

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Amneal Pharmaceuticals, LLC,

Defendants.

Civil Action No. 14-CV-2758 (PAC)

**AMNEAL PHARMACEUTICALS, LLC'S MOTION *IN LIMINE*
TO EXCLUDE EXPERT TESTIMONY FOR REFUSAL
TO PROVIDE DEPOSITION OF THE EXPERT**

Amneal Pharmaceuticals, LLC (“Amneal”) seeks a straightforward application of Federal Rule of Civil Procedure 26(b)(4)(A), which gives parties the right to depose any testifying experts. Fed. R. Civ. P. 26(b)(4)(A) (“A party may depose any person who has been identified as an expert whose opinions may be presented at trial”).

Plaintiffs intend to offer the opinion of Dr. James A. Kaduk as evidence that Amneal’s accused product infringes claims 1 and 22–25 of the ’993 patent. Plaintiffs, however, failed to produce Dr. Kaduk for deposition by Amneal.

After an unsuccessful attempt to reach a stipulation regarding infringement, Amneal requested to go forward with Dr. Kaduk’s deposition for a single hour, at the end of a day on which Dr. Kaduk was sitting for deposition by other defendants. Amneal wrote to Plaintiffs:

It looks like the stipulation will not get done, if at all, before the close of Kaduk depositions. So, Amneal would like 1 hour at the end of the currently schedule[d] ones. Please let me know what time and which day.

(Maddox Decl., Ex. 1 at 2, November 9, 2016 Email from Amneal’s Counsel to Plaintiffs’

Counsel.)

Plaintiffs refused at the time, but promised to make him available upon request.

We . . . believe that the deposition will not be necessary. *In the unlikely event that it becomes so, we will work with you to arrange a mutually convenient time that works for Dr. Kaduk.*

(*Id.* at 1, November 10, 2016 Email from Plaintiffs' Counsel to Amneal's Counsel (emphasis added).)

Two weeks later, Amneal asked for the promised deposition of Dr. Kaduk.

At this point, Amneal would like to proceed with the promised deposition. It will not exceed one hour. Please advi[s]e as to time and place you are offering Dr. Kaduk.

(*Id.* at 1, November 26, 2016 Email from Amneal's Counsel to Plaintiffs' Counsel.)

Plaintiffs never produced Dr. Kaduk for deposition by Amneal. Plaintiffs stonewalled instead, refusing even to acknowledge Amneal's request. Almost four weeks later, Plaintiffs pushed again for a stipulation but continued to ignore the promised deposition. (Maddox Decl., Ex. 2, December 15, 2016 Email from Plaintiffs' Counsel to Amneal's Counsel.)

Despite refusing a deposition, Plaintiffs intend to introduce Dr. Kaduk's expert opinions as evidence that Amneal infringes the asserted claims of the '993 patent. The Court should preclude Dr. Kaduk from offering those opinions.

Dated: December 16, 2016

Respectfully submitted,

/s/ Steven A. Maddox

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