are relevant in order to even have a chance to lead to discovery of additional and admissible evidence and explain even after that why you can't get them from Teva.

We have the documents. If the State believes that we haven't produced the document that it's entitled to, it should come to us. We'll give them the documents if they're entitled to them.

And the State's last argument, your Honor, it highlights the very problem with subpoenas like this. The State says, Well, fine, if the documents are irrelevant, the witness can go through and pick and choose what it thinks is irrelevant and responsive and produce it.

Your Honor, you can't force a nonparty to go through at his or her peril and choose what may or may not be relevant to the case. And Judge DeGiusti recognized that, and you'll see the case cite on page 6 and 7 of the reply in the Ward case.

When you use blanket terms and request all documents, it's inappropriate, because you're requiring the subpoenaed party to what Judge DeGiusti characterized as, quote, Engage in mental gymnastics to determine what information may or may not be remotely responsive.

For those reasons, your Honor, we request that the document request aspect of the subpoena be quashed. If the

State has issues with the documents that it has or has not gotten, we're happy to address those on behalf of Teva. And it should come get the documents from us.

Do you have any questions, your Honor?

THE COURT: No, sir. Thank you very much.

MR. MERKLEY: Thank you.

MR. PATE: Thank you, your Honor. Drew Pate for the State. Just to clarify one thing, I want to say that I don't think I've ever conceded that any discovery request I've ever drafted has been grossly overbroad. I think that I've probably been accused of that before, but I've definitely never conceded it. So I just wanted to clear that up.

I'm a little confused here, because they're saying they will give us the depositions but not the documents. And we've talked a lot today and your Honor has pointed out the importance of having documents for depositions.

And they say -- they represent both Teva and these nonparties, and they say, Well, these are more easily obtained from the defendant Teva. Well, okay. Give them to us. Where are they? We're taking these depositions this month, and we've asked for these documents from the sales representatives themselves, who are at the heart of this case, and for other defendants, Purdue sales reps who have testified already.

We've gotten a lot of very helpful information. We've gotten it prior to their depositions or at their depositions.

Much of it is not information that we believe Purdue's ever had. For example, we've gotten handwritten notes from a notebook and things like that, that sales representatives have taken from their training. All of that information is relevant and may or may not be information that Teva has or not. I don't know.

THE COURT: Are these depositions set?

MR. PATE: Yes, your Honor.

THE COURT: When?

MR. PATE: If you'll give me -- they're all set for the month of September.

THE COURT: In September some time. Okay.

MR. PATE: Yes, your Honor.

MR. MERKLEY: If I may clarify one point. They have been noticed for certain dates, and we think we can meet each of those dates. We're working with witnesses and we'll work with the State. There may be a date we have to move one of the witnesses.

THE COURT: Okay. And I forget now, but does the State have a pending request to produce from Teva -- well, whoever relevant, whoever it is, Teva or whoever, the employer?

MR. PATE: We do. We have pending discovery requests to produce documents --

THE COURT: Relevant -- sorry. Relevant to those depositions?

MR. PATE: Yes, your Honor. We have requests, and we've had those out for over a year. We don't have them. They've recently produced some documents that they've identified as specific custodial files for certain of their employees. None of these people are on those lists. We do not have these people's documents to my knowledge.

We probably do have some materials that they were trained with, things that they produced, and we'll use those for their deposition. But there's no rule that says we can't subpoena an individual who we're about to depose, whether they're a current employee, certainly not a former employee. And there's also no requirement in the law that they have ownership of the documents.

Teva's complaining that they own some of the materials in these people's possession. But the question is whether the individual has possession, custody, or control over that. And these sales representatives either do or do not. They either have documents in their possession that they can give to us or not.

But if they've got to fight with their former or current employer about whether or not they're supposed to have those materials, that's a fight between Teva and its current or former employees. And it's clearly not an issue, I would think, since they're represented by the same person. But that's a matter between them. It's not a matter for us. They

need to produce the documents to us if they have them.

And I don't think that there's any doubt that these documents we've requested are relevant. Your Honor is very familiar with the significance of the sales forces that we've alleged in this case and how they were used in this case.

I don't think I need to go back over all of those facts about how all of these companies blanketed the country with sales reps to misrepresent their drugs. But I will point out -- if you all agree that the courtroom is clear -- we cited a document from Teva in our response brief, your Honor, and they designated it confidential. I don't know if they still contend it's confidential or not, but I do want to read a quote from it.

MR. BARTLE: Your Honor, I'm going to object at this point. They redacted the version of this document from --

MR. PATE: You've designated it confidential. That's why I redacted it.

