

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 7

DANE COUNTY

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	
)	Case No. 04-CV-1709
)	Unclassified – Civil:30703
AMGEN INC., et al.,)	
)	
Defendants.)	

**PLAINTIFF STATE OF WISCONSIN’S OPPOSITION TO
DEFENDANT PFIZER’S MOTION FOR A PROTECTIVE ORDER**

On the eve of its deposition (notice of which had been pending for over 30 days) defendant Pfizer filed a motion for protective order and simply refused to appear. Its actions are completely unjustified. What Pfizer is essentially asking the Special Master to do is to halt discovery until Judge Krueger decides the defendants’ motion to dismiss, despite the fact that Judge Krueger has already rejected defendants’ request to do so and there are no legitimate grounds for such a request.

Background of the Case

As the complaint spells out, for years Pfizer has been reporting to medical compendiums average wholesale prices (AWPs—the prices providers/retailers pay wholesalers) for its drugs that were hugely inflated and from which Pfizer hoped to gain market share. For example, Pfizer’s subsidiary’s drug Adriamycin was priced in the medical compendiums at \$241.36, when the drug was actually selling for as low as \$33.43, creating a “spread” of \$207.93—a 622 percent markup. The Adriamycin “spread” was advertised to oncology providers in promotions which emphasized a wide margin of profit for providers of the drugs, *i.e.*, the providers could obtain the

drug at the lower price and be reimbursed at the higher price, creating a huge incentive to prescribe that particular drug.

The medical compendiums that publish Pfizer's AWP's rely on the prices reported to them by Pfizer. Among the most prominent of these compendiums are the Drug Topics Red Book ("Red Book") and First DataBank Annual Directory of Pharmaceuticals ("First DataBank"). These published prices are the only prescription drug prices that Pfizer makes public.

For many years Wisconsin, as a payer under the Medicaid program, has based its reimbursement formula for prescription drugs on Pfizer's published AWP's. Wisconsin has relied on these prices for many reasons. First, simplified and reliable estimates of the cost of drugs prescribed for Wisconsin citizens are needed because the huge number of different drugs and the non-transparency of the marketplace make it impracticable, if not impossible, for Wisconsin to track the drug price changes drug by drug on a daily basis. Second, the AWP's come directly from Pfizer, the most knowledgeable source. Third, by using the term "average wholesale price," Pfizer conveys that term's commonly understood meaning—that the price is an average of actual prices that are charged by wholesalers. Fourth, the compendiums in which these prices are published are widely used and respected. Fifth, these published prices are the only prices publicly available. Sixth, Pfizer conceals the true cost of its drugs as set forth below. Seventh, Wisconsin relies on the honesty of those who profit from Wisconsin's Medicaid assistance programs and other State programs.

The harm caused to Wisconsin by Pfizer's phony published AWP's is compounded by the fact that Pfizer hides the true prices of its drugs by exacerbating the inherent complexities of the drug market. Pfizer does this in several ways: First, Pfizer sells its drugs in a manner which

hides the true price of its drugs. This scheme works as follows. Upon agreeing on a quantity and price of a drug with a provider, or group of providers, Pfizer purports to sell the agreed upon drug to wholesalers with whom it has a contractual arrangement at a price called the Wholesale Acquisition Cost (“WAC”). The false WAC is usually higher than the actual price agreed upon by the provider and the drug manufacturer. The wholesaler then ships the product to the provider, charging the provider the (lower) price originally agreed upon by the drug manufacturer and the provider. When the wholesaler receives payment from the provider, it charges the manufacturer for handling, and any applicable rebates and discounts, and sends a bill to the manufacturer, called a “charge back,” for the difference between the false WAC and the price actually paid by the provider. These charge backs, (or shelf adjustments, or other economic inducements) are kept secret, so that it appears that the wholesaler actually purchased the drug at the higher WAC price. The effect of this practice is to create the impression that the “wholesale price” of the drug is higher than it really is.

Second, Pfizer further inhibits the ability of Wisconsin and other ultimate purchasers to learn the true cost of its drugs by wrapping the sales agreements it negotiates with providers in absolute secrecy, terming them trade secrets and proprietary, to preclude providers from telling others the price they paid.

Third, Pfizer further obscures its true prices for its drugs with its policy of treating different classes of trade differently. Thus, for the same drug, pharmacies are given one price, hospitals another, and doctors yet another.

Fourth, Pfizer has hidden its real drug prices by providing free or deeply-discounted drugs to providers as a means of discounting the overall price of its drugs. For example, Pfizer and its subsidiaries agreed to pay \$49 million to settle allegations by the U.S. Department of

Justice that the company violated the False Claims Act by overstating one of its drug's "best price" by concealing \$250,000 of cash discounts that were given to a key managed care customer. The alleged unreported discounts to the managed care organization allowed Pfizer's subsidiary to retain over \$20 million in Medicaid Rebates owed to the Medicaid program. See Ex. 1, DOJ Press Release. Further, Pfizer admitted in its recent 10-Q filing with the Securities and Exchange Commission that it is again under investigation by the U.S. Department of Justice regarding payments to physicians for prescription pharmaceutical products.

It is unlawful for Pfizer to publish a price for a product—whether it is called a suggested list price, a manufacturer's price or a wholesale price—where that price does not represent the price at which the product is actually sold. *See, e.g.*, Wis. Stat. § 100.18(10)(b) ("It is deceptive to represent the price of any merchandise as a manufacturer's or wholesaler's price, or a price equal thereto, unless the price is not more than the price which retailers regularly pay for merchandise."); Wis. Stat. § 49.49(4m)(a)(2) (It is prohibited under the Public Assistance statutes to "[k]nowingly make or cause to be made any false statement or representation of a material fact for use in determining rights to a benefit or payment."); *Sullivan's Wholesale Drug Co. v. Faryl's Pharmacy, Inc.*, 214 Ill. App.3d 1073, 1086 (1991) ("[A]ny representations concerning the price of a product or service are presumptively material."). Despite this, Wisconsin has evidence that Pfizer inflates its AWP's for all drugs. For example, as stated in the complaint, the published price for Pfizer's drug Azithromycin was marked up 25 percent from the price at which it actually sold in 2000. The complaint further alleges that the published price for its subsidiary's drug methylprednisolone sodium succinate was \$21.90, when its actual price was \$5.51, constituting a markup of 297 percent.

