
STATE OF WISCONSIN

Plaintiff,

Case No. 04 CV 1709

vs.

AMGEN, INC., et al.

Defendants.

**RESPONSES AND OBJECTIONS OF DEFENDANT AVENTIS BEHRING LLC, N/K/A
ZLB BEHRING LLC, TO PLAINTIFF'S NOTICE OF DEPOSITION AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Wis. Stats. §§ 804.05 and 804.09, Aventis Behring LLC, n/k/a ZLB Behring LLC ("Behring"), responds to Plaintiff's notice of deposition and request for production of documents (the "Notice"), served June 15, 2007.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. Behring provides these responses and objections without waiving or intending to waive: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of information provided in response to the Notice; (b) the right to object on any ground to the use of the information provided in response to the Notice at any hearing, trial, or other point during this action; (c) the right to object on any ground at any time to a demand for further responses to the Notice; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses or objections contained herein.

2. Behring objects to the Notice to the extent that it purports to require Behring to provide a corporate representative to testify, or to require Behring to produce documents, concerning events that took place, or information that was compiled, over a fourteen (14) year period (i.e., from January 1, 1993, to December 31, 2006), and spanning different

corporate entities as a result of merger activity and other corporate transactions, on the grounds that this defined period of time is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Behring also objects to the Notice as unduly burdensome to the extent that it requires Behring to provide a corporate representative to testify about corporate entities or documents that are no longer in existence, or to ascertain the knowledge of employees no longer employed by the company.

3. Behring objects to the Notice to the extent that it purports to require Behring to provide a corporate representative to testify in Madison, Wisconsin. Behring is headquartered in King of Prussia, Pennsylvania (a suburb of Philadelphia), and it is more likely than not that any Behring representative capable of testifying with respect to any unobjectionable matters set forth in the Notice will be located in or near King of Prussia, Pennsylvania. To the extent that Behring agrees to produce a representative to testify as to any topic, Behring will produce such representative or representatives for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

4. Behring objects to the Notice to the extent that it contemplates that Behring will produce a corporate representative to testify regarding a topic more than once. Behring will not produce a representative on September 26, 2007 or another mutually convenient date who can testify regarding a topic at that time, and then produce a representative that can further testify about the same topic after Plaintiff has reviewed the documents and data that Behring has produced or will produce prior to the deposition.

5. Behring objects to the Notice to the extent it seeks information or documents protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or protection against disclosure. In particular, Behring objects to the Notice to the extent it seeks discovery of the mental impressions of

Behring's counsel and/or confidential communications subject to the work product and attorney client privileges, or to the extent it calls for a legal conclusion.

6. Behring objects to the Notice to the extent that it seeks proprietary, commercially-sensitive, or other confidential information, including, but not limited to, confidential and/or proprietary research, procedures, and processes relating to the pricing of pharmaceuticals, current and past marketing plans and methods, and current and past business planning and financial information. Behring's production of any document, testimony, or information pursuant to this Notice shall not be construed as a waiver of the confidentiality of any such document or information and shall be subject to the terms of the First Amended Order of Confidentiality entered in this litigation.

7. Behring objects to the Notice to the extent that it seeks information or documents that are outside Behring's possession, custody, or control.

8. Behring objects to the Notice to the extent that it seeks information or documents already in the State's possession, custody, or control or in the possession, custody, or control of any of the State's officers, employees, agents, agencies, or departments. Behring also objects to the extent the Notice requires Behring to search for information that is publicly available or to search for information or documents for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State or any of its officers, employees, agents, agencies, or departments as it is for Behring.

9. Behring objects to the Notice to the extent that it is: (i) overly broad; (ii) unduly burdensome or oppressive; (iii) improper; or (iv) seeks information that is not relevant to the claims or defenses of any party in this action, is immaterial or is otherwise not reasonably calculated to lead to the discovery of admissible evidence.

10. Behring objects to the Notice to the extent it calls for opinion instead of factual information.

11. Behring objects to the Notice to the extent it imposes or purports to impose discovery objections greater than, or inconsistent with, Behring's obligations under the Wisconsin Rules of Civil Procedure, statutes, or common law, and to the extent that the State seeks discovery beyond that permitted by such rules and law.

