

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 9

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

ABBOTT LABORATORIES, et al.

Defendants.

**DECISION AND ORDER DENYING DEFENDANTS' MOTION TO REQUIRE
PLAINTIFF TO PRESERVE POTENTIALLY RELEVANT DOCUMENTS**

Defendants' motion to require plaintiff to preserve "potentially relevant documents" is denied, based, at the very least, upon the legal reasoning set forth in plaintiff's "Brief in Response to 'Defendants' Motion to Require Plaintiff to Preserve Potentially Relevant Documents'", relating to the overbreadth of the phrase "potentially relevant documents", the overbreadth of defendants' definition of "the plaintiff" and "document" included in at least one discovery demand¹, and the separation of powers doctrine. Any order drafted in accordance with defendants' request would be virtually meaningless, and would inevitably yield endless ancillary motion practice and other litigation mischief, none of which would advance this case one iota.

The order requested is also completely unnecessary. Wisconsin law already imposes an obligation on parties to litigation to preserve what they know, or reasonably should know, is relevant to the action. Ample remedies exist for violations of this duty, running the gamut from a tongue-lashing by the court to dismissal of the action, depending upon how egregious and prejudicial the offending party's conduct has been. Participants in the spoliation of evidence thus bear the risk of substantial sanctions, which will be applied liberally where justice requires, and all parties are well-advised—perhaps "forewarned"

¹ Do defendants truly expect this Court to even consider ordering all "citizens" of Wisconsin to preserve "potentially relevant documents"?! (Defendants' Second Set of Document Request Directed to Plaintiff, Page 7, ¶ 39)

expresses it better-- to assiduously comply with their duty to preserve evidence they know *or should know* is relevant to *any* issue material to either plaintiff's or defendants' case.

To the extent that defendants are concerned that plaintiff's view of what evidence is "relevant", and therefore must be preserved, may differ from their own, the simple expedient of a precise discovery request placing plaintiff on notice of the defense position should alleviate the concern. Seeking preservation of all "potentially relevant documents" is anything but precise.

Dated this ____ day of _____, 2007.

BY THE COURT:

Richard G. Niess
Circuit Judge

CC: Attorney William M. Conley
(for immediate service on all parties per
usual practice in this case)