



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

Judge Thad Balkman

Special Discovery Master

William C. Hetherington

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

DEC 05 2018

In the office of the
Court Clerk MARILYN WILLIAMS

**THE STATE'S RESPONSE TO PURDUE'S MOTION TO QUASH DEPOSITION
NOTICE OF PURDUE VIA JONATHAN SACKLER AND MORTIMER D.A. SACKLER**

The fact that Purdue does not want to present members of its founding family for depositions to testify on behalf of the company they own comes as no surprise. But, the grounds upon which Purdue is basing its *Motion to Quash and Motion for Protective Order for Deposition Notice of Purdue Via Jonathan Sackler and Mortimer D.A. Sackler* ("Motion")—burden, harassment, and duplication—is ridiculous. It is undisputed that for decades, the Sackler family

has derived its unimaginable wealth from the sale of OxyContin. Purdue's release and marketing of OxyContin played a key role in creating the current opioid epidemic. It is also undisputed that Jonathan Sackler and Mortimer D.A. Sackler are the sons of the co-founders of Purdue and serve on the Board of Directors for Defendant Purdue Pharma, Inc. They have attended board meetings and been actively involved in the decision-making process of this multi-billion dollar company—a company which has reaped staggering profits from the addiction and death of thousands of Oklahomans. *See, e.g., Ex. 1, Purdue Board Minutes (05/03/07); Ex. 2, Rhodes Board Minutes (10/19/05); Exs. 3-4, Quarterly Reports (01/15/08; 10/15/08).* Their ability to provide binding testimony for Purdue Pharma, Inc. cannot legitimately be disputed.

Purdue's arguments in favor of quashing the State's 12 O.S. § 3230(C)(5) deposition notices to Jonathan and Mortimer D.A. Sackler are three-fold: (1) Jonathan Sackler and Mortimer D.A. Sackler do not hold any position for Purdue Pharma, L.P. or The Purdue Frederick Co.; (2) their testimony will be duplicative; and (3) the notices are unduly burdensome and sent for harassment. None of these arguments provide "good cause" for quashing the Notices, and Purdue's *Motion* should be denied.

ARGUMENT AND AUTHORITIES

A. Legal Standard.

Under Oklahoma law, discovery rules and statutes are to be liberally construed. *Boswell v. Schultz*, 2007 OK 94, ¶ 14, 175 P.3d 390, 395; 12 O.S. § 3225 ("The Discovery Code shall be liberally construed to provide the just, speedy and inexpensive determination of every action."). "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." 12 O.S. § 3226(B)(1). Relevant discovery

is simply that which “might lead to the disclosure of admissible evidence.” *Stone v. Coleman*, 1976 OK 182, ¶ 4, 557 P.2d 904, 906 (emphasis added). “The [United States Supreme] Court has more than once declared that the deposition-discovery rules are to be accorded a broad and liberal treatment to effect their purpose of adequately informing litigants in civil trials.” *Herbert v. Lando*, 441 U.S. 153, 176 (1979).

The burden of showing good cause is statutorily placed on the party objecting to discovery and is part of that party’s motion for protective order. 12 O.S. § 3226(C)(1); *YWCA of Oklahoma City v. Melson*, 1997 OK 81, ¶ 15, 944 P.2d 304 (the Oklahoma Discovery Code “*shifts the burden of showing ‘good cause’ to the party who opposes discovery*”) (emphasis in original). A showing of “good cause” to support the issuance of a protective order indicates the burden is upon the movant to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from blanket stereotyped and conclusory statements. *Crest Infiniti II, LP v. Swinton*, 2007 OK 77, 174 P.3d 996, 1004; *Pepsi-Cola Bottling Co. of Pittsburgh, Inc. v. Pepsico, Inc.*, 2002 WL 922082, at *1 (D. Kan. May 2, 2002) (“To establish good cause, that party must make a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.”)¹ “As a general rule, courts will not grant protective orders that prohibit the taking of deposition testimony.” *U.S. E.E.O.C. v. Caesars Entm’t, Inc.*, 237 F.R.D. 428, 432 (D. Nev. 2006). Whether to enter a protective order lies within the Court’s discretion. *Thomas v. Int’l Bus. Machs.*, 48 F.3d 478, 482 (10th Cir. 1995).

