STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: November 15, 2018]

STATE OF RHODE ISLAND,	:	
by and through,	:	
PETER F. KILMARTIN,	:	
ATTORNEY GENERAL,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2018-4555**
	:	
PURDUE PHARMA L.P.; PURDUE PHARMA INC.; THE PURDUE FREDERICK COMPANY, INC.; INSYS THERAPEUTICS, INC.; CARDINAL HEALTH, INC., MCKESSON CORPORATION d/b/a MCKESSON DRUG COMPANY; and AMERISOURCEBERGEN DRUG CORPORATION,	:	
Defendants.	:	

DECISION

GIBNEY, P.J. Before this Court is Plaintiff State of Rhode Island's (State) Rule 7 Motion to Compel Defendants' Response to the State's First Request for Production of Documents (Motion to Compel) from defendants Purdue Pharma L.P.; Purdue Pharma Inc.; the Purdue Frederick Company, Inc.; Insys Therapeutics, Inc.; Cardinal Health, Inc.; McKesson Corporation d/b/a/ McKesson Drug Company; and AmerisourceBergen Drug Corporation (collectively Defendants). Defendants object and jointly move to stay discovery (Motion to Stay) until this Court rules on Defendants' September 28, 2018 Motion to Dismiss. This Court exercises jurisdiction pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

On June 25, 2018, the State of Rhode Island, by and through its Attorney General, filed a complaint (the Complaint) against the Defendants, manufacturers and distributors of prescription opioid pharmaceutical products.[1] In the Complaint, the State cited the current record numbers of addictions, overdoses, and deaths caused by the use and abuse of opioids (the Opioid Epidemic). The Complaint included counts of public nuisance, violations of the Rhode Island False Claims Act, fraud and fraudulent misrepresentation, negligence, and unjust enrichment. The State alleged that Defendants engaged in deceptive, misleading, and illegal marketing and distribution practices in the State of Rhode Island, and further maintained that these practices contributed to the Opioid Epidemic.

On June 25, 2018, the State served Defendants with the State's First Request for Production of Documents (First Request). The First Request sought, *inter alia*, all documents and communications regarding the marketing of opioids (including general marketing plans and those targeted at Rhode Island), all documents related to the distribution of opioids in Rhode Island, documents and communications concerning monetary or non-monetary payments from Defendants to Rhode Island prescribers of opioids, and information regarding any suspicious orders or declined opioid prescriptions from Rhode Island pharmacies. Defendants failed to produce any documents in response to the State's First Request. In a status conference on August 21, 2018, the State stated its need for the requested information. Defendants expressed their intent to file a motion to dismiss (Motion to Dismiss) by September 28, 2018, as well as a

[1] The following—Purdue Pharma L.P.; Purdue Pharma Inc.; the Purdue Frederick Company, Inc.; and Insys Therapeutics, Inc.—are manufacturers of opioids. Cardinal Health, Inc., McKesson Corporation d/b/a/ McKesson Drug Company, and AmerisourceBergen Drug Corporation are distributors of opioids.

motion to stay discovery until the Court ruled on the Motion to Dismiss. The Court entered an Order of Assignment and Stipulation that the parties meet and confer regarding the State's First Request, and the State agreed to an extension of Defendants' deadline to respond to the First Request to September 7, 2018.

The State filed this Motion to Compel pursuant to Super. R. Civ. P. 7(b)(3). Defendants responded with a joint Motion to Stay and a joint objection to the State's Motion to Compel. The State objects to Defendants' Motion to Stay. On September 28, the Defendants filed their Motion to Dismiss, asserting that the State failed to state a claim upon which relief could be granted, pursuant to Super. R. Civ. P. 12(b)(6).

