



OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED

FEB 07 2019

In the office of the
Court Clerk MARILYN WILLIAMS

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.)

For consideration by
Judge Balkman

Case No. CJ-2017-816
Judge Thad Balkman

Special Master:
William Hetherington

**STATE'S REPLY IN SUPPORT OF ITS MOTION FOR PROTECTIVE ORDER
REGARDING DISCOVERY OF MATTERS OCCURING BEFORE
THE MULTICOUNTY GRAND JURY**

In its Opposition to the State's Motion for Protective Order Regarding Discovery of Matters Occurring Before the Multicounty Grand Jury (the "Motion"), Watson Laboratories, Inc. ("Watson") characterizes the Motion as "the State attempt[ing] to circumvent the December 20 Journal Entry and undermine the Court's conclusions as to a thoroughly litigated issue." Opp. at

2. In so doing, Watson ignores that this Court invited the State to seek protection for information that the State believes is required by statute to be kept confidential. *See* Motion, Ex. A at 18. Indeed, while the citations to specific statutory protections were omitted from the December 20 Journal Entry, the Court acknowledged that “it’s implied that [the State is] going to follow the law.” *Id.* As explained in the Motion, this is exactly what the State seeks to do. Title 22, Section 355(A) commits discretion to order disclosure of “matters occurring before the multicounty grand jury” to the judge presiding over the multicounty grand jury. Disclosure of such matters without an order from that court is punishable as contempt. *Id.* Accordingly, the State brought this Motion not to rehash the broad confidentiality arguments that have been litigated and decided, but rather to seek relief from the Court to avoid running afoul of the strict statutory prohibition on disclosure of “matters occurring before the multicounty grand jury” with regard to specific documents that would otherwise be subject to the December 20 Journal Entry.

In its substantive argument, Watson first claims that the relevant statute—Title 22, Section 355(A)—“*does not* address those matters [before the Multicounty Grand Jury] that have already concluded—it *only* addresses disclosure obligations regarding matters that are *presently* occurring before the Multicounty Grand Jury.” Opp. at 7-8 (emphasis added). For three reasons, this is an incorrect reading of Section 355(A).

First, the same statutory language highlighted by Watson in support of its argument—*i.e.*, “matters occurring before the Multicounty grand jury”—is used in Rule 6(e) of the Federal Rules of Criminal Procedure governing grand juries. *See* Fed. R. Crim. P. 6(e)(2)(B). Federal courts are virtually unanimous in interpreting this rule as protecting the secrecy of grand jury materials even after the relevant grand jury proceedings have concluded. *See, e.g., Douglas Oil Co. v. Petrol Stops*

Northwest, 441 U.S. 211, 222 (1979); *In re Special Grand Jury 89-2*, 450 F.3d 1159, 1177 (10th Cir. 2006); *In re Lynde*, 922 F.2d 1448, 1454 (10th Cir. 1991).

Second, despite Watson's argument to the contrary, several of the reasons for maintaining the secrecy of multicounty grand jury materials endure long past the conclusion of a particular investigation. For instance, as the U.S. Supreme Court recognized in *Douglas Oil*:

For in considering the effects of disclosure on grand jury proceedings, the courts must consider not only the immediate effects upon a particular grand jury, but also the possible effect upon the functioning of future grand juries. Persons called upon to testify will consider the likelihood that their testimony may one day be disclosed to outside parties. Fear of retribution or social stigma may act as powerful deterrents to those who would come forward and aid the grand jury in the performance of its duties.

441 U.S. at 222.

Third, under Watson's interpretation, matters occurring before the multicounty grand jury would receive *lesser* protection from disclosure than would such materials presented to a traditional grand jury. Specifically, Title 22, Section 340 prohibits disclosure of grand jury proceedings to anyone other than the accused and the district attorney *without any time limitation*. See 22 O.S.2011, § 340(B) ("Any person who obtains a copy of a transcript shall not reproduce the transcript in whole or in part or otherwise disclose its contents to any person other than his or her attorney without leave of the court. Violation of this provision shall be punishable as contempt."); see also *In re Proceedings of Multicounty Grand Jury*, 1993 OK CR 12, ¶ 10, 847 P.2d 812, 815 (relying on Section 340 in holding that "hearings on requests for transcripts of *previous grand jury proceedings* must be conducted in secret" (emphasis added)). While Watson maintains that its interpretation is consistent with legislative intent,¹ it is unlikely that the

¹ Despite claiming that its interpretation "reflects legislative intent" in that "the legislature wanted to ensure that active investigations before the Multicounty Grand Jury were not improperly influenced," Opp. at 8, Watson provides no evidence to suggest that this was the Legislature's *sole* intent. Indeed, as noted above there are myriad

Legislature intended that the type of sensitive matters typically occurring before the multicounty grand jury should be entitled to less secrecy than those that come before a typical grand jury.

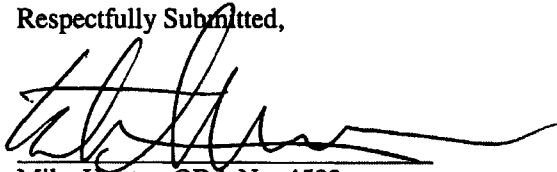
Finally, Watson appears to argue that because evidence presented to the multicounty grand jury may have been provided to the attorney for the defendant, that sole fact renders the documents public. Opp. at 8-9. This is not the law. As the State explained previously, attorneys (including those for a criminal defendant) who receive multicounty grand jury materials may disclose such materials only upon order of the presiding judge. *See* 22 O.S.2011, § 355(A). So while attorney work product protections may be waived upon production to a defendant's attorney, the confidentiality restrictions of Section 355 are not. This is not so different from the production of confidential or highly confidential discovery in this case. Materials so designated that have been produced by the State to Watson's counsel are not subject to attorney work product protections, but they certainly are not public. The Protective Order entered by the Court—similar to Section 355—still prohibits disclosure of those materials to persons outside this litigation without an order from the Court.