12. Behring objects to the Notice to the extent it is vague, ambiguous, or does not identify with sufficient particularity the information sought.

13. Behring objects to any implications and to any explicit or implicit characterizations of the facts, events, circumstances, or issues in the Notice. Any response by Behring is not intended to indicate that Behring accepts or agrees with any implication or explicit or implicit characterization of the facts, events, circumstances, or issues in the Notice, or that such implication or characterization is relevant to this action.

14. By responding that it will produce documents responsive to a particular request, Behring does not assert that it has responsive documents or that such documents exist, only that it will conduct a reasonable search and produce relevant, responsive, non-privileged documents on a rolling basis as agreed upon with Plaintiff's counsel, and subject to a binding protective order of confidentiality. No objection made herein, or lack thereof, is an admission by Behring as to the existence or non-existence of any documents.

15. The objections and responses made herein are based on Behring's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. Behring reserves the right to amend or supplement these responses in accordance with the applicable rules and court orders.

16. The information and documents supplied herein are for use in this litigation and for no other purposes.

17. Behring incorporates by reference, as if fully set forth herein, any objection or reservation of rights made by any co-defendant in this action to the extent such objection or reservation of rights is not inconsistent with Behring's position in this litigation.

OBJECTIONS AND RESPONSES TO REQUEST FOR DOCUMENTS

DOCUMENT REQUEST NO. 1: Bring to the deposition copies of all documents, information or evidence establishing that any of the Targeted Drugs was sold to a wholesaler at a price equal to or greater than the published wholesale acquisition cost (WAC) and/or sold to a retailer at a price equal or greater than the average wholesale price (AWP) published by First DataBank, during the period January 1, 1993, through December 31, 2006.

RESPONSE: Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because this Request is not limited to documents relating to the sale of the Targeted Drugs to direct customers of Behring in Wisconsin. Behring also objects to the Request on the grounds that the terms "wholesale acquisition cost (WAC)," "retailer," and "average wholesale price (AWP)," are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it previously produced to plaintiff pricing and transactional electronic data for various drugs as well as potentially responsive contract documents and other materials. Behring is in the process of identifying additional materials that relate to pricing, marketing, sales, and contracting, with specific reference to a number of the products at issue in this litigation. Behring will produce a copy of these documents, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

OBJECTIONS AND RESPONSES TO REQUESTS FOR DOCUMENTS IN EXHIBIT B

DOCUMENT REQUEST NO. 1: Any documents which show that the actual net price paid by wholesalers to defendant for the Targeted Drugs was equal to or greater than the then current Wholesale Acquisition Cost (WAC) or Net Wholesale Price (NWP) published by First DataBank, Red Book or Medispan (“the pricing compendiums”) and any document which show what percentage these sales were to the total sales of a particular drug.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because this Request is not limited to documents relating to the sale of the Targeted Drugs in Wisconsin. Behring also objects to this Request on the grounds that the terms “actual net price,” “Wholesale Acquisition Cost (WAC),” and “Net Wholesale Price (NWP)” are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it previously produced to plaintiff pricing and transactional electronic data for various drugs as well as potentially responsive contract documents and other materials. Behring is in the process of identifying additional materials that relate to pricing, marketing, sales, and contracting, with specific reference to a number of the products at issue in this litigation. Behring will produce a copy of these documents, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties’ anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 2: Documents which show, or together with other documents tend to show, that the net price paid by retail and chain pharmacies, long-term care pharmacies, mail order pharmacies, home health care entities, or doctors (providers) for the Targeted Drugs was equal to or greater than the then current Average Wholesale Price (AWP) published by the pricing compendiums.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part