II

Standard of Review

Under Super. R. Civ. P. 26(b), "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Super. R. Civ. P. 26(b)(1). The fact that information sought may not be admissible at trial is not grounds for an objection to a discovery request. *Id.* Pursuant to Super. R. Civ. P. 34, a party may serve any other party with a request for electronically stored information, tangible things, or other discoverable information within the scope of Rule 26(b), and may move for a court order if the party that received the request fails to respond. *See also* Super. R. Civ. P. 37(a). The trial court may impose sanctions upon litigants who refuse to participate in discovery. Super. R. Civ. P. 37(b); s*ee Senn v. Surgidev Corp.*, 641 A.2d 1311, 1320 (R.I. 1994) (explaining that "Rule 37(b) . . . affords the court very broad discretion" in imposing sanctions for refusal to participate in discovery).

It is well-settled that the trial court has broad discretion over matters of discovery. *Martin v. Howard*, 784 A.2d 291, 296 (R.I. 2001) (citing *Colvin v. Lekas*, 731 A.2d 718, 720 (R.I. 1999)); *see also Bashforth v. Zampini*, 576 A.2d 1197 (R.I. 1990). This discretion extends to motions to compel discovery, which will only be disturbed by the Supreme Court in the event it finds "an abuse of that discretion." *Colvin*, 731 A.2d at 720 (citing *Corvese v. Medco Containment Servs., Inc.*, 687 A.2d 880, 881 (R.I. 1997)). Likewise, "a trial court possesses the discretion to stay discovery in a civil case until one or more potentially dispositive issues have been decided." *Martin*, 784 A.2d at 297. In reviewing discovery orders for abuse of discretion, our Supreme Court has adopted a test "to determine relevancy . . . [that examines] 'whether the material sought is relevant to the subject matter of the suit, not whether it is relevant to the precise issues presented by the pleadings.'" *Cardi v. Med. Homes of Rhode Island, Inc.*, 741 A.2d 278, 289 (R.I. 1999) (quoting *DeCarvalho v. Gonsalves*, 106 R.I. 620, 262 A.2d 630, 634 (1970)).

III

Analysis

The State moves to compel Defendants' response to the State's First Request, pursuant to Rules 26, 34, and 37(a). Arguing that Rhode Island case law regarding a stay of discovery is limited, the State cites factors "universally recognized" by federal courts when balancing competing interests in a motion to stay. *Hall v. Town of Gilcrest, Colo.*, Civil Action No. 11-CV-00327-REB-BNB, 2011 WL 1518667, at *1 (D. Colo. Apr. 20, 2011) (quoting *FDIC v. Renda*, Civ. A No. 85-2216-O, 1987 WL 348635, at *2 (D. Kan. Aug. 6, 1987)). These factors include:

> "(1) the interests of the plaintiff in proceeding expeditiously with the civil action and the potential prejudice to plaintiffs of a delay;

> (2) the burden on the defendants; (3) the convenience to the court; (4) the interests of persons not parties to the civil litigation; and (5) the public interest." *Id.*

The State maintains that the balance of these interests weighs in its favor, particularly when considering the magnitude of the opioid crisis. The State contends that it is in the public interest to move forward expeditiously towards a speedy resolution of this matter.

Defendants maintain it is a "longstanding practice" for Rhode Island courts to stay discovery during the pendency of Rule 12 motions. Moreover, Defendants proffer four theories: (1) the Motion to Dismiss will present legal arguments based solely on the Complaint, (2) this Court's decision regarding the Motion to Dismiss will shape and inform future discovery and may render certain discovery requests unnecessary, (3) efficiency and conservation of the Court's and the parties' resources favor a stay, and (4) the State's outside counsel, Motley Rice LLC, already has broad access to discovery materials relevant to this case through its involvement in a federal multidistrict litigation (MDL) encompassing similar actions brought by cities and counties across the country against Defendants. Defendants compare the within Complaint to a 2008 public nuisance action (the Lead Paint Case), which ultimately concluded in a ruling by our Supreme Court that the trial court should have granted a motion to dismiss. *State v. Lead Industries Ass'n, Inc.*, 951 A.2d 428, 435 (R.I. 2008) ("we conclude that the trial justice erred by denying defendants' motion to dismiss").

