

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

WARNER CHILCOTT COMPANY, LLC, :

Plaintiff, :

v. :

ZYDUS PHARMACEUTICALS :

(USA) INC., et al., :

Defendants. :

Civil Action No. 11-1105-RGA

**MEMORANDUM**

Time being of the essence, I have separately entered an order on the issues raised in the parties' status report. (D.I. 169). I write this simply to explain why I have rejected Defendants' requests.

Defendants ask for brand plans. When they asked Plaintiff for these documents, they justified the request by reference to two paragraphs of, and an exhibit to, Dr. Sninsky's expert report. (D.I. 169, exh. A, 10/25/13 letter). Plaintiff promptly withdrew the two paragraphs and the exhibit. (D.I. 169, exh. B, 10/28/13 letter). Defendants now assert that the brand plans are relevant to two different paragraphs and a different exhibit to Dr. Sninsky's report. In my opinion, this is switching horses in midstream. It's too late to do so.

Defendants ask for the details of the financial relationships between Plaintiff and about twenty-three doctors. One is Dr. Sninsky, whose compensation for serving as an expert in this case is presumably already disclosed. Dr. Sninsky and the others have, it appears, all served as consultants [or been paid to conduct trials or research] for either Plaintiff or its predecessor in ownership of the patent. Bias is always relevant, but whether a doctor was paid \$100,000 or

\$200,000 is of such little marginal probative value that it does not constitute good cause, or anything close to it, for reopening discovery on this topic at this late date.

One unrelated issue that seems worth flagging at this time is the trial schedule. The parties submitted a request for a 5-day bench trial, starting at 9:30 a.m. each day. There was no comment about this at the Rule 16 conference. As I have gained more experience with the conduct of ANDA trials, my preferences have changed. My preference would be to have a 3-day bench trial, starting at 8:30 a.m. each day (in other words, each side gets 10 ½ hours). I mention this now so that the parties can plan accordingly.

11-1-13  
Date

Richard G. Andrews  
United States District Judge