
State of Wisconsin,

Plaintiff,

v.

Case No. 04 CV 1709

AMGEN INC., et al.,

Defendants.

PLAINTIFF'S RESPONSE TO
DEFENDANTS' SECOND DOCUMENT REQUEST

Pursuant to the Wisconsin Rules of Civil Procedure, the State of Wisconsin, by and through its undersigned counsel, respond to "Defendants' Second Request For Production of Documents" as follows.

Preliminarily, the Plaintiff has exercised due diligence in its search for records responsive to the Defendants' Requests. The Plaintiff has identified the results of that search below and it will produce to the Defendants these documents in electronic form accompanying this response. As more particularly stated below, the Plaintiff has objected to the Requests because they are framed in such a manner as to make the task of compliance a monumental undertaking. Be that as it may, please be advised that the Plaintiff continues its diligent search for responsive records and documents and will supplement its response as additional responsive documents are located.

GENERAL OBJECTIONS:

1. The Plaintiff has had settlement conferences with several of the Defendants who explicitly asked that the Plaintiff not disclose to the other Defendants that such meeting(s) have taken place. The State OBJECTS to producing documents to all Defendants that were created as a result of or for these settlement discussions choosing instead to honor its promises made to one or more Defendants, all of whom know who they are, some of whom ironically now submit these Requests.

2. The Plaintiff OBJECTS to the “definitions” which precede Defendants’ Second Request for Production of Documents to the extent that Defendants’ “definitions” deviate from the ordinary and accepted meaning of the term. In particular, the Plaintiff specifically OBJECTS to the following “definitions.”

a. Plaintiff OBJECTS to definition number 24 on the ground that Defendants’ suggested definition is inconsistent with ordinary usage.

b. Plaintiff OBJECTS to definition number 39 on the ground that definition suggested by the Defendants is not only inconsistent with ordinary usage but that it is not possible to answer a demand served upon it expecting that a response can be given from all the persons or entities described in this “definition.” To comply with this “definition” would be to make every Request over burdensome. Instead, the Plaintiff has directed its search for documents with inquiries to the following: The Department of Health and Family Services, the Department of Administration, the Legislative Fiscal Bureau, the Legislative Council, and the Office of the Governor of the State of Wisconsin. The Plaintiff OBJECTS to all Requests that demand inquiry of any other part of State government without explicitly identifying the source and the suspect on the ground that

to do so would be over burdensome and not likely to lead to the discovery of relevant and admissible evidence.

3. The Plaintiff OBJECTS to those Requests that seeks documents dated prior to January 1, 1993. Because records prior to 1993 are outside the scope of this lawsuit, and because of logistical difficulties retrieving information or knowledge back beyond that period of time, those Requests are overbroad and producing responsive information is unduly burdensome. Notwithstanding this objection, the Plaintiff has produced documents irrespective of their date or age to the extent these records were readily available.

4. The Plaintiff OBJECTS to the “general instructions” in the following respects:

As to paragraph one of the general instruction, the Request that a search be made of every part of the State’s executive branch and by the Legislative branch is over burdensome and not likely to lead to the discovery of relevant and admissible information. There are literally thousands of offices within the State, including Boards, Commissions, Bureaus and Panels. It is not possible to assume that inquiry can be made of every part of Wisconsin government in the absence of a specific direction as such. (See also objection 2(b) above.)

5. Plaintiff OBJECTS to these Requests to the extent they demand documents predicated on “what the Plaintiff knew,” or “relied on,” or documents about when the Plaintiff became “aware” of an act, event, fact or occurrence or when and/or why the Plaintiff did not become “aware” of something or some event, on the ground that all Requests asked in that regard demand irrelevant information, are unduly burdensome

and are not likely to lead to the discovery of relevant and admissible evidence. Furthermore, the State of Wisconsin is not a person so as to facilitate the determination of what it “knew” or did not “know.” Not only is this purported “knowledge” of the government not relevant, but it is not identifiable. Notwithstanding this objection, the Plaintiff has produced documents responsive to the Requests below. The Defendants may draw whatever inferences they desire from these documents including what a natural person associated with the document knew or might not have known.

6. Plaintiff OBJECTS to these Requests in their entirety on the ground that because they are intertwined, overlapping and repetitive, often demanding one or more thing previously demanded by an earlier or later Request. The manner in which the Defendants have phrased these Requests has the effect of making one document arguably relevant to many more than one specific Request. The Plaintiff OBJECTS not to producing the records, but to the burdensome and overly complicated task of determining the universe of individual demands that one document may be relevant to. Notwithstanding this objection, the Plaintiff has in good faith endeavored to match the records that are being produced with all the variously phrased overlapping demands. Perhaps more importantly, at its own expense Plaintiff has had the documents scanned in a searchable format to facilitate the Defendants’ own expeditious and efficient review. This method of production in large part alleviates this aforementioned problem.

7. The Defendants have Requested correspondence by indicating the subject upon which to define what is to be produced. The Plaintiff OBJECTS to these Requests on the ground that some documents, and in particular the correspondence files maintained by the Department of Health and Family Services, are not maintained in such a manner to

identify the subject of the general correspondence. Notwithstanding this objection, the Plaintiff has undertaken a diligent search of the electronic database of the correspondence files maintained by Department of Health and Family Services and will provide a printout of the results for the Defendants' review.

8. The Plaintiff OBJECTS to these Requests to the extent that they demand the production of documents that are as easily and readily available to the Defendants as they are to the Plaintiff. In particular, the Plaintiff OBJECTS to the production of documents from the prior administrations of the Office of the Wisconsin Governor, and other documents, that are now in the possession of the Wisconsin State Historical Society, on the ground that these records are as readily available to the Defendants as they are to the Plaintiff.

Subject to the foregoing objections, the Plaintiff responds to the Defendants' Second Request for Production of Documents as follows:

1. All Documents referred to or used in responding to Defendants' Second Set of Interrogatories Directed to Plaintiff.

ANSWER: To the extent the Plaintiff referred to documents in its response to Defendants' Second Set of Interrogatories, it did so with reference to one or more Requests more specifically stated below. Therefore, please see Plaintiff's answer to Defendants' Second Document Request below.

2. All Documents created, maintained, or received by you under 42 U.S.C. § 1396a(a)(30), 42 U.S.C. § 1396a(a)(54), 42 C.F.R. § 447.201 et seq., or 42 C.F.R. § 447.333.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it is vague and ambiguous.

42 U.S.C. § 1396a(a)(30) provides:

A state plan for medical assistance must -

(30)(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

(B) provide, under the program described in subparagraph (A), that -

(i) each admission to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 percent of all admissions and must be of sufficient size to serve the purpose of

(I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and

(II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases.

