

STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN INC., *et al.*,

Defendants.

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) No. 04 CV 1709
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**PLAINTIFF STATE OF WISCONSIN'S OPPOSITION
TO DEFENDANTS' MOTION TO QUASH PLAINTIFF'S
CROSS-NOTICE OF DEPOSITION OF PROFESSOR THEODORE R. MARMOR**

Introduction

In their "Motion to Quash Plaintiff's Cross-Notice of Deposition of Professor Theodore R. Marmor," defendants seek to thwart the State of Wisconsin's efforts to obtain relevant discovery from a recognized Yale University expert on Medicaid reimbursement. Although defendants, themselves, noticed the deposition of Professor Marmor in the pending Alabama action, *State of Alabama v. Abbott Labs, Inc., et al.*, C.V. 2005-219 (Al. Cir. Ct. Montgomery Cty.), and defendants have signaled their intent to take future depositions of Professor Marmor in Alabama and other cases, defendants ask this Court to quash the State's efforts to make relevant portions of Professor Marmor's testimony part of the record in the Wisconsin case, notwithstanding the fact that defendants have repeatedly used the cross-notice procedure for that purpose.

Defendants' motion to quash seeks to create an unlevel playing field on which defendants are permitted to depose (and redepose) Professor Marmor, but the State is prohibited from participating in or using that deposition testimony. Despite their proposed multiple depositions of Professor Marmor, defendants maintain that they will somehow be prejudiced by allowing the State to cross-notice Professor Marmor's deposition because (a) defendants' attention will be

diverted from the Alabama issues in the Alabama deposition; and (b) defendants will have insufficient opportunity to depose Professor Marmor on Wisconsin-specific issues if he is designated as an expert in Wisconsin.

This is nonsense. *First*, the purpose of the Alabama deposition is to allow defendants to prepare for the Alabama trial, and the State of Wisconsin will not disturb those proceedings in any way. It so happens, however, that parts of Professor Marmor's testimony in Alabama are likely to be relevant to the proceedings in Wisconsin. That is why the State of Wisconsin desires -- and, we believe, is entitled -- to preserve relevant testimony for possible use in the Wisconsin case. *Secondly*, all Wisconsin defendants will have an opportunity to depose Professor Marmor on Wisconsin-specific issues in accordance with the schedule established by this Court *when and if* Professor Marmor is designated as an expert witness in Wisconsin.

As shown below, there will be no prejudice whatsoever to defendants as a result of the State's cross-notice. Rather, it is *the State* that will be prejudiced if it is not permitted to cross-notice Professor Marmor's deposition and preserve the relevant portions of his testimony for use in the Wisconsin case. Such cross-noticing is exactly the procedure that defendants have followed to preserve relevant deposition testimony taken in other AWP cases for use in the Wisconsin litigation.

Because Professor Marmor's testimony is relevant to the subject matter of the Wisconsin case and the State is entitled to discover it pursuant to Wis. Stat. § 804.01(2), and because defendants have completely failed to meet their burden under Wis. Stat. § 804.01(3)(a) of demonstrating that the discovery would cause them any "undue burden" whatsoever, defendants' motion should be denied.

Discussion

I. The State's Cross-Notice of Professor Marmor's Deposition is Consistent with Wisconsin Discovery Rules and Defendants' Own Practices in this Case.

The State's cross-notice of Professor Marmor's deposition is fully consistent with Wisconsin discovery rules and defendants' own repeated practice of cross-noticing depositions in related AWP false-pricing cases.

Theodore Marmor, a Professor of Public Policy at Yale University,¹ has been designated by the State of Alabama as an expert witness concerning, *inter alia*,

...the history and growth of the Medicaid and Medicare programs and how Defendants have intentionally caused false prices to be published. His testimony will describe how Defendants helped create and benefitted from a complex reimbursement system.

