

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

AMGEN INC., et. al.,

Defendants.

NOTICE OF MOTION AND MOTION TO QUASH
DEFENDANTS'
NOTICE OF SECTION 804.05(2)(E) DEPOSITION TO STATE OF WISCONSIN
CONCERNING ELECTRONIC MAIL MESSAGES"
AND
NOTICE OF MOTION AND MOTION TO STRIKE
THE AFFIDAVIT OF MATHEW RAY

PLEASE TAKE NOTICE, that on a date and time to be set by the Court, the Plaintiff State of Wisconsin, by Frank D. Remington, Assistant Attorney General, will move the court pursuant to Wis. Stat § 804.01(3)1., for an order quashing the Defendants' Notice of Deposition concerning electronic mail messages. The grounds for this motion are as follows"

1. Presently pending before the court is "Defendants' Motion to Compel Production of Email." The Plaintiff opposes that motion and argues in its brief, among other things, that Defendants are not entitled to further discovery of emails to or from state employees. If the court concludes that the Defendants' motion to compel should be denied, then there is no reason for a deposition the subject of which only involves "electronic mail

messages.” The Plaintiff therefore, requests that Defendants’ notice be quashed (assuming consistency with the decision and order regarding Defendants’ motion to compel). Alternatively, the Plaintiff requests that Defendants’ Notice of Deposition be adjourned until after the court’s ruling on the underlying merits of Defendants’ demand for the production of email messages.

2. The Plaintiff additionally moves this Special Master for an order pursuant to Sec. 804.01(3)4 Stats. limiting the scope of any future deposition of any state employee witness. Section 804.01(2)(d)2, Stats. prohibits the Defendants from deposing Plaintiff’s consultants without first seeking court permission and upon showing that “exceptional circumstances exist under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.” Defendants “areas of inquiry” 1 through 4 and “area of inquiry” 6 are a transparent attempt to depose the Plaintiff’s consultant, upon whom the Plaintiff relied in considering possible solutions to searching the State’s computers. *See generally State v. Rachel*, 224 Wis.2d 571, 575, 591 N.W.2d 920 (Wis.App., 1999).

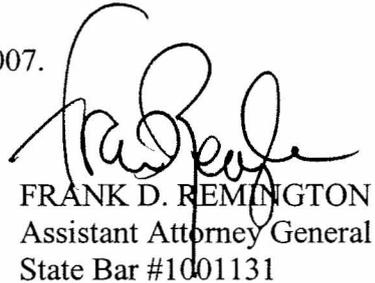
PLEASE TAKE FURTHER NOTICE, that on a date and time to be set by the Court, the Plaintiff State of Wisconsin, by Frank D. Remington, Assistant Attorney General, will move the court pursuant to Wis. Stats. § 906.02 and 908.02, for an order striking the affidavit of Matthew Ray. The grounds for this motion are as follows:

1. The affidavit of Matthew Ray does not establish personal knowledge or an otherwise adequate foundation to support the statements he makes regarding the State’s computer system. Further, there is no indication in his affidavit showing that Mr. Ray

understands the State's system which would otherwise be consistent with what is reasonably relied upon by experts in his field. *See* sec. 907.03, Stats.

2. The Defendants should not be allowed to tender an affidavit from an expert who has neither personal knowledge nor an adequate foundation in this field regarding the State of Wisconsin computer system. Essentially what the Defendants do is tender a statement by a person who relies on "information and belief" and shift the burden to the Plaintiff to identify what Mr. Ray does not know and why this Special Master should not rely in his unfounded opinion.

Dated this 5th day of September, 2007.



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