



**IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA**

PART G

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.

**For Judge Balkman's
Consideration**

**Case No. CJ-2017-816
Honorable Thad Balkman**

**William C. Hetherington
Special Discovery Master**

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

MAY 24 2019

**In the office of the
Court Clerk MARILYN WILLIAMS**

**MOTION PURSUANT TO 12 O.S. § 2509(C) TO DISMISS THE STATE'S PUBLIC
NUISANCE CLAIM OR, IN THE ALTERNATIVE, EXCLUDE EVIDENCE THAT THE
TEVA AND ACTAVIS GENERIC DEFENDANTS' MARKETING INFLUENCED ANY
INDIVIDUAL OKLAHOMA HEALTHCARE PROVIDER**

1 client about this. So you hear us say sometimes that
2 everything we say is subject to their overrule, which it is.
3 You know, there's another way to do this case, is just not take
4 any depositions. We could do that. None. We don't take any,
5 they don't take any. We'll just try it on the documents. I
6 don't know if it's ever been done before.

7 But I want your Honor to know that -- and this is the box
8 we've put ourselves in. I think they're taking advantage of
9 it. If you allow this case to go to trial May 29th, which you
10 said you're going to do, and we get past summary judgment,
11 which I think we -- or hope we will -- we're going to trial.

12 If all we have in the box is what we've taken, we're going
13 to trial. We're not going to be deterred by these obstacles.
14 And I want everybody to understand that. We're going to trial
15 if this Court allows us to go to trial with one deposition or a
16 hundred. But it's not right. It's not what the rules require.
17 But if they're going to continue to do this, we shouldn't have
18 to put up witnesses. They're asking us for dates right now for
19 corporate rep witnesses, which I think Mr. Pate gave them a
20 bunch last night, didn't you? Or Mr. Duck did?

21 But why should we put up our witnesses if they're not
22 doing the same. Why should we put up state agencies and
23 employees who are trying to prepare like Ms. Hawkins, who's
24 being asked to do so again, when these witnesses we've been
25 asking for since May have never had to appear. It's not right.

1 So that's a lot. I'm sure I'm going to get hit over the
2 head a few times here in a minute, but that's okay. Mr. Bartle
3 told me he was a Marine and he was tough. I wasn't a Marine,
4 but I hope I'm tough enough to stand what's coming my way.

5 But, your Honor, this is a serious matter. I think we've
6 given the Court several options to proceed with, and I think we
7 need to move pretty quickly so that we can go to trial if your
8 Honor is so willing.

9 Thank you.

10 THE COURT: Thank you, Mr. Beckworth.

11 Mr. Bartle?

12 MR. BARTLE: Your Honor -- I will note, your Honor,
13 this is the first time that I've heard -- certainly wasn't in
14 the status conference statement with regard to this purported
15 new plan by the State with regard to severing out and then
16 consolidating and things of that nature.

17 I don't think it's an appropriate argument for today,
18 seeing as the defendants just heard it. And to the extent
19 there's any such ruling or request, we would expect that it
20 would be by motion so we can appropriately respond.

21 I do not represent Purdue, as the Court is aware. The
22 defendants do not have an objection to a status conference. We
23 don't object to it. And it's justified, actually. I am not
24 going to spend an hour putting everything into context, as
25 every lawyer for the State has said today, before every motion

1 hearing.

2 But it's justified, given the State's dilatory and abusive
3 discovery tactics, the basis accusations of misconduct, their
4 delay in producing documents. You wonder why the State has all
5 the depositions all scheduled, your Honor? Because we haven't
6 gotten documents from the State, and we laid that out in our
7 motion.

8 And they basically stymie the defense efforts to prepare
9 this case for the May 29, 2019 trial date. I've heard
10 Mr. Beckworth say he wants to go to trial in May 2019. I heard
11 him say it at every hearing. The Court has set a May 2019
12 trial date over our objection. We'll be ready to go to trial
13 in May 2019, your Honor.

14 But that being said, we're not going to overlook or waive
15 our client's constitutional rights to appropriately defend
16 themselves by action by the State of Oklahoma. And the State's
17 conduct in this case with regard to discovery is taking away
18 from our clients' right to due process. And I'll get to that.

19 One thing I want to hit first, Mr. Beckworth talked about
20 a document between Purdue and Teva that relates to the
21 distribution of opioids. I'm going to touch on it again later.
22 He said that he found it in public research and it wasn't
23 produced. It was produced. It was produced. The produced
24 copy was used in depositions several times in this case.

25 I don't know where he got the idea that we hadn't produced

1 it. We had. I think that's the way the State first found out
2 about it. So if there's any assertion that Teva tried to hide
3 that document, it is demonstrably false.

4 Let's talk about the relief that the State requested in
5 its status conference. It's requesting an order from you that
6 its 92 affirmative depositions take place on its unilaterally
7 scheduled dates, including Saturdays, in the Cleveland County
8 Courthouse before you or Judge Hetherington or another Judge.

9 This process is already before Judge Hetherington. We've
10 had numerous hearings before Judge Hetherington, including on
11 Saturdays, although apparently the State -- some of the lawyers
12 can't make Saturday hearings. Judge Hetherington ordered 80
13 hours for 41-plus topics. 47 fact witnesses. 92 total
14 depositions.

15 On Tuesday, all the defendants provided to the State a
16 matrix with the topics, as per Judge Hetherington's order. A
17 matrix with the topics, grouped, and dates for those
18 depositions. Everybody did it on Tuesday. Last night, I'm
19 getting e-mails from Mr. Pate trying to rearrange the topics
20 and how -- that are different actually from Exhibit A that they
21 submitted in their brief.

22 This process, we have provided dates in December, we have
23 provided dates in January, and we've provided dates in
24 February. We've provided a lot of time for those deposition
25 topics, where our clients are available, our witnesses are

1 available, to take those depositions.

2 This process is dealing -- is being dealt with
3 appropriately by Judge Hetherington, including with the -- by
4 the protocol he set. We have an acknowledgment from
5 Mr. Beckworth that the State's assertion that -- prior
6 assertion that all witnesses should be compelled in the
7 Cleveland County Courthouse is demonstrably incorrect because
8 you can't do it for nonparty fact witnesses, and you can't do
9 it for nonparty fact witnesses who don't live in the state of
10 Oklahoma.

11 With regard to the Saturdays, Judge, Oklahoma law
12 prohibits depositions on Saturdays. It prohibits them on
13 Sundays. And there's a reason for that. There are people who
14 actually celebrate and observe, have religious observances on
15 Saturdays and people who do that on Sundays.

16 I'm not aware of my witnesses' observances. I'm not going
17 to ask them. It's frankly not appropriate for the State of
18 Oklahoma to ask them, and it's frankly not appropriate for me
19 to have to come to you and say, Judge; this witness has a
20 religious problem on Saturday, he can't come in to be deposed
21 by the State.

22 If you bring a witness in on a Saturday, they're going to
23 lose family time, they're going to lose religious time, and the
24 law of Oklahoma prohibits it, so no.

25 You also have two days after we had -- they filed this

1 request, Mr. Duck stated on the record the fact that witnesses
2 have to be where they live. I'm glad they finally acknowledged
3 it, even though they didn't have it in their brief.

4 Judge, there is no basis, given what Judge Hetherington
5 has done in this case and the deposition matrices that have
6 been produced, for this Court to unilaterally order witnesses,
7 fact witnesses, third parties, who have no interest in this
8 case -- the fact that they work for Teva or Cephalon or Purdue
9 or Johnson & Johnson, they still have no interest in this case.
10 For those fact witnesses, there's no basis for this Court to
11 unilaterally order them to appear anywhere.

12 With regard to the corporate designee depositions, we have
13 complied with Judge Hetherington's rulings and orders in those.
14 I know that one, there's going to be an issue raised later
15 today, and we're negotiating with the State. They changed my
16 proposal last night. They sent me a new proposal, which is
17 different from what you have before you, consolidating a lot of
18 topics into one day.

19 I will also note, your Honor -- so before I get to that.
20 Your Honor, you need to deny the relief with regard to the
21 depositions. They're being handled by Judge Hetherington, and
22 according to that protocol and what he's ordered, it is -- this
23 case is a monster, Judge. It's a monster. And we haven't even
24 started our (indistinguishable) of discovery yet.

25 People think things are busy now. Wait until the

1 defendants start dropping depositions. Because we just got,
2 and I'll get into this now -- and that relates solely to the
3 State's tactics in discovery here, your Honor.

4 And let me also step back, because the context I'm hearing
5 all the time is about my client selling opioids in the state of
6 Oklahoma. My client sells opioids all over the country. It's
7 a legally approved -- it's FDA approved, legally prescribed
8 drug that provides relief to patients everywhere.

9 The State of Oklahoma, Judge, is reimbursing opioid
10 prescriptions today. They're allowing their Medicaid and other
11 individuals who have state medical assistance to get opioid
12 prescriptions produced by all these defendants, and they're
13 paying for them.

14 So it's not about selling opioids, your Honor. It's not
15 about selling opioids. It's about their allegations of
16 misrepresentations to doctors that led to -- that they allege
17 led to the crisis here.

18 The State has taken 33 depositions. They have. The State
19 has refused dates when we've offered them, in October and
20 November, to take depositions of corporate representatives.
21 November, I offered three dates. They said they wanted one.
22 Okay. I flew a witness out here and flew out here for two and
23 a half hours, Judge. Two and a half hours of deposition
24 testimony.

25 If this case is going to get done by May of 2019, we can't

1 waste time by flying people out here for two and a half hours
2 of depositions. The State refused those dates, your Honor.
3 It's too early, we're not prepared.

4 Janssen offered dates on November 9th, before the State
5 filed its motion for a status conference. Then you've got
6 inflammatory, inappropriate, beyond the scope questions on
7 notice topics. It is unbelievable, your Honor.

8 Judge Hetherington said, and I quote from a hearing,
9 before this Court. He said: After listening to some of the
10 excerpts of deposition testimony, there were questions that
11 should not have been asked, period, that is just a waste of
12 time. A waste of time.

13 They've asked about the comparison between the Oklahoma --
14 this is corporate designee depositions. Comparison between the
15 Oklahoma and Texas constitutions. The cause of addiction to a
16 state -- to a topic -- to a deponent for whom that was not a
17 topic. They've asked about terrorism, American Military
18 history. They've asked about a witness's medical history.

19 Judge, I am not against either you or Judge Hetherington
20 sitting in on a corporate designee deposition by the State. In
21 fact, I'm all for it, because this sort of conduct would not
22 happen.

23 The Tasmanian Alkaloids, it's been mentioned earlier
24 today. They asked about Risperdal, a nonopioid antipsychotic
25 drug. The only connection to this case that I can find for

1 Risperdal, your Honor, is that Nix Patterson had a Risperdal
2 case prior to this. Nothing to do with it.

3 They asked whether or not Janssen was looking to acquire
4 Teva or Cephalon. What does that have anything to do with this
5 case, about the misrepresentations my client allegedly made to
6 doctors in the state of Oklahoma that they relied upon and then
7 issued unnecessary and excessive prescriptions.

8 We've had three depositions of the defendants -- I'm
9 sorry, the plaintiff, corporate designees, all of them woefully
10 unprepared. Purdue won a motion to compel on that. But they
11 didn't file a motion for sanctions. There's another one
12 pending.

13 Their first witness on where their documents were didn't
14 know where they were. Hadn't looked. Wasn't even a state
15 employee. Jessica Hawkins, who I understand is here today, was
16 here to testify on the standards, practice, and procedures for
17 the treatment of pain and opioid prescribing by the state of
18 Oklahoma. Apparently, she spent 100 hours.

19 She was unable to testify about how those standards,
20 policies, and procedures worked. She got them the night
21 before. We have filed 12 motions to compel in this case, your
22 Honor. We have won 9.

23 I have had to twice move to get the State to identify
24 unnecessary and excessive prescriptions that they allege my
25 client -- that were issued as a result of my client's,

1 Cephalon's, misrepresentations.

2 And this gets us back to this 245 prescriptions, your
3 Honor. I have never seen a party in a case run so far and so
4 fast from an allegation in their complaint than the State of
5 Oklahoma with regard to those 245 prescriptions. That is from
6 their complaint. I didn't make it up. They put it in their
7 complaint and said, we issued -- they reimbursed 245
8 prescriptions.

9 So whenever I asked them, Tell me which one of those are
10 unnecessary and excessive.

11 I don't know.

12 Tell me what doctor relied upon a misrepresentation by
13 Teva or Cephalon to issue those prescriptions.

14 I don't know. We'll give you a statistical analysis.

15 And if you look at it, Judge, look at the calendar. They
16 always say statistical analysis, statistical analysis. We're
17 not getting that until December 21st. Their whole case, as
18 they've been saying all morning, is about that statistical
19 analysis. We're not getting that until December 21st. It's
20 about three months before discovery ends. They are trying to
21 run out the clock on the defendants so that we are not in a
22 position to be able to defend our case.

23 Documents. Before they filed their motion for a status
24 conference, they produced 32,000. Teva alone has produced 1
25 million and -- over 8 million pages. The defendants are in the

1 millions of pages of documents and have been producing them for
2 months.

3 The day after they filed their motion, they dumped 300,000
4 documents on us. 92 percent of their document production took
5 place after they filed their motion accusing us of being
6 dilatory and stalling. 92 percent.

7 And I might also add the first 32,000 they produced to us
8 were either publicly available or completely irrelevant to this
9 case. The State is trying to run out the clock on this case so
10 that we don't have the opportunity to properly defend it. 80
11 hours of corporate depositions. 47 fact witnesses. That
12 doesn't include their 26 expert depositions that need to take
13 place, including -- and that doesn't include our expert
14 depositions. And we haven't even gotten to defendants'
15 affirmative (indistinguishable) fact of discovery or corporate
16 witnesses because we just got apparently a large amount of
17 documents. They then go on to claim that we coach witnesses.
18 It's preposterous, and frankly, it's offensive.

19 Let me go back to that document Mr. Beckworth mentioned
20 earlier about some big conspiracy between Teva and Purdue.
21 It's a distribution agreement, your Honor. Distributions for
22 an FDA approved, legally prescribed pharmaceutical and, that I
23 mentioned, the State of Oklahoma is reimbursing today.

24 We produced that document. We produced it. It said draft
25 on it. We produced it. They asked me if we could get the

1 final. We produced the final.

2 Judge, the relief the defendant -- the plaintiff requests
3 should be denied with regard to depositions. We have a
4 protocol in place. We just submitted the matrices. I'm
5 getting changes from the State right now, they might have even
6 e-mailed me while I'm sitting here, that we need to deal with.

7 We're going to get these depositions done, your Honor.
8 But I will say the Court -- and we will likely be having
9 additional motions to compel with regard to the State's
10 document production and with regard to their unprepared
11 witnesses. There hasn't been a single prepared government
12 witness yet. There hasn't been.

13 There have been three. One's been subject to a motion to
14 compel. Not prepared. There's another motion to compel being
15 heard today. And the first one was -- the guy wasn't even --
16 he wasn't even an employee of the State of Oklahoma. Might not
17 have ever even been here before.