Based on the foregoing, the State respectfully requests that the Motion be granted and materials produced by the State to opposing counsel in criminal proceedings that “occurred before the multicounty grand jury” be protected from disclosure in this case.

reasons for maintaining the secrecy of grand jury proceedings both while the proceedings are ongoing and after they have concluded. *See also* Motion at 6 (quoting *In re Grand Jury 95-1*, 118 F.3d 1433, 1439 (10th Cir. 1997)).

Dated February 7, 2019

Respectfully Submitted,



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

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

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Trey Duck, OBA No. 33347
Drew Pate, *pro hac vice*
Lisa Baldwin, OBA No. 32947
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@nixlaw.com
tduck@nixlaw.com
dpate@nixlaw.com
lbaldwin@nixlaw.com

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

**ATTORNEYS FOR PLAINTIFF
STATE OF OKLAHOMA**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on February 7, 2019 to:

Sanford C. Coats
Joshua D. Burns
Cullen D. Sweeney
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102
sandy.coats@crowedunlevy.com
joshua.burns@crowedunlevy.com

Robert G. McCampbell
Nicholas Merkley
Ashley E. Quinn
Jeffrey A. Curran
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson
Oklahoma City, OK 73102-7255
RMcCampbell@Gablelaw.com
NMerkley@Gablelaw.com
aquinn@gablelaw.com
jcurran@gablelaw.com

Steven A. Reed
Harvey Bartle IV
Mark A. Fiore
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
steven.reed@morganlewis.com
harvey.bartle@morganlewis.com
mark.fiore@morganlewis.com

Brian M. Ercole
Melissa M. Coates
Martha A. Leibell
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
brian.ercole@morganlewis.com
melissa.coates@morganlewis.com
martha.leibell@morganlewis.com

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. Lafata
Benjamin McAnaney
Eric Snapp
Jonathan S. Tam
Lindsay N. Zanello
Bert L. Wolff
Marina L. Schwartz
Mara C. Cusker Gonzalez
DECHERT, LLP
Three Byant Park
1095 Avenue of Americas
New York, NY 10036-6797
sheila.birnbaum@dechert.com
mark.cheffo@dechert.com
hayden.coleman@dechert.com
paul.lafata@dechert.com
jonathan.tam@dechert.com
lindsay.zanello@dechert.com
bert.wolff@dechert.com
Erik.snapp@dechert.com
Benjamin.mcananey@dechert.com
marina.schwarz@dechert.com
maracusk.gonzalez@dechert.com

Jae Hong Lee
DECHERT, LLP
One Bush Street, 16th Floor
San Francisco, CA 94104
jae.lee@dechert.com

Rachel M. Rosenberg
DECHERT LLP
Cira Centre, 2929 Arch Street
Philadelphia, PA 19104
Rachel.rosenberg@dechert.com

Amy Riley Lucas
Lauren S. Rakow
O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067
alucas@omm.com
lrakow@omm.com

Stephen D. Brody
David Roberts
Jessica L. Waddle
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006
sbrody@omm.com
droberts2@omm.com
jwaddle@omm.com

Daniel J. Franklin
Ross Galin
Desirae Krislie Cubero Tongco
O'MELVENY & MYERS LLP
7 Time Square
New York, NY 10036
Telephone: (212) 326-2000
dfranklin@omm.com
rgalin@omm.com
dtongco@omm.com

Jeffrey Allen Barker
O'MELVENY & MYERS, LLP
610 Newport Center Drive
Newport Beach, CA 92660
Tel: 949-823-6900
Fax: 949-823-6994
jbarker@omm.com

Britta Erin Stanton
John D. Volney
John Thomas Cox III
Eric Wolf Pinker
Jared D. Eisenburg
Jervonne D. Newsome
Patrick B. Disbennett
Elizabeth Y. Ryan
LYNN PINKER COX & HURST LLP
2100 Ross Avenue, Suite 2700
Dallas, TX 75201
bstanton@lynnllp.com
jvolney@lynnllp.com
tc Cox@lynnllp.com
epinker@lynnllp.com
jeisenberg@lynnllp.com
jnewsome@lynnllp.com
pdisbennett@lynnllp.com
eryan@lynnllp.com

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
odomb@odomsparks.com
sparksj@odomsparks.com
ridgewaym@odomsparks.com
kinnev d@odomsparks.com

Larry D. Ottaway
Amy Sherry Fischer
Andrew M. Bowman
Steven J. Johnson
Jordyn L. Cartmell
FOLIART, HUFF, OTTAWAY & BOTTOM
201 Robert S. Kerr Ave, 12th Floor
Oklahoma City, OK 73102
larryottaway@oklahomacounsel.com
amyfischer@oklahomacounsel.com
andrewbowman@oklahomacounsel.com
stevenjohnson@oklahomacounsel.com
jordyncartmell@oklahomacounsel.com

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

