

Strunck v Questcor Pharm., Inc.

2014 NY Slip Op 30500(U)

February 20, 2014

Supreme Court, New York County

Docket Number: 113689/2011

Judge: Berke-Wei

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C.
Justice

PART 46

Index Number : 113689/2011
CHARLES W. STRUNCK III
vs.
QUESTCOR PHARMACEUTICALS, INC
SEQUENCE NUMBER : 003
ORDER OF PROTECTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 4, were read on this motion ~~for~~ for a protective order

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1-2
Answering Affidavits — Exhibits _____ No(s). 3
Replying Affidavits _____ No(s). 4

Upon the foregoing papers, it is ordered that ~~this motion is~~ :

Plaintiff's motion for a protective order and defendant's motion to compel disclosure are resolved pursuant to the accompanying stipulation and stipulated commission.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

MAR 05 2014

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 2/21/14

Lucy Billings, J.S.C.
LUCY BILLINGS
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

-----X
CHARLES W. STRUNCK III,

Plaintiff,

-against-

QUESTCOR PHARMACEUTICALS, INC.,

Defendant.
-----X

:
: **Index No.: 113689/2011**
:

:
: **STIPULATION**
:

:
: **IAS Part 46**
:
:
: X

WHEREAS, the parties in the above-captioned action are presently engaged in discovery for the above-referenced action; and

WHEREAS, plaintiff filed Plaintiff's Motion for Protective Order on August 13, 2013; and

WHEREAS, defendant filed Defendant's Cross-Motion to Compel Plaintiff's Compliance with Defendant's Disclosure Requests and for Issuance of a Commission on October 21, 2013; and

WHEREAS, the parties appeared before Justice Billings on the record on January 16, 2014 for oral argument of each party's respective motion and Justice Billings directed the parties to memorialize the proceedings in a stipulation;

WHEREAS, neither party waives any valid or appropriate objections; and

that plaintiff's motion for a protective order and defendant's cross-motion to compel disclosure are resolved
THEREFORE, IT IS HEREBY STIPULATED, as follows:

1. Plaintiff shall appear for his continued deposition on March 13, 2014 which may continue day to day, and shall not exceed nine (9) hours in total, excluding any colloquy and objections which shall not be included in the computation of the nine (9) hour deposition period.

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MAR 05 2014

COUNTY CLERK'S OFFICE
NEW YORK

2. The parties agree to an issuance of a commission to permit Questcor to subpoena documents from UCB, Inc., with such commission limited to a request for the following information:

- a. Plaintiff's salary history;
- b. Plaintiff's start and end dates of employment, including the date(s) of any leaves of absence; and
- c. Plaintiff's job description.
- d. An interrogatory that requests a description of plaintiff's job duties to the extent they vary from the job description produced in response to the Commission to Request Appearance and Production of Documents By Out of State NonParty, attached hereto as Exhibit A,

3. Plaintiff agrees to provide all documents in plaintiff's possession pertaining to plaintiff's Workers' Compensation claim for the automobile accident reported by plaintiff to have taken place on or about October 13, 2010, as set forth in Document Request No. 36 in Defendant's Third Request for Production of Documents, and Plaintiff shall provide written authorization for the release to Berke-Weiss & Pechman LLP, as attorneys for defendant, of plaintiff's Workers' Compensation file, as set forth in Document Request No. 37.

4. Plaintiff shall furnish to defendants completed HIPAA authorizations, including the name, address, and telephone number of plaintiff's healthcare providers, as follows:

- a. All orthopedic and related health care providers regarding knee and back injuries, and including any pain specialists, from October 20, 2008 through the date of trial of this action; and
- b. All mental health providers from October 20, 2008 through the date of trial of this action.

5. Plaintiff shall furnish all documents and/or communications in plaintiff's possession between plaintiff and Gabe Rinato concerning or making reference to

defendant, defendant's current and former employees, and/or plaintiff's claims in this action, as requested in Document Request No. 9.

6. Plaintiff shall furnish all documents and/or communications in plaintiff's possession between plaintiff and Jim Eglit concerning or making reference to defendant, defendant's current and former employees, and/or plaintiff's claims in this action, as requested in Document Request No. 10.

