

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: August 18, 2020)

STATE OF RHODE ISLAND, by and through :  
PETER NERONHA, Attorney General :  
*Plaintiff,* :

v. :

C.A. No. PC-2018-4555

PURDUE PHARMA L.P.; PURDUE PHARMA INC.; :  
THE PURDUE FREDERICK COMPANY, INC.; :  
RHODES PHARMACEUTICALS L.P.; RHODES :  
TECHNOLOGIES; RHODES TECHNOLOGIES :  
INC.; RICHARD S. SACKLER; :  
TEVA PHARMACEUTICALS USA, INC.; :  
CEPHALON, INC.; MALLINCKRODT PLC; :  
MALLINCKRODT, LLC; SPECGX, LLC; :  
CARDINAL HEALTH, INC.; MCKESSON :  
CORPORATION d/b/a MCKESSON DRUG :  
COMPANY; and AMERISOURCEBERGEN DRUG :  
CORPORATION, :  
*Defendants.* :

**DECISION**

**GIBNEY, P.J.** Before this Court is the State of Rhode Island’s (State) Motion for Remote Depositions pursuant to Rules 16, 26, 30(b)(7), 34, and 37(a) of the Superior Court Rules of Civil Procedure. In light of the ongoing COVID-19 pandemic, the State seeks an order be in place to establish deposition protocol via remote videoconferencing technology. For the following reasons, the Court grants this motion. This Court exercises jurisdiction pursuant to G.L. 1956 § 8-2-14.

## I

### Facts and Travel

On March 9, 2020, the Governor of Rhode Island declared a State of Emergency due to COVID-19. Since that time, over 120,000 Americans have died within the span of a few months, including at least 1000 Rhode Island residents. Given the unprecedented and uncertain nature of this crisis, our Supreme Court in its executive order has recognized the need for the courts to utilize technology and adapt their procedures in order to avoid exposing litigants, attorneys, and court staff to risk of transmission.

The State filed the present motion on April 15, 2020 seeking to establish a protocol for taking depositions by remote electronic means in light of the ongoing COVID-19 pandemic. The State argues that the uncertain nature of the pandemic, combined with the extensive fact and expert discovery required for the present litigation, mandates remote depositions moving forward. Defendants filed an objection on May 5, 2020, but the parties have subsequently met and conferred and exchanged proposed orders for the remote deposition protocol.

The present litigation is currently in the midst of fact discovery; the State and Defendants have all engaged in extensive document production. The State has noticed twenty depositions of Defendants' fact witnesses. This Court granted the State's motion to compel production of those witnesses on July 29, 2020.

## II

### Standard of Review

Rule 30(b)(7) permits the Court to order "that a deposition [may] be taken by telephone or other remote electronic means." Super. R. Civ. P. 30(b)(7). In discussing the federal equivalent of this rule, "[c]ourts have long held that leave to take remote depositions . . . should be granted

liberally.” *Sonrai Systems, LLC v. Romano*, No. 16-CV-3371, 2020 WL 3960441, at \*1 (N.D. Ill. 2020) (quoting *In re Broiler Chicken Antitrust Litig.*, No. 1:16-CV-08637, 2020 WL 3469166, at \*7 (N.D. Ill. 2020)); *see also Graham v. Ocwen Loan Servicing, LLC*, No. 16-80011-CIV, 2016 WL 7443288, at \*1 (S.D. Fla. 2016) (“[C]ourts enjoy wide discretion to control and place appropriate limits on discovery, which includes authorizing depositions to be taken by remote means . . .”).

### III

#### Analysis

Since the start of the COVID-19 pandemic, numerous courts have recognized a need to conduct remote electronic court proceedings, including depositions. *See, e.g., Grano v. Sodexo Management, Inc.*, No. 18cv1818-GPC(BLM), 2020 WL 1975057 (S.D. Cal. 2020) (ordering deposition to proceed by remote means); *Learning Resources, Inc. v. Playgo Toys Enterprises Ltd.*, No. 19-CV-00660, 2020 WL 3250723, at \*3 (N.D. Ill. 2020) (finding “good cause” to enter an order requiring a deposition by remote videoconferencing); *Wilkins v. ValueHealth, LLC*, No. 19-1193-EFM-KGG, 2020 WL 2496001, at \*2 (D. Kan. 2020) (“Video or teleconference depositions and preparation are the ‘new normal’ and most likely will be for some time.”); *City of Huntington v. AmerisourceBergen Drug Corp.*, 3:17-cv-01362 (S.D.W.V. 2020) (establishing remote deposition protocol in light of COVID-19); *Joffe v. King & Spalding LLP*, No. 17-CV-3392(VEC), 2020 WL 3453452, at \*6 (S.D.N.Y. 2020) (finding that remote depositions are significantly safer than in-person depositions during the pandemic).