18 So we ask that the Court deny the relief, and to the
19 extent that there are further issues related to discovery, we
20 believe they should be appropriately dealt with before Judge
21 Hetherington who -- and listen, Judge. My understanding is
22 Judge Hetherington is a former Appeals Court Judge. He's
23 probably reversed plenty of trial court Judges, and I imagine
24 when he was a trial court Judge, he got reversed himself. We
25 may disagree with him, and we may appeal it to you. But the

1 fact that we're appealing it to you does not necessarily mean
2 the system is broken. It actually means the system is right.

3 So we would ask the Court to deny any relief requested by
4 the plaintiff and to continue the matter with discovery before
5 Judge Hetherington.

6 Thank you.

7 THE COURT: Mr. Bartle, and I'm probably going to
8 pre-empt the State from asking this question or bringing it up
9 in their rebuttal. But you mentioned a couple of times that
10 you believe the State, through their, I think you describe, as
11 their dilatory and delay tactics, is running out the clock.
12 I'm trying to square your concern for them delaying with the
13 fact they brought up to me that they first noticed these
14 corporate representative topics clear back in May before
15 Memorial Day. So tell me what I'm missing here.

16 MR. BARTLE: Sure, Judge. That's a good point.

17 So they were noticed in May. The case was properly
18 removed in June. Judge Miles-LaGrange found that it was an
19 appropriate removal. She didn't agree with it, but she found
20 it was good faith -- in good faith. We're entitled to remove a
21 case. This Court and the plaintiff should not -- nothing
22 should be held against us because we exercised our right under
23 the law.

24 THE COURT: But you would agree that whether it's
25 right or not -- and I'm not disagreeing it's right -- it

1 nevertheless ate up clock time.

2 MR. BARTLE: It did eat up the clock time, your
3 Honor. It did. And the Court decided over our objections that
4 the trial needs to stay the same. You know, you could have
5 easily extended the trial date for two months, but you didn't.
6 We're at a May 2019 trial date.

7 And with regard to the deposition, yes, your Honor,
8 Mr. Beckworth would like to say that it was our position that
9 under Oklahoma law, it's one deposition per six hours. And
10 that is our position. But we've always caveated that with we
11 understand this is a larger case, we understand that it needs
12 to be more time. The defendant wanted six hours for every
13 topic. They wanted 240 hours of depositions for each
14 defendant.

15 Now, Judge Hetherington didn't ultimately agree with that.
16 We offered 36. In the MDL, Judge, there's 14 hours of
17 corporate designee deposition topic per defendant. 14 hours.

18 Now, I appreciate that we're not here. But we've got 80
19 hours now. It's less than the State wanted. It's much more
20 than we wanted. But there was a dispute over that, Judge,
21 because when you ask -- when you spend half your deposition of
22 a corporate designee asking completely off topic things outside
23 the scope, then what you're doing is that's inappropriate use
24 of corporate designee deposition time. And so if the State had
25 actually stayed on topic, I think we would have actually been

1 done with a lot more than we are now.

2 So, your Honor, I appreciate that the State is concerned
3 about that, but we now have protocol in place. We have
4 matrices, we have dates, and we have topics that were all
5 produced earlier this week pursuant to Judge Hetherington's
6 order.

7 THE COURT: I know that there was a phone call, I
8 think they had on a Saturday. Was there -- has there been a
9 Saturday deposition?

10 MR. BARTLE: There has not, your Honor.

11 THE COURT: There has not been. Okay. The call
12 happened on Saturday?

13 MR. BARTLE: The call happened on Saturday.

14 THE COURT: Gotcha. Okay. Thank you, Mr. Bartle.

15 MR. BARTLE: Thank you, your Honor.

16 MR. BECKWORTH: Your Honor, I'll be brief in
17 rebuttal. I'll try.

18 It's not a sanctions motions, and I don't even think you
19 have to decide who's right or wrong. I think the issue is
20 you've told us we're going to trial May 29th. I know that
21 you're standing firm on that. As I said, we'll do it with the
22 2 depositions or 10 or 20 or none, whatever. We'll do it.

23 I think what we need from you, though, is an affirmance
24 that we're going on the 29th, which you've said before. I
25 think this severance is something that you can absolutely do on

1 your own from the bench. Doesn't prejudice anyone in any way,
2 shape, or form.

3 It prevents a potential delay of the case down the road
4 for something that doesn't have anything to do with the claims
5 that are at issue here. And it lets us deal with that if and
6 when it happens through the normal course. It's pretty simple.

7 I can address some of these things. The religious
8 holidays. Look, I'm a religious person. I'm sure your Honor
9 is. We don't intend or want, if somebody's got an actual
10 religious objection -- you know, some people have faith, some
11 of our team have faith. If their religious day is on a
12 Saturday, we get that.

13 Does the rule normally allow it? No. But do you have
14 discretion to manage your docket the way you want? Yes. So
15 we're giving examples to the Court of things we think could
16 happen to help move this along. That's it.

17 I cannot physically make people show up, and only you can
18 do that. I don't think you can physically do it, but you have
19 certain powers, statutory and inherent control, to do it.

20 Regarding the special master process, you know, I think
21 what was just said is pretty interesting. They picked Judge
22 Hetherington by name, and we agreed to it. They just filed a
23 motion that says he has abdicated his role as a Judge.

24 The lawyer that just made that argument, his client signed
25 off on Purdue's statements about that. I guess we'll deal with

1 that one in a minute. We predicted -- Judge Mike Burrage
2 predicted that if we use the special master process, it would
3 create some delay, and it has.

4 Judge Hetherington has done a -- in my mind, I've said it
5 before, he doesn't have law clerks, it's just him, this is a
6 lot, and he's done a lot of good. I think we've only appealed,
7 to my knowledge, one thing. Isn't that right? One part of one
8 order on time that you modified slightly, and then he's come
9 back and modified in our favor since then. That's it. We've
10 been living with things on this. We're trying to move this
11 along.

12 So again, the rhetoric is what it is. We believe it's
13 based on the facts. We're producing documents. We've produced
14 well over a million. The State's not going to have what they
15 have. We're abiding with Judge's orders. That's what we're
16 doing.

17 We've got to get this thing ready. And I cannot say this
18 clearly enough. We're ready. We're going to be ready. We're
19 going to try it. We'll get what we get, and we'll try it. But
20 the system needs to be fair, and something's got to happen.

21 I would like to address just a couple of things that were
22 said. You know, this idea of, Oh, just wait and see what
23 happens when we start noticing depositions; you heard that from
24 the defendant. Look, this calendar's been in place for a long
25 time. They sat from when we filed the case in June of '17 to

1 when you denied their motion to dismiss in December of '17 and
2 chose not to do anything discovery-wise.

3 They chose to remove it. All three of them joined in
4 Purdue's removal. They chose to lose those two months. Not
5 us. And they have sat and not taken depositions on their own,
6 at their own choice.

7 Are we doing a rolling production? Yes. Well, guess
8 what? We've been taking depositions while they do a rolling
9 production as well. That's part of it. I highlighted these
10 documents to show that when we raise stuff like this, they're
11 material.

12 I'm not the kind of lawyer, nor is anybody on my team, to
13 do gotcha stuff. The comments they've made in their briefs
14 that we're trying to, you know, catch them in a bad deal and
15 get people that aren't prepared and say they're not prepared,
16 that's actually not true. We've done it with a witness who was
17 unprepared who Judge Hetherington found to be unprepared.

18 Purdue has taken two depositions in this case. They have
19 filed a motion both witnesses were unprepared. And we keep
20 hearing Ms. Hawkins' name. She's here. You can ask her,
21 anybody can ask her if she was prepared. You can't do more
22 than she did.

23 It's -- the rhetoric you're hearing from them is just not
24 accurate. But that's not the point. The point is, what would
25 you maybe be willing to do to help us move forward. That's it.

1 That's what we're asking for.

2 So I think I've been pretty clear. I'm just proposing
3 solutions. And one of the reasons I proposed them is on a
4 hearing with Judge Hetherington, he said, You know, I hear you
5 all, what do we need to do. So we filed a motion for status
6 conference with that in mind.

7 I'm happy to answer any questions you have, anything we
8 can do to help.

9 THE COURT: Okay. Thank you.

10 Would you like to be heard?

11 MR. BARTLE: If I may?

12 THE COURT: Sure..

13 MR. BARTLE: Just be heard quickly?

14 THE COURT: Sure.

15 MR. BARTLE: Your Honor, they've had the same
16 calendar that we have. And what they call rolling production
17 is a document dump. It's a document dump. It's 32,000 pages
18 for six months, and then drop 300,000 documents on us Friday
19 before Thanksgiving. And they know where the calendar is.
20 They know where it is. We're not getting anything really from
21 their case until December 21st. So there will be depositions
22 from the defendants and certainly my client.

23 I don't think we're required under the rules and I think
24 it would be inappropriate to start taking depositions of people
25 without documents. I've never seen that really done in any

1 case, and if the State chooses to proceed that way, that's
2 fine.

3 But we're entitled to defend this case based upon
4 documents and depose people about those documents. And we're
5 just getting them. And there are going to be a significant
6 number of more depositions in offense of discovery, your Honor,
7 and the Court just needs to take that into account.

8 Thank you very much for your time, Judge.

9 MR. BRODY: Your Honor, if I may just briefly, since
10 I don't like to leave things unanswered, and there was a lot
11 said, in particular about a document that was blown up.

12 And I guess this falls into the no good deed goes
13 unpunished category, that when Johnson & Johnson decided in the
14 summer that it was going to issue an RFP for a \$2 million grant
15 to educate physicians on dealing with opioid abuse, it put a
16 process in place and posted that document on the internet, you
17 know, hidden in plain sight for anyone to see.

18 And the RFP, I believe, went out in August. The grant was
19 just made last month. And we got an e-mail, I think it was,
20 from Mr. Duck saying, Hey, we found this document, what can you
21 tell us about it, haven't seen it in your production. We said,
22 That's right, it hasn't been part of one of our rolling
23 production yet. In fact, it was created after the date when we
24 got your discovery requests and started responding to them, but
25 we would be willing to expedite production of documents related

1 to that issue. And we've done that at their request.

2 Said, All right, if you want us to put those in front of
3 some of the others, we will put them in front of some of the
4 others. We've done that as part of the normal discovery
5 process. And so we've complied with that.

6 You know, as to the question of, Well, we had a witness
7 who was designated on the pain care forum and that witness
8 couldn't answer questions about this document, wasn't prepared,
9 didn't know what it was, well, I think that just emphasizes a
10 number of the points that Mr. Bartle made, which is we're
11 getting -- you know, we have a witness who's designated on the
12 pain care forum, and all of a sudden, that witness is expected
13 to answer questions about a Johnson & Johnson RFP that was
14 issued and a grant that was made in 2018.

15 And when the witness says, Well, I don't know anything
16 about that grant process, of course the witness doesn't know
17 anything about that grant process. The witness who was deposed
18 on Tuesday was designated to talk about the pain care forum.

19 I won't go into the substance, some of the arguments that
20 were made about what the document says, and about what the
21 science says. I will say, however, your Honor, that most of
22 the time I hear lawyers for the plaintiff talk about medical
23 science, I feel like I'm holding pocket aces, because you can't
24 mess with the science.

25 And the underlying studies say what the underlying studies

1 say. There are three, you know, primary studies that are
2 cited. You can go look at them. There's a 2007 study, a 2010
3 study, a 2009 study I believe you have as an exhibit to the
4 response to the status conference motion references to what's
5 in that study. And they explain the RFP and the RFP process.

6 But since I got up and said it wasn't the time for
7 substantive arguments, we were talking about a status
8 conference, I'll stop there. But I did just want to respond to
9 the idea that somehow the fact that this document was not
10 produced with a Bates number on it, the second that it was
11 completed and posted on the internet for all to see, that that
12 somehow was a problem with the discovery process.

13 THE COURT: Thank you.

14 MR. LAFATA: Good afternoon, Your Honor. Paul LaFata
15 for Purdue. I didn't realize how advanced it's been getting on
16 the clock. I think there was 45 minutes of presentation by
17 counsel as part of a request to have a status conference.
18 There was a lot of half information and misinformation that was
19 discussed in that. I will not waste the Court's time refuting
20 every one.

21 I mean, for example, the State said that it referred to
22 its -- and the Court had asked about the inability to have
23 dates set for deposition before removal. What counsel didn't
24 say is that when we gave dates after remand with the
25 re-notices, none of them were accepted. They were all

1 rejected, and we got pulled into a fight about how we were
2 grouping topics.

3 So frankly -- and I know that the co-defendants had also
4 offered dates that were not accepted. So, your Honor, please
5 don't be misled by the suggestion that there hasn't been
6 efforts to get these things scheduled and done.

7 Frankly, as I sat there listening to both sides, I get a
8 kind of frustration on both sides that they're not getting what
9 they want, when they want it, and they're trying to figure out
10 how to get this done. I'm sure the Court is maybe thinking the
11 same thing in terms of process.

12 But the remedy to how to get things done is not to break
13 the rules. It's not to break the Oklahoma Discovery Code.
14 It's not to break due process restrictions on jurisdiction.
15 The remedy is not to do oral motions, to suddenly redo this
16 whole case, and sever off parties or to use gossip from an MDL
17 that maybe violated an MDL order; or maybe there's a conspiracy
18 to violate an MDL order that maybe the MDL Judge has to look
19 into if that's what's been happening here. But -- or to kind
20 of make up gossip and stand in front of the Court and make --
21 that's not the remedy for it.

22 Frankly, I mean, look at the calendar the State had put up
23 there, that I guess is now obsolete as of last night. Look
24 at -- it's not even humanly possible to shove in all of the
25 witnesses, the documents, the hearings that have to occur to

1 fit the schedule that's been laid out.

2 And I think it's because this is a very large case. The
3 State is taking this as a very large case, and so are we.
4 There's a lot of work to be done. Expert discovery really
5 hasn't even begun, and there are dozens and dozens of them on
6 the table, it appears.

7 So I mean, I'm part of national counsel for Purdue. We
8 are in cases with attorneys general, district attorneys,
9 private counsel across the country. And in every one of these
10 jurisdictions, the parties are moving forward.

11 This is the only jurisdiction in the country, to my
12 knowledge, where it is so stymied by the lack of cooperation,
13 the lack of professionalism, I think, in carrying out -- now,
14 look, I don't -- I need to clarify. I'm not saying that really
15 to critique individuals.

16 I think what's happening, to be honest, is that people are
17 trying to do the best they can to shove in, in almost an
18 inhuman way, shove in the amount of work that has to happen in
19 the schedule that's been laid out.

20 So people are zealous advocates on both sides. They're
21 trying to get it done. Judge Hetherington has been doing
22 herculean work to get it done. But look, there's only so much
23 that can be done, and the remedy is not to break the rules.
24 The remedy is not to violate the framework of how litigation
25 should be.

1 If we're going to have litigation this size, the schedule
2 should match a litigation this size. Honestly, every other
3 jurisdiction is doing that, and there have been schedules that
4 have had to adjust when an attorney general on the west coast
5 says now we have to produce a lot of Medicaid data, now we need
6 extra time to do that, and we say, You're probably right. So
7 that's a normal thing in litigation of this type, to adjust as
8 you go, when you realize it's so cumbersome.