42 U.S.C. § 1396a(a)(54) provides:

A state plan for medical assistance must -

(54) in the case of a State plan that provides medical assistance for covered outpatient drugs (as defined in section 1396r-8(k) of this title), comply with the applicable requirements of section 1396r-8 of this title;

42 C.F.R. § 447.201 provides:

State plan requirements.

(a) A State plan must provide that the requirements in this subpart are met.”

(b) The plan must describe the policy and the methods to be used in setting payment rates for each type of service included in the State's Medicaid program.

42 C.F.R. § 447.333 provides:

State plan requirements, findings and assurances.

(a) *State plan.* The State plan must describe comprehensively the agency's payment methodology for prescription drugs.

(b) *Findings and assurances.* Upon proposing significant State plan changes in payments for prescription drugs, and at least annually for multiple source drugs and triennially for all other drugs, the agency must make the following findings and assurances:

(1) *Findings.* The agency must make the following separate and distinct findings:

(i) In the aggregate, its Medicaid expenditures for multiple source drugs, identified and listed in accordance with § 447.332(a) of this subpart, are in accordance with the upper limits specified in § 447.332(b) of this subpart; and

(ii) In the aggregate, its Medicaid expenditures for all other drugs are in accordance with § 447.331 of this subpart.

(2) *Assurances.* The agency must make assurances satisfactory to CMS that the requirements set forth in §§ 447.331 and 447.332 concerning upper limits and in paragraph (b)(1) of this section concerning agency findings are met.

(c) *Recordkeeping.* The agency must maintain and make available to CMS, upon request, data, mathematical or statistical computations, comparisons, and any other pertinent records to support its findings and assurances.

These federal rules appear to define the contents of the "State Plan" that each state must make and submit to the federal government. Therefore, notwithstanding the foregoing objection, the Plaintiff will produce to the Defendants copies of all relevant Wisconsin State Plans.

3. All Documents constituting or concerning a "state plan for medical assistance" (42 C.F.R. 430.0 et seq.), any proposed or adopted amendments thereto, and any Findings and/or support related thereto.

ANSWER: Plaintiff OBJECTS to that part of the Request asking for "any proposed amendments" on the ground that it is not likely that there is any coherent collection of such documents, and that it is overbroad and irrelevant and not likely to lead to the discovery of any relevant evidence. Furthermore, the Plaintiff OBJECTS to that part of the Request asking to produce "any Findings and/or support related thereto" on the ground that it is vague and ambiguous. Notwithstanding these objections, as stated in answer to Request number 2 above, the Plaintiff will produce to the Defendants copies of

all relevant Wisconsin State Plans. The Plaintiff will also produce various legislative and budget documents that propose alternative reimbursement methodologies, many of which were not adopted, and if adopted have been incorporated into the State Plan.

4. All Documents concerning the use of or reimbursement for pharmaceutical products based on AWP, WAC, or any other pricing benchmark, as a means of subsidizing other medical services, procedures, costs, or equipment, or as a means of ensuring equal access to care for Medicaid Beneficiaries under 42 U.S.C. § 1396a(a)(30).

ANSWER: First, Plaintiff OBJECTS to this Request on the ground that Defendants' citation to 42 U.S.C. § 1396a(a)(30) does not appear to accurately reflect the language or attendant requirement of that section. Subparagraph 30 provides:

A state plan for medical assistance must -

(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

(B) provide, under the program described in subparagraph (A), that-

(i) each admission to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 percent of all admissions and must be of sufficient size to serve the purpose of

(I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and

(II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted to a

hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases.

Second, Plaintiff OBJECTS to this Request on the ground that it is overbroad and unduly burdensome to demand any and all documents relating to anything having to do with pharmaceutical coverage for Medical Assistant recipients. Notwithstanding these objections, the Plaintiff will produce documents relating to the use of the Defendants' reported Average Wholesale Prices in its Medical Assistance Program and records containing data pertaining to utilization and the basis or reimbursement including the Maximum Allowable Cost or "usual and customary" or basis for reimbursement.

5. All Documents constituting or concerning any Requests, surveys, or other efforts conducted by you, or on your behalf, to determine that the state is in compliance with 42 U.S.C. § 1136(a)(a)(30), including but not limited to having reimbursement rates that are consistent with providing state residents access to quality care.

ANSWER: The Plaintiff is unable to find 42 U.S.C. § 1136(a)(a)(30) which therefore makes further response to this Request not possible.

6. All Documents concerning the consideration or setting of dispensing fees as required by 42 C.F.R. § 447.331-333, including but not limited to all correspondence, memoranda, analysis, agenda, meeting minutes, e-mails, and testimony.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that to demand "all correspondence, memoranda, analysis, agenda, meeting minutes, e-mails, and testimony" relating to the "consideration" of much less the "setting" of dispensing fees is terribly overbroad and therefore unduly burdensome. The Plaintiff has provided various documents relating to dispensing fees, including documents produced as part of the budgetary process, documents produced by the Governor's recent Commission and other Legislative documents in which the subject of dispensing fees is discussed or mentioned.

7. All Documents relating to actions taken by you to ensure that pharmacists and physicians are reimbursed at their usual and customary charge under Medicaid if it is lower than the state-determined EAC or the rates set forth in the Wisconsin Medicaid physician fee schedule as required by 42 C.F.R. § 447.331.

ANSWER: See answer to number six above. Additionally, please see the utilization data that shows the basis for reimbursement, including whether it was by "usual and customary" and finally, please see the publicly available material published by the Department of Health and Family Services pertaining to pharmaceutical coverage within the State Medical Assistance Program available to the Defendants on the Department of Health and Family Service's website.

8. All Documents that reflect, discuss, memorialize or otherwise relate to any reimbursement calculation methodologies proposed by you or any other Person for prescription drugs under the Wisconsin Medical Assistance Programs, including but not

limited to, discounts off benchmark prices, such as AWP, WAC, or Direct Price, or pricing based on MAC or any other pricing that was not based on a formula derived from a pricing benchmark such as AWP, WAC, or Direct Price.

ANSWER: The Plaintiff OBJECTS to this Request to the extent that it demands documents possessed or created by any "other person," as the Defendants have defined the term, on the ground that the Request is overbroad and beyond the scope of discovery. The Plaintiff also OBJECTS to the Request pertaining to methodologies "proposed" by "you," and "benchmark price" on the ground that they are vague and ambiguous. Assuming the Plaintiff knows what the Request means, it is also objectionable because it is over burdensome and not likely to lead to the discovery of relevant and admissible evidence. Notwithstanding these objections, the Plaintiff has made a limited inquiry of the offices identified in the preface above and will produce the documents relating to the reimbursement for prescription drugs in the Wisconsin Medical Assistance Program in response to the Requests contained above and below which duplicate and replicate this Request.

9. All Documents concerning the proposal, modification or promulgation of any regulations concerning your reimbursement for pharmaceutical products, including but not limited to all comments on proposed or final regulations, all drafts of proposed or final regulations, and all memoranda, correspondence, analyses or other documents concerning proposed or final regulations.

