IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

PART F

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 Judge Balkman's Consideration

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED
MAY 24 2019
In the office of the
Court Clerk MARILYN WILLIAMS

MOTION PURSUANT TO 12 O.S. § 2509(C) TO DISMISS THE STATE'S PUBLIC NUISANCE CLAIM OR, IN THE ALTERNATIVE, EXCLUDE EVIDENCE THAT THE TEVA AND ACTAVIS GENERIC DEFENDANTS' MARKETING INFLUENCED ANY INDIVIDUAL OKLAHOMA HEALTHCARE PROVIDER

defendants' choice if they want to go do that exact same model and find patients who are willing to sit in that chair and say, These drugs have benefitted me. They can do that. What they've been doing for decades is convincing doctors to prescribe these drugs by using exemplar patients. They can do it. And that's why they want this data.

And so they handed you an order just now. We hadn't seen it. It's two pages. I just read it. Judge, in our view, we've discussed it here, that order is deceptive. It says on its face that you can, you know, be the gatekeeper on whether or not they will ultimately contact any of these patients. But make no mistake, that's what they want to do. They want to get their foot in the door with an order like that.

But you'll notice in the last paragraph it says, Without leave of Court. And if that order is signed, the way it's written right now, next week, or whenever they get the data and they run it, you will have a request in front of you and probably every week after that, asking your permission for these defendants to go contact patients in the state of Oklahoma based on data that the State safeguards.

Now, if your Honor does not intend to grant those requests, then we can take out any of that language about without leave of Court. There's no need for it. If the defendants truly don't want to contact any of these patients, then they will agree that we can take out that language,

Without leave of Court. But I bet they won't agree to that, Judge.

Even if we did have the order in place, I really don't think the State would feel comfortable. Judge, we don't look at the patient information. This legal team here hasn't seen the names. We aren't contacting patients. The State has been appointed the guardian of this information for the indigent people of Oklahoma who are on the State Medicaid program.

Judge, even if there's an order in place that doesn't allow the defendants to contact patients directly for third party discovery, how can we know whether they're doing it anyway. And I'm not trying to throw accusations at all, but Judge, orders have been violated in this case time after time after time, and I have no reason to believe that a new order would be any different.

And Judge, we know that covert activities have occurred in this state since the filing of this lawsuit to prevent this case from going to trial. We know for a fact that these defendants contacted a high profile PR firm in Oklahoma City and offered them tens of thousands of dollars a month to disseminate negative campaigns against this lawsuit. Thankfully, that PR company declined the offer. Right?

And so we know that they've contacted lawyers in this state. We know that they have contacted people. We know they have set up rallies at the State Capitol. All of that is aimed

directly at this lawsuit.

And so without being incendiary, Judge, that two-page order doesn't give us a whole lot of comfort that people, indigent people in the state of Oklahoma, won't be rung up on the telephone one evening out of the blue by a lawyer for the defendants and all of a sudden being asked questions about their use of opioids. It shouldn't happen, Judge, and we don't think that there's anything in this case that should require it.

And on the issue of requirement, there's one thing that Mr. Brody kind of glossed over in his HIPAA argument. HIPAA is a backstop in this case. We wanted a HIPAA protective order. We had to, because we've been asked to produce a ton of information, we have produced a ton of information, and some stuff might sneak through.

There's no way to prosecute this case on the timeline that we're prosecuting it without having a HIPAA protective order. But there's one thing that HIPAA protective order does not do. It does not require the production of any protected health information, and nor should it.

Now, Mr. Brody spoke specifically about a statement that I made. Now, I knew what I was talking about, what data I was talking about. And at the time, we hadn't produced it; we didn't know what the rulings were going to be, so I couldn't discuss publicly what that data was. Happy to do so now

because we've already produced it.

And it wasn't claims data. It wasn't prescription data. It was the Oklahoma Health Care Authority's internal records, e-mails, where employees of OHCA are e-mailing back and forth about whether a particular patient should receive a certain drug because this patient called in and said this and that about their life and why they need this drug.

We went through all of those e-mails. It was 40,000-plus e-mails, after we got the ruling from Judge Hetherington and we redacted the identifying information, because that's just not fair to put those e-mails in these defendants' hands, Judge. It's just not fair.

We produced them, all of them. It took us about three or four weeks to get it done, and we've been doing that ever since. To date, your Honor, we have produced 1,150,000 pages of documents in this case. And they say we've produced nothing.

We've produced 9 million lines of prescription claims data. Mr. Brody says that that's minuscule. Judge, we have done what is required of us. That database of 9 million claims, we redacted the names from it. We did that before they even filed any of this.

The question you asked Mr. Brody about whether if you had this information just de-identified, whether that would help, we gave that to them months ago. They've had it.

Now, the question about matching the databases, this is the first I've heard of it. These databases are so large, you can't -- we can't open them on computers. Your computer would crash if you tried to open it on your computer. So we don't have, personally in our law firm, the technology to open them.

This is the first time I've heard the numbers didn't match up. If that's true, and I'll verify it, our intention is for them to be able to match using these alphanumeric numbers all the way through all the databases that we produced. If we failed to do that, we'll fix it.

What they shouldn't have are totally de-identified, unmasked databases that they can then use their technology to manipulate and run all these theories and then contact patients with.

One other thing about the -- what we're doing in this case. Using the statistical sample that Mr. Whitten described, we're going to prove our false claims case and some other aspects of the case, and we have gotten our hands on some medical records.

They've been De-identified. They've been redacted. But we have not seen the names. This legal team has not seen the names on those medical records. I don't know the exact number, but when they are ready and when the statistical model is ready to go, the defendants themselves will have these medical records De-identified. And they will be able to look at them

and do every single thing that we can do with them.

The point there is, Judge, there is no prejudice. Defendants have IMS data. They can contact doctors. They can find patients who will testify for them because they want to show success stories, is what they want to do.

They will have any medical record that the State has its hands on. The State likewise will not have the identifying information. The State likewise will not be contacting those patients in those medical records. So it's an even playing field, Judge.

One last thing on the data that the defendants have requested. Judge, they also requested the State employee database. That's in the State's possession. The State provides health insurance and pharmacy benefits to its employees.

There are a number of people in this room who are in those databases whose identifying information is in those databases, including their families. I don't know if that's true for your Honor, but if your Honor is on HealthChoice, the defendants have asked for that information De-identified.

I know there are people on our legal team who are in that database. The defendants want it. They want it De-identified. We don't think it's fair for the employees of this courthouse, the employees of this state, to be forced to have their information turned over to these defendants for them to do with

what they please.

One last thing before I sit down, Judge. This issue about whether or not they're going to contact people, when we sit here and think about it, you know, we deal with the employees of the State that are handling the Medicaid program. They run it. It's a completely difficult, cumbersome job.

They have obstacle after obstacle to get this done, to get these people the medications that their doctors have prescribed. They have dedicated their lives to public service and to this program, and they care deeply, deeply about their patients.

We've talked to them about this issue, and they're horrified. The employees of OHCA are horrified that this identifying information may make its hands -- into these defendants' hands, the same defendants that created and promoted these drugs, and in our view, lied to the people of Oklahoma.

And in discussing this issue with some of the employees with OHCA, we were sitting around thinking about, you know, the poor man or woman sitting at home in Oklahoma who's on State Medicaid, and one of these defendants calls them up, one of these defendants sends them a subpoena, asking them about what they've done with opioids, why they need them, what their doctors said about them.

And it is just a horrific situation, and this Court is the

only thing that's standing between the defendants and that happening. And we don't think that a two-page order is going to help us there.

So Judge, this conspiracy is ongoing. It has not stopped. These defendants have not even tried to hide anymore that they're working together to defend this lawsuit. They will continue to conspire to preserve the profitability of these drugs. They will continue to conspire to find new markets for these drugs. They've already taken their model to Europe, and they're trying to do the same thing in Europe that they did here.

Judge, our view is that this data is sensitive and must be protected, and unfortunately, we are dealing with very strategically minded defendants who intend to use that data to benefit themselves in ways that should not be allowed.

Thank you.

THE COURT: Thank you, Mr. Duck.

Mr. Brody, I'll certainly allow you to follow up.

MR. BRODY: Thank you.

There was a lot in both of those, your Honor. Very little that had anything to do with the discovery standard with the law, with the HIPAA regulations, and with the order previously entered by this Court. I did hear, however, from Mr. Duck that apparently, if the Court enters an order that prohibits these defendants from doing something, Mr. Duck thinks that the

defendants are going to violate that order.

That's a ridiculous argument. It's offensive. And it, frankly, is no basis to deny the relief that is being sought here, one. And two, there's no basis under the law to deny the order and to deny this relevant and indeed critical discovery based on a statement from opposing counsel, from the State's contingency counsel, that counsel thinks that, you know, maybe a defendant might violate an order if the Court entered an order on this.

I'll address the points that Mr. Duck made first, and I'll come back and address the points that Mr. Whitten made. Mr. Duck spent a lot of time talking about this conspiracy theory that he says the State intends to pursue and argued that under their theory of the case, the differences between the defendants' medications are not material.

And again, this gets back to the point I made in my argument, which is, you know, they're entitled to try to prove their case however they want, but we're entitled to the information that is relevant to the claims and defenses. And that's under Oklahoma law.

We are entitled to defend this case in the way we think we need to defend the case with relevant information, and those differences between medications ultimately are likely to prove to be very important in this case. They're important in particular to the public nuisance claim, to the idea that

somehow this is a, in the State's view, single and divisible injury as opposed to a divisible injury.

There are differences. There are significant differences between the medications at issue. These are competitors who have been sued. There are also an extraordinary number of factors that other actors are involved in that come into the prescribing of opioids, the provision of opioids, monitoring opioid use, treatment of substance abuse, treatment of some of the other alleged harms that the State alleges resulted from what they claim to be improper marketing and promotion.

So that's number one. You know, it's fine, they have their theory. We look forward to showing that there is no basis to that theory, to refuting that theory, but we need the information in order to do that and to do it in the way that the defendants want to rebut these claims.

Second, Mr. Duck said that the State doesn't have IMS data. The State has requested it from us, and the defendants are producing all of the IMS data that the defendants have. I believe we have already done the bulk of that, if not all of it. In addition, they have sent a subpoena to IMS for data because the defendants don't have a complete set of IMS Health data.

Now, IMS Health data, as I explained, that's not a substitute. It is a projection based on information drawn from pharmacies about which doctors prescribed opioids. It does not

tell you whether a doctor who prescribed opioids in the state of Oklahoma wrote a prescription that was reimbursed by Medicaid that the State contends one of the defendants should be penalized for as a false or fraudulent claim.

This is a case seeking civil penalties. They want to penalize us because a doctor wrote an allegedly false or fraudulent prescription, and they don't want to tell us who the doctor was. It's no answer to say, Well, you get this estimate and this snapshot, and your sales force, based on which doctors were prescribing your drugs, promoted to different doctors. And I can give you an example that has come up in discovery that shows, you know, one reason why this is significant.

You have in the briefing, and your Honor has excerpts from transcripts of sales representatives, and this was actually the State in its own brief on the objection, excerpted some of this and said -- you know, showed where they were asking a sales representative whether they promoted to a certain doctor, who was later subject to an investigation and legal action for improper prescribing.

And so what they can do is they can take the IMS data that we've given them, they can ask the sales representatives, Did you promote to this doctor, did you think there was anything wrong with that. We don't know if at the same time the State was investigating a doctor for the improper prescription of opioids, the State was simultaneously reimbursing and paying

for that doctor's prescriptions when they knew or should have known that there was something going on, that there was in some cases criminal activity going on. They are hiding that information from us. That's just one example.

Mr. Duck said, Well, the defendants can go out and they can subpoena doctors, they can subpoena patients who they, you know, happen to identify through other means. Well, that doesn't address the question of what the data shows. That doesn't address the question of, for example, did patients who received Medicaid-reimbursed Duragesic prescriptions utilize substance abuse services, emergency services, inpatient services, outpatient hospital visits, as the State alleges, at a greater rate than non-Duragesic patients. Were there any differences. The data speaks to that question.

It also speaks through coordination with other sources of discovery; law enforcement records, office of the medical examiner records. Speaks as well to the question of whether those ancillary injuries, additional injuries, some of them significant injuries under the State's theory, whether those were, in fact, things that occurred at greater rates in patients getting different medications, whether it's Duragesic, whether it's OxyContin, whatever the medication is; whether it's Opana, an opioid manufactured by Endo, who is not a defendant in this case.

I don't know where to start on the allegation that

defendants are conducting covert activities. I don't know where that's coming from. Maybe we'll see something about it later on. It has nothing to do with the issue that's before the Court.

The idea that multiple defendants in a case who have a joint defense agreement because they've been accused of something are somehow continuing a conspiracy, simply there's no support for something like that.