(Plaintiff's Expert Disclosures, *State of Alabama v. Abbott Labs, Inc., et al.*, C.V. 2005-219 (Al. Cir. Ct. Montgomery Cty.), at 1 ("Alabama Expert Disclosures," attached as Exhibit 3 to Defs.' Motion to Quash).) His deposition is scheduled for November 13-14, 2007, at defendants' counsel's offices in New York City.²

The State of Wisconsin has not made a determination as to whether Professor Marmor, or any other particular individual for that matter, will be designated as a testifying expert under Wis. Stat. § 804.01(2)(d), nor is the State required to make such a determination at the present time under the schedule established in this case. Like the defendants, the State has not yet designated its experts, submitted expert reports, nor supplemented its interrogatory responses pursuant to Wis. Stat. § 804.01(5)(a)(2) to identify persons expected to be called as experts at

¹ Professor Marmor is a Professor in Yale's Department of Political Science and School of Management, as well as an Adjunct Professor of Law at Yale Law School and the Director of the Robert Wood Johnson Foundation's post-doctoral program in Health Policy, Institution for Social and Policy Studies at Yale.

² By the time defendants take Professor Marmor's deposition in November, they will have had months to prepare. On August 30, 2007, Alabama disclosed Professor Marmor as an expert witness and provided the defendants with a disclosure statement that identified his qualifications, the subject matters on which he will testify, a summary of his conclusions and opinions, and a 15-page *curriculum vitae*. Alabama also has produced to defendants a list of the materials upon which Professor Marmor relied, and copies of those materials.

trial. Thus, defendants' repetitious harping on the fact that Professor Marmor has not been designated as the State's expert -- as if the State were somehow derelict -- is out of place.

Pursuant to the Wisconsin discovery rules, the State has cross-noticed Professor Marmor's deposition because he will testify regarding some matters "which are relevant to the subject matter involved in the pending action." Wis. Stat. § 804.01(2)(a). Pursuant to the express authorization of § 804.01(2)(a), a party "may obtain discovery" regarding such relevant subject matter unless privileged. The Wisconsin discovery rules also expressly provide that "any party may take the testimony of any person." Wis. Stat. § 804.05(1). Putting aside the question of whether Professor Marmor will be designated in due course as a testifying expert for the State (at which time defendants will have an opportunity to depose him), many of the issues upon which Professor Marmor will testify at the Alabama deposition are relevant and probative in the Wisconsin matter as discussed in more detail below.

Indeed, defendants repeatedly have taken advantage of these same discovery rules by filing cross-notices in Wisconsin and other states of depositions originally noticed in other AWP cases, including the pending Alabama action. By our count, defendants have filed cross-notices at least 25 times in the Wisconsin litigation of depositions originally noticed in other cases. A list of defendants' cross-noticing activity in the Wisconsin case is attached as Exhibit . Seven of these depositions cross-noticed by defendants were originally noticed in the pending Alabama litigation (and all seven occurred during the past four months). The other 18 depositions cross-noticed by defendants in Wisconsin were originally noticed in the MDL litigation. Significantly, defendants have noticed and cross-noticed the depositions of witnesses who are under their control. Earlier this year, defendant Sandoz, Inc. noticed the deposition of former Sandoz employee, Christopher J. Worrell, in the Alabama case, and then filed cross-notices of Mr. Worrell's deposition in Wisconsin and other states. (*See* Cross-Notice of Videotaped Deposition of Christopher J. Worrell, attached as Exhibit B.) Similarly, last year Warrick Pharmaceuticals Corporation noticed its own deposition of a former employee, Harvey Weintraub, in numerous pending AWP litigations against Warrick, including the Wisconsin case.

The purpose of such cross-notices is well understood. First, cross-noticing ensures that the deposition testimony is part of the record in the cross-noticed case, rather than inadmissible hearsay. Second, cross-noticing avoids duplicative depositions of the same witness by the same counsel on the same issues in multiple cases. Indeed, defendants themselves have taken the position that their own witnesses should not be deposed multiple times on the same issues in each state case. As counsel for defendant AstraZeneca succinctly stated in a previous motion attempting to limit Wisconsin from deposing a corporate witness: "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* Notice of Motions and Motions of AstraZeneca for Protective Orders Concerning the Deposition of an AstraZeneca Designee, filed May 12, 2006, at 4.) Indeed, to address this issue, counsel for the plaintiff States in several AWP cases (including Wisconsin) have agreed on numerous occasions to depose a given defense witness only once, for use in several cases, as long as the defendants produced the same documents to all participating states.³

Cross-noticing the deposition of Professor Marmor is fully consistent with these principles. As noted above, Professor Marmor will testify regarding the history of the Medicaid and Medicare programs, as well as how drug manufacturers have caused false prices to be published, and how defendants have created and benefitted from the complex reimbursement system. (*See* Alabama Expert Disclosures at 1.) By cross-noticing, the State of Wisconsin seeks to preserve relevant portions of this testimony for use in the Wisconsin case without being vulnerable to defendants' arguments that it is inadmissible hearsay.