Background of Stay Request in This Case

Defendants previously tried and failed to obtain a broad stay on the basis that their voluminous motion to dismiss is pending. Wisconsin objected to such a stay arguing that defendants could not meet their burden of good cause because, among other reasons, defendants were unlikely to prevail based on the fact that, at that time, thirteen courts had already denied similar motions. At a hearing on defendants' motion in April, Judge Krueger entered an order staying discovery until May 11 (the next court date) or further order of the Court. Judge Krueger also urged the parties to agree on a protective order and urged Wisconsin's counsel to reduce the number of drugs for which it would seek discovery in the first round of discovery.

Subsequently, the parties agreed on a temporary protective order, which was presented to Judge Krueger on May 11. Defendants represented that discovery would be forthcoming. Wisconsin also informed the Court that it would narrow its list of drugs for which it was seeking discovery ("targeted drugs"). And on and around May 25, Wisconsin sent to Pfizer a list of the targeted drugs. Although Wisconsin contends that Pfizer falsely inflated the AWP of all of its drugs, this list of targeted drugs eliminates approximately half of Pfizer's National Drug Codes (NDCs) at issue. (An NDC represents a unique combination of drug, dose, and package size for each manufacturer.) Pfizer was left with a list of 88 drugs.¹

At no time during the May 11 hearing, nor at any time thereafter, have the defendants sought a further stay of discovery. Indeed, some defendants have produced meaningful, albeit not entirely complete, discovery. Others, however, Pfizer being a prime example, have almost completely stonewalled discovery. As shown below, there is no practical or legal ground for granting Pfizer's stay request.

¹ These targeted drugs include drugs manufactured and sold by both Pfizer and its wholly-owned subsidiary Pharmacia Corporation ("Pharmacia").

Wisconsin's Deposition Notice

Pfizer has not objected to the relevancy of the subject matter of the deposition notice, and indeed cannot, as it is highly relevant to Wisconsin's case and will allow it to advance substantially. The deposition notice asks Pfizer to produce for deposition the person(s) most knowledgeable in five areas (The notice contains six categories, but the parties subsequently agreed that paragraph 4 could be considered a subset of paragraph 3). See Dixon Aff. ¶6, attached as Ex. 2.

1. The evidence or information, if any, about which it is aware, which shows that any of the drugs listed on the attached sheet ("targeted drugs") were purchased by retail pharmacies at a price equal to or greater than the then current Average Wholesale Price (AWP) published in either First Data Bank or the Red Book in any year from 1993 to the present.
2. The evidence or information about which it is aware which shows, or which defendant believes may tend to show, that the published AWP was higher than the price pharmacies were actually paying for any of the targeted drugs in each year from 1993 to the present.
3. What contacts Pfizer Inc., or its subsidiaries, have had with First Data Bank or the Red Book about any of the targeted drugs.
4. Whether Pfizer Inc., or any of its subsidiaries, ever communicated to either First Data Bank or the Red Book that the published Average Wholesale Prices of their drugs were neither a price that was actually an average of wholesale prices, nor a price that was actually paid by the retail classes of trade and, if so, when such communications took place and of what they consisted.
5. The Average Manufacturer's Price (AMP) reported to the federal government of each of the targeted drugs in each year since 1993.
6. Any evidence which shows that the actual average wholesale price at which any of the targeted drugs sold in any given year was greater than the AMP.

Notice of Deposition, at 1-2. These five categories seek testimony to establish two facts—

(1) that the published AWP's are not prices at which drugs are sold at the wholesale level, and

that Pfizer had knowledge thereof; and (2) that Pfizer caused to be published and never corrected the inflated AWP.

Testimony from categories 1, 2, 5, and 6 will establish the first fact—that the published AWP is not a price at which drugs are sold at the wholesale level. The first category asks Pfizer to produce person(s) to testify regarding evidence that any of its targeted drugs were purchased by pharmacies at a price equal to or greater than the published AWP. Wisconsin believes that since the AWP is inflated, Pfizer will testify that it has no evidence that its drugs were actually purchased at such a price, but if such evidence exists, it is relevant to Wisconsin's case. The second category seeks evidence in Pfizer's possession that the published AWP was higher than the price pharmacies were actually paying for any of the targeted drugs. This evidence goes to Pfizer's knowledge of its deceptive pricing.

The fifth and sixth categories ask Pfizer to produce person(s) to testify regarding the Average Manufacturer's Price (AMP) that Pfizer reported to the federal government for each of the targeted drugs. Pursuant to 42 U.S.C. § 1396r-8, pharmaceutical manufacturers that participate in state Medicaid programs must submit to the federal government its AMPs for all participating drugs, and these prices are used by the federal government to calculate rebates for state Medicaid programs. AMPs are supposed to reflect what wholesalers actually pay the manufacturers for their drugs. Wisconsin has reason to believe that wholesalers mark up their prices to retailers (*i.e.*, their wholesale prices) no more than a couple of percentage points, and the defendants so know. Thus, the actual AWP should be at most a few percentage points greater than the AMP, assuming the AMP is not also inflated. (Wisconsin has reason to believe that the published AWP is, in fact, routinely much, much higher than the AMP.) Evidence regarding the federally reported AMP—*i.e.*, the manufacturer price—and their

relation to the wholesale prices will help Wisconsin establish that Pfizer's published wholesale prices are inflated.

Testimony from categories 3 and 4 (which were combined) will establish the fact that Pfizer caused to be published inflated prices and/or failed to correct the false prices published in the medical compendiums.

Argument

Wisconsin Statute § 804.01(3)(a) states: "Upon motion by a party ... and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" "The burden of establishing 'good cause' is on the party seeking the protective order." *Earl v. Gulf & Western Mfg. Co.*, 123 Wis.2d 200, 208, 366 N.W.2d 160, 164 (Wis. App. 1985) (citing *Vincent & Vincent, Inc. v. Spacek*, 102 Wis.2d 266, 272, 306 N.W.2d 85, 88 (Wis. App. 1981).

Wisconsin's notice of deposition is proper in form and designed to allow Wisconsin to obtain testimony to establish that Pfizer's published AWP's are false and inflated and that Pfizer so knew. Although Pfizer raises various unsupported objections, it has not come close to fulfilling its burden to show that this deposition should not take place.

