

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STATE OF WISCONSIN,)	
)	
Plaintiff,)	Case No.: 05 C 408 C
)	
v.)	
)	
ABBOTT LABORATORIES, ET AL.,)	
)	
Defendants.)	
)	
)	

**DEFENDANT BRISTOL-MYERS SQUIBB COMPANY’S RESPONSES AND
OBJECTIONS TO PLAINTIFF’S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Bristol-Myers Squibb Company (“BMS”), by its attorneys, hereby asserts the following responses and objections to Plaintiff’s First Set of Requests for Production of Documents to All Defendants (“Request for Production” or “Requests”):

PRELIMINARY STATEMENT

1. These responses are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such document requests were asked of, or statements contained herein were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. BMS' responses shall not be deemed to constitute admissions:
 - a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or
 - b. that any statement or characterization in Plaintiff's Request for Production is accurate or complete.

3. BMS' responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and BMS reserves the right to amend its responses and to raise any additional objections it may have in the future. These responses are made based upon the typical or usual interpretation of words contained in Plaintiff's Request for Production, unless a specific definition or instruction has been provided.

4. BMS' responses to these Requests contain information subject to the Temporary Qualified Protective Order entered in this matter by the State of Wisconsin Circuit Court for Dane County and must be treated accordingly. BMS is producing information and documents subject to the terms of the Temporary Qualified Protective Order or to any other equivalent Protective Order that may be entered by the United States District Court for the Western District of Wisconsin.

5. BMS' responses to Plaintiffs' Request for Production are submitted without prejudice to BMS' right to produce evidence of any subsequently discovered facts and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial. BMS reserves its right to provide further responses as additional facts are ascertained.

6. Any statement by BMS contained in these objections and responses that non-privileged documents or information will be produced in response to a specific request does

not mean that any such documents or information actually exist, but only that they will be produced to the extent that they exist.

GENERAL OBJECTIONS

BMS objects generally to Plaintiff's Request for Production of Documents as follows:

1. BMS 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, or are overly broad, unduly burdensome, ambiguous and vague. In response to these Requests, BMS will produce information (a) concerning its drugs specifically identified in the Complaint in this matter; and (b) as to which BMS has made a prior production in MDL 1456, *In re Pharmaceutical Industry Average Wholesale Price Litigation*, pending in the District of Massachusetts before Judge Patti B. Saris ("MDL 1456").
2. BMS objects to these Requests to the extent they call for the production of documents or information that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, joint defense/prosecution privilege, the work product doctrine, the consulting expert rule, the common interest doctrine or other applicable statutory or common law. 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 BMS' 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 BMS' counsel immediately upon discovery thereof.

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

4. BMS 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.

5. BMS objects to these Requests to the extent that they purport to impose obligations beyond or inconsistent with those imposed by applicable law. BMS will respond to these Requests, subject to other objections, as required by applicable rules of civil procedure.

6. BMS objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in these Requests. BMS' 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 BMS 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.

7. BMS objects to these Requests to the extent they call for the production of trade secret, proprietary, commercially sensitive, or other confidential information.

8. BMS objects to the following footnote to Requests 1, 2 and 4, on the grounds that they are unduly burdensome:

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 in Microsoft Excel

formats (.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 fixed 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).

BMS further objects to this footnote or any Requests to the extent they require or seek to require BMS to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format from that which the documents are now stored; (iii) produce metadata constituting attorney work product, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes and/or such other storage media that may be inaccessible in the normal course of business; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement or copyright laws. Any documents that BMS produces in response to these Requests will be produced in the format produced in MDL 1456, which includes documents produced in electronic form that permits identification of custodians of documents and performance of full text searches, including key word searches.

9. BMS incorporates the above General Objections and the Below Objections to Definitions into each response to the Requests set forth below as if set forth in full therein. The response to a request shall not operate as a waiver of any applicable specific or general objection to a request.

OBJECTIONS TO DEFINITIONS

1. The term “Average Manufacturer Price” or “AMP” means the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report for purposes of the Medicaid program, pursuant to 42 U.S.C. §1396r-8.

OBJECTION: BMS objects to the definition of “Average Manufacturer Price” and “AMP” as set forth in Definition No. 1 to the extent it purports to depart from the statutory definition. BMS incorporates by reference its objection to the definition of the term “Pharmaceutical.”