ANSWER: All of Wisconsin administrative regulations which have been promulgated are publicly available from a number of on-line sources including the official website maintained by the Wisconsin Revisor of Statutes. Therefore, the Defendants have equal access to this public information. Plaintiff OBJECTS to the remaining part of this Request on the ground that it is overbroad and unduly burdensome to demand the production of documents pertaining to "regulations" that the Defendants fail to define with more particularity. Notwithstanding this objection, because the mechanism for the reimbursement of pharmaceutical products has not been codified in the Wisconsin Administrative Code. c.f. Wis. Admin. Code §HFS 107.10, the Defendants may refer to the State Plans which have been demanded elsewhere in these Requests and which will be provided. Additionally, the Defendants may refer to budget documents produced by the Departments of Administration and Health and Family Services.

10. All Documents relating to your decision to use AWP as a basis for reimbursement for prescription drugs under the Wisconsin Medical Assistance Program.

ANSWER: See answer to number 8 above.

11. All Documents relating to any increase or decrease in the reimbursement rates under the Wisconsin Medical Assistance Programs for prescription drugs that was considered, proposed, or adopted by you, including but not limited to all documents concerning any reasons for such proposed pricing changes.

ANSWER: See answer to number 8 above.

12. All Documents concerning any executive, judicial, legislative or administrative efforts to alter reimbursement of pharmaceutical products.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it is vague, ambiguous and not entirely clear what it means to ask for documents concerning any “judicial” or “administrative” efforts to alter reimbursement of pharmaceutical products. (See also answer to number 9 above.) The reimbursement for pharmaceutical products is handled by the Department of Health and Family Services as provided in the State Plan, which Plaintiff is producing. A comparison of one Plan to the next will yield information about changes. Documents from the Legislative Fiscal Bureau and the Legislative Counsel are also being produced relevant to Medical Assistance pharmaceutical reimbursement. Finally, records from the Governor’s Office and the Departments of Administration and Health and Family Services also contain records relating to the State budget, proposed, rejected and those adopted, for the Medical Assistance Program and its pharmaceutical reimbursements.

13. All Documents concerning communications between you and any Provider, including physicians and pharmacies, or any Provider group, including any organization or association acting on behalf of Providers, such as the National Association of Chain Drug Stores, the American Society of Clinical Oncology, the Pharmacy Society of Wisconsin, the Wisconsin Pharmacists Association, and the Wisconsin Society of Health-System Pharmacists concerning:

- (a) reimbursement rates for pharmaceutical drugs under Medicaid;
- (b) changes, or proposed changes, in the rate of reimbursement for pharmaceutical drugs under Medicaid; and
- (c) actual acquisition costs for pharmaceutical drugs.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it is vague and ambiguous to ask the Plaintiff to produce documents with the assumption that it can discern upon whose “behalf” one is acting. By preliminary agreement with counsel, the Plaintiff will produce a spreadsheet detailing the correspondence received by the Department of Health and Family Services. The Plaintiff will also produce correspondence provided by the Governor’s Office pertaining to the recent work of the Commission. To the extent that there has been other correspondence or communications by the entities described above to persons or offices within State government not discussed above, the Plaintiff OBJECTS on the ground that the Request is overbroad and thus compliance is over burdensome. Finally, the Plaintiff will produce in electronic form data containing the information from providers to the Plaintiff through EDS and the amount of payment provided under the Medicaid Program.

14. All Documents concerning communications with physicians, pharmacists, nurses, consulting agencies or any other third party with whom you consulted, or who were involved in any other way in your decision to use AWP as a basis for prescription drug reimbursement under the Wisconsin Medical Assistance Programs, including but not limited to consulting agreements, contracts, surveys, reports, and meeting minutes.

ANSWER: The Plaintiff OBJECTS to this demand on the ground that it is overbroad and unduly burdensome to demand communications from people who were “involved in any other way in your decision to use AWP” Furthermore, the Plaintiff OBJECTS to this demand on the ground that by stating “your decision,” the Request becomes ambiguous. As already stated by the Plaintiff, the “decision” to use AWP is a function of the Legislative process in Wisconsin and ultimate responsibility rests with the body politic. See also answer to Request number 13 above. In short, the Plaintiff OBJECTS to this Request in its entirety on the ground that because the basis for the reimbursement of pharmaceutical products is a function of the legislative process, and because the budgetary process is inevitably a legislative function, the Request is overbroad and demands irrelevant and eventually inadmissible information that is not only burdensome to gather, but without identifying the person, is not a feasible undertaking to produce.

15. All Documents relating to internal communications, including communications within the Wisconsin Medical Assistance programs and with the Governor’s office and legislature, concerning:

- (a) the use of AWP as a basis for reimbursement by the Wisconsin Medical Assistance Programs;
- (b) how AWP is determined or calculated for reimbursement by the Wisconsin Medical Assistance Programs; and
- (c) the use of some figure other than AWP as a basis for reimbursement by the Wisconsin Medical Assistance Programs.

ANSWER: The Plaintiff OBJECTS to this Request to the extent that it seeks documents possessed by individual legislators on the ground that such information is irrelevant, over burdensome and not likely to lead to the discovery of relevant and admissible information. Furthermore, Plaintiff OBJECTS to this Request on the ground that communications between Legislators and various individuals or offices are claimed by these elected officials to be privileged and confidential. Finally, the Plaintiff OBJECTS to this Request on the ground that it is overbroad and incredibly and unduly burdensome to demand the production of all “internal communications” within the entire Medical Assistance Program, including its various subparts relating to the reimbursement for covered services. Notwithstanding these objections, the Plaintiff has produced documents obtained from the Office of the Governor and the Department of Administration regarding the state budget process. The Plaintiff will also produce documents from the Legislative Fiscal Bureau and Legislative Counsel that are relevant to pharmaceutical coverage within the State Medical Assistance Program. The Plaintiff

has not undertaken the impossible task of searching individual computers of current or past employees for internal electronic messages pertaining to pharmaceutical reimbursement within any office in the whole of state government. A list of correspondence received by the Department of Health and Family Services is referenced in Request number 13 above and will be produced.

16. All Documents relating to your decision to reimburse physicians for physician-administered drugs under the Wisconsin Medicaid Program according to a fee schedule, including, but not limited to, all documents relied upon in making your decision.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it is overbroad and thus unduly burdensome to demand all documents relating to “your” decision to reimburse physician administered drugs according to a fee schedule. Furthermore, the Plaintiff OBJECTS to this demand on the ground that by stating “your decision,” the Request becomes ambiguous. The “decision” to use a fee schedule is a function of the legislative process in Wisconsin and ultimate responsibility rests with the body politic. Notwithstanding these objections, the Plaintiff has provided documents to the Defendants’ that describe the reimbursement for physician administered drugs under the Wisconsin Medicaid Program and from these documents the Defendants can draw their own conclusions.

