

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

APR 20 2018

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

Honorable Thad Balkman

PURDUE'S MOTION TO QUASH AND MOTION FOR A PROTECTIVE ORDER IN RESPONSE TO THE STATE'S 3230(C)(5) DEPOSITION NOTICE

Purdue Pharma, L.P., Purdue Pharma, Inc., and The Purdue Frederick Company (collectively "Purdue") respectfully submit this motion in response to the State's 3230(C)(5) deposition notice dated April 9, 2018. Purdue moves to quash the deposition notice with respect to the topic of the finances of non-party shareholders, and moves for a protective order granting additional time to respond for the remaining topics pursuant to Section 3230(C)(5) of the Oklahoma Discovery Code.

INTRODUCTION

Defendants Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company, are privately-held companies being sued in connection with the marketing and sale of prescription opioid medications in Oklahoma. On April 9, 2018, the State served a deposition notice on Purdue, seeking a corporate witness to testify about, among other topics, Purdue's past and present ownership structure, Purdue's finances, and the distribution of revenue and/or profits to Purdue's owners, who are non-party shareholders. Ex. A.

Purdue moves to quash the State's deposition in part. Specifically, Purdue moves to quash the State's request for deposition testimony relating to distribution of profits to shareholders because such corporate distributions are not relevant to any claim or defense in this case and are, accordingly, not subject to discovery. *See Jones Packing Co. v. Caldwell*, 1973 OK 53, 510 P.2d 683, 684 (Okla. 1973).

As to the remaining topics in the State's deposition notice, Purdue agrees to produce a witness and/or information in response, subject to certain limitations, but seeks a protective order to afford Purdue adequate time to collect the information and to identify and prepare a corporate witness. As an initial matter, the Court should enter a protective order that allows Purdue to respond to the State's request for financial information by producing the *pro forma* financial documents for the last five years, instead of requiring a corporate witness to read those documents into a record. Purdue agrees to produce a witness who can testify about Purdue's ownership structure for the past five years. However, in order allow Purdue sufficient time to collect the relevant documents, to identify and adequately prepare a corporate witness on Purdue's ownership structure, the Court should enter a protective order that sets a deposition date of May 21, 2018 or later, subject to the availability and schedule of the witness. The State's

request for testimony on Purdue's "financial health" and "financial status" improperly calls for opinion testimony. Such testimony is within the purview of expert witnesses, not fact witnesses.

During a meet and confer discussion that occurred at the courthouse in advance of the April 19, 2018 hearing in this matter, Purdue informed the State that it was willing to produce witnesses and information on the topics in the deposition notice, subject to the foregoing limitations. The State refused this proposal, thus necessitating the present Motion.

LEGAL STANDARD

In Oklahoma, parties may not conduct discovery on matters that are irrelevant to the claims and defenses in the case. *See* 12 O.S. § 3226. Oklahoma trial courts can restrict discovery to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense." *Quinn v. City of Tulsa*, 777 P.2d 1331, 1342 (Okla. 1989). The Court may enter a protective order specifying "that the discovery may be had only on specified terms and conditions, including a designation of the time" or place of a deposition. 12 O.S. § 3226(C). Oklahoma trial courts have "broad discretion in deciding discovery matters" so that the proceedings before them may proceed in an orderly and efficient manner. *State ex rel. Protective Health Servs. v. Billings Fairchild Ctr., Inc.*, 2007 OK CIV APP 24, ¶ 8, 158 P.3d 484, 488 (Okla. App. 2007).

Section 3230(C)(5) of the Oklahoma Discovery Code provides for depositions of corporate representatives. This provision parallels Rule 30(b)(6) of the Federal Rules of Civil Procedure, and it is therefore appropriate for this Court to "look to discovery procedures in the federal rules when construing similar language" in Section 3230(C)(5) the Oklahoma Discovery Code. *Crest Infiniti, II, LP v. Swinton*, 2007 OK 77, ¶ 2, 174 P.3d 996, 999, *as corrected* (Okla. 2007).