So I want to turn and address one last point that Mr. Duck raised -- two last points, actually. He indicated that the HIPAA protective order doesn't require them to give us unmasked claims data.

What the order states is that the protected health information disclosed under this protective order is necessary for litigation in the above styled action and that the public interest and need for this disclosure outweigh any potential injury to the patient, the physician/patient relationship, and treatment services.

And so what we are looking at for purposes of this discovery is, Is it privileged. The answer's no. Is there a privacy interest that protects it. The answer is no. Is it proportional. The answer is clearly yes, given the sweeping allegations that have been raised and given the fact that we're talking about data, data that is, by the way, in data sets that are administered largely by outside vendors that the State

contracts with to house that data.

Now, I want to address the six points that Mr. Whitten outlined in his argument. He did start, by the way, by pointing out what I think is important. This is a situation where the Court has to undertake de novo review and to consider all of the arguments that are being made regarding the need for the importance of, the relevance of this data.

He also began by characterizing this as an effort to delay. You know, frankly, the only thing about this issue that it has been delayed is defendants getting the data. If we get the data, you know, this issue is over. Nobody's talking about delaying the trial date because we get data.

We should have gotten the data a long time ago with the HIPAA protective order, with the standards for discovery. This is data that was requested in January, and the State has resisted it; doesn't want to -- for some reason, wants to hide it from the defendants. It has not yet been given to us.

I addressed the fact, the argument, well, we have the names of the doctors and explained why the IMS data doesn't answer the questions that the data that we need from the State will answer, that will allow us to evaluate, will allow us to analyze.

Mr. Whitten said it will be burdensome, the discovery will be burdensome. We've seen not a single affidavit, not a single piece of evidence, absolutely nothing about burden. And in

fact, everything suggests that not undertaking a masking process before producing information to us is less burdensome.

That was one of the things that the MDL Court looked at was, easiest thing to do, least burdensome thing to do is just produce the data.

Third, he indicated that in his view, it was not proportional and tied that into what was another point of his, a separate point. He actually used not proportional, and then here's how we're going to prove our case as somewhat related.

And Mr. Whitten told the Court that the data is unnecessary based on the way the State will try to prove its case. Indicated that, in his view, the State has a right to try to prove their case by statistical sampling. And they have a right to try to and prove their case any way they want.

He mentioned the Burgess case. The Burgess case, there's a footnote in the Oklahoma Supreme Court decision in the Burgess case. It does not provide any support for the idea that the State could prove the allegations in this case through a statistical sample of Medicaid claims.

Burgess simply involved a case where a statistical sample was used, apparently without objection from the defendants, to estimate the number of insurance claims that included a request for reimbursement of contract or overhead and profit. That's it.

That was described in a footnote to the Supreme Court

opinion. The Oklahoma Supreme Court did not pass on the legitimacy of that even there. That is a very, very different thing than what the State is talking about here, which, again, they haven't revealed it, but seems to be somehow trying to capture the causation question and the causation element associated with their claims in their statistical sample.

And in that way, it is also very different than the other cases they ever cited in their briefing on this. You know, False Claims Act cases, where it's simply an effort to estimate, for example, Well, how many claims were upcoded for higher reimbursement before they were submitted to Medicaid, that's very different than the question of, Well, did some fraudulent promotion cause a doctor to write a medically unnecessary and inappropriate prescription which then led to adverse consequences at a greater rate than had the patient not received the medication at all. But that's a question that will be before the Court at another date.

The question now is, however they're going to try to prove their case, and they can try to prove it however they want, the defendants, under Oklahoma law, are entitled to the information that is relevant to defending that case.

And the last point that Mr. Whitten made, he said, Well, this is premature expert testimony. We're not asking for their expert model. We're not asking for their expert theory. We're not asking for details on how it is they intend to use some

statistical sample to clear the hurdles that they're going to have to clear here.

We're asking for relevant information that is in the possession of the State. That's it. And we have offered the Court a way for the Court to resolve any concerns about contact of patients, contact of doctors, who are included in that data, and we've offered a proposed order that does that.

And the idea that somehow, well, you can't enter that order because either they'll be back here asking for leave of Court, well, leave of Court can be denied, that's easy; or the order will be violated. It's a baseless and frankly offensive accusation, and it's not a basis for the Court to deny the relief that we're seeking here.

Thank you, your Honor.

THE COURT: Thanks, Mr. Brody.

MR. WHITTEN: May I very briefly touch on a couple of those points? I won't go into everything, but just a couple.

First, your Honor, I think it's very important not what Mr. Brody said, but what he did not say. Let's start out with what he did not deny. He did not deny what I pointed out that their original pleading said they were going to depose all of the doctors and all of the patients. No denial. There wasn't a denial when I pointed it out in front of Judge Hetherington either.

Secondly, he never denied that they've pivoted from that

first statement in their brief. Okay. We might not need to take all the depositions of all the patients or all the doctors. That is a huge point, because if they can live without deposing all the doctors and all the patients, they are home free. They are free to call any doctors in the state of Oklahoma they want, subject to whatever the Court says about how many of them. Obviously, we know they can't call 42,000. We'll never try the case if that's true.

Same thing for patients. They can go out and do what they did. They can bring in patients that are not bothered by turning over all their medical records to the whole world, and they can bring in exemplar patients, like they did in the Purdue video. They never denied that.

Now, Mr. Brody's making a statement, I think it's a statement of law, and he's entitled to his opinion. But he said, We can defend the case any way we want, and that was argued last time in front of Judge Hetherington.

I submit Oklahoma law disagrees with him. You can't defend the case any way you want if it's too burdensome. You can't defend a case any way you want if it's not proportional. And you can't defend a case any way you want if you can't get confidential medical records of people that don't want to give them up. So to that extent, he is just dead wrong.

Now, he misperceives my argument, and even his own slide that he put up in front of the Court shows he misperceives it.

He doesn't understand my argument that they are trying to delay the trial.

As one of his slides showed, Mr. Duck conceded, we can turn over if the Court orders all the records have to be turned over; that's not even what we're arguing as burdensome. It's the fact that once you get 9 million sets of records -- I'm sorry, 900,000 patient medical records, how are you even going to have time to read them all before our trial. That is impossible.

How are you going to have time to depose the folks that you do want to depose. Not possible. And why would you want to allow it anyway if we can't call them all at the trial. That's the whole point. This is not a class action, but it has some similarities.

In the Burgess case, only an exemplar plaintiff, the class rep, was tried, and the rest of the class had to live with that. Nobody called any of the other 10,000 class members in that case. That is how this case, a false claims case, should be tried and all the cases. He never even responded to my cases where I said, a case of this type on a state can prove a false claim by using a statistical sample. There was no response to that.

And last but not least, he was not there during the almost week-long class certification hearing in the Burgess case. I was. Judge Burrage was. The other side -- it's a Crowe &

Dunlevy case. They were there. Crowe was in this case.

That was vigorously objected to that you could do this by statistical sampling. When you look at the footnote in the Supreme Court of Oklahoma, it said we could use statistical sampling to prove a case like this, even a case that involved fraud and bad faith. It was a very significant opinion. There's no ifs, ands, or buts about it. It is a relevant opinion.

And we have stated our position. We'll either live or we'll die by the statistical sample. And so there is no need to force all this burdensome, nonproportional, and confidential discovery on the State, the taxpayers, and all these individuals who do not want their medical records brought to attention.

The last thing I'll just say, not one word was said about the document that I brought out where Mr. Brody's client said that it is stigmatizing to have the use of opioids come out. I can see why he doesn't want to talk about that. That just furthers my argument.

My medical records are mine. I don't have to turn them over. And everybody in this room has the same right. They don't have to turn them over unless they place them at issue. But that doesn't mean the State of Oklahoma is without a remedy. They have a right to pursue a False Claims Act and prove it by statistical sampling.

I do have one more point, I forgot, one more last point. The statement that Mr. Duck made about a PR company being contacted by one or more of the defendants, I want to make sure that everybody understands we are not criticizing any of our friends, our lawyers on the other side of the case.

I have no doubt, they're probably unaware of that. I have no doubt somebody out of state, higher up than these fellas, knows exactly about it, and maybe they should go ask about it, because that happened. That call was made. We were contacted by that PR firm, and they gave us a warning that these defendants over here, or some of them, were intending to hire PR companies to make Mr. Burrage, me, and Attorney General Hunter look bad. That happened. And we haven't sought Court intervention yet. Maybe they can go talk to their client and say, we don't practice law like that here in the state of Oklahoma. But I'll just leave it with that.

THE COURT: Okay.

Mr. Brody, I'll give you the final word.

MR. BRODY: Thank you, your Honor.

Just so there's no confusion of the issue here, you know, I keep hearing references to 900,000 sets of medical records. We're talking about the claims data. We're talking about unmasking the identifying information so that we can actually, through different data systems, evaluate the State's claims.

Nobody's talking about, you know, Patient Jones' medical

records from the doctor's office. That's not the information that is sent when a claim is reimbursed, and that's not what we're talking about.

We're talking about things like the MMIS database. We're talking about the State Mental Health Services database. We're talking about the Fatal and Intentional Poisoning System that's maintained by the Office of the Medical Examiner. And so I don't want there to be any confusion on the Court's part.

It's relevant, it's significant, because getting the data is not going to delay. And as I stated, you know, the only thing delaying this is what is prejudicing the defendants, which is not having relevant information that goes directly to rebutting the claims, disproving the claims that have been asserted against these defendants.

And under the Oklahoma discovery rules, under the standard for discovery in Oklahoma, this is not privileged. We have a HIPAA qualified protective order. It allows this discovery. It's relevant, and it's proportional to the needs of the case. And there's no threat that this is going to -- nobody's talking about 900,000 depositions. Nobody's talking about 42,000 depositions. Nobody's talking about 950,000 stacks of medical records. We're talking about a database.

Thank you, your Honor.

THE COURT: Thank you, Mr. Brody.

I appreciate the parties' extensive arguments and

briefing. The ruling I'm going to make on this request to -- or on the objection for the discovery master's orders, I've decided that I'm going to overrule the request.

I don't agree that the law entitles the defendants to the claims data for their defenses. I'm convinced that it's not relevant to this case. And also, I'm concerned about the undue risk of exposing confidential data that's been stated in arguments this morning.

This case, according to the petition that's been filed in the case, or in this matter, does not put these patients or doctors on trial. I will reiterate what Judge Hetherington said in his October 10th order. In fact, I'll read from it.

Defendants now have and will receive more specific patient and prescriber information in this manner and as a part of the proposed expert statistical modeling sample and will be entitled to appropriate discovery.

As has been stated by the State this morning, the State intends to use sampling and will, I believe, shortly be rolling out their expert reports. I believe that will provide the defendants with the pertinent discovery information that they seek.

So for those reasons, I'm going to overrule the request.

MR. BRODY: Can I ask for clarification, your Honor?

THE COURT: Yes.

MR. BRODY: That we will get the masked data that

we're seeking and that we as, you know, Mr. Duck said, this morning, he said he would be happy to talk about figuring out why it is that the masking process they have been using so far doesn't allow by that De-identified number tracking through the system.

And so for clarification, I just want to be sure we are going to be getting that information and that your order does not preclude us from getting that information with the masked data.

THE COURT: Well, Mr. Duck, do you want to respond to that?

MR. DUCK: Yes, your Honor. I think the next step here, and it makes sense, is for us to have a conference about that between the parties. Our intention is where at all possible, to provide them with masked data that they can track over 115:03 (inaudible). If we have failed in that endeavor, it was unintentional, and we will try to fix it if we can.

Sounds like they've got a really good grasp on what needs to be fixed. I would like to take that back to the folks that handle this data and see if we can get it done. But our intention is to do exactly what Mr. Brody's asked. I just need to make sure we fully understand what he's asking for and that we're capable of doing it.

MR. BRODY: And my intention, your Honor, was just to be sure that your order entered today doesn't preclude us from

getting that information.

THE COURT: It does not.

MR. BRODY: Thank you.

THE COURT: Let's go ahead and take a 10-minute break. Let you all get a drink or go to the bathroom. We'll start up again at 11:25.

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

THE COURT: Judge Hetherington said he's going to order pizza for all of us to stay here through lunch. I'm just kidding. I plan to work until we get done. We'll take another break at the hour or so just to give, if nothing else, Angie a rest for her fingers, but I don't plan on taking an extended lunch break.

Next I would like to take up the motion by Watson Laboratories on the information regarding criminal administrative proceedings.

Mr. McCampbell, are you going to take the lead on that one?

MR. MCCAMPBELL: Yes, your Honor.

THE COURT: Okay.

MR. MCCAMPBELL: This morning when your Honor was announcing kind of the form that we would go in today, your Honor discussed that this would be the motion about trying to discover privileged material from the State. And it was

concerning to me because it's exactly what we're not trying to do.

And so anything they've got that's attorney-client privilege, we don't want any of that. We've said all along, we don't want any of that. Anything they have which is attorney work product, we don't want it, we've never wanted it, and we said all along we don't want it.