Granted, some of Professor Marmor's deposition testimony will be Alabama-specific. Moreover, the defendants who have noted and are taking the deposition may delve into subject matter areas which we believe are irrelevant, such as defendants' so-called "government knowledge" defense. Nevertheless, defendants' contention that Professor Marmor's testimony has "no relevance to this Wisconsin case" is simply untrue. (Defs.' Mot. at 6.) In actuality, the

³ The corporate designee depositions taken during the past year of defendants Sandoz, Novartis, and AstraZeneca, among others, are examples of such a streamlined approach.

bulk of Professor Marmor's expert opinions and testimony in the Alabama case are not Alabama-specific, but instead relate generally to the pharmaceutical industry and the Medicaid reimbursement system as a whole, as shown by the following list of Professor Marmor's testimony topics and opinions, which is directly quoted from "Plaintiff's Expert Disclosures," filed in the Alabama case on August 30, 2007:

- Statutory outline of the Medicaid and Medicare programs including the rebate programs and discussion of the 1990 Omnibus Budget Reconciliation Act;
- The atypical economic assumption of Medicaid in the prescription drug market;
- How the Medicaid and Medicare programs are supposed to function on a practical level;
- The determination of Estimated Acquisition Cost (EAC);
- Explanation of why Average Wholesale Price (AWP) and Wholesale Acquisition Cost (WAC) were ultimately chosen as the components for determining EAC;
- Problems in determining EAC due to secrecy and behavior of Defendants
- Problems utilizing the prices provided to Medicaid and why Defendants keep real prices secret;
- The need for First Databank and other price reporting services;
- Description of the system that was created to deal with the issues of secrecy;
- Explanation of AWP minus figure including the historical changes in AWP;
- Explanation of WAC plus figure and the relationship between AWP and WAC;
- What was really happening in connection with the First Databank, Redbook and other third-party compendia prices;
- Efforts by Defendants to conceal fraudulent conduct;
- Incentives which led to the secrecy of the Defendants' continued secrecy pricing scheme;
- How this pricing scheme was revealed;
- Congressional investigations;
- State laws are in place to prevent this conduct;
- Why the Defendants' pricing scheme has been so difficult to unravel and why this lawsuit is the simplest solution;
- There is no simple political fix to the problem;
- Alabama evidence regarding the change to WAC in the 1980s;
- Defendants' assertion that drug makers most manipulate spreads or no generics and no access to care;
- Dispensing fees;
- Surveys and finding EAC;
- Transition from AWP to WAC after 1984 OIG Report;
- Alabama Medicaid's drug expenditures – brand versus generic;
- Alabama Medicaid's reimbursement system;
- AWP Federal Claims Act litigation;
- Cross subsidization;
- Government knowledge;
- Defense expert testimony and theories;

- Alabama Medicaid's reliance on the published prices;
- The harm to taxpayers;
- Impediments to change the Medicaid reimbursement system.

Ignoring the relevance of many of these topics and opinions to the Wisconsin litigation (not to mention other AWP cases pending across the country), defendants instead emphasize that there is no perfect "overlap" between the Alabama and Wisconsin cases. (Defs.' Mot. at 9-10.) Of course, the lack of a perfect overlap has not, heretofore, prevented the defendants from cross-noticing Alabama depositions on seven different occasions when it suited defendants' purposes. (See Depositions Cross-Noticed by Defendants in Wisconsin, attached as Ex. A.). Wis. Stat. § 804.01(2)(a) does not require perfect "overlap," but only that the discovery is "relevant to the subject matter involved in the pending action."⁴