because this Request is not limited to documents relating to the sale of the Targeted Drugs in Wisconsin. Behring also objects to this Request on the grounds that the terms “net price” and “Average Wholesale Price (AWP)” are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it previously produced to plaintiff pricing and transactional electronic data for various drugs as well as potentially responsive contract documents and other materials. Behring is in the process of identifying additional materials that relate to pricing, marketing, sales, and contracting, with specific reference to a number of the products at issue in this litigation. Behring will produce a copy of these documents, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties’ anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 3: Documents which show, or tend to show, the net price paid by providers for the Targeted Drugs.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because this Request is not limited to documents relating to the sale of the Targeted Drugs in Wisconsin. Behring also objects to this Request on the grounds that the term “net price” is vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it previously produced to plaintiff pricing and transactional electronic data for various drugs as well as potentially responsive contract documents and other materials. Behring is in the process of identifying additional materials that relate to pricing, marketing, sales, and contracting, with specific reference to a number of the products at issue in this litigation. Behring will produce a copy of these documents, subject to

the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 4: Documents which show, or tend to show, that the defendant was aware or believed that the published AWP for any of its drugs exceeded the net price providers were paying for [sic] of the Targeted Drugs.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because this Request is not limited to documents relating to the sale of the Targeted Drugs in Wisconsin. Behring also objects to this Request on the grounds that the terms "AWP" and "net price" are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it previously produced to plaintiff pricing and transactional electronic data for various drugs as well as potentially responsive contract documents and other materials. Behring is in the process of identifying additional materials that relate to pricing, marketing, sales, and contracting, with specific reference to a number of the products at issue in this litigation. Behring will produce a copy of these documents, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 5: Documents which show defendant's knowledge or belief of the markup or margin above a wholesaler's actual net acquisition cost applied by a wholesaler when selling or re-selling drugs (including but not limited to defendant's Targeted Drugs) to providers.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because this Request is not limited to documents relating to the sale of the Targeted Drugs in

Wisconsin. Behring also objects to this Request on the grounds that the terms “markup,” “margin,” and “actual net acquisition cost” are vague, ambiguous, and undefined.

DOCUMENT REQUEST NO. 6: Exemplar documents illustrating the entire range of discounts, rebates, charge-backs, free goods, incentives or other things of value offered by defendant to providers.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because this Request is not limited to documents relating to the sale of the Targeted Drugs in Wisconsin. Behring also objects to this Request on the grounds that the terms “AWP” and “net price” are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it previously produced to plaintiff pricing and transactional electronic data for various drugs as well as potentially responsive contract documents and other materials. Behring is in the process of identifying additional materials that relate to pricing, marketing, sales, and contracting, with specific reference to a number of the products at issue in this litigation. Behring will produce a copy of these documents, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties’ anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 7: Any planning document, or document used in planning, referring to the AWP of a Targeted Drug.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because the Request is not limited to documents relating to the sale of the Targeted Drugs in Wisconsin. Behring also objects to this Request on the grounds that the terms “planning documents,” “document used in planning,” and “AWP” are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it is in the process of identifying additional materials that relate to pricing, marketing, sales, and contracting, with specific reference to a number of the products at issue in this litigation. Behring will produce a copy of these documents, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 8: Documents which describe how the defendant handles returns from pharmacists.

RESPONSE: In addition to its General Objections, Behring objects to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, Behring states that it will produce documents reasonably responsive to this Request, if any exist and are located, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 9: All documents reflecting communications between defendant and First DataBank, Red Book or Medispan.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because the Request is not limited to documents relating to communications regarding the Targeted Drugs.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce documents reasonably responsive to this Request, subject to the terms of the binding protective order of confidentiality

previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 10: Documents which discuss, concern or explain defendant's reasons for supplying AWP's, WAC's or other prices to the pricing compendiums.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because the Request is not limited to documents relating to the Targeted Drugs. Behring also objects to this Request on the grounds that the terms "AWP's," "WAC's", and "other prices" are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce documents reasonably responsive to this Request, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 11: Documents reflecting communications between the defendant and any Wisconsin state employee.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because the Request is not limited to documents relating to communications concerning the sale or pricing of the Targeted Drugs in Wisconsin.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce documents reasonably responsive to this Request, subject to a binding protective order of confidentiality.