9 The remedy is not to cut them off the cuff, throw out
10 these proposals. So I know that we're going to have a status
11 conference. I'm amazed it's taking this long to discuss
12 whether to have one. The parties are in agreement to have one.

13 But for your consideration, I mean, we need to be
14 realistic and reasonable about how to respect everybody's
15 rights, to allow the parties to prepare their case, to prepare
16 their defenses, so the jury can hear a full presentation of
17 actual evidence and not half evidence.

18 I mean, like the proposal of having no depositions is
19 essentially repealing the Oklahoma Discovery Code. So again,
20 it's -- the remedy is to be realistic and human about the
21 framework, the schedule that we're operating under; not to just
22 revamp how litigation is done in the state of Oklahoma.

23 It's sort of reversed. The schedule should fit what has
24 to be done for the size and complexity of the case. So I would
25 submit respectfully that the Court should consider that for the

1 status conference. We really need to maybe have a frank
2 discussion about how to reframe the schedule for this case so
3 we can actually get this done.

4 Thank you very much, your Honor.

5 THE COURT: Thank you. Mr. LaFata, it seemed like I
6 read something in the defendants' joint response maybe
7 suggesting that some of the objections were based on the MDL
8 notice that the State was requesting duplicative and burdensome
9 discovery. Did I read that correctly?

10 MR. LAFATA: I'm not certain what we're referring to.
11 Maybe you have --

12 MR. BRODY: I believe, your Honor, it was just the
13 fact that a number of the fact witness depositions that had
14 been requested by the State are fact witnesses who were
15 requested by MDL plaintiffs for deposition before they were
16 identified by the State here, before they were noticed by the
17 State here. And it's just a matter of we have to work around
18 other court schedules.

19 The fact discovery deadline, or the fact witness
20 deposition deadline, at least in the MDL, I believe, is
21 currently still set for January 25th. It's earlier than here.
22 And I believe that was the reference that was made in the
23 response to the status conference motion.

24 There was also, I believe, another reference to -- and
25 this goes to the Court's question that you asked Mr. Bartle,

1 you know, on the 41 topics that the State noticed. This should
2 have come through in the briefing.

3 In early October, Janssen offered six days for a number of
4 those topics to be covered. They would have been done in
5 October. And the State's response was, in part, that it was
6 too early, and they weren't ready to take the testimony on
7 those topics.

8 So to the Court's question of, well, these topics were
9 identified in May, these depositions haven't happened, we
10 offered six days in October, and part of the response was it
11 was too early.

12 THE COURT: Thank you for clarifying that.

13 MR. WHITTEN: Your Honor, on behalf of the State, may
14 I just say a couple of things?

15 THE COURT: I will allow you to do that, sure.

16 MR. WHITTEN: Well, first, I think we need to correct
17 the record for my friend, Harvey, who left, but you all can
18 tell him about it. Judge Hetherington was a trial Judge in
19 this courtroom for many years, not just an appellate Judge.

20 But back to the subject. What we are really talking about
21 today, I don't -- I want to keep our eye on the ball. You're
22 hearing a lot of things today. We did not intend as a status
23 conference for you to decide which side's telling you right or
24 wrong. I don't see how you could do that today.

25 The whole point of this was to let you know, at a minimum,

1 I think both sides agree there is a spirited battle and a huge
2 disagreement about whether either side is doing what they
3 should do. So at a minimum, I don't see how you could conclude
4 anything other than that. There is a disagreement. We're not
5 asking you to decide that today. I think Judge Hetherington
6 will sort all that out.

7 The purpose for the status conference was to make you
8 aware of it. That's it. The most important thing you need to
9 know today, and this is the truth and it hasn't been denied; I
10 mean, Paul didn't deny it. The MDL has set a tiny subset for
11 trial, a couple of cities and counties. That's it. They talk
12 like it's the whole MDL. It's not.

13 Second, what the defense is trying to pull off in the MDL
14 is a giant resolution where they can settle a trillion dollar
15 problem for a few billion. That's what's going on. I don't
16 believe they'll deny that. And Oklahoma is so tiny and so
17 unimportant to them, they don't care about us. Unfortunately,
18 we get a trial here. Win or lose or draw, we get a trial here,
19 not in the MDL.

20 Now, here's the most important thing they did not deny.
21 You put a hundred lawyers in the room up at the MDL, word's
22 going to leak out of what has happened. And the lead lawyer
23 for Purdue, who is not here, and Paul hasn't denied it,
24 specifically asked the other MDL lawyers to help derail this
25 trial date in this little state of Oklahoma. Not deny. And

1 Paul may not know about it. But the lead lawyer who entered an
2 appearance in this case said it. I don't think she'll deny it
3 because she said it in front of a lot of people. They want to
4 derail this trial date.

5 Now, why is this little state of three and a half million
6 people so important to them? That's because you set this trial
7 first. That is the truth. The resolution here in this little
8 state of Oklahoma may help decide and affect the entire
9 country. So they may say it's the tail wagging the dog. We
10 say it's Oklahoma just getting justice; win, lose, or draw.

11 Now, while you have a spirited effort by the defendants to
12 take discovery -- I haven't heard anybody deny this -- Purdue's
13 going to take bankruptcy. They have no intention of going to
14 trial. That's what their lead lawyer has said. I challenge
15 her to deny it.

16 Secondly, these other defendants are going to ride that
17 wave. They know we can work, Judge Hetherington can work, you
18 can work, we can all work, and they're going to sit back
19 comfortably and say, Boy, is everybody on the plaintiff's side,
20 and the Judge is in for a surprise because Purdue's going to
21 take bankruptcy, we'll all go home, there'll be no trial in
22 May.

23 So I ask the Court just to keep your eye on the ball. The
24 most important thing you can do, and you have the power to do
25 this, you have the power to bifurcate the case, trifurcate it,

1 or not. But you have the power to assign separate numbers to
2 these groups of defendants, and you have the power to
3 consolidate them back.

4 And if they take bankruptcy next week, or if Purdue takes
5 bankruptcy May 1st, it doesn't matter. It will not save these
6 other defendants from going ahead to trial. No one's denied
7 they're going to do that. I don't believe they will, because
8 there could be some repercussions for them saying it because
9 that would be untrue. So that is the most important thing and
10 the most important reason why we asked you for a status
11 conference.

12 Now, one more thing I want to say, they're laughing back
13 when they have these meetings out of state, and they know they
14 are. They're laughing about their strategy of this removal and
15 bragging about, Well, it was a great deal. And they did cheat
16 us out of some time.

17 Shoot, Judge, if we filed a motion, as they suggested, for
18 you to assign separate numbers to these causes, they'll
19 probably remove on that and say it's a new paper and so it's an
20 amendment and so they can remove it. I predict they'll remove
21 it on something, some frivolous ground, if they can't stop the
22 trial by bankruptcy. But you know, you can't stop everything,
23 but you have the power to assign separate numbers.

24 I had a trucking case about a year ago. There were six
25 lawsuits filed. One truck ran over six cars. They were all

1 filed separately. The Judge consolidated them all for
2 discovery and trial. And what I'm talking about, what I'm
3 suggesting is the opposite of that.

4 We had one lawsuit filed with three families of
5 defendants. I'm suggesting the Court has the power because of
6 this bankruptcy issue, and to save your time and to move your
7 docket and to give the taxpayers of the State of Oklahoma a
8 fair trial, you have the power to uncouple these and just
9 assign separate numbers to them and then consolidate them for
10 discovery and trial.

11 You could do that in one order, and all of a sudden,
12 Purdue cannot stop us from going to trial against these other
13 defendants. That's what this really is about. That's why we
14 asked you to have a status conference. And with that, I will
15 sit down.

16 THE COURT: Thank you.

17 MR. LAFATA: May I respond briefly to that, your
18 Honor?

19 THE COURT: Sure, Mr. LaFata. Go ahead.

20 MR. LAFATA: Your Honor, I know we've been going back
21 and forth just to stay on point. I have to say I don't hear
22 about bankruptcy except from these lawyers. So it's a lot of
23 made-up speculation. And I need to say that the Court should
24 not entertain an oral, off-the-cuff request to revamp an entire
25 litigation based on made-up speculation.

1 Maybe somebody in the MDL proceeding is deceiving the
2 lawyers here. Maybe they're -- I don't know exactly how it
3 happened. But I do know that this is made up, and so the Court
4 really shouldn't give weight to it.

5 But I need to add, too, if the MDL Judge is hearing active
6 motions about violations of his orders about any resolution
7 discussions that happened there, so I think if there's been an
8 arrangement or something between the counsel there and here,
9 maybe the MDL Judge needs to hear about that. But that
10 shouldn't be a basis for a revamp of what's happening here.

11 With that said, if counsel has something to present to the
12 Court, they can do it. They actually deposed a corporate
13 representative of Purdue on its finances. They didn't ask him
14 these questions. We produced all of our audited financial
15 statements going back to 1996 to the present. They could have
16 asked him about those. So this is just a lot of made up.

17 Anyway, that's all, your Honor. Thanks.

18 THE COURT: Thanks.

19 MR. WHITTEN: As an officer of this Court, it was
20 said to our face, and I will say this. It was said in a
21 mediation to us, but the settlement privilege is not absolute
22 and lawyers have to abide by the oath. And if people want to
23 go under oath, we're happy to do it if they'll do it. It was
24 said. It was also said in a meeting in the MDL to a whole
25 bunch of lawyers. Paul -- I'm not blaming Paul. He doesn't

1 know. He didn't say it. But it was said. Lot of laughter too
2 when it was said.

3 THE COURT: Okay. Well, the State requested a status
4 conference, and we've just had one. What I will tell you is,
5 you know, if it's -- looks like it's been suggested that the
6 trial date of May 28, 2019 is what sets this case apart from
7 other jurisdictions, I would say that's probably correct.

8 And it was deliberately set, and it's going to be kept.
9 And I'll tell you it was deliberately set to influence and to
10 mandate the conduct of the State and the defendants to be
11 prepared. And that's why, even though there's been removals
12 and motions and everything else, one thing's remained constant,
13 and that's the trial date and it's going to stay that way.

14 And I appreciate the hard work on both sides. I know all
15 of you are making huge sacrifices to devote to this case. You
16 all signed up for it, so I'm not going to pat you too much on
17 the back, but I recognize that. And I recognize that it does
18 cause inconvenience to you.

19 I think we've demonstrated from the Court's end that
20 myself and Judge Hetherington are going to do everything we can
21 do to accommodate the expeditious resolution of this discovery
22 process so we can get this case to trial as has been scheduled.
23 So what I'm going to say is, you know, let's quit arguing about
24 the discovery, and let's start doing discovery.

25 I'm going to ask Judge Hetherington to consider some of

1 the suggestions that have been made. I know we still have one
2 more request that I look at the corporate representative
3 topics. I think that kind of flows into some of the things
4 we've already been talking about.

5 So we do need to take that up, but we're going to go ahead
6 and have another 15-minute break. We'll start back up here at
7 a quarter till. Okay.

8 (A recess was taken, after which the following
9 transpired in open court, all parties present:)

10 THE COURT: Okay. We'll now hear the objection to
11 Teva -- to the State's corporate representative deposition
12 notices. I say Teva. I know Purdue also had the objections.

13 MR. LAFATA: I think it was us. Your Honor, before
14 getting into this, during the break, I was informed by counsel
15 that I had misremembered one of the depositions that happened
16 of a Purdue witness on the subject of whether bankruptcy was
17 asked about. They informed me that it was asked about. I had
18 forgotten about that context. So just a corrective for that.

19 THE COURT: Okay.

20 MR. WHITTEN: It was more than that. He was
21 instructed not to answer by Purdue's lawyer. And we would like
22 to --

23 MR. LEONOUKAKIS: I was the one taking the
24 deposition, your Honor. Ross Leonoudakis on behalf of the
25 State. Mr. Cheffo was the --

1 MR. LAFATA: Your Honor, I don't think we have a
2 motion that we're arguing right now, are we? I don't even know
3 what this is, but we have a motion we're about to argue. Is
4 that correct?

5 THE COURT: We do, but you asked to clarify the
6 record, so I'll let the State clarify its position too.

7 MR. LEONOUKAKIS: I asked a number of questions about
8 whether or not Purdue's claimed to file bankruptcy, they're
9 hiring a law firm for financial restructuring, and whether to
10 file bankruptcy. And at every turn, the witness was instructed
11 not to answer. And I was admonished for invading the
12 attorney-client privilege, at which point Mr. Cheffo came into
13 this courtroom and tried to admonish me publicly about invading
14 attorney-client privilege. All of this was in front of
15 Mr. LaFata. So that is how the questioning went down about
16 bankruptcy.

17 THE COURT: Anything further, Mr. LaFata?

18 MR. LAFATA: Yes. It's because he was trying to
19 invade the attorney-client privilege. That's why the objection
20 was made.

21 THE COURT: Let's get on to the corporate
22 representative depo notices.

23 MR. LAFATA: Thank you, your Honor.

24 The objection that's been filed before you has to do with
25 a ruling that was made in a telephonic hearing on Saturday

1 morning, November 17, 2018. And the subject of that ruling has
2 to do with objections to the scope of certain deposition
3 subjects.

4 So it's -- just to refresh the Court's memory, these are
5 depositions both sides have exchanged deposition subjects for
6 corporate representative witnesses. Both sides have exchanged
7 objections to some of those issues. With respect to the ones
8 that we had served, we offered dates. Those were not accepted.
9 As I mentioned earlier, we offered dates. I think we got some
10 accepted last night.

11 Those objections were made in writing in response to the
12 notices when they were issued in their effective form, which
13 was I think in -- it may have been around August. It was
14 around the remand. I'm not certain of the exact date.

15 The subject of those objections were preserved in oral
16 hearing on August 31st, page 17, line 14 to 21, with respect to
17 the scope of that. And the only time that the State --

18 Do you have a question?

19 THE COURT: No. Go ahead.

20 MR. LAFATA: Oh, okay.

21 The only time that the State -- when the State filed its
22 motion with respect to the grouping of topics that had to do
23 with when we have a witness who, based on their experience and
24 the preparation and maybe the relationship during these subject
25 matters, we can have a witness that covers several topics. And

1 the parties had disagreement about how to do that. Judge
2 Hetherington resolved that dispute.

3 However, on the Saturday morning call, which was set up by
4 an ex parte communication, it's not really clear or disclosed
5 really what the nature of that communication was. But
6 regardless, the ruling on the record -- this was not based on
7 any briefing, this was not based on submitting the actual
8 objections for a decision, and I have a feeling based on --
9 this may have been sort of muscled through because of how the
10 hearing itself was set up.

11 It was not really formal. It was very ad hoc and, as I
12 said, ex parte on a Saturday morning. So it could be that what
13 I'm about to read from the transcript was really not intended
14 by the special discovery master.