Defendants also attempt to distinguish their prior cross-notices in Wisconsin and other states on the grounds that fact witnesses rather than experts were deposed. (Defs.' Mot. at 7-8.) This is a distinction without a difference, since both fact and expert witnesses have relevant and discoverable information for purposes of Wis. Stat. § 804.01(2)(a). It is evident from Professor's Marmor's expert disclosure in Alabama that some of his testimony is opinion evidence, and some is an historical recounting of the growth and development of the Medicaid reimbursement system; regardless of how it labeled, however, much of it is relevant to the Wisconsin litigation. Moreover, defendants' suggestion that Professor Marmor is "controlled by" the State (Defs.' Mot. at 7) -- even if it were true -- is inapposite, because defendants themselves have noticed and cross-noticed the depositions of former employees under their control, such as Mr. Worrell and Mr. Weintraub. Finally and most importantly, as discussed in more detail below, if Professor Marmor is designated as an expert witness by Wisconsin pursuant to § 804.01(d), defendants will

⁴ It should be noted that here, where defendants wish to prevent the State from cross-noticing an Alabama deposition, defendants emphasize that "the Alabama and Wisconsin proceedings are markedly different." (Defs.' Mot. at 9.) Last year, however, when defendants wished to prevent the State from taking depositions on the grounds that discovery already taken in the MDL should suffice, defendants emphasized the "overlap" and "important similarities" between the Wisconsin and MDL cases. (See Johnson & Johnson Defendants Reply Memorandum in Support of Their Motion for a Protective Order, filed May 26, 2006, at 4.) The consistent element here is the attempt to prevent the State from taking discovery.

receive appropriate expert disclosures and have an opportunity to take his deposition in Wisconsin.⁵

II. Defendants Are Not and Will Not Be Prejudiced by the Cross-Notice of Professor Marmor's Deposition.

Professor Marmor's deposition testimony regarding the pharmaceutical industry, the Medicaid reimbursement system, and defendants' conduct with respect to false pricing is clearly relevant to the issues in the Wisconsin case. Therefore, the State should be allowed to cross-notice his deposition and preserve relevant testimony under Wis. Stat. § 804.01(2)(a) unless defendants meet their burden under Wis. Stat. § 804.01(3)(a) of showing that a protective order is necessary "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]"

Defendants have failed to meet their burden. As discussed below, defendants' claims that they are somehow prejudiced by the cross-notice of Professor Marmor's deposition are flimsy and do not hold up to scrutiny. No harm will be caused to the defendants in either the Wisconsin or Alabama actions, particularly in light of the fact that: (a) all Wisconsin defendants will have an opportunity to depose Professor Marmor on Wisconsin-specific issues if and when he is designated as an expert witness by Wisconsin; and (b) Wisconsin will not disturb the Alabama proceedings in any way, just as the defendants' cross-notices have not disturbed depositions in other AWP cases.

⁵ Defendants maintain that they are "forced to rely on the State's highly-contingent promise of an opportunity to re-depose Professor Marmor in the future." (Defs.' Mot. at 12.) Of course, defendants' guarantee to take Professor Marmor's deposition in Wisconsin rests in the hands of this Court, not the State. The precise parameters and scope of a future Wisconsin deposition of Professor Marmor need not be decided by the Court today, however, because there are a variety of unknown factors which would inform the scope of that deposition, including the ultimate substance of his opinions and the extent to which he has already been cross-examined on those opinions. The Court should decide those issues at the appropriate time based on the existing record.

A. The availability of a future Wisconsin-specific deposition of Professor Marmor in the Wisconsin litigation resolves all of defendants' claims of prejudice.

Near the end of their Motion to Quash, defendants pose the question, "how [is it possible that] Defendants can be harmed if the State will agree to provide Professor Marmor for further deposition on Wisconsin-specific matters or if the State adds other general subjects to the [Wisconsin expert] designation." (Defs.' Mot. at 12-13.)