I. Judge Krueger has already refused to stay discovery until the motion to dismiss has been adjudicated

Pfizer's main argument is that "[d]epositions should not proceed until Judge Krueger determines whether Plaintiff even has stated claims on which relief can be granted." Pfizer Mot., ¶5. This argument has already been made to Judge Krueger and she rejected it. On March 23, 2005, defendants filed their Motion for a Protective Order Staying Discovery Until the Court Rules on Defendants' Pending Motion to Dismiss. In that motion, defendants raised the same arguments that Pfizer now raises: that it is unreasonable to put defendants through the burden

and expense of extensive discovery until dispositive motions are resolved (March 23, 2005 Mot. to Stay, at 10-11), that there would be no prejudice to Wisconsin for delaying the discovery (id. at 12), and that individual defendants had filed motions to dismiss regarding their individual circumstances. Id. at 9-10. The Court considered these arguments and Wisconsin's opposition, and entered a stay that expired on May 11, 2005, at the time a temporary protective order was entered. See Ex. 3, April 12, 2005 Order. The present motion is a backdoor attempt to ask Judge Eich to reconsider Judge Krueger's decision. Pfizer has presented no new evidence or law to warrant a different outcome.

II. Pfizer has no basis for its objection that the notice is ambiguous, unclear, or overly broad

Pfizer's next objection is that the deposition notice is "ambiguous, unclear, and overly broad" Pfizer Mot., ¶8. Pfizer has presented no argument or evidence in its motion to support this boilerplate objection, and as such the objections should be disregarded.

[The defendant] has objected to nearly all of plaintiffs' discovery requests by stating that the requests are overbroad, vague, ambiguous and unduly burdensome. However, these objections are not sufficiently specific to allow the court to ascertain the claimed objectionable character of the discovery request. This type of general objection is not a sufficient response to a motion to compel. Unless it is obvious from the wording of the request ..., an objection that discovery is overly broad and unduly burdensome must be supported by affidavits or offering evidence revealing the nature of the burden and why the discovery is objectionable.

Wagner v. Dryvit Systems, Inc. 208 F.R.D. 606, 610 (D. Neb. 2001). Further, the objections are simply incorrect. As explained above, the subject matter and categories of Wisconsin's deposition notice are straightforward, focused, and highly relevant to the case.

An examination of the supporting affidavit of Pfizer's counsel confirms that these objections are baseless. The only term that Pfizer's counsel claims is ambiguous is "contacts," Heuer Aff., ¶8, as used in the notice's paragraph 3, which asks for the persons most

knowledgeable about the “contacts Pfizer Inc., or its subsidiaries, have had with First Data Bank or the Red Book about any of the targeted drugs.” However, in the affidavit, Pfizer’s counsel affirms that with regard to this issue, “Plaintiff’s counsel clarified that the State seeks information about the nature and extent of Pfizer’s communications with First Data Bank and the RedBook with respect to any reporting of drug prices.” Heuer Aff., ¶8. Wisconsin’s counsel further states in his affidavit that the parties “agreed to Pfizer’s suggestion that it interpret the term ‘contacts’ to mean ‘correspondence’” Dixon Aff., ¶5. Thus, Pfizer’s counsel’s objection to “contacts” as being ambiguous has already been resolved.

Pfizer’s counsel also complain in the affidavit that they do “not know what drugs are at issue in this case and therefore cannot provide information about relevant drugs.” Heuer Aff., ¶¶8 & 10. However, Wisconsin had attached a narrowed list of targeted drugs to the notice of deposition to which the first round of discovery applies, so Pfizer knew exactly which drugs were at issue. This objection is disingenuous.

With regard to the person most knowledgeable about the actual price at which Pfizer’s drugs were purchased from wholesalers—referred to in paragraphs 1, 2, and 6 of the notice—(as opposed to the phony AWP), Pfizer’s counsel objects because it contends that if such evidence exists, it would be in the hands of Pfizer’s customers, not Pfizer. *Id.* at ¶¶ 7 & 10. As Wisconsin’s counsel pointed out in correspondence, Wisconsin has a reasonable basis to believe that that Pfizer routinely collects this information, and thus it is entitled to question Pfizer regarding its retention of this information, and if Pfizer did not collect this price information, its witness could merely say so under oath. Dixon Aff., ¶¶4, 7. The fact that third party “retail pharmacies, wholesalers, and others”—which could number in the thousands—might also have the requested information does not constitute a proper objection.

III. Wisconsin's notice is proper in all regards

Pfizer raises four more unsupported reasons for its protective order. First, Pfizer states that the deposition notice “improperly seeks to force the designee to bring documents to the deposition.” Pfizer Mot., ¶9. In the notice, Wisconsin requested that the designee bring documents that support the five categories of the deposition notice. Pfizer apparently acknowledges that Wisconsin Statute § 804.05 (2)(d) governing depositions provides that the “notice to a party deponent may be accompanied by a request ... for the production of documents ... at the taking of the deposition,” and that such request must be “made in compliance with s. 804.09 ...” Pfizer’s only argument as to why Wisconsin’s request for documents at the deposition was “improper” is as follows: “This means that a party may respond by objecting to the requests and the tactic of noticing a deposition may not deprive the party of the right.” Pfizer Mot., ¶9. However, Pfizer has failed to state any legitimate objections to the requested documents.

Pfizer’s next unsupported objection is that Pfizer designee should not be forced to travel to Madison, Wisconsin—the forum of the lawsuit—to be deposed because the governing statute, Wisconsin Statute Section 804.05 (3)(b) requires that a defendant be deposed within 100 miles of where it transacts business. Pfizer Mot., ¶¶4, 10. However, Pfizer fails to state that it does not transact business within 100 miles of Madison—for obvious reasons.

Pfizer also complains that the deposition notice asks that Pfizer produce a witness to testify about drugs that are or were manufactured and sold by both Pfizer and by Pharmacia Corporation (“Pharmacia”), which was named as a separate defendant. Pfizer Mot., ¶4. Pharmacia was acquired by Pfizer in April 2003 and is now a wholly-owned subsidiary of Pfizer. From discussions and correspondence with Pfizer’s attorneys regarding discovery and

settlement, it is Wisconsin's understanding that Pfizer's attorneys have dealt with the two defendants and their drugs together since this lawsuit was filed in 2004. If Pfizer has a person who can testify regarding its wholly-owned subsidiary's drugs, it should produce that person. Pfizer has never represented that it does not have such a person. Obviously, if Pfizer does not, Wisconsin can send out a separate notice to the subsidiary and conduct a separate deposition.