Based on this standard, Purdue has failed to establish a protective order is warranted for

¹ The Court may look to discovery procedures in federal rules when construing similar language in the Oklahoma Discovery Code. *Scott v. Peterson*, 2005 OK 84, ¶ 22, 126 P.3d 1232, 1238; *Crest Infiniti*, 174 P.3d at 999 (language in 12 O. § 3230(C) is similar to its federal counterpart, FRCP 30(b)(6)).

the depositions of Jonathan and Mortimer D.A. Sackler.

B. Jonathan And Mortimer D.A. Sackler Should Appear On Behalf Of Purdue Pharma, Inc.

Purdue argues the Notices should be quashed because Jonathan and Mortimer D.A. Sackler do not hold any positions for Defendants Purdue Pharma, L.P. and/or The Purdue Frederick, Co. However, Purdue concedes they do serve on the Board of Directors for Purdue Pharma, Inc. As such, they are certainly capable of providing testimony binding as to Purdue Pharma, Inc. This argument does not provide sufficient grounds to quash the Notices in their entirety.

C. Purdue Cannot Establish Good Cause For Quashing The Notices.

Purdue argues the Notices should be quashed because the testimony of Jonathan and Mortimer D.A. Sackler would only be duplicative of testimony by other more day-to-day employees of Purdue Pharma, Inc. and would already be reflected in documents produced by Purdue. They also argue that such testimony can be obtained from individuals who would find it “less burdensome.” There are several problems with these arguments.

First, Purdue’s argument implies that it has and will allow the State to conduct depositions of other more “day-to-day” corporate representatives. This is a misrepresentation of how discovery is progressing in this case. Defendants, including Purdue, have joined together to obstruct the discovery process at every turn. The parties have engaged in dozens of discovery battles, and Defendants have fought tooth and nail to prevent the State from moving forward with any depositions. In fact, the State has only been able to proceed with a small fraction of the depositions it is seeking. It is hard to fathom how the testimony of Jonathan and Mortimer D.A. Sackler can be “duplicative” of other depositions when Defendants are systematically refusing to voluntarily put up witnesses in response to the State’s deposition notices. In *Thomas*, a case relied upon heavily by Purdue in its *Motion*, in granting the request for protective order, the court

considered whether the plaintiff had attempted to take other depositions, whether the plaintiff had provided adequate notice for the deposition, and whether the plaintiff waited until the eleventh hour to make his request. 48 F.2d at 483-84. **None of those factors are present here.** To the contrary, the State has been fighting for many, many months to conduct corporate representative depositions, and Defendants have engaged in continuous obstructionist tactics to prevent that from happening.

Second, Purdue argues Jonathan and Mortimer D.A. Sackler have no unique knowledge of the facts at issue, **but it provides zero evidence whatsoever in support of this fact.** The State cannot and should not have to take Purdue's word for it. *See Crest*, 174P.3d at 1004-1005 (defendants must show more than blanket statements that "these witness[es] lack any information relevant to the issues in this case."). These men have grown up with Purdue. Their fathers founded it. It is in their family and in their blood. They have served on the Board of Directors for Purdue Pharma, Inc. for years, and they very likely know things about the company that no one else does. They, more than anyone, are in a position to provide answers on behalf of Purdue Pharma, Inc. They are part of the decision-making team for Purdue, and Purdue's position they are mere figure heads with no independent knowledge about the company is disingenuous, at best. In fact, Johnathan Sacker's name appears in **more than two thousand (2,000) documents produced by Purdue.** Regardless, Purdue has provided the Court with no particular or specific facts establishing the propriety of a protective order.

Third, Purdue argues that any information can be gleaned from documents, rendering deposition testimony from these men unnecessary. Purdue does not get to decide how the State engages in discovery. The Oklahoma Discovery Code allows the party seeking discovery to decide the methods it wants to use to obtain information, and here the State seeks depositions.

Fourth, Purdue argues the Notices should be quashed because the State already took two corporate representative depositions and twenty (20) fact witness depositions. The sheer magnitude of this lawsuit highlights the absurdity of this argument. The State's claims against Purdue relate to conduct spanning more than two decades. The State alleges Purdue created this epidemic by engaging in a complicated, nationwide marketing campaign to convince an entire country of medical professionals they had an ethical obligation to treat pain with what it touted as non-addictive, effective drugs. The complexity and breadth of Purdue's deception is difficult to comprehend, yet Purdue wants this Court to believe the State can get everything it needs in just a couple of depositions. This is simply not possible.

