

<p>STATE OF WISCONSIN,</p> <p>PLAINTIFF</p> <p>VS.</p> <p>AMGEN, INC., <i>ET AL</i>,</p> <p>DEFENDANTS</p>	<p><u>DECISION & REPORT</u> <u>OF DISCOVERY MASTER:</u></p> <p><u>PLAINTIFF'S MOTION TO COMPEL</u> <u>[ASTRAZENECA DEFENDANTS]</u></p> <p><u>JANUARY 31, 2006</u></p> <p>###</p> <p>CASE No. 04 CV 1709 UNCLASSIFIED-CIVIL: 3003</p>
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William P. Dixon, Special Assistant Attorney General, and Cynthia R. Hirsch, Assistant Attorney General, for the Plaintiff (Oral Argument by Mr.. Dixon).

Attys. Brian E. Butler and Barbara A. Neider, for Defendant AstraZeneca Pharmaceuticals LP (Oral Argument by Mr. Butler).

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INTRODUCTION & SUMMARY OF DECISION

This is an action by the State of Wisconsin against several pharmaceutical manufacturers, based on allegations that Defendants have violated Wisconsin antitrust and other laws. Specifically, the State alleges that Defendants have reported artificially inflated wholesale drug prices to pharmaceutical compendiums, while “hiding” the true prices, with the result that purchasers, such as the State of Wisconsin (whose Medicaid reimbursement formula for prescription drugs is based on those published prices), have suffered serious financial loss.

Motions to dismiss many of the State’s claims are pending.¹

By order of the court dated June 23, 2005, I was appointed Special Master with authority, *inter alia*, to “decide discovery disputes ... within the scope of Wis. Stat. §§ 804.01(3) and (4), and §§ 804.12(1), (2)(b), and (4).”

After serving and filling a series of Interrogatories and document requests, and receiving (or at least being offered) a multitude of documents in response, the State has moved to compel Defendant AstraZeneca Pharmaceuticals (hereafter AZ) to specifically respond to the Interrogatories and requests.

For the reasons stated below, I consider that at least some of the materials offered by AZ constitute an adequate response to several of the State’s discovery requests; and I therefore deny the State’s motion with respect to Interrogatories Nos. 1, 2, 3 and 4, and documents requests Nos. 1, 3, 4 and 6; and I grant the motion with respect to Interrogatory No. 5 and document requests Nos. 2, and 5—but only with respect to the 15 drugs identified by AZ.

BACKGROUND & PRELIMINARY CONSIDERATIONS

A. The State’s Requests

As indicated, the State contends that AZ (and the other defendants) report average wholesale prices (AWPs) for their products to various pharmaceutical compendiums, which prices, it claims, are grossly inflated; and it says that the purpose of such overstatements is to create a “spread” between the true wholesale price of a particular drug and the “false and inflated” AWPs—thus increasing the incentive for health-care

¹ At several points in its briefs, the State characterizes AZ’s position as one barring all discovery while the motion is pending. There was, as the parties indicate, a stay of discovery for a period of time, but that stay has expired and has not been renewed. Additionally, the court has appointed a Special Master, empowered to hear and decide discovery disputes—all while the motions are pending. While I believe the presence of the motions can have a bearing on the reasonableness of the various discovery requests, I do not consider their pendency to bar any and all discovery.

providers to choose those drugs for their patients. And, says the State, the bigger the spread, the greater the profit to the manufacturer—and the greater the losses incurred by the State. As indicated, this practice is claimed to violate state antitrust and other laws.

The State sought discovery with respect to a wide spectrum of drugs and, after disputes arose, the Trial Court urged counsel to limit number of drugs for which information was sought. The state eventually reduced the number to a list of 32 “targeted” AZ drugs²

The State filed an initial set of five Interrogatories and six sets of document requests seeking a variety of information relating to the sale and marketing of the targeted drugs. The interrogatories ask:

[1] [Has AZ] ever determined an average sales price ... net of all incentives for a Target Drug...? If so... identify:

- [a] the ... dates of each period applicable to each such determination;
- [b] the applicable class(es) of trade for ... each determination;
- [c] each average sales price ... determined;
- [d] the person(s) most knowledgeable with respect to the determinations;
- [e] the methodology used to determine such prices;
- [e] your purpose(s) in making such determinations;
- [g] whether you disclosed any average sales price ... to any publisher, customer or governmental entity [if so, identify them and provide dates];
- [h] whether any such average sales price ... was treated as confidential.

