

In the Supreme Court of Nevada

STATE OF NEVADA; NEVADA DEPARTMENT OF
CORRECTIONS; JAMES DZURENDA, Director of
the Nevada Department of Corrections, in his
official capacity; IHSAN AZZAM, PH.D., M.D.,
Chief Medical Officer of the State of Nevada,
in his official capacity; and JOHN DOE,
Attending Physician at Planned Execution of
Scott Raymond Dozier, in his official capacity,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, in and for the County of
Clark; and the HONORABLE ELIZABETH
GONZALEZ, District Judge,

Respondents,

and

ALVOGEN, INC.; and HIKMA PHARMACEUTICALS
USA INC.,

Real Parties in Interest,

Electronically Filed
Aug 23 2018 12:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court
No. A-18-777312-B

**HIKMA'S PHARMACEUTICALS USA INC.'S OPPOSITION TO
PETITIONERS' EMERGENCY MOTION TO RESCHEDULE
ORAL ARGUMENT OR A TEMPORARY STAY**

E. LEIF REID (SBN 5750)
DANIEL F. POLSENBERG (SBN 2376)
JOSH M. REID (SBN 7497)
KRISTEN L. MARTINI (SBN 11272)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Real Party in Interest Hikma Pharmaceuticals USA Inc.

NRAP 26.1 DISCLOSURE

Hikma Pharmaceuticals USA Inc., formerly known as West-Ward Pharmaceuticals Corp., is a Delaware corporation with its principal place of business located at 246 Industrial Way West, Eatontown, New Jersey. Hikma is a subsidiary of Hikma Pharmaceuticals PLC, a publicly traded company on the London Stock Exchange. Hikma has been represented in this litigation by E. Leif Reid, Daniel F. Polsenberg, Josh M. Reid, and Kristen L. Martini of Lewis Roca Rothgerber Christie LLP.

DATED this 23rd day of August, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Josh M. Reid
E. LEIF REID (SBN 5750)
DANIEL F. POLSENBERG (SBN 2376)
JOSH M. REID (SBN 7497)
KRISTEN L. MARTINI (SBN 11272)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

*Attorneys for Hikma Pharmaceuticals
USA Inc.*

**OPPOSITION TO PETITIONERS’ EMERGENCY MOTION TO
RESCHEDULE ORAL ARGUMENT OR A TEMPORARY STAY**

In its second “Emergency Motion” filed in less than a week, the State¹ requests that this Court reschedule the September 12, 2018, oral argument scheduled in this matter, or, in the alternative, that this Court—once again—reconsider its denial of the State’s request to issue a temporary stay of the district court proceedings. The State has filed three emergency motions under NRAP 27(e) during the short time period that this matter has been pending before this Court, repeatedly requesting stays of the underlying action and reconsideration. The most recent “emergency” motion seeks yet another reconsideration, this time of this Court’s August 16, 2018, Order Denying Stay and Scheduling Oral Argument, and goes even further by improperly requesting, yet again, that this Court intervene in the underlying district court action on matters relating to discovery and hearing scheduling. It is evident from the record before this Court that the State is abusing NRAP 27(e).

¹ Hikma refers to Petitioners collectively as the “State” for ease of reference.

For the reasons discussed below, together with the arguments made in Hikma Pharmaceuticals USA Inc.’s (“Hikma”) August 13, 2018, opposition to the State’s emergency motion to stay (which are incorporated herein by reference), Hikma respectfully requests that this Court deny the State’s Emergency Motion.

On July 11, 2018, the district court held a hearing on and granted a Temporary Restraining Order (“TRO”) requested by Alvogen, Inc. Before the district court at that same hearing, the State requested “substantial discovery” in preparation for the preliminary injunction hearing. Pet’rs’ App’x (“PA”) 418. At that time, the district court set a status hearing for September 10, 2018, in order to report on discovery and determine when the preliminary injunction hearing would be held. *Id.* at 423.

