



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

vs.)

Case No. CJ-2017-816
Judge Thad Balkman

(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.)

(To be heard by the
Honorable Thad Balkman)

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED
MAR 21 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**THE STATE’S RESPONSE TO THE TEVA DEFENDANTS’ EMERGENCY
OBJECTION TO THE SPECIAL DISCOVERY MASTER’S ORDER ON
CORPORATE REPRESENTATIVE DEPOSITION TOPIC 17**

The first time the Teva Defendants thought this Court did not say enough to support its decision, they filed a writ.¹ Now, as another decision from this Court does not say what the Teva Defendants want, they have decided to put words in the Court’s mouth. These Defendants have

¹ See Application to Assume Original Jurisdiction and Petition for Writ of Prohibition and/or Mandamus at 3, Supreme Court Case No. 117,831 (March 11, 2019).

proven they will do anything to delay and avoid trial in Oklahoma, including suing the Court itself. This motion—like the writ and all of Defendants’ frenetic motion practice this past week—is no exception. This motion is not about preparing for trial. It is about burdening the State and the Court and fabricating error where none exists. The motion should be denied.

To be clear, this Court has never ordered the State to put up a witness on Teva’s Topic 17. If it had, Teva’s Motion would have been 1 page, with a quote from this Court saying as much right up front. But the Court never ordered that. There is no such quote. This Court’s “conclusive ruling” is Teva’s “*Second*” point, and it is buried on page 6 of Teva’s 9-page misinterpretation of the Due Process clause.

The truth is, every time a ruling has issued specific to Topic 17, it has ordered that a deposition on that topic would not go forward.² Judge Hetherington has done that twice now—the second time explicitly indicating that his decision was “[c]onsistent with previous Orders from [he] and J Balkman.”³ It is not just the State that was unable to find Teva’s “conclusive ruling” on Topic 17; Judge Hetherington found no such ruling either.

Instead, what Judge Hetherington read from this Court was an instruction for Teva to be allowed depositions on topics that are: (1) non-duplicative, (2) non-overlapping, (3) consistent with limits imposed by prior Orders, and (4) specific to the Teva Defendants. In fact, so there’s no confusion, here is exactly what the Court said:

The Court: I’m prepared to allow them to go forward with those notices on new topics, so long as they *don’t overlap, they’re not duplicative.*⁴

...

² Jan. 20, 2019, Order of the Special Discovery Master; March 11, 2019, E-mail Ruling of Judge Hetherington (Attached as Exhibit A to Teva’s Motion).

³ March 11, 2019, E-mail Ruling of Judge Hetherington (Attached as Exhibit A to Teva’s Motion).

⁴ Tr. of Feb. 14, 2019, Hr’g at 71:1-3 (attached as Exhibit B to Teva’s Motion) (emphasis added).

The Court: Mr. Merkley, what I heard you say here this morning in the courtroom is that you're not going to simply ask for depositions on topics that have already been covered; that you're seeking information *specific to Teva*. Is that Correct?

Mr. Merkley: That's correct.

The Court: Okay. So I would expect that those deposition notices would reflect what you've represented here in court this morning.

Mr. Merkley: That's correct, and I'm happy to do that. What I just want to make clear is when I do that, we're going to set the depositions and go forward; we're not going to start a three-day meet and confer process, another week hearing with Judge Hetherington, and start that process all over again, because we only have four weeks. And I think I'm hearing the State saying we don't have to do that and they will agree to sit this witness once I revise and send out individual notices, but I want to make that clear on the record so that we're not back here doing this again on March 14th, one day before the 15th.

The Court: Well, I would hope that you all can meet and confer on that, but I don't think it's proper to automatically extinguish any side's right to complain or to bring up something if they think they do need to bring it to the discovery master. I'm not inviting that or encouraging that, but ***I don't think I can just say, no, the State has to just take whatever they get. If they have a good faith reason to believe that it violates a previous ruling, then I suspect that they would be able to bring that to the discovery master.***

Mr. Merkley: Fair enough, Judge. I'll do my very best to make sure there's no violation.⁵

And, with respect to Topic 17, Judge Hetherington correctly saw a topic that did not comply with those instructions.

First, the Teva Defendants made no attempt to tailor Topic 17 in response to the Court's instructions; they simply re-sent the same exact topic as before:

⁵ Tr. of Feb. 14, 2019, Hr'g at 72:6—73:11 (attached as Exhibit B to Teva's Motion) (emphasis added).

Teva Notices from 1/8/19 (Before Court Order to Narrow)	Teva Notices from 2/25/19 (After Court Order to Narrow)
Topic 17: The State’s investigation into, civil or criminal prosecution of, and/or discipline of doctors, pharmacists, pharmacies, clinics, “pill mills,” or hospitals in Oklahoma for the improper prescribing or diversion of Opioids during the Relevant Time Period, including the State’s knowledge of any complaints regarding improper opioid prescribing practices of any Healthcare Professional in Oklahoma.	Topic 17: The State’s investigation into, civil or criminal prosecution of, and/or discipline of doctors, pharmacists, pharmacies, clinics, “pill mills,” or hospitals in Oklahoma for the improper prescribing or diversion of Opioids during the Relevant Time Period, including the State’s knowledge of any complaints regarding improper opioid prescribing practices of any Healthcare Professional in Oklahoma.