2. The term “Chargeback” means any 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.

OBJECTION: BMS objects to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous. BMS incorporates by reference its objection to the definition of the term “Pharmaceutical.”

3. The term “Defined Period of Time” means from January 1, 1993 to the present and Documents relating to such period even though created before that period.

OBJECTION: BMS 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.” BMS 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.

4. The term “Document” means any writing or recording of any kind, including, without limitation, agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, facsimiles (faxes), film, graphs, letters, memos, maps, minutes (particularly Board of Directors and/or Executive Committee meeting minutes), notes, notices, photographs, reports, schedules, summaries, tables, and telegrams, in any medium, whether written, graphic, pictorial, photographic, electronic, emails, phonographic,

mechanical, taped, saved on computer disc [sic], hard drives, data tapes, or otherwise, and every non-identical copy. Different versions of the same Document, such as different copies of a written record bearing different handwritten notations, are different Documents within the meaning of the term as used. In case originals or original non-identical copies are not available, "Document" includes copies of originals or copies of non-identical copies as the case may be.

OBJECTION: BMS objects to the definition of "Document" as set forth in Definition No. 4 on the grounds that it is vague and ambiguous. BMS further objects to this definition to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, BMS' obligations under the Federal Rules of Civil Procedure. BMS further objects to this definition to the extent it requires or seeks to require BMS to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format from that which the documents are now stored; (iii) produce metadata constituting attorney work product, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes and/or such other storage media that may be inaccessible in the normal course of business; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement or copyright laws.

5. The term "Incentive" means anything of value provided to a customer which would lower the consideration paid for a drug, regardless of the time it was provided (for example, at the time of invoicing, shipment, or payment, or monthly quarterly, annually, or at any time or on any other basis) and regardless of its name. The term "Incentive" therefore includes, but is not limited to, payments or proposed payments in cash or in kind, Chargebacks, credits, discounts such as return to practice discounts, prompt pay discounts, volume discounts, on-invoice discounts, off-invoice discounts, rebates such as market share rebates, access rebates, or bundled drug rebates, free goods or samples, credits, administrative fees or administrative fee reimbursements, marketing fees, stocking fees, conversion fees, patient education fees, off-invoice pricing, educational or other grants, research funding, payments for participation in clinical trials, honoraria, speaker's fees or payments, patient education fees or consulting fees.

OBJECTION: BMS 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,” “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 or payments,” “patient education fees” and “consulting fees.” BMS incorporates by reference its objections to the definitions of the terms “Chargeback” and “Pharmaceutical.”

6. The term “National Sales Data” means data sufficient to identify for each sales transaction involving the Targeted Drugs the following information:

- (a) transaction date;
- (b) transaction type;
- (c) your product number;
- (d) product description;
- (e) package description;
- (f) NDC;
- (g) NDC unit quantity;
- (h) NDC unit invoice price;
- (i) NDC unit WAC (assigned by you);
- (j) contract price;
- (k) invoice price;
- (l) customer name, identification number, address and class of trade;

(m) all paid or distributed Incentives;

(n) all accrued Incentives calculated at any time identifying the amount of the accrual, its nature or type, the date of accrual, and other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.

OBJECTION: BMS objects to the definition of “National Sales Data” in Definition No. 6 on the grounds that it is overly broad and unduly burdensome. BMS 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,” “product number,” “product description,” “NDC,” “NDC unit quantity,” “NDC unit invoice price,” “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.” BMS incorporates by reference its objections to the definitions of the terms “Targeted Drugs” and “Incentives.”

7. The term “Pharmaceutical” means any drug or other product, whether sold by you, or any other manufacturer, which requires a physician’s or other prescriber’s prescription, including, but not limited to, “biological” products such as hemophilia factors and intravenous solutions.

OBJECTION: BMS 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,” “administered,” “other product,” “you,” “any other manufacturer,” “prescription,” “other prescriber’s,” “hemophilia factors,” “biological products” and “intravenous solutions.” BMS objects to this Definition to the extent that it refers to information not relevant to Plaintiff’s claims, which are limited to Wisconsin.

