



STATE OF OKLAHOMA } S.S.  
 IN THE DISTRICT COURT OF CLEVELAND COUNTY }  
 STATE OF OKLAHOMA

FILED  
 OCT 26 2018

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

Plaintiff,

v.

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

Defendants.

In the office of the  
 Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

Judge Thad Balkman

William C. Hetherington  
 Special Discovery Master

**JANSSEN'S RESPONSE TO THE DISCOVERY MASTER'S REQUEST FOR  
 ADDITIONAL ARGUMENT**

By Order of October 22, 2018, the Special Discovery Master limited the State “to a total of **eighty (80)** hours” of deposition testimony “to be divided up as State chooses.” Order of the Special Discovery Master (Oct. 22, 2018) (“Order”), at 4. The Order is unambiguous. On its face, it limits the State to a total of 80 hours of testimony pursuant to Rule 3230(C)(5).

The State has argued against interpreting the Order according to its plain terms, insisting that it should be construed as an 80 hour limit per Defendant family and that the 80 hours should apply only to a set of 41 Rule 3230(C)(5) topics served in early August. The State would have the Order carve out the testimony the State has already taken. Worse, the State argues that it should be free to serve an unlimited number of additional Rule 3230(C)(5) notices. In service of these specious theories, the State offers the nonsensical idea that its own refusal to proceed with depositions on dates offered by Defendants means Defendants are seeking to delay the progress of this case toward trial. That contention is as self-evidently wrong as its other arguments: the State

has refused six different deposition dates from Janssen in the last three weeks alone, and but for its intransigence, could have completed testimony on 31 topics by the middle of this week.<sup>1</sup>

The Special Discovery Master knows whether he intended the 80-hour limit to apply to depositions of all Defendants or depositions of each Defendant family. Indeed, he has advised the parties by email that he himself is clear on what he meant. What is important at this time is that: (1) there is ample authority for the Special Discovery Master to limit the State to 80 total hours for all Defendants; and (2) whether the 80-hour limit applies to depositions of all Defendants or is applied per Defendant family, it should be imposed for *all* Rule 3230(C)(5) depositions the State will take in this case. That issue was expressly presented to the Special Discovery Master for decision, and he acted well within his authority when he decided it.

In its original motion, the State insisted that it “is not going to preemptively limit itself” in deposition hours. Plaintiff’s Motion to Compel Depositions (Oct. 4, 2018), at 3. Janssen responded by asking the Special Discovery Master to limit the State to a total of sixty (60) deposition hours. Janssen’s Response to the State’s Motion to Compel Depositions (Oct. 11, 2018), at 2, 7. Janssen made clear in its response that the dispute arising from the State’s refusal to proceed with depositions on dates offered by Janssen was rooted in much more than 41 noticed topics. *Id.* at 7. This point was further emphasized in oral argument on October 18, 2018, when Janssen advised the Special Discovery Master that the plaintiffs in the federal opioid MDL proceeding are limited to 14 hours of corporate designee testimony per defendant family, which would translate to a total of 42 hours case-wide for the State here.

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<sup>1</sup> In the face of this indisputable record, the State’s cry that it “cannot waste another 48 or 72 hours on this issue” rings especially hollow. *See* Email from B. Beckworth to J. Hetherington (Oct. 24, 2018). The State refused to take depositions of Janssen on October 10, 11, 15, 16, 23, and 24. *See* Janssen Response at 1. The State, not Defendants has “successfully ground depositions to a halt.” *See* Email from M. Burrage to J. Hetherington (Oct. 23, 2018).

Not only was the issue squarely raised, but the Special Discovery Master was authorized to impose case-wide limits on Rule 3230(C)(5) testimony. The Court vested the Discovery Master with “all authority conferred upon discovery masters by 12 O.S. § 3225.1.” *See* Order Appointing Discovery Master (Jan. 29, 2018), at 2. This broad authority includes the power to “take all appropriate measures to perform the assigned duties fairly and efficiently.” *See* 12 O.S. § 3225.1(D)(1)(d). And he was specifically directed to “facilitate the effective and timely resolution” of discovery disputes. Order Appointing Discovery Master, at 2. The State cannot seriously contend that a court-appointed Special Discovery Master lacks the power to control deposition discovery through orders like that issued on October 22. Indeed, it would be inefficient, time-consuming, and contrary to his mandate if the Special Discovery Master lacked that power.

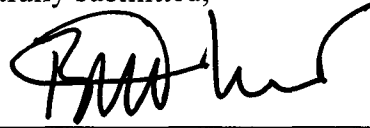
As a last resort, the State attempts to argue that because the Scheduling Order “has no limits on depositions,” there can be none.<sup>2</sup> But the Scheduling Order does not affirmatively permit limitless depositions, it simply does not address the issue. When an order or rule is silent on an issue, it is not an invitation for a party to read in whatever meaning it likes—the order or rule is inapplicable. If the Scheduling Order’s silence on deposition limits meant that it affirmatively permits unlimited depositions, then the fact that the Oklahoma Discovery Code does not set forth deposition limits would mean that any order of the Special Discovery Master limiting depositions in any way would violate Oklahoma law. That the State itself requested the Special Discovery Master to impose a particular minimum number of deposition hours in its motion means even the State knows this argument is nonsense.

The only way to definitively end this dispute is with a litigation-total limit on deposition hours. Only then will the State be forced to proceed with its discovery obligations.

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<sup>2</sup> *See* Email from B. Beckworth to J. Hetherington (Oct. 24, 2018).

Respectfully submitted,



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**CERTIFICATE OF MAILING**

Pursuant to Okla. Stat. tit. 12, § 2005(D), this is to certify on October 26<sup>th</sup>, 2018, a true and correct copy of the above and foregoing has been served via the United States Postal Service, First Class postage prepaid, to the following:

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