[2] Identify each electronic database ... which contains a price for a targeted drug. For each ... identify, describe or produce the following:

- [a] the name or title of each such database...;
- [b] the software necessary to access and utilize such data entities;

² The State says these “targeted” drugs are those in which Wisconsin had made reimbursements to providers in excess of \$100,000.

- [c] describe the structure of each database ... and identify all files or tables in each... For each such file ... identify all fields and for each describe its contents, format and location within each file or table, record or row;
- [d] the current or former employee(s) with the most knowledge of the cooperation or use of each data entity...; and
- [e] the custodian(s) of such data entity.

[3] Describe each type of incentive you have offered in conjunction with the purchase of any targeted drug. For each incentive, identify:

- [a] the type(s) of incentive(s) offered ...
- [b] the class(es) of trade eligible for each incentive;
- [c] the general terms ... of each incentive; and
- [d] the ... dates of each period during which the incentive was offered.

[4] Describe in detail how you determined each price [for] each targeted drug for each year ... and identify the person(s) most knowledgeable in making such determinations for each Drug for each year.

[5] [Has AZ] ever included in [its] marketing of a targeted drug ... reference to the difference (or spread) between [any published] AWP or WAC ... and the list price or actual price (to any customer) of any targeted drug? If so, provide the following information for each drug:

- [a] the drug name and NDC;
- [b] the ... dates during which such marketing occurred;
- [c] the name address and telephone number of each customer to whom you marketed a targeted drug in whole or in part by making a reference to such difference(s) or spread(s); and
- [d] identify any document published or provided to a customer which referred to such difference(s) or spread(s).³

The document requests were as follows⁴:

³ Both the Interrogatories and the document requests contained extensive definitions of the various terms used.

⁴ The Request specified that the documents were to be produced in a specific “electronic format” together with all appropriate documentation and explanations.

Request No. 1. All national sales data for each targeted drug during the defined period of time;⁵

Request No. 2. All documents containing AMPs as reported or calculated by you for the targeted drugs ...

Request No. 3. All documents ... in your possession that discuss or comment on the difference (or spread) between any Average Wholesale Price or Wholesale Acquisition Cost and the list or actual sales price ... of any [AZ] pharmaceuticals or any ... sold by other manufacturers. Documents which merely list the AWP or WAC price and the list or actual sales price without further calculation of the difference, or without other comment or discussion of or about the spread between such prices are not sought by this request.

Request No. 4. All documents containing an average sales price ... in response to [Interrogatory No. 1].

Request No. 5. All documents sent to or received from First Data Bank, RedBook and Medispan regarding the price of any targeted drug.

Request No. 6. All documents in your possession prepared by IMS Health regarding a targeted drug or the competitor of a targeted drug regarding pricing, sales or market share.

B. AstraZeneca's Response

AZ objected to the State's requests on several grounds, including overbreadth, competency, relevancy, materiality, privilege and/or admissibility. AZ also objected to virtually all of the term definitions provided by the State.

Other than that, AZ offered to voluntarily produce a series of records and documents. Specifically, AZ offered the following material:

⁵ Again, the applicable period of time is "from January, 1993 to the present (and the requests include "[d]ocuments relating to such period even though created before that period").

- Transactional sales and rebate data for 15 of the targeted drugs. It says this data “amounts to 17 million transactional records and reflects all discounts and rebates and their timing.” It also offered to provide the State with access to one of its “data experts” to assist in culling the required information.
- 440,000 pages of text-searchable documents regarding Zoladex (the one AZ drug the company says is referenced in the State’s complaint) that was previously produced in Multi-District Litigation involving AZ and other drug manufacturers. AZ says this includes documents relating to the pricing, sale and marketing of Zoladex, as well as notes regarding customer contact, discounts, and other information.
- 31,000 pages of text-searchable documents (also produced in the Multi-District Litigation) from AZ’s “Pricing Strategy Group” relating to the same 15 drugs. According to AZ, the group is “responsible for pricing strategy, pricing recommendations and communications with pricing publishers for all AZ products.”

The State rejected the offer out of hand, claiming, among other things, that it was no more than a “document dump,” and thus should not in any way be considered compliance with its discovery requests. AZ says that much of the information sought by the State—at least for the 15 drugs—may be found in many of these documents; and it emphasizes that not only are the documents text-searchable, but it has offered the assistance of its own computer and data experts to assist in culling information the State deems relevant. As will be discussed in more detail below, while I consider AZ’s response to be inadequate in several respects, I do not reject it entirely, for I conclude that portions of it constitute a reasonable response to one or more of the State’s interrogatories and/or document requests.