Preparing last night, I made a list of things which are definitely not privileged and which are relevant to this lawsuit, definitely responsive to the request. If I could approach the Court?

THE COURT: Sure.

MR. MCCAMPBELL: And I would ask that this be marked as a Court's Exhibit, please.

THE COURT: We can mark this Court's Exhibit 1.

MR. MCCAMPBELL: Thank you, your Honor.

So I made a list of things. I forgot about press releases, and so I just handwrote that at the bottom. A press release is obviously not privileged, and lots of other materials we're talking about in cases brought by the State. Think about, for example, discovery materials.

Every case they bring, civil or criminal, there's discovery materials. It's produced to the defense lawyer. It's not privileged. It's produced to the defense lawyer. And this motion is definitely not about trying to get any

privileged materials.

Number two, my argument today, your Honor, what's good for the goose is good for the gander. And we've had this entire argument in front of Judge Hetherington in the spring on the same issue except the roles were reversed.

In the spring, the State wanted to discover litigation files from when we had been involved in other opioid litigation. We objected, and we lost, and we were required to produce that information. And there was a lot out there.

There's a civil case in Kentucky that had a lot of documents, a criminal case, criminal investigation out of Pennsylvania, where a lot of documents were produced. And what I'm asking is what's good for the goose is good for the gander. Just as we had to produce our litigation files, the nonprivileged portions of those files, the State should have to produce the nonprivileged portions of those files.

One of the arguments of the State at the time was, Well, there's discovery exchanged, it's all electronic, all you've got to do is just punch a button, produce it. Whatever was produced in discovery in Kentucky or Pennsylvania or wherever, punch a button, produce the same thing in Oklahoma.

Same thing can happen here. Whatever civil and criminal and administrative proceedings are out there, whatever was exchanged in discovery, it's out there, it's Bates labeled, punch a button, produce it again in this lawsuit.

Now, one difference between the State's request and our request today. What the State requested was information on opioid litigation in other states based on other facts, because that might be relevant to something that happened in Oklahoma.

Understand our request today, it's on these facts in this lawsuit, these facts in this state. It's the exact same facts the State is suing on. The exact same opioid pills, the exact same opioid prescriptions they want to hold us liable for, that's the discovery we're asking for. Those cases.

Now, it's unquestionably relevant. As the Court will recall from the briefing, some of these we've been able to find, you know, from newspaper accounts, for example. One of them was Dr. Valuck. Dr. Valuck got out of prison, was allowed to practice medicine in Oklahoma, prescribed opioids. Some of his patients died. He ended up having to plead guilty to second-degree murder.

There was civil follow-on litigation, civil follow-on litigation against the pharmacies that allowed those prescriptions to go out. There's a case called Carista against Valuck, Oklahoma Civil Appeals. I've got a copy here if the Court wants it. Westminster Pharmacy said, Well, we shouldn't be liable for Dr. Valuck's conduct on giving these prescriptions. The dismissal of the pharmacy, that was affirmed on appeal by the Oklahoma Court of Civil Appeals.

There's another case coming out of Dr. Valuck. This one's

called Frantz against Valuck. Frantz, F-R-A-N-T-Z, I've got a copy of that. The pharmacies were Crest Pharmacy and Buy For Less Pharmacy. Same thing. They get dismissed because they're not responsible for Dr. Valuck's criminal conduct in making those prescriptions. That dismissal was upheld by the Oklahoma Court of Civil Appeals.

We want to defend on the same basis. Just as the pharmacies weren't liable for Dr. Valuck's conduct, we're not liable for Dr. Valuck's conduct. And we're entitled to do discovery on the facts of Dr. Valuck's case. He's not the only one. There's eight of them that we've been able to find from newspaper reports, but the State knows there are others. There's others out there the State knows about. We don't. And we're entitled to find out who those doctors are and find out the nonprivileged information that's out there about those cases so we can defend.

How else is it relevant. As we pointed out in our briefing, one of the State's theories in responding to the -- in responding to interrogatories, and we quote that interrogatory in our briefing, is that, Well, the doctors can't be responsible for their prescriptions because of the misrepresentations by the companies.

So we want to look at the files where they have brought civil or administrative or criminal actions against the doctors and see what happened there. So did they say in those cases,

Well, the doctor's not responsible because that doctor was misled by the manufacturers? I don't know, but we're entitled to find out.

And I think the State's going to try to have it both ways. When the State wants to penalize the doctor, the State's position is, the doctor is responsible for that prescription. When the State wants to penalize the manufacturer, the State's position is, No, the doctor's not responsible for that prescription. We're entitled to find out the facts.

Now, at trial, we can have a healthy debate about what inferences to draw from those facts, what do those facts mean. I get that, and we will have a healthy debate about that. But we're not there yet. This is just discovery. These facts are unquestionably relevant. They are not privileged. They ought to be produced in discovery.

In argument today -- in their pleadings, in the petition, and in argument today, Mr. Duck says, Well, it was the company's misrepresentations that caused these prescriptions to be made. It's not a small number. For the eight we can find in the newspaper, over 35 million pills. And we're entitled to prove it was not our misrepresentations. Obviously, we think there were no misrepresentations. But the cause of those prescriptions, it was not us.

In the case of Dr. Thomas, the cause of the prescription was because he was making deals with the patients. He would

give them the prescription, the patient would kick back some of the opioid pills back to Dr. Thomas.

In the case of Dr. Jenkins, Dr. Moses, Dr. Nichols, they were pill mills. They were doing it because they wanted money. There were cases out there where the doctor gives the prescription in return for sexual favors.

Well, the company, the companies, the manufacturers are not responsible for any of that conduct. We're entitled to defend and define the facts necessary to defend that we're not responsible for those cases.

And one of the big questions here is how many others of those are out there. How many other cases are there out there where the State has brought a civil, administrative, or criminal proceeding against a doctor for opioid prescription and we don't find them because they're not in the newspaper. There's going to be nonprivileged documents about every one of those, and we're entitled to those things.

There is no question these documents are relevant to our defenses. The State offers various objections, and those objections do not prevent discovery. As we've discussed, all we're asking for are the nonprivileged documents. No matter what kind of arguments they want to make, there are certain documents out there that definitely ought to be produced. Press releases would be an obvious example.

Another objection they make, apparently, in one of the

questions, we don't specify; we're just asking for opioid cases. But let me be clear. We're just asking for the opioid-related cases against the doctors, is the kind of thing that could have and should have been worked out at a meet and confer. In any event, we're just talking about the opioid cases.

Also, in those underlying cases, all sorts of material was produced in discovery. And so whatever was produced to a criminal defense lawyer, for example, there is no privilege, there is no reason not to produce it.

And all of these objections the State is now making, none of those prevented -- prevented them from complying with their discovery obligations in the criminal cases. None of those prevented them from complying with discovery obligations in civil cases.

The State also wants to say, Well, we want to produce only the things that are subject to the Open Records Act. Well, certainly, they should produce everything that's subject to the Open Records Act, but there's plenty of things out there that are not privileged and also not subject to the Open Records Act.

For example, a correspondence with opposing counsel, not privileged, not subject to the Open Records Act; documents exchanged in discovery; documents obtained through a subpoena; statements of the accused, if the accused makes a confession,

for example, all sorts of things. Unquestionably relevant; not privileged.

Next, the Discovery Code Section 3226 clearly entitles us to this. This is routine discovery, and based on the case the State has chosen to bring, there's also, of course, an important due process element.

The State wants to punish us. So they're not only asking for liability damages; they want to impose penalties under the Oklahoma Medicaid Integrity Act. They want to impose penalties under the Medicaid False Claims Act. The government wants to punish us for this conduct, and at the same time, deny us access to the facts the government has. They want to deny us access to those facts to defend ourselves. It's a clear due process violation, and the law is clear on how to handle it.

So it happens all the time, for example, that there's parallel civil and criminal investigations out there. And the government will come in and ask to stay the civil case because civil discovery is going to discover things that would harm their criminal case.

Well, here, the State wants to have its cake and eat it too. They want to have the civil case and go forward with it so there's no stay, but they also want to deny the discovery. Well, you can't do that.

I also would point out Section 2509. If I could approach the bench? 12 OS 2509, and it deals with when the government

is -- when the government's refusing to produce materials. And it says here, you know, if the government does that, if the government privilege is sustained and it appears a party is deprived of material evidence -- this is definitely material evidence -- then the Court makes other orders in the interest of justice.

And if you look at the end there, dismissing the action is one of the things the Court can do. So let me be clear. I'm not asking you to do that today. We're not there. My point is, the law is clear and it happens all the time.

The government doesn't get to have its cake and eat it too. If it's going to keep things secret, it can't move forward. Well, here, the government clearly wants to move forward, and I get that. So we ought to have discovery. This is routine discovery. The due process clause requires it, and we should go forward.

So there's all sorts of nonprivileged documents not subject to any privilege which are relevant. Most importantly, this is discovery. There are other cases out there we don't find in the newspaper. We're entitled to know what those are.

It should not be a case of blind man's bluff of us stumbling around trying to guess where that might be. They've got it in their files. They can just produce it to us and let the chips fall where they may. Let's get the facts out. That's what discovery is for. We can argue later about what

those facts mean.

We quoted Justice Scalia's language from the General Dynamics case about the height of injustice. And it would be the height of injustice here to allow the government to come forward and punish us based on these facts, and the same government denies us access to the facts they have which allows us to defend ourselves.

It's exactly what the discovery code is designed to prevent. It's exactly what the due process clause is designed to prevent. So just like we had to produce the nonprivileged portion of our litigation files to the State, the State should have to produce the nonprivileged portion of their files to us.

Thank you, your Honor.

THE COURT: Thank you.

Go ahead.

MR. DUCK: Trey Duck on behalf of the State.

Your Honor, I would like to start by reiterating a point that Mr. Whitten made this morning when he started his argument, which is that the dispute that's now before you is the culmination of months of discovery disputes, of months of arguments and hearings and meet and confers, et cetera.

We try to boil it down to the issues that are most relevant, but I'll admit that's a bit difficult to do, because what these defendants have asked for here is quite sprawling, and there is a lot of overlap in what they've asked for.

But we'll do our best to explain why what they've asked for in general just should not be produced, both for legal reasons and procedural reasons and for really good public policy reasons, which I'll address in turn.

First, your Honor, a lot of the examples you've heard about when criminal material has been produced in civil litigations is when you actually have a true situation of a parallel proceeding; meaning that the exact same defendants in this civil litigation are also being prosecuted in a criminal proceeding. We don't have that here.

So the direct overlap that Mr. McCampbell is trying to paint for this situation doesn't exist. We'll admit there are some criminal cases that deal with prescribers of opioids and their actions. But one thing has to be made clear today. We don't know anything about them.

When we started working on this case, outside counsel and the AG's office, who have been delegated to this case, the civil lawyers, it was made very, very clear to us that we would not have access to and we would have no overlap with any of the criminal prosecutions.

No one on our team that's prosecuting this case has seen any of the material, other than public material, that Mr. McCampbell has referenced. We haven't seen investigator notes, which they asked for. We haven't seen grand jury transcripts, which they've asked for. We haven't seen witness

interviews, which they've asked for.

We don't plan to see them, we haven't asked for them, because the AG's office has been very, very diligent and careful to keep those things separate. Why? Because, Judge, the AG's office is the internal legal department of the State of Oklahoma.

Now, the defendants like to blend the State and the AG's office together entirely as if they are one entity, and that's not true. Each of these defendants, likewise, has a legal department that is handling confidential arbitrations, confidential settlement negotiations, other civil litigation, maybe even criminal litigation that we don't know about.

Now, we asked for some information that had been produced in state opioid litigation in the past, because frankly, we thought it would serve everybody's interest to get that easily identifiable to us to cut to the chase.

What have we not asked for? We've not asked for these defendants' legal department's notes. We haven't asked for any of their attorneys' markups of settlement agreements. We haven't asked about confidential arbitrations that they may be prosecuting or defending. Why? Because that's their legal department.

Well, the AG's office is the State's legal department, and the defendants want to come in and ask for all of the internal material for every other case that might touch on opioids.

Now, on that point, let's be clear. A lot of these pill mill doctor cases that the AG's office is prosecuting -- and by the way, everything I say about a pill mill doctor prosecution is something I have garnered from public information on the internet.

It's not just about opioids in some circumstances. They've identified a number of different prescribers, some of whom are actually being prosecuted by federal prosecutors, not the State. So we wouldn't even have any information anyway.

But the fact that there are pill mill doctors in this state is something that in this litigation, even though we don't have access to that information, we have never run from. And why is that? Well, Judge, one of the first things we did in this case when we got the information from the defendants that we requested, was we went to see who they had targeted.