DOCUMENT REQUEST NO. 12: Documents discussing, concerning or about how the defendant initially set its AWP, WAC, Direct Price or any other price it sent to the pricing compendiums in connection with each Targeted Drug.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that the terms “AWP,” “WAC”, “Direct Price,” and “other prices” are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce documents reasonably responsive to this Request, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties’ anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 13: Documents showing each instance in which defendant changed its AWP, its WAC or Direct Price on any of its Targeted Drugs and any documents discussing, concerning or about the reasons for any such change.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that the terms “AWP,” “WAC”, and “Direct Price” are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce documents reasonably responsive to this Request, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties’ anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 14: Documents discussing, concerning or about the formulaic relationship, if any, between defendant’s AWP of a particular drug and its WAC.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that the terms “formulaic relationship,” “AWP,” and “WAC” are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce documents reasonably responsive to this Request, if they exist and are located, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 15: Any documents reflecting a public disclosure by the defendant of the fact that the AWP's published by the pricing compendiums do not accurately reflect the price providers are paying for defendant's drugs.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that the terms "AWP's" and "WAC" are vague, ambiguous, and undefined. Behring further objects to the phrase "do not accurately reflect the price providers are paying" as argumentative and as wrongly implying that published AWP's were intended to "accurately reflect the price providers are paying" for pharmaceutical products.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it is in the process of identifying additional materials that relate to pricing, marketing, sales, and contracting, with specific reference to a number of the products at issue in this litigation. Behring will produce a copy of these documents, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 16: Documents describing the methodology, or methodologies (if they have changed over time) used by defendant for calculating its AMP's for the Targeted Drugs.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Behring also objects to this Request on the grounds that the term "AMP's" is vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce any documents reasonably responsive to this Request, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 17: Documents describing defendant's policy and/or practice of requiring purchasers of its drugs to keep the actual prices such purchasers pay for defendant's drugs confidential.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because the Request is not limited to documents relating to Behring's direct purchasers of the Targeted Drugs in Wisconsin. Behring also objects to this Request on the grounds that the terms "actual prices", "purchasers," and "confidential" are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it previously produced to plaintiff pricing and transactional electronic data for various drugs as well as potentially responsive contract documents and other materials. Behring is in the process of identifying additional materials that relate to pricing, marketing, sales, and contracting, with specific reference to a number of the products at issue in this litigation. Behring will produce a copy of these documents, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 18: Documents discussing, concerning or about any actions taken by First DataBank in connection with the publication of the AWP's of defendant's drugs.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are

neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because the Request is not limited to the Targeted Drugs. Behring also objects to this Request on the grounds that the phrase “in connection with the publication of the AWP’s” is overbroad, vague and ambiguous. Behring further objects to this Request on the grounds that the term “AWP’s” is vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce documents reasonably responsive to this Request, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties’ anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 19: Documents in your possession defining AWP or WAC.

RESPONSE: In addition to its General Objections, Behring also objects to this Request on the grounds that the terms “AWP” and “WAC” are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce documents reasonably responsive to this Request, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties’ anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 20: Documents in your possession discussing how AWP is used by providers.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because the Request is not limited to documents relating to Wisconsin providers for the Targeted

Drugs. Behring also objects to this Request on the grounds that the phrase “is used by providers” is overbroad, vague and ambiguous. Behring further objects to this Request on the grounds that the term “AWP” is vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that it will produce documents reasonably responsive to this Request, if they exist and are located, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties’ anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 21: Any and all sales or marketing materials that discuss the money to be made by a provider from purchasing a Targeted Drug.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because the Request is not limited to documents relating to providers in Wisconsin. Behring further objects to the phrase “the money to be made by a provider from purchasing a Targeted Drug” as vague and ambiguous, and as argumentative to the extent it implies that providers improperly made money through the purchase of a Targeted Drug, or that providers made any money whatsoever through the purchase of a Targeted Drug.

Subject to and without waiving these objections, Behring states that it will produce documents reasonably responsive to this Request, if any exist and are located, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties’ anticipated stipulation concerning the approved uses of these documents.

DOCUMENT REQUEST NO. 22: All documents discussing the competition between Anzemet, Kytril and Zofran, including all documents comparing the spread of Anzemet to one or both of the other drugs.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the ground that it does not manufacture, market or sell Anzemet, Kytril or Zofran and did not do so during the defined period of time. Behring further objects to this Request on the grounds that is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Behring also objects to this Request on the grounds that the term “spread” is vague, ambiguous, and undefined.

