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State of Wisconsin,

Plaintiff,

v.

Case No. 04 CV 1709

AMGEN INC., et al.,

Defendants.

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PLAINTIFF'S RESPONSE TO DEFENDANTS'  
NOTICE OF SECTION 804.05(2)(e) DEPOSITION

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The defendants<sup>1</sup> have submitted to the Plaintiff a "Notice Of Section 804.05(2)(e) Deposition To The State of Wisconsin." Section 804.05(2)(e) allows parties to submit a notice of deposition to the other party naming "a governmental agency" as long as the party is willing or able to "designate with reasonable particularity the matters on which examination is requested."

The defendants now advise the Plaintiff that they desire to depose a designated person with respect to areas 5 and 11.

**Now Therefore**, the Plaintiff responds to defendants' notice of Sec. 804.05(2)(e) deposition areas of inquiry 5 and 11 as follows:

**GENERAL OBJECTIONS**

1. The Plaintiff OBJECTS to this Notice on the ground that it is not directed at an agency of the State of Wisconsin and is therefore broader than what is allowed by statute. Nonetheless, the plaintiff will assume that the Notice is directed at the Department of Health and Family Services, the agency that operates the State's Medical Assistance Program.

2. The Plaintiff OBJECTS to this Notice on the ground that it purports to demand that the plaintiff designate "one or more officers, officials, employees, or other representatives to testify on their [sic] behalf who are **most knowledgeable** about and will testify as to matters known or reasonably available to Plaintiff ... ." (Emphasis

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<sup>1</sup> All defendants except Boehringer, Roxane, and Ben Venue.

added). Section 804.05(2)(e) only requires a party to designate “one or more officers, directors, or managing agents, or other person who consent to testify on its behalf” and that these persons “shall testify as to matters known or reasonably available to the organization.”

3. The Plaintiff OBJECTS to portions of this Notice on the ground that some of the matters described do nothing more than demand the plaintiff identify an individual to testify to matters contained within documents maintained by the plaintiff. As such, pursuant to Wis. Stat. § 804.05(d), the plaintiff elects to use the procedure set forth in Sec. 804.09 where the “area of inquiry” is nothing more than a demand for production of documents.

4. The Plaintiff OBJECTS to portions of this Notice on the ground that it demands that the Plaintiff produce for testimony persons retained by the Plaintiff as a consultant and as such is beyond the scope of discovery, at this time, pursuant to Wis. Stat. § 804.01(d)2.

5. The Plaintiff OBJECTS to discovery purporting to discover “plaintiff’s knowledge” on the grounds, that it is not possible to discern the “knowledge” of the State, that demands in this regard are over burdensome, seek irrelevant information, and that it is not likely to lead to the discovery of relevant and admissible evidence

6. The Plaintiff OBJECTS to portions of this Notice to the extent it seeks information prior to January 1, 1993, which corresponds to the period of time the Plaintiff alleges is at issue in this case on the ground that because it is outside the scope of this lawsuit, and because of logistical difficulties retrieving information or knowledge back beyond that period of time it is overbroad and unduly burdensome.

7. Lastly, the Plaintiff incorporates by reference its general objections set forth in its response to “Defendants’ Second Set of Interrogatories” and “Defendants’ Second Request For Production of Documents” where applicable.

#### **AREAS OF INQUIRY – FIVE AND ELEVEN ONLY**

5. The manner in which reimbursement for both pharmacy-dispensed and physician-administered drugs is administered in the State of Wisconsin, including, but not limited to:

a. The manner in which claims for reimbursement of pharmacy-dispensed and physician-administered drugs are submitted and verified;

**DESIGNATED KNOWLEDGEABLE PERSON:** The Plaintiff OBJECTS to this request on the ground that the term “verified” is ambiguous. Notwithstanding this objection, the plaintiff designates Ms. Kimberly Smithers as a person knowledgeable about the process in which claims for reimbursement are submitted and paid by the Department of Health and Family Services in the state Medicaid Program.

b. Plaintiffs present and past method of calculation of reimbursement for pharmacy-dispensed and physician-administered drugs under Wisconsin's Medicaid Program;

**DESIGNATED KNOWLEDGEABLE PERSON:** Plaintiff furthermore OBJECTS to the terms "method of calculation of reimbursement" on the ground that it is vague and ambiguous. Notwithstanding this objection Mr. James Vavra is knowledgeable about the Medicaid claims process (but not the method the defendants employ to set the average wholesale price or some other reported price).

c. Plaintiff's negotiation, authoring, or execution of any contract or memorandum of understanding or agreement, or contribution to any contract or memorandum of understanding or agreement, between Plaintiff and any Provider relating to AWP's or the reimbursement for both pharmacy-dispensed and physician-administered drugs;

**DESIGNATED KNOWLEDGEABLE PERSON:** The Plaintiff OBJECTS to this request on the ground that as stated the request is vague and ambiguous. For example, the DHFS does not "negotiate" with providers over the Provider Agreement. Notwithstanding this objection, the Plaintiff designates Mr. Alan White as a person generally knowledgeable about Provider Agreements for services to the State Medicaid Program.

d. Plaintiffs establishment, consideration, determination, calculation, or setting of the dispensing fees or fees for other professional services payable in connection with the supply or administration of pharmacy-dispensed and physician-administered drugs; and

**DESIGNATED KNOWLEDGEABLE PERSON:** The Plaintiff OBJECTS to this request on the ground that as stated the request is vague and ambiguous. Notwithstanding this objection, the Plaintiff designates Mr. James Vavra as a person generally knowledgeable about dispensing fees paid to providers as part of the Wisconsin Medicaid Program.

e. Plaintiff's understanding of the meaning of MAC, WAC, AMP, EAC, Direct Price, Best Price, or other prices, costs, reimbursement rates, or other benchmark or metric for any Subject Drug, including pharmacy-dispensed and physician-administered drugs.

**DESIGNATED KNOWLEDGEABLE PERSON:** The Plaintiff OBJECTS to this request on the following grounds: First, Plaintiff OBJECTS on the ground that the terms "other benchmark or metric" are vague and ambiguous. Second, Plaintiff OBJECTS on the ground, that although the terms themselves are not ambiguous, it is not clear what the defendants are asking by seeking plaintiff's understanding of the meaning of "other prices" and "costs". Third, Plaintiff OBJECTS to the request on the ground that the remaining legal terms were either set by the Wisconsin Legislature or the United States Congress, or some other federal agency, and any "understanding" would only be derived by applying principles of statutory construction.

11. Plaintiff's retention and destruction policies and its compliance with those policies.

**DESIGNATED KNOWLEDGEABLE PERSON:** The Plaintiff OBJECTS to this request on the ground that as stated the request is overbroad and therefore unduly burdensome. Each Department, even each Division within that Department, has its own record destruction guidelines depending upon the type of document. There is no one person knowledgeable about all the record retention and destruction policies applicable statewide.

Dated this 18<sup>th</sup> day of June, 2007.



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