

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. 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:

Merck further objects to Request for Admission No. 7 on the grounds that it is overly

broad and unduly burdensome. Merck objects that the term “agreed” is vague, ambiguous, and undefined. Merck also objects to the extent the Request seeks information that is not within Merck’s possession, custody, or control or that is publicly available or more readily available to Plaintiff. Merck objects to the Request to the extent it implies that Merck has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Subject to and without waiving its objections, Merck DENIES the Request for Admission.

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.

RESPONSE:

Merck further objects to Interrogatory No. 7 on the grounds that it is overly broad and unduly burdensome. Merck objects that the terms “agreed” and “together developed” are vague, ambiguous, and undefined. Merck also objects to the extent the Interrogatory seeks information that is not within Merck’s possession, custody, or control or that is publicly available or more readily available to Plaintiff. Merck objects to the Interrogatory to the extent it implies that Merck has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Subject to and without waiving its objections, Merck states that both it and the State of Wisconsin understood throughout the entire relevant time period that AWP is a reimbursement benchmark and does not represent an actual average of wholesale prices. Merck further states that, prior to 2001 Wisconsin Medicaid reimbursed pharmacies for Merck drugs based on direct price. The State of Wisconsin chose to change its reimbursement formula and continues to use AWP (minus a discount) as a basis for reimbursement despite, and in part because of, its understanding that AWP does not represent an actual average of wholesale prices. Merck additionally states that Plaintiff is already in possession of documents from which the answer to the Interrogatory may be obtained. Merck 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:

Merck further objects to Request for Production of Documents No. 7 on the grounds that it is overly broad and unduly burdensome. Merck objects to the extent the Request seeks

information that is not within Merck's possession, custody, or control or that is publicly available or more readily available to Plaintiff. Merck incorporates by reference its response and objections to Interrogatory No. 7.

Subject to and without waiving its objections, Merck states that Plaintiff is already in possession of documents generally responsive to the Request. To the extent additional non-privileged Merck documents responsive to this Request are identified, they will be produced.

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:

Merck further objects to Request for Admission No. 8 on the grounds that it is overly broad and unduly burdensome. Merck objects that the term "agreed" is vague, ambiguous, and undefined. Merck also objects to the extent the Request seeks information that is not within Merck's possession, custody, or control or that is publicly available or more readily available to Plaintiff. Merck objects to the Request to the extent it implies that Merck has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Subject to and without waiving its objections, Merck DENIES the Request for Admission.

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.

RESPONSE:

Merck further objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. Merck objects that the terms “agreed” and “together developed” are vague, ambiguous, and undefined. Merck also objects to the extent the Interrogatory seeks information that is not within Merck’s possession, custody, or control or that is publicly available or more readily available to Plaintiff. Merck objects to the Interrogatory to the extent it implies that Merck has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Subject to and without waiving its objections, Merck states that both it and the State of Wisconsin understood throughout the entire relevant time period that WAC is a list price for pharmaceutical products that does not include customary prompt-pay discounts or other discounts. Merck further states that Plaintiff is already in possession of documents from which

the answer to the 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. Merck also 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:

Merck further objects to Request for Production of Documents No. 8 on the grounds that it is overly broad and unduly burdensome. Merck objects to the extent the Request seeks information that is not within Merck's possession, custody, or control or that is publicly available or more readily available to Plaintiff. Merck incorporates by reference its response and objections to Interrogatory No. 8.

Subject to and without waiving its objections, Merck states that Plaintiff is already in possession of documents generally responsive to the Request. To the extent additional non-privileged Merck documents responsive to this Request are identified, they will be produced.

Dated: August 11, 2008

Respectfully submitted,

By: Michael P. Crooks

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Attorneys for Defendant Merck & Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 11th of August 2008, I caused a true and correct copy of the foregoing Responses and Objections of Defendant Merck & Co., Inc. to Plaintiff State of Wisconsin's Second 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