



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., )  
MIKE HUNTER, )  
ATTORNEY GENERAL OF OKLAHOMA )  
STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }

Plaintiff, FILED )

Case No. CJ-2017-816

vs.

DEC 13 2018

PURDUE PHARMA L.P., et al, )  
In the office of the )  
Court Clerk MARILYN WILLIAMS )  
Defendants. )

**PURDUE'S RESPONSE AND OBJECTION TO PLAINTIFF'S STATEMENT  
REGARDING ITS PURPORTED COMPLIANCE WITH OCTOBER 22 ORDER**

On December 4, 2018, the State filed with the Court a "Statement Regarding Compliance with October 22 Order & Limited Request for Clarification/Relief" that purports to show the State has met its discovery obligations in this case. The State has not. While the State has recently increased the volume of its productions in response to document requests that were first served in January, almost a year ago, it has still failed to produce fundamental and crucial information needed to allow Purdue to prepare adequately for depositions of State employees and prepare its defenses in this case.

Virtually since the start of discovery in this case, the State has repeatedly parroted the false narrative that Purdue has been engaging in delay tactics and that the State has been working hard to collect, review, and produce documents. But the facts and data do not bear that out. In reality, it is the State that has been laying down every possible roadblock to prevent Purdue from being able to move this case toward preparation for trial. The State's recent document productions are the latest example. The State has abdicated its discovery obligations by failing to provide targeted productions from the employees who, among other things, made key

decisions regarding Oklahoma's awareness of and response to the opioid crisis. The State has instead larded its productions with public or irrelevant documents, or documents produced by third-parties (not the State), suggesting that it has substantially complied with this Court's order. Again, it has not.

A quick review of the State's productions reveals that they are replete with documents that could not have possibly survived any meaningful review by the State for responsiveness. For example, the Oklahoma Attorney General's office included in its production reams of completely irrelevant legal filings, including thousands of pages of documents from Former Attorney General Scott Pruitt's numerous battles against the Environmental Protection Agency that have absolutely nothing to do with this case. And there is no reason that the State's production should contain multiple copies, let alone a single copy, of the 350-page treatise "The Global Sovereign's Handbook" by "Johnny Liberty." A partial review of *just one* of the State's ongoing rolling productions shows the inclusion of the following documents:

- The Collected 2015 Opinions of the Attorney General E. Scott Pruitt (625 pages);
- The Collected 2016 Opinions of the Attorney General E. Scott Pruitt, Book II (843 pages);
- A collection of pictures of Attorney General Mike Hunter standing at a podium;
- Hundreds of legal briefs, comprising thousands of pages, on a wide range of cases and appeals filed in and outside of Oklahoma, including:
  - Clemency requests and hearings;
  - Applications for stays of execution;
  - Lawsuits against the state election commission;
  - Prisoner civil rights cases; and
  - Transcripts of hearings on execution protocols.
- The President's Climate Action Plan;
- Letters to movie studios regarding their tobacco policies;
- A report on "The Hidden Costs of the Environmental Protective Service's Clean Power Policy";

- Dozens of law review articles with titles such as:
  - *A Comparison of Criminal Jury Decision Rules in Democratic Countries;*
  - *An Introduction to Comparative Jury Systems;*
  - *Europe's New Jury Systems: the Cases of Spain and Russia; and*
  - *Jury Selection and Jury Trial in Spain.*
- An index of Marc Murphy's volume 1 of 320 compact discs he loaded to his computer.

The above represents but a sampling of the inappropriate documents from a *single production* in the State's rolling production process. The trend continues across other State agencies and departments. For example, the Oklahoma State Board of Pharmacy, which should be a vital source of information on opioid prescriptions, produced about 6,000 documents, of which over 5,000 are just daily email newsletters. These examples are not outliers, and reveal that though it has taken many months for the State to produce documents, the State has undertaken no meaningful steps to target its document collections or to conduct a meaningful review of what it received for relevance. It is clear that the State's effort to comply with the Court's October 22 Order was limited to building volume of documents, with no effort to actually collect documents relevant to this case.