15 Said that -- and this is November 17, 2018 hearing
16 transcript on page 36, line 24, to page 37, line 4: In the
17 event that a defendant or a defendant group has an objection to
18 a topic and the State will not agree by the meet and confer to
19 the redefined topic, then you proceed as the State defines it,
20 and the objection is overruled.

21 So there are a couple of things of note that are the
22 subject of the objection before you, your Honor. Firstly, this
23 is prophylactic overruling of objections. The Oklahoma
24 Discovery Code and every -- I mean, the Federal Rules of Civil
25 Procedures, every state that I've litigated in, it's very

1 customary, happens all the time, every day, the parties
2 exchange proposals on subject matters to take depositions; the
3 party putting up the witness will designate a witness on the
4 scope.

5 THE COURT: Let me stop you right there.

6 MR. LAFATA: Yes, sir.

7 THE COURT: If the parties exchanged proposals and
8 there's a disagreement, what happens?

9 MR. LAFATA: Well, typically, when I get a request or
10 when I serve a request and the receiving party objects to the
11 scope of it, we talk about it and we see if we can reach an
12 agreement.

13 THE COURT: Was that done?

14 MR. LAFATA: That was done with respect to some of
15 these. We haven't had an opportunity --

16 THE COURT: Was that brought to Judge Hetherington's
17 attention, that disagreement?

18 MR. LAFATA: This was not brought up, because that
19 wasn't the subject of any motion practice or hearing or
20 argument. It was a ruling in the abstract, your Honor. It was
21 done without any of this being submitted before him. So that's
22 why I think this ought to be vacated. This wasn't based on any
23 motion or filing before Judge Hetherington. So that's probably
24 -- my interpretation is probably -- wasn't intended to be as
25 broadly as it was worded, but we're taking it at face value,

1 which is the reason why it's being brought to you.

2 THE COURT: Okay. Go ahead.

3 MR. LAFATA: Okay. So again, I don't believe --
4 look, I mean, we're going to give it the weight that it is due
5 on its face. This is a prophylactic overruling of objections
6 before there are any filed. It's also a retrospective
7 overruling of objections that were not before the special
8 discovery master and that the State had never resisted.

9 And again, every other proceeding that I'm involved in,
10 it's very common to have those objections. They either get
11 worked out or not. If they're not worked out, then they're
12 presented for a resolution.

13 Unfortunately, your Honor, in this circumstance, it has
14 some deleterious effects, the way that this is framed up. And
15 that's why we have an obligation to bring this for -- to be
16 vacated.

17 Because of the rule requires -- the legislature and how
18 the discovery code requires there to be an exchange on this and
19 gives a responding party an opportunity to object,
20 prophylactically overruling objections is frankly not
21 consistent with the discovery code that's been set forth and
22 because it gives unilateral power by the noticing party to
23 define the scope of depositions, whether that noticing party is
24 a defendant or, in this case, the government, because it gives
25 the government unilateral power to define the scope of

1 discovery through a deposition.

2 It's an odd circumstance. We're sort of merging separate
3 branches of government. We're allowing the executive branch to
4 step into the shoes of a judicial function and say, This is the
5 discovery that will happen.

6 Again, I don't think it was quite intended to be that
7 broad, and probably the remedy is for this to be vacated and to
8 be fixed.

9 Now, another function of this, your Honor, as we set forth
10 in the briefs, is this is -- it deprives Purdue of an
11 opportunity to raise an objection, the way this is framed. So
12 we've laid forth case law in our submission to you. There is
13 no case law the State has submitted to defend the ruling that's
14 been set forth. There's really just a lot of rhetoric in their
15 response.

16 The case law affords the party the opportunity to be heard
17 and to present an objection. To overrule it without hearing it
18 or seeing it is not consistent with the process that a party is
19 due.

20 In Towne vs. Hubbard, which is 3 P.3d 154, the Oklahoma
21 Supreme Court in 2000, A party's opportunity to present its
22 case is an essential element of due process. Due process
23 requires an orderly proceeding where the parties are given an
24 opportunity to be heard, to defend, to enforce, and protect
25 their rights. That opportunity needs to be meaningful

1 opportunity.

2 Again, I think consistent with what I was saying earlier
3 with respect to the status conference, what is likely happening
4 is the -- kind of the attempt to keep the schedule the Court
5 has made, there's shortcuts being made in the process. The
6 constitution may not permit there to be these shortcuts made.
7 Our submission is that it doesn't permit that.

8 A Court that is blessing the conduct of a party without
9 making determinations, in particular with respect to a
10 discovery request, about whether those are consistent with the
11 Oklahoma Code, is an abdication of the judicial function. And
12 when the plaintiff in this case is the executive, it's also
13 mixing of powers that need to be separate that the constitution
14 has set forth.

15 So this Court and the special discovery master have a duty
16 to make sure that the scope of discovery is respected. There
17 is case law we cited, the district judges should not hesitate
18 to enforce that duty, make sure that's done appropriately. I
19 think unfortunately in this case, that wasn't done, and it can
20 have deleterious effects on the conduct of the case. It
21 probably already has been doing that.

22 On the separation of powers issue, this is a case kind of
23 on point. 681 P.2d 763, State ex rel. York vs. Turpen. This
24 is the Oklahoma Supreme Court in 1984, that the doctrine of
25 separation of powers is that no one department ought to possess

1 directly or indirectly an overruling influence on the others.

2 So when we have the attorney general on behalf of the
3 State that is being given a delegated authority to set the
4 scope of discovery, which is what this order has done, that, we
5 submit, is a violation of that doctrine. It ought to be
6 vacated.

7 Your Honor, we had offered dates for these deposition
8 topics. They were not accepted. I think on e-mail late last
9 night, we started getting some dates accepted. That's great.
10 The scope of these deposition topics, as you see in the
11 objections that have been attached to the submission before
12 you, I mean, frankly, this objection on the scope is really
13 around the margin. For many of these topics there isn't an
14 objection. We're putting up a witness on the topic.

15 But I will say when the shoe's on the other foot, the
16 State is often lodging objections in the middle of the
17 deposition or before the deposition begins. One of the State
18 representative witnesses who appeared to talk about the
19 policies and procedures with respect to the use of opioids, the
20 counsel for that witness on behalf of the State lodged an
21 objection at the time of the deposition.

22 Again, we took that objection, the deposition proceeded.
23 So to somehow say there's something funny with how the
24 objections were made, the State has been doing it on the fly.
25 So your Honor, we submit that these objections should not have

1 been overruled because they were not submitted for resolution,
2 a prophylactic ruling that overrules them and has the effect of
3 delegating the judicial function to the executive in this case
4 and deprives Purdue and other defendants the right of due
5 process.

6 And I'll say that if the decision would be to allow this
7 to be, that would go both ways. If the rule is going to be the
8 party noticing the deposition gets the right to set the topic
9 and the objections and response are prophylactically overruled,
10 yeah, that might speed things up, and it will lead to certain
11 results.

12 THE COURT: Well, two things. I think that's exactly
13 what the State's going to say, is that they are going to give
14 you the chance to name those topics. I'll let the State speak
15 for themselves. Maybe I've got it wrong.

16 But as I recall, the State's brief, they're saying that
17 you basically waived any objection you had to their topics
18 going back to that series of events in October. That the State
19 filed its motion to compel on October 4th, I think. You filed
20 a response on October 11th, and you didn't raise these
21 objections.

22 MR. LAFATA: Couple of things in response. I know I
23 mentioned this already, so it will be a little repetitive.

24 Firstly, our objections were served on the State in
25 writing. No response from the State. The motion that your

1 Honor's referring to, pull that motion up and scroll through
2 it. It's only four or five pages long. Nothing in there
3 arguing the scope of the deposition.

4 The word scope appears at the end of the brief. No
5 argument or presentation on the scope. And your Honor, you can
6 look at the transcript or talk to the special discovery master.
7 All of the argument that we had -- and I was here for that --
8 all the argument we had was with respect to grouping topics,
9 that was the scope, and the duration of time that came up.
10 There was no argument or presentation either way, whether
11 responding to objections which had been served or addressing
12 objections that were submitted for resolution or ruled upon.

13 THE COURT: If you group topics, aren't you implying
14 that there were topics that you agreed on?

15 MR. LAFATA: There are topics that we agreed on, yes,
16 your Honor. In fact, our written responses identify that. We
17 had agreement with the State on the topic and a proposed date
18 that the State just didn't accept. So there were topics that
19 were agreed to, yes.

20 There were some that were not agreed to that were objected
21 to. There was nothing done by the State on that. And again, I
22 said, your Honor, again, in the August 31st hearing, page 17,
23 line 14 to 21, we again preserve these objections again. So
24 there's been multiple preservations of these, your Honor.

25 Frankly, the argument about waiver is I don't believe a

1 good faith argument, because the counsel in this room were
2 present at the hearing. They wrote the briefs. You have
3 access to all of that. You can look to see if that was
4 actually presented. It wasn't.

5 THE COURT: Okay. Thank you.

6 MR. LAFATA: Thank you, your Honor.

7 THE COURT: Okay.

8 Mr. Beckworth?

9 MR. BECKWORTH: Yes, sir. Brad Beckworth again for
10 the State, your Honor.

11 Fortunately, a lot of what I had to say, you've already
12 heard. I'm troubled, though, very troubled, because you were
13 just told something that is a flat out lie. This is from our
14 brief filed on October 4, the one that Judge Hetherington ruled
15 on.

16 Purdue's attorney just told you we never asked for a
17 ruling on scope. He used that word. This is a quote. We
18 asked the Court, and this is a quote: Address all issues
19 regarding the scheduling and scope of these depositions on
20 October 18th or earlier, so that the State may put a schedule
21 in place regarding these depositions that it first began
22 noticing in April. That's on October 4, 2018, the end of our
23 motion to compel depositions on October 4. I could say more,
24 but I'm going to refrain.

25 The dishonesty, though, wasn't just limited to that.

1 Purdue's attorney started reading from page 36 of the
2 transcript. At page 36, line 24, they didn't read to you what
3 happened right above it, and you can read it for yourself. But
4 I'll quote it to you.

5 Their whole argument is that this was something new, and
6 they had objections that Judge Hetherington had never ruled on.
7 That's not what happened.

8 Mr. Burns, on the record -- this is page 36 of the
9 November 17 transcript, line 9.

10 Mr. Burns: I'm sorry. We have to present a witness on
11 the topics as defined by the State without any adjudication of
12 our pending objections to those.

13 Judge Hetherington, beginning at line 13: Well, yeah. I
14 mean, that -- I mean -- this is what matters. That's what the
15 October 22nd order was to take care of.

16 He goes on to say: We can spend the next two years
17 dealing with the objections on topics. That's what I'm trying
18 to eliminate. I don't want us to be faced with objection after
19 objection to every topic, which is what we kind of have or what
20 we have kind of. And so that's why I did it the way I did it.

21 And then you heard what Mr. LaFata said, but you didn't
22 hear the rest of it. On page 37, line 4: And by these
23 comments and my October 22nd order, I don't know how more clear
24 I can be.

25 Judge Hetherington again, page 37, line 17: That's what

1 the October 22nd order and again today is supposed to cure.

2 This is not some prophylactic issue. These orders dealt
3 with the 41 or so topics that we've been trying to get since
4 May. The matrices that were at issue that precipitated this
5 hearing were about that.

6 Judge Hetherington issued an order about that. That order
7 was on our motion to compel, which wasn't the first, I don't
8 think, that said what I just read to you about scope. That's
9 what it was. That's what a motion to compel does. I don't
10 believe that applies to depositions that haven't been noticed
11 yet under the protocol.

12 And what he was talking about, about I think Ms. Baldwin
13 about how we do it, if we have an objection to a deposition
14 that it should not take place at all and we can't come to an
15 agreement, we file a motion for protection or a motion to
16 quash.

17 If we have objections, we can state them on the record,
18 but the deposition will still go forward. We can then get a
19 determination later about whether our objections were valid or
20 not. That's the only way I think we can go through with it.

21 What's being argued to you and that is in the briefs is
22 not what happened in reality. I don't have to advocate. I can
23 just read the black and white. That's what it is.

24 I will go back to what I said earlier. They requested
25 this special master. We objected to it. They won. They

1 requested specifically Judge Hetherington. We were delighted
2 to agree to that, having lost the motion for special master in
3 the first place. So Judge Hetherington was appointed.

4 Judge Hetherington is being paid by them. They are coming
5 into a courtroom and saying that the special master has
6 abdicated his role as a tribunal. It's not right.

7 Thank you, your Honor.

8 THE COURT: Go ahead, Mr. LaFata.

9 MR. LAFATA: To start, your Honor, the first thing
10 that counsel had said was that I had misstated the content of a
11 motion. The record will reflect that's not the case. I had
12 said to you specifically the word scope appears at the end of
13 that brief. I invited you to look again at the paper. It's
14 four or five pages long.

15 There isn't -- the argument about scope had to do with how
16 the topics are grouped with the same witness. There was no
17 argument made by the State or presented to Judge Hetherington
18 with respect to the scope of any particular topic. Had to do
19 with how they're being grouped.

20 And I mean, the State says that it would have to file a
21 motion when it objects to a deposition topic we serve. It
22 hasn't done that. We served deposition topics. I was in a
23 meet and confer with counsel for the State. They said, There
24 are several topics we just totally object to, we're not even
25 going to talk about it. They haven't filed a motion on those.

1 Under this ruling, I think that means we would have the
2 right to go forward with those. That's not really how the
3 discovery code is supposed to work, as I read it.

4 Your Honor, they -- counsel had read from the transcript,
5 of that Saturday morning hearing set up ex parte by the State,
6 that the special discovery master did not want to be presented
7 with objection by objection. That was the quote that was read.
8 That's exactly what I'm highlighting for your Honor to resolve
9 here.

10 If the special discovery master says, I don't want to be
11 presented with objections, that's a prophylactic ruling on
12 whether you can present objections to the scope of a deposition
13 topic. Again, I think, frankly, this is not intended to have
14 the result that it's having.

15 The reason I believe this is happening with these rushed
16 ex parte morning hearings over a weekend when people aren't
17 available is there's so much corner cutting that's happening
18 because of the schedule that's been set up. I'm not going to
19 reargue this, but the corners can't be cut. Due process cannot
20 be sacrificed for the process here.

21 We want to go forward with these depositions. Again, I
22 said last night, we got some dates accepted for the first time.
23 We had offered them months ago. They were not accepted months
24 ago. So, your Honor, we submit that this decision needs to be
25 vacated so that the normal process can happen and we can get

1 these depositions done.

2 Thank you.

3 MR. BRODY: Your Honor, just for the record, we join
4 in the motion with respect to Janssen. It's really, I think,
5 important for us on two topics where we have objected outright
6 of the -- there are only, I think, 2 of the 44, or now it must
7 be 46 topics, that we've gotten from the State where we have
8 objected.

9 Where we are currently preserving objections outright to
10 producing a witness, it's Topics 24 and 40. Those have not
11 been litigated, adjudicated, and the State has known all along
12 that we object outright on those topics. I think those are
13 going to have to be briefed if we can't come to an agreement
14 through the meet and confer process on that.

