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Opioid MDL Counties Get Partial Info From McKesson Report

By **Darcy Reddan**

Law360 (August 1, 2018, 8:01 PM EDT) -- A special master appointed to oversee a discovery dispute in multidistrict litigation over the opioid crisis partially granted a request by counties for more information from a McKesson Corp. investigation into suspicious drug order oversight, finding Wednesday the counties are entitled to witness names but that statements and terms used in the investigation are protected work product.

Special Master David R. Cohen partially granted the counties' request for additional information used to create "McKesson Corp. Board of Directors' Response to the International Brotherhood of Teamsters," which was prepared by a special review committee appointed by McKesson as a result of concerns by the Teamsters union, a company shareholder. The Teamsters asked questions about oversight of suspicious order quantities after McKesson, a major drug distributor, paid \$150 million to the federal government in April 2015 to settle claims, including violation of federal reporting law.

On Wednesday, the special master cited the Third Circuit's ruling in [United States v. Amerada Hess Corp.](#), stating that the work product doctrine did not preclude production of the list of 46 witnesses.

Cohen stated that disclosing the list of names does not disclose the thought process of the attorneys who conducted the investigation, which amounts to minimal work product content. He also said that McKesson, which is one of many defendants in the opioid MDL, should furnish the information as part of its Rule 26 duty to disclose.

While the special master found that the list of names should be disclosed, he disagreed with the assertion that statements and search terms should also be submitted.

Cohen agreed with McKesson's claim that it did not produce written statements for each interview and also stated that *Hobart Corp. v. Dayton Power & Light Co.* supports McKesson's alternative argument that attorney notes "taken during the interviews, were prepared by counsel for the purpose of rendering legal advice to the Special Review Committee, so they are non-discoverable opinion work product."

The special master also rejected the idea that the plaintiffs have a substantial need for search terms applied by counsel and the documents collected as a result.

These terms and documents are "opinion work product," giving insight to the attorneys' strategies and ideas, according to McKesson, and Cohen agreed.

He stated that the release of the internal report did not waive any privilege over the information, but noted that if McKesson introduces evidence from the investigation that is outlined in the report, he will reconsider whether the plaintiffs are entitled to discover the additional information that has been denied.

"Again Special Master Cohen has tackled a very complex issue and distilled it down and rendered a very important decision," counsel for the plaintiffs, Hunter Shkolnik of Napoli Shkolnik PLLC, said in a statement. "This discoverable information that goes to the essence of plaintiffs' claims."

The decision marks an end to one of the latest discovery fights in the sprawling MDL. **In late July**, U.S. District Judge Dan Aaron Polster rejected public **records requests** filed by The Washington Post and West Virginia newspapers The Herald-Dispatch and the Charleston Gazette-Mail, concluding that publicity would undermine a delicate discovery process in the high-stakes case.

Representatives for McKesson did not return a request for comment Wednesday.

McKesson is represented by Covington & Burling LLP.

The counties are represented by Simmons Hanly Conroy LLC and Napoli Shkolnik PLLC.

The case is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Jeff Overley. Editing by Orlando Lorenzo.

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