
STATE OF WISCONSIN,)	
)	
Plaintiff,)	Case No.: 04-CV-1709
)	
v.)	
)	
AMGEN INC., et. al.,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO REQUIRE PLAINTIFF TO PRESERVE POTENTIALLY RELEVANT DOCUMENTS

In depositions conducted in late January 2007, Defendants learned for the first time that Plaintiff, the State of Wisconsin, had failed to take steps to prevent the wholesale destruction of potentially relevant documents in this case. Since then, the State has steadfastly refused to take any steps to rectify this situation. The State's failure to preserve potentially relevant documents is a serious breach of its legal obligations, and clearly impacts the defendants' abilities to defend against the State's claims. As a result, Defendants request that the Court enter an order requiring the State of Wisconsin to undertake adequate and appropriate steps to identify repositories and custodians of, and to preserve, potentially relevant documents, consistent with its clear legal duty to do so.¹

¹ In requesting the limited relief sought by this motion, Defendants expressly reserve their right to seek additional remedies, including appropriate sanctions for spoliation of evidence, should subsequent discovery warrant.

I. FACTUAL BACKGROUND

A. Procedural History

The initial complaint in this case was filed on June 3, 2004. *State of Wisconsin v. Abbott Laboratories, et al.*, Case No. 04 CV 1709.² The State alleges, among other things, that defendant manufacturers reported inflated Average Wholesale Prices (“AWP”) and other pricing information for their products, to the detriment of the State of Wisconsin’s Medicaid program. The State also seeks reimbursement for individuals who may have made payments based on AWP as part of the federal Medicare program.

On October 19, 2005, Defendants served their First Set of Interrogatories and Requests for Production of Documents to Plaintiff. A few months later, on February 20, 2006, Defendants served their Second Set of Interrogatories and Requests for Production of Documents to Plaintiff (herein collectively referred to as “Defendants’ Requests”).

On January 24, 2007, Defendants deposed James Vavra, the Director of the Bureau of Fee for Service Health Care Benefits within the Division of Health Care Financing (“DHCF”) and Elias Soto, the Director of Operations for DHCF. In response to Defendants’ Notice of Section 804.05(2)(e) Deposition, the State identified Mr. Vavra as the person most knowledgeable regarding the location of documents responsive to Defendants’ Requests, and Mr. Soto as the person responsible for collecting documents responsive to Defendants’ Requests. During the course of these depositions, Defendants learned that Plaintiff had failed to take appropriate, necessary and adequate steps to search for and to preserve documents relevant to this litigation.

² Plaintiff subsequently filed an amended complaint on November 1, 2004 and a second amended complaint on June 28, 2006.

B. Plaintiff's Failure to Preserve Documents

Mr. Vavra testified that documents responsive to Defendants' Requests could be found in a number of locations both within and outside the Department of Health & Family Services ("DHFS"). Mr. Vavra testified, for example, that the following entities likely possess relevant documents: (1) within DHFS: the Office of Strategic Finance, the Secretary's Office, the Division of Disabled and Elderly Services, the Bureau of Fee for Service Health Care Benefit, the Bureau of Operations, the Bureau of Program Integrity, the Bureau of Fiscal Services, the Bureau of Eligibility Management, the Bureau of Managed Health Care Programs; and (2) outside DHFS: the Department of Administration, the Governor's Office, the Legislative Audit Bureau, the Legislative Fiscal Bureau, and the Legislative Reference Bureau.

Mr. Soto, in turn, testified that the State had not undertaken any effort to preserve documents in most of these locations. He testified that the State had made only two requests to preserve documents—one to the State Historical Society and the other to a handful of specific individuals within DHFS who Mr. Soto had identified in connection with his efforts to collect documents responsive to Defendants' Requests.³ (Deposition Transcript of E. Soto (dated Jan. 24, 2007) ("Soto Tr.") at 41:19-42:20).⁴ The second request, purportedly issued to select individuals, was made only after Mr. Soto received a copy of Defendants' Requests from the Attorney General's Office, nearly a year and a half after the State had commenced this litigation. (Soto Tr. at 16:12-21; 41:19-42:20).

Remarkably, the State has made little effort to locate potentially responsive documents, let alone take appropriate, necessary, and required steps to preserve them, and

³ It is unclear whether these requests were made orally, through electronic means or by hardcopy. Despite Defendants' requests, Plaintiff has refused to produce a copy of these instructions or any other instructions that may have been distributed to State agencies or individual employees in connection with or in response to this litigation.

⁴ Transcript pages cited herein as "Soto Tr. _" are attached herein as Exhibit A.

to date has persisted in its failure to issue hold orders to several State entities, including but not limited to the:

- Medicaid Program on behalf of which the Attorney General is seeking damages (Plaintiff's Second Amended Complaint ¶¶61-66; Soto Tr. at 48:5-9);
- Office of Strategic Finance, which may possess documents relating to the consideration of proposed changes to the State's reimbursement methodology, including "issue papers done on pharmacy reimbursement" (Deposition of J. Vavra (dated Jan. 24, 2007) ("Vavra Tr."). at 36:1-16, 137:18-138:13⁵; Soto Tr. at 43:2-3);
- Secretary's Office, which possesses written testimony of the Secretary of DHFS concerning pharmaceutical reimbursement (Vavra Tr. at 88:12-89:5; Soto Tr. at 43:4-5); and
- Legislative Fiscal Bureau, which analyzes budget proposals for the Joint Committee on Finance, including budget proposals relating to proposed alternative pharmaceutical reimbursement formulas under Medicaid. (Vavra Tr. at 86:22-87:18; Soto Tr. at 24:19-21;41:19-42:20; April 16, 2007 E-mail from Jennifer Walker to Frank Remington, attached as Exhibit C; April 18, 2007 E-mail from Frank Remington to Jennifer Walker, attached as Exhibit D.).

Moreover, with the exception of a few individuals in the last two to three years, no request has been made to stop the routine destruction of electronic and hard copy documents when an employee leaves the department. (Soto Tr. at 40:17-44:21). When an employee leaves, his working hard copy files are kept in his office or cubicle for his successor, but no one is instructed to retain or review these files for relevance in connection with contemplated or pending litigation. (Soto Tr. at 32:3-15, 44:5-21). Electronic documents, on the other hand, may have been preserved depending upon an employee's position and when he left the State. Only *certain* employees' hard drives are preserved, and these only within the last two or three years (prior to which, computer hard drives were routinely wiped clean for reuse after a certain amount of time). (Soto Tr. at 32:3-15; 40:17-

⁵ Transcript pages cited herein as "Vavra Tr. _" are attached herein as Exhibit B.

41:15). Mr. Soto was uncertain where hard drives of *other* employees are sent or whether any request has been made to prevent the routine destruction of those hard drives. (Soto Tr. at 41:3-15).

Following the depositions of Mr. Vavra and Mr. Soto, undersigned counsel repeatedly sought to obtain assurance from the State, both in writing and during frequent meet and confers, that, at least on a going-forward basis, appropriate steps were being undertaken both to identify custodians and repositories of potentially relevant documents and to preserve such documents (including, at a minimum, the issuance of appropriate hold orders to individuals and state agencies and offices identified during the course of Mr. Vavra's deposition). *See, e.g.*, March 8, 2007 Letter from Steven F. Barley to Frank Remington, attached as Exhibit E; April 16, 2007 E-mail from Jennifer Walker to Frank Remington, attached as Exhibit C. Plaintiff responded that no additional hold orders had been issued or were contemplated. *See* April 18, 2007 E-mail from Frank Remington to Jennifer Walker, attached as Exhibit D.

II. ARGUMENT

A. Duty To Preserve Documents

Plaintiff's failure to preserve documents is contrary to Wisconsin law. It is well-established that parties to a litigation are under a legal duty to preserve potentially relevant documents. *See Garfoot v. Fireman's Fund Ins. Co.*, 228 Wis.2d 707, 722, 599 N.W.2d 411, 418 (Wis. App. 1999) (discussing several Wisconsin cases imposing sanctions for failure to take adequate steps to preserve evidence). This duty arises when litigation becomes a "distinct possibility." *See Milwaukee Constructors II v. Milwaukee Metropolitan Sewerage Dist.*, 177 Wis.2d 523, 532, 502 N.W.2d 881, 884 (Wis. App. 1993) (noting that a relevant factor in the analysis is "whether [the party responsible for the document

destruction] knew or should have known at the time it caused the destruction of the documents that litigation against [the opposing parties] ... was a distinct possibility”) (internal citations omitted). For the State, this duty arose no later than (and likely months before) the filing of its initial complaint in June 2004. Nevertheless, it was not until after the State had received Defendants’ Requests, nearly a year and a half later, that it instructed *any* State entity to preserve documents in connection with this case. And even then, Plaintiff’s efforts to adequately assure the preservation of documents were wholly deficient. It instructed a very limited group of individuals within DHFS (and no entity outside DHFS) to preserve documents, despite defendants’ repeated requests that it do so and Mr. Vavra’s clear testimony that a number of these entities most likely possess, or did possess, relevant documents.

B. The State’s Disregard of Its Obligation to Preserve Documents

The State’s counsel responded to Defendants’ requests by asserting that additional hold orders are unnecessary because the State has “not specifically instructed record custodians outside that agency to deviate from their standard record retention policies” and “the defendants have not given me any guidance on who or better what should be the focus of such extended retention.” See April 18, 2007 e-mail from Frank Remington to Jennifer Walker, attached as Exhibit D. The State’s response plainly ignores its obligations under the law.

First, Plaintiff is simply wrong to assume that not instructing individuals to deviate from the State’s standard record retention policy is the same as fulfilling its affirmative obligation to preserve potentially relevant documents under the law. The only record retention policy that the State has produced to date covers only budget-related documents, and does not extend to records of every agency, including records retained for

the Executive Office. See General Records Schedule for Budget and Budget Related Records, p. 3 (March 2002), attached as Exhibit F (“Budget Records Schedule”). Moreover, it *allows* for the destruction of potentially relevant documents within two to six years. See Budget Records Schedule, p. 27. It does not instruct, as is required under the law, employees to preserve documents relevant to *this* litigation.⁶

Second, it is the State’s responsibility to identify agencies (and individuals within those agencies) who are likely to possess relevant documents and to notify those individuals not to destroy relevant documents, just as it is a corporate defendant’s obligation to undertake a similar search to identify potentially relevant documents. Incredibly, the State attempts to shift this burden onto the defendants. The defendants are not in a position to possess this information, nor are they required to under the law.

Finally, the State’s response implies that its duty to preserve relevant documents *within* DHFS has been satisfied. Yet, even in the limited context of this single agency, Defendants have been unable to learn the scope, timing, and delivery of the State’s instructions, despite repeated requests for a copy of any applicable instruction. Moreover, according to Mr. Soto, the request to preserve documents was only issued to a limited universe of individuals that he identified and no instruction has been issued to a broader group of employees to ensure the adequate preservation of hard copy and electronic files of all current and former employees with potentially relevant documents.

⁶ The Budget Records Schedule does, however, provide for a “delay[] from destruction” any “[r]ecords [that] are needed for an actual or imminent legal proceeding” and imposed on any agency holding such a record “to determine if an audit, litigation, or an open record request is pending, before disposing of that record.” *Id.* at p.5. Obviously, such a decision cannot be made in a vacuum and is dependent, in the first instance, upon appropriate notice by litigating agencies of the fact of the pending litigation.

C. The Need for a Preservation Order

The State's inexplicable failure to preserve documents under these circumstances warrants the relief requested. Although well-established case law requires the State, like any other litigant, to preserve potentially relevant documents, its utter disregard of these obligations, particularly when confronted with clear evidence that it has failed to take appropriate steps, cannot be countenanced.

Unquestionably, this Court, pursuant to its inherent power to manage cases pending before it, has the authority to take proactive steps to prevent the destruction of relevant evidence where the record makes clear that the State has failed on its own to take those steps. *See, e.g., Williams v. Massachusetts Mutual Life Ins. Co.*, 226 F.R.D. 144, 146-47 (D. Mass. 2005) (ordering defendants to preserve certain documents, hard drives and email boxes); *Pueblo of Laguna v. United States*, 60 Fed. Cl. 133, 135-36, 141-43 (2004) (relying on the Court's inherent power to order defendant to take reasonable steps to preserve all documents and data that are relevant or may lead to the discovery of relevant information). *See also Manual for Complex Litigation* § 11.442 at 72-75 (4th ed. 2004) (courts "should consider whether to enter an order requiring the parties to preserve and retain documents, files, data and records that may be relevant to the litigation."); *HBJ, Inc. v. American Home Prods. Corp.*, 1994 WL 31005, at *1 (N.D. Ill. Feb. 1, 1994).

III. CONCLUSION

Accordingly, for the reasons stated above, Defendants respectfully request the Court order Plaintiff to: (i) make appropriate inquiry and instruct all relevant State personnel not to destroy or delete potentially relevant hard copy and electronic documents; (ii) take affirmative measures to prevent the inadvertent destruction and/or deletion of potentially relevant paper and electronic documents; and iii) undertake a reasonable

investigation, including interviews of relevant State employees, to determine the extent of the loss of potentially relevant records and make an accounting of such loss to the Court.

Respectfully submitted,

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Attorneys for Amgen Inc.

Dated: May 21, 2007

Certificate of Service

I hereby certify that on this 21st day of May 2007, a true and correct copy of the foregoing was served on all counsel of record by Lexis Nexis File & Serve®.

/s/ Joseph H. Young

Joseph H. Young

EXHIBIT A

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

CONFIDENTIAL

AMGEN, INC., et al.,

Defendants.

Certified Copy

DEPOSITION of ELIAS N. SOTO, taken
at the instance of the Defendants, under and pursuant
to the provisions of Chapter 804.05 of the Wisconsin
Statutes, and the acts amendatory thereof and
supplementary thereto, before me, KIM M. PETERSON, CM,
Registered Professional Reporter and Notary Public in
and for the State of Wisconsin, at the Risser Justice
Center, 17 West Main Street, Madison, Wisconsin, on
the 24th day of January, 2007, commencing at 9 o'clock
in the forenoon.

1 A P P E A R A N C E S

2

3 ARCHIBALD CONSUMER LAW OFFICE

4 1914 Monroe Street

5 Madison, Wisconsin, 53711

6 MR. P. JEFFREY ARCHIBALD

7 appeared on behalf of the

8 Plaintiff.

9

10 WISCONSIN DEPARTMENT OF JUSTICE

11 17 West Main Street

12 Madison, Wisconsin, 53707-7857

13 MR. FRANK D. REMINGTON

14 and

15 MR. THOMAS L. DOSCH

16 appeared on behalf of

17 the Plaintiff.

18

19

20

21

22

1 A P P E A R A N C E S Cont.

2

3 KELLEY, DRYE & WARREN, LLP

4 101 Park Avenue

5 New York, New York, 10178

6 MR. CLIFFORD E. KATZ

7 appeared via telephone on behalf

8 of the Defendant Mylan Laboratories, Inc.

9 Mylan Pharmaceuticals, Inc., and Dey, Inc.

10

11 DECHERT, LLP

12 Cira Centre

13 2929 Arch Street

14 Philadelphia, Pennsylvania, 19104-2808,

15 MS. JAN P. LEVINE

16 appeared via telephone on behalf

17 of the Defendant Glaxosmithkline.

18

19

20

21

22

1 A P P E A R A N C E S Cont.

2

3 HOGAN & HARTSON

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5 Suite 1600

6 Baltimore, Maryland, 21202

7 MS. JENNIFER A. WALKER

8 and

9 MR. STEVEN F. BARLEY

10 appeared

11 on behalf of the Defendant Amgen, Inc.

12

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I N D E X

WITNESS EXAMINATION	PAGE
ELIAS N. SOTO	
By Ms. Walker	006

E X H I B I T S

EXHIBIT NO.:	MARKED
Exhibit Soto 001 Notice of deposition	011
Exhibit Soto 002 Document requests	015
Exhibit Soto 003 Organization chart	025

1 P R O C E E D I N G S

2 ELIAS N. SOTO, called as a witness herein by
3 the Defendants, after having been first duly sworn,
4 was examined and testified as follows:

5 EXAMINATION

6 BY MS. WALKER:

7 Q. Good morning, Mr. Soto. My name is Jennifer
8 Walker and I represent one of the defendants in this
9 case, Amgen, Inc. I will be asking you questions
10 today. There are a couple defendants on the phone who
11 may ask you some additional questions when I'm
12 finished. I just want to go over a few things before
13 we start the deposition. Have you ever been deposed
14 before?

15 A. No.

16 Q. Okay. I just ask that you provide a verbal
17 response to my questions just so the court reporter can
18 -- can record it. If you could let me finish my
19 question before you answer just so we're not talking
20 over each other, that would be great.