DOCUMENT REQUEST NO. 23: All documents discussing, concerning or about marketing the spread (or the providers’ “potential profit” or “return on investment”) of Anzemet or any other of Behring’ Targeted Drugs.

RESPONSE: In addition to its General Objections, Behring objects to this Request on the grounds that Anzemet is not one of Behring’s “Targeted Drugs” and that Behring does not manufacture, market or sell Anzemet (and did not do so during the defined period of time). Behring further objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, in part because the Request is not limited to documents relating to Wisconsin providers for the Targeted Drugs. Behring also objects to this Request on the grounds that the terms “marketing the spread,” “potential profit,” and “return on investment” are vague, ambiguous, and undefined.

Subject to and without waiving these objections and consistent with its understanding of this Request, Behring states that that it is in the process of identifying documents that relate to its pricing, marketing, sales, and contracting, with specific reference to many of the products at issue in this litigation. Behring will produce a copy of these documents, subject to the terms of the binding protective order of confidentiality previously entered in this case and to the terms of the parties' stipulation concerning the approved uses of these documents.

RESPONSES TO REQUESTS FOR TESTIMONY REGARDING SUBJECT MATTERS

TOPIC NO. 1: The reason(s) for Defendant’s signing of Medicaid rebate agreements pursuant to 42 U.S.C. §1396r(a)(1).

TOPIC NO. 2: Defendant’s knowledge of the federal Medicaid program’s laws, regulations, and rules, including 42 C.F.R. § 447.331 and 42 C.F.R. § 447.301.

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic Nos. 1 and 2 seek legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic Nos. 1 and 2 on the grounds that they are overly broad, unduly burdensome, and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its general and specific objections, consistent with its understanding of this Topic, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topics Nos. 1 and 2, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

TOPIC NO. 3: Defendant’s knowledge of the Wisconsin Medicaid Agency’s laws, regulations, and rules, including Defendant’s knowledge of the Wisconsin Medicaid Agency’s reimbursement formula and methodology for prescription drugs.

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic No. 3 seeks legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic No. 3 on the grounds that the terms “reimbursement formula,” “methodology,” and “prescription drugs” are vague, ambiguous, and undefined. Behring further objects to Topic No. 3 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its general and specific objections, consistent with its understanding of this Topic, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic No. 3, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

TOPIC NO. 4: Defendant’s knowledge of the Medicare Part B Program’s laws, regulations, and rules relating to the reimbursement formula for covered drugs, including Defendant’s knowledge that prior to January 1, 2005, the reimbursement formula for a covered drug (including the Medicare Part B beneficiary’s 20% co-payment to be paid by Wisconsin Medicaid for dual eligibles) was based on the Average Wholesale Price (AWP) of the drug.

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic No. 4 seeks legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic No. 4 on the grounds that the terms “reimbursement formula,” “dual eligibles,” and “Average Wholesale Price (AWP)” are vague, ambiguous, and undefined. Behring further objects to Topic No. 4 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its general and specific objections, consistent with its understanding of this Topic, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic No. 4, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

Topics Nos. 5 - 15

TOPIC NO. 5: The information or documents which show that the actual net price paid by wholesalers to Defendant for the Targeted Drugs was equal to or greater than the then current Wholesale Acquisition Cost (“WAC”) or Net Wholesale Price (“NWP”) published by First DataBank, Red Book, or Medispan for the Targeted Drugs.

TOPIC NO. 6: The information or documents which show that the then current Wholesale Acquisition Cost (“WAC”) or Net Wholesale Price (“NWP”) published by First DataBank, Red Book, or Medispan was higher than the actual net price paid by wholesalers to Defendant for the Targeted Drugs.

TOPIC NO. 7: The information or documents, if any, about which Defendant is aware, which show, or which Defendant believes may tend to show, that the net price paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors for the Targeted Drugs was equal to or greater than the then current Average Wholesale Price (“AWP”) published by First DataBank, Red Book, or Medispan for the Targeted Drugs.

