

STATE OF WISCONSIN
CIRCUIT COURT Branch 7
DANE COUNTY

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STATE OF WISCONSIN, :
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 Plaintiff, :
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 v. : Case No.: 04-CV-1709
 : Unclassified Civil: 30703
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 AMGEN INC. :
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 Defendants. :
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**OBJECTIONS TO PLAINTIFF’S
NOTICE OF DEPOSITION OF SANDOZ INC.**

Defendant Sandoz Inc. (“Sandoz”), by its attorneys, hereby asserts its Objections to Plaintiff State of Wisconsin’s (“the State”) Notice of Deposition of Sandoz Inc., dated March 23, 2006 (the “Notice”).

GENERAL OBJECTIONS

The General Objections set out below apply to each topic of examination (the “Topics”) and to each of the five enumerated requests for the production of material at the time of deposition (the “Requests”).

By objecting and responding to the Notice, (or the Topics or Requests contained therein), Sandoz does not in any way waive or intend to waive (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any information, or documents or testimony that may be provided in response to the Notice; (b) any objections as to the vagueness, ambiguity, or other infirmity in the form of any Topic or Request; (c) any objections based on the undue burden imposed by any Topic or Request; (d) any objections to the use of information, documents, or testimony that might be provided in response

to the Notice at any hearings or at trial; (e) any objections to any further Notices involving or relating to the subject matter of the Notice; of (f) any privileges, rights, or immunity under the applicable Wisconsin Rules of Civil Procedure, statutes, or common law.

Further, each of the following General Objections shall have the same force and effect as if fully set forth as a Specific Objection to a Topic or Requests.

1. Sandoz objects that the Notice is premature cumulative, and duplicative to the extent it seeks information, data, documents, or testimony that Sandoz has already begun to search for and produce to the State in response to the State's First Set of Requests for Production of Documents To All Defendants (the "First Document Requests"), Written Discovery Request No. 3 (To All Defendants) (the "Third Document Requests"), or First Set of Interrogatories to All Defendants (the "First Interrogatories"), to which Sandoz currently is responding and to which the State has previously agreed to accept documents on a rolling basis. See Letter from Robert Libman, counsel for the State, to Paul Olszowka, counsel to Sandoz, dated November 9, 2005.

Accordingly, Sandoz objects to the Notice to the extent that Sandoz has not completed its investigation and that discovery relating to this action has not been completed. Any Objections set forth below are based upon, and necessarily limited to, information that has been ascertained thus far.

2. Sandoz also objects that the Notice is premature to the extent that the State has not yet amended its Complaint pursuant to the Court's Order dated April 3, 2006, which requires the State, among other things, to identify the drugs at issue. Absent an operative pleading meeting the requisite standard of specificity, Sandoz is unable to fully ascertain the extent to which the Notice seeks irrelevant information and does not contain the requisite particularity.

Sandoz therefore reserves its right to amend or supplement its objections to the Notice once the State complies with the Court's April 3 Order.

3. Sandoz objects that the Notice is unduly burdensome to the extent the Topics and Requests purport to seek information, data, documents, and related testimony since 1993 that is outside the statute of limitations applicable to the State's claims. The time period is also unduly burdensome to the extent that the State seeks to have Sandoz identify and prepare a deponent to testify about documents no longer in existence or ascertain the knowledge of employees no longer employed by the company.

4. Sandoz objects that the Topics are overbroad and do not "designate with reasonable particularity the matters on which examination is requested" as required by Wis. Stat. § 804.05(2)(3). Until the State files an amended pleading as required by the Court's April 3 Order, Sandoz hereby incorporates its General Objection No. 2 insofar as Sandoz cannot fully ascertain whether the Notice provides the reasonable particularity required by § 804.05(2)(3).

5. Sandoz objects to each Topic and Request to the extent it imposes or purports to impose discovery obligations greater than, or inconsistent with, Sandoz' obligations under the Wisconsin Rules of Civil Procedure, statutes, or common law, and to the extent that the State seeks discovery beyond that permitted by such rules and law.

6. Sandoz objects to each Topic and Request to the extent it seeks information or documents protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or protection against disclosure.

In particular, Sandoz objects to the Notice to the extent it seeks in multiple Topics and Requests "evidence or information . . . which shows, or which Sandoz believes may tend to show" various conclusions on the grounds that such Topics and Requests seek discovery of the

mental impressions of Sandoz counsel and/or confidential communications subject to work product and attorney client privileges.