21 A. Okay.

22 Q. If you need to take a break at any time, just.

1 let me know. The only thing I ask is that you let me
2 finish my question before you take the break. And
3 unless instructed by your attorney not to answer, I
4 just ask that you answer the question. Okay. Can you
5 state your full name for the record?

6 **A. Elias Nelson Soto.**

7 **Q. And what is your current business address?**

8 **A. One West Wilson, Madison, Wisconsin.**

9 **Q. Did you speak with anyone to prepare for the**
10 **deposition?**

11 **A. I've spoken with DOJ staff concerning the**
12 **process, but other than that, no.**

13 **Q. Okay. When did you speak with them?**

14 **A. Two days ago, I believe.**

15 **Q. And for how long, approximately?**

16 **A. Approximately an hour.**

17 **Q. Okay. Was there anyone present other than**
18 **the attorneys?**

19 **A. Yes. James Vavra.**

20 **Q. Okay. Did you review any documents in**
21 **preparing for the deposition?**

22 **A. I reviewed what -- the process I had**

1 followed. Just to keep notes in my head throughout the
2 process I had taken notes. So yes, I reviewed what I
3 had done to date.

4 Q. So you reviewed your notes?

5 A. Correct.

6 Q. Okay. And on your own did you review any
7 additional documents?

8 A. Not that I can recall, no.

9 Q. Okay.

10 MR. REMINGTON: If I might add, Eli, I
11 did provide him with a copy of the request for
12 production of documents, our response to defendants'
13 notice of Section 804.05(2)(e) deposition --

14 MR. KATZ: I'm sorry. This is Cliff Katz.
15 I can't hear what people are saying.

16 MR. REMINGTON: And the pleadings in
17 this case.

18 MS. WALKER: Cliff, are you able to hear me
19 at all?

20 MR. KATZ: Not that well.

21 MR. REMINGTON: Hang on. We got some
22 instructions.

1 (Discussion off the record.)

2 BY MS. WALKER:

3 Q. Mr. Soto, can you describe your educational
4 background since high school?

5 A. Educational background since high school. I
6 have an undergraduate and a master's degree.

7 Q. Where is your undergraduate from?

8 A. University of Wisconsin-LaCrosse.

9 Q. And when did you receive your undergraduate?

10 A. December 1988.

11 Q. And what's your graduate degree in?

12 A. Public administration.

13 Q. And when did you receive that?

14 A. June of '94.

15 Q. Can you describe what jobs you've had since
16 1994?

17 A. Since 1994 I have been the -- Yes. I worked
18 at the University of Wisconsin Management Institute as
19 the Director of Operations, and since -- and after that
20 I'm currently the Director of Operations for the
21 Division of Healthcare Financing.

22 Q. And how long have you been for the Division

1 of Healthcare Financing?

2 A. Approximately seven years.

3 Q. So 2000?

4 A. '99.

5 Q. '99.

6 A. Yeah.

7 Q. And your current title is Director of
8 Operations?

9 A. Correct.

10 Q. What are your responsibilities in that job?

11 A. I provide administrative support and
12 administrative operations for the Division to include
13 human resources, fiscal, IT, space and telecom-type
14 stuff like that.

15 Q. Okay. Who do you report to?

16 A. I report directly to the deputy administrator
17 for the Division of Healthcare Financing.

18 Q. And who is that currently?

19 A. Cheryl McQuilhaum. M-C-Q-U-I-L-H-A-U-M.

20 Q. And does anyone report to you?

21 A. Yes. I have approximately 15 staff that
22 report directly to -- to me.

1 MR. KATZ: I'm sorry. I can hear the
2 witness now, but I can't hear the questions.

3 MS. WALKER: Okay. I'll speak up.

4 MR. KATZ: Thanks.

5 BY MS. WALKER:

6 Q. Do you understand that you've been designated
7 by the State to -- as someone who can speak in
8 responding to certain topics?

9 A. Yes.

10 Q. And are you prepared to do this?

11 A. Yes.

12 Q. I'm going to show you the deposition notice
13 in this case. Could you mark this as Soto 1?

14 MR. REMINGTON: Are we marking -- I haven't
15 been a part of any depositions. Are we marking then
16 number 1 for each deposition? Is that how you're
17 doing it?

18 MR. BARLEY: I thought it would be easier to
19 mark it by the witness's name.

20 (Discussion off the record.)

21 (Exhibit Soto 001 was marked for
22 identification.)

1 BY MS. WALKER:

2 Q. Have you reviewed this notice?

3 A. I have seen it. In terms of reviewing it,
4 I'm not sure -- I've read through it, but not in great
5 detail. So I'm not certain what you mean in review,
6 but yes, I've seen it and I've looked through it.

7 Q. Okay. Can you look at page 9, paragraph 12,
8 and take a chance to read it.

9 A. (Witness complies.) Okay.

10 Q. Are you prepared to testify on topic 12?

11 A. I'm not sure what the questions you'll be
12 asking me, but to the extent that I have the knowledge,
13 yes.

14 Q. Okay. Are there any individuals that are
15 more knowledgeable than you on this topic?

16 A. In terms of the process that was used to
17 gather the documents, I would say no.

18 Q. What about in terms of the types of computer
19 databases and systems that are used by the Department
20 of Health Family Services and other organizations
21 within the State?

22 A. If they pertain directly to program-related

1 topics, I would not be the expert on that. I'm not a
2 program expert. If it relates to how the Division uses
3 their IT systems, then I would -- I could answer them.
4 I would not be the expert, though, but I could
5 certainly -- yeah, I could give you a relatively good
6 answer in terms of the processes that we use.

7 Q. Okay. Who would be the person for the
8 programs?

9 A. I would have -- It would be dependent -- I
10 couldn't say unless I knew what -- the topic areas that
11 you were referring to, but --

12 Q. Well, when we get to the questions, maybe we
13 could talk about that.

14 A. Correct. I'm not certain what you'll be
15 asking.

16 Q. Okay. You became an employee of Wisconsin in
17 1999, right, with the Department of Health and Family
18 Services?

19 A. With the Department, yes.

20 Q. Yes. How -- What did you do to become
21 knowledgeable about this topic prior to the time you
22 were here?

1 MR. REMINGTON: I guess I object to the form
2 of the question. What do you mean by this topic?

3 BY MS. WALKER:

4 Q. Topic number 12.

5 A. Could you restate that question, or could you
6 resay it?

7 Q. Yeah, sure. Topic number 12 asks about the
8 computer systems, databases that might contain
9 responsive documents, and I'm just asking if -- prior
10 to when you came here if there were other systems that
11 may have been in play, how did you gain knowledge about
12 those systems?

13 A. I do have the staff that are responsible for
14 procuring systems, creating, using, making. So if it
15 -- if there was a system created after the fact, I
16 would have been involved as far as paying for it and
17 the process to get it, but if there were systems
18 beforehand I would not have been knowledgeable on what
19 they used unless, of course, it was a legacy thing that
20 we still use, then I would have some knowledge of that,
21 but again, depending upon what your question is, I'm
22 not certain that I can answer that yet.

1 Q. Okay. Well, let's wait until we get to the
2 questions.

3 A. Okay.

4 Q. Have you seen the defendants' document
5 requests in this case. I think Frank indicated that he
6 had shown them to you. I can show you an example.

7 (Exhibit Soto 002 was marked for
8 identification.)

9 BY MS. WALKER:

10 Q. Have you seen these before?

11 A. Yes, I've seen these before.

12 Q. And when?

13 A. Frank has sent me copies of documents
14 throughout the entire process, and this looks like
15 pretty much every other one he's sent me, but yes, I've
16 seen this. I would say the last time I -- is in a
17 folder that I received on Monday. It had a folder of
18 -- so this looks like that could be one of those as
19 well, but specifically, I don't know.

20 Q. Do you recall, by any chance, the first time
21 you saw this?

22 A. Not specifically this one because, to be

1 honest, they all look the same.

2 MR. REMINGTON: Well, you say -- Object to
3 the form of the question. You say this. Jennifer,
4 maybe it would help him better, what he's undoubtedly
5 referring to is the fact that he has the caption.
6 Eli's not a lawyer. If you want to describe it in
7 some detail so as to familiarize himself what this
8 is, or if you want to give him the opportunity to read
9 the entire document, I think that would better enable
10 him to answer the question.

11 BY MS. WALKER:

12 Q. Well, these are the document requests that
13 defendants sent to the State, and all I'm asking is if
14 you had seen the requests that we had sent prior,
15 when's the first time you saw them?

16 A. When's the first time -- Your question comes
17 across to me as when's the first time I've seen the
18 request for information, and that was the original
19 request that I had seen approximately a year ago that
20 had the questions and areas, and there were 50 of them.
21 That was the first time. Since then there's been
22 follow-up requests for information that I've seen, and

1 I've gotten those from Frank. So I've seen them along
2 the whole way, but the original request was 50 areas of
3 info requested. So from that point on, yes, and I've
4 seen every subsequent follow-up request since then.
5 This looks just like most of them, except the first one
6 was actually in a table format and so that's the one
7 I'm familiar and used to from the first one.

8 Q. In a table format?

9 A. Correct, because I created a table format of
10 the request areas that they had originally asked for,
11 and that's what I've used throughout this whole process
12 to gather the info that they had asked on top of every
13 subsequent request on top of that, so --

14 Q. And did you create the table based on these
15 you think?

16 A. I don't know. I'd have to look through this,
17 but I believe so, but I haven't specifically looked
18 through -- through all of this, but -- so I guess I
19 don't know. I don't know.

20 Q. Okay. So -- But you are familiar with the
21 steps that were taken to collect documents in response
22 to our requests?

1 **A. Yes.**

2 **Q.** And you're prepared to testify about those
3 steps?

4 **A. Yes.**

5 **Q.** Are there any other individuals who are more
6 knowledgeable than you about those steps?

7 **A. No.**

8 **Q.** From this point forward when I refer to you
9 or ask for your knowledge I'm seeking your testimony to
10 the full extent of the State, okay?

11 **A:** (Witness nods.)

12 MR. REMINGTON: Well, you can do -- I object
13 to -- I mean, I'm not sure what grounds I object to
14 that. You can ask the questions you want. He's here
15 to testify as to his own personal knowledge. I
16 understand this notice is depositions under
17 804.05(2)(e), and we've produced Mr. Soto to testify to
18 the matters under that statute. I'm not certain that
19 simply saying that he's testifying as to the knowledge
20 of the State makes it so, but having stated that
21 objection he can go ahead.

22 BY MS. WALKER:

1 Q. What was your involvement in collecting and
2 responding to these requests, generally?

3 A. I was placed as the lead person for the
4 Division to gather up the data requests, the document
5 requests for this case. So I was placed in the lead to
6 do that.

7 Q. Who else was involved?

8 A. Whichever staff that had the information
9 pertaining to these, I would say that they were, but in
10 terms of the actually getting them and putting them in
11 a room to be reviewed was me; but staff -- whichever
12 staff I needed or had the info specifically to each one
13 of these areas, they -- they were also involved in
14 terms of getting me the data.

15 Q. Okay. Can you tell me who those people were?

16 A. I can give you a list. I'm sure I will miss
17 some, but the folks that come to mind, Keri Grey.

18 Q. And what's Keri Grey's title?

19 A. Official State title, I do not know. She's
20 in the pharmacy section, but I -- her official State
21 title I do not know.

22 Q. What type of documents did she help you with?

1 A. Oh, specifically which ones without my sheet
2 in front of me --

3 Q. Just generally.

4 A. She had information concerning Pharmacy
5 Commission files. She also had information concerning
6 the Kreling study. Those are the two that come to mind
7 right off the bat.

8 Q. Okay. And who else?

9 A. Rich Albertoni. He was a budget and planning
10 analyst at the time. He's currently a section chief
11 now. He also had files pertaining to pharmacy-related
12 work. Which ones specifically, I don't recall at this
13 time.

14 Q. Is he with the Department of Health and
15 Family Services?

16 A. Yes, ma'am.

17 Q. And so is Keri?

18 A. Yes. All these staff are.

19 Q. And who else?

20 A. Kim Smithers, and she had all the
21 system-related information.

22 Q. And what's her title?

1 A. She's a system analyst, but her specific
2 title I don't know, but she's a systems analyst. Ted
3 Collins, and he had information pertaining to MAC
4 tables. Carol Neeno, N-E-E-N-O, she had information
5 pertaining to directives, pricing information. That's
6 what comes to mind.

7 MR. KATZ: I'm sorry. I can't hear
8 the questions at all now.

9 MR. REMINGTON: There are no questions.
10 He's listing off answers.

11 -- MR. KATZ: Okay. I'm sorry.

12 THE WITNESS: Al Matano, M-A-T-A-N-O, he had
13 covered all the areas for State plan amendments. He
14 had those going back. Angie Luick, she had information
15 concerning provider updates and provider
16 communications. Nothing else comes to mind. If you
17 give me some more time I'm sure I could think of a few
18 of the -- the names, but -- again, I have a list, but
19 those are the ones that come to mind.

20 BY MS. WALKER:

21 Q. Okay. What's Mr. Collins' title?

22 A. He is a pharmacy consultant. He is a

1 contractor with us. And as I understand, I don't
2 believe -- he's no longer employed by the Division.

3 Q. Okay. And Miss Neeno?

4 A. Miss Neeno is also no longer with the
5 Division. She is, I believe, with EDS, Electronic Data
6 Services, but I'm not certain.

7 Q. Do you know what her title was when she was
8 at the Division?

9 A. No, I do not.

10 Q. And Mr. --

11 A. Matano. He's a budget and planning analyst, --
12 and he is with the Division.

13 Q. And Miss Luick?

14 A. Miss Luick is, I believe, a program and
15 planning analyst, and she is with the Division.

16 Q. Did you work with anyone outside the Division
17 in responding to these requests?

18 A. One other person, Mark Guyeski. He is one of
19 the senior staff members at EDS, and I did ask him as
20 well if he had files pertaining to the original
21 request. And then outside of the Division would have
22 been the Office of Strategic Finance, which is

1 responsible for budget-type requests, if they had
2 files. And then the other one would have been the
3 Bureau of Fiscal Services, and they do claims and stuff
4 like that. So I just checked with them as well.

5 Q. Did you check with anyone outside of DHFS?

6 A. Other than Mark Guyeski, no.

7 Q. Did you reference any policies or guidelines
8 for collecting the documents in this case?

9 A. In terms of what? Reference, what are you --

10 Q. Was there anything set in place, that the
11 Division has set in place that if you receive requests
12 you need to follow the following steps. Is there
13 anything like that?

14 A. For this process? Not that I recall, because
15 it was pretty straightforward. We have 51 areas and so
16 no, not that I recall.

17 Q. Okay.

18 A. Other than what I just -- No.

19 Q. So did you search, just so I'm clear, did you
20 search, you personally search or delegate the searching
21 of -- to any of the other departments, such as the
22 Department of Administration?

1 A. Department of Administration, no, I did not.
2 I did not have any discussion with Department of
3 Administration.

4 Q. So you wouldn't be familiar with how they
5 searched for responsive documents?

6 A. No, I would not.

7 Q. What about the governor's office?

8 A. The governor's office I did not specifically.
9 One area that I did search through the secretary's
10 office was a commission that -- Pharmacy Commission
11 that may have had some files that I did not have access
12 to. So I did ask the secretary's office if they had
13 any files pertaining to the Pharmacy Commission, but I
14 did not specifically contact the governor's office.

15 Q. Did you ask them for any additional files
16 besides the ones just pertaining to the Governor's
17 Commission?

18 A. No, I did not.

19 Q. Okay. What about the Legislative Fiscal
20 Bureau?

21 A. I did not.

22 Q. So again, you wouldn't be familiar with what

1 was done there?

2 A. No, ma'am.

3 Q. Okay. The Joint Committee on Finance?

4 A. No, ma'am.

5 Q. What about the AG's office?

6 A. No, ma'am.

7 Q. Okay. Okay. Well, I'm just going to ask you
8 some more specific questions about what you did at the
9 Department of Health and Family Services.

10 (Exhibit Soto 003 was marked for
11 identification.)

12 BY MS. WALKER:

13 Q. Mr. Soto, can you look at what's been marked
14 Soto Exhibit 3? This is an org chart that I pulled off
15 of --

16 (Discussion off the record.)

17 BY MS. WALKER:

18 Q. This is a document that I pulled off of
19 Wisconsin's Website. Does it, to the best of your
20 knowledge, accurately represent the organization of the
21 Department of Health and Family Services?

22 A. For the Department of Health and Family

1 **Services, yes.**

2 Q. We're just going to use it as a reference
3 piece.

4 A. Okay.

5 Q. Starting at the top, did you search for
6 responsive documents from the secretary, deputy
7 secretary and their executive assistants?

