

STATE OF WISCONSIN,)
)
 Plaintiff,)
)
 v.)
)
 AMGEN INC., ET AL.,)
)
 Defendants.)

Case No.: 04 CV 1709

**PFIZER INC.'S RESPONSES TO
 PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION**

Pursuant to Wisconsin Rule of Civil Procedure 804.09, defendant Pfizer Inc. ("Pfizer"), by its attorneys, hereby asserts the following responses and objections to the First Set of Requests for Production of Plaintiff, the State of Wisconsin, by its Attorney General, Peggy Lautenschlager ("the State"), as follows:

GENERAL OBJECTIONS

1. These responses are made without in any way waiving or intending to waive: (i) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, information or documents produced in response to these Requests; (ii) the right to object on any ground to the use of the documents or information produced in response to the Requests at any hearings or at trial; or (iii) the right to object on any ground at any time for further responses to the Requests; or (iv) its right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

2. Pfizer has not completed its investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to these Requests are based upon, and necessarily limited by, information now available to Pfizer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: March 23, 2005

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