

Merck will do so only subject to and in reliance on the Protective Order entered by the Court on November 29, 2005.

**RESPONSES AND OBJECTIONS TO SPECIFIC
DEPOSITION NOTICE TOPICS**

1. Any information possessed by the defendant showing, or tending to show, that the published AWP of any of defendant's targeted drugs was generally higher than the actual, net wholesale price regularly charged retail pharmacies for any of these drugs in any year from 1993 to the present.

RESPONSE

Merck further objects that in using the terms "Any information . . .tending to show" the topic is vague, unreasonably overbroad, unduly burdensome, and would require Merck to speculate. Merck also objects that the phrase "actual, net wholesale price regularly charged retail pharmacies" is vague and ambiguous. Merck also objects to the Request to the extent it seeks information on the wholesale prices paid by retail pharmacies on the ground that such information is outside Merck's possession, custody, or control and that such information for the Targeted Merck Drugs reimbursed by Wisconsin Medicaid is more readily available to Plaintiff than to Merck.

Subject to and without waiving its objections, Merck will provide testimony on the information generally available to Merck regarding wholesale prices to retail pharmacies.

2. Any information showing that any of defendant's targeted drugs were regularly purchased by retail pharmacies at a price equal to or greater than the published AWP at any time from 1993 to the present.

RESPONSE

See objections and response to Topic 1.

3. The reason why defendant reported AWP's to medical compendiums that were higher than the price retail pharmacies were regularly paying for defendant's drugs, if it did so.

RESPONSE

Merck further objects that the term "medical compendiums" is vague and ambiguous. Merck objects that the topic assumes facts not in evidence and misstates facts in asserting that Merck "reported AWP's to medical compendiums." Merck further objects that the topic requires Merck to speculate in seeking "the price retail pharmacies were regularly paying" Merck's drugs. Merck further objects that information on prices paid by retail pharmacies is equally or more available to Plaintiff.

Subject to and without waiving these objections Merck will provide a witness to testify regarding Merck's communications with First Data Bank and Red Book regarding the prices of the Merck Targeted Drugs.

4. What contacts Merck & Company, Inc., or its subsidiaries, have had with First Data Bank or the Red Book about any of the targeted drug.

RESPONSE

Merck further objects that the reference to "subsidiaries" is vague, burdensome and overbroad. Merck also objects that "contacts" "about pricing of targeted drugs" is overbroad, unduly burdensome and not relevant.

Subject to and without waiving their objections, Merck will provide a witness to testify regarding communications between Merck and First Data Bank or Red Book concerning the prices of Merck Targeted Drugs.

5. Whether Merck & Company, Inc., or any of its subsidiaries, ever communicated to either First Data Bank or the Red Book that the published Average Wholesale Prices of the

drugs did not accurately reflect the prices being paid by the retail classes of trade and, if so, when such communications took place and of what they consisted

RESPONSE

Merck further objects that the reference to “any of its subsidiaries” is vague, overbroad and improper. Merck also objects that the phrase “retail classes of trade” is vague and ambiguous.

Subject to and without waiving its objections, Merck will provide a witness to testify regarding the communications between Merck and First Data Bank or Red Book concerning the pricing of Merck Targeted Drugs.

6. What action, if any, defendants took to keep any AWP from being published in a medical compendium including but not limited to refusing to confirm any AWP for any medical compendium, and the reasons it took such actions.

RESPONSE

Merck further objects that the term “medical compendium” is vague and ambiguous.

Subject to and without waiving its objections, Merck will provide a witness to testify regarding the communications between Merck and First Data Bank or Red Book concerning the pricing of Merck Targeted Drugs.

RESPONSES AND OBJECTIONS TO SPECIFIC DOCUMENT REQUESTS

1. All documents in defendant’s possession tending to show that the published AWP of any of defendant’s drugs was generally higher than the actual, net wholesale price regularly paid by retail pharmacies for those drugs at any time from 1993 to the present;

RESPONSE:

Merck further objects that the Request for “All documents . . .tending to show” is vague, unreasonably overbroad, unduly burdensome, and would require Merck to speculate. Merck also objects that the phrase “actual, net wholesale prices regularly paid by retail pharmacies” is vague and ambiguous. Merck also objects to the Request to the extent it seeks information on the wholesale prices paid by retail pharmacies on the ground that such information is outside Merck’s possession, custody, or control and that such information for the Targeted Merck Drugs reimbursed by Wisconsin Medicaid is more readily available to Plaintiff than to Merck.

2. For the same period of time, all documents showing that any of the targeted drugs were generally sold to retail pharmacies at a price equal to or greater than the published AWP;

RESPONSE:

Merck further objects that the Request for “all” documents is unreasonably overbroad and unduly burdensome, and not relevant. Merck also objects to the Request to the extent it seeks information on policy and practice of wholesalers on the ground that such information is outside Merck’s possession, custody, or control. Merck also objects that information concerning the prices paid by retail pharmacies in Wisconsin for the Targeted Merck Drugs reimbursed by Wisconsin Medicaid is more readily available to Plaintiff than to Merck. Merck objects to the time frame and will limit its response to the time periods set forth in its General Objections.

Subject to and without waiving these objections, Merck will produce responsive, non-privileged documents sufficient to show the types of information generally available to it concerning the price at which Merck Targeted Drugs were generally sold to retail pharmacies.

3. For the same period of time, any documents evidencing communications between defendant and First Data Bank or The Red Book about or concerning the targeted drugs;

RESPONSE:

Merck further objects that the Request for “any documents evidencing communications” is unreasonably overbroad and unduly burdensome. Merck also objects that the Request for communications “about or concerning the targeted drugs” is overbroad and not relevant to the extent it is directed to matters other than pricing for Targeted Merck Drugs. Merck objects to the time frame and will limit its response to the time periods set forth in its General Objections.

Subject to and without waiving these objections, Merck will produce its responsive, non-privileged communications with Red Book and First Data Bank concerning the prices of the Targeted Merck Drugs.

4. For the same period any documents which defendant believes tend to show: a) why defendant reported AWP to medical compendiums that were higher than the price retail pharmacies were regularly paying for defendant’s drugs, if it did so, and b) any actions defendant took to keep any AWP from being published in a medical compendium.

RESPONSE:

Merck also objects to the Request on the grounds that the phrase “medical compendiums” is vague and ambiguous. That the phrase “tending to show” is vague, unreasonably overbroad, unduly burdensome, and would require Merck to speculate. Merck further objects that the Request for “any document,” and regarding “any actions” is overbroad and unduly burdensome. Merck objects to the time frame and will limit its response to the time periods set forth in its General Objections.

Subject to and without waiving these objections, Merck will review the files of the offices and individuals with responsibility for pricing communications with First Data Bank and Red Book for responsive, non-privileged documents, if any.

Dated: July 10, 2006

By:


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