DISCUSSION

There are two prefatory matters. First, a significant component of AZ’s overbreadth argument is its assertion that the State’s Complaint refers to only one AZ drug: Zoladex; yet the discovery requests seek documents and information on 32 drugs—which AZ says comprises the bulk of its United States product line. Thus, says AZ, the

requests “call for information regarding the vast majority of its current product portfolio without providing any underlying, particularized allegations to substantiate such [a] demand.” [Brief, at 8] To the extent AZ suggests that the fact that Zoladex was the only one of its drugs specifically cited in the Complaint should limit the State’s discovery to that one drug, I disagree. As the State points out, the Complaint alleges that the several defendants have engaged in an illegal course of conduct with respect to the marketing of all (or nearly all) of their products;⁶ and, given the nature and purpose of pleadings under applicable Wisconsin procedural rules, I do not believe that placing such a limitation on the State’s discovery rights in this case is warranted.

Second, The State argues that AZ’s objections are untimely. Noting that the discovery requests were issued on January 27, 2005, and that AZ did not respond until July 15, 2005, it says that, under the cases, AZ’s objections have been waived.⁷ As AZ points out, however, the Trial Court had stayed all discover “until May 11, 2005, or until further order of the Court.” And while the Court did not extend or otherwise rule on whether the stay survived after that date, it did encourage the parties to make some progress on discovery, and the record indicates that counsel for both sides were engaged in discussions regarding the scope of discovery (discussions which, as AZ notes, and as the Special Master is aware from his own experience as a circuit court judge, are matters of course in large-scale lawsuits), and that, on June 30, 2005, AZ notified the State that it was planning to file its response by July 15th. [Exhibits 6, 16, 17, 18, and 19 to AZ’s brief] Under these facts, I do not consider AZ to have waived its objections to the State’s discovery requests.⁸

⁶ See, for example, State’s First Amended Complaint, at ¶¶ 34, 37.

⁷ The State cites several federal cases in support of the “waiver” proposition, noting that, under *Wilson v. Continental Ins. Co.*, 87 Wis.2d 155, 157 (Ct. App. 1987), federal decisions construing the federal procedural counterparts of the Wisconsin Rules of Civil Procedure, while not controlling, are considered “persuasive.”

⁸ As AZ points out, waiver is the “voluntary and intentional relinquishment of a known right,” *Milas v. Labor Ass’n of Wis., Inc.*, 214 Wis.2d 1, 9 (1997); and such discussions and correspondence are inconsistent with that concept.

On the merits of the motion and AZ’s response, the following general legal considerations are instructive. First, courts have broad discretion to regulate discovery by placing limits on its scope, issuing protective orders, and a variety of other powers. *See*, 8 *Wisconsin Practice, Civil Discovery*, §§ 1.1, 8.9, 9, 6. And they can, where warranted, direct that depositions, rather than interrogatories, be used. Marcus, *Federal Practice and Procedure*, 2163 (2d ed). *See*, also, *Duncan v. Paragon Publ’g, Inc.*, 204 F.R.D. 127, 128-29 (S.D., Inc. 2001); *Spector Freight Sys., Inc. v. Home Indem. Co.*, 58 F.R.D. 162, 164-65 (N.D. Ill.) Additionally, overly broad and general objections to discovery requests—simply stating the requests are overbroad, vague or unduly burdensome—are insufficient; they must be supported by affidavits or other proof “revealing the nature of the burden...” *Wagner v. Drivit Systems, Inc.*, 208 F.R.D. 606, 610 (N.D., Neb. 2001).

Applicable Wisconsin Statutes are in accord. Discovery is available for any non-privileged, relevant⁹ matter. Section 804.02(2)(a), *Stats*. And the court may issue a protective order “for good cause shown” in order to protect a party from “annoyance, embarrassment, oppression, or undue burden or expense.” Section 804.01(3). To that end, the court is authorized to bar discovery altogether, or to direct that it be had “only on specified terms and conditions,” or that it be had “by a method ... other than that selected by the party seeking discovery”—or that its scope be “limited to certain matters.” *Id.* With specific reference to interrogatories, § 804.08(3) states that where the answer to an interrogatory may be ascertained by the responding party’s business records, “and the burden of deriving or ascertaining the answer is substantially the same for the [inquiring] party ... as for the [responding] party ... it is a sufficient answer ... to specify the records from which the answer may be derived or ascertained and to afford the [inquiring] party reasonable opportunity to examine ... such records...”