That IMS data we talked about earlier this morning, they use that to find doctors they want to send sales reps to, and we have, in some instances, lists of who these defendants sent sales reps to. Well, guess who were at the tops of all of their lists? The doctors, who are now being prosecuted for overprescribing.

So the defendants say, Well, those doctors are at fault for doing that, and the doctors do bear responsibility. The AG's office is prosecuting them in actions we're not familiar with because of that. And despite their overprescribing and

despite these doctors being willing to hand these drugs out like candy, the defendants would still send sales reps into those physician's office to fight for market share.

Hey, this guy, Dr. Jenkins, really prescribes a lot of opioids, let's go in and make sure he's prescribing Nucynta. Purdue says, Let's send somebody into Dr. Jenkins' office and make sure he's prescribing opioids, let's buy him meals, let's host CME events at his office. All of that happened, Judge.

Now, what Mr. Jenkins did and is being prosecuted for is important. The defendants profited from it, and they took advantage of the situation.

Another thing that ties in with this, Judge, is no one here will ever say that there is a sole liability for one defendant causing one prescription that shouldn't have been written. We've never said that. We've said the opposite. They worked together to do this. They succeeded in doing it.

And on top of that, the OUJI on causation here in Oklahoma is really clear. There can be more than one cause. And in some of the situations, I'm sure we'll see, there was more than one cause. But a primary cause and a cause that cannot be denied, we believe, is that the defendants' aggressive marketing tactics caused all of the overprescribing, or at least they took advantage of it in an unlawful way to profit from it.

Now, Judge, Mr. McCampbell wants to draw the line between

privileged and nonprivileged. I don't believe the briefs do that. It's clearly -- I believe there's a little bit of a pivot there, because investigation files are clearly privileged. What state investigators do and think, as an extension of the AG's prosecution team, is obviously work product that should not be discoverable.

Let's talk about what happens if those are turned over. Well, investigators, prosecutors, anyone working in an investigation file in the future will be really hesitant about what they write down. It will have a chilling effect on the efficacy of our investigators. It will prevent them from pursuing leads that they may not otherwise pursue.

And the end result, Judge, is that the investigators and the prosecutors will not be as well equipped to protect Oklahomans from the criminals and other bad actors that are out there. Surely that's not what the defendants want.

And Judge, they make a very -- they spend a lot of time on due process, and they say, if you don't give us this privileged information, investigation files, grand jury transcripts, if you don't give us this privileged information, you'll be denying us due process.

Judge, the exact opposite is true. If this Court requires the State to produce privileged information, that will be violating due process, because those privileges are put in place to protect the procedures that the public and the State

of Oklahoma are entitled to, to protect the citizens and to prosecute criminals.

Now, Mr. McCampbell drew some comparisons between what the defendants have produced from other litigation and what they've asked us to produce from criminal investigations. One thing can't be forgotten here. The State is not like corporations. There's one really key difference.

The State of Oklahoma is a sovereign that has been charged by its people under a constitution recognized by the United States Government to prosecute criminals and to protect the public interest. The defendants do not have a corresponding obligation. The defendants' sole obligation, as we've seen in all of the documents, has been to make money for their owners, or their shareholders. There is no parallel to be drawn here.

The State simultaneously has the power to prosecute criminals and bring civil litigation to recover money that the State should not have spent and for damages that were incurred. The defendants do not have and will never have those parallel powers.

What defendants have asked this Court to do is make the State choose whether it will pursue criminal actions against pill mills or whether it will pursue civil actions against people like these corporations or defendants like these corporations. And nowhere in history has that been appropriate.

The State should be allowed to make those parallel prosecutions happen at the same time. If this stuff is turned over, if we're compelled to produce it, you know, I assume a criminal division of the AG's office will scramble to uncover what it is they believe the Court has ordered to be produced from the hard drives and other network, files that we have never been given access to. It's a process that we likely won't be involved in at all because we're not permitted to see it either.

And then the very next thing after that is those prosecutors will think, Well, what next. We've got five other people on our list we haven't filed charges against. There's a bunch of other pill mills we were going after, how do we do this. Should we cease all written communication since this stuff now is going to be out in the public. Maybe we just don't pursue them at all. Maybe the State just needs to put all of its baskets -- all of its eggs in the basket of civil litigation.

Well, Judge, the State should not be put to that choice, but our fear is that if this request of the defendants is granted, that's exactly the choice that the State will have to make.

Next, your Honor, there are a number of other protected measures out there that the defendants have ignored here. Criminal courts place restrictions on the sharing of

information.

There are sealing orders in Federal False Claims Act litigation that literally prohibits all of the litigants from sharing any of the information. So we could be in a situation where there are criminal courts or federal False Claims Act cases where you have conflicting orders, orders from those courts, saying, You can't share this information with anybody and an order from this Court saying, No, you've got to share that information. And we'll have litigants potentially all over the country, if this reaches into False Claims Act litigation, that don't know which order to follow.

There will likely be satellite litigation as a result of it. There is a False Claims Act Division in the AG's office that then will have to figure out what they need to do, and we have all of these inconsistencies.

Now, what will the defendants say is wrong with the argument I just made. It's pretty simple. They're going to say, Well, there are protective orders in this civil litigation for the cases that they were ordered to produce documents from. That's true. There are protective orders in those cases.

The protective orders that we've seen from other civil litigation and the protective order in this case allows for the sharing of confidential information between state governments. So there may be a protective order I haven't seen that doesn't have that provision. But the point is the information we've

received from other state litigation, information that in the future might be shared with other states in other litigation, that's specifically contemplated in the protective order. So it's not a situation where you have conflicting orders from different courts about whether the information can be shared.

We have this list of documents from Mr. McCampbell. I want to make sure the Court is clear on one thing. We're producing documents in response to these requests. This is not a blanket shutdown, you're not getting anything. It's just not. There are a number of things on this list that we will be producing. There are a number of things on the list that we don't think we should have to produce.

But orders, hearing transcripts from public hearings, briefing by the party that was -- parties that was filed in a nonsealed case, public informations and indictments, judgments and sentencing, final orders, we're going to produce that stuff.

That's the kind of thing that is subject to the Open Records Act that we've already agreed to produce and have been working to produce. In fact, I think that the defendants already have a lot of this information.

Going beyond that not only would be improper for all of the privileged and protection and public policy reasons we've discussed; will also be very, very burdensome to the State of Oklahoma. And the value that the defendants may derive from

any of that information does not exceed that burden.

How do I know that? All of the information that we've used about those pill mills, defendants cited in their brief. They've got like 45 footnotes in their briefs to URLs and links to click to go online to read about these prosecutions. That's the exact same material that I and our team went and looked at before we took depositions.

In those depositions, we asked sales reps:

Mr. Smith, do you know who Dr. Harvey Jenkins is?

Yes, I do.

You visited him, didn't you?

Yes, I did.

Did you know that he has been now prosecuted, is being prosecuted for running a pill mill?

They either say yes or no.

But you went and saw him anyway, didn't you?

That's the extent of the questioning that we've done. Everything that we need to ask those questions, we gathered from public information. The defendants have access to it. They proved it in the footnotes.

So where does this logically lead us to. We've got some questions about that too, Judge. But one thing I know is that we found ourselves in a bit of an odd position, given that on the other side of this case are two former U.S. Attorneys in the state of Oklahoma, both of whom, based on public

information, prosecuted pill mill doctors.

Mr. McCampbell himself is actually in the database of documents that the defendants produced to us in this litigation. It's marked confidential, the document that Mr. McCampbell's name is in, but it references an article that he was quoted, and it related to the prosecution of an online doctor who was prescribing narcotic painkillers online. Mr. McCampbell himself prosecuted that case.

So where does this lead to. Did the federal government through the Eastern District, Western District, and Northern District of Texas fail to prosecute appropriate pill mill doctors in this state? Did they do it adequately? Is there information there? Does Mr. McCampbell himself, does Mr. Coats himself know of situations where there's information that would be beneficial to the State?

We don't know. And at this point, your Honor, it is conjecture other than the articles we've seen. And I'm not suggesting that the State has any intention of exploring that in discovery or otherwise. But that is the logical extension of where this goes if the defendants are successful in this appeal for the State to turn over investigatory information.

The fact of the matter is there are people on the defense side with relevant information about the exact same thing. We don't think it should go that far right now. We don't know where this case will go in the future. But that is the logical

extension, Judge.

And so, with that, we would ask this Court to be the gatekeeper of the system of justice that exists in the state of Oklahoma. That system has and hopefully will always have the right to jury trials in both criminal and civil litigation.

The State is the only authority in state courts to bring both of those kinds of cases. In this case, we are not looking at any of the information in the criminal cases. So to preserve that system of justice, to prevent a chilling effect, to make sure that Oklahomans are kept safe by the criminal prosecutors who are appointed to prosecute people like pill mill doctors, we would ask this Court to keep all of this information protected.

We will make sure that the defendants have all of the information that is subject to disclosure that is in the State's possession related to criminal prosecutions and administrative proceedings. We've already done it. We'll continue to do it. And hopefully, that will put an end to this so that we do not have to keep bringing up these issues of whether or not the State can fulfill its role as a protector of Oklahomans.

Thank you.

THE COURT: Thank you, Mr. Duck.

Mr. McCampbell, do you want to reply?

MR. MCCAMPBELL: Mr. Duck argues that he hasn't

looked at these documents we're asking for, and I get that. But that's not how discovery works. I want to look at the documents because I think they're going to help my client, and the fact that the other side hasn't chosen to look at them and get to them, that's not the test. The test is I'm allowed to discover this information to defend my client.

By the same token, what's good for the goose is good for the gander. None of us here in Oklahoma, none of us defending, the Oklahoma lawyers, we didn't see any of the documents about the Kentucky case or the Pennsylvania case or any of the cases in other states, but that doesn't mean they weren't discoverable. Those documents were discoverable.

Mr. Duck mentions that there would be attorney markups and legal notes at the AG's office. Let me say again we don't want any attorney material. We don't want their markups. We don't want their legal notes. We don't want any attorney-client information.

He mentions grand jury transcripts. Grand jury transcripts get turned over in every single criminal prosecution. There's the Blasdel case from the Oklahoma Court of Criminal Appeals. There's Jencks against the United States. Every single prosecution.

But let me also say, Judge, the grand jury's transcripts aren't a big deal for us. If that's what's holding the Court up, just say they don't have to produce grand jury transcripts.

That's not it. It's finding out about those other cases, the other cases that are out -- that we don't know about.

The other cases that are in their files where they know a doctor was prescribing opioids inappropriately, but that doctor didn't get prosecuted for some reason. For example, what if the doctor passed away, so there would be no reason to bring a case, but they're still trying to hold us liable for those prescriptions. We're entitled to find out about those things.

He mentions federal prosecutions, they wouldn't have any documents. But they would have documents. So the case I prosecuted, Dr. Ricky Joe Nelson was opioid pill mill over the internet, prosecuted it here in Oklahoma City. Of course, I worked closely with the Oklahoma Board of Medical Licensure. Of course, the Oklahoma Board of Medical Licensure would have documents concerning that case, even though the actual -- the criminal prosecution took place in federal court.

The other thing that happens routinely -- and I confess I don't recall if it happened to Dr. Nelson, but I bet it did. Once you get to criminal conviction, what happens is the agency, the licensing agency gets a certified copy of that, uses that in a licensing action to revoke the person's license. So once again, of course, there would be nonprivileged documents in the State's possession on those instances.

Mr. Duck argues, Well, there's not just one cause of an event and wants to argue that, Well, it's the manufacturers

were the cause of this event. I want to argue, no, it was this criminal activity by the doctors were the cause of the event.

Mr. Duck and I can have a healthy argument on that. I have no doubt we will continue to have a healthy argument about that. But today, it's just discovery. Let us get to the facts so we can have an argument based on the facts, not just lawyers arguing with each other.

Mr. Duck also says, Well, gee, if you turn this over in discovery, what does that do to the investigators, how are those investigators and agents going to feel about that information getting out. I've worked with agents and investigators for years, and they all know from the very first document they start on a case, eventually, all of that's going to be turned over to a criminal defense lawyer. That's how the game works. Everybody knows that.

And just as it gets turned over to a criminal defense lawyer or just as it gets turned over to the defense lawyer in a civil case, it ought to be turned over to us in this case. Not going to be a surprise to any investigator or agent that that's what happens.

Mr. Duck mentions pending -- or pending investigations that might ripen, and what do we do about those. Well, there's a couple of answers. Number one, the State has chosen to be in this position. They have chosen to say we're going to bring a case based on all the opioids in the state. They have created

their own problem.

But again, if there's a particular file they want to hold back, something that's eminent, you know, we can talk to them about that. We can work with that. But there's thousands of pages of other things that are way done, way in the past, defendant's already sentenced and gone to prison, license is already revoked, thousands and thousands of pages that there's nothing sensitive in there and there's nothing privileged in there.