8. The term “Spread” is used to refer to the difference between the actual acquisition cost or purchase price of a Pharmaceutical (paid by purchasers of the Pharmaceuticals) and the reimbursement rate paid by third party payors (to purchasers of the Pharmaceuticals) for the Pharmaceutical. Third party payors include the Medicare program, Medicaid program, and

private insurance. Thus, the Spread is the gross profit actually or potentially realized by the purchasers of the Pharmaceuticals for those Pharmaceuticals ultimately paid for by third party payors.

OBJECTION: BMS 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 “actual acquisition cost,” “purchase price,” “reimbursement rate,” “third party payors,” “gross profit actually or potentially realized,” and “purchasers.” BMS incorporates by reference its objection to the definition of the term “Pharmaceutical.”

9. The term “Targeted Drugs” means those drugs manufactured by you which have total utilization under the Medicaid and Medicare Part B program exceeding \$10,000 during the Defined Period of Time in the state of Wisconsin.

OBJECTION: BMS objects to the definition of “Targeted Drugs” in Definition No. 9 on the grounds that it is overly broad and unduly burdensome. BMS further objects to this definition on the grounds that it is vague and ambiguous, particularly with respect to the language “you,” “drugs,” and “total utilization.” BMS incorporates by reference its objection to the definition of the term “Defined Period of Time.” BMS incorporates General Objection No. 1, to the extent that this Definition seeks information concerning drugs not specifically identified in the Complaint.

**SPECIFIC OBJECTIONS AND RESPONSES TO PLAINTIFF’S
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 and Objections to Definitions set forth above, BMS 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.

BMS objects to this Request on the grounds that it is overly broad with respect to the language “all.” BMS further objects to the footnote to Request No. 1, as set forth above in General Objection No. 8. Subject to and without waiving the foregoing Preliminary Statement, General Objections, Objections to Definitions and Specific Objections, BMS will produce documents and/or information responsive to this Request, if any, to the extent that it has previously produced such documents or information in MDL 1456.

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 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 and Objections to Definitions set forth above, BMS 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. BMS 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.” BMS further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information, the confidentiality of which is protected by federal statute. *See* 42 U.S.C. § 1396r-8. BMS further objects to the footnote to Request No. 2, as set forth above in General Objection No. 8. Subject to and without waiving the foregoing Preliminary Statement, General Objections, Objections to Definitions and Specific Objections, BMS will produce documents responsive to this Request, if any, to the extent that it has previously produced such documents in MDL 1456.

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 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 and Objections to Definitions set forth above, BMS 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. BMS objects to this Request on the grounds that it is vague and ambiguous with respect to the language “all,” “created,” “you,” “in your possession,” “Average Wholesale Price,” “Wholesale Acquisition Cost,” and “Pharmaceuticals sold by other manufacturers.” BMS further objects to this Request to the extent it seeks information from beyond the time period relevant to this litigation. Subject to and without waiving the foregoing Preliminary Statement, General Objections, Objections to Definitions and Specific Objections, BMS will produce documents responsive to this Request, if any, to the extent that it has previously produced such documents in MDL 1456.

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 and Objections to Definitions set forth above, BMS 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. BMS objects to this Request on the grounds that it is vague and ambiguous with respect to the language “all,” “composite price,” and “average sales price,” which Plaintiff does not define herein. BMS further objects to this Request to the extent it seeks information from beyond the

time period relevant to this litigation. BMS objects to the footnote to Request No. 4, as set forth above in General Objection No. 8. Subject to and without waiver of these objections, BMS 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 and Objections to Definitions set forth above, BMS 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. BMS objects to this request on the grounds that it is vague and ambiguous with respect to the language “all,” “received,” “regarding” and “price.” Subject to and without waiving the foregoing Preliminary Statement, General Objections, Objections to Definitions and Specific Objections, BMS will produce documents responsive to this Request, if any, to the extent that it has previously produced such documents in MDL 1456.

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 and Objections to Definitions set forth above, BMS 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. BMS 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.” BMS objects to this Request to the extent it seeks documents that are more appropriately sought from third parties, to whom requests may be directed. Subject

to and without waiving the foregoing Preliminary Statement, General Objections, Objections to Definitions and Specific Objections, BMS will produce documents responsive to this Request, if any, to the extent that it has previously produced such documents in MDL 1456.

Dated: July 15, 2005

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