8 A. No, I did not, other than asking for the
9 **Pharmacy Commission files.**

10 Q. What about the Office of Strategic Finance?

11 A. Yes, ma'am, I did.

12 Q. What types of documents did you ask for from
13 them?

14 A. I gave them the specific request that
15 outlined the 50 -- you have 51 here, I believe,
16 questions, and asked them do you have any files
17 pertaining to any of these 51 areas. And actually, for
18 mine it was 50, I think there was some dupes, and asked
19 them do you have any information or files pertaining to
20 these. And that answer was no, they did not.

21 Q. Was there one person in particular that you
22 spoke with there?

1 A. Yes. The Director of the Office of Strategic
2 Finance, Fredi Bove, B-O-V-E. It's F-R-E-D-I. It's a
3 she.

4 Q. Oh, thank you. As far as you know, did Fredi
5 search electronic documents and hard copy documents to
6 see if there -- anything was responsive?

7 A. I do not know.

8 Q. Do you know if she reached out to her reports
9 to see if they had anything responsive?

10 A. I do not know for certain. I do not know for
11 certain.

12 Q. Did she give you any indication of how she
13 went about looking for responsive documents, other than
14 to say that she didn't have any?

15 A. No, I don't.

16 Q. What about the Office of Legal Counsel?

17 A. No, ma'am, I did not.

18 Q. The Division of Healthcare Financing?

19 A. Yes, ma'am, I did.

20 Q. Can you explain how you went about pulling
21 and collecting responsive documents from the Division?

22 A. Yes. I started with the 51, which in my --

1 and I put them in a table format. I distributed them
2 to the bureau directors and I asked them to give me any
3 staff names who would have information concerning any
4 of the 50 areas. I compiled a list from them based on
5 that and interviewed each of the staff. Prior to
6 interviewing them I sent them the 50 response areas and
7 asked them do you have any files. That meaning in
8 Record Center, any e-mails, any electronic, or any
9 working files currently in your area or that you know
10 of pertaining to these areas. Then I met with each of
11 them and I said okay, what do you have and to which
12 area does it pertain to. And I gathered them up and
13 put them in a storage room by the areas and had DOJ
14 staff review from there.

15 Q. With the table that you created, was it just
16 actual words that we had in our request, or did you
17 summarize them?

18 A. No, ma'am. It was word for word what you all
19 had.

20 Q. Okay. And I take it these individuals would
21 pull off any electronic --

22 A. Correct. I had them search for e-mails, for

1 electronic, for Records Center, and for working files
2 that they had actually had there.

3 Q. What is Records Center?

4 A. Oh, it's when we have records that we no
5 longer need to keep because of storage issues and so
6 on, then we ship them over to the Records Center, the
7 State Historical Society Records Center, and they hold
8 them until which time we say destruct or not destruct.

9 Q. So these individuals would search those
10 documents, too?

11 A. I asked them if they knew if any were
12 actually there. I provided them also a list of all the
13 Records Center topic areas that we have over there and
14 said review these, are there any of your files that
15 would pertain to any of the 50 areas in this list. And
16 if they said yes, then I would pull those files. If
17 they said no, then I just didn't, so -- And I also
18 reviewed them myself to look for any words that would
19 look like they could have anything to do with -- with
20 the language of what you guys had asked for.

21 Q. Okay. And they provided you with hard copy
22 documents, too?

1 A. Yes. Yes.

2 Q. Did you search any shared drives that the
3 Division might use?

4 A. Yes, I did. I did do a search myself. We
5 have a shared drive, the H drive, and I did do a search
6 for anything that had the words AWP, average wholesale
7 pricing, or some of the other key type terms I could
8 pull from there and do that, and I did do that.

9 Q. Do you have a list of those search terms that
10 you used?

11 A. No, I do not. No.

12 Q. You just created them --

13 A. Yeah. I just looked through, and for the
14 most part it was AWP, average wholesale price, the
15 wording.

16 Q. What about any databases? Did you search any
17 databases other than the shared drives?

18 A. No, I did not, unless -- unless a staff would
19 have said I had some there, but no, I didn't. And I
20 don't recall that staff said there's a database that I
21 would have used.

22 Q. What about any backup tapes or drives?

1 **A. No. No.**

2 **Q. Any external hard drives?**

3 **A. No.**

4 **Q. The -- Any archived or off-site materials**
5 **other than the Records Center materials?**

6 **A. No.**

7 **Q. Do you know if you searched the files of Ted**
8 **Collins?**

9 **A. I did not search his files. I specifically**
10 **asked him if he had the same thing, files, e-mails, and**
11 **he did not have much at all. In fact, he didn't have**
12 **much at all.**

13 **Q. And you gave him the full list?**

14 **A. Yes, ma'am. Yes.**

15 **Q. And as far as you know, he searched**
16 **electronic and hard copy, both?**

17 **A. As far as I know, yes.**

18 **Q. What about Mike Boushon?**

19 **A. Mike Boushon? I did not speak with Mike.**

20 **Q. Is he still an employee here?**

21 **A. No, ma'am, not that I'm aware of. I think he**
22 **left a while ago.**

1 Q. Do you know when, by any chance?

2 A. No.

3 Q. When an employee leaves are their documents
4 kept somewhere?

5 A. Yes. Their working files are kept wherever
6 they're at for the next staff person to -- I would say
7 their cube, unless they had some other type files, and
8 their hard drives actually come to me. A copy of their
9 hard drives come to me.

10 Q. And are their hard drives kept?

11 A. -- I have a stack. We recently started that
12 process, so I -- I don't have them all, but if it was a
13 critical area, specifically if it pertained to anything
14 that would do with this, I would have them now, but
15 Mike's, for instance, I don't have his.

16 Q. Do you know who replaced Mike?

17 A. No, I do not.

18 Q. What about Mark Moody?

19 A. Mark Moody in terms of what, ma'am?

20 Q. Did you search documents from Mark Moody's
21 files?

22 A. No, I did not.

1 Q. Is he an employee with the State?

2 A. No longer, no.

3 Q. What about Peggy Bartels?

4 A. Peggy Bartels? I did not search Peggy's. I
5 did not.

6 Q. Is she an employee with the State still?

7 A. No, ma'am.

8 Q. Would you have the hard drive still for Mr.
9 Moody or Miss Bartels?

10 A. Yes.

11 Q. But those haven't been searched yet?

12 A. No.

13 Q. What about any other former administrator for
14 the Department?

15 A. Administrator, no.

16 Q. What about --

17 MR. REMINGTON: Well -- Never
18 mind.

19 BY MS. WALKER:

20 Q. What about for the head of the Division --

21 MR. BARLEY: Sounds like one of my objections.

22 BY MS. WALKER:

1 Q. -- of Healthcare Financing?

2 A. I don't --

3 Q. Did you search the current head of the
4 Division of Healthcare Financing?

5 A. The current administrator? We currently
6 don't have one. It's vacant.

7 Q. Okay.

8 A. And he -- Yeah. He was only here for four
9 months, and he would not have had anything pertaining
10 to this.

11 Q. Who was he?

12 A. Kevin Hayden. He's now the secretary.

13 Q. The Secretary of the Department of Health and
14 Family Services?

15 A. Yes, ma'am.

16 Q. And who was before Kevin?

17 A. Mark Moody.

18 Q. Okay. Thanks. Did you search the files of
19 Rita Hallet, H-A-L-L-E-T?

20 A. I specifically did not, no, but she was one
21 of the ones that we -- we asked. Now that you bring up
22 that name, yes, she was one that we asked original the

1 50 questions, but I did not search it myself.

2 Q. But she searched her own files?

3 A. Yes, ma'am.

4 Q. What about Alan White?

5 A. Alan White was also on the list as well.

6 Q. Christine Nye, N-Y-E?

7 A. I'm not familiar with that name.

8 Q. Okay. And you mentioned Carol Neeno before.
9 She searched her own files?

10 A. Yes.

11 -- Q. Okay. Did you give them any sort of time ---
12 limit as to what documents were responsive?

13 A. I did not give a time limit. I interviewed
14 them and said which files pertain to which question,
15 where are they, and in the next few days after that I
16 came and gathered them.

17 Q. But you didn't say anything before, you know,
18 a certain date they didn't have to give you, or were
19 they --

20 A. No. They gave me everything that they had.
21 There was no -- I wasn't going to let -- We did not
22 decide that. I was going to leave that up to DOJ staff

1 to decide what was pertinent or not, but no, we did not
2 give a timeframe. I more or less took everything that
3 they had.

4 Q. Okay. Before you testified that Miss Grey
5 looked for the Pharmacy Commission and the Kreling
6 studies. Do you know if she went out into the
7 Department to see who had these documents?

8 A. I do not know that.

9 Q. Do you have any idea of how she collected
10 them?

11 A. No, I don't.

12 Q. Did anyone else -- I guess you asked everyone
13 whether or not they had federal reports such as the OIG
14 reports, reports from GAO?

15 A. I will let you finish your question. I did
16 -- I did not ask -- I said look at the areas. If it
17 was in this, in your response or your request, then
18 that specifically -- I did not ask for any one type of
19 anything other than specifically for the 50 areas, look
20 at them all, except if there was a follow-up. Frank
21 may have asked, I don't recall offhand, but he may have
22 asked did you specifically look for this and then I may

1 have went back and asked that, but whatever the wording
2 that you all asked for, that's exactly what I gave them
3 and asked for.

4 Q. Okay. What computer systems does the
5 Department have that relate to preparation drug
6 reimbursement and rebates?

7 A. I am not familiar with any. I'm not a
8 program expert, ma'am. None come to mind, and I'm not
9 sure what -- how they would be used. So unless you can
10 explain a little bit more how they would be used, I
11 don't know.

12 Q. This is -- I guess this is one of those
13 questions that we mentioned before. Do you know who
14 might know what computer systems would be used for --
15 that relate to preparation drug reimbursement and
16 rebates?

17 A. Possibly Mr. Vavra up next.

18 Q. Okay. What kind of e-mail system does the
19 Department use?

20 A. GroupWise.

21 Q. GroupWise? Do you know if that's used
22 throughout the State of Wisconsin, or is that just the

1 Department?

2 A. I think -- I don't know what other
3 departments use GroupWise. It is not common -- The
4 State is making a switch to Outlook for the most part,
5 but we still use GroupWise. We haven't made the
6 transition yet, but I believe, I don't know for
7 certain, that most of the State is either on or
8 switched to Outlook, but we still use GroupWise.

9 Q. Are there backup tapes kept?

10 A. Specifically of Group -- There are backup
11 tapes or backup systems used at the Department, yes.
12 Specifically which type and how, I do not know, but we
13 do have a backup, yes.

14 Q. Do you know how long they're kept?

15 A. I do not know how long.

16 Q. Do you know if they're recycled?

17 A. I don't know.

18 Q. Who would know that?

19 A. The Bureau of Information Technology
20 Services, BITS, B-I-T-S. They would be -- They are the
21 -- the keepers of the LAN and GroupWise and computer
22 systems for the Department.

1 Q. So you don't know when e-mail was first used
2 by the Department?

3 A. No.

4 Q. Is e-mail commonly used here?

5 A. Is e-mail -- In what context, ma'am?

6 Q. Do people tend to use e-mail more than
7 writing letters or corresponding --

8 A. I don't know. I think that would -- I think
9 that's a style thing that, you know, that's -- but I
10 don't know, but I would say each staff have their own
11 style on how they keep files and e-mails.

12 Q. Can you give me a general sense of how files
13 are kept and maintained at the Department?

14 A. What type of files?

15 Q. Like any -- For example, anything relating to
16 pharmaceutical pricing. Do individuals keep them, or
17 are there rooms that have group files?

18 A. I think a little bit of both, but for the
19 most part I would say individuals keep them. We are a
20 workplace of cubes, we don't have much in terms of
21 storage space and so on, so we are a workplace of
22 cubes. So for the most part, I would say that they

1 keep them in their cube, working files. I'm sure some
2 have rooms -- or not rooms because we have no locked
3 storage for our own, but I would -- I would guess that
4 if there's some space that spills over from one cube
5 possibly spills into a vacant cube. I know that does
6 happen, but for the most part folks have their little
7 cubes that they keep their files in.

8 Q. What about electronic files? Do people use
9 -- save to their personal drive, or do they tend to use
10 shared drives?

11 A. That's a preference thing. I think it's
12 dependent upon staff. Some do do the shared drives.
13 Some bureaus push it more than others. So I would say
14 it depends on the bureau and the person and their
15 comfort level with IT and shared drives and so on. I
16 would say that we have a mixture.

17 Q. Okay. You said that you get the hard copy --
18 I mean the hard drives when people leave?

19 A. For certain folks, yes.

20 Q. Which folks do you get those for?

21 A. The administrators, key staff, section
22 chiefs. We started that in the last probably two to

1 three years. When a critical staff person leaves, I
2 get a copy of their hard drives.

3 Q. Who do the other hard drives go to for the
4 other people?

5 A. I don't know.

6 Q. What happened prior to two to three years ago
7 when a staff person would leave?

8 A. I would suspect that their hard drives would
9 be kept for a certain amount of time and then wiped out
10 for space issues or having to use that computer to --
11 to give to the next staff person.

12 Q. Do you know if a hold has been put in place
13 since this litigation started to stop wiping the hard
14 drives for a certain individuals?

15 A. Wiping the hard drives, no.

16 Q. Do you know if a hold order has been issued
17 in this case?

18 A. I'm sorry?

19 Q. An order that says not to destroy documents
20 that might be responsive to this litigation.

21 A. In some contexts, yes. The -- All the
22 records that are kept at the State Historical Society,

1 we have placed a hold on destruction of any files --
2 Actually, we placed a hold on the entire Division, so
3 we did no files at all. About a month ago we started to
4 let go some files that had no way of even remotely
5 being associated with this, but if there was even a --
6 a possibility that it was related to, I get all of the
7 requests for destruction and -- and I -- I have said
8 yes to two of them, and there were so far-fetched that
9 it could not have been, but that only was a month ago,
10 but in the last year we've shut down completely all the
11 destruction of records at the Records Center. Staff
12 know that if I get files from them, they were involved
13 -- involved in this and that request, that don't do
14 anything with -- with your files before you check with
15 me. So some contexts, yes.

16 Q. Okay. And this was just sent to the people
17 within the Division?

18 A. It was sent to the people on the list that I
19 specifically gathered the information who would have
20 had the expertise to -- to reply to the 50.

21 Q. Okay. But not -- not within the Office of
22 Legal Counsel?

1 **A. No, ma'am.**

2 **Q. Or the Office of Strategic Finance?**

3 **A. No.**

4 **Q. Or the secretary's office?**

5 **A. No.**

6 **Q. And --**

7 **A. At least I didn't do that.**

8 **Q. And it hasn't been issued to -- When**
9 employees leave, what about their hard copy to make
10 sure that those aren't destroyed?

11 **A. If any employee would leave on my list, then**
12 **I would tell the IT -- our IT guy I need that -- that**
13 **file. He's also aware of the list of what I use.**

14 **Q. What about people that may have left before**
15 **you got your -- the request? Do you know if they were**
16 **told prior to you coming into the picture?**

17 **A. Could you say that again?**

18 **Q. Yeah. Sorry. Before you started**
19 **interviewing people and sending out your chart, do you**
20 **know if -- if they had been given a notice not to**
21 **destroy any documents prior to that?**

22 **A. No, I don't. I don't know how they would**

1 have, but I don't know that. I don't know who would
2 have done that. Folks don't tend to destroy -- I mean,
3 folks are pretty -- pack rats. They don't tend to
4 destroy too much, but I would not have done that, no.

5 Q. Okay. And you say when an employee leaves
6 their hard copies are left with the person who replaces
7 them?

8 A. Correct. Their files are left in their work
9 station and then the next one comes in and uses them or
10 doesn't, or adds to them.

11 Q. And they would have been notified, if that
12 person is someone that would have responsive documents,
13 not to destroy those documents?

14 A. I don't know, but no case comes to mind of
15 any of these critical staff leaving. I don't know that
16 they would have destroyed. I don't know why they would
17 have destroyed, but they -- I don't recall us saying
18 specifically do not -- you're one of the 13 vacancies,
19 or you're one of the folks on the list who -- you've
20 replaced somebody, don't dump files, but I don't think
21 I've had that happen yet.

22 Q. What about with Mr. Collins? Because you

1 said --

2 A. Mr. Collins, correct, but he was not
3 replaced. He's a contractor. So whatever he had, which
4 I don't believe he gave me anything at all. He
5 reviewed his files, but he claimed he didn't have
6 anything at all, so -- but he's a contractor, but we
7 haven't replaced that position. So nobody has come in
8 to his work station area and done anything with it, but
9 again, I don't recall that I got anything from him.