He also argues, Well, there may be sealing orders in these other cases that govern this, and he's right. I am going to argue the same thing happened when they were asking for our files. One of the problems was there's sealing orders in these cases in other states. And he roared right past that. No, they have to be produced in Oklahoma.

The other really practical answer to that is if there is a sealing order out there, let's deal with that when we come to it. There's thousands and thousands of nonprivileged pages for which there is no sealing order, not a reason in the world they can't produce it to us and produce it to us now.

Mr. Duck points out, Well, we are producing documents based on the URLs where we cited where we found things in the newspaper. But understand, one of the main things we've asked for and one of the main things we're hoping this Court will order is what about the cases we don't know about.

What about the doctors that it hasn't gone to court yet for one reason or another, but the State has the information. And the State's trying to punish us for that conduct, but is denying us the facts to defend ourselves.

It's basic discovery, basic due process, and the Court ought to allow us to get those documents.

Thank you, your Honor.

THE COURT: Thank you.

MR. DUCK: Briefly, your Honor?

THE COURT: Yeah, that's fine.

MR. DUCK: Well, we heard a lot about choice just now, and one thing is really clear, Judge, and that's that the State of Oklahoma did not choose this opioid epidemic. We did not choose to be in this situation. The State did not choose to be under circumstances where Oklahomans are dying every day at a rate of up to ten people a week. No one would choose that.

Despite very clear evidence that an epidemic would occur if defendants did what they did, the defendants chose to move forward with their aggressive marketing campaign. And they knew, they had to know, what would happen.

They had to, because every single time in human history that people have been given widespread access to opiates, every time, dating back millennia, the result has been overdose, addiction, and death, period.

Same thing happened here. Defendants chose to aggressively market their opioids despite that knowledge, despite that history. Defendants say that we have chosen not to look at the criminal files. Judge, I did not make a choice not to look at those criminal files. I'm not allowed to look at those criminal files, because the law doesn't permit it.

We haven't seen them not because we're trying to be sneaky and we think that if we haven't seen it, then they don't get it. We're not allowed to look at them. That was made clear from day one. That was no choice by this civil team.

Another point that we heard was about sealing orders. I want to be clear about one thing so we're not confused. There are sealing orders and there are protective orders. To my knowledge, I'm pretty sure this is true. I don't think we've gotten anything subject to a sealing order that shuts down the public access to a case.

When a sealing order is in place, the public doesn't even know the case exists. Right? And I don't think we've ever been given anything by the defendants that was subject to a sealing order. If I'm wrong about that, I'm sure we'll hear about it.

Then there's protective orders, which just protect the confidentiality of certain discovery information. We have received information subject to protective orders. Those protective orders contain provisions that allow that sharing.

The same is not true for what defendants are asking for because we have both sealing orders and protective orders that don't have sharing provisions in them for the files they're after.

Last, Judge, there are two types of investigations we're talking about. And one are old investigations. We think that information is privileged as well. But think about the currently -- the investigations that are currently occurring.

They've asked for those specifically by name. Give us your investigation materials for investigations that are currently ongoing. No good can come from that. The State just should not be required to divulge what it is currently investigating in realtime to parties who are not interested parties being prosecuted in the litigation, period.

And I think there was some conflating of those two different things there. But it does seem very clear to us that the primary focus of the defendants here is to get open investigation materials, and that's some of the most sensitive stuff out there.

We would ask that the Court affirm Judge Hetherington's order. We think it was the right order. It was based on the law, it was based on the facts, it was based on the needs of this case. And we would ask that it stay in place.

Thank you, Judge.

THE COURT: Mr. Duck, Mr. McCampbell gave me this

outline of examples. Tell me specifically on here things that have already been or the State's agreed to share and what you're not wanting to share.

MR. DUCK: I will do my best to address that. We lawyers, I think, being creatures of organization and wanting to fit things neatly into boxes, this list is very broad and it's hard to know exactly what Mr. McCampbell was contemplating for a lot of these, but I'll do my best to address it.

Any filings in criminal, civil, or administrative litigation that are public filings that are not subject to a protective order or a sealing order, we will produce. Now, some of those are available online for the defendants. Despite that, we will pull them for them. Others are not publicly accessible. I guess theoretically, they could go to the medical examiner or the medical board's office and request certain filings and pay for them, or they could go to clerks' offices and request for public filings when they're not online. We're not going to put them through that.

If it's publicly available filed transcripts, pleadings, orders, et cetera, in both criminal and civil administrative proceedings, we will produce them. To the extent they're asking for anything that is not filed with a tribunal, that is what we believe is work product, which would include the entire investigation file, we at this point in time and based on Judge Hetherington's order, do not have an intention of producing

that.

I can talk to my client and see where we stand on some of the communications that are referenced in here. Part of the issue -- and I'm not trying to evade your question -- since I haven't seen this stuff, it's hard for me to know where it exists, how easy it is to get, whether it's co-mingled with other things. But I can talk to Abby and other folks at the AG's office and see about some of the communications.

My sense is that if there are communications to outside parties, you know, where the information has already been made public and it's easily accessible, et cetera, then we're probably not going to have a problem. I just hope I'm not getting in trouble with my client right now. But I think that will probably be something we can do.

Obviously, final orders, judgments, sentences, that would include things like a revocation of a physician's license, you know, the final result of whatever the proceeding is, we'll produce that.

What we will not produce I really think can be summed up as investigation file materials. So what does that mean. I think it means most of the things that are in No. B1 for pending litigation in the criminal context, I think that would mean witness statements made to prosecutors. I think that would also include documents received by subpoena in the criminal context. And I think that covers most of it.

Are there any other particular categories here that I haven't addressed? Our goal -- just to put it simply, our goal is to give them everything that we're allowed to give them. Our second goal is to protect the things that the State needs to protect in its interest, and it's really as simple as that.

Thank you, Judge.

THE COURT: Thank you.

Mr. McCampbell, do you want to respond to that?

MR. MCCAMPBELL: If I could be heard on just the list, your Honor.

THE COURT: Sure.

MR. MCCAMPBELL: First, I want to the make sure we're clear on the pleadings and orders and everything we're discussing. At one point, there was some discussion about giving us that on the eight cases we found in the newspaper. I think we're agreed now it would be any cases, whether we've -- the eight we mentioned, or any other cases out there; pleadings and orders and things like that.

MR. DUCK: I think we need to look at the actual discovery requests and see. I certainly don't want to overcommit to something that I don't even -- because I don't even know the size or the magnitude of this deal. I haven't seen where the State keeps all this.

I don't know how many cases they've got. I don't know how many investigations they've got. So I think we need to look at

what they've actually requested, and if they requested it and it's the pleadings, et cetera, that you just mentioned, then I think that we can do it.

MR. MCCAMPBELL: So on that one, your Honor, we have requested it. We're here, we've litigated it in front of Judge Hetherington, we've litigated with you. I think we're entitled to an order on that.

If I could also address Item B1, the items that have already been produced to a criminal defense lawyer or a civil defense lawyer, if it's already been produced to them, it's not privileged. None of these things Mr. Duck's complaining about applies. If it can be produced to those lawyers, it ought to be produced to us.

The expert reports. The expert reports are going to be important because they're going to tell us how many pills are at issue. And once again, on the cases that are done, that would have been turned over in discovery anyway, so that would be done.

And I say again, if it's a current case against a doctor who doesn't know he or she is under investigation yet, we can talk about those. I understand the sensitivity on that. But there's thousands and thousands of pages out there on cases that either they've already been done, or they're not going to happen for some reason, and everybody knows they're not going to happen. And none of that is sensitive. That ought to all

be produced, given the case the State has chosen to bring.

Thank you.

THE COURT: Okay. You've asked me to -- I mean, this is a de novo review of Judge Hetherington's decision, and I'm just kind of struggling to figure out what it is that you didn't like about it. I think I understand it now, and that is the defendants are wanting to look at, you know, things that are -- the State might have the key to that are criminal administrative proceedings that are not privileged. Again, I'm having a hard time getting my head around what that might be, and you've kind of helped define it.

I think I'm inclined to deny the request to overrule, but I want to make sure that I also leave the door open so that the State is required to produce to the defendants documents that have previously been produced, as Mr. McCampbell I think just said just a minute ago, to other criminal defense attorneys. I think that's a reasonable request. I think that's probably in line with Judge Hetherington's previous ruling anyway.

My concern in not expanding or not granting the defendants' further relief is I do believe that we have to be careful to not have a chilling effect on law enforcement and prosecution. Mr. McCampbell even stated as much a minute ago with the recognition that in some cases, open investigations, that that could definitely be a concern.

And so the bottom line is I think that the parties need to

have further meet and confers on whether or not the State has complied with the request. But I think to the extent that the defendants just want to completely open the door to any information that the State has by virtue of it being an entity that prosecutes people, I don't think that they just get unfettered right to have all those documents.

I agree with what Mr. Duck stated earlier. Just because the State of Oklahoma prosecutes cases, doesn't mean that in the civil case they have a requirement to turn all that information over to the defendants. And I'm not sure the defendants necessarily want all that either.

Mr. McCampbell, I have in my notes that, you know, at the beginning you said, who are the doctors, we want to know who are the doctors. Tell me what further clarification you need from me so that you feel like you can get the information you need from the State as far as who are the doctors.

MR. MCCAMPBELL: Well, yes, your Honor. Documents, certainly every case, every civil, administrative, or criminal case brought against a doctor, and the documents that they know where they had suspicions or probable cause, or whatever you want to call it, that a doctor was prescribing opioids illegally, and that a case was not brought for some reason.

And --

THE COURT: So cases brought against doctors and --

MR. MCCAMPBELL: Cases brought, or they've received

information about suspicion about that doctor, but a case was not brought for some reason. So we could try to uncover the facts on, you know, maybe there's nothing wrong there or maybe it was millions of pills changing hands but the doctor passed away and there was no -- there is no case, and there's no public record of it. But we would be entitled to that. So that.

Also, if I could ask for one clarification of your Honor's order. You mentioned that we should receive whatever documents got produced to a criminal defense lawyer, that ought to be produced to us. And I think the same logic would apply to civil defense lawyers. If documents were produced in civil cases, I would think that the Court's order would say those ought to be produced just as well.

And yeah, civil. And when I say civil, I'm counting administrative as civil, your Honor.

THE COURT: With the caveat that those are not privileged? You're asking for nonprivileged?

MR. MCCAMPBELL: Correct. If it's been produced to your adversary in litigation, it would not be privileged.

MR. DUCK: We have a response that might help streamline some things. Based on what we've heard, I don't think there's any need to modify Judge Hetherington's order, because on record today, to the extent it wasn't clear earlier, I agree on behalf of the State to produce a lot of the things

that they have requested.

I just spoke to Ms. Dillsaver. We would be willing to give them, the defendants, to the extent they don't already have it, a list of the criminal proceedings that have been filed, whether they're open, and those that have already been closed. What we can't do is provide a list of those that were passed on for whatever reason, those investigations that occurred where no filing followed.

There's a few reasons for that. A lot of them, the statute of limitations may not have run. You might find out something else in different investigation, reopen the investigation, and now all of the prior investigation materials have been produced in civil litigation, et cetera.

But we can give them a list of the proceedings that have occurred to date, closed and currently open, just not the investigation files associated with those. Then they'll know the identities of these physicians.

You know, they do have subpoena power with this Court. I don't know whether to what extent these defendant doctors are under some confidentiality requirement themselves, but we'll at least give them a list of those names.

The other things, the pleadings, et cetera, I think that Judge Hetherington's original order contemplates that we are already going to turn over the public information, and we're committed to do that.

MR. MCCAMPBELL: So, your Honor, just as I'm thinking about it, the list, that would be very helpful. The pleadings in all the cases, not just the eight we found in the newspaper, very helpful. And then I think we're also at documents produced to the opposing lawyer in civil, criminal, or administrative proceedings. Is that where we are?

MR. DUCK: I don't think it's not where we are, Judge. I mean, we're there. I just don't know how many cases that is, and so -- or what it all entails because I haven't seen it. So I think we're there. But I just want to reserve the right for us to look at it and talk about it.

Our intention is to turn over all the public documents that they've requested that relate to criminal, administrative, and civil proceedings that we can. So we're committed to do that and we will, barring some unforeseen circumstance that I haven't seen because I haven't looked into some of these files.

One other point, though, Judge, we would like, to the extent there is any patient information in any of these documents that eventually is turned over, you know, we would like for the same privacy.

THE COURT: Right. That would be consistent with my previous ruling.

MR. DUCK: Yes, your Honor.

THE COURT: I think we ought to all look at page 6 and 7 of Judge Hetherington's order October 22nd. I want you

to tell me from the defendants and from the State, what specifically, needs that you're requesting be modified based upon any common ground we found here in court today.

