



It doubtless has been apparent to the Court how extraordinarily expensive and burdensome this litigation has been. Prior to bringing this motion, Pfizer offered a common sense approach to Plaintiff which would have permitted Plaintiff to obtain the information it seeks in a cost-effective manner. *See* March 4, 2008 Affidavit of Jamie M. McCall at ¶¶ 4, 6 (“McCall Affidavit”). Plaintiff rejected that offer and, instead, insisted that Pfizer have witnesses travel to Wisconsin to give live testimony at a deposition to address corporate structure issues. *See id.* ¶¶ 5, 7. While, in some situations, depositions make sense, this is not one of them. Conversely, while interrogatories can be abused, they do have their usefulness, particularly when seeking information or documents that do not reside with any one witness, in any one place. To permit this deposition to go forward would require Pfizer to educate one or more Pfizer employees on more than 10 years of the history, structure, and operations of another company. Pfizer could not educate an employee to testify on 10 years of its own history, structure, and operations and it cannot do so for a different company. The reason for this is simple: no witness can retain, much less testify to, such a vast body of information. Simply put, Plaintiff is insisting on a memory test rather a deposition, for which it will be impossible to prepare, much less give, and refusing to permit Pfizer to obtain and provide Plaintiff with precisely the information Plaintiff claims it wants.

## II. ARGUMENT

According to Wis. Stats. § 804.01(3)(a), the Court may issue a protective order for “good cause shown” to protect a party from “annoyance, embarrassment, oppression, or undue burden or expense....” *See also Vincent & Vincent, Inc. v. Spacek*, 102 Wis. 2d 266, 272-273, 306 N.W. 2d 85, 88 (Ct. App. 1981) (holding that the courts must weigh the burden and expense of producing information against the value of the information sought). As set forth below,

Plaintiff's Notice of Deposition is directed to the wrong company and employs the wrong discovery method to obtain the information.

**A. Plaintiff Requests Information From The Wrong Party.**

The relevant period of time for discovery in this litigation is January 1, 1993 to June 3, 2004, the date Plaintiff filed its original Complaint in this case. Pfizer acquired Pharmacia in April of 2003. Pfizer and Pharmacia were completely unrelated and distinct companies for 10 of this 11 year period.<sup>1</sup> Even after the merger, Pharmacia has maintained its own corporate identity as a subsidiary of Pfizer. This factual distinction has been maintained throughout the procedural progress of this case in discovery. Pfizer and Pharmacia have offered separate 30(b)(6) and fact witnesses, filed separate pleadings, motions and briefing, and made separate document productions. See McCall Affidavit at ¶ 9. As a result, Plaintiff's requests from Pfizer for information related to Pharmacia are simply directed to the wrong party for nearly all of the time period at issue.

**B. Plaintiff Requests Information Using The Wrong Discovery Method.**

Not only is Plaintiff's Notice of Deposition directed at the wrong company, but it employs the wrong method of discovery as well. The critical issue is whether the value of the information sought outweighs the undue burden and expense of complying with the discovery demand. See *Vincent & Vincent, Inc. v. Spacek*, 102 Wis. 2d 266, 272-273, 306 N.W. 2d 85, 88 (Ct. App. 1981). Here, because Plaintiff's requests focus on another company, the value of the information sought is extremely low. On the other hand, the burden and expense of educating witnesses on these issues and requiring them to travel to Wisconsin to take a memory test under oath about eighteen subject matters that relate to another company and cover a 10 year period of

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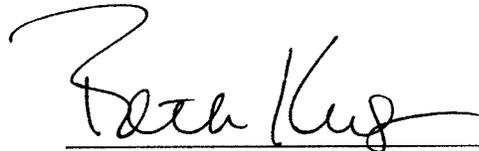
<sup>1</sup> Moreover, the two companies have very different profiles, and participated in different facets of the pharmaceutical market. Pfizer is a manufacturer of branded self-administered drugs, while Pharmacia manufactured and sold mostly multi-source, generic, or physician administered drugs.

time is extremely high.<sup>2</sup> Moreover, to the extent known, these requests for information would be more efficiently discovered through interrogatories. *See e.g. SmithKline Beecham Corp. v. Apotex Corp.*, 2004 U.S. Dist. LEXIS 8990 \*8 (E.D. Pa., Mar. 23, 2004) (“The question is which device would yield most reliably and in the most cost-effective, least burdensome manner information that is sufficiently complete to meet the needs of the parties and the court.”). Therefore, because the burden and expense of complying with Plaintiff’s Notice of Deposition significantly outweighs the value of the information sought, Pfizer should not be compelled to produce witnesses in Wisconsin for issues that could be resolved through less burdensome methods, such as interrogatories.

### III. CONCLUSION

For the reasons set forth above, the Court should grant Pfizer’s motion for a protective order under Wis. Stats. § 804.01(3)(a).

Dated this 4<sup>th</sup> day of March, 2008.



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<sup>2</sup> The following two requests highlight the massive scope of Plaintiff’s demands:

7. **The time, date and location of all sales meetings held by Pharmacia after Pharmacia’s acquisition by Pfizer....**

14. **General identification of the number, titles and locations of all Pharmacia employees.**

(Emphasis added). Pfizer witnesses cannot reasonably be expected to list the time, date, and location of “every” sales meeting (however that is defined) held by Pharmacia following its merger with Pfizer in 2003. Nor can Plaintiff reasonably expect Pfizer witnesses to provide information on such specific information as the identification number, title, and location of “all” Pharmacia employees from 1993 to 2004.

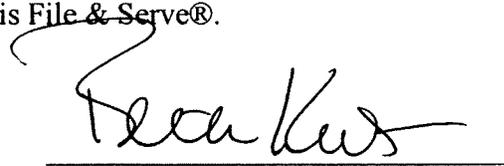
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**CERTIFICATE OF SERVICE**

I, Beth J. Kushner, hereby certify that on this day of 4<sup>th</sup> day of March 2008, a true and correct copy of "Pfizer Inc.'s Memorandum in Support of its Motion for a Protective Order" was served on all counsel of record by Lexis Nexis File & Serve®.

  
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