Defendants argue that the complex and high stakes of the present litigation are ill-suited for remote depositions because the depositions would be lengthy, numerous, and document-intensive. “However, this is not an obstacle to a successful remote deposition.” *Rouviere v. DePuy*

*Orthopaedics, Inc.*, No. 1:18-cv-04814, 2020 WL 3967665, at \*3 (S.D.N.Y. 2020) (rejecting argument that “document intensive” nature of depositions would prejudice parties if conducted remotely). Courts have discussed various options that litigants can use to ensure that depositions run smoothly. *See United States for Use and Benefit of Chen v. K.O.O. Construction, Inc.*, No. 19cv1535-JAH-LL, 2020 WL 2631444, at \*2 (S.D. Cal. 2020) (“Other courts have found that exhibits can be managed in remote depositions by sending Bates-stamped exhibits to deponents prior to the depositions or using modern videoconference technology to share documents and images . . .”). Though remote depositions may create challenges, “the health risks in this case outweigh the practical problems of making effective use of exhibits.” *Sonrai Systems*, 2020 WL 3960441, at \*4 (quoting *Reynard v. Washburn University of Topeka*, No. 19-4012-HLT-TJJ, 2020 WL 3791876, at \*6 (D. Kan. 2020)). Thus, the complexity of the depositions and high volume of documents is not a bar to remote videoconference depositions.

Likewise, any argument that problems with the videoconferencing technology could interrupt or delay depositions is not persuasive. “Technological problems can arise during in-person as well as remote depositions, but that is not a reason to prevent remote depositions from occurring.” *In re Broiler Chicken Antitrust Litigation*, 2020 WL 3469166, at \*4.

In their initial objection, Defendants argued that remote depositions could create due process concerns because deponents’ access to counsel would be limited. Though the parties have since exchanged proposed orders, the right to counsel during the deposition remains a contested issue. Defendants’ main objection is that the State does not wish to include a provision acknowledging a deponent’s presumptive right to in-person counsel. The State argues that this provision would disrupt any potential remote protocol because deponents could forestall depositions by requesting in-person counsel even if that request is impracticable.

The Court agrees with Defendants that deponents should still have access to in-person counsel if they wish. “Denying [deponent] the opportunity to have its attorney present during the . . . deposition would inhibit defense counsels’ duty to effectively and competently represent their . . . clients.” *Redmond v. Poseidon Personnel Services, S.A.*, No. 09-2671, 2009 WL 3486385, at \*3 (E.D. La. 2009). Should deponents’ request for in-person counsel become a barrier to depositions occurring, “[t]he Court can address those situations as they arise and in the context of particular facts and circumstances relating to that witness or deposition . . .” *In re Broiler Chicken*, 2020 WL 3469166, at \*9. Therefore, Defendants’ right to counsel provision should be included in the remote deposition protocol.

The Court also agrees with Defendants that hard copies of exhibits should be provided to deponents and other participants forty-eight hours prior to the start of the deposition as argued by the Defendants, rather than the twenty-four hours proposed by the State. Given the “difficulties with using documents during a remote deposition,” additional time to prepare and review exhibits is beneficial to all parties. *Reynard*, 2020 WL 3791876, at \*6. Defendants also contend that language in the protocol should require all essential participants to have adequate technology, and that the video conferencing software should trigger an automatic notification if an essential participant is disconnected from the deposition. The Court agrees with the former argument and finds generally that the burden should not be placed on participants to request a suspension of the deposition should a party be disconnected.

#### IV

#### Conclusion

For the foregoing reasons, the Court grants the State’s Motion for Remote Depositions. Counsel should prepare a revised version of Defendants’ five-page proposed order, submitted on

June 17, 2020, for entry as the remote deposition protocol. (Defs.' Letter to the Court, Ex. 2, June 17, 2020.)



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** State of Rhode Island v. Purdue Pharma L.P., et al.

**CASE NO:** PC-2018-4555

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** August 18, 2020

**JUSTICE/MAGISTRATE:** Gibney, P.J.

**ATTORNEYS:**

**For Plaintiff:** See attached

**For Defendant:** See attached

*State of Rhode Island, by and through, Peter F. Neronha, Attorney General v. Purdue Pharma  
L.P., et al.*  
C.A. No. PC-2018-4555

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