MR. MCCAMPBELL: Sure. So right at the end where he says Watson's motion to compel, investigative -- investigatory files is denied, I think we're now agreed that it would be granted as to the list of doctors they're going to provide us, the pleadings in all the cases they have, not just the eight we found in the newspaper, and documents they've been -- produced to opposing counsel in civil, administrative, or criminal proceedings.

I think we're now agreed on all of those, which would be more than what Judge Hetherington gave us. And then I would respectfully continue to ask for the other things, the -- well, yeah. So the other things on cases that didn't ripen into a case that went to court, for example.

THE COURT: And I think that's where I have a hard time granting you that request, because, again, I have this concern about a, you know, perhaps chilling law enforcement effect. If there's a doctor out there that for some reason or other, the State still may be looking at but they haven't proceeded, you know, I can't grant that.

If there was an investigation -- I think Mr. Duck used an example, maybe the State dropped the investigation because he died. Okay. If there's two of those, throw those in there

too. But I can't grant that to include just any investigation that still might be open, because I think it presents too much of a risk and a chilling effect on those prosecution efforts.

MR. BARTLE: Can I make one point?

THE COURT: Sure, Mr. Bartle. Go ahead.

MR. BARTLE: Thank you, your Honor.

We would ask for a list -- we need the files. We would ask for a list of the names of the doctors, which you just discussed, to where a case was not proceeded against. As Mr. McCampbell mentioned under the evidence rules, if we're denied material evidence, we're entitled to later move the Court to limit this case and to later move this Court to allow us or to prohibit the State from proceeding on any prescriptions related to those doctors.

And if the Court is going to deny us the opportunity to get information about doctors for whom the case did not ultimately bring a -- the State did not bring a criminal case, when we can't even get access to know who they are, then they can't later seek to hold us liable for those prescriptions under our theory of the defense.

So we would be entitled under the evidence rules to then move this Court to limit and reduce the amount of prescriptions the State is seeking -- for which the State is seeking to hold us liable.

They've argued earlier in this case and many others -- or

in this hearing and others, we're responsible for every opioid -- every opioid prescription issued in the state of Oklahoma more than three days' prescription or not for end of life palliative care. That would necessarily include doctors for whom they haven't brought a criminal case if he died, if a witness died, if the statute of limitations passed.

So we would be entitled later to move under the evidence rules of Oklahoma to limit the State's case, and we would ask this Court to at least order the State to give us a list of those doctors so that we may appropriately move this Court at a later date when we seek to limit the scope of the plaintiff's case.

THE COURT: And so I guess I would ask the State, you know, granted -- given that there's a protective order in place, you know, how would that still -- what concerns do you have with that request by Mr. Bartle?

MR. DUCK: Couple of different concerns, your Honor.

First, I actually don't think -- I think we're quibbling over the term investigation file. I think we're using it differently. We understood Judge Hetherington to mean the actual investigation file. But the pleadings that we're talking about turning over and any communications made to outside parties not subject to a protective order, that's not, in our view, investigatory material. So we're going to turn that over.

On the list of doctors who ultimately were not prosecuted or, you know, disciplined, that could be a pretty long list. And I don't know the obligation of investigations that apply to the attorney general's office or to the state boards, but I suspect that they operate off of tips or, you know, complaints that are made. And I also suspect that many times, those complaints turn out not to pan out.

And we would be in a situation where we are dragging innocent doctors' names through the mud in some of those situations because the State followed up on a complaint. And I assume the defendants want to contact these people. Why else do they need their names?

And just to be really clear on this point, there are some bad doctors that prescribed opioids in this state. By and large, the vast majority of physicians that prescribe opioids in this state were lied to by these defendants, were victims of the aggressive marketing that they undertook, and would be appalled to learn some of the truths that we've learned about not only these drugs, but the defendants in this litigation. And to drag their names, these innocent parties' names through the mud for no reason, strikes us as entirely inappropriate and unnecessary.

We just are willing to give them those -- the list of names of doctors who have been disciplined and/or prosecuted, including those names of people currently being prosecuted,

filed charges.

THE COURT: Here's what I'm going to do. I'm going to order the State to produce a list of doctors who had been previously investigated, but are currently no longer, with the reasons why. And I'm going to order that produced to the discovery master, and I'm going to ask him to make a ruling on whether or not that should be shared with the defendants.

MR. DUCK: In camera?

THE COURT: Yes.

MR. DUCK: Is there a time on that?

THE COURT: I'm asking you to produce it. You tell me how much time you need.

MR. DUCK: Abby's saying at least 30 days.

THE COURT: Well, I'll give you whatever to the first of the year is. Okay. By January 1?

MR. DUCK: Okay. Thank you, Judge.

THE COURT: Okay?

All right. Anything further, Mr. McCampbell, on your motion?

MR. MCCAMPBELL: No, sir. Thank you.

THE COURT: Okay.

MR. DUCK: In all other respects, though, the discovery master's order is confirmed, we don't need to change -- I mean, we've agreed to produce what we said we were going to produce, what we think is consistent with that

order.

MR. MCCAMPBELL: I'm sorry. I thought we just went through this. So we get the pleadings and all the cases, not just the eight, the things that were produced to opposing counsel in civil, criminal, and administrative. What was the third category. So no, it's not the same as what Judge Hetherington said.

THE COURT: We modified his order, and I think I would like to ask, Mr. McCampbell, if you'll take the lead in maybe preparing a proposed order to submit to me that would reflect the amendments to the order?

MR. MCCAMPBELL: Yes, sir.

THE COURT: Okay.

MR. DUCK: And we agree to produce those, and we believe it's consistent with the order. But we will absolutely go to work to get that material.

THE COURT: Okay. Thank you. We're going to go ahead and break again, and then when we come back, I want to take up the defendants' objections to the discovery master's ruling on the State's corporate representative topics. Okay? It's 12:36. How about 12:55? 12:55.

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

THE COURT: All right. We're going to take up the request for status conference next. I understand we've got

some folks that can't stay, and that's fine. No problem doing that.

Mr. Beckworth, you can address the Court.

MR. BECKWORTH: Yes, sir. Brad Beckworth for the State, your Honor. Thank you.

We filed this motion for status conference, and it's been a long time since we've all been before your Honor. I think our last session with you was sometime in August.

THE COURT: You've made up for it so far today.

MR. BECKWORTH: Get ready. I think for this whole thing to make sense, I need a little leeway to put some things in context and give you an update of where we are. We've moved through a lot today.

I'm going to start with depositions. It's a major issue. Some of this, you've heard before, but we'll build the timeline. If you'll recall, April 2nd, we noticed two corporate depositions of Purdue. One was about abatement, and one was about the New York Times.

Sometime shortly after there, we noticed a deposition of Purdue about some of their financial documents. I'll get to it in a minute, but those are the only corporate rep depos we've taken of Purdue to date, so just keep that in mind as I go through this timeline.

We noticed those depositions April 2nd. Between April 2nd and the 5th of April, we found out that Purdue was not going to

produce those witnesses, nor were the other defendants. We filed motions to compel on April 5th. We had a hearing. On April 25th, Judge Hetherington issued an order.

He granted our motion to compel related to the New York Times deposition with some limitations. He also told us that we could take the deposition on abatement, but we would have to re-notice it with some limitations about the scope of that. We did that.

On May 4th, we re-noticed the New York Times deposition for May 10th. We were told witness wouldn't be available. We moved it to May 23rd. Then it was asked to be moved again. It got moved to June 15th. June 15th is an important date.

May 24th, we sent notices on 41 topics of corporate representative depositions to all three defendants. We're still trying to take those depositions. That's a major issue in our status conference motion, and as I go through the conduct that's led us to this point, I think it's important to understand what has and hasn't occurred.

On June 13th, two days before the first set of depos were going to actually take place as ordered by Judge Hetherington, the defendants filed their, what we say, is a fraudulent removal. No discovery took place. You're familiar with that.

August 6th, the case was remanded. As you know, we immediately re-noticed all the depositions that had been noticed prior to removal. August 10th, you held a status

conference. And one the issues there was what do we do about these deposition notices that we've redone.

And your ruling with respect to that was those depositions to which Judge Hetherington had already ordered should go forward based on motions to compel, motions for protection, whatever, had to get done by the end of the month.

The remainder of those depositions, we would present to Judge Hetherington so he could decide what to do with them because we hadn't finally decided any objections or motions related to those.

As you'll recall, we were back in the courtroom downstairs on August 20th. That was because Purdue was not willing to produce a witness, and Johnson & Johnson was not going to produce a witness as had been ordered.

We filed a motion to show cause, and your Honor said, We don't have to decide whether I have to take action on this, because I'm telling everybody I expect those depositions to go forward. Those depositions did, in fact, go forward, but that's what it took to get them done.

With respect to Purdue, I took a deposition of one witness on two topics, the New York Times and abatement. Mr. Leonoudakis took a deposition here simultaneously with the hearing, lasted about four hours, on some financial matters related to Purdue. We're going to get to what happened there in a moment. We took a deposition on abatement with each of

the other defendants. There's been a handful of other depositions with the other defendants, but not with Purdue.

Let me just stop right there. In one of the defendants' briefs that talked about what depositions have and haven't occurred, they said we didn't tell you the truth. Well, that's not true. They said 33 depositions, or something like that, had taken place.

The depositions that have taken place are with sales reps who we went out and subpoenaed in the state of Oklahoma. And if you'll recall, after the remand occurred, we had to go back out and do it again, and there was a big kerfuffle about whether we could take those depositions during the pendency of the removal. So when we're talking about corporate representative depositions, the number we gave you is right.

On September 27th, mind you, your Honor, this is more than a month after we were last before you, we still hadn't taken any of the other corporate rep depositions other than the ones you had to deal with. So we had a hearing with Judge Hetherington, and during that hearing at his request, we met about having a protocol for corporate representative depositions going forward.

And at his direction we all agreed upon a protocol of a manner in which we would let the defendants know what we intended to take, try to reach an agreement on that. And then Judge Hetherington said, Look, if you all can't get to an

agreement, we've got to move this along, everybody's got my cell phone number, y'all call, let me know if you need to have a hearing, and let's deal with stuff as soon as we can.

Nobody objected to that protocol. Nobody appealed it to you. And nobody at all objected to the process that Judge Hetherington put in place. That's what we've been dealing with this entire time.

Now, that protocol didn't necessarily pertain to the 41 deposition topics that had been noticed prior to that hearing because, as we argued, those were noticed under the rules and the scheduling order as we knew it to be. So we asked for help on that as well.

We tried to get those depositions taken. Didn't happen. We told Judge Hetherington that during this protocol process on talking about how we were going to do this going forward, we would talk again about those deposition topics and what we were -- when we could take them and what we were going to do.

In response to that, we got what I will tell you, in my opinion, was very, very unreasonable responses from the defendants. Let me give you some examples.

Teva came to us and said -- wrote a letter to Judge Burrage and said, You only get one deposition in this case for a total of six hours. One. Purdue said, We're going to give you 15 topics on one day, and then we'll maybe give you another witness. Johnson & Johnson came back with a proposal of 27

topics to take place over two days.

Now, Judge, as you know, this is a case that spans almost 20 years. As they've proclaimed many times, there's now somewhere between 40 and 50 million pages of documents produced by the defendants; collectively, we've produced well over a million. It's a lot. You know that. I don't need to repeat that. But 6 hours or one day to take 15, 18 topics, it wasn't reasonable.

We had a meet and confer, and I asked all the lawyers -- they're working together, and there's a joint defense agreement -- whose position are we going with. Do you all agree that it's really six hours. Well, even the company that said that it was six hours wouldn't stand by that. The others said, We don't -- one said, I don't know where that's relevant, and one said, I don't know what our position is.

We had a lengthy meet and confer. We said we weren't going to abide by the six hour deal, we'd have to take that up with the Court. They finally relaxed on that. And ultimately, we told them we would take all their proposals and we'd try to group them up together, send them back to them, and see if we could come to an agreement.

Unfortunately, we were not able to do that. So on October 4th, we filed a motion to compel about these 41 deposition topics. Now, again, your Honor, I gave you a timeline earlier. Those are the same 41 topics that we have been dealing with

since May. Still had not taken any depositions other than the ones that you ordered.

Then we had to have a hearing. That was October 18th. During that hearing, for the first time, the defendants asked that Judge Hetherington limit the amount of time that we could take with respect to those 41 topics.

On October 22nd, Judge Hetherington issued an order, and we'll hear argument I think on that -- appeal of that order here in a minute. But it's important to the whole context. In his order, he said with respect to those depositions, that we would be limited, the State, to 80 hours per defendant, and he talked about a procedure for how that would happen. And he overruled all the objections to it and specifically said those depositions were going to go forward.

I read the order, thought I read it correctly, I sent an e-mail to everyone, including Judge Hetherington, and said, We just want to make sure we understand this hour limitation. Immediately, we got into a dispute with the defendants about what was meant.