It is wholly unsurprising that defendants fail to provide an answer to this question. Indeed, the availability of a future Wisconsin-specific deposition completely resolves defendants' complaints that:

- (1) the Alabama deposition "will not focus on Wisconsin-related matters" (Defs.' Mot. at 1, 8);
- (2) the Alabama deposition is limited to two days (*id.* at 2, 6);
- (3) defendants will have to use part of the Alabama deposition to address Wisconsin-specific issues (*id.* at 6, 13);
- (4) the Alabama deposition is limited to questioning by the Alabama "First Track Defendants" who are brand-name drug manufacturers (*id.* at 2, 5, 10-11);⁶
- (5) fact discovery in Wisconsin has not yet been completed (*id.* at 2, 4);
- (6) there are differences in the legal claims in the Alabama and Wisconsin cases (*id.* at 9); and
- (7) defendants have not been informed of Professor Marmor's opinions in the Wisconsin case (*id.* at 2, 4).

The answer to all of these perceived grievances is as follows: if Professor Marmor is designated by the State of Wisconsin as an expert pursuant to Wis. Stat. § 804.01(2)(d), *all* Wisconsin defendants will have *ample* opportunity, *after fact discovery* and *after disclosure of his opinions* to "*focus on Wisconsin-related matters,*" including *Wisconsin legal claims*, at a Wisconsin deposition.

⁶ We note that defendants have offered no support for the contention that only First Track Defendants are permitted to question Professor Marmor. We have been advised by lawyers for the State of Alabama that there has been no discussion of which defendants can or cannot question Professor Marmor at the November, 2007 deposition.

Defendants' cries of prejudice are particularly difficult to swallow given their apparent expectation of taking multiple depositions of Professor Marmor. According to their motion, defendants plan to depose Professor Marmor: (a) in November 2007 in the Alabama First Track proceedings; (b) in any subsequent Alabama proceedings relating to generic drug manufacturers (Defs.' Mot. at 10-11); and (c) in any Wisconsin proceedings in which Professor Marmor is designated as an expert (Defs.' Mot. at 12). Defendants also are likely to argue that they are entitled to take Professor Marmor's deposition in any other state case in which he has been designated as an expert witness.

Thus, defendants expect to take many bites of the apple, but are not willing to allow the State of Wisconsin to cross-notice Professor Marmor's deposition to preserve it for use in this case. We believe that this unfairness to the State is relevant to the Court's consideration. Although defendants' motion to quash should be denied simply because defendants have failed to show that a court order is necessary to prevent any "annoyance, embarrassment, oppression, or undue burden or expense," Wis. Stat. § 804.01(3)(a) -- without any need for the State, as the non-moving party, to show that granting defendants' motion will cause the State undue burden -- the unfairness of defendants' position is palpable.

B. There will be no prejudice to the Alabama proceedings.

Finally, because of the availability of a Wisconsin-specific deposition of Professor Marmor (if and when he is designated as an expert), there will be no interference with the Alabama defendants obtaining full Alabama discovery at his Alabama deposition.

Contrary to defendants' feverish imaginings, counsel for plaintiffs in Wisconsin and other states are not forcing defendants "to use the two days of the Alabama deposition of Professor Marmor to address issues for nine other states." (Defs.' Motion at 6.) We reiterate: the purpose of the Alabama deposition is to allow defendants to prepare for trial in February 2008. Portions of Professor Marmor's deposition testimony, however, are likely to be relevant to the proceedings in Wisconsin and other states, and it is no burden on anyone to preserve that testimony for later

use. Indeed, defendants have used the cross-notice procedure on 25 prior occasions (seven of them in which the deposition was originally noted in the Alabama case) without any concern for "diverting" the issues pending in the original case, or otherwise "disrupting" the proceedings. Defendants' motion presupposes a double standard in this regard.

Defendants have failed to show that the Court should quash a procedure that defendants, themselves, have followed on two dozen occasions during the course of this litigation. Accordingly, their motion should be denied.