Finally, Pfizer's suggestion that Wisconsin has been unwilling to discuss discovery issues is incomprehensible. Pfizer Mot., ¶11. Wisconsin gave Pfizer more than 30 days notice of the deposition. Pfizer waited 25 days before contacting Wisconsin regarding the deposition, stating in its first paragraph that it would not produce a witness for the scheduled deposition, but not requesting another date. Pfizer Ex. C. Despite this lack of regard for other attorneys' schedules, the parties attempted to resolve in good faith any questions Pfizer had regarding the notice, as discussed above in Section II and in the parties' affidavits. (Apparently to put forth evidence of Pfizer's cooperation in the discovery process, Pfizer's motion states that it has "responded to written discovery requests." Pfizer Mot., ¶11. However, its written responses contain nothing more than objections, and to date, nothing has been produced. See Ex. 4, Pfizer's July 15, 2005 discovery responses.) In the end, the parties' negotiations came down to the fact that Pfizer did not want a deposition taking place before the motion to dismiss had been decided. Dixon Aff., ¶8. However, as discussed above, that issue has already been decided by Judge Krueger.

Conclusion

Wisconsin respectfully submits that its notice of deposition is proper in all regards, that Pfizer's motion for a protective order should be denied, and that the Court should order the deposition to proceed.

Dated this 27th day of December, 2005.



One of Plaintiff's Attorneys

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**FOR IMMEDIATE RELEASE
MONDAY, OCTOBER 28, 2002
WWW.USDOJ.GOV**

**CIV
(202) 514-2007
TDD (202) 514-1888**

**DRUG GIANT PFIZER & TWO SUBSIDIARIES TO PAY \$49 MILLION
FOR DEFRAUDING DRUG MEDICAID REBATE PROGRAM**

WASHINGTON, D.C.- Pfizer Corporation and its subsidiaries, Warner-Lambert and Parke-Davis, have agreed to pay \$49 million to settle allegations that the company violated the False Claims Act, the Justice Department and the U.S. Attorney's Office for the Eastern District of Texas announced today. The government alleged that the defendants fraudulently avoided paying fully the rebates owed to the state and federal governments under the national drug Medicaid Rebate program for the cholesterol-lowering drug Lipitor.

Congress enacted the Medicaid Rebate program in 1991 to ensure that state Medicaid programs and the federal government do not overpay for the cost of providing drugs to Medicaid beneficiaries. The rebate program is embodied in the Medicaid Rebate Agreement that each drug company signs with the federal government in exchange for the privilege of having its products approved for use by Medicaid beneficiaries.

The Medicaid Rebate program requires drug companies to pay quarterly rebates to states in a way intended to account for discounts given by the drug companies to their favored customers. The key to the program is the requirement that, for each drug sold, drug companies report to the Center for Medicare and Medicaid Services the best price they offered to any commercial, for-profit customer and pay a quarterly rebate based, in part, upon that best price.

Defendant, Parke-Davis Labs, then a subsidiary of Warner-Lambert, which was subsequently acquired by Pfizer in 2000, allegedly overstated the Lipitor best price in the first and second quarters of 1999 by concealing \$250,000 of cash discounts that were given to a key managed care customer in Louisiana in exchange for favorable status on the managed care organization's drug formulary. The alleged unreported discounts to the managed care organization allowed Parke-Davis/Warner-Lambert to retain over \$20 million in Medicaid Rebates owed to the Medicaid program.

"The Medicaid program was created to help ensure that those with lower incomes receive medical treatment – not to enrich drug companies or providers," said Robert D. McCallum, Jr., Assistant Attorney General for the Justice Department's Civil Division. "The Medicaid Rebate program plays a critical role in helping the state and federal governments control ever-increasing drug costs."

In addition to the \$49 million settlement payment, Pfizer will enter into a five-year corporate integrity agreement with the Department of Health and Human Services' (HHS) Office of Inspector General. The corporate integrity agreement includes requirements that Pfizer certify its best price processes and maintain internal procedures designed to prevent future problems in compliance with the Medicaid Rebate program.

"Pharmaceutical companies have a responsibility to be good corporate citizens and to be fair and honest in their dealings with Medicaid, Medicare and the other government health care programs," stated HHS Inspector General Janet Rehnquist. "As a condition of this settlement, Pfizer must

implement and maintain policies and procedures designed to ensure the full and accurate reporting of discounts and other pricing data used to calculate Medicaid rebates."

The settlement amount will be divided between the federal government and the states that did not receive the full Medicaid Rebate payments owed by Parke-Davis/Warner-Lambert. The United States will receive \$27,915,300 plus accrued interest. The remainder of the settlement amount, \$21,084,700 plus accrued interest, will be shared among 40 states.

David Foster, a former Parke-Davis/Warner-Lambert employee in the company's Southeast Region, was the qui tam relator or "whistle blower" who filed the initial suit on behalf of the United States. Mr. Foster will receive 21.3% of the federal government's portion of the recovery or \$5,945,958.90.

The case is United States ex rel. David Foster v. Pfizer Inc, Warner-Lambert Corporation, and Parke-Davis Laboratories.

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02-622

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 7

DANE COUNTY

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 04-CV-1709
)	Unclassified – Civil:30703
AMGEN INC., et al.,)	
)	
Defendants.)	

AFFIDAVIT OF WILLIAM P. DIXON

State of Wisconsin)
) ss.
County of Dane)

I, William P. Dixon, hereby declare and affirm that:

1. I am a partner with Miner, Barnhill & Galland and represent the Plaintiff in this action as a Special Assistant Attorney General.

2. Upon receipt of the November 29, 2005 letter from attorney Kimberly Heuer, counsel for Pfizer Inc., (Exhibit C to Heuer Affidavit of December 5) I called her office in response to her request to discuss the Notice of Deposition and Pfizer’s “areas of concern”.

3. Attorney Heuer was traveling and we were first able to confer on December 2, 2005 in a telephone conversation which included attorney Heuer and attorney Scott Stempel for Pfizer and attorney Jeffrey Archibald and myself for Plaintiff. Mr. Stempel began by saying the deposition was premature because there was a pending Motion To Dismiss and until that was decided by Judge Krueger, Pfizer was not going to produce any witness for a scheduled deposition. I stated this was not permitted under Wisconsin law and that the deposition would proceed as scheduled. Pfizer’s counsel stated that the complaint did not include any allegations about a drug manufactured by Pfizer and I reminded counsel that this was untrue.

Ex. 2

4. I asked counsel whether they wished to discuss the questions they referred to in their November 29 correspondence and they then raised a number of questions about the Notice of Deposition. With regard to paragraphs 1 and 2 I stated that Plaintiff had a reasonable basis to know that Pfizer collected and retained this information and was entitled to question Pfizer regarding its retention of this information. If Pfizer did not collect or retain this price information its witness could merely say so under oath.

5. With regard to paragraph 3 I agreed to Pfizer's suggestion that it interpret the term "contacts" to mean "correspondence" and stated that the complaint, supplemented by Exhibit A to the deposition notice (list of "targeted drugs") spelled out clearly and precisely the drugs for which Plaintiff was seeking information. I rejected Pfizer's claim that the language of paragraph 3 was ambiguous.