MR. BARTLE: When they submitted this document to the Court, their reply, they redacted it. They provided an unsealed copy, a clean copy to the Court, but redacted it. They redacted the version they sent to us. When we asked them last Sunday to provide us a copy of the unredacted version, they didn't.

So to the extent that Mr. Pate is going to rely on something that only this Court has seen and we have not, we

object. We have not seen the unredacted version of whatever quote he's about to say.

MR. PATE: It's their document.

MR. BARTLE: Judge, I'm allowed to see it in a brief. I don't even know what it is. I don't even know what that quote is. This is the first time I'm going to hear it, and it's the first time -- if it's in their brief -- I don't think that's appropriate. I asked them on Sunday, Judge, to provide me a copy of it, and they didn't.

So to the extent that he's going to rely upon something that you've seen and I haven't, it's inappropriate.

THE COURT: I haven't seen it either.

MR. PATE: Your Honor, to be clear, the redacted exhibit that was filed has the Bates number that they put on the document. They could have looked it up as one paragraph.

THE COURT: Do me a favor and give me the date that your pleading was filed.

MR. BARTLE: I don't know what --

THE COURT: That's where I'm headed with this.

MR. PATE: The date of our response brief, your Honor, is August 24.

MR. BARTLE: Your Honor, may I approach? This is the copy they provided us.

THE COURT: Yeah, I get it. I'm not sure -- again, what I got in that response had redacted portions as well.

MR. PATE: We're required to redact it, your Honor, under the protective order, and what we publicly file. And we also weren't aware that the defendants -- for example, each individual defendant -- we learned this -- this came up during deposition, your Honor, but whether or not the defendants are comfortable sharing documents they've designated confidential with the other defendants. They've said that they're competitors at times, so...

THE COURT: Let's not get into that for now. Let's go ahead with your arguments, and let's skip the quotation for now, please.

MR. PATE: Just so Mr. Bartle has it and we're not surprising him with it, it's right there.

MR. BARTLE: Thanks for providing it to me the date of the hearing.

MR. PATE: You had the Bates number.

All right. So the whole point of that, your Honor, was the sales forces are important. I don't think Teva is going to deny that their sales force is important. So coming in here and saying that documents that are in possession of someone who's sole job was to sale opioids for you is irrelevant just simply doesn't comport with the facts.

So that's why these documents are relevant. That's why we've requested them from these individuals. Like I said, the ones that we have gotten them from have been very helpful for

these depositions that we have taken so far, and we anticipate they will continue to be helpful.

And it's interesting that the defendants say it's more easy to obtain them from Teva when we asked for these a year ago from Teva, and we don't have these documents; nor do we have confirmation that they have everything that these individuals have.

I don't know what these individuals have. They may have handwritten notes. They may have recordings of conversations. They may have all sorts of things that Teva doesn't even know they have. But we've asked for those materials to the extent they have them, and we're entitled to them, whether they're a former or current employee.

Lastly, your Honor, about the burden. Frankly, they didn't provide any evidence that there's any burden on any of these individuals. If they're representing both the defendant and the individuals themselves, that's a complicated issue.

First, because Teva can't object that it's an undue burden for a particular nonparty to produce documents. Case law is clear, they don't have standing to do it. They say, Well, okay, we're objecting on undue burden on behalf of the individual now. Okay. You can do that, but you have to provide evidence that there's actually some undue burden.

And they've provided none, other than saying, Well, these relate to my employment, and they belong to my employer.

That's not a burden issue. Like I said, your Honor, that's a question of whether or not they're supposed to have something. But that's not our issue. That's their issue.

They can produce it under the protective order, but either way, they need to produce it. And these individuals, as has been demonstrated, can produce it a whole lot faster than requiring us to wait for Teva to produce all of their documents in large rolling waves, which relate to the case -- I'm not harping on them for that, but that's not what these depositions are about, your Honor.

So with that, unless you have any questions, your Honor?

THE COURT: No, sir. Thanks.

MR. MERKLEY: May I briefly, your Honor?

THE COURT: Sure.

MR. MERKLEY: As Mr. Pate said, there is no rule requiring to get the documents. I think the Bostian case is very clear. It's still not been distinguished. There is in fact a rule that if you have a party to the case that possesses the documents, you have to go get them from the party.

And your Honor, this argument presents the very problem we see in this case over and over and over again. We tell you about it each week. The State doesn't produce documents to us, therefore we can't go depose its witnesses, because we want the documents before we go depose the witnesses.

The State -- we're doing a rolling production far in

advance of what the State's producing, and they've asked for these sales force documents. They're getting the sales force documents, as they admitted, and we're continuing to produce sales force documents on a rolling basis.