The State asserts at the outset that AZ is not contending that any of its requests seek irrelevant material. Even so, says the State, each interrogatory serves a relevant

⁹ For purposes of discovery, it is not grounds for objection that the information sought would be inadmissible at trial—as long as it is “reasonably calculated to lead to the discovery of admissible evidence.” Section 804.01(2)(a), *Stats*.

purpose: determining the “actual price” of the drugs, and showing that that price was below the price reported to the pharmaceutical compendiums (Nos. 1 and 3); providing a means to allow the State’s computer experts to “efficiently access pricing information” (No. 2); establishing AZ’s knowledge of the actual prices, and to identify witnesses; and establishing that AZ knew of the “spread” (No. 5). The State identifies the following purposes for the document requests: to establish the actual prices of all drugs sold and that AZ knew of the spread between the actual and wholesale prices (Nos. 1 and 2); to establish AZ’s knowledge of the spread (No. 3); to determine how AZ used the “composite prices” as discussed in Interrogatory No. 1 (No. 4); to establish AZ’s participation in posting the published prices on which the State’s reimbursement rates are determined (No. 5); and to establish AZ’s knowledge that the drugs were not sold at the published prices (No. 6). On this record, it does not appear that any of the Interrogatories or document requests should be barred as seeking irrelevant material.

AZ, arguing that many, if not all, of the State’s requests are overly broad to the point of being burdensome, has submitted the affidavits of Paula Flynn, an AZ paralegal, and Kristi Prinzo, one of its attorneys. The Flynn affidavit discusses the discovery process in the MDL case—which, as noted, concerned only one AZ drug, Zoladex; and it states that collecting the requested Zoladex documents in that case took more than a year and involved reviewing more than 120 employee files and more than 130,000 boxes of documents. It goes on to state that complying with the State’s requests as drawn—which involve many more drugs (some of them manufactured by at least four different entities that were predecessors of AZ)—would require an effort tantamount to, or exceeding, that expended in the MDL litigation. As an example, Flynn states:

[C]ompiling historical data responsive to Interrogatory No. 1 will take an estimated 3 to 6 months, due to the existence of multiple systems and entities. The difficulties involved with the gathering of historical data due to multiple predecessor systems and entities make gathering information in response to this interrogatory unduly burdensome.

...Similarly, if Interrogatory No. 3 (relating to incentives) is limited to 1993 to the present, it will require AZ to review approximately 22,000 contracts involving over 5,000 customers.

Atty. Prinzo's affidavit discusses the law firm's work on discovery in the MDL litigation. She states that the firm's lawyers and other employees spent more than 8,700 hours over an eighteen-month period collecting and reviewing the documents involved in discovery requests in that case. And she states that, overall, the production effort in that litigation "cost AZ millions of dollars." She concludes by stating that "locating, reviewing and producing ... responsive documents for the additional ... drugs on [the State's] 'targeted list' would require effort and expense at least as massive as what was incurred to produce the substantially similar MDL production."

Plainly, the State's requests seek a mountain of data and information and AZ's response is equally voluminous—so much so that any attempt, at this point in the process, to ascertain whether the proffered documents may be considered a full and complete response to the State's inquiries would be so time-consuming as to be fruitless. There is no question that, in these circumstances, to-the-letter compliance with all of the State's requests, as drafted, would indeed be burdensome in terms of time and expense, to say nothing of the corresponding delay in resolution of the charges underlying the lawsuit.

In litigation of this magnitude, the interests of the parties, the public, and the judicial system itself, are better served by compromise (and a little give-and-take), than by nose-to-nose advocacy at the discovery stage of the proceedings. The spirit of Wisconsin's discovery statutes is to facilitate the fullest possible exchange of information between the parties—in the belief that the ends of justice are best met when, at the time of trial, both sides are fully informed on all matters at issue. And to the extent that less advocacy at the discovery stage of the proceedings facilitates the information exchange, it can only enhance the value (and the benefits) of advocacy at trial. The instant motions provide an example. To me, the issue at this point is whether the materials offered by AZ in response to the State's requests constitute a reasonable, first-step, response under all of the circumstances—including, as just indicated, the nature, size and complexity of the

lawsuit. And the State, arguing strenuously that the response is wholly inadequate has yet to examine it in its entirety.

