

July 27, 2007

Via First Class Mail

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Re: *State of Wisconsin v. Amgen Inc., et al.*
Case No. 04 CV 1709

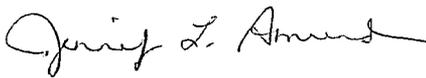
Dear Counsel:

Enclosed please find Novartis Pharmaceuticals Corporation's Responses and Objections to Plaintiff State of Wisconsin's Fifth Set of Requests for Production of Documents to All Defendants, being served to all counsel via LexisNexis File and Serve as shown below. The original has been retained pursuant to the statute.

If you have any questions, don't hesitate to call.

Sincerely,

SOLHEIM BILLING & GRIMMER, S.C.

By 
Jennifer L. Amundsen

JLA/jck
Enclosure

cc: All Counsel of record (*via LNFS; w/ enclosure*)
Atty. Christine Braun (*via email; w/ enclosure*)
Atty. Kim Grimmer (*via email; w/ enclosure*)

STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

Case No. 04-CV-1709
Unclassified - Civil: 30703

v.

AMGEN INC., et al.,

Defendants.

**NOVARTIS PHARMACEUTICALS CORPORATION'S RESPONSES AND
OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S FIFTH SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

Pursuant to Wisconsin Statutes §§ 804.01 and 804.09, the Wisconsin Supreme Court Rules, and the Dane County Circuit Court Rules (collectively, the "Wisconsin Rules"), Defendant Novartis Pharmaceuticals Corporation ("NPC"), by its undersigned counsel, responds as follows to Plaintiff State of Wisconsin's ("Plaintiff") Fifth Set of Request for Production of Documents (To All Defendants) served on or about June 27, 2007:

GENERAL OBJECTIONS

A. By responding to these Requests, NPC does not waive or intend to waive: (i) any objections as to the competency, relevancy, materiality, or admissibility as evidence, for any purpose, of any documents or information produced in response to these Requests; (ii) the right to object on any ground to the use of the documents produced in response to these Requests at any hearing or trial; (iii) the right to object on any ground at any time to a demand for further responses to these Requests; or (iv) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

B. NPC objects to each Request to the extent that it purports to seek information protected by the attorney-client privilege, work-product doctrine, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections.

C. By responding that it will produce documents in response to a particular Request, NPC does not assert that it has responsive materials or that such materials exist, only that it will conduct a reasonable search and make available responsive, non-privileged documents. No objection, or lack thereof, is an admission by NPC as to the existence or non-existence of any documents. Where NPC already has identified specific documents responsive to a particular Request and states that it will produce responsive documents “including” certain specifically identified documents, “including” means “including but not limited to.”

D. NPC objects to collecting and producing documents or information pursuant to these Requests, which were served prior to the date on which NPC, Plaintiff, and certain other plaintiff states entered into the Stipulation Concerning the Use of Documents Produced by Novartis Pharmaceuticals Corporation to the State of Alabama for Use in the Alaska, Hawaii, Idaho, Illinois, Kentucky, Mississippi, South Carolina and Wisconsin Pharmaceutical Pricing Actions (the “Core Document Stipulation”), in *State of Alabama v. Abbott Labs., Inc.*, Civil Action No. CV-2005-219 (Ala. Cir. Ct), and which provides that “NPC will create a set of documents, to be known as the ‘NPC Core Set of Documents,’” which, along with “the set of [Wisconsin]-specific data and documents containing data and information pertaining to [Wisconsin] will constitute NPC’s responses to [Wisconsin’s] individual document requests” in this action. See Core Document Stipulation ¶ 2 (emphasis added). Consistent with the Stipulation, NPC has begun producing the NPC Core Set of Documents on a rolling basis.

E. These responses are based on NPC's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. NPC reserves the right to amend or supplement these responses in accordance with the applicable rules and Court orders with additional information, documents, or objections that may become available or come to NPC's attention, and to rely upon such information, documents, or objections in any hearing, trial or other proceeding in this litigation.

F. NPC objects to Plaintiff's "Definitions" to the extent that they purport to expand upon or alter NPC's obligations under the Wisconsin Rules.

G. NPC objects to Plaintiff's "Instructions" to the extent that they purport to expand upon or alter NPC's obligations under the Wisconsin Rules.

