

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

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 06 C 0582 C

Honorable Barbara B. Crabb

AMGEN INC., et al.,

Defendants.

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**PLAINTIFF'S RESPONSE TO NOVARTIS PHARMACEUTICALS  
CORPORATION'S FIRST SET OF REQUESTS TO THE STATE OF  
WISCONSIN FOR PRODUCTION OF DOCUMENTS**

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Pursuant to the Federal Rules of Civil Procedure, the State of Wisconsin, by and through its undersigned counsel, respond to defendant Novartis Pharmaceutical Corporation's "First<sup>1</sup> Set of Requests to the State of Wisconsin for Production of Documents" as follows.

**GENERAL OBJECTIONS:**

Plaintiff expressly incorporates all of the General Objections set forth below into each Response to the Requests. Any specific objections provided below are made in addition to these General Objections and a failure to reiterate a General Objection below does not constitute a waiver or limitation of that or any other objection. To the extent that the Plaintiff states that it will produce documents responsive to any Request, such

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<sup>1</sup> Because Novartis joined in the defendants' collective First and Second Requests for Production of Documents, this is actually Novartis' Third Request.

statement is made subject to, and without waiver or limitation of, all specific objections stated in response to such Request and all General Objections set forth below.

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

B. By responding to these Requests, the Plaintiff does not waive or intend to waive any privilege, for any purpose, of any documents or information produced in response to these Requests, and, in particular, the Plaintiff OBJECTS to each Request to the extent that it purports to seek information protected by the attorney-client privilege, work-product doctrine, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections.

C. By responding that it will produce documents in response to a particular Request, the Plaintiff does not assert that it has responsive materials or that such materials exist, only that it will conduct a reasonable search and make available responsive, nonprivileged documents. No objection, or lack thereof, is an admission as to the existence or non-existence of any documents.

D. This response is based on Plaintiff's investigation to date of those sources within its control where it reasonably believes responsive documents or information may

exist. The Plaintiff reserves the right to amend or supplement these responses in accordance with the applicable rules and Court orders with additional information, documents, or objections that may become available.

E. Plaintiff OBJECTS to Novartis' "Definitions," and "Instructions" to the extent that they purport to expand upon or alter Plaintiff's obligations under the Federal Rules of Civil Procedure.

F. Plaintiff OBJECTS to Novartis' use of the discovery rules beyond what itself has limited its Response to Plaintiff's First Set of Requests for Production of Documents.

G. Plaintiff OBJECTS to these Requests to the extent that they seek information not contained in documents that currently exists within the State and purport to require the Plaintiff create, compile or develop new documents.

H. Plaintiff OBJECTS to these Requests to the extent that they seek production of documents or information not in the State's custody or control, publicly available documents or information equally available to Novartis or documents or information more appropriately sought from third parties to whom subpoenas or requests could be or have been directed.

I. Plaintiff OBJECTS to the "definitions" 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."

1. Plaintiff OBJECTS to definition F to the extent that it demands the Plaintiff to (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format; (iii) produce data, fields,

records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, programs, or databases, or (vii) violate any licensing agreement, copyright laws, or proprietary rights of any third party.

2. Plaintiff OBJECTS to definition N on the ground that definition suggested by the Defendant 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.

3. Plaintiff OBJECTS to definition O on the ground that definition suggested by the Defendant is vague and ambiguous to the extent that it seeks to include as a “provider” a person or entity outside of the Medicaid or Medicare Programs

4. Plaintiff OBJECTS to definition U on the ground that definition suggested by the Defendant is vague and ambiguous in that it seems to be without limitation to the nature and type of “administrative services” that is provided to the State of Wisconsin in general are of “medical benefits.”

J. Plaintiff OBJECTS to those Requests that seek 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.

K. Plaintiff OBJECTS to paragraph W of the general instruction on the ground that the Request demands a search be made of every part of the State's executive branch and by the Legislative branch and is thus 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.

L. 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.

M. Plaintiff OBJECTS to paragraph Y of the general instructions to the extent that these requests demand the production of documents that are as easily and readily available to the Defendant as they are to the Plaintiff.

Subject to the foregoing objections, the Plaintiff responds as follows:

1. All Documents and data You relied on to calculate or determine the alleged market prices and spreads set forth in Exhibits D and E to Your Second Amended Complaint for NPC Subject Drugs.

ANSWER: The Plaintiff used the data given to it by First Data Bank, and the wholesale companies: Cardinal and AmeriSource Bergen and the Medicaid claims data produced by EDS all of which has been previously produced to all of the defendants, including Novartis.

2. All Documents concerning or constituting Communications between You and any Third Party Administrator concerning (i) Your Reimbursement of pharmaceutical products; (ii) Providers' acquisition costs; and/or (iii) any allegation contained in Your Second Amended Complaint.

