



STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

<p><b>STATE OF WISCONSIN,</b></p> <p style="text-align: center;"><b>PLAINTIFF</b></p> <p style="text-align: center;"><b>VS.</b></p> <p><b>ABBOTT LABORATORIES., ET AL.,</b></p> <p style="text-align: center;"><b>DEFENDANTS</b></p>	<p style="text-align: center;"><b><u>DECISION AND ORDER OF THE DISCOVERY</u></b> <b><u>MASTER ON DEFENDANTS' EXPEDITED</u></b> <b><u>MOTION FOR A PROTECTIVE ORDER</u></b></p> <p style="text-align: center;">CASE No. 04-CV-1709</p>
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**Appearances**

Defendants by Attys. James W. Matthews (pro hac vice), Ralph A. Weber  
and Beth Ermatinger Hanan

Plaintiff by Assistant Attorney General Sarah Siskind

**Discussion**

On this Motion, Defendants seek a protective order prohibiting the State of Wisconsin from engaging in any further discovery of Thomson Reuters (Healthcare), Inc. ["Red Book"], "including testimony at a deposition noticed for May 2, 2014, in an Illinois action involving the State of Illinois and these (and other) defendants.

The initial notice of the deposition was issued on March 18, 2014, and at that time the State cross-noticed it. The deposition was re-scheduled to May 2, 2014, and, on April 4, 2014, Defendants wrote to the State, objecting to the cross-notice on grounds that the deadline for fact discovery had long since passed in this case, and asserting that the State had already obtained discovery from Red Book. Defendants requested that the State "confirm that [it] will not be cross-noticing the IL deposition of Red Book." Defendant's

Exhibit 1. The State agreed, writing to Defendants on the same date, stating: “Wisconsin will not cross-notice the Red Book deposition.” State Exhibit 9. In addition, the State has represented to the court in its brief that it “will not attend [the Illinois deposition], and will not have counsel appear at the deposition in its behalf.” Brief, at 2. The State did point out in its April 4, 2014, letter to Defendants that, under Wisconsin law, deposition testimony from unavailable witnesses may be used under certain conditions and noted that it was reserving its right “to use the testimony as these rules permit.”

As indicated, the relief sought in Defendants’ Notice of Expedited Motion asks that I issue an order prohibiting the State from taking further discovery of Red Book—specifically during the Illinois deposition. The State repeats that it has not cross-noticed and will not attend the Illinois deposition and responds, correctly I think, that this court’s jurisdiction—and that of the Special Discovery Master—does not extend to an Illinois plaintiff taking testimony in an Illinois action. As the State asserts, there is no discovery request pending in the instant action, and thus no discovery to bar.

Defendants also argue that “Wisconsin’s attempt to take discovery of Red Book is untimely” because the scheduling order in the instant action cut off discovery some time ago. As just noted, however, the State has informed Defendants’ counsel that it will not attend the Illinois deposition and will not participate in its taking. Again, there is no discovery pending in the instant action.

Defendants next argue that I should issue a protective order barring the State from conducting “another Red Book deposition,” pointing out that Wisconsin examined one of its officers or agents in years past. As noted, the State has not cross-noticed, nor will it attend, the Illinois deposition.

Defendants then point to an order in the Illinois action requiring the State of Illinois to confine its examination of Red Book to documents and information relating to the initial trial defendants, which would exclude several defendants in the instant action, including Watson, GSK, Novartis, Aventis, BMS, Pfizer, AstraZeneca and Tap, and they argue that “[t]o allow the State’s untimely cross-notice to stand would unfairly enable

Wisconsin to end-run around that ... limitation...” Brief, at 6. As stressed above, however, there is no cross-notice and the State will not be attending or participating in the Illinois deposition.

Defendants emphasize the State’s reference in its April 14, 2014, letter that it was reserving its right to use any portion of the Illinois deposition that would be admissible under Wisconsin law. Section 804.07, Wis. Stats., provides in part that “...any part or all of a deposition, so far as admissible under the rules of evidence ... may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof ...” Defendants state: “The State’s contention that it may use Red Book’s 2014 deposition against any of the Moving Defendants in the Wisconsin action requires a protective order.” Brief, at 4. First, whether the State has a right to *use* any portion of the Illinois deposition (or a deposition taken in any other action)—whether the lengthy provisions of sec. 804.07 can be satisfied with respect to the offered material, is a question of law relating to the admissibility of evidence at trial; and that is a question far beyond the authority of a discovery master. And while Defendants at one point refer to the time and expense “burden” of attending the Illinois deposition to protect its interests in light of the “reasonable notice” language of sec. 804.07, I agree with the State that that is the type of “strategy” decision counsel frequently face in litigation—especially multi-state litigation such these AWP cases.<sup>1</sup>

IT IS THEREFORE ORDERED that the Defendants’ Expedited Motion for Protective Order dated April 7, 2014, be, and the same hereby is, denied.

Dated at Madison, Wisconsin, this 23rd day of April, 2014,

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William Eich, Special Discovery Master

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<sup>1</sup> Finally, the State has moved to file an additional brief in this matter. In light of the conclusions I have reached above, I consider the request moot and deny it.