17. All Documents explaining or concerning your methodology for reimbursement of physician-administered drugs, including all physician fee schedules.

ANSWER: See answer to 16 above. Similarly, the Defendants may draw their own conclusions “concerning” the State’s “methodology” by reviewing the records being produced attached hereto and from the other publicly available information, including that which is easily and readily accessible to the Defendants on the website maintained by the Department of Health and Family Services.

18. All Documents concerning any changes considered or adopted to your methodology for reimbursement of physician-administered drugs.

ANSWER: The Plaintiff OBJECTS to this Request to the extent that it demands documents concerning any changes “considered” on the ground that it is vague and ambiguous, overbroad and not likely to the discovery of relevant and admissible evidence. Notwithstanding this objection, the reimbursement “methodology” can be found in the State Plans which are being produced or by reference to on-line sources maintained by the Wisconsin Department of Health and Family Services.

19. All Documents in your possession, or in the possession of the Wisconsin Medical Assistance Programs, relating to the definition, meaning or calculation of AWP, WAC, EAC, and/or actual acquisition cost.

ANSWER: The Plaintiff has produced a number of documents that can be searched using the terms stated above. There are no known State documents that define the actual

acquisition cost other than its ordinary usage according to accepted and various lexicons. The basis for determining the estimated acquisition cost, as well as an explanation of the Maximum Allowable Cost, may be found in the State Plan. (See p. 5, attachment 4.19-B of each State Plan.) WAC is defined in the CMS-approved supplemental rebate agreement, definition section.

20. All Documents relating to your knowledge that the average actual acquisition cost for prescription drugs was lower than the Subject Drugs' published AWP.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it assumes that the Plaintiff possessed "knowledge that the average actual acquisition cost for prescription drugs was lower than the Subject Drugs' published AWP." The demand to produce documents relating to the "knowledge" possessed by the State of Wisconsin is objectionable on the ground that applied to the body politic it is vague and ambiguous. Moreover, it is objectionable because it demands irrelevant information that is over burdensome to produce and it is not likely to lead to the discovery of relevant and admissible evidence. The Plaintiff will produce documents relevant to the State's Maximum Allowable Cost. The Plaintiff also is producing various material, reports, studies, budget documents and the like, that discuss the relationship, (or lack thereof), between the published AWP and the assumed readily available retail price. Because Plaintiff has produced these records in electronic searchable format, the Defendants can undertake its own search using whatever terms they choose.

21. All Documents constituting or concerning any requests, surveys, or other efforts conducted by you, or on your behalf, to determine the actual acquisition costs or pharmacists' actual dispensing fees of the Subject Drugs to Providers.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that the terms "requests," and "other efforts" are vague and ambiguous. Notwithstanding this objection, for documents relating to actual acquisition costs, see Plaintiff's answer to demand number 20 above. As to the issue of dispensing fees, the Plaintiff will produce documents relating to the issue as it arose during various budget cycles, certain legislative fiscal bureau memorandums, and documents from the recent Governor's Commission, including a report done by University of Wisconsin School of Pharmacy Professor David Krehling.

22. All Documents relating to actions taken or considered by you to change the rates set forth in the Wisconsin Medicaid physician fee schedule and/or the reimbursement methodologies under the Wisconsin Medical Assistance Programs after becoming aware that AWP did not approximate average actual acquisition cost.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it assumes that the Plaintiff became "aware" that the AWP did not approximate the average actual acquisition cost. Plaintiff also OBJECTS to this Request on the ground that the term "approximate" is vague and ambiguous. The Defendants' persistent and pernicious practice of secreting real prices combined with the repeated and regular publication of

false average wholesale prices illegally and deleteriously affected the Plaintiff from systematically approximating the estimated acquisition cost for providers in the retail class of trade. Documents relating to the setting a discount off of the published AWP and relating to the MAC are being produced to the Defendants.

23. All Documents concerning any Requests by you for any information concerning the prices, costs, or reimbursement for Subject Drugs, including but not limited to contracts, memoranda of understanding, agreements, Provider contracts, or communications concerning the calculation, monitoring, tracking, processing, or payment of claims for Subject Drugs.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it is overbroad and unduly burdensome to produce any “communication” as that term has been defined by the Defendants “concerning the calculation, monitoring, tracking, processing, or payment of claims for Subject Drugs.” The Plaintiff also OBJECTS to this Request on the ground that it appears to demand the production of the entire universe of documents relating to the large and complicated Wisconsin Medicaid Program and is therefore over burdensome. The Plaintiff has, nonetheless, diligently reviewed its files for responsive documents and will produce them in response to this Request. The objectionable nature of this Request makes it impossible to reasonably search the myriad of government offices for relevant records or to know whether the Plaintiff has produced what the Defendants think this Request demands to be produced.

24. All Documents constituting or concerning any internal or external, governmental or private, formal or informal, reports, assessments, studies, analyses, reviews or audits conducted regarding your reimbursement of pharmaceutical products, including but not limited to:

(a) Documents concerning any efforts, conclusions, or recommendations, whether preliminary or final, by the Legislative Audit Bureau relating to pharmaceutical reimbursement, including, but not limited to an audit described by then Lieutenant Governor Martin Schreiber in a February 7, 1975, letter to the Department of Health, Education & Welfare. *See Exhibit A.*

(b) Documents relating to a 2002 HHS-OIG report specifically discussing Wisconsin pharmacy drug acquisition costs for use in the Medicaid program and concluding that pharmacies could purchase well below the State’s AWP — 11.25% reimbursement rate and that, on average, Wisconsin pharmacies are able to purchase brand name drugs at 20.52% below the AWP. *See Department of Health & Human Services, Office of the Inspector General, Review of Pharmacy Acquisition Costs of Drugs Reimbursed Under the Medicaid Prescription Drug Program of the Wisconsin Department of Health and Family Services (A-06-01-0003) (Mar. 2002).*

ANSWER: Plaintiff OBJECTS to the first clause in the first sentence of this is Request on the ground that it is overbroad and thus unduly burdensome. As to the specific documents described in (a) above, documents created by Lieutenant Governor Martin

Schreiber in 1975, thirty-one years ago, are no longer in the possession of the current occupant of the Office of the Wisconsin Governor. Records (or those which remain) of former administrations are maintained by the Wisconsin State Historical Society to which Defendants have equal access. The Plaintiff will produce records of the Wisconsin Legislative Audit Bureau relating to pharmaceutical reimbursement as part of that Bureau's review of proposed biennial budget bills. As to the specific documents described in (b) above, documents relating to a federal government report are presumably available from the federal Department of Health and Human Services. The Plaintiff OBJECTS to the Request demanding the production of "internal or external, governmental or private, formal or informal, reports, assessments, studies, analyses, reviews or audits" generated or prompted by this DHHS report on the ground that it is over burdensome and not likely to lead to the discovery of admissible evidence. The records of the DHFS are not maintained in a fashion to readily identify them as relating to this one federal government report. The Plaintiff has produced thousands of pages of documents many relating to the biannual budget process all in electronic and searchable form. The Defendants may search these records for reference to the documents described above.