7. Sandoz objects to each Topic and Request to the extent it seeks the production of proprietary or commercially-sensitive information, including but not limited to, personal financial information, confidential and/or proprietary research, procedures and processes relating to the pricing of pharmaceuticals, current and past marketing plans and methods, and current and past business planning and financial information. Sandoz' production of any document, testimony, or information pursuant to this Notice shall not be construed as a waiver of the confidentiality of any such document or information and shall be subject to the Protective Order, as amended by the Court's order of November 29, 2005.

8. Sandoz objects to each Topic and Request to the extent it requires Sandoz to disclose information or produce documents outside of Sandoz' possession, custody, or control and/or no longer in existence and to seek information or knowledge from persons no longer employed or associated with Sandoz.

9. Sandoz objects to each Topic and Request to the extent it seeks information or documents already in the State's possession, custody, or control or in the possession, custody, or control of any of the State's officers, employees, agents, agencies, or departments. Sandoz further objects to each Topic and Request to the extent it requires Sandoz to search for information publicly available or to search for information or documents for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State or any of its officers, employees, agents, agencies, or departments as it is for Sandoz.

10. Sandoz objects to each Topic and Request to the extent that it is cumulative or duplicative of the State's First Document Requests, Third Document Requests, or First

Interrogatories. Each written response, data, and/or document produced in response to the State's prior discovery requests is deemed to have been produced in response to each Request contained in the Notice and every other of the State's discovery requests.

Sandoz further objects to each Topic and Request as unduly burdensome and designed to annoy and harass Sandoz to the extent that such Topic or Request purports to require Sandoz to repeat reviews and production of documents already undertaken in connection with the State's previous discovery requests.

11. Sandoz objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues depicted in the Notice. Sandoz' testimony or production of documents, data, or information in connection with a particular Request is not intended to indicate that Sandoz agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues depicted in the Notice, or that such implications or characterizations are relevant to this action.

12. Sandoz objects to each Topic and Request as vague, overbroad and unduly burdensome to the extent it seeks the provision or production of "any" or "all" "evidence" or "information" on a subject matter. Sandoz further objects to such Topics and Requests to the extent that they purport to seek information, documents, or testimony that is attorney work product or subject to the attorney client or any other applicable privilege.

13. Sandoz objects to the drugs listed in Exhibit A to the Notice as overbroad and vague and ambiguous to the extent that it purports to require Sandoz to provide information or testimony regarding drugs inconsistent with the identified in the exhibit to the State's letter of May 20, 2005. See Letter from Robert Libman, counsel for the State, to Paul Olszowka, counsel to Sandoz, dated May 20, 2005. Sandoz further objects that Exhibit A to the Notice is unduly

burdensome to the extent that the State's listing of the chemical names of drugs, without providing Sandoz-specific NDC codes, imposes on Sandoz a burden to identify which Sandoz products may be at issue.

SPECIFIC OBJECTIONS TO INSTRUCTIONS

1. Sandoz objects to the State's Instruction that Sandoz produce a deponent to appear at the office of the Attorney General of the State of Wisconsin in Madison, Wisconsin on the grounds that the Instruction purports to impose on Sandoz an obligation not required by, or inconsistent with, the Wisconsin Rules of Civil Procedure and Wisconsin law. Any deponent that Sandoz may designate in response to the Notice will be made available at Sandoz' principal place of business or a mutually agreed-upon location.

2. Sandoz objects to the State's Instruction that any deponent Sandoz may identify bring all responsive "evidence and information" to the deposition on the grounds that the Instruction is unduly burdensome to the extent it purports to require Sandoz to make available duplicate copies of documents or material already in the State's possession.

3. Sandoz further objects to the Instruction that any deponent Sandoz may identify bring documents to the deposition on the ground that the Instruction seeks to circumvent the State's agreement with Sandoz as to the timing of production of documents responsive to the State's prior discovery requests and seeks to unfairly accelerate Sandoz' production of documents.

SPECIFIC OBJECTIONS TO TOPICS

Topic No. 1:

The evidence or information, if any, about which it is aware, which shows that any of the drugs listed on Exhibit A to this notice of deposition ("targeted drugs") were purchased by retail pharmacies at a price equal to or greater than the current Average Wholesale Price

(“AWP”) published by either First DataBank or the Red Book in any year from 1993 to the present.

