
STATE OF WISCONSIN,

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Plaintiff,

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v.

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Case No. 04-CV-1709

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AMGEN INC., et al.,

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Defendants.

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**BRISTOL-MYERS SQUIBB COMPANY’S RESPONSES AND OBJECTIONS
TO PLAINTIFF STATE OF WISCONSIN’S FIRST SET OF
CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS**

Pursuant to Wisconsin Rule of Civil Procedure §§ 804.01, 804.08 and 804.09, defendant Bristol-Myers Squibb Company (“BMS”), by its attorneys, hereby asserts the following responses and objections to Plaintiff’s Second Set of Consolidated Discovery Requests to All Defendants (the “Requests”):

PRELIMINARY STATEMENT

1. These responses are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such document requests were asked of, or statements contained herein were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. BMS’s responses shall not be deemed to constitute admissions:
- a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or

b. that any statement or characterization in Plaintiff's Requests is accurate or complete.

3. BMS's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and BMS reserves the right to amend its responses and to raise any additional objections it may have in the future. These responses are made based upon the typical or usual interpretation of words contained in Plaintiff's Requests, unless a specific definition or instruction has been provided.

4. BMS's responses to these Requests are contingent upon, and are made subject and pursuant to, the protective order entered in this action and must be treated accordingly.

5. BMS's responses to these Requests are submitted without prejudice to BMS's right to produce evidence of any subsequently discovered facts and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial. BMS reserves its right to provide further responses as additional facts are ascertained.

6. Any statement by BMS contained in these objections and responses that non-privileged documents or information will be produced in response to a specific request does not mean that any such documents or information actually exist, but only that they will be produced to the extent that they exist.

GENERAL OBJECTIONS

1. BMS objects to Plaintiff's "Definitions," "Instructions for Interrogatories," "Instructions for Requests for Admission," "Instructions for Requests for Production of Documents," and "Instructions for all Discovery Requests" to the extent Plaintiff intends to expand upon or alter BMS's obligations under the Wisconsin Rules of Civil Procedure. BMS

will comply with applicable rules of civil procedure in providing its responses and objections to the Requests.

2. BMS objects to the Requests to the extent that they seek information or documents from outside the statute of limitations applicable to the claims in this action or beyond the time period relevant to this action.

3. BMS objects to these Requests to the extent that they seek documents and information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, or are overly broad, unduly burdensome, ambiguous and vague. In response to these Requests, BMS will produce information concerning only those drugs that the parties have agreed are at issue in this action.

4. BMS objects to these Requests to the extent they call for the production of documents or information that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, joint defense/prosecution privilege, the work product doctrine, the consulting expert rule, the common interest doctrine or other applicable statutory or common law. To the extent that any such protected documents or information are inadvertently produced in response to these Requests, the production of such documents or information shall not constitute a waiver of BMS's right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to BMS's counsel immediately upon discovery thereof.

5. BMS objects to these Requests to the extent that they seek documents and information not within BMS's possession, custody, or control or are more appropriately sought from third parties to whom requests have been or may be directed.

6. BMS objects to these Requests to the extent that they seek production of publicly available documents or information, or information which Plaintiff has in its possession or can obtain from other sources.

7. BMS objects to these Requests to the extent that they purport to impose obligations beyond, or inconsistent, with those imposed by applicable law. BMS will respond to these Requests, subject to other objections, as required by the Wisconsin Rules of Civil Procedure.

8. BMS objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in these Requests. BMS's response that it will produce documents in connection with a particular Request, or that it has no responsive documents, is not intended to indicate that BMS agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests or that such implications or characterizations are relevant to this action.

9. BMS objects to these Requests to the extent they call for the production of trade secret, proprietary, commercially sensitive, or other confidential information.

10. BMS incorporates the above Preliminary Statement and General Objections and the below Objections to Definitions into each response to the Requests set forth below as if set forth fully therein. The response to a Request shall not operate as a waiver of any applicable specific or general objection to any Request.