H. NPC objects to each Request that purports to require NPC to produce "all" documents described by such Request as unduly burdensome, cumulative, duplicative, and vexatious on its face. NPC will search for and produce documents sufficient to provide the information or data sought by specific Requests, and where appropriate (i.e., where non-identical documents provide additional relevant information), NPC will produce such documents.

I. NPC objects to these Requests to the extent that they seek information not contained in documents that currently exist at NPC and purport to require NPC to create, compile or develop new documents.

J. NPC objects to these Requests to the extent that they seek production of documents or information not in NPC's custody or control, publicly available documents or information, documents or information equally available to Plaintiff, or documents or

information more appropriately sought from third parties to whom subpoenas or requests could be or have been directed.

K. Given the confidential and proprietary nature of the documents requested, NPC's production of documents is subject to and in reliance upon the Protective Order entered in this action by the Circuit Court for Dane County, Wisconsin on November 29, 2005.

L. NPC hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any other Defendant in this action to the extent such objection or reservation of rights is not inconsistent with NPC's position in this action.

M. The documents and information produced in response to these Requests are for use in this litigation and for no other purpose.

OBJECTIONS TO INSTRUCTIONS

1. In responding to these requests, Defendants are required to produce all responsive documents that are in the possession, custody, or control of any of them or any of their agents.

OBJECTION: NPC objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by the Wisconsin Rules. NPC states that it will search for and produce documents in accordance with the Wisconsin Rules.

2. All documents that respond, in whole or in part, to any portion of the production requests below shall be produced in their entirety, including all attachments and enclosures.

OBJECTION: NPC objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by the Wisconsin Rules. NPC states that it will search for and produce documents in accordance with the Wisconsin Rules.

3. If you withhold any document requested on the basis of a claim that it is protected from disclosure by privilege, work product, or otherwise, provide the following information separately for each such document:

(a) The name and title of every author, sender, addressee, and recipient by category;

(b) The date of the document;

(c) The name and title of each person (other than stenographic or clerical assistants participating in preparation of the documents);

(d) The name and title of each person to whom the contents of the documents have been communicated by copy, exhibition, reading, or summary;

(e) A description of the nature and subject matter of the document is protected from disclosure;

(f) A statement of the basis on which it is claimed that the document is protected from disclosure; and

(g) The name and title of the person supplying the information requested in subparagraph(s) (a) through (f) above.

OBJECTION: NPC objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by the Wisconsin Rules. NPC states that it will identify documents withheld, as required by the Wisconsin Rules.

4. Notwithstanding a claim that a document is protected from disclosure, any document so withheld must be produced with the portion claimed to be protected excised.

OBJECTION: NPC objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by the Wisconsin Rules. NPC states that it will search for and produce documents in accordance with the Wisconsin Rules.

5. The time period covered by these Requests is January 1, 1993 to the present.

OBJECTION: NPC objects to Instruction No. 5 on the grounds that it overly broad and unduly burdensome to the extent that it requires NPC to search for and produce information outside the limitations periods applicable to the claims in the Second Amended Complaint, or beyond the time period relevant to this litigation, and such information is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible

evidence. NPC further objects to this Instruction to the extent that it purports to require that NPC search for and produce documents generated or assembled either prior to January 1, 1997, which was the date NPC was created by operation of merger following approval by the Federal Trade Commission on December 17, 1996, or after September 30, 2003, the date on which the State of Nevada's Amended Second Amended Complaint in the action styled *In Re Pharmaceutical Industry Average Wholesale Price Litigation* (D. Mass.), MDL No. 1456, brought by the Nevada Attorney General and containing similar allegations against NPC to those alleged by Plaintiff, was publicly filed, thereby placing Plaintiff on notice, no later than that date, of the allegations against NPC, on the grounds that such documents are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. NPC's production of any documents outside of these dates does not constitute a waiver by NPC of this objection.

OBJECTIONS TO DEFINITIONS

1. The terms "you," "your," or "your company" shall mean the defendants, and their subsidiaries, divisions, predecessors, officers, agents and all other persons acting or purporting to act on behalf of defendants or their subsidiaries or predecessors.

OBJECTION: NPC objects to Definition No. 1 as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and states that all responses contained herein are on behalf of Novartis Pharmaceuticals Corporation.