25. All Documents concerning any comments about, participation or involvement in, or responses to any studies, reports, analyses, or papers regarding reimbursement of pharmaceutical products.

ANSWER: The Plaintiff OBJECTS to this question on the ground that the Request is overbroad and therefore unduly burdensome. Not only does this Request, number 25, appear to be a simple, albeit more generic, reiteration of what is asked above and below, but it appears to be purposefully drafted with such sweeping breadth as to be not designed to stimulate a rational production of documents as it is a veiled attempt to preserve the claim that Defendants asked for "everything" and got something less. The Plaintiff therefore OBJECTS.

26. All Documents concerning your calculation of reimbursement amounts for Subject Drugs, including but not limited to guidelines, instructions, provider manuals and the like.

ANSWER: The Plaintiff will produce the electronic claims data from which the Defendants can discern the Plaintiff's calculation of the reimbursement for each transaction for each drug. As for "guidelines, instructions, provider manuals and the like,"¹ please refer to the multitude of records and documents being provided including, and especially, the Wisconsin Medical Assistance Provider Manual for pharmaceutical coverage.

¹ The Plaintiff OBJECTS to the addendum "and the like" on the ground that it is really not very helpful or descriptive in assisting the Plaintiff to comply with this particular Request. The objection is relegated to a simple footnote because the answer only simply directs the Defendants to look elsewhere anyway, thus, resulting in really only an academic exercise in over-lawyering.

27. All Documents concerning the purchase of or reimbursement for Subject Drugs by Wisconsin entities, including but not limited to the Wisconsin Department of Corrections, the University of Wisconsin Hospitals, the University of Wisconsin School of Pharmacy.

ANSWER: Each Defendant was previously given data from Cardinal Health Systems which shows the price paid by various State "entities." The Plaintiff does not understand what is meant by asking for documents concerning the "reimbursement" for drugs purchased by the government, so it therefore OBJECTS on vagueness grounds. Finally, it may be that somewhere, at sometime, someone purchased drugs which were paid for out of the public treasury, but do not appear in the data produced by Cardinal. The Plaintiff OBJECTS to this Request to the extent that it applies beyond those purchases made through the Minnesota Buying Group and which are not reflected in the Cardinal data on the ground the Request, construed as such, is over broad inasmuch as it is simply not reasonably possible to track those unusual and relatively insignificant purchases made by an institution as large and dispersed as the State of Wisconsin.

28. All Documents, including data, concerning Medicaid Rebates, discounts, or reimbursements for the Subject Drugs, including but not limited to all documents and data concerning the following:

- (a) unit rebate amount;
- (b) transactional data;
- (c) communications between you and the federal government concerning utilization and "per-unit" rebate data; and
- (d) data dictionaries that explain the data fields produced in response to this Request

ANSWER: The Plaintiff OBJECTS to this Request on the ground that to demand "all documents concerning rebates, discounts or reimbursements is terribly overbroad and accordingly over burdensome to comply with. The Plaintiff OBJECTS to the demand for documents relating to "discounts" as ambiguous as that term is generally not relevant to the Medical Assistance program to the extent it differs from "rebates." Notwithstanding these objections, the Plaintiff will produce documents relating to the rebate program that are thought to be responsive to this Request. Each Defendant has within its own possession record of payments made to the Plaintiff as part of the rebates calculated according to the Defendant's reported AMP and record of payments made to the Plaintiff as part of the Plaintiff's Supplemental Rebate Program, if applicable.

29. All claims data related to the Subject Drugs, including but not limited to:

- (a) pharmacy claims data;

- (b) medical claims data;
- (c) all service codes data associated with the administration of those Subject Drugs that are physician-administered drugs;
- (d) drug pricing files; and
- (e) data dictionaries that explain the data fields produced in response to this Request

ANSWER: With respect to subsection (c) above, the Plaintiff OBJECTS to the production of service code data “associated” with the administration of prescription drugs on the ground that the demand is both ambiguous and overbroad and unduly burdensome and costly to produce. The Plaintiff will produce claims data including J-codes which include the cost of administering the prescription drug. The Plaintiff will also produce data relevant to (a), (b), (d), and (e) above.

30. All Documents concerning any communication between you and any Defendant concerning rebates for any Subject Drug.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that each Defendant has equal and perhaps more efficient access to the communications it has had with the Plaintiff. Nonetheless, the Plaintiff will produce its files pertaining to rebates for Subject Drugs to the Defendants in response to this Request.

31. All Documents concerning any communication or negotiation by you, or on your behalf, with any Defendant concerning reimbursement, discounts, or pricing of pharmaceutical products.

ANSWER: The Plaintiff does not get “reimbursed” by the Defendants nor does the Plaintiff obtain any “discounts” from the Defendants as part of the State Medicaid Program. The Plaintiff similarly does not “negotiate” with the Defendant over the price of its products. The Plaintiff gets rebates from the Defendants, see Request number 28 above. The electronic claims data demanded in Request number 29 above will provide Defendants with information on the Plaintiff’s reimbursement to providers within the Medicaid Program. The Plaintiff also participates in a buying group which acquires products through Cardinal Health Systems which may or may not acquire drugs at a reduced price.

32. All Documents concerning or constituting communications between you and any Publisher, including but not limited to memoranda, contracts or agreements, concerning the pricing or reimbursement of pharmaceutical products.

ANSWER: Plaintiff’s records relating to First Data Bank, Inc. will be made available to the Defendants. Moreover, the Plaintiff will provide confidential data and records acquired by the Plaintiff from First Data Bank, Inc. in third party discovery proceedings relating to this litigation.

33. All Documents concerning communications between you and any other state government, including but not limited to that government's Medicaid program, officials, agents, employees, divisions, departments, or agencies, concerning usual and customary, AWP, AMP, MAC, WAC, Direct Price, EAC, Best Price, FUL or other prices, costs, reimbursement rates, or other benchmarks for pharmaceutical drug pricing.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it is overbroad and therefore unduly burdensome and not likely to lead to the discovery of admissible and relevant evidence. Defendants Request as drafted is without limitation in time and it fails to indicate what part of "state government" it may be directed toward. It is not possible to efficiently and reasonably search for any "document," (as Defendants have defined that term), created at any time regarding the entire Medicaid Program by any past or present employee, elected official or "agent" that may have gone to or from any other person in any other state, especially given the breadth of the subject-matter described in the Request above. Furthermore, to the extent this Request demands the production of documents regarding litigation, the Plaintiff OBJECTS on the ground of attorney-client and work product privilege, (although parenthetically, this objection is somewhat academic inasmuch as no actual documents were located reasonably relevant to this Request and privileged as stated above, but is stated herein to preserve the defense). Notwithstanding these objections, the Plaintiff will provide non-privileged documents concerning settlements facilitated by the National Association of Medicaid Fraud Control Units, which is comprised of representatives of member States.