7. Plaintiff shall furnish all documents and/or communications in plaintiff's possession between plaintiff and Sonya Smith concerning plaintiff's resume, as requested in Document Request No. 11, per plaintiff's testimony at his deposition.

8. Plaintiff shall furnish any documents and/or written communications in plaintiff's possession from LinkedIn specifically related to plaintiff's efforts to obtain new employment and/or other mitigation efforts.

9. With respect to Interrogatory No. 5 in Defendant's First Set of Interrogatories, to the extent plaintiff has identified witnesses he intends to call for trial in this action, plaintiff agrees to identify any such witness. Should plaintiff's witness list change, plaintiff shall supplement his response hereto with an updated witness list. CPLR 3101(h).

10. Plaintiff agrees to answer Interrogatory No. 7 in Defendant's First Set of Interrogatories, which is as follows:

Have any documents been used or referred to in connection with the preparation of or answers to these interrogatories? If so, for each document referred to, state the following:

- a) The number of the Interrogatory;
- b) The identity and title of the document;
- c) The location in which the document was found; and
- d) The location in which the document is presently located.

11. Plaintiff agrees to answer Interrogatory No. 8 in Defendant's First Set of Interrogatories which is stated below, and to the extent responsive documents previously were provided in response thereto or are in the possession of defendant, plaintiff shall identify such documents by bates-number.

Did Plaintiff receive oral and/or written notice regarding perceived problems in Plaintiff's job performance and/or infractions of any of Defendant's rules or policies? If so, please state the following with respect to each such notice:

- a) Date;
- b) Name of the person(s) who notified Plaintiff;
- c) Nature, substance, and summary of notice;
- d) Whether the notice was oral or written;
- e) Persons present, substance, and outcome of conversations regarding notice;
- f) Whether Plaintiff was informed that if Plaintiff's job performance did not improve or otherwise become satisfactory to Defendant, Plaintiff would be terminated;
- g) Whether Plaintiff was afforded an opportunity to correct or improve Plaintiff's performance.

12. Plaintiff agrees to answer Interrogatory No. 9 in Defendant's First Set of Interrogatories which is stated below, and to the extent that responsive documents previously were provided in response thereto or are in the possession of defendant, plaintiff shall identify such documents by bates-number.

Name and describe each disability alleged by Plaintiff in the Complaint.

13. Plaintiff agrees to answer Interrogatory No. 10 in Defendant's First Set of Interrogatories, as stated below to the extent that it applies or relates to the claims alleged in the complaint, including the conditions that he is alleging are either the reason for his termination or his damages. To the extent that plaintiff already provided such information, plaintiff agrees to identify the bates-stamped number of documents

responsive to this request or the page and line in the transcript of plaintiff's deposition where there is testimony containing such information.

Does Plaintiff allege any injury or illness that arose out of or in the course of employment with Defendant? If so, please state the following with respect to each such injury or illness:

- a) The nature of such injury or illness;
- b) How such injury or illness occurred;
- c) The date on which such injury or illness occurred;
- d) Whether Plaintiff has filed a workers' compensation claim. If so, state the date and outcome of the claim; and
- e) Whether Plaintiff has filed or applied for disability benefits of any type. If so, state the date, identify the nature of the benefits applied for, and the outcome of any such application.

14. Plaintiff agrees to answer Interrogatory No. 11, in Defendant's First Set of Interrogatories, as stated below:

Were there any communications between Plaintiff and Defendant about the type or extent of any disability of Plaintiff? If so, please state the following with respect to each such communication:

- a) The name, address, and telephone number of each person who made and/or received the communication;
- b) The name, address, and telephone number of each person who witnessed the communication;
- c) The date and substance of the communication; and
- d) Identify each document that refers to the communication.

15. Plaintiff agrees to answer Interrogatory No. 12 in Defendant's First Set of Interrogatories, as stated below:

Were there any communications between Plaintiff and Defendant about any possible accommodation of Plaintiff? If so, please state the following for each such communication:

- a) The name, address, and telephone number of each person who made and/or received the communication;
- b) The name, address, and telephone number of each person who witnessed the communication;
- c) The date and substance of the communication; and
- d) Identify each document that refers to the communication.

