



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.)

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED

FEB 25 2019

In the office of the
Court Clerk MARILYN WILLIAMS

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 18th day of February, 2019 the above and entitled matter comes on for ruling by the undersigned having heard argument thereon on February 14, 2019.

Argument was heard and Orders are entered as to the following motions:

State's Motion to De-Designate Confidential Documents

Counsel announced an agreement to strike confidential designations that were the subject of this motion, however, argument was heard regarding State's concern that "this is a systemic problem with blanket designations." Blanket and inappropriate confidential designations can rise

to the level of an abuse of discovery process and subject to sanctions. In the context of this motion, there was no affirmative sanction relief requested and this motion is found to be moot.

Defendants' Motions to Compel Regarding Requests for Admissions and Interrogatories

Janssen Group

RFAs 1, 2 and 3 requests to compel are **Sustained** with a finding that State is only compelled to admit or deny the requests made without identifying any doctors or patient personal information, or ongoing, past or present investigatory information or confidential investigative file content.

Interrogatories 20, 21 and 22 requests to compel are **Overruled**.

Teva, Cephalon Requests for Admissions

RFA No. 4 - **Sustained** with State compelled only to admit or deny.

RFA No. 9 - **Sustained** with State compelled only to admit or deny.

RFA No. 10 - **Sustained** with State compelled only to admit or deny.

FRA No. 11 - **Sustained** with State compelled only to admit or deny.

Watson & Actavis Requests for Admissions

RFA No. 3 – **Sustained** with State compelled only to admit or deny.

RFA No. 8 – **Sustained** with State compelled only to admit or deny.

RFA No. 9 – **Sustained** with State compelled only to admit or deny.

RFA No. 10 - **Sustained** with State compelled only to admit or deny.

Purdue

Purdue's motion asks the undersigned to review State responses to produce request for admissions number 1, 3, 6, 7, 8, 9, 16, 17, 18, 19 & 20, make findings that they are insufficient, deem the requests admitted and awarded attorney fees.

RFAs Numbered 1, 3, 6, 7, 8 & 9 are announced agreed-to by the parties.

RFA No. 16 – Purdue's Motion is **Overruled**.

RFA No. 17 - **Sustained** with State compelled only to admit or deny.

RFA No. 18 – Purdue's Motion is **Overruled**.

RFA No. 19 – **Sustained** with State compelled only to admit or deny.

RFA No. 20 - **Sustained** with State compelled only to admit or deny.

As indicated in previous Orders, the allegations pled and proof model elected by State raise allegations that all Defendants misled all physicians in a joint marketing and promotion effort. State has elected not to prove through individualized proof and adopts a statistical proof model. As previously Ordered, State is required to continue to produce all public, non-privileged requests. State has timely submitted written answers or objections and under Title 12 O.S. §3236(A), Purdue's request to deem admitted and for attorney fees is **Denied**.

State's Motion for Order Permitting Service of Requests for Admission to Authenticate Documents Produced in Discovery

The parties, with argument from Purdue and Teva Group, announced an agreement to permit service of requests for admissions in order to authenticate as many documents that have been produced by the parties as possible. The agreement indicates it does not cover documents produced by third parties, not a party to the litigation. Purdue argued that authentication is premature and that we should not consider authenticating documents until after parties have completed and exchanged exhibit lists. A record was made that similar to designating portions of depositions and getting rulings for admission at trial, a document authentication process for the tremendous volume of documents to be admitted in this case is critical. A process for obtaining deposition designation rulings and rulings on authentication of documents must be addressed as soon as possible and to the extent necessary, deposition designation objections and objected-to document authentication would be presented to the undersigned for consideration and ruling. With this reality in mind, the undersigned entered an Order that allowed the State to proceed with RFA requests to authenticate documents and exceed the thirty limit to do so, with the understanding that we should be dealing with documents that will be trial exhibits anyway and do so in an effort to get the process started and continue after exhibit lists are completed.

Janssen's Emergency Motion To Compel

Argument was heard regarding Janssen's emergency motion to compel and State agreed the undersigned could rule without the benefit of a State response.

Janssen moves the undersigned to compel (1) State to complete its claims data production in fully "cross-walked form" within seven days; (2) immediately certify that State has produced data dictionaries, field definition tables and user manuals that identify all fields and codes in its claims databases or produce all such materials within seven days accompanied by a certification of completion that identifies by Bates number.

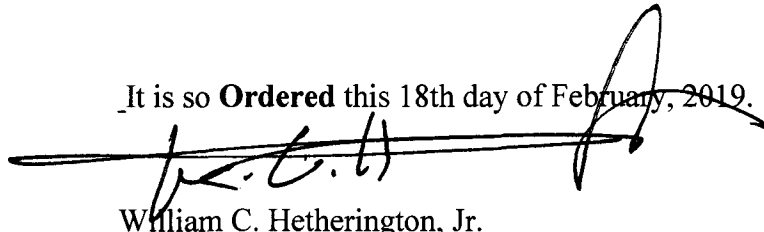
Argument indicated the databases that can be linked up or cross-referenced have been produced by State, and again, to the extent State can provide identification numbers or link information in any form, State continues to be **Ordered** and compelled to provide the "cross-walked" information. Certain diagnosis codes, procedural codes and detail status codes can be publicly accessed by Defendants, if not, State is **Ordered** to produce. Argument is that some databases such as the Medical Examiner's database and Health Choice database (which as argued, is relevant to State's fraud and public nuisance claims) cannot be so identified.

Defendants make reference in their brief to the “MDL” Special Discovery Master and Judge’s Orders regarding these issues. State argues that part of the basis for the MDL’s decision was the fact that, based on what the Plaintiffs had already provided, Defendants were unable to match patients across databases. State argues the Defendants in this case have already been provided with a set of unique identifiers which will facilitate the cross reference across State databases. The plaintiffs in the MDL did not use a de-identified numbering scheme as is being attempted in this case. Pharmacies and distributors are not defendants in this case however, patient-level claims data and description codes, are relevant and argument indicates necessary for Defendants to complete their expert analysis in defense, and there arguably remains an inability to link to some relevant databases.

Therefore, as to the identified databases Defendants cannot access by any “cross-walked” link method or by unique identifiers and, data code dictionaries and field definition tables, State continues to be **Ordered** to produce and Janssen’s emergency motion is **Sustained** to the extent State is Ordered to complete database and code production pursuant to statute in a form that is either ordinarily maintained or in a de-identified form which is reasonably usable with Defendants able to obtain the relevant information. If Defendants continue to be denied access to necessary databases, while delay may be the result, the undersigned will revisit and consider further Defendant requests to compel and a different database identifying scheme.

State is **Ordered** to complete this identification process on or before March 1, 2019 at 4pm.

It is so **Ordered** this 18th day of February, 2019.

A handwritten signature in black ink, appearing to read 'W.C.H.', is written over a horizontal line. The signature is stylized and extends to the right, crossing the line.

William C. Hetherington, Jr.

Special Discovery Master