In response, the State maintains that Defendants fail to meet their burden of showing good cause for their Motion to Stay. Super. R. Civ. P. 26(c) (requiring the moving party to show good cause for a protective discovery order). The State argues that its request is narrowly tailored and seeks Rhode Island-specific information that is unavailable to the State through MDL discovery. Furthermore, the State argues that Defendants' reliance on the Lead Paint Case

is misplaced, contending that the results of the Lead Paint Case actually support their Motion to Compel, as discovery delays granted during the pendency of dispositive motions in the Lead Paint Case resulted in undue delay. S*ee Lead Industries Ass'n, Inc.*, 951 A.2d at 434 ("[a]fter the first trial resulted in a mistrial, a second trial commenced; that second trial, spanning four months, became the longest civil jury trial in the state's history"). Finally, the State reiterates the magnitude of the Opioid Epidemic, and represents that the dire circumstances of this public health emergency require the Court to move forward expeditiously.

The Court finds the State's First Request "relevant to the subject matter of the pending suit," and within the scope of Rule 26. *DeCarvalho,* 106 R.I. at 626, A.2d at 634; Super. R. Civ. P. 26(b) (allowing parties to "obtain discovery regarding any matter . . . relevant to the subject matter involved in the pending action"). In the first Request, the State seeks, *inter alia,* documents and communications related to the marketing of opioids (both generally and in Rhode Island, specifically), documents and communications concerning scientific research regarding the long-term efficacy and addictive properties of opioids, and information indicating payments from Defendants to Rhode Island prescribers of opioids—all of which are relevant to this litigation. *State v. Houde*, 596 A.2d 330, 333 (R.I. 1991) ("[r]elevant evidence has been defined as evidence that tends to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without such evidence") (citing *Capezza v. Hertz Equip. Rental Corp.*, 118 R.I. 1, 371 A.2d 269 (1977)); *see also State v. Silvia*, 898 A.2d 707, 716 (R.I. 2006) ("[t]he determination of whether evidence is relevant is confided to the sound discretion of the trial justice").

Furthermore, the urgent nature of the Opioid Epidemic necessitates a speedy and efficient resolution to this litigation. *See, e.g., Zaino v. Zaino*, 818 A.2d 630, 642 (R.I. 2003) (holding that

the trial court justice did not abuse his discretion when he imposed sanctions upon the defendant, after the defendant hindered a speedy resolution to the litigation by refusing to comply with discovery obligations); *see also* Super. R. Civ. P. 1 (indicating that the Superior Court Rules of Civil Procedure must be "construed and administered to secure the just, speedy, and inexpensive determination of every action"). Given the magnitude of this crisis, staying discovery is against the interests of both the parties and the public. *See Bashforth*, 576 A.2d at 1201 (holding the trial justice's grant of a protective order was contrary to the liberal approach of Super. R. Civ. P. 26, as well as Rule 1's stated purpose of securing just, speedy, and inexpensive resolutions to all litigations).

Therefore, the Court grants the State's Motion to Compel. *Colvin*, 731 A.2d at 720 ("[i]n granting or denying discovery motions, a Superior Court justice has broad discretion"). Accordingly, Defendants' Motion to Stay during the pendency of their Motion to Dismiss is denied. *Cardi*, 741 A.2d at 279 ("[t]he test . . . to determine relevancy for discovery purposes is 'whether the material sought is relevant to the subject matter of the suit, not whether it is relevant to the precise issues presented by the pleadings'") (quoting *DeCarvalho*, 106 R.I. at 627, 262 A.2d at 634).

IV

Conclusion

For the foregoing reasons, this Court grants the State's Rule 7 Motion to Compel Defendants' Response to the State's First Request for Production of Documents, and denies Defendants' Joint Motion to Stay Discovery. Counsel shall present the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	State of Rhode Island, by and through, Peter F. Kilmartin, Attorney General v. Purdue Pharma L.P., et al.
CASE NO:	PC-2018-4555
COURT:	Providence County Superior Court
DATE DECISION FILED:	November 15, 2018
JUSTICE/MAGISTRATE:	Gibney, P.J.

ATTORNEYS:

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State of Rhode Island v. Purdue Pharma L.P., et al.
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