Respectfully submitted,

/s/ Elizabeth J. Eberle
One of the Attorneys for Plaintiff

MICHAEL R. BAUER
Assistant Attorney General
State Bar #1003627
CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870
FRANK D. REMINGTON
Assistant Attorney General
State Bar #1001131
Wisconsin Dept. of Justice
P.O. Box 7857
Madison, WI 53707-7857
(608) 266-0332 (MRB)
(608) 266-3861 (CRH)
(608) 266-3542 (FDR)

CHARLES BARNHILL
State Bar #1015932
WILLIAM P. DIXON
State Bar #1012532
ELIZABETH J. EBERLE
State Bar #1037016
ROBERT S. LIBMAN
Admitted *Pro Hac Vice*
Miner, Barnhill & Galland, P.C.
44 E. Mifflin St.
Madison, WI 53703
(608) 255-5200

Attorneys for Plaintiff, State of Wisconsin

**DEPOSITIONS CROSS-NOTICED BY DEFENDANTS
IN WISCONSIN**

	Deponent	Employer	Date	Noticed In
1	Deirdre Duzor	HHS-CMS	10/12/2007	MDL 1456
2	Lisa Recchia	Watson/Schein	10/3/07	MDL 1456
3	Larry Reed	HHS-CMS	9/14/2007	MDL 1456
4	Joyce Somsak	HHS-CMS	9/7/2007	MDL 1456
5	Thomas Gustafson	HHS-CMS	9/7/2007	MDL 1456
6	Kathleen Buto	HHS-CMS	9/6/2007	MDL 1456
7	Robert Niemann	HHS-CMS	8/29/2007	MDL 1456
8	Julie Gehman	McKesson	8/24/2007	Alabama
9	Tyler Jones	McKesson	8/24/2007	Alabama
10	Tom Smith	McKesson	8/24/2007	Alabama
11	Cardinal Health, Inc.	Cardinal	8/24/2007	Alabama
12	AmerisourceBergen Corporation	AmerisourceBergen	8/23/2007	Alabama
13	Patricia Kay Morgan	First DataBank	8/17/2007	Alabama
14	Richard Morris	HHS-CMS	8/14/2007	MDL 1456
15	Christopher J. Worrell	Sandoz	7/12/2007	Alabama
16	Robert Vito	HHS-CMS	4/19/2007	MDL 1456
17	Lisa Foley Stand	HHS-CMS	4/9/2007	MDL 1456
18	Bruce Vladeck	HHS-CMS	4/5/2007	MDL 1456
19	Nancy-Ann Min DeParle	HHS-CMS	4/5/2007	MDL 1456
20	Charles Booth	HHS-CMS	3/29/2007	MDL 1456
21	Thomas Scully	HHS-CMS	3/29/2007	MDL 1456
22	Linda Ragone	HHS-CMS	3/15/2007	MDL 1456
23	David Tawes	HHS-CMS	3/15/2007	MDL 1456
24	Cynthia Hansford	HHS-CMS	2/282007	MDL 1456
25	Harvey Weintraub	Warrick	3/31/2006	MDL 1456





Jul 12 2007
3:28PM

STATE OF WISCONSIN

CIRCUIT COURT
Branch 6

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN INC., *et al.*,

Defendants.

Case No.: 04-CV-1709

CROSS-NOTICE OF VIDEOTAPED DEPOSITION OF CHRISTOPHER J. WORRELL

FROM: Sandoz Inc.

TO: All Counsel of Record

PLEASE TAKE NOTICE that, pursuant to §§ 804.05(2)(a), 885.42 and 885.44, Wis. Stats. and the Wisconsin Rules of Civil Procedure, defendant Sandoz Inc. hereby cross-notices the videotaped deposition of Christopher J. Worrell for purposes of the above-captioned action. This deposition has been noticed in *State of Alabama v. Abbott Laboratories, Inc. et al.*, Case No. CV-05-219 ("Alabama Action"). A copy of the deposition notice in the Alabama Action suit is attached as Exhibit A.

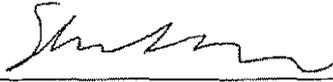
Mr. Worrell's deposition will take place at the offices of White & Case LLP, 1155 Avenue of the Americas, New York, New York 10036 on August 7, 2007, beginning at 9:00 a.m. E.S.T. The deposition will take place before a notary public, or any other officer authorized to administer oaths and will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other



purposes as permitted under the Wisconsin Rules of Civil Procedure. Arrangements will be made so that counsel may participate by telephone if they wish. You are invited to attend and cross examine.