They just don't want to wait. They want to have them right now when they decide they want to depose a witness. We haven't yet gone out and started just laying subpoenas on all these employees of these individual agencies to get the State's documents. We may. And that may be what we have to do.

But the State can't have its cake and eat it too and sit here and argue, You guys sit back and don't take any depositions, you can't do anything to present your defenses until we get you all the documents, but we're going forward with every deposition we want, and we want the documents right now.

If they have a specific document that they want that they think is relevant to this deposition, your Honor, that they don't think we've produced to them, if they'll bring that to our attention, we'll go get it for them. And we'll do our best to get it to them as soon as we possibly can.

And we're cooperating with them on the deposition. We're not trying to deny them the deposition. But going out and laying subpoenas on all of our employees is not acceptable. It's not permissible under the rule.

That's all I have.

MR. PATE: Can I address that real quick? Because we haven't gone out and laid subpoenas on every employee for any of these companies. We're talking about three employees, one of whom doesn't even work there anymore. And there is no guarantee that Teva can or even knows what documents any of those three individuals actually have that differ from what's in Teva's possession.

THE COURT: Say that again.

MR. PATE: Sure. There is no indication, there's been no statement made by them, there's no evidence, and it's highly unlikely that Teva actually has all of the same materials that these both current and former employees have that relate to their employment.

I mentioned a notebook we got from a Purdue sales rep that was extensive notes that she took about how she was trained. We would never have gotten that from Purdue. They don't have stuff like that. But we got it from her.

It's just as easily one of these former or current employees could have used their own private e-mail to e-mail a friend or a fellow sales rep for a different company, Hey, I just got training on this, don't think that's right, but I was told to do it so I'm going to follow it.

I don't know if that exists, but it might. And Teva's not going to have that. That's why we asked for documents about and from these employees.

THE COURT: Okay. Thank you. Anything else?

This is the one -- well, this is the one now, as this hearing has developed, that I'm not prepared to rule on today. I do want to study this one a little bit more. I do want to look at the law I've been presented with and do my own research, and then I'll enter an order just as quickly as I can. So I will take this one under advisement.

Anything else besides the scheduling dates?

MR. BARTLE: Your Honor, the only thing I would note is perhaps the State should provide you an unredacted copy of its motion so you can consider it in full.

MR. PATE: My understanding was you already had it.

THE COURT: Well, let me be real sure.

MR. WHITTEN: Here, your Honor.

THE COURT: These -- I've gotten, you know, the old mixed up with the new. I want to be really sure that we've got --

MR. PATE: In case you don't.

THE COURT: All right. Thank you. Yeah. All right. So the one I got electronically has all that in there? No? So this -- I probably do need this? Yeah, okay, thanks. I was looking at the right one, but I wasn't finding it. All right. Thank you very much.

MR. WHITTEN: You've got it now.

THE COURT: I have it now. I appreciate it.

Okay. Dates. That is something else I didn't even bring over. But I have had a couple of calls saying, When are we scheduled to have hearings. And I know that we had -- Judge Balkman sent out an order earlier that listed the dates.

But whoever wants to do this, just get up and tell me what dates we're supposed to meet so I'm sure I'll be here and be prepared, I'll add. I don't know if anybody even has them.

MR. BARTLE: Judge, I'm not sure we're prepared. I'm sure the parties can review the order and then make a submission.

THE COURT: Yeah. You may not even have them. I didn't bring my schedule over either. It's in my big thick file.

MR. MERKLEY: I can go through my phone, but that's going to take quite a while.

THE COURT: Yeah, let's not do that. In the next, what, by Monday or Tuesday, let's say in the next three days, somebody please circulate your understanding of our hearing dates and times. And I know we sort of got through, I think, January. We're trying to at least get through January 15th, the fact deadline, discovery deadline.

I know that may change with the new scheduling order, but circulate around between now and the next three or four days, be sure you have an agreed -- on the dates and times we're going to meet. And be sure and include me in your e-mail

matrix so that everybody's clear, including me. Okay?

Anything else from anybody?

MR. WHITTEN: No, your Honor.

THE COURT: All right. Thank you. Very good argument today. Thank you. Thank you.

MR. MERKLEY: Thank you, your Honor.

(End of proceedings)

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

CERTIFICATE OF THE COURT REPORTER

I, Angela Thagard, Certified Shorthand Reporter and Official Court Reporter for Cleveland County, do hereby certify that the foregoing transcript in the above-styled case is a

true, correct, and complete transcript of my shorthand notes of the proceedings in said cause.

I further certify that I am neither related to nor attorney for any interested party nor otherwise interested in the event of said action.

Dated this 31st day of August, 2018.

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ANGELA THAGARD, CSR, RPR