ARGUMENT

I. Revenues Distributed to Purdue's Shareholders Is Not Relevant to Any Claim or Defense in the Case.

The State's deposition notice requests information on profit distributions to Purdue's shareholders. Specifically, the State demands that Purdue provide a corporate representative to testify regarding:

[D]istributions of any revenue and/or profits to owners in the past five years; and past and present formal and informal policies and procedures related to the distribution of any revenue and/or profits to owners.

The State's demand should be quashed because information about the financial distributions to Purdue's shareholders is not relevant to any claim or defense in this case and is therefore outside the scope of discovery.

The scope of discovery in Oklahoma is limited to "any matter that is relevant to any party's claim or defense." 12 O.S. § 3226. Depositions are intended to further the purpose of "adequately informing the litigants in civil trials." *Quinn*, 1989 OK 112. Therefore, the requirement that "material sought in discovery be 'relevant' should be *firmly applied*." *Id.* (emphasis added). The Court must therefore consider the scope of each deposition request in light of the claims and defenses at issue in the case. Discovery requests are "relevant" if they are either (1) "admissible as evidence," or (2) "might lead to the disclosure of admissible evidence." *Stone v. Coleman*, 1976 OK 182, 557 P.2d 904, 905-06 (Okla. 1976).

The State's request for information about revenues distributed to the shareholders of a private company does not relate to admissible evidence or information that might lead to admissible evidence. The claims in this case primarily relate to marketing practices, namely that Purdue's allegedly deceptive marketing practices violated Oklahoma's Medicaid False Claims Act, the Medicaid Program Integrity Act, as well as common law fraud, unjust enrichment, and

public nuisance. A deposition regarding corporate distributions to shareholders does nothing to “facilitate and simplify identification of the issues” implicated by these claims, which makes discovery inappropriate. *State ex rel. Remington Arms Co. v. Powers*, 1976 OK 103, 552 P.2d 1150, 1152 (Okla. 1976).

Courts have repeatedly quashed discovery seeking similar requests for corporate information. For instance, the Oklahoma Supreme Court held that the trial court properly quashed broad requests for discovery of “[a]ll corporate books, corporate records and minutes of the directors, officers and stockholders” in a corporate fraud case on relevance grounds. *See Jones Packing Co. v. Caldwell*, 1973 OK 53, 510 P.2d 683, 684 (Okla. 1973). In *Jones*, the discovery request for corporate records and stockholder information was quashed because the party seeking discovery could not identify “some specific aspect” of the corporate records that it needed “to prove or disprove some specific issue relevant in the case, or lead to some evidence which might tend to so do.” *Id.* A party seeking discovery “is not entitled to the discovery . . . as a matter of right,” but “must show good cause.” *Id.*

Likewise, in *Hope For Families & Cmty. Serv., Inc. v. Warren*, 2009 WL 174970, at *14 (M.D. Ala. Jan. 26, 2009), a closely-held casino corporation sued a county over amendments to local gambling regulations. *Id.* at 1-2. The county served a discovery request on the casino for “production of all documents . . . reflecting shareholders and shares held by any shareholder in the casino.” *Id.* at 14. The court denied the county’s request for information on the financial holdings of shareholders on relevance grounds, reasoning that the county had “failed to show that this private information about non-party shareholders is relevant in any sense.” *Id.* The same result is warranted here.

II. Purdue Agrees to Produce Information Regarding Purdue's Ownership Structure and Finances For the Past Five Years But Requires Additional Time to Respond

The State also seeks information regarding Purdue's ownership structure and "financial health" over the last five years:

The Purdue Defendants' past and present ownership structure; financial status and financial health, including but not limited to information contained in any *pro forma* financial statements, such as gross revenue, liabilities, profits, and cash flow, for the past five years[.]

While Purdue is willing to provide this information, it respectfully seeks three modest modifications.