OBJECTIONS TO DEFINITIONS

(1) The term "document" means any writing or recording of any kind, including, without limitation, agendas, agreements, analyses, announcements, audits, booklets, books,

brochures, calendars, charts, contracts, correspondence, electronic mail (e-mail), facsimiles (faxes), film, graphs, letters, memos, maps, minutes (particularly Board of Directors and/or Executive Committee meeting minutes), notes, notices, photographs, reports, schedules, summaries, tables, telegrams, and videotapes, in any medium, whether written, graphic, pictorial, photographic, electronic, phonographic, mechanical, taped, saved on computer disk, hard drives, data tapes, or otherwise, and every non-identical copy. Different versions of the same document, such as different copies of a written record bearing different handwritten notations, are different documents within the meaning of the term as used. In case originals or original non-identical copies are not available, "document" includes copies of originals or copies of non-identical copies as the case may be.

OBJECTION: BMS objects to the definition of "Document" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous. BMS also objects to this definition to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, BMS's obligations under the Wisconsin Rules of Civil Procedure. BMS further objects to this definition to the extent it requires or seeks to require BMS to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format from that which the documents are now stored; (iii) produce metadata constituting attorney work product, including without limitation, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes and/or such other storage media that may be inaccessible in the normal course of business; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreements or copyright laws.

(2) The term "identify," when used in reference to a natural person, means to state the person's:

- (a) first and last name;
- (b) current or last-known job title;
- (c) current or last-known business address;
- (d) current or last-known business telephone number;

- (e) current or last-known home address; and
- (f) current or last-known home telephone number.

OBJECTION: BMS objects to the definition of “Identify” as set forth in Definition No. 2 on the grounds that it is overly broad and unduly burdensome. BMS further objects to this definition to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, BMS’s obligations under the Wisconsin Rules of Civil Procedure.

(3) The term “you,” “your,” and/or “your company” means each defendant, its domestic or foreign parents, and any other affiliated company, subsidiary, division, joint venture or other entity having at least 10% ownership interest in defendant; defendant’s agents, independent contractors, directors, employees, officers, and representatives; and merged, consolidated or acquired predecessors; and any other person or entity acting on behalf of defendant.

OBJECTION: BMS objects to the definitions of “you,” “your” and “your company” as set forth in Definition No. 3 on the grounds that they are overly broad, unduly burdensome, vague and ambiguous. BMS states that all Responses contained herein are on behalf of defendant Bristol-Myers Squibb Company.

RESPONSE TO CONSOLIDATED DISCOVERY REQUEST NO. 7

REQUEST FOR ADMISSION NO. 7: At no time has the State of Wisconsin and you agreed on the meaning or definition of average wholesale price (“AWP”).

RESPONSE: In addition to the Preliminary Statement, General Objections and Objections to Definitions set forth above, BMS objects to Request for Admission No. 7 on the grounds that it is overly broad and unduly burdensome. BMS further objects to this request on the grounds that the term “agreed” is vague, ambiguous and undefined. BMS further objects to this request to the extent it seeks information that is not within BMS’s possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, BMS objects to

this request to the extent it implies that BMS has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Subject to its General and Specific Objections, BMS denies Request for Admission No. 7.

INTERROGATORY NO. 7: If your response to request for admission no. 7 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of AWP that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (c) state whether you contend that the State of Wisconsin and you agree on the definition of AWP provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;
- (d) if your answer to subpart (c) is “no,” identify the last date when you contend the State of Wisconsin and you agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory;
- (f) if your answer to subpart (e) is “yes,” describe in detail the manner in which the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person’s participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of AWP;
- (g) identify all documents supporting your response to request for admission no. 7;
- (h) identify all documents supporting your answer to interrogatory no. 7, including all subparts; and
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 7, including all subparts.

ANSWER: In addition to the Preliminary Statement, General Objections and Objections to Definitions set forth above, BMS objects to Interrogatory No. 7 on the grounds that it is overly broad and unduly burdensome. BMS further objects to this request on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. BMS further objects to this request to the extent it seeks information that is not within BMS’s possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, BMS objects to

this request to the extent it implies that BMS has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Notwithstanding its General and Specific Objections, and without waiving them, BMS states that it has been widely known for decades, including by state Medicaid agencies such as the State of Wisconsin, that AWP's are not mathematical averages of prices paid by pharmacies but rather are benchmarks that may exceed pharmacy acquisition costs. BMS further states that the State of Wisconsin chose and continues to use AWP as a basis for reimbursement despite, and in part because of its understanding that AWP does not represent an actual average of wholesale prices. BMS additionally states that Plaintiff is already in possession of documents from which the answer to this interrogatory may be obtained. Additionally, BMS refers Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information generally responsive to this interrogatory.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7: Produce all documents identified in your response to interrogatory no. 7.