Second, Topic 17 exceeds what this Court ruled was discoverable regarding State investigations. Contrary to what Teva argues in its Motion, this Court did not open the flood gates and rule that Teva was entitled to discover everything about every investigation the State has ever undertaken over the past twenty years. Rather, Teva’s motion regarding that information was granted “*in part*”—and that part pertained only to information that had been disclosed in a filing or disclosed to the other side in litigation.⁶ Teva’s Topic 17, on the other hand, makes no attempt to fit within those boundaries.

Third, Topic 17 is duplicative of other evidence—testimonial and otherwise—that Teva has already received. Teva received thousands of documents—tens of thousands of pages of information—related to the State’s investigations as a result of the Court’s December 20th Order.

⁶ Journal Entry on Discovery of Criminal, Civil and Administrative Proceedings, filed Dec. 20, 2018 (attached as Exhibit G to Teva’s Motion) (“Having reviewed the briefs of the parties and received argument of counsel, this Court finds that the motion is granted in part as specified below: 1. The plaintiff shall produce non-sealed charging documents, petitions, informations, indictments, briefs, orders, transcripts, docket sheets and other documents filed with a tribunal in all civil, criminal or administrative proceedings brought by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids 2. The Plaintiff shall also produce all documents produced to the attorney for the defendant, respondent, or licensee in all civil, criminal or administrative proceedings commenced by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids”).

Teva has also been present and received testimony from a host of State witnesses from various agencies related to the topic of investigations, including:

- Mark Stewart – Chief Enforcement Agent for the Oklahoma Bureau of Narcotics, who the State also designated as a corporate representative to testify on the subject of State investigation into drug diversion;⁷
- Reji Varghese – Deputy Director of the State Medical Board, who (along with Mark Stewart) the State designated as a corporate representative to testify on the subject of State investigations of doctors;⁸
- Deborah Bruce – Executive Director of the State Board of Osteopathic Examiners;
- Susan Rogers – Executive Director of the State Board of Dentistry;
- Darrel Weaver – former Director of the Oklahoma Bureau of Narcotics; and
- Melton Edminsten – former Chief Agent of Diversion for the Oklahoma Bureau of Narcotics and current Chief Investigator for the State Board of Veterinary Medical Examiners;

⁷ Mr. Stewart testified on the following topics:

- (1) Your knowledge of diversion of prescription opioids in your geographic area, including but not limited to analyses of who diverted opioids, the prescriber of the diverted opioids, the pharmacies from which the opioids were dispensed, when You became aware of the diversion, and steps You took to prevent future diversion of prescription opioids.
- (24) Disciplinary or legal actions taken by the Oklahoma Bureau of Narcotics and Dangerous Drug Control during the Relevant Time Period against any individuals or medical providers for participating in or facilitating the practices of theft, diversion, illegal sale, “doctor shopping,” or improper prescribing of prescription opioid medications.
- (33) The origin, development, interpretation, and application of the standards, practices, and procedures during the Relevant Time Period for identifying, investigating, and addressing the theft or diversion of prescription opioids.

⁸ Mr. Varghese testified on the following topic: “Disciplinary or legal actions taken by You (including but not limited to the Oklahoma Medical Board) during the Relevant Time Period against any individuals or medical providers for participating in or facilitating the practices of theft, diversion, illegal sale, “doctor shopping,” or improper prescribing of prescription opioid medications.”

Many, if not all, of these witnesses provided testimony on the State's investigation of drug diversion. Some of them did so as corporate representatives. Teva was there for all of it.

Finally, even if it were not duplicative, another deposition for Teva to ask questions about when and how the State investigated these cases would be a waste of time. Per this Court's prior orders, Teva is not entitled to privileged details of investigations beyond what has been disclosed in filings or through prior discovery. And Teva already has documents that provide those details. There is no need for Teva to spend another 4, 6, or however many hours they plan to spend, asking the State's witness to ratify what those filings already say. Moreover, it is impractical for a single witness, or even a single witness for every relevant agency, to prepare to testify on all of the cases the State has brought against healthcare professionals over the past two decades. And, given Teva's use of time during the other depositions noticed from this batch of topics—treating them as memory quizzes just to manufacture further delay attempts—all this will produce is another motion and another hearing.

For example, Teva spent two days asking different State witnesses to recite each drug the Teva Defendants manufactured, even though that information was both publicly available and readily available to the Teva Defendants—*the companies that manufacture those drugs*. Indeed, even when one of the State's witnesses provided a list of Teva-Defendant drugs identified by a numerical (NDC) code unique to each manufacturer, Teva's counsel then asked whether the witness had memorized and could say which code corresponded with which manufacturer—information that is also both publicly available and readily available to the Teva Defendants. Teva has also devoted hours—if not days of multi-day depositions—to asking questions way outside the scope of topics noticed for those depositions, including asking corporate representatives to testify on the State's experts' opinions. All of this demonstrates that, when Teva has been given

the opportunity to elicit deposition testimony, their strategy has not been to develop evidence for trial; their strategy has been to manufacture snippets for motions and excuses for delay.

Teva did not comply with the Court's instructions with respect to Topic 17. And it has squandered and abused its opportunity to depose the State on the other topics Judge Hetherington permitted. Judge Hetherington was right to quash Topic 17. Moreover, Teva already has the discovery on these issues within the confines of what the Court has allowed. Thus, the Court should affirm the ruling of Judge Hetherington and overrule Teva's objection.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on March 21, 2019 to:

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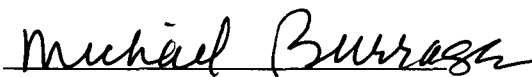
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