



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

Civil Action No. 21-C-9000 PHARM

THIS DOCUMENT APPLIES TO:

**STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, Attorney General,**

Plaintiff,

v.

CIVIL ACTION 20-C-132 PNM

**WALMART, INC. f/k/a WAL-MART
STORES, INC.,**

Defendant

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION TO COMPEL WALMART 30(B)(7) DEPOSITION**

This matter comes before the Court on *Plaintiff's Motion to Compel Walmart 30(b)(7) Deposition* (Transaction ID 67670324). The Plaintiff, the State of West Virginia, brought this motion to compel against Walmart Inc. ("Walmart"). The State issued a 30(b)(7) Notice of Deposition to Walmart, which raised various objections to the scope of the topics contained within Plaintiff's 30(b)(7) Notice of Deposition to Walmart.

After the State filed its motion, the parties continued to confer and narrowed the issues for the Commissioner's consideration. On June 13, 2022, Defendant Walmart filed *Walmart Inc.'s Response in Opposition to Plaintiff's Motion to Compel Walmart 30(B)(7) Deposition* (Transaction ID 67721534). On June 17, 2022, the State filed its *Reply in Support of Motion to Compel Walmart 30(B)(7) Deposition* (Transaction ID 67738362). The Discovery Commissioner heard oral argument on the Motion on July 1, 2022 and issued oral rulings. This Order memorializes those rulings.

Having considered the Motion (and all attached exhibits), Walmart's Opposition (and all attached exhibits), the State's Reply (and all attached exhibits), the parties' oral arguments and the entire record herein, the Discovery Commissioner **GRANTS** the motion **IN PART** and **DENIES** the motion **IN PART** as set forth below:

1. "The scope of discovery in civil cases is broad[.]" State *ex rel. Shroades v. Henry*, 187 W. Va. 723, 725, 421 S.E.2d 264, 266 (1992). "Rule 26(b)(1) of the West Virginia Rules of Civil Procedure . . . provides, in pertinent part, that the '[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" *Id.*; see also State *ex rel. W. Va. State Police v. Taylor*, 201 W. Va. 554, 565 n.16, 499 S.E.2d 283, 294 n.16 (1997) ("We have traditionally given the Rules a liberal construction favoring broad discovery, because broad discovery policies are 'essential to the fair disposition of both civil and criminal lawsuits'" (quoting State *ex rel. U.S. Fidelity and Guar. Co. v. Canady*, 194 W.Va. 431, 444, 460 S.E.2d 677, 690 (1995))).

2. "A party may in a notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested." W. Va. Rule of Civ. Proc. 30(b)(7). Such a notice obligates the recipient to "designate one or more" designees "to testify on its behalf" as to "matters known or reasonably available to the organization." *Id.*

3. "Under Rule 26(b)(1)(iii) of the West Virginia Rules of Civil Procedure, a trial court may limit discovery if it finds that the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation." State Farm Mut. Auto. Ins. Co. v. Stephens, 188 W. Va. 622, 625, 425 S.E.2d 577 (1992). The Stephens decision sets forth

several factors to consider and notes that “the opposing party has the obligation to show why discovery is burdensome unless, in light of the issues, the discovery request is oppressive on its face.” *Id.* at 628.

4. As noted, the parties conferred and narrowed the original motion to three remaining issues in dispute. The Commissioner addresses each issue below:

Topic 5: Testimony regarding Walmart “Field Leadership” Meetings

5. As modified during negotiations, Topic 5 reads in full: “Walmart’s knowledge and awareness of potential abuse, misuse and/or diversion of the Relevant CII Opioids in West Virginia, and Walmart’s policies, procedures, and actions to address potential abuse, misuse and/or diversion of the Relevant CII Opioids in West Virginia, including any meetings, discussions or actions that Walmart took in response to the abuse, misuse and/or diversion of the Relevant CII Opioids.”

6. The State contends the topic should encompass meetings among Walmart’s “field leadership” employees (Regional, District and Market Health and Wellness Directors). Walmart contends such a request is overly burdensome and has agreed to educate its designee with respect to meetings among “Home Office” personnel regarding potential abuse, misuse and/or diversion of the Relevant CII Opioids in West Virginia.

7. At oral argument, counsel for Walmart confirmed that, in addition to meetings among “Home Office” personnel, the designee also would be prepared to discuss information regarding potential abuse, misuse and/or diversion of the Relevant CII Opioids in West Virginia that Walmart’s West Virginia “field leadership” personnel reported to Walmart’s “Home Office” personnel.

