

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

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February 23, 2007

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Re: *LaPoint, et al. v. AmerisourceBergen Corp.*
Civil Action No. 327-N

Dear Counsel:

This letter constitutes my decision on the pending motions. Before the Court are: (1) defendant AmerisourceBergen's motion to compel plaintiffs to produce the so-called Neuenschwander data and to compel plaintiffs to produce Mr. Neuenschwander for a deposition; (2) AmerisourceBergen's motion for an order permitting it to designate, after the discovery deadline has passed, an economist as a rebuttal expert at trial.

Because of the press of other matters, the Court does not have the time to explain in detail the background for the present dispute or to describe at length the reasoning for the Court's ruling. First, suffice it to say that the first motion is unopposed. Plaintiffs have agreed to produce Mr. Neuenschwander for a deposition and to provide defendants with the Neuenschwander data upon which plaintiffs' expert relied. If AmerisourceBergen deposes Mr. Neuenschwander on the compilation of his data, then in fairness plaintiffs shall be entitled to call Mr. Neuenschwander at trial to testify on the same factual issue.

Second, I deny AmerisourceBergen's request that it be permitted to designate an economist as a rebuttal expert at trial. It is incontrovertible that AmerisourceBergen had a full month, from November 22, 2006 until December 22, 2006, to designate its own economics expert to rebut Dr. Stiroh's economic analysis. For whatever reason, AmerisourceBergen elected not to retain its own expert by the December 22 discovery deadline. Nothing in the testimony by Dr. Stiroh at deposition should have been a surprise, as AmerisourceBergen's own expert (who reviewed Dr. Stiroh's report at the same time as AmerisourceBergen and its counsel) recognized that Dr. Stiroh had assumed the truth of plaintiffs' factual allegations in developing her expert opinion. Because AmerisourceBergen had access to the expert's report and could have elected to call its own expert if necessary for more than a month before the discovery deadline, and because AmerisourceBergen and its counsel cannot reasonably claim surprise from the deposition testimony by Dr. Stiroh, no good ground exists for yet another extension or waiver of the discovery deadline cut-off dates.

Furthermore, if the Court were to grant AmerisourceBergen yet another waiver of the discovery and trial schedule, it would impose unfair prejudice on the plaintiffs. An extension of time in order to designate a new expert and to have the new expert's report submitted (and enable plaintiffs to take discovery regarding it) would throw a huge monkey wrench into the summary judgment briefing and trial schedule. Delays have already caused this breach of contract case to drag on for almost three years. Yet another delay is simply not warranted in these circumstances.

Accordingly, for the reasons set forth above, I grant AmerisourceBergen's motion to compel production of the Neuenschwander database and his deposition. I deny AmerisourceBergen's motion for leave to designate an additional rebuttal expert witness.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the name.

William B. Chandler III

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