16. Plaintiff agrees to answer Interrogatory No. 13 in Defendant's First Set of Interrogatories, and defendant agrees to limit the time period of this interrogatory to any a civil action filed against any employer of plaintiff for any adverse employment action in the five (5) years prior to his termination from Questcor, as restated in accordance with such time limit.

Except for this action has Plaintiff filed a civil action against any employer in connection with an adverse employment action during the period through August 4, 2011? If so, please state the following for each civil action:

- a) The name, address, and telephone number of each employer against whom the action was filed;
- b) The court, names of the parties, and case number of the civil action;
- c) The name, address, and telephone number of any attorney representing the employee, and
- d) State whether the action has been resolved or is pending.

17. Defendant agrees to withdraw Interrogatory No. 14 in Defendant's First Set of Interrogatories.

18. Plaintiff agrees to describe in detail all income plaintiff has received from any source since August 4, 2011, as requested in defendant's Interrogatory No. 17, including the precise dollar amount and the source of all such income, except that if such information was already produced, plaintiff agrees to identify any relevant documents by bates-number.

19. Defendant agrees to withdraw subsection (c) and (d) of Interrogatory No. 21 in Defendant's First Set of Interrogatories, and plaintiff agrees to respond to Interrogatory No. 21 as restated below in accordance with that limitation.

Does Plaintiff attribute any physical, mental, or emotional injuries to the termination of his employment with Defendant? If so, please state the following:

- (a) Each physical, mental, or emotional injury;
- (b) A list of the names, addresses, telephone number of any health care providers; and
- (c) The costs to date

20. Plaintiff agrees to respond to Interrogatory No. 24 in Defendant's First Set of Interrogatories, as described below, to the extent that it applies to eye-witnesses at the time of the accident.

With respect to Plaintiff's claim the Plaintiff "[o]n or about October 13, 2010...injured his right knee in a car accident while performing his job duties," as alleged in ¶20 of the Complaint, identify each and every person whom you believe has personal knowledge of any facts relating to these claims and/or witnessed the actions claimed by the Plaintiff.

21. Plaintiff agrees, to the extent possible, to respond to Interrogatory No. 32 in Defendant's First Set of Interrogatories, and to state with particularity and in detail the relief plaintiff is seeking with respect to lost earnings, medical expenses, and prospective relief.

22. With respect to Interrogatory No. 36 in Defendant's First Set of Interrogatories, plaintiff agrees to identify any and all such documents relating to his employment with defendant which he retained after termination of his employment with Questcor which plaintiff intends to introduce at trial, or that he is going to rely on

in his testimony at trial, and any person(s) or entities to whom Plaintiff provided such documents, as restated below.

Did Plaintiff retain any documents relating to his employment with Defendant after termination of his employment? If so, identify any and all such documents which Plaintiff intends to introduce at trial, or that he is going to rely on in his testimony at trial.

23. The parties agree to respond and/or exchange information responsive to the requests stipulated herein by no later than seven (7) days prior to plaintiff's continued deposition.

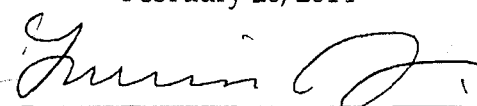
24. This Stipulation and Order may be executed in several counterparts, each of which shall serve as an original as against any party who signed it, and all of which taken together shall constitute one and the same document.

Dated: New York, New York
February 20, 2014

Dated: New York, New York
February 20, 2014



~~Mark Lubelsky~~ *Simon, Malinowski*
MARK L. LUBELSKY AND ASSOCIATES
123 West 18th St, 8th Floor
New York, New York 10011
(212) 242-7480
Attorneys for Plaintiff



Laurie Berke-Weiss
BERKE-WEISS & PECHMAN LLP
488 Madison Avenue, 11th Floor
New York, New York 10022
(212) 583-9500
Attorneys for Defendant

FILED

SO ORDERED.

MAR 05 2014

Dated: February 21, 2014
New York, New York

Lucy Billings
COUNTY CLERK'S OFFICE
NEW YORK
Hon. Lucy Billings

LUCY BILLINGS
J.S.C.

