

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**AMERISOURCEBERGEN DRUG CORPORATION,  
a Delaware corporation, sometimes  
doing business as AMERISOURCE CORPORATION,**

**Plaintiff,**

v.

**Civil Action No.: 2:04CV58**

**JAMES S. BURKS,  
individually, and doing business as  
POCAHONTAS PHARMACY,**

**Defendant.**

**OPINION/ORDER**

This matter is before the undersigned United States Magistrate Judge pursuant to Defendant's "Motion to Quash and for a Protective Order Regarding the October 20, 2006 Deposition of James S. Burke" [DE 74]. There has not to date been a response to the Motion.

The Court again notes that this case was reopened by Order of United States District Judge Robert E. Maxwell on February 10, 2006. The discovery cutoff is October 20, 2006.

According to Defendant's Motion and the Court's review of the docket sheet in this matter, on October 16, 2006, Plaintiff served Defendant with a Notice of Deposition, said deposition to take place on October 20, 2006.

Defendant argues that four days' notice is unreasonable under the Federal Rules of Civil Procedure. The Court agrees, and therefore **GRANTS** Defendant's Motion to Quash and for a Protective Order Regarding the October 20, 2006, deposition only.

Because Plaintiff has not been provided time to respond to the motion, however, the Court addresses only the issue of the October 20, 2006, deposition. The Court defers addressing whether Defendant's deposition may be taken after October 20, 2006, with the exception of noting that

Plaintiff was expressly directed to file any motion for extension of discovery **BEFORE** October 20, 2006, with reasons for the necessity of the extension included in the request.

Plaintiff shall file any response it may deem necessary to Defendant's motion to quash and for protective order on or before October 25, 2006.

The Court **DENIES** without prejudice Defendant's motion insofar as it requests that the Court direct Plaintiff to comply with the Amended Notice of Deposition, as not being ripe for decision. The Court has only a "Certificate of Service" for "Amended Notice of Deposition and Production of Documents to Amerisourcebergen Drug Corporation," and no objection to or motion to quash that Notice from Plaintiff.

For docketing purposes only, Defendant's Motion to Quash and for a Protective Order Regarding the October 20, 2006 Deposition of James S. Burke [D.E. 72] is **GRANTED in part, DENIED in part, and DEFERRED in part.**

It is so **ORDERED.**

Dated: October 19<sup>th</sup>, 2006.

*/s John S. Kaul*

JOHN S. KAULL  
UNITED STATES MAGISTRATE JUDGE