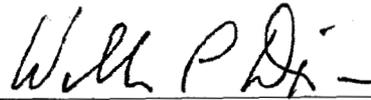
6. I agreed with the suggestion of Pfizer's counsel that paragraph 4 could be considered a subset of paragraph 3.

7. Pfizer's counsel stated that it did not know what was the "actual average wholesale price" of the drugs Pfizer manufactured. As with paragraphs 1 and 2, I stated that we had a reasoned basis to believe Pfizer continuously collected this information and retained it.

8. Pfizer's counsel concluded by stating that it would not produce any witness for the noticed deposition while there was a pending Motion To Dismiss, regardless of any agreements we reached about the language employed in the deposition notice, and would seek a protective order saying it did not have to appear for any deposition until the motion was decided. I then stated that in view of their position, we would cancel the court reporter retained for the December 7 deposition.

I certify under penalty of perjury that the foregoing is true and correct.

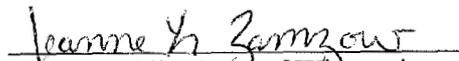
Dated this 8th day of December, 2005.



William P. Dixon

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(608) 255-5200

Subscribed and sworn to before me
this 8th day of December, 2005.


Jeanne Y. Zarnow
Notary Public, State of Wisconsin
My commission expires 06/14/09.

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH: 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN, INC., et al.,

Defendants.

Case No: 04 CV 1709

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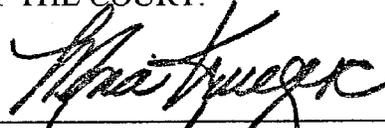
ORDER

Defendants' Motion for a Protective Order dated March 23, 2005, having been briefed and argued at a hearing on April 8, 2005;

IT IS ORDERED that discovery directed at the defendants, or any defendant, is STAYED until May 11, 2005, or until further order of the Court.

Dated this 12th day of April, 2005.

BY THE COURT:



Honorable Moria G. Krueger
Circuit Court Judge, Branch 7

3. The information and documents supplied herein are for use in this litigation and for no other purpose.

4. Pfizer objects to these Requests to the extent that they seek documents and information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, are overly broad, unduly burdensome, ambiguous and vague.

5. Pfizer objects to these Requests to the extent they call for the production of documents or information protected from disclosure under the attorney-client privilege, the work product doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents or information are inadvertently produced in response to these Requests, the production of such documents or information shall not constitute a waiver of Pfizer's right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to Pfizer's counsel immediately upon discovery thereof.

6. Pfizer objects to these Requests to the extent that they seek documents and information not within Pfizer's possession, custody, or control or are more appropriately sought from third parties to whom requests have been or may be directed.

7. Pfizer objects to these Requests to the extent that they seek production of publicly available documents or information, or that which plaintiff can obtain from other sources.

8. Pfizer objects to these Requests to the extent they call for the production of trade secret, proprietary, commercially sensitive, or other confidential information. Pfizer will not produce any responsive information, including confidential business, trade secret or proprietary

information until an appropriate Protective Order or Confidentiality Agreement has been entered in this case.

9. Pfizer objects to these Requests to the extent that they seek to impose discovery obligations that are broader than, or inconsistent with, Pfizer's obligations under the Wisconsin Rules of Civil Procedure.

10. Pfizer objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in these Requests. Pfizer's response that it will produce documents in connection with a particular Request, or that it has no responsive documents, is not intended to indicate that Pfizer agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests or that such implications or characterizations are relevant to this action.

11. Pfizer reserves the right to withhold the production of any responsive information until the court has ruled on Defendants' Motion to Dismiss in this case.

12. Subject to and without waiving any objection set forth herein, Pfizer will produce non-privileged, responsive documents and make them available for review, inspection and copying at the office of Morgan, Lewis & Bockius, LLP, 1701 Market Street, Philadelphia, PA, 19103, unless other mutually-agreeable arrangements are made.

13. Pfizer objects to the definition of "Average Manufacturer Price" and "AMP" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language "the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report." Pfizer incorporates by reference its objection to the definition of the term "Pharmaceutical." Pfizer further objects to this definition to the extent that it purports to set an accurate or legally significant definition of AMP.

14. Pfizer objects to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous with respect to the language “payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser’s acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.” Pfizer incorporates by reference its objection to the definition of the term “Pharmaceutical.”

15. Pfizer objects to the definition of “Defined Period of Time” as set forth in Definition No. 3 on the grounds that it is overly broad and unduly burdensome and vague and ambiguous, particularly with respect to the language “Documents relating to such period,” and incorporates by reference its objection to the definition of the term “Document.” Pfizer objects to this definition to the extent that it seeks information from outside the statute of limitations applicable to the claims in this litigation, or beyond the time period relevant to this litigation.

16. Pfizer objects to the definition of “Document” as set forth in Definition No. 4 on the grounds that it is vague and ambiguous with respect to the language “writing,” “recording,” any kind,” “agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, facsimiles (faxes), film, graphs, letters, memos, maps, minutes,” “Executive Committee minutes,” “notes, notices, photographs, reports, schedules, summaries, tables, and telegrams,” “medium,” “written, graphic, pictorial, photographic, electronic, emails, phonographic, mechanical, taped,” “hard drives, data tapes” and “copies.” Pfizer further objects to this definition to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Pfizer’s obligations under the Wisconsin Rules of Civil Procedure. Pfizer further objects to this definition to the extent it requires or seeks to require Pfizer (i) to produce documents or data in a particular form or

format; (ii) to convert documents or data into a particular or different file format; (iii) to produce data, fields, records, or reports about produced documents or data; (iv) to produce documents or data on any particular media; (v) to search for and/or produce any documents or data on back-up tapes; (vi) to produce any proprietary software, data, programs, or databases; or (vii) to violate any licensing agreement or copyright laws.