15 As to the others, you know, those depositions are going to
16 go forward. We have offered witnesses subject to and without
17 waiving objections. As a practical matter, you know, that
18 stuff's moving; it's going. And I think the first set of
19 topics is going to be addressed week after next in Oklahoma
20 City.

21 But it is important to us that there is clarification.
22 And I don't know if -- how to interpret Mr. Beckworth's
23 statement on this, but as to the outright objection to the
24 Topics 24 and 40, that we have those objections to those 2 out
25 of the 46 topics thus far that have been noticed.

1 THE COURT: I would like to hear the State on 24 and
2 40. What is your response as far as working out objections
3 that the defendant has on topics?

4 MR. BECKWORTH: I may let Mr. Pate comment on that
5 just because he's been involved in some of the meet and
6 confers. I think there's some confusion here.

7 The motion to compel that we filed dealt with the topics,
8 I think, through 41, and that is what Judge Hetherington ruled
9 upon in his prior order. So that was a motion to compel
10 depositions over their objection. He ruled on that. They
11 waived any appeal of it.

12 This Saturday hearing that we're talking about was in
13 relation to him ordering them to give us matrices where the
14 depositions were to go forward, who it was going to be, what
15 dates, and what time. Teva didn't even produce one. Violated
16 his order.

17 And so we had that Saturday hearing to say, Look, you've
18 already ruled on this, the matrix they did doesn't comply with
19 your order. That's what that was all about. This idea of you
20 having adjudicated objections, we're talking about the topics
21 that were at issue in the prior motion to compel that had
22 already been ruled upon that there was no appeal of.

23 This is -- unless I'm just grossly misunderstanding
24 something, this is a coconut shell game. They're talking about
25 something that's not what's at actual issue. That's how I

1 understand it.

2 Mr. Pate, am I missing anything?

3 MR. PATE: No, your Honor. The objections that --
4 may I approach?

5 THE COURT: Sure.

6 MR. PATE: The objections that I think Mr. Brody
7 referred to, to Topics 24 and 40, which we received, I believe,
8 from every single defendant, were objections that they could
9 have asserted at the time that we filed our motion to compel
10 and asked for relief on, and they didn't do that.

11 We filed a motion to compel all of these, and the Court
12 ruled on that. So any objections that they have going forward,
13 Mr. LaFata argued at length about how this is prophylactic, any
14 objections to new topics. I think Mr. Beckworth explained
15 that's not the situation. The motion to compel was about those
16 41 topics.

17 And all three defendants violated Judge Hetherington's
18 order again when they provided their supplemental matrix that
19 they were ordered to provide and didn't include any dates for
20 those topics either, because they think they still have
21 objections that haven't been ruled on and they don't want to
22 give us a date for those. But the time for them to assert that
23 was passed.

24 And the reason that the defendants want to vacate that
25 order is so that they can reassert all of these objections we

1 got the first time and redefine our topics and file motions to
2 quash and further delay the depositions that they just offered
3 dates on. That's what's happening, your Honor.

4 THE COURT: Not all at once.

5 MR. BRODY: If I may, your Honor.

6 We're not proposing to delay anything that's on the
7 calendar. And as Mr. LaFata did, I would urge the Court to go
8 back and take a look at I believe it's an exhibit to the motion
9 Purdue filed, which is the October 4th motion that the State
10 filed with discovery master, the motion to compel related to
11 number of hours of deposition and topic groupings, which didn't
12 address the objections, the outright objections to only two of
13 the topics.

14 We have offered dates on 39 of the 41 topics, as well as
15 three topics, additional topics, subsequently served by the
16 State. We have provided witnesses on four other topics,
17 depositions that have already occurred. And so that's moving
18 forward.

19 We're really only talking about an adjudication on an
20 outright objection to two topics. And I would encourage the
21 Court to look back, certainly before entering a ruling on this
22 issue, at the October 4th brief.

23 And the fallout, you know, if we are given the
24 opportunity, as I believe we should be, to have those
25 objections adjudicated, is not going to be any delay. The

1 depositions where we have dates are going to move forward. I
2 don't believe we've gotten a response to a number of the dates
3 we've offered to the State for various topics. We're waiting
4 for that response.

5 We've offered dates on multiple occasions. We offered
6 dates in September. We offered dates by letter in October. In
7 person, I offered dates to Mr. Pate when we were here on
8 October 3rd. We offered dates on November 9th by letter.

9 We offered dates by letter on November 27th. Those are
10 falling into place. That's going to go forward. So we're
11 really only talking about two, and I would encourage the Court
12 to go back to that briefing.

13 MR. PATE: Your Honor, may I respond to that briefly?

14 THE COURT: Yeah. Let's go ahead and let the State
15 respond.

16 MR. PATE: I apologize, your Honor. But I just want
17 to make clear, because we've heard sometimes lawyers arguing
18 for all the defendants and sometimes they're arguing for just
19 their client. So I want to make clear that what Mr. Brody was
20 just arguing just applies to Janssen, because his client may
21 only be arguing about two topics, but I don't think the same is
22 true for Purdue. So I just want to clarify.

23 THE COURT: Okay. Thank you.

24 Mr. McCampbell?

25 MR. MCCAMPBELL: Yeah. On behalf of Teva, your

1 Honor, I'm at a disadvantage of Mr. Bartle having to get on a
2 plane because he's got a hearing tomorrow morning. And I have
3 been personally involved in this, but it's my understanding
4 that Harvey got caught in a situation. He had multiple
5 responsibilities and multiple cases.

6 He may have missed the deadline for turning over the
7 matrix. When he got some breathing room, he did get the matrix
8 done and did produce it. So it's not a situation where we're
9 just ignoring our responsibilities, your Honor.

10 THE COURT: Thank you for clarifying.

11 Mr. LaFata.

12 MR. LAFATA: I have one final point, your Honor, in
13 response to the last argument made. The State has tried to
14 argue that the special discovery master had already adjudicated
15 these objections in the hearing before the Saturday morning
16 conference.

17 Take a look at the order that the special master issued as
18 a result of that hearing. One of the items that he required
19 the parties to do was to state their topics with specificity to
20 exchange them. If it were the case that both sides were
21 talking about the contours of their topics, why would the
22 special master ask them to reissue their topics to one another.

23 It is just another indication -- look at the briefing.
24 You'll see it was not argued. The State didn't argue it. We
25 didn't argue it, because the issue of scope had to do with the

1 grouping of topics. And then look at the order that came out
2 of it. If what they say is true about what the special
3 discovery master did in that hearing, that order wouldn't make
4 sense. You wouldn't have to reissue topics if they have
5 already been adjudicated. Your Honor, that didn't happen. The
6 first time that happened was Saturday morning in that call.

7 Thank you, your Honor.

8 THE COURT: I do want to hear what your response is
9 to Mr. LaFata.

10 MR. BECKWORTH: Your Honor, the special discovery
11 master is here. I guess we could ask him what he meant. But
12 as he said on the record, I don't know how I can be any more
13 clear than that.

14 Your Honor, we are talking about topics that we noticed
15 over 180 days ago. We don't have an obligation to get rulings
16 on their objections. They have an obligation to file a motion
17 to quash or motion for protection. We offensively filed a
18 motion to compel because we knew what was up. We did it.

19 The ruling was that we get to take the deposition subject
20 to these matrices. That's what happened. As Judge
21 Hetherington said, he was -- said it in his October 22nd order
22 that's what he intended to do, and he clarified that. So it's
23 our understanding that his order goes to those depositions.

24 Now, I don't know that it's something we want to get into
25 here, but it troubles me that we're -- with all the problems

1 we've had in this case, that we're heading on a course where
2 we're supposed to go get a ruling on a bunch of objections
3 every time we want to go take a deposition and that somehow
4 that's our affirmative obligation to get them every time they
5 raise one. Because let me just read a few as an example.

6 This is in Purdue's objections to our amended notices. I
7 mean, and I'm not saying these are inappropriate. I'm not
8 commenting on whether they should or shouldn't do this. We
9 have general objections we use that are kind of boilerplate
10 sometimes too.

11 They object to the request on the grounds that, they seek
12 information that is irrelevant, overbroad, oppressive, unduly
13 burdensome, not reasonably calculated to lead to discovery of
14 admissible evidence and not proportional to the needs of the
15 case because they are not limited to events or issues in or
16 affecting Oklahoma.

17 You know, there's a lot of stuff like that. They object
18 to the extent the expense or burden of discovery outweighs the
19 likely benefit, taking into account the needs of the case, the
20 amount in controversy, the importance of the issues in
21 litigation, the importance of the requests of discovery in
22 resolving the case, and it goes on. And then there's specific
23 ones to certain topics.

24 As I understand the rules -- I am licensed here; it's been
25 a while -- I don't think that we have an obligation to go get

1 an affirmative ruling, overruling every objection somebody
2 makes to a deposition notice under Oklahoma's version of --
3 well, 3230(C)(5). I don't think that's how it works. But
4 whatever it is, we moved to compel them. They lost. We moved
5 to enforce that order. That's what I think happened. I don't
6 think there's anything inappropriate about that.

7 I don't know if you had a specific question?

8 THE COURT: Well, I think Mr. LaFata was suggesting
9 that the order by Judge Hetherington wasn't specific to scope,
10 and I think you answered it. You believe what he said at the
11 hearing and what had already happened answered for accepting
12 the topics that you had already produced. Is that correct?

13 MR. BECKWORTH: Yes, sir. Just to be clear, when we
14 filed the motion, I read to you the relief that we asked for,
15 which said: And scope. I think I argued that hearing. It was
16 a long hearing. So if they knew there was a motion to compel,
17 if they stood in the courtroom and didn't ask for specific
18 objections to be dealt with or anything like that, that's not
19 my fault. But whatever happened, that order occurred, and he
20 said, You get this many hours, do the matrices, and then go
21 forward.

22 And just real quick. This concept of, they keep giving
23 us, they keep giving us dates, one of the things that
24 precipitated this Saturday hearing was Judge Hetherington has
25 said we get to use our time the way we want to do it, try to

1 get together and get topics grouped accordingly. That's what
2 we've been trying to do for a while.

3 But getting them telling us exactly which topics we have
4 to take, exactly how we're going to do it, and that they're
5 going to provide some in writing and then we don't get to
6 actually ask questions about those topics unless they see what
7 we will and won't take and then they decide, not us, not you,
8 they decide whether the writing's good enough, we're not going
9 to take that.

10 And so we went to the Judge on it. And again, we can keep
11 going around and around about this all day, but I don't think
12 it's very complicated.

13 Thank you.

14 THE COURT: Thank you.

15 All right. You know, I read this stuff before, and I've
16 been looking at it again. My review of what has happened
17 convinces me that the normal process was followed. I believe
18 that the State filed its motion to compel. There were no
19 objections asserted. Judge Hetherington made his ruling. And
20 I side with the State. I believe that that should be it on
21 those deposition topics.

22 I'm concerned about the matrix. I think I understand that
23 they've been submitted, but I think there's still some dates
24 that need to be worked out. And I'm going to ask that the
25 parties present that to Judge Hetherington, and if there's not

1 an agreement, that the Court will just make a decision on when
2 those other depositions start or take place.

3 I agree that the discovery code encourages a meet and
4 confer, but as I said before, it's time to quit arguing and
5 time to start doing it.

6 Any questions about my ruling?

7 MR. BECKWORTH: Not from the State, your Honor.

8 THE COURT: Okay. All right. Are there any other
9 matters before I quit and turn it over to Judge Hetherington?
10 All right.

11 Judge Hetherington, do you need a couple minutes to
12 prepare?

13 (A recess was taken, after which the following
14 transpired in open court, all parties present:)

15 THE COURT (JUDGE HETHERINGTON): Let's go ahead and
16 go on the record. I think at great risk, I'm going to mention
17 the word topics. And everybody just went crazy, looking at me,
18 and I don't want to rehash anything at all, except I want to
19 ask one question.

20 I know how he's ruled, and I get it. But I do think we
21 have -- is it 29 and 40 or 24 and 40 that are still at issue?
22 Correct?

23 Mr. Beckworth, is that correct?

24 MR. LAFATA: Yes, sir.

25 MR. BECKWORTH: I'm going to let Mr. Pate argue that.

1 THE COURT: Because I want to get straight in my
2 mind, I want to be sure I understand, you know, what I still
3 have left, because I know that's not before me right now, I
4 know it's been raised, I know I've read about it. I think --
5 is it 29 and 40, or 24 and 40?

6 MR. PATE: I think the topics are 24 and 40.

7 MR. LAFATA: Correct.

8 MR. PATE: But the topic numbers, I can describe
9 them, I believe, if that would be helpful. But I think you
10 asked me if it's -- if those are still an issue.

11 THE COURT: Right.

12 MR. PATE: And I would kind of unfortunately ask you
13 the same thing, because what --

14 THE COURT: I think they are.

15 MR. PATE: Okay.

16 THE COURT: That's why I'm hesitant to saying
17 anything here. Well, I'm just not going to say much else. I
18 think 24 and 40 are still at issue.

19 MR. PATE: But none of the other topics?

20 THE COURT: Correct.

21 MR. PATE: Okay. Do you want us to address those
22 topics today?

23 THE COURT: No.

24 MR. PATE: We would be happy to do that.

25 THE COURT: Please, no.

1 MR. PATE: I'm sure everyone else will too.

2 THE COURT: Now, I don't know where you are on
3 witnesses being designated for those topics. I obviously don't
4 know that.

5 MR. PATE: I can give you kind of a summary.

6 THE COURT: Yeah, give me a little, help me a little.
7 Let's do.

8 MR. PATE: Sure, your Honor. So after we had the
9 hearing, the telephonic hearing, where you ordered new matrices
10 to be produced, we received those and have done our best to get
11 back to the defendants promptly about what dates work and what
12 dates don't. I think we're still in the process of that. We
13 are trying to accommodate them as much as possible on -- and
14 accept as many dates as we can. I think we've done that.

15 I have an amended -- we put it together for the status
16 conference. Didn't end up coming up, but an amended calendar
17 like what we attached to our motion for status conference that
18 kind of lays out the dates. I can provide that to you and
19 them, or we can just go through the process of continuing to
20 respond to the dates that they've offered and let them know
21 what dates work and what dates don't.

22 What I will say, though, your Honor, is we're dealing with
23 a situation -- and I understand it, but hopefully we get
24 corresponding responses from them to work through this. We
25 still have, for example, 15 topics offered across two days.

1 Now, the defendants who have said that, have said, We
2 understand you get your 80 hours, it's up to you how to use
3 your 80 hours, if you need more time, you know, we're not going
4 to object that you don't have more time, I believe is what they
5 have said.

6 The reason I bring it up, your Honor, is because all I
7 want to make sure is when we don't accept the date or we say,
8 We need another date, it's not because we're not trying to make
9 all the dates they offer work. If we can make a date work, we
10 will. But we also may need more dates. For 15, 16, 17 topics,
11 some of these, we need more than two days.

