
STATE OF WISCONSIN,)	
)	
Plaintiff,)	No. 04 CV 1709
)	
v.)	
)	
AMGEN INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

**RESPONSES AND OBJECTIONS OF DEFENDANT MERCK & CO., INC. TO
PLAINTIFF STATE OF WISCONSIN’S FIRST SET OF CONSOLIDATED
DISCOVERY REQUESTS TO ALL DEFENDANTS**

Pursuant to Sections 804.01 and 804.09 of the Wisconsin Statutes, defendant Merck & Co., Inc. (“Merck”), hereby responds and objects to Plaintiff’s First Set of Consolidated Discovery Requests to All Defendants (“the Requests”) as follows:

Merck is presently pursuing its investigation and analysis of the facts and law relating to this case and has not completed discovery or preparation for trial. The responses set forth herein are given without prejudice to Merck’s right to produce evidence of any subsequently discovered facts or documents, or interpretations thereof, or to modify, change, or amend its responses. The information set forth herein is true and correct to Merck’s best knowledge as of this date and is subject to correction for errors, mistakes, or omissions. The within responses are based on documents and information currently available to Merck.

Reference in a response to a precedent or subsequent response incorporates both the information and the objections set forth in the referenced response. Merck reserves the right to introduce at trial, or in support of or in opposition to any motion in this or any other proceeding,

any and all documents heretofore or hereafter produced by the parties in this action or in any other action, or produced by any third person. Identification or production of certain documents is done without prejudice to establish at a later date any additional facts that may be contained within or discovered as a result of any subsequent review of such documents or additional investigation and discovery.

GENERAL OBJECTIONS

Merck incorporates its General Objections set forth in Merck's prior discovery responses as if fully set forth herein.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Merck objects to Plaintiff's Definitions and Instructions to the extent they purport to expand upon or alter Merck's obligations under Wisconsin Statutes §§ 804.01 and 804.09.

2. Merck incorporates its objections in prior discovery responses to Plaintiff's Definitions and Instructions as if fully set forth herein.

3. Merck objects to these Requests with respect to their lack of any limitation as to time period. Unless otherwise specified, Merck will respond as to the period from November 1998 to November 2004.

SPECIFIC RESPONSES AND OBJECTIONS TO CONSOLIDATED DISCOVERY REQUESTS

Merck incorporates its General Objections and Objections to Definitions and Instructions into each of the responses that follow. The specific objections set forth in each response are in addition to those objections, and unless otherwise specified, Merck's responses will be limited in accordance with each of its objections.

CONSOLIDATED DISCOVERY REQUEST NO. 1

REQUEST FOR ADMISSION NO. 1: At no time has the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, explicitly approved your

practice of reporting to First DataBank average wholesale prices (“AWPs”) for your drugs that were not the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE:

Merck further objects to the use of the term “your drugs” to the extent it seeks information on Merck drugs other than the Merck drugs at issue in this action. Merck objects to the term “practice” and the phrase “true average prices” as vague, ambiguous, and undefined in this context. Merck also objects to the Request on the grounds that it is argumentative and misleading in asserting that Merck reported AWP to First DataBank and that AWP was intended to equal an average price charged by wholesalers to their customers.

Subject to and without waiving its objections, Merck states that it did not report AWP to First DataBank.

INTERROGATORY NO. 1: If your response to Request for Admission No. 1 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify whether the approval was made verbally or in writing;
- (b) identify the person(s) who approved the practice;
- (c) identify the date(s) on which the approval was made;
- (d) state whether the approval was communicated to you;
- (e) if the approval was communicated to you, state whether the communication was made verbally or in writing;
- (f) if the approval was communicated to you, identify the date of such communication(s);
- (g) if the approval was communicated to you, identify the person(s) who made the communication(s);
- (h) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (i) identify all documents relating to the approval of the practice;
- (j) identify all documents relating to the communication of the approval to you.

RESPONSE:

Not applicable. See Merck’s response to Request for Admission No. 1.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1: Produce all documents identified in your Response to Interrogatory No. 1.

RESPONSE:

Not applicable. See Merck's responses to Request for Admission No. 1 and Interrogatory No. 1.

CONSOLIDATED DISCOVERY REQUEST NO. 2

REQUEST FOR ADMISSION NO. 2: At no time has the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, explicitly approved your practice of reporting to First DataBank suggested wholesale prices ("SWPs") for your drugs that were not the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE:

Merck further objects to the use of the term "your drugs" to the extent it seeks information on Merck drugs other than the Merck drugs at issue in this action. Merck objects to the term "practice" and the phrase "true average prices" as vague, ambiguous, and undefined in this context. Merck also objects to the Request on the grounds that it is argumentative and misleading in asserting that Merck reported SWPs to First DataBank and that SWP was intended to equal an average price charged by wholesalers to their customers.