17. Pfizer objects to the definition of "Incentive" as set forth in Definition No. 5 on the grounds that it is overly broad, unduly burdensome, ambiguous and vague, particularly with respect to the language "anything of value," "provided," "customer," "lower the consideration paid for a drug, regardless of the time it was provided . . . and regardless of its name," "credits," "discounts," "return to practice discounts," "prompt pay discounts," "volume discounts," "on-invoice discounts," "off-invoice discounts," "rebates," "market share rebates," "access rebates," "bundled drug rebates," "free goods or samples," "administrative fees or administrative fee reimbursements," "marketing fees," "stocking fees," "conversion fees," "patient education fees," "off-invoice pricing," "educational or other grants," "research funding," "clinical trials," "honoraria," "speaker's fees," "patient education fees" and "consulting fees." Pfizer incorporates by reference its objection to the definition of the term "Chargeback." Pfizer further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

18. Pfizer objects to the definition of "National Sales Data" in Definition No. 6 on the grounds that it is overly broad and unduly burdensome. Pfizer further objects on the grounds that this definition is vague and ambiguous with respect to the language "data sufficient to identify for each sales transaction," "transaction type," "your product number," "package description," "WAC," "you," "contract price," "invoice price," "identification number," "paid or

distributed Incentives,” “accrued Incentives,” “calculated at any time” and “other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.” Pfizer incorporates by reference its objection to the definition of the term “Targeted Drugs.” Pfizer objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

19. Pfizer objects to the definition of “Pharmaceutical” in Definition No. 7 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language “any drug, “other product,” “you,” “any other manufacturer,” “‘biological’ products” and “intravenous solutions.” Pfizer objects to this Definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

20. Pfizer objects to the definition of “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language “third party payors,” “gross profit actually or potentially realized” and

“purchasers.” Pfizer incorporates by reference its objection to the definition of the term “Pharmaceuticals.”

21. Pfizer objects to the definition of “Targeted Drugs” on the grounds that it is overly broad and unduly burdensome. Pfizer further objects to this definition on the grounds that it is vague and ambiguous, particularly with respect to the language “you” and “total utilization.” Pfizer incorporates by reference its objection to the definition of the term “Defined Period of Time.” Pfizer objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

22. Pfizer objects to the State’s demand, noted by an asterisk after Request Nos. 1, 2 and 4 that: “*Documents are to be produced in electronic format with all documentation required to identify files and fields by name, content, and format, and explanations for all coded data. Acceptable electronic format for documents which in their native form are organized as word processing documents, or printed documents other than tabular reports, (documents comprised principally of text, or of a combination of text and graphics) is searchable Adobe Acrobat-portable document format (.pdf). Acceptable electronic format for documents which in their native form are organized as spreadsheets is Microsoft Excel format (.xls). Acceptable electronic format for documents which in their native form are comprised principally of tabular data, or tabular reports with fixed column widths or field lengths is fixed-field ASCII text (.txt). Acceptable electronic format for documents which in their native form are comprised principally

of electronic data in one or more data tables, files, or other data entities, is delimited ASCII text (.csv).” to the extent that it imposes discovery obligations that are broader than, or inconsistent with, Pfizer’s obligations under the Wisconsin Rules of Civil Procedure. Pfizer incorporates by reference its objection to the definition of the term “Document.”

**SPECIFIC RESPONSES AND OBJECTIONS TO
REQUEST FOR PRODUCTION OF DOCUMENTS**

REQUEST NO. 1: All National Sales Data for each Targeted Drug during the Defined Period of Time.*

RESPONSE TO REQUEST NO. 1: In addition to the General Objections set forth above, Pfizer objects to Request No. 1 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this Request on the grounds that it is vague and ambiguous with respect to the language “all.” Pfizer incorporates by reference its objections to the State’s definitions of the terms “National Sales Data,” “Targeted Drug” and “Defined Period of Time.” Pfizer objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information.

REQUEST NO. 2: All Documents containing AMPs as reported or calculated by you for the Targeted Drugs or a spread sheet or database showing all reported and calculated AMPs for each Targeted Drug over the Defined Period of Time which lists when such AMPs were reported or calculated, and the quarter to which each AMP applies.*

RESPONSE TO REQUEST NO. 2: In addition to the General Objections set forth above, Pfizer objects to Request No. 2 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this request on the grounds that it is vague and ambiguous with respect to the language “all,” “reported or calculated,” “you,” “spread sheet” and “database.” Pfizer incorporates by reference its objections to the State’s definitions of the terms “Documents,” “AMPs,” “Targeted Drug” and “Defined Period of Time.” Pfizer objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information.

REQUEST NO. 3: All Documents created by you, or in your possession, that discuss or comment on the difference (or Spread) between any Average Wholesale Price or Wholesale Acquisition Cost and the list or actual sales price (to any purchaser) of any of defendants' Pharmaceuticals or any Pharmaceuticals sold by other manufacturers. Documents which merely list the AWP or WAC price and the list or actual sales price without further calculation of the difference, or without other comment or discussion of or about the spread between such prices are not sought by this request.

RESPONSE TO REQUEST NO. 3: In addition to the General Objections set forth above, Pfizer objects to Request No. 3 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this request on the grounds that it is vague and ambiguous with respect to the

language “all,” “created,” “you,” “in your possession,” “discuss or comment,” “difference,” “Average Wholesale Price,” “Wholesale Acquisition Cost,” “list or actual sales price,” “purchaser,” “defendants’ Pharmaceuticals,” “Pharmaceuticals sold by other manufacturers,” “discussion” and “prices.” Pfizer incorporates by reference its objections to the State’s definitions of the terms “Documents,” “Spread” and “Pharmaceuticals.” Pfizer objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin, or to the relevant time period involving the State’s claims. Pfizer objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer objects to this Request to the extent it seeks confidential business, trade secret or proprietary information. Pfizer further objects to this Request to the extent it seeks documents that are more appropriately sought from third parties, including other defendants, to whom requests may be directed.

REQUEST NO. 4: All Documents containing an average sales price or composite price identified by you in response to Interrogatory No. 1 of Plaintiff’s First Set of Interrogatories to All Defendants.*

RESPONSE TO REQUEST NO. 4: In addition to the General Objections set forth above, Pfizer objects to Request No. 4 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this Request on the grounds that it is vague and ambiguous with respect to the language “all,” “average sales price,” “composite price” and “you.” Pfizer incorporates by reference its objections to the State’s definitions of the term “documents.” Pfizer objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer objects to this Request to the extent it seeks information subject to the

attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information.

Subject to and without waiver of these objections, Pfizer Incorporates its Response to Interrogatory No. 1.

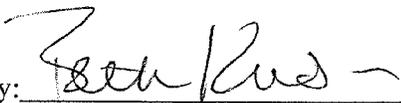
REQUEST NO. 5: All Documents sent to or received from First DataBank, Redbook and Medi-span regarding the price of any Targeted Drug.