So Judge Hetherington had to have additional briefing. And on that additional briefing, we got into a new issue led by Purdue. And I think it's important. I'm going to point out where the defendants have acted independently where I can, but Purdue's been the frontrunner on a lot of what I'm going to be talking about today.

Purdue said, Judge, you meant you only get 80 hours of depositions total in the case for all the defendants. So on October 25th, I believe it was, Judge Hetherington sent an e-mail order clarifying what he meant and said, number one, the 80-hour limitation applies per defendant family, not per defendant; and also, that for depositions outside of the 41, we had a protocol in place, and he would deal with those in due course. It's important that nobody ever appealed that order. It's been going for a long time.

One of the things that -- and by the way, any appeals of that order are waived. One of the things that he instructed all of us to do was to come back and provide a matrix where he said everybody should point out by topic, by date, if possible, or by witness, as possible, how we could best align these depositions.

We got that from Purdue on November 13th timely. We got it from Johnson & Johnson on November 13th timely. We didn't get one from Teva. So what will be heard in a moment is we had a hearing on Saturday the 17th, and we learned that Teva claimed they just forgot to do it.

We'll talk about that hearing, I think, here a little bit later. Why are those depositions important, and why did I go into that hearing now. We still aren't taking those depositions. Why? Because the motion we're going to hear in a moment on the objections was filed this week, I'm guessing with

the intent that we wouldn't be able to have it heard for quite some time until the next hearing.

So we immediately filed a response within 24 hours so that we could have it presented today. Those depositions, unless and until that order is dealt with, I don't think go forward.

On top of that, we sent out deposition notices under the Oklahoma 30(B) rule to individuals who we believe are corporate representatives on November 7th. Nobody responded to those. We have a protocol in place. We got nothing.

So I believe on November 21st, Mr. Pate sent an e-mail back out to all the defendants, said, Hey, we never heard from you, so those depositions are going to go forward. Still didn't hear anything. Tell you what some of those depositions are.

On Monday, we were scheduled to take Burt Rosen, a high-up ranking employee at Purdue who was, we believe, their person who was responsible for the pain care forum, but also oversaw their government relations. And I think we had two or three Sacklers that were supposed to be here next week.

We found out, I believe last night, that Purdue's not producing any of those witnesses. We've all been preparing for it, we had a busy week planned, we'll have to do something else, I guess.

So as we sit here today, I could go get it, I could show you the list, because it's the same one I've used with you many

times, where I had to cross lines through all the dates we've missed, we still haven't taken though corporate representative depositions. There's just been a few.

The numbers are staggering. Since we first noticed these depositions, over 180 days have passed, not including today. There's been 16 motions at least. There's been I believe 8 related to depos. There have been multiple motions to compel and multiple orders granted. There have been at least 12 hearings. There's been more hearings than there have been depositions on these corporate rep topics.

I believe today, if my numbers are right, we've taken a total of six corporate representative depositions. So that's where we stand on the deposition issue. We're at a standstill.

Now, by comparison, when we present witnesses, including one issue that will be heard today, Ms. Hawkins is in the courtroom, she was prepared by Ms. Baldwin for over a hundred hours. She was deposed for two days. And we got hit with a deposition motion that said she wasn't prepared and didn't do enough to try to do her job as a witness. Judge Hetherington will hear that issue later.

Purdue's taken, I believe, two corporate representative depositions of our folks. Both times they've filed motions that we didn't prepare our witnesses. We've had a lot of problems in this case. There's been a few issues that I don't know that you're fully aware of that I want to talk about real

briefly just to give you a full picture of some of the problems and what's going on in this case.

One of them involves a gentleman by the name of Stephen Ives. Mr. Ives, you may have heard of or may remember, is a person that lives here in Oklahoma City. We tried to take his deposition, we noticed it up, because we believed he worked for the Sacklers and may have knowledge about a lot of different things in this case, and there was a motion for protection or to quash filed on that.

We had a hearing with Judge Hetherington on that issue. During that hearing, Mr. Ives' attorney, who we thought was independent, wasn't any of the ones here today, made the argument among others that his deposition was not appropriate because he wasn't an agent of Purdue.

Now, Purdue sat through that entire hearing and said nothing. Didn't confirm or deny that he was an agent. They said nothing. So when we started getting all our documents produced -- there's been motions on that and orders on that -- we found documents that he was indeed an agent.

And I don't mean an agent by my interpretation of it. I mean, literally an agent. He is a person who is indemnified by Purdue as an agent, who has the right to get his legal expenses paid for by Purdue as an agent. Purdue knew that. They had to know it. It's been going on for a long time. Nothing was said.

We also found out that this gentleman has been copied on things that involve Purdue's efforts to take their drugs to Europe and do there what they've done here. He's been on other documents, what we think may be important. So why does that matter?

Because we didn't know he was an agent and Purdue sat silent during that hearing, long time passed. We got the documents. We had to go through the loophole of asking to take his deposition again. Rather than just re-notice it, we went to Judge Hetherington and asked for permission. We had to have a hearing about that. We won that hearing.

Then we got an e-mail from the lawyer representing him trying to modify the ruling after the hearing about what we could do and how we could do it. Judge Hetherington just denied that as well. All that to take one deposition of a person who has been with the Sacklers, has been a Purdue agent, who's indemnified by the company, who Purdue had to know but sat by and said nothing.

Let me give you an example about Teva. Teva -- your Honor, you've heard some of this. Judge Hetherington certainly heard a lot of it. We heard the lawyers come in and say over and over, this case is about 245 prescriptions. And we've always told your Honor it's not about that. We've talked about opioids generally. You know the argument. I don't need to repeat it here today.

But you know what we found through public research? A document that Teva had not produced, that Teva had entered into an agreement which relates to a patent lawsuit with Purdue over the ability to sell generic OxyContin. In Purdue's board minutes, Purdue talks about -- this is in 2008 -- the arrangement.

Now, we finally have a draft of that agreement. We got it from Teva. I still don't know -- I'm not going to represent that we don't have it. I don't know if we have a final executed version of this agreement. Here's why it's important.

While you were being told in hearings, including a motion to dismiss, and while Judge Hetherington was being told in hearings that Teva was only about 245, and that's all this case was about, here's what really happened, at least it's what we think.

Teva had a deal with Purdue through a distribution agreement where Teva would actually buy OxyContin from Purdue, and under their OxyContin patent, and sell it as a generic. And through that agreement, they had to pay to buy the drug itself, and then they had to pay a royalty back to Purdue.

We believe that also happened with Endo, who's not in our case but is part of this worldwide web of opioid dealers. And we all had to sit here in the courtroom and listen to 245 over and over and over again, when in truth, Teva was actually selling OxyContin that it got straight from Purdue. Never

heard any of that. Had to file a motion about it. Judge Hetherington had to rule on it.

Then we had to deal with something called Rhodes Pharmaceutical. I don't know if your Honor's familiar with Rhodes Pharmaceutical or not. It's pretty important. Rhodes Pharmaceutical is a company that was founded by the Sacklers some time, we think, in 2007 or 2008.

We believe it was a reaction to the criminal problems they had and whether they may not be able to sell OxyContin again or that their market share would diminish as a result.

We were not told about Rhodes Pharma. We were told about a company called Rhodes Tech. We were not told about Rhodes Pharma. We found out about Rhodes Pharmaceuticals through an independent investigation. Why did Rhodes Pharma matter. Well, it mattered for a lot of reasons.

One, Rhodes Pharmaceuticals was selling opioids other than OxyContin. When I took the deposition of Purdue's rep on abatement, in New York Times questions, one of the things she said when I asked her about their participation in the problem was they only made Oxycodone or OxyContin, and a lot of the drugs that were causing problems in Oklahoma, they didn't have anything to do with. Well, in fact, some of those drugs are the ones that Rhodes was selling. But there was more to it.

We also found out that Purdue, with Rhodes, where they bought some of their drugs -- if you remember, in our motion to

dismiss hearing, we talked about something called Tasmanian Alkaloids. You were told it was no big deal. Tasmanian Alkaloids in Tasmania literally grows poppies where Thebaine comes from.

Well, there's another company that J&J owned called Noramco. Noramco made something called Active Pharmaceutical Ingredient. I don't believe we've had the pleasure of talking to you about that, but that would be, for example, Oxycodone or any of the combination drugs that these companies sold. J&J supplied that API to Purdue.

And very likely, because of the agreement that Teva had with Purdue, some of the drugs that Teva was getting from Purdue to sell generic OxyContin also came from Noramco and J&J. These are all things that we're dealing with in discovery in this case.

Why did I bring it up now. We had to file a motion to compel about this. Purdue did not produce this information about Rhodes. So we had to have a hearing here. A lawyer came in and he made the argument that this company was not an affiliate of Purdue, even though we had defined affiliate very broadly, and that's why they didn't produce the information.

Judge Hetherington overruled that. The lawyer who made that argument I have not seen in the courtroom before or since. But it took us having a pretty involved hearing to get to the bottom of that one. Purdue made the claim that everything

about Rhodes was hanging out in plain sight and was there for us to see, we just should have known about it, which isn't true. We shouldn't have to go out and find stuff from other places.

But let me just show you what we had to do. We went to Rhodes' website. And they've seen this before, used it in others. But here's a bottle of Oxycodone Hydrochloride sold by Rhodes, manufactured by Rhodes Pharmaceutical. I'm sorry, marketed by Rhodes Pharmaceuticals LP, manufactured by Purdue Pharmaceuticals LP.

I mean, Judge, you've heard us say over and over and over this is a case about opioids in the state of Oklahoma and a vast conspiracy among these three companies and the pain care forum and other third parties that they worked with. The idea that Purdue could litigate this case as long as it did and not tell you or Judge Hetherington or us about stuff like that is a problem. But it gets worse.

So we recently had an issue with Johnson & Johnson. I'm going to just show you, I highlighted each one of these defendants and the problems we've had. I know you have heard in our motion to dismiss time the idea of the pain care forum.

Let me just back up a little bit because it's very important for the relief we're going to be asking for and what we think needs to happen here. The pain care forum, we believe, was created in 2005 at the insistence or help -- not

really sure what to say -- that Purdue tried to get it started or maybe created it itself, we don't really know yet, but we know its genesis involved Purdue.

This was an amalgamation of a lot of different entities. Some of them are what we call front groups. And if you'll recall from our motion to dismiss hearing, we showed you this web of all these different entities and how they pointed back. But there were some manufacturers on them.

Let me tell you who was on the pain care forum. Abbott Labs. I don't know if you'll recall, but Abbott Labs was a company that Purdue used to contract to get sales reps to get their numbers up in the early years to over a thousand sales reps in the country. They used Abbott employees.

Another member, Endo. Endo is important. Their opioid got pulled from the shelves here in Oklahoma and the rest of the country in the last couple of years. Another defendant, Purdue. Another defendant, Cephalon. Another defendant, Johnson & Johnson.

You had the manufacturers of these drugs working together with these third parties. And as our case will show, and you'll hear it as we get closer to trial, these third parties were really interesting.

There were, what appeared to be, independent third parties and they would have names like the American Pain Society. But within those organizations, they had people that did work for

various defendants who may have been paid by various defendants who may have been funded by various defendants.

And those organizations or their individual members were members of this pain care forum. And then whenever there was an issue that these companies wanted to address, they would often take multiple members or different members of the pain care forum and create a new entity. It's a very elaborate thing that happened, but it was done with multiple purposes.

We found in the state of Oklahoma, for example, that one of these entities, it was out of Wisconsin, actually put a grade on states. They put a grade on states based upon the restrictive nature of their opioid prescribing and their laws.

Oklahoma got a C-plus. It was in the lower part of the rankings. That's a good thing for Oklahoma, but it was a bad thing for them, because C-plus didn't mean they were a bad state; it meant we had restricted policies.

Then they worked together, the pain care forum, with the folks that made this study, to do a commercial valuation of these grades to see what the commercial opportunities were or were not in the state.

MR. BRODY: Your Honor, can I just raise a procedural point? We're here on a request for a status conference. I didn't know we were here for opening statements and substantive argument. I'm sure the State thinks a lot of what it's developed through the discovery process so far. We have a lot

of issues today.

Again, this is a request for a status conference so that we can talk about how this case is going to move forward. It's not a request for an opportunity to do something like an interim summation or argue the case.

I know that Mr. Beckworth wants to move forward and give his take on, you know, what a terrible defendant Janssen is and what a bad company Janssen is, but, again, this is a request for a status conference.

MR. BECKWORTH: Your Honor, I can move on. I'm trying to put this in context. I think you get the picture. So to get to the point of why this is relevant to the status conference issue, I'll just show you a couple of documents. These are documents produced by the defendants. If I may approach?

THE COURT: Yes.

MR. BECKWORTH: So this is a blowup of a Janssen document. That's why I was talking about the pain care forums. You've got to have the context to understand the problem. So PriCara is part of Janssen and J&J. American Academy of Pain Medicine, I believe, was one of the pain care forum entities.