Subject to and without waiving its objections, Merck states that it did not report SWPs to First DataBank.

INTERROGATORY NO. 2: If your response to Request for Admission No. 2 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify whether the approval was made verbally or in writing;
- (b) identify the person(s) who approved the practice;
- (c) identify the date(s) on which the approval was made;
- (d) state whether the approval was communicated to you;
- (e) if the approval was communicated to you, state whether the communication was made verbally or in writing;

- (f) if the approval was communicated to you, identify the date of such communication(s);
- (g) if the approval was communicated to you, identify the person(s) who made the communication(s);
- (h) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (i) identify all documents relating to the approval of the practice;
- (j) identify all documents relating to the communication of the approval to you.

RESPONSE:

Not applicable. See Merck's response to Request for Admission No. 2.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2: Produce all documents identified in your Response to Interrogatory No. 2.

RESPONSE:

Not applicable. See Merck's responses to Request for Admission No. 2 and Interrogatory No. 2.

CONSOLIDATED DISCOVERY REQUEST NO. 3

REQUEST FOR ADMISSION NO. 3: At no time has the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, explicitly approved your practice of reporting to First DataBank wholesale acquisition costs ("WACs") for your drugs that were not the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you for your drugs.

RESPONSE:

Merck further objects to the use of the term "your drugs" to the extent it seeks information on Merck drugs other than the Merck drugs at issue in this action. Merck objects to the Request on the grounds that it is argumentative and misleading in that WAC is by definition an undiscounted or list price. Merck also objects to the phrase "true average prices" as vague, ambiguous, and undefined in this context. Merck objects that the Request is misleading in suggesting that Merck was required to obtain the approval of "the State of Wisconsin, its Department of Health & Family Services, or any employee thereof" for its WAC pricing.

Subject to and without waiving its objections, DENIED.

INTERROGATORY NO. 3: If your response to Request for Admission No. 3 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify whether the approval was made verbally or in writing;
- (b) identify the person(s) who approved the practice;
- (c) identify the date(s) on which the approval was made;
- (d) state whether the approval was communicated to you;
- (e) if the approval was communicated to you, state whether the communication was made verbally or in writing;
- (f) if the approval was communicated to you, identify the date of such communication(s);
- (g) if the approval was communicated to you, identify the person(s) who made the communication(s);
- (h) if the approval was communicated to you, identify the person(s) who received the communication(s);
- (i) identify all documents relating to the approval of the practice;
- (j) identify all documents relating to the communication of the approval to you.

RESPONSE:

Merck incorporates by reference its response to Request for Admission No. 3.

Subject to and without waiving its objections, Merck states that it has been widely known, including by state Medicaid agencies such as that in the State of Wisconsin, that WAC is an undiscounted or list price for pharmaceuticals and that documents reflecting that well-known fact include federal statutes, reports from various branches of the federal government, and documents from the files of various agencies of the State of Wisconsin.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3: Produce all documents identified in your Response to Interrogatory No. 3.

RESPONSE:

Merck incorporates by reference its responses to Request for Admission No. 3 and Interrogatory No. 3. Merck further objects to the Request on the grounds that it seeks documents

or information equally available to Plaintiff or already in Plaintiff's possession, custody, or control.

CONSOLIDATED DISCOVERY REQUEST NO. 4

REQUEST FOR ADMISSION NO. 4: The average wholesale prices ("AWPs") that you reported to First DataBank for your drugs were not the true average prices charged by wholesalers to their customers for your drugs. Rather, the AWPs that you reported to First DataBank for your drugs were more than the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE:

Merck further objects to the use of the term "your drugs" to the extent it seeks information on Merck drugs other than the Merck drugs at issue in this action. Merck objects to the phrase "true average prices" as vague, ambiguous, and undefined in this context. Merck also objects to the Request on the grounds that it is argumentative and misleading in asserting that Merck reported AWPs to First DataBank and that AWP was intended to equal an average price charged by wholesalers to their customers.

Subject to and without waiving its objections, Merck states that it did not report AWPs to First DataBank.

INTERROGATORY NO. 4: If your response to Request for Admission No. 4 is anything other than an unqualified admission, state all bases for your response and identify all documents that support or relate to your response.

RESPONSE:

Not applicable. See Merck's responses to Request for Admission No. 4.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4: Produce all documents identified in your Response to Interrogatory No. 4.

RESPONSE:

Not applicable. See Merck's responses to Request for Admission No. 4 and Interrogatory No. 4.

CONSOLIDATED DISCOVERY REQUEST NO. 5

REQUEST FOR ADMISSION NO. 5: The suggested wholesale prices (“SWPs”) that you reported to First DataBank for your drugs were not the true average prices charged by wholesalers to their customers for your drugs. Rather, the SWPs that you reported to First DataBank for your drugs were more than the true average prices charged by wholesalers to their customers for your drugs.