TOPIC NO. 8: Defendant’s knowledge of the net price paid (in relation to Average Wholesale Price and Wholesale Acquisition Cost) by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, and doctors for the Targeted Drugs pursuant to direct sales from Defendant to these entities.

TOPIC NO. 9: Defendant’s knowledge of the net price paid (in relation to Average Wholesale Price and Wholesale Acquisition Cost) by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care pharmacies, or doctors for the Targeted Drugs when purchased through wholesalers.

TOPIC NO. 10: Defendant’s knowledge or belief of the markup or margin above a wholesaler’s actual net acquisition cost applied by a wholesaler when selling or reselling the Targeted Drugs to retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors.

TOPIC NO. 11: The information or documents, if any, about which Defendant is aware, which show, or which Defendant believes may tend to show, that the then current Average Wholesale Price (“AWP”) published by First DataBank, Red Book, or Medispan was higher than the actual net price paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors for the Targeted Drugs.

TOPIC NO. 12: The discounts, rebates, chargebacks, free goods, incentives, or other things of value offered by Defendant to wholesalers, retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors that would reduce the net price paid by these entities for the Targeted Drugs.

TOPIC NO. 13: Defendant’s pricing decisions, pricing strategies, and pricing recommendations, including but not limited to, decisions, strategies, and recommendations regarding price discounts, rebates, chargebacks, credits, inventory management agreements, and other forms of price reductions relating to the Targeted Drugs.

TOPIC NO. 14: Defendant’s marketing decisions, plans, and strategies, market share research, product launches, and advertising relating to the Targeted Drugs.

TOPIC NO. 15: Defendant’s sales strategies, sales staff training, sales meetings, competitive sales research, sales staff evaluations, and sales forecasts relating to the Targeted Drugs.

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 seek legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 on the grounds that the terms and/or phrases “actual net price,” “Wholesale Acquisition Cost (“WAC”),” “Net Wholesale Price” (“NWP”),” “net price,” “retail and chain pharmacies,” “long-term care pharmacies,” “mail-order pharmacies,” “home health care entities,” “Average Wholesale Price (“AWP”),” “direct sales,” “markup,” “margin,” “actual net acquisition cost,” “discounts,” “rebates,” “chargebacks,” “free goods,” “incentives,” and “inventory management agreements” are vague, ambiguous, and undefined. Behring further objects to Topic Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 on the grounds that they are overly

broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, in part because these Topics are not limited to the sale of the Targeted Drugs in Wisconsin.

Subject to and without waiving its general and specific objections, consistent with its understanding of these Topics, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

Topic Nos. 16 - 27

TOPIC NO. 16: Communications between Defendant and First DataBank, Red Book, and Medispan about the Targeted Drugs, including the pricing information (such as AWP, WAC, SWP, DP) provided by Defendant to these entities and Defendant's definitions of these terms.

TOPIC NO. 17: Defendant's reason(s) for supplying pricing information (such as AWP, WAC, SWP, DP) to First Databank (sic), Red Book, or Medispan for the Targeted Drugs.

TOPIC NO. 18: Defendant's knowledge of the relationship between the pricing information (such as AWP, WAC, SWP, DP) Defendant supplied to First DataBank, Red Book, or Medispan and the pricing information published by First DataBank, Red Book, or Medispan for the Targeted Drugs.

TOPIC NO. 19: Defendant's knowledge or understanding of the use of Defendant's reported pricing information (such as AWP, WAC, SWP, DP) by First DataBank, Red Book, or Medispan, including but not limited to the transmission of that information to the Wisconsin Medicaid Agency.

TOPIC NO. 20: The action(s), if any, taken by Defendant to stop, object to, or otherwise oppose the publication of the Wholesale Acquisition Cost ("WAC") or Average Wholesale Price ("AWP") by First DataBank, Red Book, or Medispan for any of the Targeted Drugs and the reason(s) for any such action(s).

TOPIC NO. 21: To the extent Defendant stopped reporting any pricing information (such as AWP, WAC, SWP, DP) to First DataBank, Red Book, or Medispan, for the Targeted Drugs, the reason(s) for doing so.