Objections to Topic No. 1:

In addition to the foregoing General Objections, Sandoz objects to Topic No. 1 on the grounds that the terms “aware,” “shows,” and “retail pharmacies,” are overly broad, vague and ambiguous, and unduly burdensome. As one example, this deposition topic may be reasonably construed to request Sandoz to identify and prepare a deponent capable of providing testimony as to prices Sandoz has charged undefined entities, for fifty-two drugs (and hundreds of formulations and NDCs) over a period of thirteen years.

Sandoz also objects that Topic No. 1 is overbroad and unduly burdensome to the extent it seeks information about transactions between Sandoz and non-party intermediaries over which Sandoz has no control. To illustrate, the Topic may be reasonably construed to seek information about transactions between Sandoz and pharmaceutical wholesalers that purchased Sandoz products for subsequent resale to Medicaid providers at terms wholly unknown to Sandoz.

Sandoz further objects that this Topic is unduly burdensome and designed to harass and annoy Sandoz to the extent the State purports to impose upon Sandoz the burden of identifying and preparing a deponent capable of interpreting Sandoz’ pricing data in a manner that “shows” the conclusion sought by the State.

Further, Sandoz objects that this Topic seeks information neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence to the extent the topic seeks information as to prices paid by “retail pharmacies” outside the State of Wisconsin.

Sandoz also objects to this Topic to the extent it seeks information duplicative of that Sandoz may produce in response to Request No. 1 of the State’s First Document Requests.

Topic No. 2:

The evidence or information, if any, about which it is aware, which shows, or which Sandoz believes may tend to show, that the published AWP was higher than the price pharmacies were actually paying for any of the targeted drugs in the year 1993 to the present.

Objections to Topic No. 2:

In addition to the foregoing General Objections, Sandoz objects to Topic No. 2 on the grounds that the phrases “aware,” “published AWP,” “tend to show,” and “pharmacies” are overly broad and vague and ambiguous. For example, while Topic No. 1 seeks information regarding “current AWP,” Topic No. 2 seeks information regarding unspecified “published AWP.”

As an illustration of both the overbroad and burdensome nature of this Topic, it may be reasonably construed to require Sandoz to interpret the differences between the “retail pharmacies” referred to in Topic No. 1 and the “pharmacies” referred to in Topic No. 2; then conduct an investigation of each of its customers to determine the nature of its business operations and whether such customer qualifies as a “pharmacy” or “retail pharmacy”; then identify the multiple thousands of transactions involving targeted drugs since 1993; and, then identify and prepare a deponent to testify about such transactions.

In addition, Sandoz also incorporates by reference its foregoing specific objections to Topic No. 1.

Topic No. 3:

What contacts Sandoz, or its subsidiaries, have had with First DataBank or the Red Book about any of the targeted drugs.

Objections to Topic No. 3:

In addition to the foregoing General Objections, Sandoz objects to Topic No. 3 on the grounds that it is overly broad and vague and ambiguous. For example, this Topic purports to

require Sandoz to identify any employee who has had “contact” with staff at First DataBank or the Red Book since 1993, including former employees; locate such employees who have had such “contacts”; ascertain the substance and purpose of such “contacts”; and then prepare a deponent to testify concerning such “contacts,” regardless of their subject matter or relevance.

Sandoz also objects that this Topic seeks testimony or information regarding unidentified Sandoz subsidiaries, which are not parties to this action and are not subject to the jurisdiction of this court.

Topic No. 4:

Whether Sandoz, or any of its subsidiaries, ever communicated to First Databank or the Red Book that the published Average Wholesale Price was neither a price that was actually an average of wholesale prices, not a price that was actually paid by the retail classes of trade and, if so, when such communications took place and of what they consisted.

Objections to Topic No. 4:

In addition to the foregoing General Objections, Sandoz objects to Topic No. 4 on the grounds that the phrases “actually paid,” and “retail classes of trade,” are overly broad and vague and ambiguous. To illustrate, the State appears to have distinguished “contacts” with First DataBank and the RedBook (Topic No. 3) and “communications” (Topic No. 4) with the same entities. The Notice, however, provides no guidance as to what these terms mean and, consequently, improperly imposes a undue burden on Sandoz to interpret the Topics.

In addition, Sandoz also incorporates by reference its foregoing specific objections to Topic No. 3.

Topic No. 5:

The Average Manufacturer’s Price (“AMP”) reported to the federal government of each targeted drug from 1993 to the present.