FILED

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

MAR 05 2014

-----X
 CHARLES W. STRUNCK III, :
 Plaintiff, :
 -against- :
 QUESTCOR PHARMACEUTICALS, INC., :
 Defendant. :
 -----X

COUNTY CLERK'S OFFICE
 NEW YORK
 Index No.: 113689/2011
 COMMISSION TO
 REQUEST
 APPEARANCE AND
 PRODUCTION OF
 DOCUMENTS BY
 OUT OF STATE
 NONPARTY

TO: THE CLERK OF THE SUPERIOR COURT OF COBB COUNTY, STATE OF
GEORGIA

WHEREAS, there is an action in this ^{Court,} the Supreme Court of New York, County of
 New York, entitled as above, and this Court is of the opinion that complete justice in the
 action ^{may} cannot be done without a subpoena issuing and being served on Anne S. Richo,
 Executive Vice President and General Counsel, UBC Pharma, within your jurisdiction,
 requiring the witness to appear and produce certain documents; and

WHEREAS, this Court has determined that good cause exists for the production
of certain documents in this case;

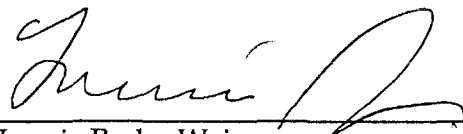
THEREFORE, we request that, in the interest of justice, you issue a subpoena by
your proper and usual process summoning the following witness:

Anne S. Richo
 Executive Vice President and General Counsel
 UCB, Inc.
 1950 Lake Park Drive
 Smyrna, Georgia 30080

to appear and produce certain documents at the offices of Berke-Weiss & Pechman
 LLP, 488 Madison Avenue, 11th Floor, New York, New York, 10022, on March 14, 2014,
 at 10 a.m.

Dated: New York, New York
February 20, 2014

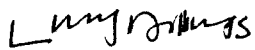
BERKE-WEISS AND PECHMAN LLP

By: 

Laurie Berke-Weiss
488 Madison Avenue, 11th Floor
New York, NY 10022
(212) 583-9500
berke-weiss @bwp-law.com
Attorneys for Defendant

SO ORDERED.

Dated: February 21, 2014
New York, New York



Hon. Lucy Billings, J.S.C.

FILED

MAR 05 2014

COUNTY CLERK'S OFFICE
NEW YORK

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

CHARLES W. STRUNCK III,)	
)	
Plaintiff,)	Pending in SUPREME
-against-)	COURT OF NEW YORK,
)	COUNTY OF NEW YORK
QUESTCOR PHARMACEUTICALS, INC.,)	
)	
Defendant.)	Index No.: 113689/2011

SUBPOENA DUCES TECUM FOR DEPOSITION

TO:

Anne S. Richo
Executive Vice President and General Counsel
UCB, Inc.
1950 Lake Park Drive
Smyrna, Georgia 30080

GREETINGS:

YOU ARE HEREBY COMMANDED that you appear and attend at the offices of Berke-Weiss & Pechman LLP, 488 Madison Avenue, 11th Floor, New York, NY 10022, on March 14, 2014 at 10:00 a.m., then and there to be examined on deposition for the purpose of discovery and for the preservation of testimony by the defendant Questcor Pharmaceuticals, Inc. in the above referenced action, and to bring with you to said deposition the documents, object, and things with respect to Charles W. Strunck III ("plaintiff"):

1. All documents reflecting plaintiff's salary history;
2. All documents reflecting plaintiff's dates of employment, including the date(s) of any leave of absence; and
3. All documents reflecting plaintiff's job description or job duties at UCB, Inc., or any related entity.

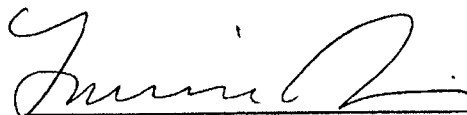
4. In the event plaintiff's duties differed from his job description, you will answer the following interrogatory: "Please describe plaintiff's job duties to the extent they vary from the job description produced in response to this Commission to Request Appearance and Production of Documents By Out of State Nonparty."

FAIL NOT UNDER PENALTY OF THE LAW

This ____ day of ____, 2014.

Clerk, Superior Court of Cobb County,
Georgia

Dated: New York, New York
February 20, 2014



Laurie Berke-Weiss
BERKE-WEISS AND PECHMAN LLP
488 Madison Avenue, 11th Floor
New York, New York 10022
(212) 583-9500
Attorneys for Defendant