Fifth, Purdue argues there are other people for whom a deposition would be "less burdensome" than Jonathan and Mortimer D.A. Sackler. Setting aside the implication that individuals who have profited wildly for years from getting Oklahomans addicted to opioids cannot be bothered to sit for a deposition, courts routinely permit the depositions of high-level executives "when conduct and knowledge at the highest corporate levels of the defendant are relevant in the case." *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 205 F.R.D. 535, 536 (S.D. Ind. 2002) (citing *Six W. Retail Acquisition v. Sony Theatre Mgmt.*, 203 F.R.D. 98 (S.D.N.Y. 2001)). As members of the Board of Directors, Jonathan and Mortimer D.A. Sackler are leaders of Purdue. While it may be inconvenient for them to answer the State's questions, Purdue's overall management decisions relating to the production and marketing of opioids are central to the State's claims. *See Gaither v. The Hous. Auth. Of The City Of New Haven*, No. CIV. NO. 3 07CV0667, 2008 WL 2782728, at *1 (D. Conn. July 7, 2008) ("Highly placed executives are not immune from discovery, and the fact that an executive has a busy schedule cannot shield that witness from being deposed."). The State should be allowed to obtain testimony from these

man that binds Purdue Pharma, Inc., and Purdue's *Motion* should be denied.

CONCLUSION

For the reasons set forth above, the State respectfully requests the Court deny Purdue's *Motion* and order Jonathan and Mortimer D.A. Sackler to appear for 12 O.S. § 3230(C)(5) depositions on behalf of Purdue Pharma, Inc., and for such further relief the Court deems proper.

Respectfully submitted,



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

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

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

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

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on December 5, 2018 to:

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

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. Lafata
Jonathan S. Tam
Lindsay N. Zanello
Bert L. Wolff
Marina L. Schwartz
Dechert, LLP
Three Byant Park
1095 Avenue of Americas
New York, NY 10036-6797

Patrick J. Fitzgerald
R. Ryan Stoll
SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
155 North Wacker Drive, Suite 2700
Chicago, Illinois 60606

Robert G. McCampbell
Nicholas Merkley
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson
Oklahoma City, OK 73102-7255

Steven A. Reed
Harvey Bartle IV

Brian M. Ercole
MORGAN, LEWIS & BOCKIUS LLP

Jeremy A. Menkowitz
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131

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

Charles C. Lifland
Jennifer D. Cardelus
Wallace Moore Allan
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Stephen D. Brody
David Roberts
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

Larry D. Ottaway
Amy Sherry Fischer
FOLIART, HUFF, OTTAWAY & BOTTOM
201 Robert S. Kerr Ave, 12th Floor
Oklahoma City, OK 73102

Daniel J. Franklin
Ross Galin
O'Melveny & Myers LLP
7 Time Square
New York, NY 10036
Telephone: (212) 326-2000

Eric W. Snapp
Dechert, LLP
Suite 3400
35 West Wacker Drive
Chicago, IL 60601

Robert S. Hoff
Wiggin & Dana, LLP
265 Church Street
New Haven, CT 06510

Benjamin Franklin McAnaney
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19104

Britta Erin Stanton
John D. Volney
John Thomas Cox III
Eric Wolf Pinker
LYNN PINKER COX & HURST LLP 2100 Ross
Avenue, Suite 2700 Dallas, TX 75201

Amy Riley Lucas
O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067



Michael Burrage

EXHIBIT

1

**CONFIDENTIAL
FILED UNDER SEAL
PURSUANT TO PROTECTIVE ORDER
DATED APRIL 16, 2018**

EXHIBIT

2

**CONFIDENTIAL
FILED UNDER SEAL
PURSUANT TO PROTECTIVE ORDER
DATED APRIL 16, 2018**

EXHIBIT

3

**CONFIDENTIAL
FILED UNDER SEAL
PURSUANT TO PROTECTIVE ORDER
DATED APRIL 16, 2018**

EXHIBIT

4

**CONFIDENTIAL
FILED UNDER SEAL
PURSUANT TO PROTECTIVE ORDER
DATED APRIL 16, 2018**