12 And so when we say we'll accept and we'll take these five
13 topics on this day, we'll plan to do these four on this day and
14 we'll cover as much as we can, but we also need more time and
15 more days, we know, for these other topics, please provide a
16 date, what I would expect would happen after all the briefing
17 and the argument that you've heard and all of the arguments
18 that we have made in the briefs that we filed, that we would
19 promptly get new dates for those and that this process would
20 continue so that all of these can actually be set so that we
21 can have the calendar that everyone has, it's got all the
22 topics on it for all the days, that we can then proceed with.

23 THE COURT: Has the State provided your matrix yet to
24 the defense for the topics --

25 MR. PATE: We haven't received deposition requests

1 from anyone yet except Purdue, the topics, I believe, other
2 than the one that we already presented a witness on for
3 Janssen. That deposition's already occurred. Purdue's the
4 only one that sent us topics, and we sent them our matrix, your
5 Honor. They've never sent us notices, but they did send us our
6 topics and we provided a matrix --

7 THE COURT: Okay.

8 MR. PATE: -- and proposed dates. And we would
9 expect, as was I think discussed at the hearing and you
10 acknowledged, that if a certain date doesn't work and they need
11 another date, you know, we'll try to get them another date.

12 THE COURT: Okay. At the risk of --

13 MR. BRODY: I know. I will just say that the way
14 that Mr. Pate described his expectation of how the process is
15 going to work is I think the way the process is working and
16 will continue to work. It's a back and forth. If we say, you
17 know, In response to your matrix, we can have a witness address
18 these topics over these two days, and they come back and say,
19 We need three days for those topics and that's how we're
20 choosing to allocate our 80 hours, well, you've already ruled
21 they get 80 hours, and, you know, we have to get them another
22 date.

23 THE COURT: Okay. And it works both ways. I mean,
24 there really hadn't been a time problem with the defense side,
25 but it does work both ways. So I guess if there hasn't been a

1 request, notices made from two of the defendant groups, that's
2 yet to come, I guess. So we'll see what happens. All right.
3 Thanks.

4 So I guess what was next on my agenda was Purdue's motion
5 for reconsideration of the October 22nd order regarding Rhodes.
6 Is that where we want to start?

7 MR. LAFATA: Yes, your Honor.

8 THE COURT: All right. Mr. LaFata, thank you, sir.

9 MR. PATE: I know it's their motion, and I don't want
10 to intrude on that. But our understanding was that this motion
11 wasn't really at issue anymore. I think after they filed it, I
12 sent a response to everyone saying that we agree that -- and
13 understand from your order that they weren't asking you to
14 reconsider anything; that they were just asking you to clarify
15 whether or not Purdue and the Purdue defendants had to produce
16 things outside of their possession, custody, or control.

17 And our understanding from your Honor's order and why I
18 sent my response was that that's not what was intended and
19 said, but there's no real dispute there.

20 THE COURT: Yeah. I mean, if that would help, let me
21 just read in my notes. You're not requesting reconsideration
22 to the extent it requires Purdue to produce responsive
23 documents concerning Rhodes. However, Purdue cannot compel an
24 independent nonparty, Rhodes, produce its own documents that
25 are within its possession and control and not that of Purdue.

1 MR. LAFATA: Yes, sir.

2 THE COURT: Absolutely true. The State even argued
3 its position, it did not turn on whether Rhodes is an
4 affiliate, which I think is true; the State sought documents in
5 Purdue's possession. So if that helps, I think you're right.

6 MR. LAFATA: Yes, sir. What you read, in my mind,
7 sounds like that resolves it. The point is it doesn't change
8 the discovery. It's really the statement that I don't think
9 was really argued about, the corporate affiliate. It wasn't
10 like a corporate law debate that we were having. The discovery
11 point is resolved. I agree with what Mr. Pate had just said as
12 well. Yes, sir.

13 THE COURT: Okay. Well, that helps. Thank you. Let
14 me close that one and open the next one.

15 Okay. Next is then Purdue's motion to compel corporate
16 witness testimony. And I think I've got the right one.

17 MR. COX: Your Honor, you may not need to pull it up,
18 quite frankly. Trey Cox. I am new to the case. I represent
19 Purdue. And so I approach these discovery motions on both the
20 best person and the worst person to try to resolve discovery.
21 I am the worst because I haven't been involved in the case, but
22 I'm the best because I haven't been involved in any of the
23 history of the case.

24 I introduced myself at the start of this day to
25 Ms. Baldwin and asked her what we could do to work it out. And

1 I am pleased, I believe, to report that we have been able to
2 work this issue out.

3 And the agreement is that Ms. Hawkins will be presented
4 again for two hours on a topic. The topic needs to be more
5 specifically defined with respect to the operationalization or
6 the actual usage and the practices, the implementation that is
7 of how opioids were used in the mental facilities.

8 And so that's what we're going to work on. I'm going to
9 work with Ms. Baldwin to specifically define that. She will be
10 presented again on the topic that we agree to for no more than
11 two hours. I have committed to her also that I will get her a
12 draft of this more defined, more definitive topical
13 clarification early next week.

14 I'll get it to you by Wednesday of next week.

15 And in light of that, Purdue will withdraw this motion.

16 MS. BALDWIN: And your Honor, I just want to say a
17 few things. While -- Lisa Baldwin for the State of Oklahoma.
18 While the State has reached this agreement with Purdue, I feel
19 that it's important to explain to you the kind of abuse of
20 discovery that's been going on with respect to our corporate
21 representative witnesses, including Mr. Castleberry and
22 Ms. Hawkins.

23 I'm not conceding, the State is not conceding that she was
24 not prepared. She has been the most prepared witness in this
25 case, probably most cases in state and federal court. She

1 prepared for over 100 hours. She met with 17 different state
2 agencies. She met with over 30 state employees and two
3 Oklahoma universities. This is all over the course of four
4 months. So she was extremely prepared, and Purdue's motion was
5 very, very frivolous.

6 However, I just met --

7 MR. COX: That's a little more than I think our
8 agreement was. Over the top on that. I don't think it was
9 frivolous. I think we've reached an agreement on it.

10 MS. BALDWIN: We've reached an agreement. I will say
11 I met Mr. Cox for the first time this morning, and he's a bit
12 of breath of fresh air. I will say initially, the person,
13 Purdue's counsel, who took Ms. Hawkins' deposition and who
14 filed this motion, wrote me a letter asking if I would meet and
15 confer, and I agreed to that. Then he -- he then did not
16 respond.

17 So Mr. Cox came to me this morning, he said he wanted to
18 meet and confer, and so I agreed to it.

19 MR. COX: Yes. And, your Honor --

20 THE COURT: So do we need any clarification, Mr. Cox,
21 on -- for instance, let me just read -- and again, I know I'm
22 running a risk here of blowing up your agreement.

23 MR. COX: Please don't blow up my agreement.

24 THE COURT: I think you've done a very good job. The
25 State had previously produced the Cephalon guidelines that

1 pertain to the treatment of pain, but did not produce the
2 policies until Ms. Hawkins had it the night before her
3 deposition. We know it's imperative, the document -- again, we
4 fight over document preparation, getting the documents well in
5 advance so we don't have delay. That's been a constant
6 problem.

7 So as far as the other two hours for Ms. Hawkins, she has
8 everything she needs to be able to prepare for the other two
9 hours of her testimony, correct?

10 MR. COX: I believe so. We're going to define the
11 supplementation to the topic definition, and I think that's the
12 one piece that she will need.

13 MS. BALDWIN: And, your Honor, the deposition topics
14 at issue are standards, procedures, and practices for the use
15 of opioids and opioid alternative medications and the treatment
16 of pain. She was prepared on those topics.

17 She interviewed four individuals at the Department of
18 Mental Health where she works. They provided her information.
19 She testified -- and you'll see in our response, she testified
20 extensively on the policies and procedures.

21 The Department of Mental Health operates psychiatric
22 facilities. They treat the most severely mentally ill people
23 in the state, and treating pain is just not in their mission or
24 purview. She testified to that. She reviewed policies, she
25 testified to those policies during her deposition.

1 And really, what I just wanted to let you know is that
2 this is a pattern where Purdue has been noticing depositions of
3 corporate reps, taking them, and then filing motions to compel.

4 And while we're reaching an agreement, we want the Court
5 to be aware of this pattern, because I'm concerned that the
6 next corporate representative we present, we're going to be
7 right back here making the same argument.

8 THE COURT: And that's why I'm trying to cure some of
9 this, because, you know, the part that I'm referred to in their
10 motion says the following. I mean, her answer was, you know,
11 My understanding of this topic was I was to prepare about
12 whether there were standards, practices, and procedures; not
13 necessarily speak to the hows, the whys, the whereases, the
14 whens, those sorts of operationalization -- which I'm glad she
15 can pronounce it, I can't -- of the policy.

16 Well, come on. I mean, you know, we've got -- I mean, I
17 agree with her in part there on that answer. But I see that as
18 a problem. That's the problem with almost every one of these
19 on the -- you know, we've got to be prepared to testify to the
20 hows and whys if we're the right person to testify.

21 MS. BALDWIN: Your Honor, she was the right person to
22 testify. She is the director of prevention services of the
23 Department of Mental Health. She has an incredible amount of
24 knowledge. And that is the -- that was both her understanding,
25 the State's understanding, and the individuals that she

1 interviewed, including the director of treatment services, as
2 these were: What are the policies and procedures which implies
3 a generalized policy. And again, these are state psychiatric
4 facilities, short-term hospital stays, treating the most
5 severely mentally ill. And they said, We don't treat pain,
6 this is not what we do.

7 THE COURT: Yeah. Then that's the answer.

8 MS. BALDWIN: And they went to individual psychiatric
9 facilities, and they asked them to provide any policies that
10 they had. They did. She reviewed them. So the State really
11 did its best efforts.

12 Now, when you read the motion, Purdue's motion, what
13 they're asking for was and what Purdue's counsel asked in the
14 deposition was really volume of prescribing, individual
15 physician's practices, how many, you know, at this one
16 facility, did this doctor prescribe three opioids, what kind of
17 opioids were there.

18 And so, your Honor, from the broad topic that they served,
19 she was not prepared to testify in that. But that is not, I
20 believe, the fault of the State or the witness. You can see
21 from all of her preparation, her -- I mean, she brought this
22 notebook of over 500 documents with her. She had extensive
23 charts.

24 I mean, this was a good faith effort on the part of this
25 witness. She's a full-time state employee, and she testified

1 repeatedly, over 100 hours. I personally spent probably 130
2 hours preparing her.

3 THE COURT: I mean, there's no question about that.
4 I just -- okay. I just want to be sure that an agreement as to
5 this witness and others that relates to the same topic, if
6 there is any, you know, we cover it --

7 MR. COX: And that's why I think that there has been
8 a disconnect in -- and I'm not -- this is not a blame. This is
9 a descriptive disconnect in topic. We provide a topic that
10 says, you know, the use and application, which we interpret use
11 and application one way. They go, they prepare their witness,
12 but we're not on the same page as to use and application.

13 And that's why what my proposal to solve this is, is we've
14 now identified what the hole is, what the miscommunication is.
15 Let's define that, and let's get past this.

16 THE COURT: Well, I'll hush and not blow it up then.

17 MS. BALDWIN: And I just have one more clarification.

18 THE COURT: You know, you're seeing my concern
19 about -- because this applies to more than just this witness.
20 I mean, it applies to a lot of the witnesses.

21 MS. BALDWIN: And, your Honor, I just have one more
22 clarification. We agreed that the additional two hours are
23 going to apply against Purdue's total corporate representative
24 witness hours.

25 MR. COX: Yes.

1 THE COURT: Well -- okay. That was a good time to
2 say nothing. Okay.

3 MS. BALDWIN: Thank you, your Honor.

4 MR. COX: Thank you, your Honor.

5 THE COURT: Thank you. Thank you very much. I
6 appreciate that.

7 Now Purdue's motion for clarification.

8 MR. COX: I have that one too, your Honor. I will
9 also report -- and I asked particularly how to pronounce his
10 name so I got it right -- Mr. Leonoudakis and I spoke. No?
11 Oh, man, how did I get it wrong?

12 MR. LEONOUKAKIS: Leonoudakis.

13 MR. COX: Leonoudakis. I'm sorry. I apologize then.
14 I specifically asked and tried to get it right, and I still
15 failed. I apologize for that.

16 MR. WHITTEN: He can't say it either.

17 MR. COX: Well, that's good. I've got company then.

18 I think I am pleased to report that we also were able to
19 reach an agreement with respect to what this clarification is.
20 It is with respect to three witnesses.

21 And what they have informed me that they will do is,
22 number one, they will produce the custodial files for the three
23 witnesses by December 7th, and they have provided deposition
24 dates for Mr. McCurdy of December 13th, Mr. Murphy of December
25 18th, and Mr. Brown for December 14th. That one may be

1 determined, and this is when we were agreeing there may be some
2 slight movement in those. But I think the main thing is, is
3 the custodial files are going to be produced and the
4 depositions will be on those dates identified or some period
5 briefly thereafter. And then --

6 THE COURT: Well, wait. Custodial files will be
7 produced?

8 MR. COX: December 7th.

9 THE COURT: Or briefly -- okay. Okay.

10 MR. COX: I understand that's -- we're good on that,
11 custodial files, December 7th. And then those -- the
12 depositions will proceed on the dates that I identified or
13 dates shortly thereafter.

14 And then what I guess the final issue is, is those
15 individuals, we're going to take those individuals, and then
16 those should cover any of the remaining corporate
17 representative issues that are out there. But if they don't,
18 then we will confer about whether that should happen, like
19 given what we have been talking about, which is the interest is
20 the clinical application.

21 And I think that's the same problem that they had with
22 Castleberry is, what do the clinicians, the doctors, and the
23 pharmacists have to say about how the opioids were used,
24 prescribed. These three, who are the chief medical officer,
25 the head pharmacist, these are the people that will handle and

1 get us that information. Moreover, they are all currently and
2 still employed by the State and have been for some time. So we
3 believe that should alleviate any issues there.

4 MR. LEONOUDAKIS: That is our understanding, yes,
5 your Honor.

6 THE COURT: All right. Let me read the rest of my
7 notes. Okay. Thank you.

8 MR. COX: Thank you, your Honor.

9 THE COURT: Thank you very much.

10 Now, just for the record, again, the two motions regarding
11 Fate, F-A-T-E, Inc., and Lampstand Media are being passed. I
12 don't know if there's any comments that need to be made about
13 that. I know that Mr. Neville is just getting in the case as
14 well, and those will be reset maybe -- I think our next hearing
15 date is December 20th, correct?

16 MR. LAFATA: I believe, your Honor, that there was
17 some e-mail exchange about setting a time to arrange for this,
18 including with counsel for them. And I've not personally been
19 involved in those communications, but I think that's been
20 happening.

21 THE COURT: So if we can do that earlier, I can do
22 it. Yeah, because I think we talked about me doing it either
23 over even in our office in the conference room, Angie if she's
24 available, or somebody bring a court reporter. So yeah, I
25 mean, we can work that out well in advance of the 20th if need

1 be.