2. The words "document" and "documents" are used in the broadest possible sense and refer, without limitation, to all written, printed, typed, photostatic, photographed, recorded or otherwise reproduced communications or representations of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, as well as audio or video recordings of communications, oral statement, conversations or events. This definition includes, but it not [sic] limited to, any and all of the following: day-timers, journals, logs, calendars, handwritten notes, correspondence,

minutes, records, messages, memoranda, telephone memoranda, diaries, contracts, agreements, invoices, orders, acknowledgements, receipts, bills, statements, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial statements, working papers, tallies, maps, drawings, diagrams, sketches, x-rays, charts, labels, packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. Any preliminary versions, drafts, or revisions of any of the foregoing, any document which has or contains any attachment, enclosure, comment, notation, addition, insertion, or marking of any kind which is not part of another document, or any document which does not contain a comment, notation, addition, insertion, or marking of any kind which is part of another document, is to be considered a separate document.

OBJECTION: NPC objects to Definition No. 2 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, NPC's obligation under the Wisconsin Rules. NPC further objects to this definition to the extent that it requires NPC to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format; (iii) produce data, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce and documents or data on back-up tapes (or other non-readily accessible media); (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement, copyright laws, or proprietary rights of any third party.

3. The term "spread" has the same definition as set forth in the United States Department of Health and Human Services Office of Inspector General's "Compliance Program Guidance for Pharmaceutical Manufacturers" published in the May 5, 2003 Federal Register, i.e., the difference between the amount a customer pays for a product and the amount the customer receives upon resale of the product to the patient or other payer.

OBJECTION: NPC objects to Definition No. 3 to the extent that it purports to set an accurate or legally significant definition of the term "spread."

**RESPONSES AND OBJECTIONS TO
INDIVIDUAL DOCUMENT REQUESTS**

NPC incorporates by reference each of the foregoing General Objections, Objections to Instructions, and Objections to Definitions in each of the following Responses and Objections to Individual Document Requests as if fully set forth within each. To the extent that NPC states that it will search for and produce documents responsive to any Request, such statement is made subject to, and without waiver or limitation of, all Objections.

DOCUMENT REQUEST NO. 14 All documents relating to lobbying efforts of you, or any individual or entity acting on your behalf (including but not limited to third-party lobbyists or lobbyist organizations such as the Pharmaceutical Research and Manufacturers of America), with regard to:

- (a) the Wisconsin Medicaid program's reimbursement for prescription drugs;
- (b) other state Medicaid programs' reimbursement for prescription drugs; and
- (c) the federal Medicare program's reimbursement for prescription drugs.

Documents sought by this request include, but are not limited to:

- (a) communications with the State of Wisconsin, the Wisconsin Department of Health & Family Services, and the Wisconsin legislature (including any legislative committee or individual state legislator);
- (b) communications with other states, other state Medicaid programs, and other state legislatures (including any legislative committee or individual state legislator);
- (c) internal communications within your company;
- (d) communications between you and external third-party lobbyists of lobbyist organizations such as the Pharmaceutical Research and Manufacturers of America; and
- (e) documents identifying, describing, or relating to the amount of money spent on lobbying efforts regarding these issues.

RESPONSE TO DOCUMENT REQUEST NO. 14: NPC objects to Request No. 14 on the grounds that it purports to require NPC to produce documents and information protected from disclosure pursuant to the First Amendment association privilege. NPC further objects to this

Request on the ground that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because (i) it purports to require NPC to search for and produce documents relating to its lobbying efforts with regard to “other state Medicaid programs’ reimbursement for prescription drugs” and “communications with other states, other state Medicaid programs, and other state legislatures (including any legislative committee or individual state legislator)” when such documents and communications, if they exist, are not relevant to Plaintiff’s claims, which relate to the reimbursement of NPC drugs under the Wisconsin Medicaid program and/or Medicare Part B; and (ii) it purports to require NPC to produce information relating to the amount of money NPC spent on lobbying efforts, which is not relevant to any of Plaintiff’s claims. NPC further objects to this Request on the grounds that it is vexatious and unduly burdensome to the extent that it purports to require NPC to search for and produce information that is already in Plaintiff’s possession, such as “communications with the State of Wisconsin, the Wisconsin Department of Health & Family Services, and the Wisconsin legislature (including any legislative committee or individual state legislator).” Subject to and without waiving the foregoing General and Specific Objections, NPC states that, pursuant to the Core Document Stipulation, NPC will produce the NPC Core Set of Documents, which is deemed responsive to Request No. 14.