I have outlined AZ's response above. The State, arguing for its rejection *in toto*, characterizes it as the type of "document dump" rejected by courts in several cases—and criticized by a Wisconsin Judicial Council Note to the discovery statutes.

One of the key points in the Judicial Council Note is that "a respondent may not impose on an interrogating party a mass of records as to which research is feasible only for one familiar with the records." *See, also, Govas v. Chambers* 965 Fed.2d 298, 302 (7th Cir. 1992), where the court noted that, where the answer to an interrogatory "cannot be ascertained from the documents," and the responding party "had exclusive access to th[e] information," that party cannot simply provide the documents, but must answer the interrogatory. I disagree, however, with the State's argument that AZ's *entire submission* constitutes an impermissible document dump.

Plainly, the State's argument has vitality with respect to the 440,000 MDL/Zoladex documents. While the documents are text-searchable, they relate, at best, to only one of 32 drugs for which the State seeks information (and the 15 advocated by AZ). I agree with the State that the MDL litigation differs significantly from the instant case. It is a private class action involving Medicare Part B issues, and no party to that case appears to be asserting the type of Medicaid claim being advanced by the State here. Beyond that, it appears that the State of Wisconsin has settled its claim with respect to Zoladex, and, as indicated, Zoladex is the only AZ drug involved in the MDL litigation. Additionally, the State points out that the time periods in the MDL litigation and the instant case are different. To require the State to sift through 400,000-plus documents primarily related to a single drug in hopes of finding information useful in a case involving other drugs seems to me to be the type of response the "document dump" cases rightly criticize. I do not consider the MDL/Zoladex offer to be a reasonable response to any of the State's discovery requests.

I reach a different conclusion with respect to the other materials proffered by AZ. They do not comprise the type of “gigantic do-it-yourself kit” criticized in one of the State’s cases—where “the defendant has in essence told the plaintiff that, if he wishes, he may hunt through all its documents and find the information for himself.” *Kozlowski v. Sears, Roebuck & Co.*, 73 F.R.D. 73, 76-77 (D.C. Mass. 1976). See, also, *Transportes Aereos De Angola v. Ronair, Inc.*, 104 F.R.D. 482, 489 (D. Del. 1985). Nor is this a case where, as in *In re Sulfuric Acid Antitrust Litig.*, 2005 WL 2403328 (N.D. Ill., September 27, 2005), the defendants “dump[ed] massive amounts of documents, which the[y] ... concede have ‘no logical order to them,’ on their adversaries and demand[ed] that they try to find what they are looking for.” To the contrary, what AZ offers here—as at least an initial response¹⁰ to the State’s requests—is: [a] sales and rebate data for 15 of the 32 targeted drugs—together with the assistance of one of its “data experts” to aid in locating the desired information; [b] 31,000 pages of text-searchable¹¹ documents from AZ’s “Pricing Strategy Group”—the entity responsible for all pricing strategy and all communications with the pricing publishers—relating to those 15 drugs; and [c] the services of an AZ computer expert to locate and provide information concerning all of its pricing databases.¹²

As discussed earlier, a party responding to an interrogatory may produce business records if it can show that “the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served.” *In re Sulfuric Acid Antitrust Litig.*, *supra*, 231 F.R.D. at 366; See also, § 804.08(3), *Stats.* Given the documents and records proffered—together with the assistance of AZ’s data

¹⁰ AZ stressed in its brief and at argument on the motions that its response would in no way prejudice the State from seeking further information—or even renewing some of its requests—should that initial response not prove satisfactory.

¹¹ The text-searchable nature of the documents weighs in AZ’s favor. See, for example, *Zakre v. Norddeutsche Landesbank*, 2004 WL 764895, at *1 (S.D.N.Y. April 9, 2004); *In re Lorazepam & Corazepate Antitrust Litigation*, 300 F.Supp.2d 43, 46-47 (D. D.C. 2004). The State attempts to distinguish the cases, but its arguments are based largely on the portion of AZ’s response relating to the 440,000 Zoladex-related documents, which I have concluded is not responsive to any of the State’s requests.

¹² See, Supplemental Affidavit of Kristi T. Prinzo, January 3, 2006, at p. 2.

and computer experts—I consider that the burden of isolating the specific information sought is, with respect to the requests at issue, substantially the same for both parties.