2 MR. LAFATA: That would be good. Thank you.

3 THE COURT: All right. Thank you.

4 All right. State's emergency motion for sanctions.

5 Mr. Beckworth?

6 MR. BECKWORTH: Thank you, your Honor. Brad
7 Beckworth for the State.

8 Just real quick on the two Purdue motions that were dealt
9 with by agreement. I just would like to make clear for the
10 record that those are withdrawn. We've had an issue in the
11 past where, your Honor, we've agreed to something, and then
12 it's ruled on and sustained and goes along with what we agreed,
13 and that's now being used against us, saying, Oh, there's been
14 nine motions granted. I think Mr. Cox said that, but I just
15 want to make sure, for your purposes, it's withdrawn.

16 MR. COX: It is absolutely part of our agreement that
17 those two motions are withdrawn, your Honor.

18 THE COURT: All right. Thank you, Mr. Cox.

19 MR. BECKWORTH: Your Honor, it's a serious motion
20 that we filed, but the eyes in the back of my head said to me
21 that you were here most of the day already, so you've heard a
22 lot of what I have to say on this issue. So I don't intend to
23 go through it in great detail. I'm just going to hit the three
24 topics that are at issue as quickly as I can.

25 The first issue deals with the deposition we took of

1 Mr. Ponder, who was a designated 30(B) witness for J&J on the
2 issue of their knowledge of the pain care forum and certain
3 lobbying and legislative efforts in Oklahoma.

4 As you recall, we had a hearing on that issue. And first
5 I just want to talk about what happened with your ruling and
6 thereafter. We understood your ruling to be that, A, they were
7 ordered to produce a prepared witness; B, it didn't count
8 against our time to have another three hours with that witness;
9 and C, that that witness had to be produced within the next
10 business week.

11 In the briefs, the defendants have now taken the position
12 that that's not what you ordered. They're saying that you
13 ordered something far different from that. So I took the
14 liberty of actually going and reading the whole transcript,
15 because this is important to what's actually being written
16 versus what actually occurred in real life.

17 On page 121 of the Ponder transcript, this was during the
18 conclusion of the hearing we had with you, you said as follows,
19 starting on line 4: But it's clear that there needs to be
20 another witness provided that is prepared to answer as to pain
21 care forum and get it done within the next five or six days at
22 most. I mean, it's the end of the week now, so let's say by
23 the end of the week next week. And if it has to be here in
24 Norman, it's here in Norman.

25 I don't think there was anything equivocal about that

1 ruling. That ruling came, as your Honor will remember, after a
2 lengthy debate where you originally said, Let's get somebody
3 here within the next couple of weeks, and I said, Judge, we've
4 got to move fast, we can't have another two weeks lost on this.
5 That was your ruling.

6 I sent out an e-mail. I cannot remember, as I stand here,
7 but the following week on Tuesday or Wednesday, and said, Hey,
8 we'll see you all on Friday for this deposition. I got a
9 response from, I believe his name's pronounced Gavin Ross,
10 Gavin with J&J's attorney, who was there at the deposition,
11 feigning or claiming that they weren't going to have a witness
12 there on Friday and didn't know we actually intended to take a
13 deposition on Friday.

14 Of course, we had a ruling that said we could. So through
15 e-mails and then phone calls, the decision was made that they
16 could not have a witness prepared by that date. They offered
17 to have a witness, I believe, come Monday of Thanksgiving week,
18 and I had a conflict, because your order said to take it by the
19 end of the week before. I couldn't do it by Monday.

20 So I told Mr. Gavin we would do it in Oklahoma City
21 because we were going to be here anyway on Tuesday. I started
22 getting e-mails from him to call him personally, so I did. And
23 he informed me that that was going to really wreck his
24 Thanksgiving week and maybe the witness's and asked if we could
25 do it later.

1 So I told him as follows. One, this job's hard enough,
2 I'm not going to make you travel and miss Thanksgiving with
3 your family over a three-hour deposition, but I want it to be
4 clear that the position I have is that you were ordered to do
5 it the week before and you failed to do it. And I'm still
6 going to raise that. That notwithstanding, I don't want to
7 take another unprepared witness, so we'll do it after
8 Thanksgiving. That's the truth of what happened.

9 That lawyer's not here in the courtroom, and as we're
10 seeing more and more often, the lawyers that actually engage in
11 a lot of the conduct at issue don't show up here in the
12 courtroom to deal with the stuff that they were involved in.
13 But that's what happened. That's the truth.

14 And the stuff that was put in that brief aren't the truth.
15 And the transcript doesn't lie. Neither do I. I may make a
16 mistake every once in a while. There's a lot going on, and my
17 memory slips just like everyone else, but those words are
18 clear. That's what happened.

19 So also, during that hearing, I told your Honor exactly
20 what you heard me say with Judge Balkman, is we need help
21 moving this thing along. And I made this comment to your Honor
22 that I know you don't like issuing sanctions. And what you
23 said, and the record was, you didn't agree that you did or
24 didn't like them, but you understand that coercive sanctions
25 are required sometimes.

1 You mentioned what had happened in Tobacco with the \$5,000
2 a day sanction, and that if we believe sanctions were
3 appropriate from time to time, we had to ask for them. That's
4 what happened. So that was step one to what's going on today.

5 Step two, we had Ms. Churchman took a deposition of a J&J
6 representative shortly after this hearing took place. Now, if
7 you'll recall, during this hearing, one of the admonishments
8 you gave was not to instruct witnesses not to answer. If you
9 know, you know, if you don't, you don't, we get the answer we
10 get, but don't instruct them not to answer. We all know you
11 can instruct a witness not to answer if it's abusive,
12 privileged, we all get that, but don't instruct somebody not to
13 answer.

14 During the deposition -- it's been briefed -- we asked the
15 witness to read this document that you've heard a lot about
16 today into the record. Now, I don't think I need to go over
17 that, but I think you were here when I talked about the three
18 examples with witnesses where we tried to use this Johnson &
19 Johnson document that had not been produced to us in
20 depositions. And witnesses said, We don't even know if that's
21 a real document, I don't know where that came from, I don't
22 know if it's true.

23 So when we ask a witness about it, it's hard enough when
24 we're producing what we think is a pretty critical document,
25 and they hadn't seen it before. When I follow -- the first use

1 of that was with Mr. Ponder.

2 When that's followed up the next week with a young lawyer
3 at our firm taking a deposition of one of their sales
4 representatives and she uses that document, it's not
5 appropriate in any way, shape, or form for a lawyer -- and I
6 don't care who that lawyer is, whether he's a great guy or not
7 or whether he's our lawyer or theirs -- to sit there and say,
8 You're not reading that; don't do it.

9 But it's even more inappropriate in this context where it
10 was done because of some allegation or uncertainty about what
11 that document was. That was their document. So we burned an
12 opportunity to have that witness questioned the way we wanted
13 to. It's not right. It goes against the instruction that you
14 made to J&J three or four days prior. That's what happened.

15 Same thing happened just the other day. On Tuesday, I
16 continued that deposition. During that deposition, I asked
17 this witness about this same document, and I got the same
18 thing. I don't know where this came from, I don't know if
19 that's accurate, it's not something I've ever heard before.

20 I'm paraphrasing. I don't have the transcript in front of
21 me. But that is why we raised the issue about the witness
22 being instructed not to answer the question.

23 Now, in their briefs they say, Well, that wasn't a
24 question, you were having them read a document. We're
25 entitled, I think, to set our questions up the way we want. We

1 do it often where we ask to read a part of a document and then
2 we ask about that document. That's happened in a lot of
3 depositions.

4 And to my knowledge in this case, that's the only time a
5 witness has been instructed not to read something into the
6 record. It's a problem. So that leaves us with, if I remember
7 right, the last thing that we raised before your Honor, which
8 is this document.

9 This document is a problem for J&J. You've seen it. Let
10 me put it up here again. I'm not going to go through a big
11 hullabaloo about -- and that's an Aggie term, hullabaloo -- but
12 I'm not going to go through a big hullabaloo about it.

13 But it's fair to say we view this as an important
14 statement. J&J is saying, in fact, as many as 1 in 4 patients
15 receiving long-term opioid therapy in a primary care setting
16 struggles with opioid addiction.

17 Now, J&J has come back and said, we didn't do anything
18 wrong because they found the document, and we didn't do
19 anything wrong because that document was actually created after
20 the discovery request went out in this case.

21 The document speaks for itself. It is their document.
22 We've had witnesses not want to testify about the document, but
23 the document says what it says. And now we've had lawyers come
24 in -- now that the lawyers got involved, they're disclaiming a
25 public document that they used to engage in a \$2 million

1 contract which has been awarded. And now they're saying that
2 their very own document is false. They're saying that the
3 statements there they say, in fact, are false.

4 That's a problem. That document should have been
5 produced. We're entitled to know everything about that
6 document. What we got was a letter responsive to our request.
7 And I will actually compliment J&J. They moved on this pretty
8 fast when we raised it to their attention.

9 But what happened was, in addition to giving us some
10 information about it, the lawyer who wrote the letter now
11 claims that this document -- now they claim it's false. They
12 claim that despite being written by employees involved in this
13 procurement process, despite being reviewed by their legal
14 counsel, that what they did was they made a mistake, and not
15 just in that one, but in the paragraph preceding it.

16 We're entitled to know all about that, and we're entitled
17 to ask their witnesses about it. It is not appropriate at all
18 to engage in that type of conduct.

19 Now, let me just step back to something that I'll close
20 with on this. There's been a direct misrepresentation to this
21 Court about what happened in that Ponder deposition. I read
22 the rough transcript to your Honor during my argument. You
23 heard it. It's on paper. I asked that witness how long he had
24 prepared for his deposition.

25 That witness said: One hour, two hours.

1 I said: How much?

2 Two to three tops.

3 That's what he said. That was his testimony.

4 Now, of course, later in the deposition, the lawyer
5 started saying, Let me stop your cross-examination of this
6 witness, let me take it over and ask some questions about it.
7 I said, No, you can ask your questions at the end of the day.

8 When he was put on redirect, he said, I think as much as
9 three days' preparation was given. Okay. I don't know which
10 one's true. But in our brief, we said he didn't tell the
11 truth. He didn't. Two to three hours and three days are
12 completely opposite. They cannot both be true. It is an
13 impossibility of the English language. That's what he did. So
14 he lied on the first half, or he lied on the second half. I
15 don't know. But that's what happened.

16 So the relief we requested is severe. We have to ask for
17 relief to build the record. You have heard an awful lot today.
18 A lot of it was about you. We have to build a record. So
19 we've asked for sanctions. I think you already gave one, which
20 is you ordered that witness to -- or a different witness to be
21 prepared. We've taken that deposition.

22 But despite that admonishment, they didn't show up when
23 you said they had to. They feigned ignorance of it. They
24 instructed a witness not to respond to a specific question that
25 we asked and the way we asked it. And the stuff is just

1 continuing.

2 So it's late in the day. I've already gone over a lot of
3 this with Judge Balkman, and it's in the record already before
4 you. I will respond to any questions you have, but I don't
5 think a whole lot else needs to be said.

6 THE COURT: Let me ask you about your request.

7 MR. BECKWORTH: Yes, sir.

8 THE COURT: I know that your relief that's requested
9 involves a number of things, and seven of them by my count,
10 with No. 2 involving multiple subparts. Number one is Johnson
11 & Johnson must offer a prepared witness on Topic 41 for at
12 least three hours with whatever time it takes, not counting
13 against the State, and produce the author of their request for
14 proposal and Mr. Flanary at the Cleveland County Courthouse
15 with me present. Is that your request?

16 MR. BECKWORTH: Yes, your Honor, it is.

17 THE COURT: Okay.

18 MR. BECKWORTH: Sorry, I was just trying to get the
19 document. I apologize. I didn't want to belabor this. I
20 really didn't even go into the legislative part of it. If you
21 need me to, I will.

22 THE COURT: No.

23 MR. BECKWORTH: I do want to address one issue.
24 These briefs were trying to flip this back on us that we tried
25 to ambush this guy. That's not at all what happened.

1 Ms. Baldwin and Ms. Churchman and I spent more than 7 or 8
2 days, and you can read the transcript.

3 We had some very detailed questions about every law that's
4 ever been passed in this state and what they did or didn't do
5 and their dollars. I asked Mr. Ponder about DUR board meeting
6 minutes. I did not have those minutes with me. I wasn't
7 reading from them.

8 I went and looked at every DUR board meeting that had been
9 taken during this guy's career. I didn't know he was going to
10 be the witness, I don't think. I don't think we were told
11 before. And I just went down the list of every one that I knew
12 of, if he had been there and what he remembered. That's what
13 happened. And he didn't know anything. Okay? So that -- I
14 didn't want to leave that out.

15 THE COURT: Well, I mean, your research indicated he
16 had -- I don't know where this comes from, but had attended at
17 least 46 drug utilization board meetings.

18 MR. BECKWORTH: That's correct. And here's how we
19 came to that.

20 THE COURT: Over the 14 years. So how did you come
21 by that, yeah?

22 MR. BECKWORTH: Because we knew that they had a
23 person by the name of Ponder that was going to those meetings,
24 and so that's how we did the research. I did not know that
25 their representative was going to be Ponder until I met him

1 that day.

2 So I had a list that J&J had someone there on the rolls or
3 announced as being present. I think Ms. Baldwin actually found
4 all that. And that's why I went down the list one by one. I'm
5 sure I have minutes somewhere, but I didn't have those minutes
6 with me. I wasn't trying to quiz him over the minutes
7 themselves. I was trying to ask him what he knew.

8 Now, to flip that back, you had a guy whose job it was to
9 be at those meetings. Other than one or two, he had nothing he
10 could offer us about why he was there or what he was doing. So
11 if the answer is, I was doing nothing, I guess that's his
12 answer. But that's not what he said. He didn't recall.

13 So that is part of the relief, is to have a properly
14 prepared person on that.

15 THE COURT: Well, are you expecting this -- a witness
16 to be prepared to talk about 26 specific legislative
17 initiatives promoted by Johnson & Johnson?

18 MR. BECKWORTH: To the extent Johnson & Johnson took
19 a position internally or externally about those in the state of
20 Oklahoma, yes. You know, I doubt you've had the opportunity to
21 read the entire transcript but, you know, one of the things
22 that happens here is through the pain care forum and other
23 things, these defendants have absolutely been on a
24 collaborative -- and that's the word used in the documents, and
25 that's the word the witness testified to -- collaborative

1 effort to work with their partners to get policy passed here
2 and nationally. And that's what they did.

3 And so part of what they're claiming here is, you know,
4 you hear it today, like the State's still allowing drugs to be
5 paid for. Well, part of that's because we're required to by
6 federal law. But we're entitled to know what position they
7 took for or against any law that's been passed in the state of
8 Oklahoma, if they're going to have anything to say about those
9 laws.

10 And one of the things I asked this witness, was pretty
11 interesting, was we had an opioid commission, it was opened to
12 the public. There were public and private people there. Where
13 was J&J. J&J started using a group called Pharma, who they've
14 spent tens of millions of dollars with nationally to do their
15 work in the state of Oklahoma after this lawsuit was filed. So
16 I think it's fair game to ask those questions with someone who
17 actually knows what they're talking about.