TOPIC NO. 22: Defendant's confirmation or acquiescence that the pricing information published by First DataBank, Red Book or Medispan for the Targeted Drugs was true and accurate.

TOPIC NO. 23: The information and/or data that Defendant has purchased, obtained, or reviewed from First DataBank, Red Book, Medispan, or IMS relating to the Targeted Drugs, including but not limited to, pricing and market share.

TOPIC NO. 24: Whether Defendant ever communicated to First DataBank, Red Book, or Medispan that the Average Wholesale Prices (“AWPs”) that Defendant reported to these entities was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors for the Targeted Drugs and, if so, when such communications took place and of what they consisted.

TOPIC NO. 25: Whether Defendant ever communicated to anyone in the Wisconsin Medicaid Agency that the Average Wholesale Prices (“AWPs”) that Defendant reported to First DataBank, Red Book, or Medispan was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors for the Targeted Drugs and, if so, when such communications took place and of what they consisted.

TOPIC NO. 26: Whether Defendant ever communicated to First DataBank, Red Book, or Medispan that the Wholesale Acquisition Cost (“WAC”) that Defendant reported to these entities was not the net price actually paid by wholesalers to Defendants for the Targeted Drugs and, if so, when such communications took place and of what they consisted.

TOPIC NO. 27: Whether Defendant ever communicated to anyone in the Wisconsin Medicaid Agency that the Wholesale Acquisition Cost (“WAC”) that Defendant reported to First DataBank, Red Book, or Medispan was not the net price actually paid by wholesalers to Defendant for the Targeted Drugs and, if so, when such communications took place and of what they consisted.

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic Nos. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 seek legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic Nos. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 on the grounds that the terms and/or phrases “AWP,” “WAC,” “SWP,” “DP,” “Wholesale Acquisition Cost,” “Average Wholesale Price,” “wholesale prices,” “retail and chain pharmacies,” “long-term care pharmacies,” “mail-order pharmacies,” and “home health care entities” are vague, ambiguous, and undefined. Behring further objects to Topic Nos. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 on the grounds that they are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Behring also objects to Topic Nos. 24 and 25 on the grounds that they are argumentative and improper as stated to the extent they incorrectly imply that AWP has been represented as “a price that was actually an average of wholesale prices” or “a price that was actually paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors” for pharmaceutical products. Behring

objects to Topic Nos. 26 and 27 on the grounds that they are argumentative and improper as stated to the extent they incorrectly imply that WAC has been represented as “the net price actually paid by wholesalers” for pharmaceutical products.

Subject to and without waiving its general and specific objections, consistent with its understanding of these Topics, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic Nos. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

Topic Nos. 28 – 31

TOPIC NO. 28: The methodology used by Defendant to calculate the Average Manufacturer’s Price (“AMP”) (as defined by 42 U.S.C. § 1396r-8(k)(1)) for the Targeted Drugs and Defendant’s understanding of the use of AMP by CMS, including but not limited to its use in connection with rebates under the Medicaid rebate statute.

TOPIC NO. 29: Whether Defendant has ever provided AMPs or any other pricing information (such as ASP, AWP, WAC) to the State of Wisconsin (apart from providing them pursuant to the State’s discovery requests in this case).

TOPIC NO. 30: Defendant’s understanding and belief regarding the confidentiality provisions of the Medicaid Rebate statute, 42 U.S.C. 1396r, as it pertains to AMPs and Best Prices.

TOPIC NO. 31: Whether Defendant contends that the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMPs of the Targeted Drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid rebate statute, 42 U.S.C. 1396r, and if so, all bases for such contention.

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic Nos. 28, 29, 30, and 31 seek legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic Nos. 28, 29, 30, and 31 on the grounds that the terms and/or phrases “rebates,” “AMPs,” “ASP,” “AWP,” “WAC,” “Best Prices,” and “Unit Rebate Amount” are vague, ambiguous, and undefined. Behring further objects to Topic Nos. 28, 29, 30, and 31 on the grounds that they are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its general and specific objections, consistent with its understanding of these Topics, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic Nos. 28, 29, 30, and 31, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

TOPIC NO. 32: Defendant's policies and practices concerning the disclosures that providers (retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, doctors, hospitals, clinics), wholesalers, and pharmacy benefit managers may make of the drug pricing information they receive from Defendant for the Targeted Drugs.