10 Q. So his hard copy documents have not been
-11 destroyed?

12 A. No.

13 Q. And he left them here?

14 A. Correct.

15 MR. REMINGTON: Well, I object to
16 that question. It assumes that he has hard copies of
17 which could be destroyed. I don't think that Eli has
18 testified that he knows what Mr. Collins has, other
19 than asking him a question.

20 BY MS. WALKER:

21 Q. Okay. And you never received his -- Did you
22 ever receive his hard drive when he left?

1 A. I have not, no.

2 Q. So as far as you know, it's still on his
3 computer?

4 A. It's not on his computer. It's on the
5 Division of Healthcare Finance's computer.

6 Q. Okay. And Miss Neeno, who you said left the
7 Division --

8 A. (Witness nods.)

9 Q. -- as far as you know her documents have --

10 A. As far as I know, they have not been
11 destroyed. In fact -- No, they have not been destroyed
12 or even -- No.

13 Q. Does the State keep any records of records
14 that are destroyed?

15 A. From the Records Center, yes, because there's
16 actually a -- we -- before they destroy files based on
17 the time frames that we've put in place, they send us a
18 request to -- a notice saying by the way, this record
19 box, record set is going to be destroyed in two months
20 or three months, I'm not sure of the timeframe, unless
21 you say not to, so -- and then we say yes, or no, and
22 then they destroy.

1 Q. And do they keep a list of what it is that
2 they destroyed?

3 A. Correct. Oh, yes. Yes.

4 Q. And you keep a list of what is shipped off,
5 too?

6 A. Yes. Yes.

7 Q. With the documents that were destroyed --
8 With the list of documents that were destroyed, did you
9 look at the list to see if anything was destroyed that
10 may have been responsive?

11 A. Well, I haven't looked at this until, well,
12 until I've been involved in this, but I did not look at
13 anything past years that had been destroyed. I looked
14 specifically at the -- at the list of the ones we have
15 now and said do not destroy anything in the Division
16 until the last month, in which two of them I said go
17 ahead because they were so far-fetched, and space is
18 critical over there as well, so -- but prior to that
19 year or being involved in this, I did not go back and
20 say was there any files, but for that same time when I
21 reviewed that -- our list of everything that's there,
22 there wasn't much that staff had said is over there at

1 all. In fact, I -- I think I may have pulled one box.
2 Somebody said I think, you know, I have -- there may be
3 something there, but other than that, no, I haven't
4 gone back and looked.

5 Q. You indicated that you talked to these
6 individuals about retaining documents and not
7 destroying anything. Do you know if there was a
8 directive sent on everyone in the Medicaid program?

9 A. There was not. I did not do that.

10 Q. Does the Department of Health and Family
11 Services have a document retention policy?

12 A. There's guidelines, policies out there, I'm
13 sure. Which one specific you're referring to I don't
14 know, but -- you have to be a little bit more specific,
15 but there are guidelines, yes, and every Division has a
16 person responsible for retention of files and records.

17 Q. Did you ask that person for copies of the
18 retention policies in response to the document
19 requests?

20 A. Did I -- The person specifically in my
21 Division that works for me, did I ask him what our
22 retention policies are?

1 Q. Yeah. One of the requests, and we can look
2 at it, is for copies of retention policies. And what
3 I'm asking is did you -- did you collect retention
4 policies for the Department of Health and Family
5 Services?

6 A. I did not collect retention policies for the
7 Department of Health and Family Services. For the
8 Division, that's a different question, but for the
9 Department I did not.

10 Q. And did you for the Division?

11 A. I had a discussion with my staff person on
12 what retention policies are and what the Record Center
13 policies are and how we ship files and how we track
14 files and how do we know when files would be, you know,
15 destructed and so on. And he gave me an overview to
16 make sure -- I thought I pretty much knew, but I
17 checked with him to make sure is this the process as I
18 understand it and can I get which files and so on. So
19 that -- that I did.

20 Q. Do you know if that retention policy's in
21 writing for the Division?

22 A. No, I do not know if it's in writing. I do

1 not know if it's actually specifically in writing, no.

2 Q. As far as you know, is there any difference
3 between the policy that he described to you and what is
4 actually done in practice, as far as retaining --

5 A. No. I think it was -- I think they're right
6 on. Yeah. No.

7 Q. Does -- As far as you know, does the document
8 retention policy have any exemptions for certain types
9 of documents?

10 A. No. I wouldn't say never, but most of them
11 are based on statute, on what requirements by statute
12 that you need to retain files. Beyond that, if there's
13 just specifically no statute requirement, then it tends
14 to be five -- between three and five years, and then at
15 that point we just ask the staff, you know, how long do
16 you want us -- if there's not specifically one defining
17 statute or requirement, then we just say how long do
18 you want to keep them, but most are three to five years
19 average.

20 Q. Okay. Do you know what the policy says with
21 respect to data, such as EDS claims data?

22 A. Oh, that I'm not familiar with because that

1 -- no, I'm not familiar with that, but I suspect that
2 that would follow the same guidelines by statute, but I
3 do not know.

4 Q. Did you search for documents relating to
5 physician administered drugs or JHACO drugs?

6 A. Specifically what was asked in your -- I did
7 not leave a word out. If you asked for it, they got
8 that request. And again, I'm not a program expert. So
9 what you say, I have no idea what that even means, but
10 throughout this whole thing it was just whatever
11 specifically you asked for and what the staff -- the
12 names I received, as well as asking them do you know
13 any other staff who would have this info. I would not
14 -- I didn't do that.

15 MS. WALKER: Okay. Could we take a break?

16 (Recess taken.)

17 BY MS. WALKER:

18 Q. Mr. Soto, I just have a few more questions.
19 I'll try to speak a little louder. Just so I
20 understand, the only efforts that you undertook to
21 respond to the document requests were to look for
22 documents within the Division, with the exception of

1 the Pharmacy Commission reports that you reached out to
2 the governor's secretary for?

3 A. No. That's -- Also, the Office of Strategic
4 Finance and the Bureau of Fiscal Services.

5 Q. And with those you only asked for specific
6 documents?

7 A. I gave them the 50 original request areas
8 that you had asked, and I gave them that and said based
9 on this what documents or any information you have
10 pertaining to these 50 areas. The process I used
11 throughout was that.

12 Q. Okay. But you did not undertake any efforts
13 outside of the Department --

14 A. No.

15 Q. -- of Health and Family Services?

16 A. Other than for EDS, but --

17 Q. EDS and the Pharmacy Commission from the
18 governor's office, right?

19 A. Governor's office through the secretary's
20 office, yes. Not specifically to the governor's
21 office.

22 Q. Okay. And within the Department of Health

1 and Family Services, what you did was delegate to
2 certain individuals giving them the list of 50 with
3 your chart and had them identify who would have
4 responsive documents?

5 A. Say that again, please.

6 Q. When you received a request you identified a
7 certain group of people initially to give the request
8 to?

9 A. I started with the bureau directors and asked
10 them which staff specifically would have expertise in
11 that. There were some that were apparent to me that I
12 just knew because I've been there for seven years, so
13 there's some I knew, and the bureau directors gave me
14 the rest of -- this person, this person. And then
15 after I spoke with those staff, I said is there anybody
16 else that you know would have information pertaining to
17 these 50 areas, and oh, yeah, check with this person.
18 So I would add them on my list, go about the same
19 process.

20 Q. Okay. Other than Mr. Collins, did you search
21 any other consultant's documents for responsive
22 documents?

1 A. No consultants come to mind, no.

2 Q. What about any former employees?

3 A. Former employees? Yes, I did.

4 Q. And who were those?

5 A. Two in specific. One was the Deputy
6 Administrator for the Division, Pris, P-R-I-S,
7 Boroniec, B-O-R-O-N-I-E-C, and Russ Pederson,
8 P-E-D-E-R-S-O-N.

9 Q. Anyone else?

10 A. Not that come to mind, no.

11 Q. I just want to clarify one thing about Mr.
12 Collins. Did he look -- He looked -- You asked him to
13 look through his own documents?

14 A. I asked -- I gave -- The same process
15 applies. Here's the 50, do you have any information,
16 e-mail, electronic, any at Record Center, or working
17 files here that you have that pertain to any of these
18 50. And I don't believe he gave me anything at all.
19 In fact, I think -- I believe he just referred me to
20 Keri Grey, was one of them, and Karen Neeno was the
21 other, so -- but I don't believe he gave me anything at
22 all, but if he did I put it, you know, for review for

1 DOJ staff to decide what goes and what doesn't.

2 Q. And I understand he has a contract with -- he
3 has a contract with the State. Does that mean he
4 actually sat here?

5 A. He did part time. I believe it was part
6 time. He did. He actually had a work cube station at
7 the Division.

8 Q. So he looked not only in his documents here,
9 but any documents he may have had off-site that were
10 responsive?

11 A. I don't know that, ma'am. I don't know that.

12 Q. Have you told me everything that you've done
13 in -- in response to these requests in collecting
14 documents? Is there anything that we haven't discussed
15 that you did?

16 A. I did check our controlled correspondence
17 database, which is -- is nothing -- I mean, that sound
18 far fancier than what it is. I did check our
19 controlled correspondence for any letters or
20 correspondences that have been outgoing to look for the
21 words AWP, and there's over 10,000 of those. I also
22 sent them to Frank and said, you know, review as well

1 if you need to to see if there's anything that we could
2 pull if we had them still on file. They dated back to
3 10 years. And other than that, the -- No. Other than
4 that, I don't believe -- I believe that's it.

5 Q. And with the search terms you used for the
6 correspondence database, did you write down the search
7 terms that you used?

8 A. No, I did not, but come to mind, average
9 wholesale pricing, AWP. Those are the ones that come
10 to mind I used.

11 Q. Does this correspondence database only have
12 correspondence received by the Department, or also
13 correspondence that they wrote outside?

14 A. Almost -- The majority of them would have
15 been somebody asking for information, coming in, and as
16 a result we responded back. So it would have been most
17 likely in and out. And again, it goes back to 10
18 years. I don't believe we have every one of them, but
19 staff can look for the ones that they had had, but
20 there was none that come to mind that I said hey, pull
21 this one because it matched. So there's none that come
22 to mind.

1 Q. Anything else that you can think of?

2 A. No.

3 MS. WALKER: Does anyone on the call have
4 any questions?

5 MR. REMINGTON: No, I don't have any
6 questions. Good.. Thank you, Eli.

7 (At 10:10 a.m. the deposition concluded.)

8
9

10

ELIAS N. SOTO

11
12

13 SUBSCRIBED AND SWORN before and to me this
14 day of _____, 20__.

15
16

17

18

19

NOTARY PUBLIC

20
21

22 My Commission Expires:

1 STATE OF WISCONSIN)
2 MILWAUKEE COUNTY) SS:

3
4 I, KIM M. PETERSON, CM, Registered
5 Professional Reporter and Notary Public in and for the
6 State of Wisconsin, do hereby certify that the
7 deposition of ELIAS N. SOTO, was taken before me at
8 the Risser Justice Center, 17 West Main Street,
9 Madison, Wisconsin, on the 24th day of January, 2007,
10 commencing at 9 o'clock in the forenoon.

11
12 That it was taken at the instance
13 of the Defendants upon verbal interrogatories.

14
15 That said deposition was taken to
16 be used in an action now pending in the Circuit Court
17 of DANE County, Wisconsin, in which STATE OF
18 WISCONSIN, is the Plaintiff and AMGEN, INC., et al.,
19 are the Defendants.

20
21
22

1 A P P E A R A N C E S

2

3 ARCHIBALD CONSUMER LAW OFFICE, 1914
4 Monroe Street, Madison, Wisconsin, 53711, by MR. P.
5 JEFFREY ARCHIBALD, appeared on behalf of the
6 Plaintiff.

7 WISCONSIN DEPARTMENT OF JUSTICE,
8 P.O. Box 7857, Madison, Wisconsin, 53707-7857, by MR.
9 FRANK D. REMINGTON and MR. THOMAS L. DOSCH, appeared
10 on behalf of the Plaintiff.

11

12 KELLEY, DRYE & WARREN, LLP, 101
13 Park Avenue, New York, New York, 10178, by MR.
14 CLIFFORD E. KATZ, appeared via telephone on behalf of
15 the Defendant Mylan Laboratories, Inc., Mylan
16 Pharmaceuticals, Inc., and Dey, Inc.

17

18 DECHERT, LLP, Cira Centre, 2929
19 Arch Street, Philadelphia, Pennsylvania, 19104-2808,
20 by MS. JAN P. LEVINE, appeared via telephone on behalf
21 of the Defendant Glaxosmithkline.

22

1 HOGAN & HARTSON, 111 South Calvert
2 Street, Suite 1600, Baltimore, Maryland, 21202, by MS.
3 JENNIFER A. WALKER and MR. STEVEN F. BARLEY, appeared
4 on behalf of the Defendant Amgen, Inc.

5
6 That said deponent, before
7 examination, was sworn to testify the truth, the whole
8 truth, and nothing but the truth relative to said
9 cause.

10
11 That the foregoing is a full, true
12 and correct record of all the proceedings had in the
13 matter of the taking of said deposition, as reflected
14 by my original machine shorthand notes taken at said
15 time and place.

16
17 *Kim M. Peterson*
18 Notary Public in and for
19 the State of Wisconsin

KIM M. PETERSON
Notary Public
State of Wisconsin

20 Dated this 1st day of FEBRUARY, 2002,
21 Milwaukee, Wisconsin.

22 My commission expires April 11, 2010.

EXHIBIT B

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

CONFIDENTIAL

AMGEN, INC., et al.,

Defendants.

Certified Copy

DEPOSITION of JAMES VAVRA, taken at the instance of the Defendants, under and pursuant to the provisions of Chapter 804.05 of the Wisconsin Statutes, and the acts amendatory thereof and supplementary thereto, before me, KIM M. PETERSON, CM, Registered Professional Reporter and Notary Public in and for the State of Wisconsin, at the Risser Justice Center, 17 West Main Street, Madison, Wisconsin, on the 24th day of January, 2007, commencing at 10:15 o'clock in the forenoon.

1 Q. And are you aware of any documents in
2 the State's possession, custody and control that
3 would relate to any efforts that the State
4 undertook in considering these findings in
5 determining future changes to the State's
6 reimbursement methodology for prescription drugs?
7 In other words, the letter from the State says
8 we'll consider this. I'm asking what documents
9 might be out there that might document or refer to
10 the State's efforts in doing that.

11 A. **Certain budget documents might do that.**

12 Q. And what types of budget documents?

13 A. **Issue papers done on pharmacy**
14 **reimbursement, for example, done either by**
15 **Healthcare Finance or perhaps the Office of**
16 **Strategic Finance. The Department's budget**
17 **requests may have specific references to pharmacy**
18 **reimbursement items. We would have also had**
19 **access to any Department of Administration budget**
20 **documents produced or Legislative Fiscal Bureau**
21 **documents.**

22 Q. What -- You said issue papers that might

1 Q. Is the lower body, is it called the
2 House in Wisconsin?

3 A. **The Assembly.**

4 Q. Assembly, okay. That's what ours is
5 called, too. Very august body I'm sure.

6 A. **Um-hum.**

7 Q. So there is some sort of Health
8 Committee?

9 A. **Yes.**

10 Q. Is there -- Does the -- Is there also
11 some sort of Finance Committee?

12 A. **There's a Joint Finance Committee as
13 well.**

14 Q. And that is -- Again, that committee is
15 -- It says joint. Does that mean it's a joint
16 between the House and the Senate and it's one
17 committee?

18 A. **Correct. It's both. It's the Joint
19 Finance Committee. The membership is made up of
20 representatives and -- or assembly persons and
21 senators.**

22 Q. And would they have some involvement in

1 potential changes to reimbursement for Medicaid
2 reimbursed drugs in Wisconsin?

3 **A. Yes, as part of budget deliberations**
4 **certainly.**

5 Q. And if I'm getting outside an area where
6 you are comfortable telling me what documents
7 might be out there, let me know, but what types of
8 documents would either the Joint Finance Committee
9 or either the Senate or Assembly Health Committees
10 have relating to Medicaid drug reimbursement,
11 potential changes to that?

12 MR. ARCHIBALD: I'll object to the
13 extent it goes beyond this witness's competence,
14 but you can answer to the extent that you know.

15 THE WITNESS: The Joint Finance
16 Committee requests that papers related to budget
17 deliberations be done by the Legislative Fiscal
18 Bureau, so they would have those.

19 In terms of the legislative committees,
20 I'm not aware of what they might request, but I
21 know legislators can request that Fiscal Bureau do
22 analyses for them on various topics.

