

STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

STATE OF WISCONSIN,)

Plaintiff,)

v.)

ABBOTT LABORATORIES, INC., et. al.,)

Defendants.)

Case No.: 04 CV 1709

**BRIEF OF DEFENDANTS IN SUPPORT OF
EXCEPTION OF DEFENDANT MERCK & CO., INC. TO THE
APRIL 27, 2006 DECISION AND REPORT OF DISCOVERY MASTER**

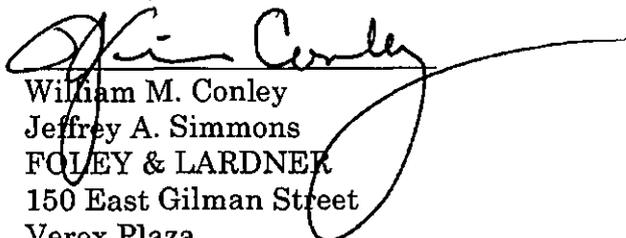
Defendants in the above-captioned case submit this brief in support of Merck & Co., Inc.'s exception to the Special Discovery Master's April 27, 2006 decision and report (the "Master's Report"), which mistakenly held that section 804.05(3) authorizes plaintiff to require out-of-state corporate designees to come to Madison for depositions. This decision has the potential to affect the interests of all defendants in this action. If the Master's Report is allowed to stand, more than three dozen out-of-state defendants may be forced to produce in Madison corporate designees whose work locations are hundreds of miles from Wisconsin and whose jobs may never take them to Wisconsin, at great burden, expense and inconvenience to those designees and the corporations they represent.¹ Travel to

¹ To date, the State has noted the depositions of some thirteen other corporate designees, including several that may take place in the very near term absent the filing of a protective order.

Madison for a few hours of testimony will require most designees to miss at least two days of work, as well as endure burdensome travel away from their homes.

Merck's brief correctly sets forth the governing legal principles. Accordingly, the defendants respectfully request that the Court grant Merck's exception and rule that (absent a different agreement between the parties) section 804.05(3) requires that depositions of corporate designees take place within one hundred miles of where the witness resides, works, or transacts business in person.

Respectfully submitted,
On behalf of all Defendants



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May 12, 2006

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2006, a true and correct copy of the foregoing document 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.

/s/ Jennifer A. Walker

Jennifer A. Walker