

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SHIRE, LLC,)	14-CV-5694
)	
Plaintiff,)	
)	
v.)	
)	
COREPHARMA, LLC,)	Camden, NJ
)	May 18, 2015
Defendants.)	11:01 a.m.
)	
SHIRE, LLC,)	14-CV-6095
)	
Plaintiff,)	
)	
v.)	
)	
AMERIGEN PHARMACEUTICALS LIMITED,)	
)	
Defendants.)	
)	
SHIRE, LLC,)	15-CV-1454
)	
Plaintiff,)	
)	
v.)	
)	
PAR PHARMACEUTICALS, INC.,)	
et al.,)	
Defendants.)	

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JOEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 responsive information that needs to be looked at by all
2 defendants, we can do that, but by clearly sharing everything
3 and forcing outside counsel to review more documents than it
4 needs to, documents that is not necessary to review, Your
5 Honor, this is -- this can be unworkable.

6 And another point made by Shire's counsel is the
7 prejudice that it will suffer if there is a expert report by
8 defendants where we have allegedly inconsistent positions.
9 Well, Your Honor, if that's the case, Shire is free to ask the
10 expert in a deposition the questions it wants to ask as long it
11 does not disclose improperly the confidential information that
12 belongs to other defendants. Shire is free to ask the
13 defendants as long -- ask defendants experts as long as it does
14 not use another defendant's experts opining a formulation that
15 is completely different from another defendant's and try to use
16 that as evidence against that other defendants. Your Honor,
17 that, again, is improper, because the defendant whose evidence
18 is going to be used, the other defendant does not have the
19 opportunity to get discovery on that. He cannot go depose the
20 witnesses of the other defendants. There's no discovery on it,
21 and the evidence will be highly prejudicial, and that's why
22 Your Honor needs to prevent such misuse and such cross use of
23 each other's confidential information.

24 THE COURT: Thank you, counsel.

25 MR. YANG: Thank you.

1 THE COURT: Counsel, the Court is prepared to issue
2 its ruling, and I'll confirm it in an order of the Court. The
3 issue before the Court is whether the existing discovery
4 confidentiality order that's in place between Shire,
5 CorePharma, and Amerigen should be amended simply to include
6 Par Pharma as an additional party to it or as Par Pharma
7 suggests, paragraph 5 should be amended and a new paragraph 7
8 should be added. The amendment to paragraph 5 would prevent
9 the sharing of confidential information amongst the defendants.
10 Par Pharma has listed in its May 6, 2015 letter brief, docket
11 number 48, page 3, the bullet points, the information that
12 would not be shared.

13 Shire opposes the amendments. It's not entirely
14 clear what the positions of CorePharma and Amerigen are as to
15 the entirety of the issues. As to paragraph 5, I think both
16 defendants object to the proposed amendment.

17 For the reason to be discussed for the Court -- by
18 the Court, the Court is going to deny Par's application, and
19 the Court is going to issue an order including the docket
20 number from the Par case in the existing discovery
21 confidentiality order. The Court believes that existing
22 paragraph 5 is necessary to assure the efficient case
23 management of these three cases and the orderly administration
24 and handling of the case. If the Court adopts Par's
25 suggestion, the Court believes that it would create intractable

1 management problems dealing with depositions, expert reports,
2 the Markman hearing, et cetera.

3 The Court has a lot of experience in these
4 consolidated cases. This is the first time this issue has come
5 up before this Court. In this Court's experience, it has not
6 faced, and I hope it will continue to be the case, a problem
7 with the sharing of confidential information between parties to
8 a litigation.

9 The Court believes that paragraph 5 assures that no
10 parties gain an unfair advantage and that it puts all parties
11 on a level playing field. Frankly and candidly, the Court sees
12 no material prejudice to Par from this ruling. Certainly, in
13 every case, there's a risk of inadvertent disclosure, but
14 again, as this Court has noted, in its experience, this has not
15 been a problem. Paragraph 5 gives Par the protection it needs
16 to assure that its information is not inadvertently disclosed
17 and either intentionally or inadvertently misused for any
18 purpose.

19 The Court wholeheartedly agrees with the suggestion
20 made by CorePharma and Amerigen that if there are exceptional
21 circumstances -- or exceptional might be too strong of a word.
22 If there is good cause to limit the distribution of certain
23 confidential information for a particular reason, there are
24 provisions in the DCO where that can be accommodated, and
25 certainly, this Court can entertain an application by any party

The Court - Decision

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1 if it seeks to limit the distribution of its confidential
2 information to a greater degree than is already set forth in
3 paragraph 5 of the DCO.

4 Par has suggested that there's prejudice to the
5 extent there be increased costs. The Court does not give that
6 argument any material weight. The increased cost in the
7 context of the costs of handling this type of litigation in the
8 Court's view would be immaterial or certainly not significant
9 enough to warrant the degree and prejudice reflected in the
10 case law.

11 The Court does not believe the addition of paragraph
12 7 is necessary. The Court is troubled by the fact that it
13 would hamper plaintiff's ability to use relevant information
14 against a defendant. I don't know how a Court can do that at
15 this point in the case, but again, the Court has to emphasize
16 that it has had a good deal of experience with these cases.
17 The DCOs have gone smoothly. The Court hasn't experienced any
18 problem witness this case. Granted, we're not that far along,
19 but there seems to be no problems thus far with paragraph 5,
20 and I would think that if paragraph 7 was significant and
21 important enough for defendants in this type of litigation to
22 have it included in a DCO, CorePharma and Amerigen would have
23 raised it before Par raised it when it was brought into this
24 litigation.

25 So for the reasons discussed, the Court is going to

Colloquy

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1 deny Par's application. The Court is going to order that all
2 parties shall be subject to the same DCO that's already entered
3 in the case. All parties will be subject to the same terms
4 that currently exist without prejudice to any party's right to
5 move for good cause to prevent a dissemination of especially
6 secret or sensitive information or information that one party
7 believes for one reason or another is completely inappropriate
8 to be distributed or produced to either a co-defendant or
9 Shire.

10 So that's the Court's ruling on the DCO issue.

11 I should add, although I appreciate Par's offering to
12 submit additional authority to the Court on this issue, the
13 parties had a full and fair opportunity to brief the issue, and
14 no authority has been submitted to the Court where the
15 suggestions that Par proposed have been adopted by the Court.
16 I don't doubt that there have been cases where similar orders
17 have been entered, but for all the Court knows, that was done
18 by consent, and if the parties consent to amended DCO, as per
19 Par's suggestion, that's fine with the Court, but we don't have
20 that issue here.

21 So now that we're done with the DCO issue, let's move
22 to the discovery issues in the case. I have the parties'
23 letter briefs, and what I'd like to do is what I do in every
24 case, start with the plaintiff. We'll deal with the
25 plaintiff's issues case by case, and then we'll get to each