1 BY MR. BARLEY:

2 Q. In the course of the debate about
3 changes to Medicaid reimbursement for
4 pharmaceuticals, are members of the Department,
5 your Department, called to testify in front of any
6 of these committees?

7 A. They can be, yes.

8 Q. And if they do, do they provide written
9 testimony in advance, or do they testify live, or
10 some combination?

11 A. It's -- I believe it's a combination.

12 Q. And where would the written testimony be
13 located? Would the Department maintain that, or
14 would that be in the possession of the
15 legislature?

16 A. I believe if it's maintained it would be
17 the Department. Typically, when there is a -- a
18 finance hearing where they request that the
19 Secretary of Health and Family Services present,
20 the secretary goes.

21 Q. So would the secretary then be the
22 person who would be in possession of the written

1 -- I don't know if it's to the governor or the
2 Department of Administration. I should know that.
3 That's just a civics point. It's easy enough for
4 you to find, but that transmittal is done by the
5 secretary of the Department.

6 Q. So if we wanted to find the DHFS
7 submission to the Department of Administration,
8 which in turn, you know, is going to be put into
9 the governor's budget at some point, or considered
10 to be included in the governor's budget, the
11 documents relating to that would be in the
12 secretary's possession?

13 A. Secretary's office or, again, Office of
14 Strategic Finance, who actually produced the final
15 documents for transmittal. And again, I should
16 know, but don't remember if it goes to the
17 governor or to the Secretary of DOA.

18 Q. All right. Topic 10B is documents
19 relating to Department of Health and Family
20 Services' 1999 proposal to decrease reimbursement
21 for pharmaceuticals from AWP minus 10 percent to
22 AWP minus 18 percent. Are you familiar with that

1 proposal by DHFS?

2 A. Yeah, I recall the proposal.

3 Q. Where would documents be located that
4 were generated in connection with developing and
5 making that proposal?

6 A. Again, those would have been within the
7 Department since this was -- I don't recall the
8 specifics of this one, but it would have come from
9 the Office of Strategic Finance, which may not
10 have been called that then. Might have been
11 Office of Policy and Budget, OPB, at the time, but
12 the same type of office. The budget office for
13 the secretary.

14 Q. I assume that your bureau would have
15 input into that?

16 A. Correct.

17 Q. There would be meetings leading up to
18 that?

19 A. Correct. Potentially concept papers or
20 issue papers that we drafted as well.

21 Q. And where would the concept papers or
22 issue papers be, if you had done them?

EXHIBIT C

Walker, Jennifer A.

From: Walker, Jennifer A.
Sent: Monday, April 16, 2007 4:48 PM
To: Remington, Frank D.
Cc: Barley, Steven F.
Subject: Summary of 4/12/07 meet-and-confer

Frank,

I am writing to summarize our April 12, 2007 meet-and-confer. During our meeting, we discussed the following: (1) the State's searches of electronic documents; (2) the State's position concerning EDS; (3) the State's response to our January 26, 2007 letter concerning the State's interrogatory responses and objections; and (4) steps the State has taken to preserve responsive documents. We also started to discuss outstanding issues related to the State's document production but, since it was getting late, we decided to postpone the remainder of that discussion until Thursday, April 19 at 11am (EST)/10am (CST).

State's searches of electronic documents

As we suspected, and you confirmed, the State has not searched electronic files for responsive documents. Accordingly, we asked the State to search the following files using defendants' search terms: (1) DHFS' controlled correspondence database; (2) emails of "key" individuals (including but not limited to those individuals Mr. Soto identified during his collection process) and the individuals we identified in our March 8, 2007 letter; and (3) non-email electronic documents of those same individuals. You said you would get back to us this week as to whether the State was willing to undertake searches of some or all of these areas. You also said that you would provide us with a proposed, revised list of search terms. Please provide us with this list as soon as possible.

EDS

The State is not opposed to the defendants speaking directly with EDS and invited us to subpoena EDS for responsive documents. We maintain that as the State's Medicaid fiscal agent, the State has control over EDS and is responsible for producing responsive documents from EDS. Nevertheless, given your statements, we will have ex parte discussions with EDS and subpoena EDS directly.

State's response to our 1/26/07 letter

You agreed to respond to our January 26, 2007 letter in writing within two weeks.

State's steps to preserve responsive documents

Although you were unable to supplement Mr. Soto's deposition testimony on this issue, you agreed to let us know when, how, and to whom within DHFS the State made a request to preserve documents. Also, you said that other than the State's general document preservation/destruction policy, no "hold" order or instruction to preserve potentially responsive documents was or has been given to individuals or entities outside DHFS. Please let me know if I am mistaken.

If you feel that this summary mischaracterizes our discussion in any way, please let me know. We appreciate your continued cooperation in this matter and look forward to speaking with you on Thursday at 11am (EST)/10am (CST).

Kind regards,
Jennifer

JENNIFER WALKER, ATTORNEY AT LAW
HOGAN & HARTSON LLP
111 South Calvert Street, Suite 1600, Baltimore, MD 21202
direct +1.410.659.2759 | tel +1.410.659.2700 | fax +1.410.539.6981
jawalker@hhlaw.com | <http://www.hhlaw.com>

5/21/2007

EXHIBIT D

Walker, Jennifer A.

From: Remington, Frank D. [remingtonfd@DOJ.STATE.WI.US]
Sent: Wednesday, April 18, 2007 1:41 PM
To: Walker, Jennifer A.
Cc: Barley, Steven F.; Chuck Barnhill
Subject: RE: Summary of 4/12/07 meet-and-confer

Jennifer:

I have the date and time on my calendar for our next meeting.

I suspect you did not intend to mischaracterize our earlier discussions, but I think it best to make clear what we have done and what I have consistently told you. You indicate that I confirmed that the State has not searched electronic files for responsive documents. This is not accurate. What I said was the following. I met with DHFS staff to go over the defendants' request for production of documents. At that meeting we discussed the location of responsive documents including what person or person who might have custody those responsive documents. DHFS staff instructed these persons to produce all responsive documents regardless of the form in which they were kept; this instruction by definition included documents that were in electronic form. We discussed this at our last meeting and I recall saying that proof of this fact is made by reference to the e-mails that were the subject of the Plaintiff's attorney-client privilege dispute. Thus, the record should be clear that the State did search electronic files for responsive documents, but perhaps not in the manner in which the defendants would have liked.

I also continue to be perplexed by our discussions about the defendants' inquires about whether a "hold order" has been put in place. As you know, Mr. Eli Soto is taking all reasonable steps to preserve records at the DHFS. I have not specifically instructed record custodians outside that agency to deviate from their standard record retention policies because the defendants have not given me any guidance on who or better what should be the focus of such extended retention. We have talked about this. And I have indicated that the State undertook a massive process of obtaining all documents relevant to the defendants' second request for production of documents. Literally thousands and thousands of documents have been scanned and turned over. All relevant data has been produced. Persons have been identified having knowledge about the areas defendants have made inquiry of.

The defendants resort to a fall back position of demanding the state preserve "all potentially responsive records." This tells me nothing about who to contact or more importantly what to say. I have asked the defendants to identify specifically what record custodian I should make inquiry and more importantly to tell me what I should instruct this custodian to retain. As we have discussed, this is not an issue with regard to DHFS. But it is critical with regard to the other agencies who are not intimately involved with the Medical Assistance Program. From my perspective, the defendants prior demands were comprehensive and complete and we have already turned over all of the records the State has relating to these demands. If the defendants could articulate to me in a comprehensible fashion what records they do not already have but would like, or might like, I am happy to convey this message to the appropriate persons. Better than that, I am amenable to producing them to you without delay.

I look forward to speaking with you further tomorrow.

Frank

From: Walker, Jennifer A. [mailto:JAWalker@HHLAW.com]
Sent: Monday, April 16, 2007 3:48 PM
To: Remington, Frank D.
Cc: Barley, Steven F.
Subject: Summary of 4/12/07 meet-and-confer

Frank,

5/21/2007

I am writing to summarize our April 12, 2007 meet-and-confer. During our meeting, we discussed the following: (1) the State's searches of electronic documents; (2) the State's position concerning EDS; (3) the State's response to our January 26, 2007 letter concerning the State's interrogatory responses and objections; and (4) steps the State has taken to preserve responsive documents. We also started to discuss outstanding issues related to the State's document production but, since it was getting late, we decided to postpone the remainder of that discussion until Thursday, April 19 at 11am (EST)/10am (CST).

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EDS

The State is not opposed to the defendants speaking directly with EDS and invited us to subpoena EDS for responsive documents. We maintain that as the State's Medicaid fiscal agent, the State has control over EDS and is responsible for producing responsive documents from EDS. Nevertheless, given your statements, we will have ex parte discussions with EDS and subpoena EDS directly.

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You agreed to respond to our January 26, 2007 letter in writing within two weeks.

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Although you were unable to supplement Mr. Soto's deposition testimony on this issue, you agreed to let us know when, how, and to whom within DHFS the State made a request to preserve documents. Also, you said that other than the State's general document preservation/destruction policy, no "hold" order or instruction to preserve potentially responsive documents was or has been given to individuals or entities outside DHFS. Please let me know if I am mistaken.

If you feel that this summary mischaracterizes our discussion in any way, please let me know. We appreciate your continued cooperation in this matter and look forward to speaking with you on Thursday at 11am (EST)/10am (CST).

Kind regards,
Jennifer

JENNIFER WALKER, ATTORNEY AT LAW
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If you have received this electronic transmission in error, please notify us by tele

5/21/2007

EXHIBIT E

HOGAN & HARTSON

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March 8, 2007

Steven F. Barley
Partner
+1.410.659.2724
sfbarley@hhlaw.com

BY ELECTRONIC MAIL

Frank Remington, Esq.
Wisconsin Department of Justice
Office of the Attorney General
P.O. Box. 7857
Madison, WI 53707

Re: State of Wisconsin v. Amgen Inc., et al.

Dear Frank:

I write to address some discovery-related issues that became apparent during the depositions of James Vavra and Eli Soto.

First and perhaps most significantly, their testimony made it very apparent that a number of individuals and locations likely to be in possession of responsive documents either were not searched or were not searched adequately. Accordingly, we request that the State search the individuals and entities identified below.

Individuals

We request that the State search the following individuals, whom Mr. Soto testified he did not search, for responsive hard-copy and electronic documents:

- Mike Boushon (Soto Tr. at 31-32),
- Mark Moody (Soto Tr. at 32-33; Vavra Tr. at 131-132),
- Peggy Bartels (Soto Tr. at 32-33),
- Kevin Hayden (Soto Tr. at 34), and
- Christine Nye (Soto Tr. at 6-7).

In addition, we request that the State search the hard-copy and electronic files of Ted Collins again. Mr. Soto testified that he asked Mr. Collins for responsive documents but Mr. Collins responded that he had none. (Soto Tr. at 45). Frankly, we find this difficult to understand given Mr. Collins's position and the fact that Mr. Vavra testified that Mr. Collins likely had access to responsive documents and, in particular, wholesaler data. (Vavra Tr. at 72, 96-99). We request that the State

search Mr. Collins' hard-copy documents again and also search his electronic documents using defendants' search terms for responsive documents.

We also request that the State search the hard-copy and electronic documents of the current and former employees who were in the following positions since 1985:

- Secretary of the Department of Health & Family Services (*see e.g.*, Vavra Tr. at 100-101);
- Liaison to the Governor's Office (*see* Vavra Tr. at 90-92);
- Administrator for what is currently known as the Division of Health Care Financing (*see e.g.*, Vavra Tr. at 100-101); and
- Pharmacy consultants (*see* Vavra Tr. at 96-99).

Department of Health and Family Services ("DHFS"), generally

Mr. Soto testified that he searched one DHFS shared drive, the H drive, with a limited set of search terms that he unilaterally chose. (Soto Tr. at 30). We request that the State search the H drive for responsive documents using defendants' search terms. We also request that the State search any other shared drive that may contain responsive documents.

Mr. Vavra testified that someone on his staff might have copies of the following reports: (1) study by Congressman Tom Barrett on Milwaukee pharmacies; (2) Federal Trade Commission report on pharmaceutical reimbursement; or (3) HCFA study on the impact of PBMs conducted by the University of Wisconsin-Madison and the University of California at San Francisco. (Vavra Tr. at 92-94). Please search for and produce these reports and any communications concerning these reports. Please also search for the Brandeis University report, which Mr. Vavra also testified about during his deposition. (Vavra Tr. at 28.)

Mr. Vavra further testified that CMS periodically undertakes audits of various areas of Wisconsin's Medicaid program and that these audit reports are kept by the office that is the subject of the audit. (Vavra Tr. at 29-31). Please search for and produce these reports to the extent they address pharmaceutical pricing and/or reimbursement or are otherwise responsive to the defendants' document requests. Please also produce any documents or communications concerning these reports.

In addition, Mr. Vavra testified that DHFS has budget-related documents, including budget requests, related to pharmaceutical pricing and reimbursement. (Vavra Tr. at 38). To the extent the State has not already produced these documents, we request that it do so.

Office of Strategic Finance ("OSF")

We request that the State perform a more comprehensive search of OSF for responsive documents. Although Mr. Soto testified that he asked OSF for, and it

denied having, responsive documents (Soto Tr. at 22-23; 26-27), Mr. Vavra identified, a number of categories of responsive documents maintained by OSF, including but not limited to the following: (1) issue, briefing, and concept papers on pharmaceutical reimbursement and/or costs (Vavra Tr. at 36-37; 129), (2) documents related to DHFS's 1999 proposal to decrease reimbursement rates to AWP-18% (Vavra Tr. at 137-139), and (3) possibly written testimony of the Secretary concerning pharmaceutical reimbursement. (Vavra Tr. at 88-89). We request that the State search for and produce these documents.

DHFS Secretary's Office

We also request that the State search the DHFS Secretary's office for responsive documents. Mr. Soto asked the Secretary's office only for documents related to the Governor's Pharmacy Reimbursement Commission. (Soto Tr. at 26). Mr. Vavra, however, testified that the Secretary's office potentially maintains several categories of responsive documents, including but not limited to the following: (1) written testimony of the Secretary concerning pharmaceutical reimbursement (Vavra Tr. at 88-89), (2) email correspondence with the Governor's office concerning pharmaceutical reimbursement (Vavra Tr. at 90-92), and (3) communications with/from the National Association of State Medicaid Directors concerning pharmaceutical reimbursement. (Vavra Tr. at 100-101). We request that the State search for and produce these documents.

Division of Disabled and Elderly Services ("DDES")

Mr. Soto did not search DDES for responsive documents. Mr. Vavra, however, testified that he thought DDES had access to pharmaceutical wholesaler data through its mental health institutions, which purchase pharmaceuticals directly from wholesalers. (Vavra Tr. at 72-74). We request that the State produce this data and any documents comparing the price paid by these institutions to that reimbursed by Wisconsin Medicaid. We further request that the State produce the same for any other entity within the State of Wisconsin that purchases pharmaceuticals directly from wholesalers, pharmaceutical manufacturers and/or other entities.

Bureau of Fee for Service Health Care Benefits

Mr. Vavra testified that several categories of responsive documents are maintained by the Bureau of Fee for Service Health Care Benefits, including the following:

- Communications with CMS about State plans and/or amendments. (Vavra Tr. at 16-17).
- Provider handbooks and/or updates concerning pharmaceutical pricing and/or reimbursement. (Vavra Tr. at 66-67).
- Documents from other states discussing or reflecting pharmaceutical reimbursement or EAC information. (Vavra Tr. at 76-79).

- Information from third-party payors concerning AWP and/or EAC. (Vavra Tr. at 79).
- Information compiled by CMS concerning AWP and/or EAC. (Vavra Tr. at 76-79).
- State Medicaid Director letters from CMS concerning changes in pharmaceutical reimbursement. (Vavra Tr. at 102).
- Recipient newsletters concerning pharmaceutical pricing and/or reimbursement. (Vavra Tr. at 108, 109).
- Letters from manufacturers concerning pricing in connection with Wisconsin's Preferred Drug List. (Vavra Tr. at 110).
- Documents, including handwritten notes, from meetings with manufacturers discussing pricing information. (Vavra Tr. at 110-111).

Based on our review of the State's initial production, it does not appear defendants received these documents. We request that the State search for and produce these documents.

In addition, pursuant to Wis. Adm. Code § 108.02(6) DHFS must "publish a public notice in the Wisconsin administrative register of any significant proposed change in the statewide method or level of reimbursement for a service . . ." Wis. Adm. Code § 108.02(6). Based on the public notices we were able to find online related to pharmaceutical reimbursement, it appears that people were directed to Mr. Vavra at the Bureau of Fee for Service Health Care Benefits for copies of the proposed changes and were told to send written comments on the proposed changes to the Division of Health Care Financing. Please search for and produce all such proposed changes and any written comments DHCF received regarding those proposed changes.

