



STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED In The
Office of the Court Clerk

JAN 03 2019

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.)

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816
Judge Thad Balkman

William C. Hetherington
Special Discovery Master

THE STATE OF OKLAHOMA'S MOTION TO RECONSIDER DECEMBER 26, 2018
ORDER SUSTAINING PURDUE'S MOTION TO QUASH DEPOSITION NOTICES TO
JONATHAN SACKLER AND MORTIMER D.A. SACKLER
AND BRIEF IN SUPPORT

INTRODUCTION

The Sackler family is synonymous with the Purdue brand.¹ Just as there is no Microsoft without Bill Gates or Wal-Mart without the Waltons, there is no Purdue without the Sacklers. One cannot tell the story of Purdue without the Sackler family. And who can tell that story better than the Sacklers themselves? Moreover, who is in a better position to provide the full story of Purdue, on behalf of Purdue, than the two Sacklers, Jonathan and Mortimer D.A., whose fathers founded the company, who own the company, who grew up with the company, and who sit/sat on the Board of Directors for Purdue Pharma, Inc.? No one.

The Sacklers were there when Purdue chose to build a drug empire around opioid narcotics. The Sacklers were there when Purdue pleaded guilty for the way it marketed its opioids. And the Sacklers were there when Purdue decided to continue aggressively marketing opioids even after pleading guilty. No one at Purdue stood to gain more, and no one's legacy was so inextricably tied to these decisions than the Sacklers. Their perspective of Purdue is truly unique. It is essential to telling the full story of Purdue and the crisis it caused. And no one can tell it like the Sacklers can.

Although there may be individuals qualified to give testimony regarding discrete aspects of Purdue's day-to-day operations, that is not what these depositions seek. These depositions seek answers to broader questions about the heart of Purdue's business and its conduct over the last two decades. These are questions that require insight into board-level decision making. And these two board members in particular—who own *and* were either present or involved with the company from day one of the relevant time period—are uniquely qualified to provide informative testimony

¹ See, e.g., Patrick Radden Keefe, *The Family That Built an Empire of Pain*, THE NEW YORKER, October 30, 2017.

on such subjects. Accordingly, and as stated more fully below, the State respectfully moves the Special Discovery Master to reconsider that part of his December 26, 2018 Order sustaining Purdue's Motion to Quash Deposition Notices of Purdue Via Jonathan Sackler and Mortimer D.A. Sackler, and require these depositions go forward.

ARGUMENT

In his Order, the Special Discovery Master granted Purdue's Motion on the grounds that neither Jonathan nor Mortimer D.A. Sackler had unique, independent knowledge of the claim-related conduct that could not be explored through witnesses previously designated by Purdue. *See* Order of Special Discovery Master at 2-3 (December 26, 2018). The Special Discovery Master determined the State could renew its request for the Sacklers' depositions if other Purdue witnesses were not adequately prepared to testify on the issues set forth in the notices. *See id.* at 3 ("We will see if witnesses are timely set and adequately prepared with meaningful discovery depositions conducted on these described topics. If not ... adequate grounds could exist to compel the Sackler depositions into specific areas of relevant factual knowledge [the] State may demonstrate has not been forthcoming as promised by Purdue."). The State respectfully disagrees.

First, the State is not seeking duplicative testimony from the Sacklers. Rather, the State seeks unique testimony relating to the heart of Purdue's opioid business strategy, which includes conduct spanning over two decades. Very few, if any, of the corporate representatives deposed have been at Purdue or associated with the company during the relevant time period (1996-present). However, Jonathan and Mortimer D.A. Sackler have been associated with the company from the beginning and were present during several pivotal moments relevant to this case, including but not limited to: (1) the introduction and initial push of OxyContin into the market, (2) the expanded use of opioids to treat non-cancer pain, (3) Purdue's guilty plea to federal criminal

charges that it misbranded OxyContin with the intent to defraud/mislead, and (4) the establishment of Rhodes Pharma.² There is no other person better suited to provide testimony on these (and other) critical decisions in Purdue's history than those who were there, and no other person who can testify about the impetus for those decisions like one of the owners sitting on the board.

Moreover, as owners and directors of Purdue, the Sacklers are uniquely qualified to provide testimony regarding Purdue's ownership structure, as well as the unique aspects of its financial arrangement—much of which is run right here in Oklahoma through Steven Ives. Purdue is a privately held company and the Sacklers control Purdue. In this regard, there is no other corporate representative of Purdue that can possibly provide the same perspective and insight into Purdue's business as the Sacklers. No one else directs, controls, or benefits from Purdue's decisions like the Sacklers do.

Third, the mere fact Jonathan Sackler may no longer sit on Purdue's board should be of no consequence to the State's deposition notice. As previously noted by the Special Discovery Master, both men were on the Board of Directors for Purdue Pharma, Inc. at the time the State's notices were issued. *See* Order at 2. The disallowance of a corporate representative's deposition based on the mere fact the witness no longer sat on the board would invite abuse and strategic "shuffling" of key witnesses' roles in an effort to evade discovery. Such a course should not be embarked upon here, especially given the magnitude of the issues involved in the present litigation.

Finally, the State respectfully asserts that time is of the essence and it does not have the convenience—at this juncture—to wait to reassert its notices. Discovery is winding down. Defendants have saddled the State and burned valuable time, expenses, and resources with their delay tactics, of which this Court is well aware. Plainly speaking, these depositions should be

² As everyone is well aware, Rhodes Pharma was set up in 2007, four months after Purdue pleaded guilty to the federal criminal charges.

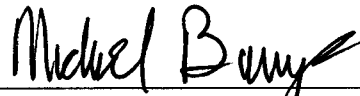
conducted *now*. Other than its self-serving, unsubstantiated assertions, Purdue has not shown it would suffer undue burden or prejudice were the depositions allowed to proceed. This begs the question: Where is the harm? Who is worse off: the State, saddled with an abatement plan that will cost over \$7,000,000,000, or the Sacklers, who have made *billions* from addiction and death from the use of their product?³ Such a balance of interests clearly favors the State. The State cannot afford to delay its case for contingencies. It respectfully asks the Special Discovery Master to reverse that portion of his Order sustaining Purdue's request to quash the deposition notices to the Sacklers.

CONCLUSION

In sum, the State seeks unique testimony from uniquely qualified individuals who possess a unique background and history with Purdue. Their testimony can be taken and is essential to the State's prosecution of this action. Accordingly, the State requests that the Special Discovery Master grant its Motion to Reconsider, reverse his decision to sustain Purdue's Motion to Quash Deposition Notices of Purdue Via Jonathan Sackler and Mortimer D.A. Sackler, and permit these depositions to go forward.

³ See Keefe, *supra* (noting that OxyContin has become a "blockbuster" for the Sackler family, and "has reportedly generated some thirty-five billion dollars in revenue for Purdue.").

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