18 THE COURT: Okay. Thank you, Mr. Beckworth.

19 MR. BECKWORTH: Yes, your Honor. Thank you.

20 THE COURT: Now Mr. Ottaway.

21 MR. OTTAWAY: I feel like a little child going off to
22 the end of the high dive board. There's that moment you look
23 down, and you think, Should I leap or stay up here. I will
24 announce my appearance for Janssen and jump in. I'm Larry
25 Ottaway. This is Amy Fischer. This is Andy Bowman. We have

1 entered our appearance for Janssen on this motion.

2 I don't want to get into a lot of who shot John here, but
3 you heard a couple of things. Here are two documents attached
4 to our brief, the plaintiff's request for the deposition that
5 followed Mr. Ponder's and the immediate response.

6 There have been complaints that Mr. Ponder did not know
7 anything about lobbying in Oklahoma. Mr. Ponder was Johnson &
8 Johnson's lobbyist here. This is Mr. Ponder's deposition
9 printed front and back. That's a lot of he didn't know
10 anything.

11 THE COURT: Oh, I have it.

12 MR. OTTAWAY: And I would encourage you to read it.

13 THE COURT: Well, and I did get it highlighted and
14 I've read most of the highlighted portions.

15 MR. OTTAWAY: This is the deposition of the witness
16 produced by Johnson & Johnson who followed Mr. Ponder on the
17 pain forum pursuant to the hearing that has been discussed.
18 You can check the timing.

19 THE COURT: Mr. Ottaway, who is that, that one?

20 MR. OTTAWAY: For the record, it's Bruce, B-R-U-C-E.
21 C-O-L-L-I-G-E-N. And I've got that one if you want to read
22 that one.

23 The timing of that deposition is clear from those e-mails
24 and is reflected on page 12 of the brief. There's absolutely
25 nothing sinister about it. A deposition was offered, dates

1 were worked out between counsel, and it was taken.

2 The State in this case has asked for some pretty draconian
3 things, and they have done it based on three items. If I may
4 go through them one at a time.

5 Number one, that a lawyer told a witness not to answer a
6 question. That is purely false that these lawyers who are my
7 friends from the O'Melveny Firm should all have their pro hacs
8 revoked for in part because of that act. And yet it wasn't
9 until we filed our brief that we told you that it was John
10 Sparks, not one of the pro hac lawyers at that deposition.

11 Mr. Sparks did not tell a witness not to answer a
12 question. Did not tell a witness not to answer a question.
13 What he told the witness and instructed the witness is, You
14 don't have to read this document aloud.

15 He told the attorney questioning the witness, If you wish
16 to have the witness read this document and ask questions about
17 it, that's fine. If you want to read all or portions of it
18 into the record and ask questions about it, that's fine.
19 That's what happened.

20 All the questions were answered. The statement that
21 Mr. Sparks told the witness not to answer a question is false,
22 and the relief requested that lawyers who were not even there
23 be deprived of their livelihood is, well, to say the least, a
24 bridge too far.

25 The second one, J&J hid a document. Untrue. It is true

1 that this document right here, the request for proposal, had
2 not been yet produced in the rolling production that Johnson &
3 Johnson has been doing since the request for production was
4 filed.

5 What you don't see here is the date this document was
6 created. This request for proposal was created in August of
7 this year, barely 90 days ago. It is not at all surprising
8 that it was not produced in Johnson & Johnson's original
9 production or in any rolling production.

10 The minute they brought it up to us, found it hiding in
11 plain sight on the internet, we immediately prioritized all of
12 the discovery surrounding it. We do not maintain that document
13 is false. Unlike what you've heard here, it refers to specific
14 studies.

15 We have cited those studies. It's not a medical article.
16 It is a request for proposal to give away \$2 million to fight
17 opioid addiction and study opioid addiction, hardly the thing
18 of an evil company. Again, not the reason for a sanction.

19 Mr. Ponder's deposition, as I've already said, was taken.
20 A lot of information was gleaned. Another deposition was
21 offered at your Honor's request, and at the request of
22 Mr. Brody and the plaintiff, the dates were worked out. Those
23 questions were asked. That is the appropriate way to handle
24 that situation.

25 I will point out to you, and this has happened now twice

1 to the State, but we haven't come running going, Jerk the pro
2 hacs, jerk their bar tickets, sanction them, ask for money per
3 day. We've tried to handle it the way it ought to be handled;
4 and that is to get agreements that witnesses will be put back
5 up. We haven't asked to strike their claims, as they've asked
6 to strike the defenses, even though there's absolutely no
7 relationship between the defenses they want to strike and the
8 conduct they complain of.

9 I don't want to bore the record here. The fact is no
10 sanction is appropriate here. The conduct of the Johnson &
11 Johnson lawyers involved was perfectly appropriate, easily
12 defensible, and very professional.

13 I can't look into the heart of the other team here to
14 answer why they would file such a motion. I can only respond
15 to what comes out of their mouth. I have read the briefs. I'm
16 sure your Honor has too. I hope you've read our response. I'm
17 sorry it got to you late, but there was a lot to deal with.

18 THE COURT: I will tell you that in all honestly, I
19 was on page -- well, I can't remember -- several hundred pages
20 in actually to the Ponder deposition when I found out about the
21 response. I read the front page of it, and --

22 MR. OTTAWAY: That's the best part.

23 THE COURT: Yeah.

24 MR. OTTAWAY: We hope to hit the good parts up front.

25 THE COURT: And so in all honesty, no. And I will.

1 MR. OTTAWAY: Well, please do, because I think you'll
2 find that no sanction here is appropriate. The remedy for the
3 deposition was just like the remedy in depositions where
4 they've produced witnesses that have not been able to answer
5 questions; another witness gets produced.

6 THE COURT: All right. Thank you, Mr. Ottaway.

7 Mr. Beckworth, of course -- well, any response first, I
8 guess? Notably, you have made specific requests for specific
9 sanctions based upon the briefed allegations of abuse of the
10 process as you've stated in the brief and your motion.

11 And I guess I'm going to say, notably, to me, it does not
12 really involve a whole lot that has to do with getting
13 depositions set and, you know, finish up the matrix
14 designations and the timing and dates and all of that. That's
15 not apparently in here, correct? It's really not.

16 MR. BECKWORTH: I don't know if I understand what
17 you're --

18 THE COURT: Well, you don't have any other request of
19 me with regard to the setting of depositions, getting them
20 done, timing on them?

21 MR. BECKWORTH: Generally?

22 THE COURT: Well --

23 MR. BECKWORTH: Outside of these that occurred?

24 THE COURT: Yeah. I mean, as it relates to this
25 specific sanction request.

1 MR. BECKWORTH: Yes, sir. So what we did here --
2 again, I can go read it out loud to you. But during that
3 hearing, you said, you know, If you all want -- If you
4 believe -- I'm paraphrasing. But the gist of it was, If you
5 believe that you need to have remedies from, you've got to ask
6 for them. And we -- you had said we hadn't asked you for
7 specific sanctions; we've asked for admonishment and other
8 things.

9 And let me tell you, to opposing counsel's credit, who now
10 is all wet from jumping off the high dive and he's fully in
11 this case, he hasn't been here, so he doesn't know everything
12 that's occurred. We haven't asked for these types of sanctions
13 before. We did in one situation with Judge Balkman over those
14 specific depositions.

15 But we've tried to be pretty respectful and ask for
16 admonishment or other rulings without anything specific to
17 lawyers. There's lots happened. I don't want to misstate
18 something if I'm wrong about that, but I'm pretty sure about
19 it.

20 So what we did is we went to relief in addition to what
21 you had already ordered. I think we were very specific as to
22 these depositions, what we wanted. The one on the pain care
23 forum has been completed, so I guess that's off the table,
24 other than we had to re-prepare and spend the time and money to
25 do that. The other one about legislative issues has not taken

1 place.

2 Now, with respect to the other things that are listed,
3 your Honor, as I know you know from your vast experience, we
4 have to start somewhere, and I hope, and I'm sure the new
5 counsel hopes, that it doesn't ever have to go any further than
6 that. But in order to build a record, such that you have
7 additional remedies available to you down the road if needed,
8 you've got to start somewhere.

9 So we listed from easiest to pretty darn hard. I think
10 that's what we have to do. You told us to ask for them, so we
11 asked for them. That's why we did it. And with all due
12 respect to why we didn't name Mr. Sparks in that deposition as
13 the person that asked it, when we asked it -- it was in
14 there -- I personally took his name out, because I didn't want
15 us to have to say it about him in a document that, if I
16 remember right, we filed publicly, because I don't think we
17 used anything that was under seal. I made that decision. Brad
18 Beckworth made it. If they would prefer that I put his name in
19 there, I guess, you know, I could have done that. But I made
20 that decision.

21 Quite the opposite of every brief that gets filed where
22 they name me by name, or they send e-mails about what I'm doing
23 with my family, and now where they name you. The quote where
24 you say we asked improper questions, I don't know if you
25 remember where that comes from.

1 I'm going to tell you where it comes from. You were
2 sitting as a guest in the courtroom over there in the jury box
3 the day we argued the bifurcation motion, and we showed some
4 clips of the few depositions we had taken.

5 It was an argument in front of Judge Balkman. And you
6 made a comment the next day that -- what you said that, you
7 know, some of those were inappropriate or whatever. It wasn't
8 even before you. How many times have we heard that?

9 They use your words against you. That's what they do.
10 And I hear laughter behind me, but it's true. I've been here
11 in every hearing. You know how many times it's happened. You
12 saw today what had to happen just to get the truth out about
13 what really happened when we asked Purdue about bankruptcy.
14 The same lawyer who said it wasn't asked, then came back and
15 admitted that he instructed not to answer because it was
16 privileged.

17 So we have to start somewhere. I'm sorry to have to do it
18 as a lawyer, but that's what we did.

19 THE COURT: No, that's fine. I mean, I more or less
20 invited it, so now here we are. So now it's time to move
21 forward and see if -- you know, what I do with this.

22 MR. BECKWORTH: Yes, sir.

23 THE COURT: We all understand the difference between
24 coercive and punitive sanctions. We all understand the
25 constitutional ramifications to this kind of thing. And I

1 certainly understand the gravity of it.

2 MR. BECKWORTH: Yes, sir.

3 THE COURT: So I think it's time to move forward, and
4 I will deal with it appropriately.

5 MR. BECKWORTH: Thank you very much. Appreciate it.

6 THE COURT: Mr. Ottaway?

7 MR. OTTAWAY: I have nothing more to add on the
8 subject to the fact that the sanctions are not appropriate,
9 given the conduct alleged and that there is no nexus between
10 the sanctions sought and the behavior complained of.

11 I do get exasperated, though, when in response to a very,
12 what I hoped was tight argument on the three subjects about
13 which the brief occurred and the sanction motion, we get into
14 now, Purdue's done this, and we've been accused of that. And I
15 just don't find the invective helpful.

16 I think your Honor has said that. We agree
17 wholeheartedly. That's why you won't find it in our brief.

18 THE COURT: Welcome to the swimming pool.

19 MR. OTTAWAY: Thank you.

20 THE COURT: And that's okay. I mean, you know, with
21 those of us that have been doing this for a while understand
22 what to listen to and sometimes just enjoy the show, you know,
23 so that's okay. It's all right. It's serious litigation.

24 All right. Anything else?

25 MR. OTTAWAY: Not from me, your Honor.

1 THE COURT: Mr. Beckworth, anything else?

2 MR. BECKWORTH: Not from me.

3 THE COURT: All right. Thank you all. We will be --
4 before we recess, let's get on the record it's the 20th,
5 correct, and so we are aware that that is the next hearing date
6 except to the extent that we want to get Mr. Neville and his
7 situation dealt with.

8 Mr. LaFata, an agreed time where you all can do it,
9 wherever you want to do it, I guess, where we can get in a
10 courtroom or a -- with a court reporter or my office conference
11 room, which is all right for this. I mean, it's pretty good
12 size.

13 MR. LAFATA: Thank you.

14 THE COURT: But other than that, is there anything
15 else?

16 MR. WHITTEN: I'm sorry, your Honor. I spoke to
17 Mr. Neville yesterday. He's still out of town. He's in
18 Arizona.

19 THE COURT: I know he is.

20 MR. WHITTEN: But he told me he had talked to you,
21 and he told me he had talked to Sandy. I wasn't on those
22 calls. But what he told me was that it was locked in on the
23 20th. So if that's not right, Mr. Neville needs to know.
24 Neither Fate nor Lampstand is a party to this case. They
25 didn't agree to this procedure, so he couldn't be here. I hate

1 to interrupt his vacation.

2 THE COURT: No, it's not -- I told him that wasn't
3 going to happen. I got that. We all agreed to that.

4 MR. WHITTEN: This is a very serious matter to me,
5 personally.

6 THE COURT: I understand.

7 MR. WHITTEN: People keep throwing around the words
8 of being offended and everything. I'm pretty upset about this,
9 and we don't want to do it by phone. And we want to do it on
10 the 20th.

11 THE COURT: Okay. All right. We'll see. He
12 represents them now, so let's deal with it, and then if I can
13 help, give me a call. Okay?

14 MR. LAFATA: Thank you, sir.

15 THE COURT: All right. Thank you. We're in recess.
16 Thank you very much.

17 (End of proceedings 4:35 p.m.)

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1 IN THE DISTRICT COURT OF CLEVELAND COUNTY

2 STATE OF OKLAHOMA

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

6 Plaintiff,)

7 vs.)

Case No. CJ-2017-816

8 (1) PURDUE PHARMA L.P.;)
9 (2) PURDUE PHARMA, INC.;)
10 (3) THE PURDUE FREDERICK)
COMPANY;)
11 (4) TEVA PHARMACEUTICALS)
USA, INC;)
12 (5) CEPHALON, INC.;)
13 (6) JOHNSON & JOHNSON;)
14 (7) JANSSEN PHARMACEUTICALS,)
INC.;)
15 (8) ORTHO-McNEIL-JANSSEN)
PHARMACEUTICALS, INC.,)
16 n/k/a JANSSEN PHARMACEUTICALS;)
17 (9) JANSSEN PHARMACEUTICA, INC.)
18 n/k/a JANSSEN PHARMACEUTICALS,)
INC.;)
19 (10) ALLERGAN, PLC, f/k/a)
ACTAVIS PLC, f/k/a ACTAVIS,)
20 INC., f/k/a WATSON)
PHARMACEUTICALS, INC.;)
21 (11) WATSON LABORATORIES, INC.;)
22 (12) ACTAVIS LLC; AND)
23 (13) ACTAVIS PHARMA, INC.,)
24 f/k/a WATSON PHARMA, INC.,)
25)

Defendants.)

22 CERTIFICATE OF THE COURT REPORTER

23 I, Angela Thagard, Certified Shorthand Reporter and
24 Official Court Reporter for Cleveland County, do hereby certify
25 that the foregoing transcript in the above-styled case is a

1 true, correct, and complete transcript of my shorthand notes of
2 the proceedings in said cause.

3 I further certify that I am neither related to nor
4 attorney for any interested party nor otherwise interested in
5 the event of said action.

6 Dated this 6th day of December, 2018.

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ANGELA THAGARD, CSR, RPR

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