8. The Commissioner finds that the request for a designee to testify regarding meetings among “field leadership” personnel is overly burdensome and that counsel’s clarification above confirms the State will receive pertinent information. Therefore, the Commissioner **DENIES** the Motion with respect to the narrowed issue in Topic 5 presented for the Commissioner’s Decision.

Topic 7(f): Identification of Prescription Goals for Walmart’s West Virginia Pharmacies

9. In Topic 7(f), the State agreed to receive a written response identifying the actual prescription goals (*i.e.*, number of prescriptions dispensed per day/week/month/etc.) that Walmart set for its West Virginia pharmacies. Walmart contends this request is of minimal relevance, if any, and overly burdensome. Walmart additionally asserts that the State waived its right to the requested information by failing to move to compel responses to interrogatories seeking such information.

10. The Commissioner finds that the requested information is relevant. The State contends in its Amended Complaint and may argue at trial that Walmart’s prescription goals prioritized speed over safety and therefore “incentivized [pharmacists] to fill as many prescriptions as possible to increase their respective bonuses and keep customers—to the detriment of patient safety.” First Am. Compl. ¶ 130 & ¶¶ 110-130.

11. The Commissioner finds that the request for the actual prescription goals is not overly burdensome. Walmart presumably evaluated its pharmacies on a regular basis using these goals and therefore must have access to those goals. To the extent Walmart claims excessive cost or burden, it has not provided sufficient detail to sustain its objections.

12. Although not stated on the record at the hearing, the Commissioner does not find Walmart’s “waiver” argument constitutes grounds to deny the Motion to Compel.

13. Therefore, the Commissioner **GRANTS** the Motion with respect to Topic 7(f).

14. At the hearing, counsel for Walmart advised that it had not collected this information in any opioid litigation and was unsure of the timeframe in which it could be collected. Counsel agreed and the Commissioner hereby **ORDERS** Walmart to provide a status update regarding its collection of this information on or before July 15, 2022.

Topic 7(m): Identification of former Pharmacists

15. In Topic 7(m), the State agreed to receive a written response identifying Walmart's former pharmacists who resigned, quit, or otherwise left employment at Walmart's West Virginia pharmacies. Walmart contends this request is irrelevant and overly burdensome. Walmart additionally asserts that the State waived its right to the requested information by failing to move to compel responses to interrogatories seeking such information.

16. The Commissioner finds that the requested information is relevant. Rule 26(a) of the West Virginia Rules of Civil Procedure authorizes discovery of "the identity and location of persons having knowledge of any discoverable matter." Additionally, courts have authorized discovery into the identity and last known contact information of former employees. *Brode v. Mon Health Care, Inc.*, No. 1:20-cv-253, 2021 WL 7448631, at *3 (N.D.W.V. May 3, 2021) (granting motion to compel 30(b)(6) deposition on several topics, including "the identity of all current and former employees"); *State ex rel. Chaparro v. Wilkes*, 190 W. Va. 395, 398, 438 S.E.2d 575, 578 (1993) ("there is no prohibition against using other discovery methods to identify witnesses"); *In re Bank of Am. Wage & Hour Empl. Prac. Litig.*, 275 F.R.D. 534, 539 (D. Kan. 2011) (noting that the identities of former employees was "facially relevant"); *Abraham v. Alpha Chi Omega*, 271 F.R.D. 556 (N.D. Tex. 2010) (same).

17. Although not stated on the record at the hearing, the Commissioner does not find Walmart's "waiver" argument constitutes grounds to deny the Motion to Compel.

18. However, the Commissioner is unable to evaluate Walmart's burden argument based upon the existing record. Walmart has not explained the manner in which the corporation maintains personnel records, whether older personnel records are maintained, and whether the records are searchable. As directed at the hearing, the Commissioner hereby **ORDERS** Walmart to provide a status update regarding its maintenance and the searchability of its personnel records on or before July 15, 2022. Upon receiving that update, the Commissioner will determine whether to grant or deny the State's request.

It is so **ORDERED**.

ENTERED: July 25, 2022

/s/Christopher C. Wilkes
Discovery Commissioner

Submitted by:

STATE OF WEST VIRGINIA *ex rel.*
PATRICK MORRISEY, Attorney General

By Counsel

/s/ John D. Hurst

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