RESPONSE TO REQUEST NO. 5: In addition to the General Objections set forth above, Pfizer objects to Request No. 5 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this request on the grounds that it is vague and ambiguous with respect to the language “all,” “received,” “regarding” and “price.” Pfizer incorporates by reference its objections to the State’s definitions of the terms “Documents,” and “Targeted Drug.” Pfizer objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin, or to the time period relevant to this litigation. Pfizer objects to this Request on the grounds that it assumes that Pfizer communicated with “First DataBank, Redbook and Medi-span.” Pfizer objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information.

REQUEST NO. 6: All Documents in your possession prepared by IMS Health regarding a Targeted Drug or the competitor of a Targeted Drug regarding pricing, sales or market share.

RESPONSE TO REQUEST NO. 6: In addition to the General Objections set forth above, Pfizer objects to Request No. 6 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this Request on the grounds that it is vague and ambiguous with respect to the language “all,” “in your possession,” “prepared,” “IMS Health,” “regarding,” “competitor,” “pricing, sales or market share.” Pfizer incorporates by reference its objections to the State’s definitions of the terms “documents,” and “targeted drug.” Pfizer objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin, or to the time period relevant to this litigation. Pfizer objects to this Request to the extent it seeks documents that are not within Pfizer’s possession, custody, or control or are more appropriately sought from third parties, including other drug manufacturers, including other defendants, to whom requests may be directed. Pfizer objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information.

Dated: March 23, 2005

By: 
Beth Kushner SBN 1008591
Timothy Feeley SBN 101820
VON BRIESEN & ROPER, S.C.
411 East Wisconsin Avenue, Suite 700
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document requests are based upon, and necessarily limited by, information now available to Pfizer.

3. The information and documents supplied herein are for use in this litigation and for no other purpose.

4. Pfizer objects to these Interrogatories to the extent that they seek documents and information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, are overly broad, unduly burdensome, ambiguous and vague.

5. Pfizer objects to these Interrogatories to the extent they call for the production of documents or information protected from disclosure under the attorney-client privilege, the work product doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents or information are inadvertently produced in response to these Interrogatories, the production of such documents or information shall not constitute a waiver of Pfizer's right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to Pfizer's counsel immediately upon discovery thereof.

6. Pfizer objects to these Interrogatories to the extent that they seek documents and information not within Pfizer's possession, custody, or control or are more appropriately sought from third parties to whom requests have been or may be directed.

7. Pfizer objects to these Interrogatories to the extent that they seek production of publicly available documents or information, or that which plaintiff can obtain from other sources.

8. Pfizer objects to these Interrogatories to the extent they call for the production of trade secret, proprietary, commercially sensitive, or other confidential information. Pfizer will not produce any responsive information, including confidential business, trade secret or proprietary information, until an appropriate Protective Order or Confidentiality Agreement has been entered in this case.

9. Pfizer objects to these Interrogatories to the extent that they seek to impose discovery obligations that are broader than, or inconsistent with, Pfizer's obligations under the Wisconsin Rules of Civil Procedure.

10. Pfizer objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories. Pfizer's response that it will produce documents in connection with a particular request, or that it has no responsive documents, is not intended to indicate that Pfizer agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories or that such implications or characterizations are relevant to this action.

11. Pfizer reserves the right to withhold the production of any responsive information until the court has ruled on Defendants' Motion to Dismiss in this case.

12. Pfizer objects to the definition of "Average Manufacturer Price" and "AMP" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language "the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report." Pfizer incorporates by reference its objection to the definition of the term "Pharmaceutical." Pfizer further objects to this definition to the extent that it purports to set an accurate or legally significant definition of AMP.

13. Pfizer objects to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous with respect to the language “payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser’s acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.” Pfizer incorporates by reference its objection to the definition of the term “Pharmaceutical.”

14. Pfizer objects to the definition of “Defined Period of Time” as set forth in Definition No. 3 on the grounds that it is overly broad and unduly burdensome and vague and ambiguous, particularly with respect to the language “Documents relating to such period,” and incorporates by reference its objection to the definition of the term “document.” Pfizer objects to this definition to the extent that it seeks information from outside the statute of limitations applicable to the claims in this litigation, or beyond the time period relevant to this litigation.

15. Pfizer objects to the definition of “Document” as set forth in Definition No. 4 on the grounds that it is vague and ambiguous with respect to the language “writing,” “recording,” any kind,” “agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, facsimiles (faxes), film, graphs, letters, memos, maps, minutes,” “Executive Committee minutes,” “notes, notices, photographs, reports, schedules, summaries, tables, and telegrams,” “medium,” “written, graphic, pictorial, photographic, electronic, emails, phonographic, mechanical, taped,” “hard drives, data tapes” and “copies.” Pfizer further objects to this definition to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Pfizer’s obligations under the Wisconsin Rules of Civil Procedure. Pfizer further objects to this definition to the extent it requires or seeks to require Pfizer (i) to produce documents or data in a particular form or

format; (ii) to convert documents or data into a particular or different file format; (iii) to produce data, fields, records, or reports about produced documents or data; (iv) to produce documents or data on any particular media; (v) to search for and/or produce any documents or data on back-up tapes; (vi) to produce any proprietary software, data, programs, or databases; or (vii) to violate any licensing agreement or copyright laws.

16. Pfizer objects to the definition of "Incentive" as set forth in Definition No. 5 on the grounds that it is overly broad, unduly burdensome, ambiguous and vague, particularly with respect to the language "anything of value," "provided," "customer," "lower the consideration paid for a drug, regardless of the time it was provided . . . and regardless of its name," "credits," "discounts," "return to practice discounts," "prompt pay discounts," "volume discounts," "on-invoice discounts," "off-invoice discounts," "rebates," "market share rebates," "access rebates," "bundled drug rebates," "free goods or samples," "administrative fees or administrative fee reimbursements," "marketing fees," "stocking fees," "conversion fees," "patient education fees," "off-invoice pricing," "educational or other grants," "research funding," "clinical trials," "honoraria," "speaker's fees," "patient education fees" and "consulting fees." Pfizer incorporates by reference its objection to the definition of the term "Chargeback." Pfizer further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

17. Pfizer objects to the definition of "National Sales Data" in Definition No. 6 on the grounds that it is overly broad and unduly burdensome. Pfizer further objects on the grounds that this definition is vague and ambiguous with respect to the language "data sufficient to identify for each sales transaction," "transaction type," "your product number," "package description," "WAC," "you," "contract price," "invoice price," "identification number," "paid or

distributed Incentives,” “accrued Incentives,” “calculated at any time” and “other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.” Pfizer incorporates by reference its objection to the definition of the term “Targeted Drugs.” Pfizer objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

18. Pfizer objects to the definition of “Pharmaceutical” in Definition No. 7 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language “any drug, “other product,” “you,” “any other manufacturer,” “‘biological’ products” and “intravenous solutions.” Pfizer objects to this Definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

18. Pfizer objects to the definition of “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, vague and ambiguous, particularly with respect to the language “third party payors,” “gross profit actually or potentially realized” and “purchasers.” Pfizer incorporates by reference its objection to the definition of the term “Pharmaceuticals.”

