

STATE OF WISCONSIN,

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Plaintiff,

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Case No.: 04 CV 1709

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v.

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AMGEN INC., ET AL.,

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Defendants.

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**RESPONSES AND OBJECTIONS OF PHARMACIA CORPORATION  
TO PLAINTIFF'S SECOND CONSOLIDATED SET OF  
DISCOVERY REQUESTS TO ALL DEFENDANTS**

Pursuant to Wis. Stat. §§ 804.08, 804.09 and 804.11, defendant Pharmacia Corporation ("Pharmacia"), by its attorneys, objects and responds to Plaintiff State of Wisconsin's Second Set of Consolidated Discovery Requests to All Defendants (the "Requests") as follows:

**PRELIMINARY STATEMENT**

1. These responses and objections are made solely for the purposes of this action and no other purpose. Each response is made without in any way waiving or intending to waive: (i) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, information or documents produced in response to these Requests; (ii) the right to object on any ground to the use of the documents or information produced in response to the Requests at any hearings or at trial; or (iii) the right to object on any ground at any time for further responses to the Requests; (iv) its right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein; and (v) and to any and all other objections that may be applicable at a trial or other hearing or proceeding, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Pharmacia has not completed its investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the accompanying

document requests are based upon, and necessarily limited by, information now available to Pharmacia.

3. Pharmacia 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, are overly broad, unduly burdensome, ambiguous and vague.

4. Pharmacia objects to these Requests to the extent they call for the production of documents or information protected from disclosure under the attorney-client privilege, the work product doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. 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 Pharmacia'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 Pharmacia's counsel immediately upon discovery thereof.

5. Pharmacia objects to these Requests to the extent that they seek production of publicly available documents or information, or that which Plaintiff can obtain from other sources.

6. Pharmacia's responses to these Requests are submitted without prejudice to Pharmacia's right to produce evidence of any subsequently discovered fact. Pharmacia accordingly reserves its right to produce further responses and answers as additional facts are ascertained.

7. Pharmacia's responses to these Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

8. Pharmacia objects to these Requests to the extent that they seek to impose discovery obligations that are broader than, or inconsistent with, Pharmacia's obligations under the Wisconsin Rules of Civil Procedure.

9. Pharmacia objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in these Requests. Pharmacia'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 Pharmacia 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.

10. Pharmacia objects to each Request to the extent that it calls for the identification or production of documents or information not relevant to the issues in this action and is not reasonably calculated to lead to the discovery of admissible evidence.

11. Pharmacia objects to each Request to the extent that it calls for production of documents or information not within its possession, custody, or control or are more appropriately sought from third parties to whom Requests have been or may be directed.

12. Pharmacia objects to each Request to the extent that it calls for information that is confidential, proprietary, and/or a trade secret of a third party. Any such materials produced will be subject to the Protective Order entered in this action.

13. Pharmacia objects to each Request to the extent that it seeks disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

14. Pharmacia objects to the definition of "document" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those imposed by the applicable Wisconsin Rules of Civil Procedure. Pharmacia further objects to this definition to

the extent that it purports to require Pharmacia to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by Pharmacia as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

15. Pharmacia objects to the definition of “targeted drugs” to the extent that it (i) refers to information not relevant to Plaintiff’s claims, which are limited to Wisconsin, (ii) seeks information from beyond the time period from September 1, 1993 to June 4, 2004 (i.e., the time period relevant to this litigation); or (iii) includes drugs Pharmacia did not manufacture, produce or sell during that time period relevant in this litigation, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

16. Pharmacia objects to the definition of the terms “you,” “your,” and “your company” on the grounds that it is vague, ambiguous and overbroad. The responses herein are made on behalf of Pharmacia Corporation

17. Pharmacia objects to the time-period specified by the Requests to the extent it encompasses any time-period before September 1, 1993 or any time period after June 4, 2004, and does not fall within any of the exceptions (the document discovery time-period set by the Court).

18. Pharmacia objects to Plaintiff’s “Definitions” and “Instructions” to the extent Plaintiff intends to expand upon or alter Pharmacia’s obligations under the Wisconsin Rules of

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

19. Pharmacia expressly incorporates the above General Objections into each specific response to the Requests set forth below as if set forth in full therein. The response to a Request shall not operate as a waiver of any applicable specific or general objection to the Request.

**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:** Pharmacia ADMITS that at no time has it had any communications or discussions with the State of Wisconsin concerning the meaning or definition of average wholesale price (“AWP”).

**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:** See response to Request for Admission No. 7.

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

**RESPONSE:** See response to Interrogatory No. 7.

**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:** Pharmacia ADMITS that at no time has it had any communications or discussions with the State of Wisconsin concerning the meaning or definition of wholesale acquisition cost (“WAC”).

**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:** See response to Request for Admission No. 8.

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

**RESPONSE:** See response to Interrogatory No. 8.

Dated this 15<sup>th</sup> day of August, 2008.



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*Attorneys for Defendant Pharmacia  
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**CERTIFICATE OF SERVICE**

I, Beth J. Kushner, hereby certify that on this day of 15<sup>th</sup> day of August 2008, a true and correct copy of Responses and Objections of Pharmacia Corporation to Plaintiff's Second Consolidated Set of Discovery Requests to all Defendants was served on all counsel of record by Lexis Nexis File & Serve®.



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