34. All Documents relating to communications. between you and the federal government, including but not limited to the OIG, the General Accounting Office, CMS and the Department of Health and Human Services, and their predecessor agencies, concerning:

- (a) the pricing of prescription drugs;
- (b) AWP for prescription drugs;
- (c) EAC for prescription drugs;
- (d) WAC for prescription drugs;
- (e) proposed alternative reimbursement methodologies;
- (f) reimbursement methodologies considered or used by other states or state agencies; and
- (g) the processing of prescription drug reimbursement claims submitted by Wisconsin healthcare providers.

ANSWER: The Plaintiff reiterates and incorporates by reference herein the objections stated in response to Request number 33 above and the more salient objection stated in response to Request number 25 above. Additionally, the Plaintiff OBJECTS here on the ground that the term “you” is ambiguous. But more importantly, and as previously stated, the Plaintiff is producing its documents in an electronic format that allows the Defendants to search them with convenience and ease. The Plaintiff has done this on its own and incurred significant expense and after being rebuffed by the Defendants for a reciprocal agreement to produce to the Plaintiff the documents it Requests from the Defendants in a similar electronic and searchable format. The Plaintiff will produce documents which the Defendants can electronically search by using the terms above and of course the Defendants are able and welcomed to express any concerns about this methodology after each Defendant has had an opportunity to exercise their review.

35. All Documents from January 1985 to the present, concerning the pricing of Subject Drugs prepared by any Federal Agency, including but not limited to, reports, memoranda, or analyses prepared by the United States Department of Justice or HHS-OIG.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that as framed the Request violates Wis. Stat. § 804.07 which limits the scope of discovery to documents in the possession, custody or control of the Plaintiff. The Request does not express any limitation regarding possession, custody or control and because it demands documents created by “any Federal Agency” and not a State of Wisconsin agency, the Request is overbroad and therefore unduly burdensome. Moreover, even if the Request was qualified to demand only those documents within the Plaintiff’s possession, custody or control, the Plaintiff would OBJECT on the ground that the description of the nature of the “report, memoranda, or analysis” is so broad as to be ambiguous and from it no cogent production is reasonably possible. Notwithstanding this objection, the Plaintiff is producing a multitude and myriad of government records some created within and some acquired elsewhere and as stated in response to Request number 34 above, the Defendants may at their own leisure undertake an electronic search using whatever terms each Defendant so desires so as to isolate those documents prepared by any federal agency. In the alternative, if any Defendant is able to identify one or more documents from January 1985 to the present, concerning the pricing of Subject Drugs prepared by any Federal Agency, including but not limited to, reports, memoranda, or analyses prepared by the United States Department of Justice or HHS-OIG and do so by title, author and/or date, the Plaintiff will undertake a diligent search to locate a copy or in the absence of finding a copy make reasonable inquiry to determine if that identified document had ever been received by some person in the Plaintiff’s employ.

36. All Documents concerning the revised AWP prices provided by the United States Department of Justice and National Association of Medicaid Fraud Control Units in 2000, including but not limited to documents concerning your decision to use or not to use the revised AWP prices in reimbursing pharmaceutical products.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that the term “concerning” is vague and ambiguous. Notwithstanding this objection, the Plaintiff submits that after exercising due diligence it is unable to locate any documents generated specifically because of the issuance of the USDOJ memorandum in 2000 nor is it aware of any documents being prepared as a result of this memorandum. Because the Plaintiff has provided its documents to the Defendants in searchable electronic form, (at State’s own expense), the Defendant may search the documents provided to determine whether any of the records that are being produced “concerned” that memorandum. Furthermore, the Defendants may use the electronic claims data being produced in response to this Request and isolate transactions and reimbursement made in 2000.

37. All Documents relating to HCFA’s 1988 decision to disapprove Medicaid State Plans that base reimbursement for pharmaceutical products on an undiscounted AWP.

ANSWER: The Plaintiff OBJECTS to the term “relating to” as ambiguous. Notwithstanding this objection, the Plaintiff is unaware of any document generated because in 1988 HCFA made the decision stated above.

38. All Documents relating to any of the following:

(a) 1984 HHS-OIG report indicating that on average, pharmacists buy pharmaceutical products at AWP —15.9%. *See* Department of Health & Human Services, Office of the Inspector General, *Changes to the Medicaid Prescription Drug Program Could Save Millions* (A-06-40216) (Sept. 1984);

(b) 1989 HHS-OIG report indicating that on average, pharmacists buy pharmaceutical products at AWP — 15.5%. *See* Department of Health & Human Services, Office of the Inspector General, *Use of Average Wholesale Prices in Reimbursing Pharmacies Participating in Medicaid and the Medicare Prescription Drug Program* (A-06-89-00037) (Oct. 1989);

(c) 1989 HCFA Medicaid Manual indicating that pharmacies buy pharmaceutical products at AWP-10-20%

(d) 1996 HHS-OIG report indicating potential for significant Medicare savings. *See* Department of Health & Human Services, Office of the Inspector General, *Appropriateness of Medicare Prescription Drug Allowances* (03-95-00420) (May 1996);

(e) 1997 HHS-OIG report indicating that on average, pharmacies buy pharmaceutical products at AWP —18.3%. *See* Department of Health & Human Services, Office of the Inspector General, *Medicaid Pharmacy — Actual Acquisition Cost of Prescription Drug Products for Brand Name Drugs* (A-06-96-0003O) (Apr.1997);

(f) 2001 HHS-OIG report indicating that AWP bears little to no resemblance to actual wholesale prices. *See* Department of Health & Human Services, Office of the

Inspector General, *Medicare Reimbursement of Prescription Drugs* (03-01-00310) (Jan. 2001);

(g) 2001 HHS-OIG report indicating that continued reliance on average wholesale prices as a reimbursement metric is flawed. *See* Department of Health & Human Services, Office of the Inspector General, *Medicaid's Use of Revised Average Wholesale Prices* (03-01-00010) (Sept. 2001);

(h) 2001 HHS-OIG report indicating that pharmacy actual acquisition cost was an average 21.84% below AWP. *See* Department of Health & Human Services, Office of the Inspector General, *Medicaid Pharmacy — Actual Acquisition Cost of Brand Name Prescription Drug Products* (A-06-00-00023) (Aug. 2001);

(i) 2002 HHS-OIG report, *Medicaid Pharmacy — Additional Analyses of the Actual Acquisition Cost of Prescription Drug Products* (A06-02-00041) (Sept. 2002); and

(j) 2003 HHS-OIG report indicating that Wisconsin was negotiating with drug manufacturers for supplemental rebates. *See* Department of Health & Human Services, Office of the Inspector General, *State Strategies to Contain Medicaid Drug Costs*.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that the term “relating to” is vague and ambiguous. Notwithstanding this objection, the Plaintiff submits that after exercising due diligence it is unable to locate any documents generated specifically and clearly as a result of the documents identified above nor is Plaintiff aware of any documents being prepared as a result of the reports identified above. Because the Plaintiff has provided its documents to the Defendants in searchable electronic form, (at State’s own expense), the Defendant may search the documents provided to determine whether any of the records that are being produced “relate to” any of them.