The figures listed in the State's so-called Statement of Compliance on their face confirm that something is amiss with the State's discovery collections. That the Oklahoma State Board of Veterinary Medical Examiners has 13,000 responsive documents, while the Oklahoma State Medical Board has only 150 responsive documents, strains credulity. It is simply not believable that the Oklahoma Bureau of Narcotics & Dangerous Drugs, responsible for enforcing Oklahoma's drug laws, compiling drug statistics, publishing Oklahoma's yearly Drug Threat Assessment, running Oklahoma's Prescription Drug Monitoring Program, and with an entire division dedicated solely to investigating the misuse of legal pharmaceutical products through

diversion,<sup>1</sup> has only **50 responsive documents in total**. The State also excludes from its Statement of Compliance the prior deficiencies Purdue already identified, for which Purdue sought supplementation. As an example, the Oklahoma Department of Human Services—which is the largest state agency in Oklahoma and handles all applications and eligibility for SoonerCare Medicaid in Oklahoma<sup>2</sup>—produced a mere **47 documents**. The Employee Group Insurance Division of Oklahoma’s Office of Management & Enterprise Services—which administers, manages, and provides group health, dental, life, and disability insurance for current and former employees of state agencies, school districts, and other governmental units of the State of Oklahoma<sup>3</sup>—produced **only 4 documents**. These production asymmetries signal deficiencies that the State should have recognized and addressed before it told the Court that it was in compliance. The glaring gaps in the collections may be why the State chose to pad the Statement of Compliance with production figures from third-parties, such as the American Pain Society and the American Geriatrics Society, whose productions reflect no effort from the State to collect documents beyond serving subpoenas on third parties.

To date, Purdue has produced tens of millions of pages of responsive documents in this matter while the State continues to slow roll its productions laden with non-responsive documents with the hope that the discovery period expires before Purdue has a chance to meaningfully prepare its defenses. The Court simply cannot let this happen. The State’s longstanding pattern of delay is highly prejudicial to Purdue and jeopardizes the schedule in this case. It has already frustrated the taking of depositions and threatens to also undercut expert discovery for expert opinions that will refer to discovery the State has been long-ordered to

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<sup>1</sup> [https://www.ok.gov/obnndd/About\\_OBNDD/index.html](https://www.ok.gov/obnndd/About_OBNDD/index.html)

<sup>2</sup> <http://www.okdhs.org/aboutus/Pages/default.aspx>

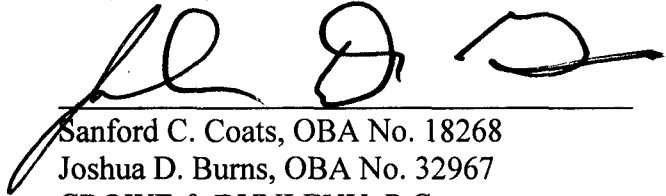
<sup>3</sup> <https://omes.ok.gov/sites/g/files/gmc316/f/2017CAFR.pdf>

produce. The State's failure to produce documents from the State's agencies responsible for the administration of its employee and Medicaid insurance programs handicaps meaningful expert review of how the State reviews what medications are medically necessary. Further, they preclude investigation into why the State, *to this day*, continues to both endorse and reimburse the valuable and efficacious medications that its attorneys claim are the catalyst of an opioid crisis. Without such productions, Purdue simply cannot prepare meaningful expert disclosures. Along the same lines, the State's unexplained request for more time to gather documents from the Board of Pharmacy and the Board of Dentistry—two valuable repositories of information on diverted opioids—only makes sense if Purdue is granted additional time as well to make its expert disclosures, sufficiently after the State has been proven to have truly met its production obligations.

The documents requested by Purdue should have been produced long ago and certainly by now in light of this Court's October 22 order. Yet here we are. Rather than reward the State's deficient document productions and stall tactics with more time, the Court should require the State to explain to the Court exactly how it collected and reviewed the documents it produced from each agency and department so it can be determined exactly why the productions are so deficient. Further, as discussed in Purdue's Motion to Compel Production of State Custodial Files and Deposition Dates (filed on December 6, 2018), the Court should order the State to conduct the targeted collection of custodial files that Purdue requested months ago. Due to the prejudice suffered by Purdue and the necessity of complete productions for meaningful expert analysis, Purdue should also receive an additional 30 days from the State's true production completion to submit its expert disclosures.

Date: December 13, 2018

Respectfully submitted,



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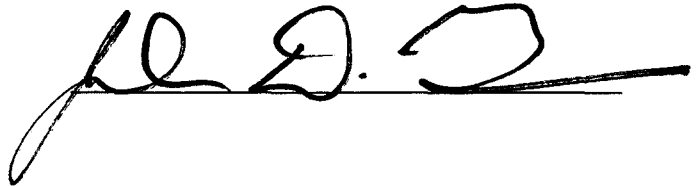
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of December 2018, I caused a true and correct copy of the following:

**PURDUE'S RESPONSE AND OBJECTION TO PLAINTIFF'S STATEMENT  
REGARDING ITS PURPORTED COMPLIANCE WITH OCTOBER 22 ORDER**

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

A handwritten signature in black ink, appearing to read 'E. Wolf Pinker', written over a horizontal line.





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