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic No. 32 seeks legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic No. 32 on the grounds that the terms and/or phrases "retail and chain pharmacies," "long-term care pharmacies," "mail-order pharmacies," and "home health care entities" are vague, ambiguous, and undefined. Behring further objects to Topic No. 32 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, in part because this Topic is not limited to the providers of the Targeted Drugs in Wisconsin. Behring further objects to Topic No. 32 as improper to the extent it inaccurately implies that providers (retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, doctors, hospitals, clinics) receive drug pricing information for the Targeted Drugs.

Subject to and without waiving its general and specific objections, consistent with its understanding of this Topic, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic No. 32, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

TOPIC NO. 33: Defendant's knowledge of whether First DataBank increased the AWP's for the Targeted Drugs from WAC+20% to WAC+25% in or around 2001-2002 and the action(s), if any, taken by Defendant in response including, but not limited to, any studies, analyses or white papers regarding this issue.

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic No. 33 seeks legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic No. 33 on the grounds that the terms and/or phrases “AWP,” “WAC+20%,” “WAC+25%,” and “white papers” are vague, ambiguous, and undefined. Behring further objects to Topic No. 33 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its general and specific objections, consistent with its understanding of this Topic, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic No. 33, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

TOPIC NO. 34: Direct communications between Defendant (or Defendant’s counsel or representatives) and the State of Wisconsin Attorney General’s Office and/or the State of Wisconsin Medicaid Agency.

RESPONSE: In addition to its General Objections, Behring objects to Topic No. 34 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, in part because this Topic is not limited as to the time period or issues involved in this lawsuit.

Subject to and without waiving its general and specific objections, consistent with its understanding of this Topic, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic No. 34, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

TOPIC NO. 35: The nature and type of customers who purchase or distribute Defendant’s drugs.

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic No. 35 seeks legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic No. 35 on the grounds that the term “customers”

is vague, ambiguous, and undefined. Behring further objects to Topic No. 35 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, in part because this Topic is not limited to customers of the Targeted Drugs in Wisconsin.

Subject to and without waiving its general and specific objections, consistent with its understanding of this Topic, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic No. 35, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

TOPIC NO. 36: Defendant's use in its marketing or sales of the Targeted Drugs of the difference between a provider's acquisition cost and third-party reimbursement, including but not limited to "return to practice."

RESPONSE: In addition to its General Objections, Behring objects to the extent Topic No. 36 seeks legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic No. 36 on the grounds that the terms and/or phrases "provider's acquisition cost," "third-party reimbursement," and "return to practice" are vague, ambiguous, and undefined. Behring further objects to Topic No. 36 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, in part because this Topic is not limited to the marketing or sales of the Targeted Drugs in Wisconsin.

Subject to and without waiving its general and specific objections, consistent with its understanding of this Topic, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic No. 36, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

TOPIC NO. 37: Identification of the existence, location and format of all hard copy and electronic documents, data, and information relating to the subjects identified in paragraphs 1-37 above.

RESPONSE: In addition to its General Objections, Behring objects to Topic No. 37 to the extent it seeks legal opinions or evidence subject to the attorney-client privilege or work product doctrine. Behring also objects to Topic No. 37 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its general and specific objections, consistent with its understanding of this Topic, and to the extent Behring is able to identify a witness with knowledge regarding the issues identified in Topic No. 37, Behring agrees to produce a witness for deposition in or near King of Prussia, Pennsylvania, or at another agreed-upon location.

Dated this 26th day of July, 2007.

By: By: /s/ Clifford Joe Cavitt
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AVENTIS BEHRING LLC, N/K/A
ZLB BEHRING LLC

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.: 04-CV-1709

AMGEN INC., et al.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 26th day of July, 2007, electronically served a true and correct copy of the foregoing pleading on counsel of record by transmission to LNFS, pursuant to Case Management Order.

/s/ Clifford Joe Cavitt
Clifford Joe Cavitt