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Drug firms seek to keep 18 words under seal in pain-pill suit

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AmerisourceBergen Corporation's offices in Chesterbrook, Pennsylvania. The company has been named in a lawsuit by the state attorney general along with Smith Corp., The Harvard Drug Group, Anda Inc., Associated Pharmacies, H.D. Smith Wholesale Drug, KeySource Medical; Masters Pharmaceuticals, Quest Pharmaceuticals and Top Rx.

AP file photo

The nation's largest drug wholesalers are asking a Boone County judge to hold a closed-door hearing where they promise to explain why they want to keep secret 18 words in a lawsuit filed against them.

Twelve days ago, Circuit Judge William Thompson issued an order unsealing court documents that disclose allegations about the number of prescription painkillers the companies have shipped to West Virginia pharmacies in specific towns and regions of the state. Thompson gave the drug companies two weeks to appeal his decision to the West Virginia Supreme Court.

Instead, the prescription drug distributors filed a motion Wednesday to revise Thompson's order and requested an "in camera" hearing that would be closed to the news media and the public.

The out-of-state companies argue that the 18 words contain "commercially-sensitive information." The drug wholesalers maintain that they provided 2007-2012 prescription drug sales figures to the state with the expectation that the numbers would be kept confidential. They want the 18 words redacted, or blacked out, from the lawsuit if the court records are released.

The lawsuit – filed in 2012 by then-Attorney General Darrell McGraw and inherited by his successor, Patrick Morrissey – alleges that the drug wholesalers helped fuel West Virginia's prescription drug problem by shipping an excessive number of painkillers to pharmacies across the state. The West Virginia Department of Health and Human Resources and Department of Military Affairs and Public Safety have since joined the lawsuit as plaintiffs.

The Charleston Gazette-Mail filed a motion to intervene in the case last month, saying the unsealing of the court records is a matter of "substantial public interest" to West Virginians.

Two weeks ago, Thompson ruled that the drug wholesalers' business interests in keeping the court records sealed do not outweigh the public's right to see the court filings. The judge also found that the lawsuit doesn't include information about the distributors' prescription drug sales prices or profits.

In Wednesday's motion, the companies took issue with the way Thompson's order characterizes their motives for keeping the court records under seal.

The drug wholesalers asserted that they're not trying to protect their "corporate image." They added that they've never argued that the court documents include "trade secrets."

Thompson's order also stipulated that the companies could keep their pill shipment numbers under seal, if they agree to settle the state's lawsuit against them by this Friday.

In February, drug wholesaler Miami-Luken reached a \$2.5 million settlement with the state. The allegations against that company will remain sealed, according to Thompson's May 6 order.

That's unfair, the other drug companies – those that haven't settled – argued Wednesday.

If Thompson refuses to revise his order, he should unseal court records that reveal the companies' sales

figures – not just those that remain in the case – “to provide fuller context” and “avoid prejudice,” according to the wholesalers’ motion filed Wednesday.

The companies named in the state’s lawsuit are: AmerisourceBergen; J.M. Smith Corp.; The Harvard Drug Group; Anda Inc.; Associated Pharmacies; H.D. Smith Wholesale Drug; KeySource Medical; Masters Pharmaceuticals; Quest Pharmaceuticals; and Top Rx.

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