

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MADDEN  
Justice

PART 11

AMERISOURCE BERGEN CORP.

INDEX NO. 111810/06

- v -

NEW YORK ATTORNEY GENERAL

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 01

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is determined  
in accordance with the annexed decision  
and order.

Dated: March 5, 2004

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

-----X

In re: Subpoena Duces Tecum Issued to  
AmerisourceBergen Corporation by the  
New York Attorney General

INDEX NO. 111810/06

-----X

JOAN A. MADDEN, J.:

AmerisourceBergen Corporation moves for an order pursuant to CPLR 2304: 1) fixing conditions to or modifying the non-party, civil subpoena served on it by the New York Attorney General on the grounds that it seeks confidential and proprietary information; 2) compelling the Attorney General to reimburse AmerisourceBergen for the reasonable expenses incurred in gathering and producing the electronic data requested in the subpoena; and 3) staying the accrual of penalties for noncompliance with the subpoena until the determination of this motion.

In response to the motion, the Attorney General cross-moves for an order pursuant to CPLR 2308 directing AmerisourceBergen to serve full and complete responses to the subpoena.

The parties have resolved the confidentiality issues by executing a Stipulation as to Confidential Matter, dated September 28, 2006 and so-ordered on September 29, 2006.

As to AmerisourceBergen's request for an order compelling the Attorney General to compensate it for its costs of responding to the subpoena, AmerisourceBergen cites to statutory and case law authority determining the issue as to who should bear the cost of complying with *discovery* demands, as opposed to the issue raised herein which is limited to compliance with an investigatory subpoena. See e.g., Schroeder v. Centro Pariso Tropical, 233 AD2d 314 (2<sup>nd</sup> Dept 1996); Rubin v. Alamo Rent-A-Car, 190 AD2d 661 (2<sup>nd</sup> Dept 1993); Lipco Electrical Corp., 4

Misc3d 1019(A) (Sup Ct, Nassau Co, 2004). While those cases hold that each party bears the cost of its own discovery, there is no statutory or case law authority to support the same result as to the cost of responding to a subpoena. Under CPLR 8001, the amounts recoverable for costs incurred in responding to a subpoena are limited to a witness fee of fifteen dollars per day and travel expenses of twenty-three cents per mile for a person whose attendance is required by a subpoena, and reimbursement of reproduction expenses as follows: “[w]henver the preparation of a transcript of records is required in order to comply with a subpoena, the person subpoenaed shall receive an additional fee of ten cents per folio upon demand.” Neither CPLR 8001 or any other statute provides for reimbursement of any additional costs of complying with a subpoena, including the expenses of employees and outside vendors gathering and producing the electronic data responsive to subpoena at issue herein.

Accordingly, it is hereby

ORDERED that the motion by AmerisourceBergen Corporation for an order compelling the New York State Attorney General to reimburse it for the reasonable expenses incurred in gathering and producing the electronic data requested in the subpoena, is denied; and it is further

ORDERED that the New York State Attorney General’s cross-motion to compel is granted only to the extent that AmerisourceBergen Corporation is directed to respond to the subpoena within thirty days of service of notice of entry of this order.

DATED: ~~February~~ <sup>March 5, 2007</sup>, 2007

ENTER:

\_\_\_\_\_  
J.S.C.