Bureau of Operations

Mr. Vavra testified that the Bureau of Operations also maintains a number of responsive documents, including the following:

- Directives to EDS from the State of Wisconsin concerning pharmaceutical reimbursement and/or pricing. (Vavra Tr. at 52-53).
- Audits of EDS. Mr. Vavra thought at least three audits of EDS have been conducted by Clifton Gunderson. (Vavra Tr. at 60-61).
- Communications with First DataBank. (Vavra Tr. at 122-124).
- Documents related to EDS's role in collecting unit rebate amounts in order to invoice manufacturers. (Vavra Tr. at 146-147).

It does not appear defendants received these documents in the State's initial production. We request that the State search for and produce these documents.

Bureau of Managed Health Care Programs

Mr. Vavra testified that the State contracts with 5-8 managed care plans to deliver benefits to certain beneficiaries and that copies of these contracts are kept by the Bureau of Managed Health Care Programs. (Vavra Tr. at 113, 115-116). Defendants did not receive copies of these contracts, and thus request that the State search for and produce them.

Bureau of Program Integrity

Mr. Vavra testified that the Bureau of Program Integrity maintains a number of responsive documents, including the following:

- Documents in the files of Wisconsin's current and former pharmacy consultant concerning pharmaceutical reimbursement. (Vavra Tr. at 96-99.)
- Documents from the National Association of Medicaid Fraud Control Units, DOJ, or the Association of Attorney Generals concerning pharmaceutical reimbursement. (Vavra Tr. at 103, 105).
- Contracts with mail order pharmacies. (Vavra Tr. at 120-121).

Again, it does not appear defendants received these documents in the State's initial production. We request that the State search for and produce these documents.

Department of Administration ("DOA")

Mr. Vavra testified that DOA maintains budget documents concerning pharmaceutical pricing and/or reimbursement. It appears that defendants did not receive these documents in the State's initial production. We request that the State produce these documents, and in particular, documents related to the 2001-2003 budget proposal to change reimbursement to AWP-18% (Vavra Tr. at 139) and the 2005-2007 proposal to change reimbursement to AWP-16% (Vavra Tr. at 140), which Mr. Vavra testified might be located in DOA's files.

Governor's Office

Mr. Vavra testified that the Governor's Office maintains a number of responsive documents, including budget proposals and the Budget in Brief, which usually accompanies the budget proposal, both of which occasionally contain references to pharmaceutical pricing and/or reimbursement. (Vavra Tr. at 82; 129; 132-134; 139). It appears that defendants did not receive these documents in the State's initial production. We request that the State produce these documents.

Legislative Fiscal Bureau ("LFB")

Mr. Vavra testified that LFB has documents related to budget issues on pharmaceutical reimbursement under Medicaid, including documents related to DHFS's 1999 proposal to decrease reimbursement rates to AWP-18% and the 2001-2003 proposal to change reimbursement to AWP-18%. (Vavra Tr. at 129, 137-139). To the extent the State has not produced these documents, and in particular documents related to DHFS's 1999 proposal, we request that the State do so.

Legislative Audit Bureau ("LAB")

Mr. Vavra testified that LAB may have undertaken audits of Wisconsin's Medicaid program. (Vavra Tr. at 24-26.) Please inquire whether any audits have been conducted of Wisconsin's Medicaid program since its inception. It appears that at least one may have occurred in or around 1975 at the request of the then-Lieutenant Governor of Wisconsin, Martin Schreiber. See attached letter of February 7, 1975 from Martin J. Schreiber, Lieutenant Governor of Wisconsin to the Department of Health, Education and Welfare. Please search for documents concerning this audit and any other audit of pharmaceutical billing, reimbursement, or costs under the Wisconsin Medicaid program.

Legislative Reference Bureau ("LRB")

Mr. Vavra testified that LRB may have documents related to Wisconsin's 2005 legislation to alter Medicaid pharmaceutical reimbursement rates from AWP-16% to AWP-13%. (Vavra Tr. at 141-142). It does not appear that defendants received any documents from LRB. Please search for responsive documents from LRB, including documents related to Wisconsin's 2005 legislation to change reimbursement rates from AWP-16% to AWP-13%.

EDS

Mr. Vavra testified that EDS has a number of potentially responsive documents, which defendants did not receive in the State's initial production. Those documents include the following:

- Agreements between providers and EDS/Wisconsin concerning pharmaceutical reimbursement. (Vavra Tr. at 42-43; 49-50; 119-120).
- Management reports summarizing claims paid. (Vavra Tr. at 47-48).
- Master drug list identifying all drugs reimbursed by the State. (Vavra Tr. at 55-56).
- Provider complaints concerning pharmaceutical pricing and/or reimbursement or dispensing costs/fees. (Vavra Tr. at 62-63).
- Documents advising the State of ways to save money. (Vavra Tr. at 59).
- Communications with manufacturers concerning pricing. (Vavra Tr. at 111-112).
- EDS's contract with the State. (Vavra Tr. at 117).

- EDS's contract with its two subcontractors—Provider Synergies and APS Healthcare. (Vavra Tr. at 114, 117).
- EDS's contract with First DataBank and any communications between EDS and First DataBank. (Vavra Tr. 122-124).
- EDS's contract with APS Healthcare. (Vavra Tr. at 114).
- Copies of APS Healthcare's drug utilization reviews. (Vavra Tr. at 114).

We request that the State search for and produce these documents.

In addition to the deficiencies in the State's production, it appears, based on Mr. Soto's deposition, that a hold order was only recently issued and only to certain individuals.¹ (Soto Tr. at 41-44). We request that, if you have not already done so, a proper hold order be issued to all individuals who may have potentially responsive documents, including individuals within DHFS, Governor's Office, Department of Administration, Legislative Fiscal Bureau, Legislative Audit Bureau, Legislative Reference Bureau, Joint Committee for Finance, and EDS. We also request that a hold order be issued to these individuals' supervisors and successors to prevent the destruction of these individuals' files in the event they leave government service while this case is pending. (Soto Tr. at 40-44, 48). Moreover, we request that you issue a hold order to the IT department or other department responsible for wiping hard-drives to ensure that all hard-drives with potentially responsive documents are maintained. (Soto Tr. at 32; 40-41).

These depositions unfortunately made clear that, among other things, the State's initial efforts to locate and produce documents responsive to the defendants' requests were disappointingly limited and inadequate. They raised serious issues about the scope and oversight of this effort, which appears to have been left largely to an inexperienced individual with no legal background.

After you have had a chance to review this letter, please give Jennifer Walker or me a call so we can schedule a meet-and-confer to discuss this letter, my January 26, 2007 letter raising concerns about the State's Interrogatory Responses, and my February 28, 2007 letter following-up on our January 10, 2007 meet-and-confer. We look forward to resolving these, and other, discovery-related issues.

Very truly yours,

Steven F. Barley / JW

Steven F. Barley

cc: Jennifer A. Walker

¹ We do not at this time address the implications of the State's failure to timely issue an appropriate hold order or Mr. Soto's testimony regarding the State's periodic, post-Complaint destruction of potentially responsive documents. (See Soto Tr. at 32, 40-44, 48).

EXHIBIT F

General Records Schedule
Budget and Budget Related Records

For use by
State of Wisconsin Government Agencies

Public Records Board

Approved March, 2002

RDA's BUDG001-BUDG041

WI-Prod-AWP-106551

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PURPOSE

The purpose of this general schedule is to:

- Provide state agencies with uniform guidelines for the retention and disposition of common budget and budget related records;
- Ensure that agencies retain budget and budget related records as long as needed for internal administration requirements, and to meet legal, fiscal, historical and other state of Wisconsin and federal requirements;
- Promote cost-effective management of records by state agencies; and
- Provide state agencies with legal authorization to dispose of obsolete records on a regularly scheduled basis after the established minimum retention periods.

WHO MAY USE THIS SCHEDULE?

Agencies included: This general schedule applies to all Wisconsin state agencies and University of Wisconsin institutions. This schedule is written to accommodate budget and budget related records across state government. Agency specific records schedules should be either superceded or brought into conformance with this schedule.

SCHEDULE DOES NOT REQUIRE CREATION OF RECORDS

It is understood that not all agencies may have all the types of budget and budget related records listed in this schedule. This schedule does not require records to be created by state agencies. Rather, it provides policy guidance for those records that are created or received by state agencies.

SCOPE

This general schedule covers records series that agencies create and use for all aspects of budgeting. As the primary agency with statewide budget-related responsibilities, the State Budget Office in the Department of Administration records are included. The other major user of the document is the office or person in each agency with responsibility for preparing and implementing biennial and operating budgets.

The records of the Executive Office and legislative records developed and maintained by the Legislative Service agencies such as the Legislative Fiscal Bureau or the Legislative Reference Bureau are not included in this document.

Agencies may use different terminology and may file records series differently. However, the functional areas should be similar for all agencies and the retention periods apply, regardless of the filing arrangement used. Sometimes the document suggests, but does not require, that records be filed together, as a unit.

To promote enterprise consistency and reduce duplicate work effort, agencies should make every effort to use this document for their budget records. If agencies have additional budget and budget related records that are not covered, contact the resources listed below under "For Additional Information and Assistance," prior to developing a separate schedule.

Electronic Records: For electronic, magnetic or machine-readable data systems, this schedule applies to the electronic data maintained by the State Controller's Office. To the extent that the functions of agency systems cover the function described for the records, use the appropriate retention schedules.

The risks associated with maintaining accessibility over time for these records is low for most of the record series in this document. Most of the retention time periods in this document are the current fiscal year and 6 back fiscal years (FIS + 6) to allow for 3 biennial budget cycles worth or records to be maintained for administrative purposes. However, agencies should consider the provisions of ADM 12 Electronic Records Management and make sure that the systems and procedures used for budget related records complies with these performance-based standards.

FOR EFFECTIVE USE OF THIS SCHEDULE:

Records Series Titles and Categories: Titles of records series may not be the exact titles used by an agency for each record or records series. The schedule requires some interpretation and application to specific agency titles of budget and budget related records. If agency staff are uncertain about the schedule's application to a specific group of records or need assistance, see the "For Additional Information and Assistance" section to identify sources for advice.

Page 11 begins a listing of each record series, summarizing the retention requirements for official, agency and working copies of the records. Each records series is described in narrative detail, including lists of forms, reports and other items included in the series. All items within a series relate to the same topic and have the same retention requirements.

For easy reference, you may also consult the attached appendices at the end of the general schedule:

- Appendix 1: Records Series Index by Series Number
- Appendix 2: Records Series Index by Series Title
- Appendix 3: Summary of Other Approved Statewide General Records Schedules
- Appendix 4: Overview of WISMART Accounting System
- Appendix 5: Approximate Timetable for Budget Development

THE SCHEDULE IS A TOOL TO DEVELOP AND MAINTAIN RECORDS THAT DOCUMENT THE BIENNIAL BUDGET PROCESS

Agencies need to maintain adequate documentation of budget and budget related transactions and activities to meet internal administrative needs, legal purposes and program and financial audit requirements. This schedule provides agency staff with a sound basis for adequate program documentation.

Agency records management officers should work with budgeting staff to implement organized filing systems and design information processes that are consistent with effective, efficient records management principles. Design filing systems to meet staff informational needs and facilitate cross reference to retention and disposition guidance in this schedule.

The agency should use this schedule to dispose of records that are no longer needed on a continuing basis. Implement the retention and disposition policies in this schedule in a timely and efficient manner. To facilitate disposition, agency staff should cut off files periodically and develop methods to mark files when they close.

For most budget records, the final disposition is "destroy". A few record series may have historical value. These are indicated in the schedule with a disposition of "transfer to the State Historical Society" for archival preservation, after the indicated time periods. For UW institutions, records designated for preservation should be transferred to the individual campus archives. University Archives fulfill the same obligations as the State Archives under s. 16.61 (13), Wisconsin Statutes.

RETAINING RECORDS LONGER THAN SPECIFIED

Agencies are required to follow this schedule for applicable records. Retention periods established and disposition directions are state policy requirements for budget and related records. Records may be delayed from destruction only under the following conditions:

- Particular records have been identified as needed for a financial or performance audit;
- Records are needed for an actual or imminent legal proceeding; or
- An open record request for retrieval of particular records has been received and not completed.

The Wisconsin Open Records Law, s. 19.35 (5), Wisconsin Statutes, forbids the destruction of any record after an inspection or copying request until the request is granted, or at least 60 days after the date that the request is denied. Court orders may extend this time period. The agency's legal custodian of records can provide advice.

It is the responsibility of the office holding the record to determine if an audit, litigation, or an open record request is pending, before disposing of that record.

Agencies are encouraged to transfer inactive records to the State Records Center.

CONFIDENTIALITY OF BUDGET AND BUDGET RELATED RECORDS

The budget process is primarily open and, as a result, most budget-related records are not confidential. Therefore the confidential designation for all the series in this document is "not confidential".

However, during the budget development process strategies and preliminary decisions made by the Governor and agency heads as they put together the budget may be confidential. Such records may be covered by common law exclusions to the Open Records Law. Once decisions have been made and publicly announced, the records would lose their confidential status.

However, because this records schedule contains final decisions already made, all budget and budget related records identified in this schedule do not contain confidential or restricted access information and are likely open to public viewing.

If in doubt as to whether or not a specific record is confidential, it is always a good idea to check with agency legal counsel. If your agency does not have a legal counsel, an Assistant Attorney General in the Department of Justice should be able to provide advice.

PERSONALLY IDENTIFIABLE INFORMATION

The budget and budget related records in this schedule contain personally identifiable information within the meaning of this term, as defined in s. 19.62(5), Wisconsin Statutes. The types of records that contain personally identifiable information include records with names and social security numbers. Agencies should be aware of the requirements in Subchapter IV, Personal Information Practices, of Chapter 19 of the state statutes and any applicable program specific laws or regulations that restrict the use or release of social security numbers.

FOR ADDITIONAL INFORMATION AND ASSISTANCE

Agency personnel should also consult with the following resource staff for additional information and assistance with records management concerns.

Records Management Officer: Each agency has a designated records officer who serves as liaison to the Public Records Board. The records officer is responsible for agency-wide records management planning, program development, and assistance.

DOA Records Management Section: The DOA Records Management Section provides free training sessions, as needed, on implementation of general records schedules.

Public Records Board: The board's Executive Secretary can offer technical assistance and training to assist agencies with records management, including records scheduling and interpretation of schedules.

State Historical Society: The State Historical Society of Wisconsin (SHSW) assists agencies with records management, particularly in identifying the small percentage of records that have historical value.

UW Institution Archives: UW institutions have delegated authority to operate archives for historical institutional records. Oftentimes, the UW institutional archives also functions as the focus for records management related activities on the campus.

LEGEND OF TERMS AND PHRASES

For each record series identified below, the schedule provides the records series identifying number, title, additional description, and sometimes a comment on the administration of this series. Also included is the location/custodian, which indicates where the record is likely to be maintained. Lastly, the retention and disposition are specified.

Retention Period is the length of time an office must keep particular records. This is usually expressed in terms of years, months, days and may be contingent upon an event date or specification date that triggers the "clock".

CR refers to creation. Creation retention periods start when a record is created or received.

EVT refers to event. Retention periods tied to even dates do not begin until the event occurs and the retention time period is then triggered. For example, if a records series has a retention of EVT + 1 year and the event is defined as the life of an asset all records in this category would be retained one year after the asset is sold, scrapped or otherwise taken out of service.

FIS means the current fiscal year. Therefore FIS + 6 years indicates that these records must be retained for the current fiscal year and six complete additional fiscal years. It has been determined that most of the budget related records in this schedule should be retained for at least FIS + 6 years to satisfy any audit requirements. Unlike CR and EVT retention periods, records series identified as FIS are managed in blocks by fiscal year.

Disposition is what happens to the records after the retention period is satisfied. Most record series in the schedule have a disposition of destroy. This suggests that the records can be destroyed without concern for the confidentiality of the materials.

The State Records Center has fact sheets that explain options for destruction of paper and microfilm records.

The other disposition is transfer to either the State Archives or a designated UW institution archive for identified university records. Records series with historical value are preserved for researchers and to provide a history of state government operations.

WISCONSIN BIENNIAL BUDGET CYCLE BACKGROUND

The Wisconsin State Budget, characterized as a Biennial Budget (one budget covering two fiscal years), is the legislative document that sets the level of authorized state expenditures for a given fiscal biennium. It also details the corresponding level of revenues (particularly taxes) projected to be available to finance those expenditures. Thus, the budget is considered a financial balance statement for state government, dealing both with income and outgo for all state agencies for a two-year period.

