



1900 K STREET NW - SUITE 725  
WASHINGTON, DC 20006  
(202) 830-0707

January 26, 2017

Hon. Paul A. Crotty  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 735  
New York, NY 10007

Re: *Kowa Company, Ltd. et al. v. Amneal Pharmaceuticals LLC, et al.*,  
Case Nos. 14-cv-2758 (PAC); 14-cv-7934 (PAC); and 15-cv-3935 (PAC);

Your Honor:

We object to Plaintiffs' introduction of new expert opinions regarding a document that Plaintiffs did not produce until trial: PTX-735. Specifically, Plaintiffs first produced PTX-735 to Amneal and Apotex on January 10, 2017, when the parties exchanged trial exhibits.

Amneal and Apotex seek the same relief that Plaintiffs sought, and the Court granted, with respect to proposed expert opinions regarding a document that Apotex and Amneal did not identify until the end of expert discovery, and served with a supplemental expert report back in November. (Trial Transcript 398:2-5.)

Here, plaintiffs' delay was longer, and the unfair surprise more prejudicial. Plaintiffs never served a supplemental report or in any way disclosed what new opinion Dr. Byrn intends to offer based on PTX-735. Amneal and Apotex would not learn that new opinion until Dr. Byrn's direct examination on the last day of trial. Obviously, Amneal and Apotex would be

unable to have Dr. Roberts, who has since returned to England, evaluate and respond to Dr. Byrn's new opinion.

In Plaintiffs' own words, when the shoe was on the other foot, this is "a belated attempt to give themselves a 'do over.'" (Mr. Conlin's Jan. 19, 2017, Letter to Court at 2.) Indeed, with respect to Plaintiffs' desire to have Dr. Byrn opine as to this document produced after the end of discovery, our position can be expressed by simply switching the parties in Plaintiffs' own text:

[Plaintiffs] were required to seek additional time under Federal Rule of Civil Procedure 6(b). It provides: "When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . (B) on motion made after the time has expired if the party failed to act because of excusable neglect. [Plaintiffs] sought neither [Defendants'] consent nor the Court's permission.

\* \* \*

[Plaintiffs] have offered no justification whatsoever for their failure to comply with the Court's Rule 26(f) scheduling order regarding service of expert witness disclosures.

*Id.* at 2-3.

We respectfully suggest that Plaintiffs were aware that Dr. Byrn cannot opine on PTX-735. That is why they attempted to move PTX-735 into evidence during Dr. Roberts' cross examination by Mr. Bauer. Your Honor may recall sustaining our objection, because Dr. Roberts had never seen the document. (Trial Transcript at 846: 11-19.) Here, Plaintiffs' expert

Dr. Byrn either never saw the document until after the close of expert discovery, or, in any event, never disclosed it in accordance with the scheduling order.

Finally, PTX-735 is not admissible, even separate and apart from Dr. Byrn's undisclosed opinions. It is a document created by Sawai, which is no longer a party to the case. It is not a party admission. Plaintiffs lack any foundation to introduce the document at trial.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Steven A. Maddox", written in a cursive style.

Steven A. Maddox

cc: All counsel of record