
STATE OF WISCONSIN,)	
)	
)	
Plaintiff,)	No. 04 CV 1709
)	
v.)	
)	
AMGEN INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

**RESPONSES AND OBJECTIONS OF DEFENDANT MERCK & CO., INC. TO
PLAINTIFF STATE OF WISCONSIN’S SIXTH SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

Pursuant to Sections 804.01 and 804.09 of the Wisconsin Statutes, defendant Merck & Co., Inc. (“Merck”), hereby responds and objects to Plaintiff’s Sixth Set of Requests for Production of Documents (“the Requests”) as follows:

Merck is presently pursuing its investigation and analysis of the facts and law relating to this case and has not completed discovery or preparation for trial. The responses set forth herein are given without prejudice to Merck’s right to produce evidence of any subsequently discovered facts or documents, or interpretations thereof, or to modify, change, or amend its responses. The information set forth herein is true and correct to Merck’s best knowledge as of this date and is subject to correction for errors, mistakes, or omissions. The within responses are based on documents and information currently available to Merck.

Reference in a response to a precedent or subsequent response incorporates both the information and the objections set forth in the referenced response. Merck reserves the right to introduce at trial, or in support of or in opposition to any motion in this or any other proceeding,

any and all documents heretofore or hereafter produced by the parties in this action or in any other action, or produced by any third person. Identification or production of certain documents is done without prejudice to establish at a later date any additional facts that may be contained within or discovered as a result of any subsequent review of such documents or additional investigation and discovery.

GENERAL OBJECTIONS

1. Merck objects to the Requests to the extent that they are vague, ambiguous, argumentative, duplicative, overly broad, and unduly burdensome or oppressive; to the extent that they seek documents or information that are not relevant to the claims or defenses of any party or to the subject matter involved in this action; and to the extent they seek documents or information beyond that provided for by Wisconsin Statutes §§ 804.01 and 804.09 and other applicable state and federal laws.

2. Merck objects to the Requests to the extent that they seek documents or information protected from discovery by the attorney-client privilege, work product doctrine, or any other privilege, or that are otherwise immune or protected from disclosure. Merck does not intend to waive any applicable protections or privileges through the production of documents or the supplying of information in response to the Requests. On the contrary, Merck specifically intends to preserve any and all applicable protections or privileges.

3. Inadvertent production of any document shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such document or any other document, or with respect to the subject matter thereof or the information contained therein, nor shall such inadvertent production waive Merck's right to object to the use of the document or the information contained therein during this or any subsequent proceeding.

4. Merck objects to the Requests to the extent they seek information or documents generated or compiled in the course of the defense of this action or any other AWP litigation. Merck will not produce such information or documents.

5. Merck objects to the Requests as overly broad and unduly burdensome to the extent that they call for the production of “all” documents when all relevant facts can be obtained from fewer than “each,” “any,” or “all” documents or information. Merck objects to the Requests to the extent they seek documents other than those that can be located upon a search of files where one could reasonably expect to find such documents.

6. Merck objects to the Requests to the extent that they seek any other confidential or proprietary information or trade secrets. Merck will only produce such information subject to and in reliance on the Protective Order entered on November 29, 2005. The information and documents provided are for use in this litigation and for no other purpose.

7. Merck objects to the Requests to the extent that they call for information or documents relating to Merck’s business or practices that are inapplicable to the providers reimbursed by Plaintiff. Unless otherwise specified, Merck’s responses will be limited to information and documents about its business or practices in the United States generally or in Wisconsin in particular and with respect to the types of providers that are reimbursed by the State of Wisconsin under Medicaid.

8. Merck objects to the Requests to the extent that they purport to require Merck to provide a compilation, abstract, audit, and/or document summary that does not currently exist. Merck will make available for inspection copies of responsive, non-privileged documents at a mutually convenient date, time, and location.

9. Merck objects to the Requests to the extent that they are unreasonably cumulative or duplicative and to the extent that they call for documents that are publicly available or obtainable from some other source that is more convenient, less burdensome, or less expensive.

10. Merck objects to the Requests to the extent that they are unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

11. Merck is responding to the Requests without waiving or intending to waive, but on the contrary, preserving and intending to preserve: (a) the right to object on any proper grounds to the use of such documents or information for any purpose, in whole or in part, in any subsequent proceedings in this action or in any other action; (b) the right to object on all grounds, at any time, to interrogatories, requests, or other discovery procedures involving or relating to the subject of the Requests to which Merck has responded herein; and (c) the right at any time to revise, correct, add to, or clarify any of the responses made herein.