The state budget process should be viewed as a continuous cycle which completes itself and begins again after every two fiscal years (in Wisconsin beginning in July and lasting through June two following years). It moves from submittal of agency budget requests to legislative authorization of appropriations, to agency expenditures of those appropriations, to the review of agency expenditures and then, beginning again, with subsequent agency budget requests. (Please see **Appendix 5: Approximate Timetable for Budget Development** for additional information about the budget development cycle.)

The biennial budget process begins when the State Budget Office, an entity within the Department of Administration, issues budget instructions to all state agencies for submittal of their budget requests for the next biennium (see **BUDG038: Biennial Budget Instructions**). These instructions detail the form and manner in which each state agency must submit its budget request. In addition to detailing the budget forms that state agencies will be required to submit, these instructions may often include broad fiscal policy directives that an incumbent Governor wishes for agencies to follow as part of the development of their individual budget requests.

The next step in the process is of preparation and submittal to DOA of budget requests by each state agency (see **BUDG028: Department Biennial Budget Submission**). It is then the job of budget analysts at DOA to review the submitted material and make decisions regarding certain policies on whether or not they will be included in the next biennial budget. From these decisions, DOA then produces an overall summary of agency budget requests in order to submit them to the Governor for consideration (see **BUDG031: Biennial Budget Summary**).

The next step in the budget cycle includes the Governor's review of the summary of Agency Budget Requests and the preparation and submittal of the recommended budget (see **BUDG013: Executive Budget Veto Messages** and **BUDG032: Veto Considerations—Lists and Actions Taken**). The Governor submits the Executive Budget as legislation which is then referred to the Legislative Joint Committee on Finance for its consideration (see **BUDG 023: Legislative Fiscal Bureau Papers Produced During Joint Finance Budget Motions** and **BUDG35: Joint Finance Executive Action Notes/Decisions on Agency Issues**). After the Joint Finance Committee completes its work the budget goes to each house of the Legislature where it must be enacted (see **BUDG033: Bill Tracking and Analysis Notes and Memos**). Differences between

the approved budget of the Senate and Assembly are negotiated in a conference committee with representatives from both houses.

After the legislature has enacted the Budget Bill, the Governor then has another chance to provide input through the Governor's vetoes of specific items in the final the Budget Bill.

From there, the process of administration of state finances begins in accord with the enacted budget. Once this process is over, the budget cycle concludes with the Legislative Review of the Executive Performance. When the cycle reaches this point, it will then be time to begin the cycle all over again with the initial step of the process, that of issuance of budget instructions by DOA for the next Biennial Budget.

LISTING OF BUDGET AND BUDGET-RELATED RECORDS

BUDG001 Budget Director's File

These documents pertain to the Director's records including memoranda, reports, directives, etc. documenting all activities of the State Budget Office and/or Agency Central Budget Office. This record series also includes the correspondence files, and annual reports within the Director's possession.

Note: The Budget Director's File is the main file within the State Budget Office in which many official materials are maintained. It represents the location of the bulk of the policy documents and further information pertaining to the Biennial Budget process.

While it was clear from our observations that the Budget Director's File contains many of the important budget documents within the agency, this will not necessarily be the case for all other agencies.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Transfer to State Historical Society or appropriate University Archives.

BUDG002 Program Revenue Supplements and Positions

Records include requests under s. 16.515, Wisconsin Statutes, for supplements to existing program revenue and certain appropriations and requests under s. 16.505(2) for program revenue requests.

This record series also contains agency requests and justifications, as well as the analysis of Department of Administration budget analysts along with recommendations.

Location/Custodian: State Budget Office, DOA and /or Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Transfer to State Historical Society or appropriate University Archives.

BUDG003 Federal Funds Reports

Records include reports by the Department of Administration as required under s. 16.54(8) on federal funds allotted in excess of those approved in the biennial budget process. These reports contain the specific agency name, alpha appropriation, dollar increase over authorized amount and also an explanation of the increase.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office
Retention Period: FIS + 2 years
Method of Disposition: Destroy

BUDG004 Budget Documents/Developments

Records include budget papers used in the preparation of the biennial budget documents under s. 16.46, Wisconsin Statutes. Records also include agency requests (forms or their equivalents), justifications, analyses, work papers, policy papers (from the Department of Administration and the Legislative Fiscal Bureau), and related correspondence.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office
Retention Period: FIS + 6 years
Method of Disposition: Transfer to State Historical Society or appropriate University Archives.

BUDG005 Employee/Position Report File

Records include computer printouts generated as a spin-off of running central payroll in the Department of Administration. Each pay period reflects the number of employees by type, amount of hours paid and total payroll. Records series also contain monthly reports to the Governor on the number of full-time equivalent positions by source and the number of all state employees by types (i.e. unclassified, classified, limited-term employee, project, etc.)

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office
Retention Period: FIS + 6 years
Method of Disposition: Destroy

BUDG006 Legislative Bill Analyses Files (Files/User Files/Historical)

Records include copies of all bill analyses prepared by agencies and their budget analysts for the Governor's use when acting on legislation.

Note: The paper records in this series are generally kept for 2 years and then made into microfiche. At that time, the paper records are destroyed while the microfiche records are kept for a longer retention period.

It should be noted that the microfiche records are transferred to the State Historical Society after the retention periods have expired while the paper records are destroyed.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 14 years

Method of Disposition: Destroy (Paper records)
 Transfer to the State Historical Society or appropriate University
 Archives (Microfiche records)

BUDG007 Chapter 20 History (Interim/Final/Microfiche)

Records include computer printouts of the Chapter 20 schedule of the Wisconsin Statutes reflecting updates at various times of the legislative session as required by s. 20.004(2).

The History starts with agency requests at the appropriation level with subsequent entries for the Governor's recommendations and individual decision item entries through all miscellaneous legislation.

Note: The paper records in this series are generally kept for 2 years and then made into microfiche. At that time, the paper records are destroyed while the microfiche records are kept for a longer retention period.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 20 years

Method of Disposition: Destroy

BUDG008 Personnel Management Informational System (PMIS)

Records include forms used by agencies when requesting new positions under s. 16.505(1)(c) and (2), Wisconsin Statutes, and completed by the State Budget Office to inform agencies of new positions approved by the Joint Committee on Finance, through the budget process or through miscellaneous legislation. These records also include forms used to change the information on positions on the file and to delete positions.

Note: The paper records in this series are generally kept for 2 years and then made into microfiche. At that time, the paper records are destroyed while the microfiche records are kept for a longer retention period.

A. Input Forms and Documentation To File Maintenance/Vacancy Reports/Other Reports/Microfiche

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 10 years

Method of Disposition: Destroy

B. Position Listings (B-1's)

The purpose of this record series is to provide detailed position reports that do the full salary funding calculation under standard budget adjustments.

Records also include position by position listing of all authorized permanent and project positions on PMIS, the position number and classification of each position, the B-2 numeric appropriation under which each position is authorized, the program sub-unit of the agency in which the position is authorized, and the subtotal information.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

**BUDG009 Joint Committee on Finance Meeting Under s. 13.10
(Materials/Microfiche)**

Records include the official record of Joint Committee on Finance Meetings under s. 13.10, Wisconsin Statutes, containing agency requests, Department of Administration and Fiscal Bureau analyses and Governor's recommendations and minutes of committee persons.

Note: The paper records in this series are generally kept for 2 years and then made into microfiche. At that time, the paper records are destroyed while the microfiche records are kept for a longer retention period.

It should be noted that the microfiche records are transferred to the State Historical Society after the retention periods have expired while the paper records are destroyed.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Destroy (Paper Records)
Transfer to the State Historical Society or appropriate University Archives (Microfiche Records)

BUDG010 Research Materials

Records include research materials created for studies, reports, surveys, etc. used in the preparation of Biennial Budget policy and documents under s. 16.46, Wisconsin Statutes. Files contain data created for issues which are ongoing and, therefore, will be used again in the future to update the studies, reports, surveys, etc.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 20 years

Method of Disposition: Transfer to State Historical Society or appropriate University Archives

BUDG011 Executive Biennial Budgets

This text is created each biennium to provide reference and supporting material to those reviewing the Biennial Budget.

Record series includes Budget Message, Summary of Tax Exempt Devices, Executive Budgets, Budget in Brief, Budget in Very Brief.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Transfer to State Historical Society or appropriate University Archives

BUDG012 Executive Orders

Records include Executive Orders from the Governor pertaining to various issues to be mandated (such as special elections, heating and maintenance of facilities, occasions of flags being flown at half-mast, etc.)

These records detail the language presented by the Governor as to the specific issue and supporting analysis and conclusions.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 10 years

Method of Disposition: Destroy

BUDG013 Executive Budget Veto Messages

Records include various provision vetoes pertaining to budgets by the Governor and brief messages as to why they were being vetoed.

These records also include specific language detailing the reasons for vetoing certain issues and supporting analysis and conclusions.

Note: See page 9: "Wisconsin Biennial Budget Cycle Background" for additional information.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

BUDG014 Class Codes Summary Reports

Records include codes for each category of expenditures and revenues along with their estimated amounts. Also includes state General Program Revenues totals reports, all funds totals reports, taxes, salaries, travel, insurance, etc.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 8 years

Method of Disposition: Destroy

BUDG015 Wisconsin State Budget Comparative Summary of Budget Recommendations

Records include a summary of the state budget recommendations for each state agency and program, "General Fund Taxes", and non-policy items contained within the Governor's original budget document but prepared especially for introduction as separate legislation.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Destroy

BUDG016 Executive Budget Briefing Documents

Records include documents used by analysts to prepare the Biennial Budget including statistics, background documents, and spreadsheets.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 8 years

Method of Disposition: Destroy

BUDG017 Executive Veto Briefing Documents

Records include documents that summarize changes in the Biennial Budget used by analysts. These records allow analysts to make a decision on vetoing a certain item within the budget based on facts and statistics.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 8 years

Method of Disposition: Destroy

BUDG018 National Surveys/Detail Backup

Records include national information pertaining to budgets and any information used for background by analysts when making decisions about various budget components.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office
Retention Period: FIS + 8 years
Method of Disposition: Destroy

BUDG019 WISMART Appropriation Table Detail (Microfiche)

Records contain tables and figures pertaining to WISMART, the system of accounting used by the Wisconsin State Government.

Note: Please see Appendix 4 for more details on the WISMART Accounting system. Section VIII. of the General Records Schedule Fiscal and Accounting, Third Edition, September 1999 describes accounting reports generated from both WISMART and agency accounting systems.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office
Retention Period: FIS + 10 years
Method of Disposition: Destroy

BUDG020 Critical Payroll (Bi-Weekly) (Microfiche)

Records include bi-weekly listings of payrolls and salaries of employees for determining amounts of expenditures allotted to payrolls. These records constitute an important component in determining the amount of funds requested for payrolls.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office
Retention Period: FIS + 2 years
Method of Disposition: Destroy

BUDG021 November 20 Report

Records include statutorily recorded information pertaining to budget development and implementation.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office
Retention Period: FIS + 8 years

Method of Disposition: Destroy

BUDG022 Annual Fiscal Reports

Records contain backup information including financing that is used by budget analysts when producing the November 20 Report.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 8 years

Method of Disposition: Destroy

**BUDG023 Legislative Fiscal Bureau Papers Produced During
Joint Finance Budget Motions**

Records contain documents including motions, policy proposals, etc., produced by the Legislative Fiscal Bureau pertaining to various budget items.

Note: See page 9: "Wisconsin Biennial Budget Cycle Background" for additional information.

Location/Custodian: State Budget Office, DOA and/or Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Destroy

BUDG024 Decision Item Background Documents

These records present succinct summaries of the need, options, and proposed solution and should begin with a brief one or two sentence summary.

Records contain briefing papers, spreadsheets with statistics and calculations, supporting documents, and any further background information.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

BUDG025 Standard Decision Items

These records are designed to give a description of the decision item such as building operations, additional financial positions, increased LTE funds, ongoing capital equipment needs and technical position consolidation. These records also give the level of priority (high, medium or low) associated with each decision item.

Records include worksheets, spreadsheets, schedules, and any other information pertaining to the reconciliation process of the biennial budget.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

BUDG026 Budget Details (B-9's)

Records contain summaries of expenditure items including permanent and project position salaries, fringe benefits, supplies and services, permanent properties, non-allotted reserves, as well as the adjusted base year level of funds associated with each item.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

BUDG027 Title Final Detail Listing (B-5's/B-6's)

Records include a list of activities and programs (such as rural economic development loan repayments, neighborhood assistance programs, sale of materials or services, gaming economic developments, etc.) as well as the object class of the specific activity or program and the type and source of funding.

Included in these records are the B-5's which deal with the Department Program Structure File Maintenance. These records were created to ensure that the various programs within the agency are listed and categorized in order to maintain and organize them in an efficient manner. These records also exist to change a program structure (codes and/or titles) or define a decision item code number and title for use in budget decision item file maintenance.

Further included in these records are the B-6's which cover the Department Appropriation Structure File Maintenance. These records are designed to define whether the purpose of each appropriation is for state operations, local assistance, or aids to individuals and organizations.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

BUDG028 Department Biennial Budget Submission

This document represents many forms within the agency budget office and effectively details the Biennial Budget process. Also, this record encompasses a large group of important components such as the B-2's, the B-3's, the B-7's, the B-8's, and the B-10's, which are used by budget analysts to submit their Biennial Budget information. A short detail of each of these components follows below:

Agency Budget Requests (B-2's): This component contains such categories as Program Structure (which includes the agency, program, subprogram, and, where appropriate, the program element codes and titles), the Decision Item Code, the Numeric Appropriation Number, and the Change Author Code.

The B-2's also include costs in each year of the biennium for such things as permanent position salaries, turnover, project position salaries, Limited Term Employment/Miscellaneous salaries, fringe benefits, supplies and services, permanent property, unallotted reserves, aids to individuals and organizations, local assistance, and one-time financing.

This component further includes costs for project positions authorized, as well as classified and unclassified positions authorized.

Revenue Projections/Balance Statements (B-3's): The B-3 form functions to present the estimated financial position of a program revenue appropriation (program revenue financial plan) which incorporates projected revenues, and reserves for non-budgeted expenditures (such as pay plan). It also brings together all anticipated funding obligations, both in the formal budget request (B-2) or costs which will be supplemented as pay plan.

This component also contains various categories including opening balances, GPR-earned or program revenues, total revenue collections in the fiscal year, total available funds for expenditures, B-2 expenditure total from Decision Item Narratives (DINS), etc. Finally, the closing balances are included.

Note: B-3's may also include supporting documentation.

Department Summaries Form (B-7's): The purpose of the Department Summaries Form is to summarize the entire agency budget on one page including the adjusted base budget and its requested budget.

This component includes Permanent and Project Positions, Program Revenue Federal and Segregated Revenue Federal, Program Revenue Service, and Segregated Revenue Service and Segregated Revenue Local.

The Department Summaries Form includes this budget and program information for both annual and biennial summaries.

Program Summaries Form (B-8's): The purpose of this component is to detail the various programs within an agency and provide background information about the nature of each program.

The B-8's include sources of funds for each category (General Purpose Revenue, Federal Revenue, Program Revenue, or Segregated Revenue) as well as the funding authorized for these programs. Also included are the fundings doubled and the changes from the base year for further reference.

Position Changes and Salary Documentation Worksheet (B-10's): The purpose of this component is to show details of project positions being deleted and also to accompany the B-2 form to remove salary and fringe benefits funding whenever positions are being deleted.

The B-10's also include positions and pay ranges for each employee in question as well as monthly salary costs, number of FTE positions, the salary costs and the position number. Also included are the position termination date for each year of the biennium and other related remarks about the specific employee.

Note: See page 9: "Wisconsin Biennial Budget Cycle Background" for additional information.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years for all components

Method of Disposition: Destroy for all

BUDG029 Briefing Documents

Records include summaries, short papers, correspondence, briefings and any other information used by budget analysts on a consistent basis pertaining to the biennial budget process.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

BUDG030 TAP Resource Identification Discussions

Records include resource allocation and planning tools designed to help align proposed spending with identified priorities. Topics may include, for example, fleet vehicle expansion, equipment replacements, and training expenditures. This category may also include certain statutory language changes considered by the agency during the budget planning process.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

BUDG031 Biennial Budget Summary

Records include summation of agency budgeting areas including: bills with subject matter defined, position changes, Governor's vetoes, reports or reporting requirements, and appropriation changes (base and growth).

Records also include correspondence, overviews of provisions in the Biennial Budget for the agency, and other information pertaining to the agency part of the Biennial Budget.