DOCUMENT REQUEST NO. 15 Documents identifying, describing, or relating to your internal code of conduct or other policy relating to the ethical standards applicable to your employees.

RESPONSE TO DOCUMENT REQUEST NO. 15: NPC objects to Request No. 15 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it purports to require NPC to search for and produce

documents relating to the ethical standards applicable to NPC's employees, without regard to whether such ethical standards may be relevant to the alleged conduct at issue in Plaintiff's claims. Subject to and without waiving the foregoing General and Specific Objections, NPC states that, pursuant to the Core Document Stipulation, NPC will produce the NPC Core Set of Documents, which is deemed responsive to Request No. 15.

DOCUMENT REQUEST NO. 16 Documents relating to your compliance policy or other policies designed to ensure adherence to applicable statutes, regulations and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs.

RESPONSE TO DOCUMENT REQUEST NO. 16: NPC objects to Request No. 16 on the grounds that the phrase "applicable statutes, regulations and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs" is (i) vague and ambiguous, and (ii) overly broad, to the extent that it encompasses "statutes, regulations and requirements" that are wholly irrelevant to any issue in this action, and is therefore unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing General and Specific Objections, NPC states that, pursuant to the Core Document Stipulation, NPC will produce the NPC Core Set of Documents, which is deemed responsive to Request No. 16.

DOCUMENT REQUEST NO. 17 Documents relating to any policy relating to the use or promotion of, or reference to, the spread of a drug in connection with the sales or marketing of that drug including, but not limited to:

- (a) documents that relate to or describe the policy, including consequences for violation of the policy;
- (b) documents that identify the date that the policy was established and/or became effective;
- (c) documents identifying, describing, or relating to the reason(s) for establishment of the policy;

- (d) documents identifying, describing, or relating to the distribution and dissemination of the policy to your employees;
- (e) documents identifying, describing, or relating to training provided to your employees regarding the policy; and
- (f) documents relating to any actual or potential violations of the policy, including any investigation, determination, and action taken by your company related to any such actual or potential violation.

RESPONSE TO DOCUMENT REQUEST NO. 17: Subject to and without waiving the foregoing General Objections, NPC states that, pursuant to the Core Document Stipulation, NPC will produce the NPC Core Set of Documents, which is deemed responsive to Request No. 17.

DOCUMENT REQUEST NO. 18 Documents identifying or describing the reimbursement formula for prescription drugs used by the Wisconsin Medicaid Program, including but not limited to its formula for estimating acquisition cost or its use of AWP.

RESPONSE TO DOCUMENT REQUEST NO. 18: Subject to and without waiving the foregoing General Objections, NPC states that, to the extent that Request No. 18 seeks the production of documents pertaining specifically to the Wisconsin Medicaid Program, NPC will search for and produce, to the extent that such documents exist in its possession, non-privileged documents responsive to Request No. 18 that are not otherwise included in the NPC Core Set of Documents.

DOCUMENT REQUEST NO. 19 All documents relating to the National Pharmaceutical Council, including but not limited to the following:

- (a) documents relating to your membership in the National Pharmaceutical Council;
- (b) all correspondence between you and the National Pharmaceutical Council;
- (c) all annual publications of the National Pharmaceutical Council entitled “Pharmaceutical Benefits Under State Medical Assistance Programs.”

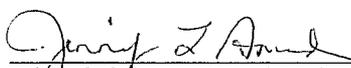
RESPONSE TO DOCUMENT REQUEST NO. 19: NPC objects to Request No. 19 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it purports to require NPC to search for and produce “*all* correspondence between [NPC] and the National Pharmaceutical Council” without regard to whether such correspondence is related to any of Plaintiff’s claims in this action. In addition, NPC objects to this Request on the grounds that it is vexatious and unduly burdensome to the extent that it seeks documents that are more appropriately sought from third parties. Subject to and without waiving the foregoing General and Specific Objections, NPC states that, pursuant to the Core Document Stipulation, NPC will produce the NPC Core Set of Documents, which is deemed responsive to Request No. 19.

Dated this 27th day of July, 2007.

Respectfully submitted,

Novartis Pharmaceuticals Corporation

By its attorneys,



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