39. All Documents relating to the Governor’s proposal in the 1996-1997 state budget of a “best price” reimbursement methodology, which was not adopted, by which pharmacists would be required to bill Medicaid at the same rate as their lowest third-party insurance contract.

ANSWER: Plaintiff reiterates by incorporation here and below, the objection stated above that these Requests demand irrelevant and inadmissible information. Furthermore, the Plaintiff OBJECTS to the terms “relating to” on the ground of vagueness. Notwithstanding this objection, the Plaintiff will produce documents regarding the proposal identified above.

40. All Documents relating to the proposal by your Department of Health and Family Services in 1999 to decrease reimbursement from AWP —10% to AWP —18%.

ANSWER: See response to Request number 39. The Plaintiff will produce documents regarding the proposal identified above.

41. All Documents relating to the proposals by the Governor in 2001 and 2003 to decrease reimbursement to AWP — 15%, including but not limited to the budget reports along with any communications regarding the proposals.

ANSWER: See response to Request number 39. The Plaintiff will produce documents regarding the proposal identified above.

42. All Documents between the Governor's office and the Joint Committee on Finance regarding reimbursement of pharmaceuticals in the Wisconsin Medical Assistance Program, including but not limited to a June 4, 2001 report which indicates that a reimbursement rate of AWP — 15% would provide an average margin of 3% of the AWP price for drugs purchased under Medicare compared with approximately 8% of AWP under current reimbursement rates. *See Exhibit B.*

ANSWER: The Plaintiff OBJECTS to this Request that it produce all documents ever exchanged between the Governor's Office and the Joint Committee on Finance regarding reimbursement of pharmaceuticals in the Medical Assistance Program on the ground that it is without limitation to time or scope and is therefore overbroad and unduly burdensome. The Plaintiff will produce documents located by staff in the Office of the Wisconsin Governor relating to the 2001 report and other documents prepared as part of the State's budget process that discuss the issue of reimbursement of pharmaceuticals within the State Medical Assistance Programs.

43. All Documents relating to the 2005-2007 state budget proposal to set reimbursement for brand name and certain generic drugs under Medicaid, BadgerCare, and SeniorCare to AWP — 16%.

ANSWER: See response to Request number 39. The Plaintiff will produce documents regarding the proposal identified above.

44. All Documents relating to the Wisconsin 2005 legislative proposal to increase the reimbursement rate for pharmaceutical drugs dispensed by pharmacies from AWP — 16% to AWP — 13%, including but not limited to the following:

- (a) discussions by individual legislators regarding the proposed increase;
- (b) communications between the legislature and the Governor's office regarding the proposed increase;
- (c) communications between the legislature and other departments or agencies of the State of Wisconsin regarding the proposed increase; and
- (d) communications with pharmacists or pharmacy groups regarding the proposed increase.

ANSWER: The Plaintiff OBJECTS to the production of documents created by and in the possession of individual legislators on the ground that these are not documents in Plaintiff's possession. (See Plaintiff's response to Requests 13, 14 and 15 above). Furthermore, the Plaintiff OBJECTS to Request (c) above to the extent "agencies" includes other than DHFS or DOA. Notwithstanding these objections, the Plaintiff will produce documents relevant to this 2005 legislative proposal including electronic correspondence preserved by the Governor's Office and correspondence received by the Governor's Office.

45. All Documents relating to the Governor's decision in 2005 to establish a Pharmacy Reimbursement Commission to find alternatives to decreasing the reimbursement rates for pharmacies and any notes, findings, reports, or recommendations by the Pharmacy Reimbursement Commission.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that "all documents relating to" is vague and ambiguous and perhaps overbroad. Additionally, the Plaintiff OBJECTS to this Request on the ground that it mischaracterizes the Governor's purpose for establishing the Commission, not to find alternatives to decrease rates, but to make recommendations on alternative methods to set rates at which pharmacies are reimbursed. Notwithstanding these objections, the Plaintiff produces the Commission's notes, findings, reports, and recommendations. The Plaintiff OBJECTS to the production of documents in the personal possession of individuals to the extent that exist, who were appointed to serve on the Commission pursuant to Wis. Stat. § 804.07 which limits the scope of discovery to documents in the possession, custody or control of the Plaintiff.

46. All Documents supporting, refuting, or otherwise concerning your claim, alleged in paragraph No. 37 of your First Amended Complaint, that any individual Defendant illegally misrepresented the true AWP for their drugs.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that Plaintiff's Second Amended Complaint has made the First Amended Complaint obsolete.

47. All Documents supporting, refuting, or otherwise concerning Your claim, alleged in paragraph No. 38 of Your First Amended Complaint, that any individual Defendant marketed the spread to one or more Providers.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that Plaintiff's Second Amended Complaint has made the First Amended Complaint obsolete.

48. All Documents supporting, refuting, or otherwise concerning your claim, alleged in paragraph No. 40 of your First Amended Complaint, that any individual Defendant illegally inflated the AWP for their drugs.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that Plaintiff's Second Amended Complaint has made the First Amended Complaint obsolete.

49. All Documents supporting, refuting, or otherwise concerning your claim, alleged in paragraph No. 44 of your First Amended Complaint, that any individual Defendant illegal and deceptively misrepresented and inflated WAC of their drugs.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that Plaintiff's Second Amended Complaint has made the First Amended Complaint obsolete.

50. All Documents supporting, refuting, or otherwise concerning your claim, alleged in paragraph Nos. 44, 51 and 71 of your First Amended Complaint, that any individual Defendant hid the "real" price of their drugs by providing free drugs, secret rebates and phony grants or fees.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that Plaintiff's Second Amended Complaint has made the First Amended Complaint obsolete.

51. All Documents reflecting the actual or estimated losses, damages, or alleged overpayments made by you as a result of Defendants' alleged conduct.

ANSWER: The Plaintiff has provided the Defendants with the Medicaid Program utilization information. Payments made to providers relying on Defendants' false Average Wholesale Price constitute the Plaintiff's damage to the extent there were overpayments made. The Plaintiff has not finished a precise calculation of this amount.