After this Court lifted the temporary stay of the underlying proceedings, on August 21, 2018, the district court held a status hearing to discuss the discovery schedule and potential preliminary injunction hearing date. As of the time of the August 21 status hearing, the State had not propounded a single discovery request upon either Alvogen or Hikma to prepare for the preliminary injunction hearing. Considering

the State's repeated requests made to this Court to relieve the State of its discovery obligations, and its lackadaisical approach to serving discovery in the underlying action, the State's Emergency Motion appears to relate more to the State's continued pattern of avoiding disclosure of information and preventing discovery in this matter, rather than it being under the yoke of "a hurried and slapdash discovery period."

The district court has only set one firm date in the underlying action; that is, the September 10 status hearing. If the parties are not ready for the preliminary injunction hearing at that time, this matter can be properly addressed by the district court, and there is no need for this Court to take any action at this time.

Of additional consideration, the State filed its "Emergency Motion" without notice or consultation with Hikma or Alvogen, and its request would provide this Court and Real Parties in Interest with less time to review the State's Reply to Hikma's and Alvogen's Answers to the Writ Petition and Sandoz Inc.'s amicus brief.

For these reasons, the reasons set forth in Hikma's previous opposition papers, and because the State's request to reschedule oral

argument appears to be another improper attempt to seek reconsideration of this Court's August 16 Order denying the State's request for a stay of the district court proceedings, denial of the State's Emergency Motion is warranted. Allowing oral argument to proceed as scheduled on September 12 and allowing the underlying district court action to continue pursuant to Nevada law is appropriate.

DATED this 23rd day of August, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Josh M. Reid
E. LEIF REID (SBN 5750)
DANIEL F. POLSENBERG (SBN 2376)
JOSH M. REID (SBN 7497)
KRISTEN L. MARTINI (SBN 11272)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

*Attorneys for Hikma Pharmaceuticals
USA Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2018, I submitted the foregoing
“Hikma’s Pharmaceuticals USA Inc.’s Opposition to Petitioners’
Emergency Motion to Reschedule Oral Argument or a Temporary Stay” for
filing via the Court’s eFlex electronic filing system. Electronic notification
and e-mail will be sent to the following:

Attorneys for Petitioners

Ann M. McDermott
Jordan T. Smith
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Attorneys for Real Party in Interest

Alvogen, Inc.
James J. Pisanelli
Todd L. Bice
Debra L. Spinelli
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Kenneth Schuler
Michael Faris
Alex Grabowski
LATHAM & WATKINS LLP
330 North Wabash Ave., #2800
Chicago, IL 60611

Angela Walker
LATHAM & WATKINS LLP
555 Eleventh St., NW, Suite 1000

Attorneys for Amicus Curiae Clark

County District Attorney
Jonathan E. Vanboskerck
OFFICE OF THE CLARK
COUNTY DISTRICT ATTORNEY
200 Lewis Avenue
Las Vegas, NV 89155

*Attorneys for Amici Curiae the
States of Arkansas, Alabama,
Arizona, Florida, Georgia, Idaho,
Indiana, Louisiana, Missouri,
Nebraska, Oklahoma, South
Carolina, Tennessee, Texas, and
Utah*

David C. O’Mara
311 E. Liberty Street
Reno, NV 89501

*Attorneys for Amicus Curiae
Sandoz Inc.*

J Colby Williams
Philip R. Erwin
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, NV 89101

Washington, DC 20004-1304

Noel B. Ix
PEPPER HAMILTON LLP
301 Carnegie Center, Suite 400
Princeton, NJ 08540

Andrew Kantra
PEPPER HAMILTON LLP
300 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103

I further certify that a copy of this document will be served by hand
delivery to:

Honorable Elizabeth Gonzalez
Department 11
EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Jessie M. Helm
An Employee of Lewis Roca
Rothgerber Christie LLP