



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

v.)

PURDUE PHARMA L.P.; PURDUE PHARMA)
INC.; THE PURDUE FREDERICK COMPANY,)
INC.; TEVA PHARMACEUTICALS USA, INC.;)
CEPHALON, INC.; JOHNSON & JOHNSON;)
JANSSEN PHARMACEUTICALS, INC.;)
ORTHO-McNEIL-JANSSEN)
PHARMACEUTICALS, INC., n/k/a JANSSEN)
PHARMACEUTICALS, INC.; JANSSEN)
PHARMACEUTICA, INC., n/k/a JANSSEN)
PHARMACEUTICALS, INC.;)
ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a)
ACTAVIS, INC., f/k/a WATSON)
PHARMACEUTICALS, INC.; WATSON)
LABORATORIES, INC.; ACTAVIS LLC; and)
ACTAVIS PHARMA, INC., f/k/a WATSON)
PHARMA, INC.,)

Defendants.)

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED

JAN 09 2018

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

Honorable Thad Balkman

**DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR APPOINTMENT OF
DISCOVERY MASTER**

Defendants hereby reply in support of their 12/6/17 Motion for Appointment of Discovery Master and respond to the arguments raised by the State in its 12/27/17 Opposition to Defendants' requested appointment.

Defendants have asked the Court to appoint a discovery master, pursuant to 12 O.S. § 3225.1, to oversee the timely and effective resolution of pretrial discovery matters in this complex and important litigation. In other words, a Court-appointed discovery master serves the paramount aim of *judicial efficiency*, and should be employed to achieve those ends here. The

State, however, opposes such an appointment on the grounds that a discovery master is not necessary, would not be beneficial, and will *delay* the disposition of this case. The State's arguments are unfounded and run counter to the litigation interests served by 12 O.S. § 3225.1, turning the very purpose of a discovery master on its ear. The Court should reject the State's warnings of delay and appoint a discovery master to aid in the streamlined adjudication of this matter, for the following reasons:

First, contrary to the State's arguments, this is a highly complex case with far-reaching discovery materials and issues—precisely the type of litigation where a discovery master's expertise would prove most beneficial to the Court. *See* 12 O.S. § 3225.1(A)(2)(a) (authorizing appointment of discovery master where “necessary in the administration of justice due to the nature, complexity or volume of the materials involved”). The State is seeking to hold Defendants liable for sale and marketing activities conducted by Defendants and numerous third-party entities reaching back to at least 2007. It has begun discovery seeking a much broader swath of materials, serving document production requests on Defendants—large, multinational companies—for 20 years'-worth of paper and electronic materials (encompassing millions of pages of documents). The State further ignores the volume of discovery it and other third parties will need to produce in this litigation.¹ The discovery as to the parties and third parties will implicate various issues—such as, but certainly not limited to, temporal scope—that a discovery master is uniquely equipped to expeditiously handle and resolve.

¹ To give just one example of the sheer volume of materials likely to be produced in this case, in the *City of Chicago* litigation—the first of the opioid litigations that proceeded to discovery—Defendants served discovery requests on Plaintiff in or around January and May 2017. In response, over the course of seven months, Plaintiff produced approximately 2.5 million pages of documents. Notably, Plaintiff's production did *not* contain any emails—ESI collection and production had just begun in that case—and did not yet include the reimbursement claim files and identification of purportedly medically unnecessary claims the City was required to produce.

The breadth of the State’s claims—coupled with the severity of its allegations—underscores the exceptional nature of this case. So too does the complexity of the State’s claims, in which it will have to prove that certain Opioid prescriptions—those that were allegedly unnecessary or excessive—both resulted from the allegedly false or misleading statements at issue *and* caused damages far removed from the marketing statements at issue. When faced with the prospect of a discovery master, however, the State now abruptly insists that its claims “do not implicate complex materials,” “do not implicate . . . novel causes of action,” and that the relative volume of discovery materials “is not exceptional.” (State’s Opp’n at 6–7.) The Court should reject the State’s attempt to downplay the scope of its own lawsuit.

Second, far from burdening the rights of the parties to access the Court, a discovery master will facilitate the expeditious progression of this litigation. This Court sits in a busy courthouse within a populous judicial district. This is not the Court’s only case, and its time and resources are limited. “The goal of judicial masters, such as discovery masters, is to ensure efficiency in the court system.” James C. Milton, *New Discovery Master Law Takes Effect on Nov. 1, 2015*, 86 OKLA. B.J. 1845, 1845 (2015). Importantly, “[t]he use of masters in complex matters will help allow judges to address other matters on their dockets.” *Id.* For example, in the *City of Chicago* litigation, a magistrate judge was appointed to oversee discovery and free up the judge to handle his busy docket. In that case, over the course of a year, the magistrate judge held various hearings to make sure discovery stayed on track and to resolve disputed issues. Put simply, as demonstrated in the *City of Chicago*, a discovery master is a tool of judicial economy. The discovery master solves discovery problems so that the Court does not have to, saving valuable hours. Each discovery issue that can be resolved by a discovery master will make this litigation, and the Court’s own docket in general, run more smoothly.

Third, the appointment of a discovery master will facilitate the Court's monitoring of developments in *In re National Prescription Opiate Litigation*, MDL No. 2804, the federal multi-district litigation pending before the Honorable Dan Polster in the Northern District of Ohio (the "MDL litigation"). The Oklahoma Supreme Court recognizes that the appointment of a coordinating judge can serve a useful role in promoting the just and efficient conduct of large, complex litigation where parallel proceedings in other jurisdictions involve common pretrial and discovery issues. *In re Oklahoma Breast Implant Cases*, 1993 OK 11, 847 P.2d 772. A discovery master will serve the important function of monitoring and, if necessary, coordinating with the MDL litigation without having to add any burden or inconvenience on this Court.

Fourth, far from acting in bad faith, Defendants' request for a discovery master will protect all of the parties from the expense and delay of having to present piecemeal discovery issues to this Court. (Mot. at 3.) With a case of this magnitude, the realistic view is to acknowledge that discovery issues are bound to arise between the parties. Good-faith litigants may reasonably anticipate the possibility of complex discovery disputes while also embracing the most procedurally appropriate vehicle for their expeditious resolution in this unique case: the discovery master, who will provide quick and efficient solutions to discovery disputes.

Finally, the Court may disregard the State's insistence that the Court will need to apply its own *de novo* review to whatever the discovery master recommends. The Court need not expect, as the State appears to threaten, that every discovery-master ruling will be subject to challenge, nor that the Court's review will not benefit from the prior consideration of a skilled

discovery master. In any event, the discovery master's procedural rulings are reviewed by the Court for abuse of discretion only. 12 O.S. § 3225.1(F)(5).²


For the foregoing reasons, and for the reasons more fully set forth in Defendants' Motion for Appointment of Discovery Master, Defendants respectfully request that the Court enter an Order appointing a discovery master to address and resolve pretrial discovery issues in this complex case.

² Consonant with the goals of the discovery-master statute, the litigants may also stipulate that the discovery master's factual findings will be reviewed for clear error only. 12 O.S. § 3225.1(F)(3)(a)-(b).

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Respectfully submitted,

By:


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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed, postage prepared, this 9th day of January, 2018 to:

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A handwritten signature in black ink, appearing to read "Sanford L. Coffey", is written over a horizontal line.