First, this should be done on the papers, at least as an initial matter. Purdue requests that the Court enter a protective order specifying that Purdue can satisfy the State's request for financial information by producing the *pro forma* financial documents for the last five years instead of a corporate witness to read those documents into a record.^[1] The best way for Purdue to provide accurate and thorough information about the company's financial information for the past five years is to submit this information in writing. The rule for corporate depositions "is not designed to be a memory contest." *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 150 (S.D.N.Y. 1997). For these reasons, Purdue moves for a protective order (1) staying its response deadline until May 21, 2018 and (2) granting permission to respond to the State's request for financial information via production of documents.

Second, the deposition should be put off until on or after May 21, 2018 to allow Purdue to have a reasonable amount of time to collect the information requested by the State and to identify and prepare a witness. The deposition is currently noticed for April 23, 2018 in

^[1] If this Court is unwilling to allow production of financial documents in response to this 3230(C)(5) request, Purdue can identify and prepare a corporate witness on this topic.

Oklahoma City. The State served this 3230(C)(5) deposition notice—its fourth request in the past month—on Purdue on April 9, 2018. The State did not consult with Purdue before serving the notice. On April 19, 2018, the parties met and conferred about the scope of the notice and timing of the deposition. Purdue informed the State that a witness could not be made available by April 23, 2018, and the parties conferred about the scope of the deposition topic in the notice. The State was unwilling to agree to any modification of the notice, thus necessitating the present motion.

Purdue is already working to identify and prepare corporate representatives to testify on other topics noticed by the State in early May. The State’s proposed deposition date of April 23, 2018 simply does not give Purdue sufficient time to gather comprehensive financial information and details of the company’s ownership structure. As a privately held company, Purdue does not routinely assemble and publish summaries of its financial data. Collecting this information and producing it in some useful format will take time. Accordingly, Purdue requests 30 days to respond to the State’s request and proposes a new deposition date of May 21, 2018. Good cause exists for entering a protective order to give Purdue and its designated representative a reasonable time to comply with the State’s request. *See Engles v. Hilti, Inc.*, 2012 WL 6726441, at *1 (N.D. Okla. Dec. 27, 2012) (noting that discovery rules “require[] a reasonable time to comply”).

Third, Purdue agrees to produce a corporate witness to testify on the topic of “[t]he Purdue Defendants’ past and present ownership structure,” provided that the request is limited to the past five years. Limiting discovery into Purdue’s corporate ownership structure to the past five years is appropriate since the historical corporate structure of Purdue is not relevant to any issue in this case. Purdue will also respond to the State’s request for the Purdue Defendants’

finances “including but not limited to information contained in any *pro forma* financial statements, such as gross revenue, liabilities, profits, and cash flow, for the past five years.”

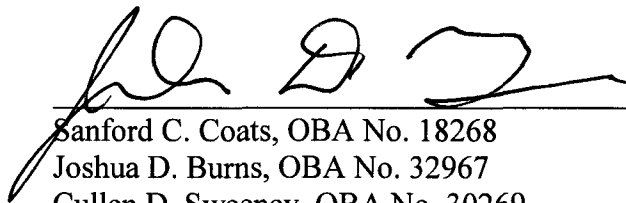
Finally, the Court should quash the portion of the deposition request that seeks an opinion on Purdue’s “financial health” and “financial status.” These topics call for improper opinion testimony, not fact testimony. All the facts that would inform any opinion on Purdue’s “financial health” are contained in the company’s financial statements.

CONCLUSION

For these reasons, Purdue respectfully requests that the Court enter a Protective Order staying Purdue’s deadline to respond to the 3230(C)(5) deposition notice until May 21, 2018 or later, subject to the availability of the witness, and permitting Purdue to answer the State’s notice about financial information with documents. Purdue further requests that the State’s notice requesting information on revenue distribution to Purdue’s non-party shareholders be quashed.

Dated: April 20, 2018.