12. Because of the over breadth of the Requests and the vague, non-specific nature of the allegations against Merck in the Second Amended Complaint, it is not possible for Merck to anticipate all possible grounds for objection at this stage in the litigation with respect to the particular Requests set forth herein. Merck reserves the right to supplement or correct these responses and to raise any additional objections deemed necessary and appropriate in light of the results of any further review.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Merck objects to Plaintiff's Definitions and Instructions to the extent they purport to expand upon or alter Merck's obligations under Wisconsin Statutes §§ 804.01 and 804.09.

2. Merck objects to Plaintiff's definition of "you," "your," or "your company" as vague, ambiguous, overly broad, and unduly burdensome to the extent it purports to encompass Merck's "subsidiaries, divisions, predecessors, officers, [and] agents" other than those involved in the pricing and marketing of the Merck drugs referenced in the exhibits to the Second Amended Complaint as further limited by the parties' discussions (hereinafter "Merck drugs at issue"). Merck further objects to the foregoing and to the portion of the definition encompassing "all other persons acting or purporting to act on behalf of each defendant" as vague, ambiguous, and overly broad, as requiring Merck to speculate, and as imposing obligations beyond those set forth in Wis. Stat. Chapter 804.

3. Merck objects to Plaintiff's definition of "document" or "documents" as vague, ambiguous, overly broad, and unduly burdensome, and incorporates its objections to the definition of "Document" set forth in Merck's Objections and Responses to Plaintiff's First Set of Requests for Production of Documents as if fully set forth herein.

4. Merck objects to the time period in the instructions as overly broad, unduly burdensome, and not relevant. Merck will respond as to the time period November 1998 to November 2004.

RESPONSES AND OBJECTIONS TO INDIVIDUAL DOCUMENT REQUESTS

Merck incorporates its General Objections and Objections to Definitions and Instructions set forth into each of Merck's responses. The specific objections set forth in each response below are in addition to those objections and unless otherwise specified, Merck's responses are limited in accordance with each of its objections, including its objections to the time frame of the requests. To the extent that Merck provides or offers to produce confidential information, Merck

will do so only subject to and in reliance on the Protective Order entered by the Court on November 29, 2005.

REQUEST NO. 20: The following documents relating to the Together Rx programs:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient cost of covered prescription drugs, including but not limited to, any formula for reimbursement based on the average wholesale price (“AWP”) of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;
- (d) documents identifying or relating to the eligibility requirements for participation in the Together Rx programs; and
- (e) documents identifying your prescription drugs covered by the Together Rx programs.

RESPONSE:

Merck did not participate in the Together Rx program, and objects to the Request as not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 21: All documents relating to any program of yours that provides, or is marketed as providing, a discount or savings to consumers for any of your prescription drugs. Examples of such programs are the Novartis Savings Program a/k/a the Novartis Care Plan (Novartis Care Card), Pfizer for Living Program (Pfizer Share Card), Pfizer U Share Prescription Drug Discount Card, and the GlaxoSmithKline Orange Card. This request includes, but is not limited to, the following documents:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient cost of covered prescription drugs, including but not limited to, any formula for reimbursement based on the AWP of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;

- (d) documents identifying or relating to the eligibility requirements for participation in the program; and
- (e) documents identifying your prescription drugs covered by the program.

RESPONSE:

Merck further objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Merck objects to this Request to the extent it seeks documents not relevant to the State's claims, which are limited to Wisconsin. Merck objects that the terms or phrases "any program of yours that provides, or is marketed as providing," "a discount or savings," and "consumers" are vague, ambiguous and undefined. Merck also objects to this Request to the extent it seeks documents relating to programs that "provide, or [are] marketed as providing, a discount or savings to" consumers of Merck's products because such documents are neither relevant to the subject matter involved in the pending action, nor likely to lead to the discovery of admissible evidence. To the extent the Request seeks documents relating to Merck's prescription drug discount card program, Merck further objects that this program was implemented after the relevant time period. Merck will meet and confer with Plaintiff to determine if any of Merck's other patient assistance programs, which are publicly disclosed on Merck's website, are responsive and relevant to Wisconsin's claims for the relevant time period and Merck drugs at issue.

Dated: February 13, 2008

Respectfully submitted,

By: s/Robert B. Funkhouser

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CERTIFICATE OF SERVICE

I certify that on February 13, 2008, a true and correct copy of the foregoing was served on all counsel of record by Lexis Nexis File & Serve®, pursuant to Case Management Order No. 1.

/s/Robert B. Funkhouser