

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

ABBOTT LABORATORIES, et al.,

Defendants.

NOTICE OF MOTIONS AND MOTIONS OF
ASTRAZENECA FOR PROTECTIVE ORDERS
CONCERNING THE DEPOSITION OF AN ASTRAZENECA DESIGNEE

PLEASE TAKE NOTICE that Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP (“AstraZeneca”), will bring the following motions for protective orders at a time and date to be determined by the Special Discovery Master. These motions concern the deposition of an AstraZeneca designee which the State has noticed for May 17, 2006.

Pursuant to Wis. Stat. § 804.01(3)(a), AstraZeneca moves the Court for an order adjourning the deposition of an AstraZeneca designee which the State has noticed for May 17, 2006, to a date after the State has cured the defects in its First Amended Complaint, as required by the Court’s April 3, 2006 Partial Decision and Order (“Partial Decision”).

AstraZeneca also moves the Court for an order limiting the State's deposition to issues that are in dispute and to topics that have not previously been covered in depositions taken in the AWP Multi District Litigation ("MDL"). AstraZeneca has already provided transcripts of such depositions to the State in this case.

AstraZeneca had previously informed the State that it objected to the State noticing the location of the deposition as Madison, Wisconsin. The subject of the proper location for the State's depositions of corporate designees was addressed by Judge Eich in his April 26, 2006 Decision and Report of the Discovery Master, in the context of a motion for a protective order filed by Defendant Merck. The issue remains the subject of ongoing litigation between the State and Defendant Merck, as Merck has filed with the court taken an Exception to the April 26, 2006 Decision and Report.

AstraZeneca also requests such other and further relief as the Court deems just and proper, including but not limited to an award of the fees and costs it incurred in bringing this motion.

The grounds for these motions are as follows:

1. Pursuant to Wis. Stat. § 804.01(3)(a), the Court "may make any order that justice requires" to "protect a party from discovery that would result in annoyance, embarrassment, oppression or undue burden or expense." *See also Vincent & Vincent, Inc. v. Spacek*, 102 Wis. 2d 266, 271-72, 306 N.W.2d 85 (Ct. App. 1981). Among the orders the Court may make is an order providing that discovery not be had or designating the time at which discovery may be had. *See Wis. Stat. § 804.01(3)(a)1, 4.*

2. In her Partial Decision, Judge Krueger concluded that the State has not properly pleaded its fraud claims:

Plaintiff ... has failed (other than in a few examples) to set forth the activities of each defendant and to put everyone on notice for what activities, occurring when and how it wishes to hold each defendant responsible. Probably for good reason, Plaintiff seems as though it wants to put the burden on each company to come forward with an explanation for each and every AWP listing since 1992. This is not permissible.

Under this complaint, it is not known what Plaintiff considers the threshold for fraud. Would a few cents difference from the AWP and the actual sales price meet that definition? A few dollars? Is the State limiting this case to the drugs mentioned in Exhibits A & B attached to the Complaint or is it including the 65,000 different drugs referenced several times in that pleading?

In order to maintain these causes of action premised on fraud, Plaintiff must re-plead them, giving as many specifics as it can.

Partial Decision at 13-14 (footnotes omitted).

3. It would be unduly burdensome and oppressive to require AstraZeneca to produce a designee for a deposition before AstraZeneca knows, “with as much detail as Plaintiff can provide, **which** of its drugs are involved and **what** (name, date) publication of AWP is false, and the **actual** price that should have been published.” Partial Decision at 14 (emphasis in original). AstraZeneca is entitled to know what the specific claims against it are so that it can properly prepare the witness who will testify on its behalf. The State’s Second Amended Complaint may well change the drugs at issue, the time period covered by the State’s claims and other significant circumstances that would affect preparation of the witness.

4. Requiring AstraZeneca to produce a witness for a deposition before the State amends its complaint also would result in inefficiency and undue burden and expense for AstraZeneca. If the State's allegations change by virtue of the amendment, the State will no doubt seek a second deposition of the AstraZeneca designee purportedly aimed at covering the new allegations. The State should not be permitted to capitalize on its faulty pleading by deposing the same witness twice. Moreover, AstraZeneca's witness and AstraZeneca should not have to bear the burden and expense resulting from preparing for and participating in a second deposition in Wisconsin.

5. AstraZeneca has provided to the State 39 deposition transcripts from depositions taken in the MDL proceeding in multiple formats requested by the State, thereby allowing for text searchability of the transcripts.

6. The topics listed in the deposition notice have, for the most part, been covered in the deposition transcripts AstraZeneca has provided to the State.

7. Requiring AstraZeneca to produce one or more witnesses to testify on topics that have been covered in previous depositions would be unduly burdensome and duplicative. *See* Kristi T. Prinzo's Affidavit in Support of AstraZeneca's Motions for Protective Orders Concerning the Deposition of an AstraZeneca Designee at ¶¶ 9-10; Notice of Motion and Motion for Protective Order filed by J&J Defendants, dated April 26, 2006.

8. On April 11, 2006, Defendant Mylan filed a motion for a protective order adjourning the section 804.05(2)(e) deposition of a Mylan representative to a date after

the State has cured the defects in its First Amended Complaint as directed by the Court's Partial Decision.

9. On April 26, 2006, the Johnson & Johnson Defendants filed a motion for a protective order barring the State from proceeding with the section 804.05(2)(e) deposition based upon the Johnson & Johnson Defendants having provided the State with deposition transcripts from the MDL covering many of the issues and topics which are the subject of the State's deposition notice to the Johnson & Johnson Defendants in this case.

10. AstraZeneca has asked the State if it would defer its section 804.05(2)(e) deposition of AstraZeneca's representative or representatives until such time as the Mylan motion and the Johnson & Johnson motions have been decided so that AstraZeneca can be informed by a ruling on those decisions. AstraZeneca noted that it was likely that a decision on these motions would resolve any outstanding issues. The State refused this request.

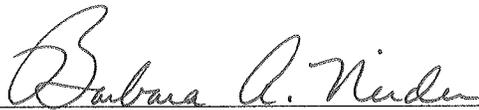
11. Notably, the relief which AstraZeneca seeks as to the first of its motions is limited. AstraZeneca is not requesting an indefinite adjournment of the deposition. Rather, AstraZeneca is only seeking a temporary postponement of the deposition until after the State has filed its Second Amended Complaint. As per the Court's April 3, 2006 Partial Order and Decision, the Second Amended Complaint is to be filed by June 5, 2006. On May 9, 2006, Plaintiff asked Defendants to consent to the filing of its Second Amended Complaint on July 2, 2006. It is not known at this time whether the Court will grant this extension.

12. As to AstraZeneca's second motion, if the Court grants the motion filed by the Johnson & Johnson Defendants, AstraZeneca will specify the information to which this motion applies.

13. In support of these motions, AstraZeneca relies on, and incorporates by reference, the arguments made by Mylan in its Notice of Motion and Motion for Protective Order dated April 11, 2006, and by the Johnson & Johnson Defendants in their Notice and Motion for Protective Order dated April 26, 2006. In addition, these motions are supported by the Affidavit of Kristi T. Prinzo in Support of AstraZeneca's Motions for Protective Orders Concerning the Deposition of an AstraZeneca Designee.

Dated: May 12, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2006, a true and correct copy of the foregoing was served upon all counsel of record via electronic service pursuant to Case Management Order No. 1 by causing a copy to be sent to LexisNexis File & Serve for posting and notification.


Rhonda J. Maier