Respectfully submitted,



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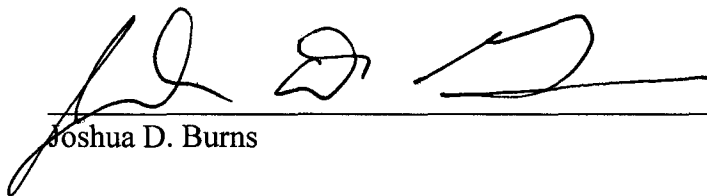
*Counsel for Purdue Pharma L.P., Purdue Pharma
Inc., and The Purdue Frederick Company Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April 2018, I caused a true and correct copy of the following:

**PURDUE'S MOTION TO QUASH AND MOTION
FOR A PROTECTIVE ORDER IN RESPONSE TO
THE STATE'S 3230(C)(5) DEPOSITION NOTICE**

to be served via email upon the counsel of record listed on the attached Service List.



Joshua D. Burns

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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

vs.)

- (1) PURDUE PHARMA L.P.;)
- (2) PURDUE PHARMA, INC.;)
- (3) THE PURDUE FREDERICK COMPANY;)
- (4) TEVA PHARMACEUTICALS USA, INC.;)
- (5) CEPHALON, INC.;)
- (6) JOHNSON & JOHNSON;)
- (7) JANSSEN PHARMACEUTICALS, INC;)
- (8) ORTHO-MCNEIL-JANSSEN)
- PHARMACEUTICALS, INC., n/k/a)
- JANSSEN PHARMACEUTICALS;)
- (9) JANSSEN PHARMACEUTICA, INC.,)
- n/k/a JANSSEN PHARMACEUTICALS, INC.;)
- (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC,)
- f/k/a ACTAVIS, INC., f/k/a WATSON)
- PHARMACEUTICALS, INC.;)
- (11) WATSON LABORATORIES, INC.;)
- (12) ACTAVIS LLC; and)
- (13) ACTAVIS PHARMA, INC.,)
- f/k/a WATSON PHARMA, INC.,)

Defendants.)

Case No. CJ-2017-816
Judge Thad Balkman

Special Master:
William Hetherington

**NOTICE FOR 3230(C)(5) VIDEOTAPED DEPOSITION OF CORPORATE
REPRESENTATIVE(S) OF PURDUE PHARMA, L.P.; PURDUE PHARMA, INC.; AND
THE PURDUE FREDERICK COMPANY**

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COUNSEL FOR THE PURDUE DEFENDANTS

Please take notice that, on the date and at the time indicated below, Plaintiff will take the deposition(s) upon oral examination of the corporate representative(s) of Defendants, Purdue Pharma, L.P., Purdue Pharma, Inc., and the Purdue Frederick Company (collectively, the "Purdue Defendants") in accordance with 12 O.S. §3230(C)(5). The Purdue Defendants shall designate one or more officers, directors, managing agents, or other persons who consent to testify on the Purdue Defendants' behalf regarding the subject matters identified in Appendix A.

The oral and video deposition(s) will occur as follows:

DATE	TIME	LOCATION
April 23, 2018	9:00 a.m.	CROWE & DUNLEVY, P.C. Braniff Building 324 N. Robinson Ave., Ste. 100 Oklahoma City, OK 73102

Said depositions are to be used as evidence in the trial of the above cause, the same to be taken before a qualified reporter and shall be recorded by videotape. Said depositions when so taken and returned according to law may be used as evidence in the trial of this cause and the taking of the same will be adjourned and continue from day-to-day until completed, at the same place until it is completed.

Dated: April 9, 2018



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was mailed and emailed on April 9, 2018 to:

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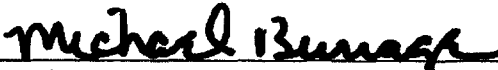
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Michael Burrage

Appendix A

The matters on which examination is requested are itemized below. The Purdue Defendants must designate persons to testify as to each subject of testimony. This designation must be delivered to Plaintiff prior to or at the commencement of the taking of the deposition. See 12 O.S. §3230(C)(5).

1. The Purdue Defendants' past and present ownership structure; financial status and financial health, including but not limited to information contained in any *pro forma* financial statements, such as gross revenue, liabilities, profits, and cash flow, for the past five years; distributions of any revenue and/or profits to owners in the past five years; and past and present formal and informal policies and procedures related to the distribution of any revenue and/or profits to owners.