RESPONSE:

Merck further objects to the use of the term “your drugs” to the extent it seeks information on Merck drugs other than the Merck drugs at issue in this action. Merck objects to the phrase “true average prices” as vague, ambiguous, and undefined in this context. Merck also objects to the Request on the grounds that it is argumentative and misleading in asserting that Merck reported SWPs to First DataBank and that SWP was intended to equal an average price charged by wholesalers to their customers.

Subject to and without waiving its objections, Merck states that it did not report SWPs to First DataBank.

INTERROGATORY NO. 5: If your response to Request for Admission No. 5 is anything other than an unqualified admission, state all bases for your response and identify all documents that support or relate to your response.

RESPONSE:

Not applicable. See Merck’s responses to Request for Admission No. 5.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5: Produce all documents identified in your Response to Interrogatory No. 5.

RESPONSE:

Not applicable. See Merck’s responses to Request for Admission No. 5 and Interrogatory No. 5.

CONSOLIDATED DISCOVERY REQUEST NO. 6

REQUEST FOR ADMISSION NO. 6: The wholesale acquisition costs (“WACs”) that you reported to First DataBank for your drugs were not the true average prices, net of discounts,

rebates, chargebacks, and incentives, paid by wholesalers to you for your drugs. Rather, the WACs that you reported to First DataBank for your drugs were more than the true average prices, net of discounts, rebates, chargebacks, and incentives, paid by wholesalers to you for your drugs.

RESPONSE:

Merck further objects to the use of the term “your drugs” to the extent it seeks information on Merck drugs other than the Merck drugs at issue in this action. Merck objects to the phrase “true average prices” as vague, ambiguous, and undefined in this context. Merck also objects to the Request on the grounds that it is argumentative and misleading in that WAC is by definition an undiscounted or list price.

Subject to and without waiving its objections, DENIED.

INTERROGATORY NO. 6: If your response to Request for Admission No. 6 is anything other than an unqualified admission, state all bases for your response and identify all documents that support or relate to your response.

RESPONSE:

Merck incorporates by reference its response to Request for Admission No. 6.

Subject to and without waiving its objections, Merck states that it has been widely known, including by state Medicaid agencies such as that in the State of Wisconsin, that WAC is an undiscounted or list price for pharmaceuticals and that documents reflecting that well-known fact include federal statutes, reports from various branches of the federal government, and documents from the files of various agencies of the State of Wisconsin. Merck further states that during the applicable time period, Merck offered the Merck drugs at issue to wholesalers for resale to retail pharmacies at WAC or catalog price. As disclosed in its catalogs and in its standard terms and conditions, Merck offered its customers a standard prompt payment discount of two percent for invoices paid within a specific time period. The supporting documents include Merck’s catalog prices and terms and conditions for sales to wholesalers, which have

been produced. Merck also refers Plaintiff to the wholesaler transactional data produced by third parties, including Amerisource Bergen, McKesson, and Cardinal.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6: Produce all documents identified in your Response to Interrogatory No. 6.

RESPONSE:

Merck incorporates by reference its responses to Request for Admission No. 6 and Interrogatory No. 6. Merck further objects to the Request on the grounds that it seeks documents or information equally available to Plaintiff or already in Plaintiff's possession, custody, or control.

Dated: June 16, 2008

Respectfully submitted,

By: /s/Robert B. Funkhouser

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Attorneys for Defendant Merck & Co., Inc.

STATE OF PENNSYLVANIA:

COUNTY OF MONTGOMERY:

Harry J. Rieck, being duly sworn, deposes and says:

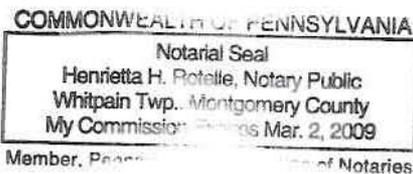
I am the Executive Director of Hospital National Accounts Sales and Marketing of Merck & Co., Inc. ("Merck"), a defendant in the above-entitled action. I have read the foregoing answers to interrogatories in the Responses and Objections of Defendant Merck & Co., Inc. to Plaintiff State of Wisconsin's Consolidated Discovery Requests to All Defendants and subscribe to them on behalf of Merck; the foregoing answers are based on personal knowledge or information communicated to me by employees and agents of Merck acting within the scope and course of their employment or on the information obtained from the books and records of Merck; and I believe the foregoing answers to interrogatories are true and correct.

Harry J. Rieck

SWORN TO AND SUBSCRIBED before me, this the 16 day of June 2008.

Henrietta H. Rotelle
NOTARY PUBLIC

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that on the 16th of June 2008, I caused a true and correct copy of the foregoing pleadings Plaintiff State of Wisconsin's First Set of Consolidated Discovery Requests to All Defendants to be electronically served upon all counsel of record by transmission to LexisNexis File & Serve.

/s/Robert B. Funkhouser