52. All Documents concerning any action, administrative or otherwise, considered or taken by you, or on your behalf, to recover the alleged overpayments from Providers who received alleged overpaid amounts for drug reimbursement.

ANSWER: The Plaintiff has participated in a number of national settlements as part of the National Association of Medicaid Fraud Control Units some of which collected overpayments from some of the Defendants and has produced relevant documents as demanded elsewhere in this document. The Plaintiff has not commenced any action, administrative or otherwise, to recompense the damage caused by Defendants' false Average Wholesale Prices from any person other than from Defendants themselves in the course of this law enforcement proceeding.

53. All Documents relating to the total annual dollar figure and corresponding percentage of Wisconsin Medical Assistant Program beneficiary co-payments that have been uncollected by Wisconsin providers since the inception of each program.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it demands the production of irrelevant information that is not readily accessible to the Plaintiff and would therefore be over burdensome to produce. Moreover, the information appears not to be reasonably calculated to the discovery of relevant and admissible evidence. The Plaintiff also OBJECTS to this Request on the ground that to request all documents "since the inception of each program" is overbroad and thus unduly burdensome. Finally, the Plaintiff OBJECTS on the ground that the Request is itself ambiguous and

despite some attempt it has not been possible to discern what information exactly the Defendants are seeking from this Request.

54. All Documents relating to the total annual dollar figure and corresponding percentage of Wisconsin Medicare Part B beneficiary co-payments that have been uncollected by Wisconsin providers.

ANSWER: See answer to Request number 53 above. Notwithstanding these objections, the Plaintiff further OBJECTS on the ground that it is not clear what exactly the Defendants are asking for and why they believe the Plaintiff would have documents relevant to what private party providers have not collected as co-payments from individual Medicare patients.

55. All Documents received from third-party sources concerning reimbursement for prescription drugs and/or the pricing of prescription drugs, including but not limited to the Wisconsin Pharmacists Association, the National Association of State Medicaid Directors, the NAMFCU, the National Association of Attorneys General, the American Society of Consultant Pharmacists, and the American Pharmacists Association.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it is overbroad and unduly burdensome. The Request as currently phrased if taken as written would possibly entail the production of documents the number of which would be greater than one could imagine. Once again, as first observed in response to Request number 25 above, this Request also appears to be purposefully drafted with such sweeping breadth as to be not designed to stimulate a rational production of documents as it is a veiled attempt to preserve the claim that Defendants asked for “everything” and yet at some later time, (at undoubtedly an opportune moment in this litigation), present the opportunity for an argument that the Plaintiff was remiss in its duties under Wis. Stat. § 804.09. The Plaintiff therefore OBJECTS.

56. All Documents and data given to you through formal or informal Requests from third-parties, including but not limited to retail drug chain stores, providers, and provider groups, concerning the prices, costs, or reimbursement for Subject Drugs.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it is overbroad and ambiguous. The Request is unclear as to whom this information may have been given, under what circumstances or when and thereby effectively precludes the Plaintiff from undertaking a meaningful inquiry or search. The Request seems to demand all documents from third parties regarding “reimbursement for Subject Drugs.” If this is what the Defendants envision, the simple demand is nothing more than an attempt to summarize the specific Requests above and is in the end so overbroad as to be objectionable. Notwithstanding this objection and these aforementioned concerns, the Plaintiff has acquired data from three wholesalers and one large national retailer and will provide the Defendants with a copy of this data. The Plaintiff has also produced miscellaneous correspondence from pharmacists who in the context of objection to the

MAC, may have provided evidence of their “cost” of one or more pharmaceutical product.

57. All National Coverage Decisions, Local Medical Review Policies and Local Coverage Determinations for prescription drugs in effect for Wisconsin Medicare Carriers and Fiscal Intermediaries.

ANSWER: The Plaintiff is not in possession of any documents relevant to this Request. Upon information and belief, the contractor Trust Solutions, receives National Coverage Decisions from the publicly available website maintained by CMS and Medicare Carriers.

58. All Documents concerning any proceedings, including but not limited to lawsuits, administrative or legislative proceedings, or criminal or civil investigations, in which your employees or agents have testified, provided statements, or been interviewed concerning the pricing, reimbursement of pharmaceutical products, or access to care.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it is overbroad and therefore unduly burdensome. First, the Request is ambiguous in that it asks for documents relating to “agents.” Second, to demand application of this Request to every “employee,” past and present, is grossly overbroad and effectively precludes the Plaintiff from making any meaningful inquiry to specific individuals about what they may or may not have done, or before whom they may have appeared. Finally, the Request demands documents relating to “access to care.” It is not clear what this means or why it is relevant or even whether it would lead to the discovery of relevant information. Lastly, the Plaintiff has undertaken over the years many investigations concerning specific instances of Medicaid fraud in which persons have claimed entitlements or payments to which they were not deserving. These isolated and individual actions prosecuted either civilly or criminally are irrelevant to this action and would be extremely burdensome to retrieve, much less produce to the Defendants in response to this Request and would not in Plaintiff’s estimation lead to the discovery of relevant information. (Not including the agreements and prosecutions by the NAMFCU and the USDOJ in which one or more of the Defendant’s propounding this very question paid substantial amounts of money for the fraudulent act or acts described in the indictment or settlement agreement, copies of which are being produced herewith).

59. Organizational charts or similar Document(s) that name or describe your employees involved or in any way responsible for the administration or oversight of your Medicaid program, including but not limited to all directors or similar officials.

ANSWER: The Plaintiff will provide a document relevant to this Request.

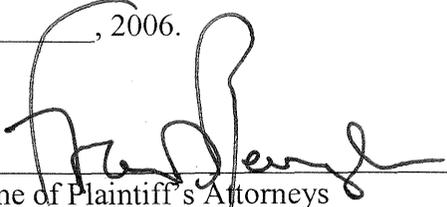
60. Documents sufficient to describe your Document retention or destruction policies, including any changes to, or departures from, such policies, and Documents demonstrating that you have complied with such policies, including but not limited to document preservation notices circulated by you.

ANSWER: The Plaintiff will provide a document relevant to this Request as prepared by the Wisconsin Department of Administration.

61. All communications, including bids and Requests for proposals, with outside lawyers to potentially handle this case, and the contracts and terms of engagement of such lawyers.

ANSWER: Plaintiff OBJECTS to this Request on the ground that asking for information pertaining to the State's process of finding and hiring a lawyer to assist in representing it seeks irrelevant information, is protected privileged information and ultimately is not likely to lead to the discovery of relevant and admissible information. The Plaintiff also OBJECTS on the ground that communications with "outside counsel," (which it is assumed to mean the persons appointed by the Attorney General as "Special Assistant Attorneys General") are protected the work product or attorney client privileges.

Dated this 21st day of August, 2006.


One of Plaintiff's Attorneys
FRANK D. REMINGTON
Assistant Attorney General
State Bar #1001131

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3542