ANSWER: Defendant Novartis specifically defined the terms "Third Party Administrator" and "communications" in its Request. Using Novartis' definition, Request number 2 essentially demands all "letters, memoranda, e-mail, voice-mail, telegrams, invoices, telephone conversations, face-to-face meetings" between the State and "any entity that provides administrative services to the State of Wisconsin regarding medical benefits provided to any participant or beneficiary" regarding:

1. the State's reimbursement of pharmaceutical products;
2. provider acquisition costs; and
3. any allegation in the Second Amended Complaint.

In its letter dated December 15, 2006 Novartis "clarifies" the Request by claiming that "Plaintiff's actions with respect to reimbursement were at all times fully informed by its knowledge and use of the entire process to its advantage, and NPC is entitled to discovery necessary to demonstrate that fact to the Court and Jury at the appropriate time."

Plaintiff does not dispute that Novartis is entitled to discovery of relevant evidence and evidence that is reasonably likely to lead to the discovery of relevant and admissible evidence. The Plaintiff OBJECTS to this Request on the ground that it is overbroad and therefore unduly burdensome. The Plaintiff also OBJECTS to this Request on the ground that the areas of inquiry numbers 1 and 3 above, notwithstanding Novartis' definitions, are also vague and ambiguous.

As to inquiry number 2 above, Novartis already asked for and received a response to its demand for documents relating to provider acquisition costs. The Plaintiff, to the extent that it purchased drugs, did so through the Minnesota Buying Group which in turn utilized the services of the wholesaler Cardinal and the Plaintiff already provided

Novartis with data from Cardinal. Otherwise, the Plaintiff already stated that it did not possess data concerning provider acquisition costs, other than in an anecdotal fashion as through, for example, correspondence complaining about the States Maximum Allowable Cost, which has already been produced to Novartis.

Finally, the Plaintiff already produced to defendant Novartis all of its data concerning utilization and reimbursement for products in the Medicaid Program. Plaintiff also provided to Novartis what documents it could find relating to provider acquisition costs. The Plaintiff gave to Novartis not only what it had in its files from FDB but gave to Novartis what the Plaintiff had acquired from FDB through this litigation.

3. All Documents containing or concerning any disclosure or disclaimer You received, directly or indirectly, from NPC concerning the AWP of any NPC Subject Drug.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that “disclosure” and “disclaimer” are vague and ambiguous. Furthermore, the Plaintiff also OBJECTS to this Request on the ground that Novartis previously demanded the production of these documents and already received the response stated below:

In the Defendants’ Second Request for Production of Documents Demand number 30, Novartis asked for: All Documents concerning any communication between you and any Defendant concerning rebates for any Subject Drug. The Plaintiff responded: 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.

The Plaintiff restates that same objection here again.

In the Defendants’ Second Request for Production of Documents Demand number 31, Novartis asked for: All Documents concerning any communication or negotiation by you, or on your behalf, with any Defendant concerning reimbursement, discounts, or pricing of pharmaceutical products. The Plaintiff responded: 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.

In its letter dated December 15, 2006, Novartis clarified its latest demand by noting that as opposed to its earlier Request, it now here seeks documents that the Plaintiff may have received "indirectly" from it. First, in producing documents to Novartis and the other defendants in response to its Second Request, the Plaintiff did not differentiate between relevant documents it received "directly" or "indirectly." Thus, the scope of this Request is in effect no different than what it submitted earlier. Because the Plaintiff scanned all of the documents it produced to the defendants in a searchable electronic format, Novartis can look on its own for its documents among the others previously produced.

Finally, the Plaintiff OBJECTS to the Request to the extent it seeks its own documents that the Plaintiff may have "indirectly" received from someone else, it is over burdensome. It is likely that if in fact a Novartis document was sent to Plaintiff by someone else, it is not catalogued by reference to Novartis, but according to the person or entity that sent it and thus it is not possible to meaningfully search for these documents.

Novartis' only specific example of what it seeks are NPC price lists the Plaintiff may have received from some pricing compendium. The Plaintiff already produced what it obtained from First Data Bank. When the Plaintiff receives other documents from other compendiums, it will turn over to all defendants all that it receives.

4. All Documents concerning the price at which Providers could purchase or have purchased any NPC Subject Drug.

ANSWER: The Plaintiff OBJECTS to this Request on the ground that it duplicates Novartis' earlier demand and to which the Plaintiff has already replied. Presumably the data from Cardinal, AmeriSource Bergen and Walgreens establishes the price which a provider could acquire NPC drugs.

Dated this 9<sup>th</sup> day of January, 2007.

  
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