RESPONSE: In addition to the Preliminary Statement, General Objections and Objections to Definitions set forth above, BMS objects to Request for Production of Documents No. 7 on the grounds that it is overly broad and unduly burdensome. BMS also objects to this request to the extent it seeks information that is not within BMS's possession, custody or control, publicly available, or more readily available to Plaintiff. BMS also incorporates by reference its answer and objections to Interrogatory No. 7 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, BMS states that Plaintiff is already in possession of documents generally responsive to this request.

RESPONSES TO CONSOLIDATED DISCOVERY REQUEST NO. 8

REQUEST FOR ADMISSION NO. 8: At no time has the State of Wisconsin and you agreed on the meaning or definition of wholesale acquisition cost (“WAC”).

RESPONSE: In addition to the Preliminary Statement, General Objections and Objections to Definitions set forth above, BMS objects to Request for Admission No. 8 on the grounds that it is overly broad and unduly burdensome. BMS further objects to this request on the grounds that the term “agreed” is vague, ambiguous and undefined. BMS further objects to this request to the extent it seeks information that is not within BMS’s possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, BMS objects to this request to the extent it implies that BMS has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Subject to its General and Specific Objections, BMS denies Request for Admission No. 8.

INTERROGATORY NO. 8: If your response to request for admission no. 8 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of WAC that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;
- (c) state whether you contend that the State of Wisconsin and you agree on the definition of WAC provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;
- (d) if your answer to subpart (c) is “no,” identify the last date when you contend the State of Wisconsin and you agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory;
- (f) if your answer to subpart (e) is “yes,” describe in detail the manner in which the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person’s participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of WAC;
- (g) identify all documents supporting your response to request for admission no. 8;

- (h) identify all documents supporting your answer to interrogatory no. 8, including all subparts;
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 8, including all subparts.

ANSWER: In addition to the Preliminary Statement, General Objections and Objections to Definitions set forth above, BMS objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. BMS further objects to this request on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. BMS further objects to this request to the extent it seeks information that is not within BMS’s possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, BMS objects to this request to the extent it implies that BMS has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Notwithstanding its General and Specific Objections, and without waiving them, BMS states that it has been widely known for decades, including by state Medicaid agencies such as the State of Wisconsin, that WAC is a list price for pharmaceutical products that does not include customary prompt-pay discounts or other discounts. BMS further states that Plaintiff is already in possession of documents from which the answer to this interrogatory may be obtained. Such documents include, but are not limited to, federal statutes, reports from various branches of the federal government and, upon information and belief, documents from the files of various agencies of the State of Wisconsin. Additionally, BMS refers Plaintiff to Defendants’ briefing and attached exhibits filed in response to Plaintiff’s motions for summary judgment, which contain information generally responsive to this interrogatory.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8: Produce all documents identified in your response to interrogatory no. 8.

RESPONSE: In addition to the Preliminary Statement, General Objections and Objections to Definitions set forth above, BMS objects to Request for Production of Documents No. 8 on the grounds that it is overly broad and unduly burdensome. BMS further objects to this request on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. BMS further objects to this request to the extent it seeks information that is not within BMS’s possession, custody or control, publicly available, or more readily available to Plaintiff. BMS also incorporates by reference its answer and objections to Interrogatory No. 8 of these Requests.

Notwithstanding its General and Specific Objections, and without waiving them, BMS states that Plaintiff is already in possession of documents generally responsive to this request.

Dated: August 11, 2008

Respectfully Submitted,

GODFREY & KAHN, S.C.

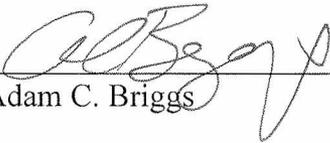
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Certificate of Service

I, Adam C. Briggs, hereby certify that on August 11, 2008 a true and correct copy of the foregoing was served on all counsel of record by Lexis Nexis File & Serve®.



Adam C. Briggs