



GRANTED IN PART

Filed: Jun 28 2023 12:22PM EDT
Transaction ID 70276742
Case No. 2020-1069-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SHAREHOLDER REPRESENTATIVE)
SERVICES LLC, solely in its capacity)
as representative of the Securityholders,)

Plaintiff / Counterclaim-Defendant,)

v.)

C.A. No. 2020-1069-MTZ

ALEXION PHARMACEUTICALS,)
INC.,)

Defendant / Counterclaim-Plaintiff.)

**[PROPOSED] ORDER GRANTING PLAINTIFF’S EXPEDITED MOTION
IN LIMINE TO EXCLUDE UNTIMELY PRODUCED DOCUMENTS**

Plaintiff Shareholder Representative Services LLC (“SRS”) having filed its Expedited Motion *in Limine* to Exclude Untimely Produced Documents, (the “Motion”), and after consideration of the Motion and any response thereto, and for good cause shown,

IT IS HEREBY ORDERED this ___ day of _____, 2023, that:

1. The Motion is GRANTED.
2. The following documents (the “Disputed Documents”) are stricken

from the joint exhibit list:

- JX2523
- JX2524
- JX2525

- JX2526
- JX2527
- JX2530
- JX2531
- JX2582
- JX2589

3. Alexion shall be precluded from any use of the Disputed Documents at trial.

Vice Chancellor Zurn

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Morgan Zurn

File & Serve

Transaction ID: 70249900

Current Date: Jun 28, 2023

Case Number: 2020-1069-MTZ

Case Name: CONF ORD - Shareholder Representative Services, LLC v. Alexion Pharmaceuticals Inc.

Court Authorizer: Morgan Zurn

Court Authorizer

Comments:

The motion seeks to preclude two groups of documents on the premise that Alexion produced them for the first time on June 9, to SRS's prejudice.

This premise is not true for the Expenditure Spreadsheet: it was produced in connection with Bahl's rebuttal report on April 6, and addressed at his deposition. But RFP 1 asked for all documents related to Alexion's efforts to develop ALXN1830, including the "allocation of personnel and resources." Alexion says the spreadsheet "summarizes Alexion's external spend and certain full time employee ("FTE") expenditures in connection with ALXN1830's development." Opp. Br. at 5-6. That is what RFP 1 requested. Alexion was required to produce responsive documents even if SRS did not press for them. Alexion intends to prove it spent approximately \$130 million, but introduced documentary support only through its rebuttal expert addressing the "factual premise" of whether Alexion defunded ALXN1830. The Court has excluded from trial documents that an expert relied on but were not timely produced. See *Verition P'rs Master Fund v. Aruba Networks*, C.A. No. 11448-VCL (Nov. 30, 2016). Because the data is responsive to RFP 1, and Alexion failed to timely produce it or the DRE 1006 spreadsheet, both are excluded. Bahl may not testify or opine on the spreadsheet's contents.

The CSR documents were produced on June 9. They could not have been produced earlier because they did not exist: Alexion created them after the discovery cutoff, after depositions revealed inaccuracies in the earlier CSR. Prejudice from the New CSR is uncertain: Alexion committed to not use the New CSR in its case in chief, intends to use it to show they corrected their regulatory filings, and expressed limited interest in cross-examining with the New CSR; and the changes are nuanced, best evaluated in context after trial. In the meantime, Alexion shall produce all documents and communications relating to the New CSR and a privilege log by 7/5.

/s/ **Judge Morgan Zurn**