Dated: July 12, 2007

FRIEBERT, FINERTY & ST. JOHN, S.C.

By: 

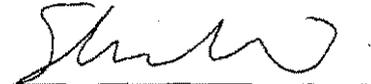
Shannon A. Allen
State Bar No. 1024558
Two Plaza East – Suite 1250
330 East Kilbourn Avenue
Milwaukee, WI 53202

Of counsel:

WHITE & CASE LLP
Wayne A. Cross (admitted *pro hac vice*)
Michael J. Gallagher (admitted *pro hac vice*)
1155 Avenue of the Americas
New York, New York 10036
Telephone: (212) 819-8200
Facsimile: (212) 354-8113

CERTIFICATE OF SERVICE

I, Shannon Allen, hereby certify that on this 12th day of July, 2007, a true and correct copy of the foregoing Cross-Notice of Videotaped Deposition of Christopher J. Worrell was caused to be served on the plaintiff's counsel via first class mail and to all counsel of record by Lexis Nexis File & Serve.



Shannon Allen



Jul 12 2007
3:28PM

EXHIBIT A



Jul 9 2007 4:34PM

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA,)	
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Plaintiff,)	
)	CASE No. CV-05-219
v.)	
)	
ABBOTT LABORATORIES, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

NOTICE OF VIDEOTAPED DEPOSITION OF CHRISTOPHER J. WORRELL

TO: ALL COUNSEL OF RECORD
FROM: SANDOZ INC.

PLEASE TAKE NOTICE that, pursuant to the Alabama Rules of Civil Procedure, defendant Sandoz Inc. will take the deposition of Christopher J. Worrell, of 102 Davis Drive, North Wales, PA 19454, a non-party to the above captioned matter, by videotape and upon oral examination before Henderson Legal Services or other duly qualified officer at 9:00 a.m. E.S.T. on August 7, 2007, or such other date as mutually agreed to by the parties and the deponent, at the offices of White & Case LLP, 1155 Avenue of the Americas, New York, New York 10036.

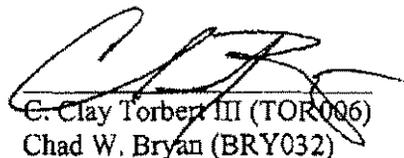
The deposition will be taken upon oral examination pursuant to the Alabama Rules of Civil Procedure, before a notary public, court reporter, or other officer authorized by law to administer oaths, for the purpose of discovery, for use as evidence, and for such other purposes as permitted under Alabama Rules of Civil Procedure. The deposition will be recorded by stenographic and/or sound and visual means. Arrangements will be made so that counsel may participate by telephone if they wish. You are invited to attend and cross-examine.

The deponent is informed that his deposition shall be videotaped in order perpetuate his testimony, and because, if the deposition is used as evidence at trial, a videotaped deposition is a more valuable demonstrative aide to the jury than the mere reading of a deposition transcript. All reasonable measures will be taken to ensure that the deponent's recorded testimony will be accurate and trustworthy and that the deponent is treated fairly.

Dated: July 9, 2007

CAPELL & HOWARD P.C.

By:



C. Clay Torbert III (TOR006)
Chad W. Bryan (BRY032)
150 South Perry Street
P.O. Box 2069
Montgomery, AL 36102
cct@chlaw.com

WHITE & CASE LLP
Wayne A. Cross (admitted *pro hac vice*)
Michael J. Gallagher (admitted *pro hac vice*)
1155 Avenue of the Americas
New York, New York 10036
Telephone: (212) 819 8200
Facsimile: (212) 354-8113
mgallagher@whitecase.com

Attorneys for Defendant Sandoz Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2007, I have caused a true and correct copy of the foregoing document to be served on all counsel of record by electronic service, pursuant to Case Management Order No. 2, by sending a copy to Lexis/Nexis for posting and notification to all parties.



Of Counsel

CERTIFICATE OF SERVICE

Lisa Mecca Davis certifies that she caused a copy of the attached Opposition to be served upon all counsel of record, by LexisNexis File & Serve, this 26th day of October, 2007.



Lisa Mecca Davis