19. Pfizer objects to the definition of “Targeted Drugs” on the grounds that it is overly broad and unduly burdensome. Pfizer further objects to this definition on the grounds that it is vague and ambiguous, particularly with respect to the language “you” and “total utilization.” Pfizer incorporates by reference its objection to the definition of the term “Defined Period of Time.” Pfizer objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

SPECIFIC RESPONSES AND OBJECTIONS INTERROGATORIES

INTERROGATORY NO. 1: Have you ever determined an average sales price or other composite price net of any or all Incentives for a Targeted Drug during the Defined Period of Time? If so, for each Targeted Drug for which you have made such a determination, identify:

- (a) the beginning and ending dates of each period applicable to each such determination;
- (b) the applicable class(es) of trade for which each determination was made;
- (c) each average sales price or composite price determined;
- (d) the person(s) most knowledgeable regarding the determinations;
- (e) the methodology used to determine such prices;
- (f) your purpose(s) in making such determinations;

(g) whether you disclosed any average sales price or composite price so determined to any publisher, customer, or governmental entity. If so, identify each publisher, customer or governmental entity to whom each such price was disclosed and the corresponding date of the disclosure; and

(h) whether any such average sales price or composite price was treated as confidential or commercially sensitive financial information.

RESPONSE TO INTERROGATORY NO. 1: In addition to the General Objections set forth above, Pfizer objects to Interrogatory No. 1 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “determined,” “average sales price or other composite price net of any or all Incentives,” “determination,” “methodology,” “disclosed,” “publisher, customer, or governmental entity” and “such price.” Pfizer incorporates by reference its objections to the State’s definitions of the terms “Incentive,” “Targeted Drugs” and “Defined Period of Time.” Pfizer objects to this interrogatory to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer objects to this interrogatory to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

INTERROGATORY NO. 2: Identify each electronic database, data table or data file that you now maintain or have maintained during the Defined Period of Time in the ordinary course of business which contains a price for a Targeted Drug. For each such electronic data entity, identify, describe or produce the following:

- (a) the name or title of each such database, data table, or data file;
- (b) the software necessary to access and utilize such data entities;
- (c) describe the structure of each database, data table or data file identified in

response to Request No. 2(a) above and identify all files or tables in each such database, data table or data file. For each such file or table, identify all fields and for each field describe its contents, format and location within each file or table' record or row.

(d) the current or former employee(s) with the most knowledge of the operation or use of each data entity identified above; and

(e) the custodians of such data entity.

RESPONSE TO INTERROGATORY NO. 2: In addition to the General Objections set forth above, Pfizer objects to Interrogatory No. 2 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this interrogatory on the grounds that it is vague and ambiguous with respect to the language “electronic database, data table or data file,” “you,” “ordinary course of business,” “price,” “software necessary to access and utilize such data entities,” “structure of each database, data table, or data file,” “fields,” “format and location within each file or table record or row” and “operation or use.” Pfizer incorporates by reference its objections to the State’s definitions of the terms “Defined Period of Time” and “Targeted Drug.” Pfizer objects to this interrogatory to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer objects to this interrogatory to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

INTERROGATORY NO. 3:

Describe each type of Incentive you have offered in

conjunction with the purchase of any Targeted Drug. For each such Incentive, identify:

- (a) the type(s) of Incentive(s) offered for each Targeted Drug;
- (b) the class(es) of trade eligible for each Incentive;
- (c) the general terms and conditions of each Incentive; and
- (d) the beginning and ending dates of each period during which the Incentive

was offered.

RESPONSE TO INTERROGATORY NO. 3: In addition to the General Objections

set forth above, Pfizer objects to Interrogatory No. 3 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this interrogatory on the grounds that it is vague and ambiguous with respect to the language “type of Incentive,” “you,” “offered,” “class(es) of trade eligible” and “general terms and conditions.” Pfizer incorporates by reference its objections to the State’s definitions of the terms “Incentive” and “Targeted Drugs.” Pfizer objects to this interrogatory to the extent that it seeks information outside the time period relevant to this litigation and to the extent that it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer objects to this interrogatory to the extent that it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

INTERROGATORY NO. 4:

Describe in detail how you determined each price

you used in the ordinary course of business of each Targeted Drug for each year during the

Defined Period of Time and identify the person(s) most knowledgeable in making such determinations for each Targeted Drug for each year.

RESPONSE TO INTERROGATORY NO. 4: In addition to the General Objections set forth above, Pfizer objects to Interrogatory No. 4 on the grounds that it is overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “determined,” “price” and “ordinary course of business.” Pfizer incorporates by reference its objections to the State’s definitions of the terms “Targeted Drug” and “Defined Period of Time.” Pfizer objects to this interrogatory to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer objects to this interrogatory to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

INTERROGATORY NO. 5: Have you ever included in your marketing of a Targeted Drug to any customer reference to the difference (or spread) between an AWP or WAC published by First DataBank, Redbook or Medi-span and the list or actual price (to any customer) of any Targeted Drug? If so, provide the following information for each Targeted Drug:

- a. the drug name and NDC;
- b. the beginning and ending dates during which such marketing occurred;

c. the name, address and telephone number of each customer to whom you marketed a Targeted Drug in whole or in part by making a reference to such difference(s) or spread(s); and

d. identify any document published or provided to a customer which referred to such difference(s) or spread(s).

RESPONSE TO INTERROGATORY NO. 5: In addition to the General Objections set forth above, Pfizer objects to Interrogatory No. 5 on the grounds that it is overly broad and unduly and not reasonably calculated to lead to the discovery of admissible evidence. Pfizer objects to this interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “ever included,” “your,” “marketing,” “customer,” “reference to the difference (or spread) between an AWP or WAC,” “published,” “list or actual price” and “provided.” Pfizer incorporates by reference its objections to the State’s definitions of the term “Targeted Drug.” Pfizer objects to this interrogatory to the extent that it seeks information outside the time period relevant to this litigation and to the extent that it seeks information not relevant to the State’s claims, which are limited to Wisconsin. Pfizer objects to this interrogatory to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. Pfizer further objects to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

Dated: March 23, 2005

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