This was a document that they would leave and send out to different folks, and this one was for geriatric patients. The name here, Rollin Gallagher, this is a guy that was very influential in the pain care forum who contributed to the stock

in it. And this is a cutout from page 17 of the document.

But just to show you the point. This is talking about opioids and opioid myths. Myths. We all know what a myth is.

Myth: Opioid medications are always addictive.

Fact: Many studies show that opioids are rarely addictive when used properly for the management of chronic pain.

So we got that statement. That was produced in this litigation. This is something that was handed out by the pain care forum to the U.S. Congress. This has been produced, I believe, by Purdue. This was an action plan that the pain care forum set up with the help of Purdue to go out and try to get positive media and legislation efforts in place to say there's this problem with undertreated pain in America, and the way to solve it is -- one way is to use a lot of opioids to deal with it. And we just cut out this one page here.

But it says: Healthcare professionals and the public are unaware. And the second bullet says: Appropriate use of opioid medications like Oxycodone, which would be OxyContin, Is safe and effective and unlikely to cause addiction in people who are under the care of a doctor and who have no history of substance abuse.

Let's remember that. Unlikely to cause addiction, and under the care of a doctor. Why did I go through, as Mr. Brody said, what they like to say are jury arguments. Well, of course, they're jury arguments, because we're going hopefully

to a jury trial. But they're just the facts.

I said it because of this. This is a pretty important thing in this case. Mr. Duck and I were up in my office one night late at night, and we were doing some research. And I came across this document on the web. I was so shocked by it that I literally turned to Mr. Duck, and I said, I don't know if this is a real document. It hasn't been produced to us. I can't believe what it says -- I'm going to point out why in a moment -- and this could be a fake document that somebody's put on the web, because it's, in our opinion, pretty damming.

So we got with Johnson & Johnson's attorneys and asked them about it, and to their credit, they said, Hey, we'll get on this, we'll move fast, try to figure out what it is. And they have confirmed that it was indeed their document. This document was not produced to us.

If I may approach, I just want to show you. What it is, is this is the first page of it. It was request for proposal that J&J put out to the public. They were trying to get a contract in place where J&J would pay someone up to $2 million to do studies for them about opioid problem, addiction, abatement, or whatever the overall scope of the task was.

Look at what it says. Talks about them being safe, prescribed by a doctor. We just saw that a minute ago. But down here at the bottom: In fact, as many as 1 in 4 patients receiving long-term opioid therapy in a primary care setting

struggles with opioid addiction. So primary care setting means with a doctor.

You just saw it for yourself. Unlikely -- under a doctor's care, you've heard a lot in this case that the addiction risk was low. You've seen unlikely, you've seen this pain care forum that others put out, less than 1 percent. I just showed you what they put to Congress. This is a document that says in fact -- not hypothetical -- in fact, as many as 1 in 4 patients.

Now, we raise this in our motion to show what the problems were in this case. And Johnson & Johnson's answer was, one, they found it, so it wasn't a big secret; two, we shouldn't have had to produce it because this was created after their discovery request went out; and three, it's been a rolling production, so why does it matter.

Let me tell you why it matters. I went and asked a witness about this, a guy named Richard Ponder. He was a Janssen designated corporate rep, one of the few we've been able to take, who was their lobbyist or was a registered lobbyist here in the state of Oklahoma, also their legislative affair person here in the state of Oklahoma and in Texas and Arkansas.

And he was designated on certain topics about legislative efforts here and also on what they knew about the pain care forum and their membership in it. When I asked him about this

document in relation to the pain care forum handout I just showed you, he couldn't answer it.

He said: I don't know if this is true.

I asked him why.

I've never heard this before.

I couldn't get straight answers about the document, because he didn't even know if it was a real document. I couldn't show him a document produced by Janssen because Janssen hadn't produced it.

So Ms. Churchman took a deposition of a J&J sales rep. She asked the witness to read it aloud on the record. Janssen's attorney instructed the witness not to do it, despite the fact that Judge Hetherington had just admonished a witness a few days earlier that they need to answer questions unless there was an instruction for privilege.

So one of the things that came up in there was, was that document -- what was it. It's not a production issue, is what I think what the argument was made. I then took a deposition to continue the one of Mr. Ponder. Let me step back for a second.

When we took the deposition of Mr. Ponder in Austin, about an hour into it, we had a hearing -- or 90 minutes into it, we had a hearing with Judge Hetherington. It's not before your Honor today. It's relevant to the other whole issue.

We contend that the witness was unprepared. Judge

Hetherington found that he was. He couldn't even tell us when the pain care forum was founded or where it was or if they even had an office.

We reconvened that deposition without any penalty to us, meaning it didn't count against our time, here this week. I asked the same -- that witness on that topic about this document. I got the same thing.

I don't know, I've never seen it before, I don't know if it's legitimate, it could be a hypothetical.

I mean, I don't have the transcript in front of me, but you get the gist. So their not producing a document like that, where we can ask witnesses about it, is a problem. And now if you have the opportunity to read the briefs, what J&J is saying now is that the statement they made is a lie.

They're saying, even though we had several folks write it, even though our legal department reviewed it, the studies that are cited there in the footnote don't actually say what we say in that document, so we didn't really -- it's not really 1 in 4 percent -- or 1 in 4, and 25 percent.

So there's independent example of each defendant. We've got more. That's the kind of thing we're dealing with. We have to come to the court for relief on stuff that's highly germane to the case. It's impeding the process of the case, and it's a problem.

We recently sent interrogatories to Johnson & Johnson

about Noramco. One of the things we want to know is how much money did you make from Noramco or Tasmanian Alkaloids selling your drugs here in the state of Oklahoma. And this was pretty interesting. We got these, I believe, yesterday.

The answer was: These are improper interrogatories because you're trying to ask for documents, and you've already issued too many requests for documents, so we're not going to answer the interrogatories. And then they say: But we'll give you documents.

We can't get an answer from them. They know. They know how much money they've made and who they've sold to. We want to know who bought the drugs, where it went, because in the supply chain when everybody says -- and you heard this argument in the privacy issue today, we need to know whose drugs caused what problem -- if they sold the base ingredients for all these drugs, that's relevant information for a jury to know.

I just explained the issue of these new deposition notices that we just found out last night they're not going to show up for next week. So there's a lot of problems.

But let me get to the one that is the most serious. As you know, there is an MDL going on. I've raised to your Honor back in August some problems about where I think Purdue's headed. I've raised repeatedly with Judge Hetherington some issues that I think are going on with Purdue. And now I'm aware of some new ones, and I'm going to go over with you.

So we know that Purdue hired a restructuring firm. I've argued that to you before. We know that Purdue brought in a bankruptcy specialist. You've heard that before. I've asked Purdue to admit or deny in court, and they just won't say anything -- I can't make them answer it -- whether their intention is to actually seek bankruptcy protection.

What I believe is happening is that Purdue has zero point zero intention of ever setting foot in front of a jury in this courtroom. And I believe that the other defendants think that it's likely that Purdue's going to file and seek bankruptcy protection; and therefore, if that happens, this trial date that you've set and held firm may get delayed.

We're under the belief that Purdue's lead attorneys have taken another step, and that is to ask members of the other side in the MDL to help them make sure this trial gets delayed. We also are under the belief that Purdue's position is that if we don't go into the MDL and engage in settlement discussions there, they will file bankruptcy as a means to avoid a trial in this Court.

I can't make them admit it, but I'm pretty sure it's true, and a lot of what we've told your Honor over the course of this case where we had a hunch that something was going on, has proved very, very, very accurate. I'm pretty sure this one's very, very, very accurate. It's a problem.

It leads one to wonder, why in the world are we sitting

here having Purdue even take depositions and call people like Ms. Hawkins, who has to be here today to get redeposed after she spent weeks preparing for depositions, why are they even doing that if they don't really intend to go to trial.

So I think what they're doing, I've told Judge Hetherington this over and over and over again, is they're trying to avoid us getting these depositions in the can so we won't have them to use at trial. We need to get depositions taken. We have to.

I think we're in a real dangerous crossroads in this case. This is what I think. And I know all these lawyers are going to get up here -- they're good lawyers. They've got families just like mine. I'm sure everybody loves them like I hope my family loves me. This is a pretty contentious piece of litigation. It's not about the lawyers; it's about the companies.

But it is about one lawyer who's calling the shots for Purdue, and that lawyer is never here. He's entered an appearance here. Never set foot in this courtroom, and I doubt that person ever will unless your Honor demands it. They're calling the shots on this. And I think we've got two freight trains running at one another. One of them is your Honor and Judge Hetherington, and one of them is Purdue.

And it's a big game of chicken, because we've gotten into a situation where we can't get and force them to appear for

depositions. We can file motions for sanction, and then we get told we're aggressive and all these nasty words that are being said about us, and we're having to file aggressive. And they are aggressive, I'll admit it; they're aggressive motions because they're based on fact.

But we're just pointing fingers at one another, but the work isn't happening. And I can't make them come here. And now you're in a dilemma because -- and Judge Hetherington said this in a hearing we had back when I was in Austin. You know, the Judge can issue coercive sanctions to make people come, but judges don't like to do that.

To build a record, to have very harsh sanctions, you've got to start doing something as we go. That puts you in a really bad situation. I mean, do we want to try this case by sanctions? I don't. They've accused us of that, but I don't.

I want Purdue to participate in the justice process the way it's required here in Oklahoma, and they're not doing it. And I don't care what they stand up and say. They're entitled to come up here and argue all they want. Everybody here on this side of the courtroom, we know what's going on. And you should really read the briefs.

They're accusing the State of Oklahoma as not wanting to go to trial. They're accusing the State of Oklahoma as not wanting to take depositions and that we're causing these delays. How many times have I come and begged you guys --

these guys to be here. I can't make them do it. I have to depend on your Honor and Judge Hetherington to do it. So it's a problem. I think everybody's aware of it.

So I want to propose some solutions. The status conference. We provided an Exhibit A. There are a lot of depositions on there that we have dates for. Here in a moment we can provide you an updated version on some dates that we've all agreed that if these depositions go forward, the dates that we'll produce witnesses and they will.

You know, one of the things we asked for was those depositions be put on calendar that they're going to happen. Another thing we've asked for is that if we have time, Judge Hetherington or another Judge would preside over the depositions. I don't know if your Honor's inclined to do that, but I think it would help on some of this.

One of the things the defendants raised -- I think maybe we may have said it wrong, or they may have misinterpreted it. I wanted to be clear. We said this should apply to all depositions. I don't believe your Honor has jurisdiction to require third parties who aren't part of this case or former employees who aren't under the control or the direction of the defendant to be compelled here in Oklahoma.

We said that, that fact witnesses that fall in those categories, you know, if you don't power over them, you don't have power over them. We're not asking you to use

extraordinary jurisdiction that you don't actually have the ability to do. To the extent we said that improperly in our motion, that wasn't our intent. But I would ask your Honor to do what you can within your powers.

And then I think we are at a time where we have to really take seriously this bankruptcy issue. And I thought long and hard about this. And Mr. Whitten and I have talked about it a lot, and Judge Burrage and I have talked about it a lot. I think there's a solution to it.

I think the solution is, you have the ability under the rules to organize your docket and your cases as you see fit. We think you have the ability, on your own discretion, to sever out Purdue from the other two and immediately consolidate them all in, in the same case. And that way, we can proceed in an orderly fashion, just as we are, to trial.

If Purdue chooses to file bankruptcy, so be it. They'll file it under that cause number, and we'll head on to trial with the other two. Because this is a joint and several case, it will be somebody else's issue to try to seek contribution from Purdue at another time if that's what they choose to do.

We're very confident in our case against all three of these defendants. We're also very confident in the joint and several liability laws that exists to the benefit of the State of Oklahoma if that happens. We don't think that requires anything other than probably even just a same cause number with

a dash as to Purdue. But that helps us avoid this problem.

I do not think it is appropriate in a case of any magnitude, but certainly one like this, for this Court and its word to keep a trial date to be held hostage by the threat of a company telling everyone that they're not going to be put to trial in Oklahoma, and that if we don't go to the MDL and participate with their efforts there, that they're going to go file bankruptcy and delay and upset this trial date. They can deny it if they want. I would be very surprised if they do. But that's where we are.

So I don't think that is a big deal. Mr. Whitten was trying a case in California just last week, and the day of jury selection, the Judge -- I don't even know what the word is. It's not trifurcate; it's fourfurcate -- quadruplicate? The Judge split it into four different parts on her own. That happens all the time, and the rules allow it to happen. So that's where we are.

I told Mr. Whitten before I started today that he gets the -- sometimes the really difficult motions like the one that he had to argue this morning, and sometimes I get the ones that it unfortunately places me in a position of sounding like I'm griping all the time. I am. I am griping, I am complaining, I am frustrated. We've got to get this case to go to trial. So that's where we are.

And I will say this, your Honor. I haven't talked to our