Objections to Topic No. 5:

In addition to the foregoing General Objections, Sandoz objects that Topic No. 5 is designed to harass and annoy Sandoz and unreasonably cumulative or duplicative to the extent it seeks AMP data which Sandoz produced to the State in response to Request No. 2 of the State's First Document Requests.

Sandoz further objects that this Topic is overly broad and vague and ambiguous to the extent the State seeks any other information regarding Sandoz' AMPs as such an inquiry is not readily apparent from this Topic as drafted.

Topic No. 6:

Any evidence which shows that the actual average wholesale price at which any of the targeted drugs sold in any given year was greater than the reported AMP.

Objections to Topic No. 6:

In addition to the foregoing General Objections, Sandoz objects to Topic No. 6 on the grounds that the phrases "actual average wholesale price" and "shows" are overly broad and vague and ambiguous. Sandoz further that Topic No. 6 is unduly burdensome and designed to harass and annoy Sandoz to the extent the State purports to impose upon Sandoz the burden of interpreting Sandoz' data and preparing a deponent to testify about what such data "shows" concerning the conclusion sought by the State.

Sandoz also objects that this Topic is cumulative or duplicative of Topics Nos. 1 and 2 to the extent it may be reasonably construed to seek information as to the prices Sandoz' customers have paid. Sandoz also incorporates by reference its foregoing specific objections to Topics Nos. 1 and 2.

SPECIFIC OBJECTIONS TO REQUESTS

Request No. 1:

All evidence or information showing that any of the targeted drugs was sold at a price equal to or greater than the published AWP from 1993 to present.

Objections to Request No. 1:

In addition to the foregoing General Objections, Sandoz objects to Request No. 1 on the grounds that the phrases “showing,” and “at a price” are overly broad and vague and ambiguous. Sandoz further objects to this Request to the extent that it is cumulative or duplicative of Request No. 1 of the State’s First Document Requests for Production of Documents.

Request No. 2:

For the same period all evidence or information showing that actual average wholesale prices of Sandoz’ drugs were less than the published AWP.

Objections to Request No. 2:

In addition to the foregoing General Objections, Sandoz objects to Request No. 3 on the grounds that it is overly broad and vague and ambiguous, particularly as to the term “actual average wholesale prices.” Sandoz further objects to this Request to the extent that it is cumulative or duplicative of Request No. 1 of the State’s First Document Requests for Production of Documents.

Request No. 3:

For the same time period any evidence of communications between Sandoz and First DataBank and/or the Red Book about or concerning any of the targeted drugs.

Objections to Request No. 3:

In addition to the foregoing General Objections, Sandoz objects to Request No. 3 on the grounds that it requires Sandoz to disclose information and produce documents outside of Sandoz’ possession, custody, or control or to provide or seek information and produce

documents regarding non parties. Sandoz also objects to Request No. 3 to the extent it seeks prices published by First Data Book or Red Book on the grounds that the Request purports to require Sandoz to disclose information or produce documents which are available in the public domain, or for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State as or its officers, employees, agents, agencies or departments as it is for Sandoz.

Sandoz further objects that Request No. 3 is unduly burdensome, cumulative or duplicative, and designed to harass and annoy Sandoz to the extent that Sandoz has already produced documents sent to or received from First DataBank, Redbook and Medi-span in response to Request No. 5 of the State's First Document Requests.

Request No. 4:

For the same time period the reported AMPs of each targeted drug.

Objections to Request No. 4:

In addition to the foregoing General Objections, Sandoz objects to Request No. 4 on the grounds that it is overly broad and vague and ambiguous, particularly as to the term "reported."

Sandoz further objects that Request No. 4 is unduly burdensome, cumulative or duplicative, and designed to harass and annoy Sandoz to the extent that Sandoz has already produced the requested information in response to Request No. 2 of the State's First Document Requests.

Request No. 5:

For the same time period any evidence Sandoz has showing that the actual average wholesale price of any of the targeted drugs was greater than the reported AMP.

Objections to Request No. 5:

In addition to the foregoing General Objections, Sandoz objects to Request No. 5 on the grounds that it is overly broad and vague and ambiguous, particularly as to the term “any evidence,” “Sandoz has,” and “showing,” and “actual average wholesale price.” Sandoz also objects that this Request is unduly burdensome to the extent that it is cumulative or duplicative of information produced in response to Request No. 2 of the State’s First Document Requests.

Dated: New York, New York
April 14, 2006

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