Before proceeding to the individual interrogatories and requests, it is appropriate to consider the reasonableness of AZ’s offer to provide information with respect to only 15 of the list of 32 targeted drugs identified by the State. The State claims that its list was trimmed considerably from its initial request. As indicated, however, AZ has supplied the affidavit of one of its employees indicating that “[t]hese 32 drugs account for all but a few of the products currently marketed by AZ in the United States.”¹³ [Affidavit of Paula Flynn, at 2] Given the burdens discussed in the Flynn and Prizo affidavits, and given, too, the amount of information that will ultimately have to be considered in this case—and also the fact that, as discussed above, the parties are only in the initial stages of discovery¹⁴— I consider 15 to be a reasonable number.

With respect to the Interrogatories, I conclude that the sales and rebate data and the text-searchable pricing records—again, abetted by the AZ data and computer experts—constitute a reasonable response to Interrogatories 1, 2, 3 and 4. As to Interrogatory No. 5, none of the proffered responses appear to touch on the subject of the inquiry—whether AZ has ever marketed a targeted drug by referring to the “spread.” Other than a general objection, AZ has not satisfied me that the question, as phrased, is overbroad or would carry an impermissible burden. I therefore consider it appropriate to compel a response to Interrogatory No. 5.

With respect to the document requests, I conclude that the expert-guided inspection of AZ’s sales and other databases constitutes an adequate response to requests Nos. 1 and 4. The response to Request No. 2 was simply a reference to the MDL/Zoladex documents (which I have concluded constitutes an inadequate response).

¹³ The State suggests that the 32 drugs constitute only “half of the drugs AZ sold to Wisconsin.” [Reply Brief, at 5] But the statement is unsupported by any reference to affidavits or other proof.

¹⁴ Indeed, the State has captioned its requests “Plaintiff’s First Set” of Interrogatories and document requests.

And because it is not clear that AZ's offer of the sales and rebate data and pricing records constitute a reasonable response to the request—and because, again at this stage of discovery, AZ has not identified any undue burden of responding to the inquiry—I believe it is appropriate to compel a response. Request No. 3, while similar in makeup to No. 2, appears to seek documents that are likely to be included in the pricing and other data contained in AZ's response. Again, should all of the desired data not be present, the State will be free to frame a second, modified request. Request No. 5 asks for exchanges between AZ and the three major pharmaceutical compendiums regarding the price of targeted drugs. Here, too, AZ's reference to the MDL Zoladex documents is inadequate and I do not see a specific response to constitute an undue burden. As for Request No. 6, relating to IMS Health-prepared documents regarding the price, sales or market share of targeted drugs or their competitors appears to be closely-enough related to the sales, pricing and other data that much of the sought-after information may be contained therein. Accordingly, I will not compel a specific response to this request at this time.

CONCLUSION

I conclude, therefore, that:

- AZ's proposal to transmit to the State some 440,000 documents from the Multi-District Litigation concerning the drug Zoladex is an inadequate response to any and all of the State's Interrogatories and Document Requests.

- AZ's proposal to provide the State with [a] transactional sales and rebate data for 15 of the targeted drugs (together with the services of one of its data experts), [b] 31,000 pages of text-searchable documents from its "Pricing Strategy Group" relating to the 15 of the targeted drugs, and [c] the services of an AZ computer expert to locate and provide information concerning all of its pricing databases, constitutes, at this stage of the proceedings, a reasonable

response to Interrogatories Nos. 1, 2, 3 and 4. It does not constitute a reasonable response to Interrogatory No. 5.

- AZ's proposal, as just described, constitutes, at this stage of the proceedings, a reasonable response to Document Requests No. 1, 3, 4 and 6. It does not constitute a reasonable response to Requests Nos. 2 and 5.

It follows that:

[1] The State's Motion to Compel is granted with respect to Interrogatory No. 5, and Document Requests Nos. 2 and 5—limited, as discussed above, to the 15 drugs listed in AZ's proposed response;

[2] The State's Motion to Compel is denied with respect to Interrogatories Nos. 1, 2, 3 and 4, and Document Requests Nos. 1, 3, 4 and 6.

[3] Denial of the Motion with respect to the named Interrogatories and Document Requests will be without prejudice to the State's renewal or modification of such motions should the proffered materials be considered inadequate.

Finally, because neither side prevailed in whole on the motion, neither side will be awarded costs and/or fees.

Dated at Madison, Wisconsin, this 31st day of January 2006

William Eich
Special Master