Note: See page 9: "Wisconsin Biennial Budget Cycle Background" for additional information.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

BUDG032 Veto Considerations—Lists and Actions Taken

These records were created specifically to deal with the Governor's veto authority. They also provide important background information to the State Budget Office (SBO) as well as to the Governor.

Records include various draft vetoes pertaining to the proposed budget and documents which describe the interaction between the Legislature and outside interests. These records also include background information relating to the analyst's decisions on whether or not to veto certain bills or items.

Note: See page 9: "Wisconsin Biennial Budget Cycle Background" for additional information.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Destroy

BUDG033 Bill Tracking and Analysis Notes and Memos

The purpose of this record series is to document and track the status of the Biennial Budget Legislation as it goes through the budget process.

Records include descriptions of various legislation, assembly bills, history of bills, and other important correspondence and memos.

Note: See page 9: "Wisconsin Biennial Budget Cycle Background" for additional information.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Destroy

BUDG034 Joint Finance Executive Action Notes/Decisions on Agency Issues

These records have the purpose of summarizing and documenting the agency-head decisions as the budget is being developed. They further provide tools for those involved in analyzing the decisions and issues before submitting them to the Biennial Budget.

Records include the Joint Finance Committee language/decisions as to various programs including gaming, information technology programs, etc.

Note: See page 9: "Wisconsin Biennial Budget Cycle Background" for additional information.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Destroy

BUDG035 Worksheets, Summaries for Section Office

Records including general agency provisions, standard budget adjustments, agency summaries with changes from the previous year, budget narrative forms, notes, and correspondence pertaining to agency budget requests.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Destroy

BUDG036 Statute Language Proposals and Issues

These records exist to provide information relating to the tracking of the status of the Biennial Budget Legislation as it moves through the budget process. It also serves as an important reference document to better understand the language that is being created in the statutes and legislation.

Records include Revisor's Bill items (remedial legislation), memos, correspondence, drafting requests for projects, biennial budget language proposals, drafts for discussion, and statutes associated with related items.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Destroy

BUDG037 Revenue Re-Estimates For Reconciliation

The agency central budget office is in charge of reconciling the budget to ensure that expenditures do not exceed revenues. During this reconciliation process, certain records are used to form the base on which the Biennial Budget is built. Revenue Re-Estimates are those background papers which further detail the amount of revenues flowing into the agency to ensure correctness.

These records include correspondence, general purpose revenue earned estimates, and analysis of revenues collected by the agency.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 4 years

Method of Disposition: Destroy

BUDG038 Biennial Budget Instructions

This record functions to describe the details of the major budget policies that will take effect in the next biennium.

This record series includes overall guidelines of the Governor's priorities for the upcoming biennium. Also included are timetables for budget development, the program and appropriation structures, base year reconciliation information, and other budget documents such as the PMIS and position listings (B-1's), Agency Budget Requests (B-2's), Revenue and Balance Statements (B-3's), and Position and Salary Documentation (B-10's).

Further included are various appendices including a statutory fund table, master lease program, performance measures in budgeting, budget checklists, and a model budget with examples of all its components.

Note: See page 9: "Wisconsin Biennial Budget Cycle Background" for additional information.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6 years

Method of Disposition: Destroy

BUDG039 Agency Biennial Budget In Brief

This record contains an overview of policy proposals submitted to DOA and the Governor. It gives a list of those policies which have been accepted as well as those which have been denied.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6

Method of Disposition: Destroy

BUDG040 Agency Final Budget Submittal to Oversight Policy Board

This record represents the submission of the budget to the Oversight Policy Board. This record includes summaries of all divisions that exist within the agency and also details what amounts of funds should be allocated to each of the divisions in the upcoming Biennial Budget.

Note: this type of record will not be common to all state agencies. Only those agencies which require approval from a higher entity such as the Natural Resources Board will have a record of this type.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6

Method of Disposition: Destroy

BUDG041 Formal Biennial Budget (Division Requests)

This record includes all internal working documents at the division or bureau level within each agency. This record includes formal and informal budget requests for each of the divisions for consideration by the agency for inclusion in the final submittal of the budget to DOA.

Location/Custodian: Agency Central Budget Office

Retention Period: FIS + 6

Method of Disposition: Destroy

Appendix 1: Record Series Summary Information by Record Series Number

<u>Number</u>	<u>Record (Series) Name</u>	<u>Retention</u>	<u>Disposition</u>
BUDG001	Budget Director's File	FIS + 6	SHS
BUDG002	Program Revenue Supplements and Positions	FIS + 6	SHS
BUDG003	Federal Funds Report	FIS + 2	Destroy
BUDG004	Budget Documents/Developments	FIS + 6	SHS
BUDG005	Employee/Position Report File	FIS + 6	Destroy
BUDG006	Legislative Bill Analysis Files (Files/User Files/Historical)	FIS + 14	Destroy
BUDG007	Chapter 20 History (Interim/Final/Microfiche)	FIS + 20	Destroy
BUDG008	PMIS--Input Forms and Documentation to File Maintenance	FIS + 10	Destroy
A	(Vacancy Reports/ Other Reports/Microfiche)		
BUDG008	PMIS--Position Listings (B-1's)		
B			
BUDG009	Joint Committee on Finance Meeting Under s. 13.10 (Materials/Microfiche)	FIS + 4	Destroy
BUDG010	Research Materials	FIS + 20	SHS
BUDG011	Executive Biennial Budgets	FIS + 10	SHS
BUDG012	Executive Orders	FIS + 4	SHS
BUDG013	Executive Budget Veto Messages	FIS + 6	Destroy
BUDG014	Class Codes Summary Reports	FIS + 8	Destroy
BUDG015	Wisconsin State Budget--Comparative Summary of Budget Recommendations	FIS + 4	Destroy
BUDG016	Executive Briefing Documents	FIS + 8	Destroy
BUDG017	Executive Veto Briefing Documents	FIS + 8	Destroy
BUDG018	National Surveys/Detail Backups	FIS + 8	Destroy
BUDG019	WISMART Appropriation Table Detail (Microfilm)	FIS + 10	Destroy
BUDG020	Critical Payroll Bi-weekly Report (Microfilm)	FIS + 2	Destroy

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BUDG021	November 20 Report	FIS + 8	Destroy
BUDG022	Annual Fiscal Reports	FIS + 8	Destroy
BUDG023	LFB Papers Produced During Joint Finance Budget Motions	FIS + 4	Destroy
BUDG024	Decision Item Background Documents	FIS + 6	Destroy
BUDG025	Standard Decision Items	FIS + 6	Destroy
BUDG026	Budget Details (B-9's)	FIS + 6	Destroy
BUDG027	Title Final Detail Listings (B-5's/B-6's)	FIS + 6	Destroy
BUDG028	Department Biennial Budget Submission	FIS + 6	Destroy
BUDG029	Briefing Documents	FIS + 6	Destroy
BUDG030	TAP Resource Identification Discussions	FIS + 6	Destroy
BUDG031	Biennial Budget Summary	FIS + 6	Destroy
BUDG032	Veto Considerations--Lists and Actions Taken	FIS + 4	Destroy
BUDG033	Bill Tracking and Analysis Notes and Memos	FIS + 4	Destroy
BUDG034	Joint Finance Executive Action Notes/Decisions on Agency Issues	FIS + 4	Destroy
BUDG035	Worksheets, Summaries for Section Office	FIS + 4	Destroy
BUDG036	Statute Language Proposals and Issues	FIS + 6	Destroy
BUDG037	Revenue Re-estimates for Reconciliation	FIS + 4	Destroy
BUDG038	Biennial Budget Instructions	FIS + 6	Destroy
BUDG039	Agency Budget In Brief	FIS + 6	Destroy
BUDG040	Agency Final Budget Submittal to Oversight Policy Board	FIS + 6	Destroy
BUDG041	Formal Biennial Budget--Division Requests	FIS + 6	Destroy

Appendix 2: Record Series Summary Information by Record Series Title

<u>Number</u>	<u>Record (Series) Title</u>	<u>Retention</u>	<u>Disposition</u>
BUDG039	Agency Budget In Brief	FIS + 6	Destroy
BUDG040	Agency Final Submittal to Oversight Policy Board	FIS + 6	Destroy
BUDG022	Annual Fiscal Reports	FIS + 8	Destroy
BUDG038	Biennial Budget Instructions	FIS + 6	Destroy
BUDG031	Biennial Budget Summary	FIS + 6	Destroy
BUDG029	Briefing Documents	FIS + 6	Destroy
BUDG033	Bill Tracking and Analysis Notes and Memos	FIS + 4	Destroy
BUDG026	Budget Details (B-9's)	FIS + 6	Destroy
BUDG001	Budget Director's File	FIS + 6	Transfer to SHS
BUDG004	Budget Documents/Developments	FIS + 6	Destroy
BUDG007	Chapter 20 History (Interim/Final/Microfiche)	FIS + 20	Destroy
BUDG014	Class Codes Summary Report	FIS + 8	Destroy
BUDG020	Critical Payroll (Bi-weekly)—Microfiche	FIS + 2	Destroy
BUDG024	Decision Item Background Documents	FIS + 6	Destroy
BUDG028	Department Biennial Budget Submission	FIS + 6	Destroy
BUDG005	Employee/Position Report File	FIS + 6	Destroy
BUDG011	Executive Biennial Budgets	FIS + 10	Transfer to SHS
BUDG016	Executive Briefing Documents	FIS + 8	Destroy
BUDG013	Executive Budget Veto Messages	FIS + 6	Destroy
BUDG012	Executive Orders	FIS + 10	Transfer to SHS
BUDG017	Executive Veto Briefing Documents	FIS + 8	Transfer to SHS
BUDG003	Federal Funds Reports	FIS + 2	Destroy
BUDG041	Formal Biennial Budget (Division Requests)	FIS + 6	Destroy
BUDG009	Joint Committee on Finance Meeting Under s 13.10 (Materials/Microfiche)	FIS + 4	Destroy
BUDG034	Joint Finance Executive Action Notes/Decisions on DOA Issues	FIS + 4	Destroy
BUDG006	Legislative Bill Analyses Files (Files/User Files/Historical)	FIS + 14	Destroy
BUDG023	LFB Papers Produced During Budget Joint Finance Motions	FIS + 4	Destroy

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BUDG018	National Surveys/Detail Backup	FIS + 8	Destroy
BUDG021	November 20 Report	FIS + 8	Destroy
BUDG008A	PMIS--Input Forms and Documentation to File Maintenance (Vacancy Reports/ Other Reports/Microfiche)	FIS + 10	Destroy
BUDG008B	PMIS--Position Listings (B-1's)	FIS + 6	Destroy
BUDG002	Program Revenue Supplements and Positions	FIS + 6	Destroy
BUDG010	Research Materials	FIS + 20	Transfer to SHS
BUDG037	Revenue Re-estimates for Reconciliation	FIS + 4	Destroy
BUDG025	Standard Decision Items	FIS + 6	Destroy
BUDG036	Statute Language Proposals and Issues	FIS + 6	Destroy
BUDG030	TAP Resource Identification Discussions	FIS + 6	Destroy
BUDG027	Title Final Detail Listings (B-5's/B-6's)	FIS + 6	Destroy
BUDG032	Veto Considerations--Lists and Actions Taken	FIS + 4	Destroy
BUDG015	Wisconsin State Budget--Comparative Summary of Budget Recommendations	FIS + 4	Destroy
BUDG019	WISMART Appropriation Table Detail--Microfilm	FIS + 10	Destroy
BUDG035	Worksheets, Summaries, etc. for Section Office	FIS + 4	Destroy

**Appendix 3: Summary of Approved Statewide General Records Schedules-
November, 2001**

**I. Purchasing and Procurement General Records Schedule, Revised
December, 1992**
RDA #90100-90129

Covers all purchasing related records including purchase orders, bids, contracts, case files and various reports that are required by the State Bureau of Procurement.

Covers all state agencies including UW System Administration and UW institutions.

**II. General Records Schedule: Payroll and Related Records, Revised 2nd
Edition, November, 1997**
RDA #90200-90217

Includes DOA Central Payroll data, and payroll related records such as leave accounting records, pay adjustment records, and pay withholding authorizations for tax and benefit purposes.

Does not include UW System Administration and UW institutions that are not directly tied to DOA payroll. However, UW System Administration has developed it's own general records schedule for payroll related records at UW Madison and all other UW institutions.

III. Worker's Compensation and Related Records, Revised July, 1997
RDA #90300-90311

Includes all related records such as near miss reports, Worker's Compensation claim files, and incident reports.

Covers all state agencies including UW System Administration and UW institutions.

**IV. General Records Schedule: Data Security and Related Records, July
2001**
RDA #90400010-90400070

Includes all records related to security associated with access to computer related resources. Records include access control, completed confidentiality forms, logon requests, ACF2 Security Handbook, and security reports.

This schedule applies to all state agencies except the University of Wisconsin System and UW institutions. It is anticipated that the UW System will develop a comparable retention schedule for their records.

V. General Records Schedule: Common Records in Wisconsin State Government, August, 1998
RDA #90500000-90500006

Includes common records in the following areas: routine activity/production reports for individuals; organizing tools; and routine materials such as transitory files and mailing address lists. Additional types of record series may be added to this schedule in the future.

This schedule applies to all state agencies and UW institutions. No further notification is required to dispose of records identified in this schedule.

VI. General Records Schedule: Motor Vehicle Management Records, May, 1999

RDA Fleet 001-014

Includes motor vehicle related subject files, project files and correspondence files. Also includes records related programs such as ride sharing and the state vanpool program. Also includes all records related to vehicle acquisition and disposition, maintenance, assignment and utilization and motor vehicle incident/accident reports.

VII. Personnel and Related Records, May, 1998, Revised May 1999

Includes over 140 types of personnel related records broken down into specific personnel related functions. Covers records at the Department of Employee Relations, agency central human resources (personnel) department and records maintained by supervisors related to personnel functions.

VIII. General Records Schedule: Fiscal and Accounting Related Records, Revised September, 1999

Includes over 110 different fiscal and accounting related records organized by functional area. The areas include: Fiscal Administration; Internal Control; Payment and Receipts for Non-Capital Items; Consolidated Federal Funds Requests; State Treasurer Records; Collection related records; Capital Assets Accounting; Statewide and Agency specific Accounting Reports; Payroll Related Fiscal Records and Capital Equipment Inventory and Disposal related records.

Note: General schedules are listed as a major category on the DOA Records Management Home Page. The address is <http://www.doa.state.wi.us/dsas/recordsmgt>. If you need further assistance, contact your agency records officer or the DOA Records Management Section at 266-2996 or 266-2770.

Appendix 4: OVERVIEW OF WISMART

WISMART is the statewide accounting system. The system is host based operating on a large mainframe computer managed by the Division of Info-Tech Services within the Department of Administration.

The software on which WISMART is based is a modified version of the Advantage software developed by American Management system of Fairfax, VA. On July 1, 1993, the AMS Government Financial System or GRS, Version 8.0 was installed and implemented. An upgrade of the GFS system was completed May 19, 1995 to Version 8.2. This version has since been renamed by AMS to Advantage 1.0.1. On March 9, 1998, the system was upgraded to the latest version of the AMS software, Advantage 2000.

The state utilizes the following Advantage ledgers: general ledger, budget ledger, collection memo ledger (receipts), projects ledger, and grants ledger, the advanced receivable and fixed asset ledgers. Accounting information, some at a summarized level, is maintained on WISMART for all State agencies. Agencies enter data either directly on-line or through interfaces processed overnight in batch mode.

Five "interface agencies" rely on their own accounting systems and send data from these systems to WISMART. Interface agencies include the University of Wisconsin (summarized data), Department of Transportation (detail), Department of Workforce Development (summarized), the Department of Corrections (summarized) and the Department of Health and Family Services (summarized). All other agencies are using WISMART as their agency accounting system.

Appendix 5: Approximate Timetable for Budget Development

June of even numbered year:	Budget Instructions are Released
June of even numbered year:	Preliminary B-9's (Excel and paper) distributed to agencies
June of even numbered year:	Program/Appropriation Printouts Mailed
June of even numbered year:	B-2 File Maintenance Correcting Errors on Preliminary B-9's is due
July of even numbered year:	GPR-earned Printouts are Mailed for Next Fiscal Year Reestimate
July of even numbered year:	B-9 Files and Reports are Distributed
July of even numbered year:	Program/Appropriations are Verified to DOA
July of even numbered year:	Budget Workshop
July of even numbered year:	Adjusted Base Levels are Locked
July of even numbered year:	B-1 Position Printouts and Electronic Files are E-mailed
August of even numbered year:	Reestimated GPR-earned Printouts are Due in DOA
September of even numbered year:	Agency Budgets are Due in DOA and Legislative Fiscal Bureau
November of even numbered year:	Agencies are Advised by DOA of Requests to Fund Within Base