
STATE OF WISCONSIN,)	
)	
Plaintiff,)	Case No.: 04-CV-1709
)	
v.)	
)	
AMGEN INC., et. al.,)	
)	
Defendants.)	

SCHERING-PLOUGH CORPORATION’S AND WARRICK PHARMACEUTICALS CORPORATION’S RESPONSES AND OBJECTIONS TO PLAINTIFF’S EIGHTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS

Pursuant to Wisconsin Rule of Civil Procedure 804.09, Defendants Schering-Plough Corporation (“Schering-Plough”) and Warrick Pharmaceuticals Corporation (“Warrick”, collectively, “Respondents”) hereby respond and object to Plaintiff’s Eighth Set of Requests for Production of Documents to All Defendants (the “Requests”) as follows.

GENERAL OBJECTIONS

1. Respondents provide this response without waiver of or prejudice to their right, at any later time, to raise objections to: (a) the relevance, materiality, or admissibility of (i) the Requests or any part thereof, (ii) statements made in this response to the Requests or any part thereof, or (iii) any document produced pursuant to this response; or (b) any further demand for discovery involving or relating to the matters raised in the Requests.

2. Respondents undertake to respond to the Requests only to the extent required by the Wisconsin Rule of Civil Procedure (the “Rules”), the local rules of this Court, and other

applicable law, and Respondents object to the Requests to the extent that they purport to exceed, expand upon or conflict with those requirements.

3. Respondents further object to the definitions of “you,” “your,” “your company,” “document,” and “documents” as set forth in Definition Nos. 1 and 2 on the grounds that they are overly broad, unduly burdensome, vague, ambiguous, and to the extent they seeks to impose discovery obligations that are broader than, or inconsistent with, Respondents’ obligations under the Rules. Respondents undertake to respond on behalf of Schering-Plough Corporation and Warrick Pharmaceuticals Corporation.

4. Respondents have not completed their investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the responses are based upon, and necessarily limited by, information now available to Respondents. Respondents reserve the right, at any time, to revise, correct, and to supplement, modify, or clarify the specific responses set forth below or the information disclosed therein. By this reservation, Respondents do not, however, assume a continuing responsibility to update their responses beyond the requirements of the Rules and they object to the Requests to the extent they seek to impose any such continuing obligation.

5. Respondents object to the place and time directed for the production of documents. Subject to and without waiving any objection set forth herein, Respondents will produce responsive documents, if any, and/or make them available for inspection and designation for copying at a mutually-agreeable time and location.

6. Respondents object to the Requests to the extent they demand production of any document covered by the attorney-client privilege or the work product doctrine, third-party confidentiality agreements or protective orders, or any other applicable privilege, immunity or

protection. In the event any document subject to a privilege, immunity or protection is produced by Respondents, its production is inadvertent and does not constitute a waiver of any privilege, immunity or protection.

7. In the responses that follow, a statement that responsive documents will be produced does not mean that: (a) any documents exist; or (b) they are in Respondents' possession, custody, or control.

8. Respondents object to the Requests (i) to the extent they call for information generated after the date this action was commenced, or (ii) to the extent they call for information pertaining to any time outside of the limitations periods applicable to any of Plaintiff's claims because the Requests are to this extent overly broad and unduly burdensome, and seek information that is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

9. Respondents object to the Requests as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent they purport to require production of documents or seek information relating to Respondents' drugs that have not been identified in the Second Amended Complaint.

10. Respondents object to each Request to the extent that it may be construed as calling for the production of confidential information relating to a patient. Respondents will not produce any such material to the extent they are under any obligation to maintain the patient information in confidence. Respondents will not disclose such material unless the patient grants permission to do so.

11. Respondents object to the Requests as unduly burdensome to the extent they seek documents that are available, in a way that would be less burdensome or expensive, from a public source or some other source available to the Plaintiff.

12. Respondents object to the Requests to the extent they seek information regarding matters not related to Wisconsin, because such information is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

13. Any production of documents or information responsive to requests to which Respondents have objected is not intended to and does not waive those or any other objections.

14. Respondents' production and responses to the Requests are supplied for use in this litigation and for no other purpose.

15. Respondents object to the Requests to the extent they are indefinite and/or fail to describe the categories of documents to be produced with reasonable particularity, and to the extent that they employ terms or definitions that render the Requests vague or ambiguous. Except as otherwise stated, Respondents will interpret any such term based on its understanding of the term's usage, if any, by Respondents and/or in the pharmaceutical industry.

16. Respondents object to the Requests to the extent they request documents not within Respondents' possession, custody or control.

17. Respondents have been named as defendants in numerous AWP-related litigations since approximately 2000. In the majority of these actions, Respondents have been the subject of extensive AWP-related discovery and, in response, have conducted reasonable searches on several occasions for AWP-related documents and produced the responsive, non-privileged materials that they were able to locate. Therefore, included in those prior documents collections

and productions are all relevant, non-privileged documents that could be located as a result of reasonable searches for AWP-related materials. Respondents produced a series of documents to the State of Wisconsin, beginning on May 12, 2006, in advance of the September 2006 deposition of Harvey Weintraub (the “Weintraub Production”). The Weintraub Production consists of both Warrick and Schering Corporation (“Schering”) documents, produced in various related state AWP actions, covering time periods ranging from 1993 through 2003.¹ The document collections that were done and resulted in the Weintraub Production are comprehensive and contain documents that are responsive to the Requests. A description, in general, of the contents of the Weintraub Production is below.

(a) The Weintraub Production includes documents covering the 1/1/1997-9/6/2002 time period for the following drugs:

Schering Corp. Drugs	Warrick Drugs
Clarinex	Albuterol
Claritin	Clotrimazole
Claritin-D	Cimetidine
Diprolene	Cromolyn Sodium
Diprosone	Griseofulvin ultramicrocrystalline
Eulexin	ISMN (isosorbide mononitrate)
Integrilin	Labetalol

¹ Warrick documents from the Texas case concerning albuterol were produced for the time period 1993-2003, although some earlier documents were produced. Documents concerning other Warrick and Schering drugs at issue in other state AG cases and/or the class action multi-district litigation, *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.) (hereinafter “the MDL Production”), were generally produced for the time period 1/1997-9/6/2002. Certain types of transaction data were produced for the time period prior to 1/1997 and post 9/6/2002.

Schering Corp. Drugs	Warrick Drugs
Intron A	Oxaprozin
Lotrisone	Perphenazine
Nasonex	Potassium chloride
PEG-Intron	Sodium chloride
Proventil	Sucralfate
Rebetol	Theophylline
Sebizon	
Temodar	
Trinalin Rep	
Vanceril	

(b) The contents of the Weintraub Production are described generally in the bulleted list below. Because the Weintraub Production consists of documents from multiple litigations, the documents have various Bates Ranges. To the extent practicable, Bates Ranges of responsive documents are provided herein.

- Paper documents from Texas albuterol litigation and documents responsive to the MDL class-action plaintiffs' document requests, including, *inter alia*, contracts and related documents, sales and marketing documents, pricing documents (including correspondence with state Medicaid agencies), finance documents, organization charts, document-retention policies, and documents related to governmental inquiries and legal proceedings;
- Electronic documents responsive to the MDL class-action plaintiffs' document requests, including e-mail, network, and hard-drive documents, and certain electronic documents responsive to requests in the Connecticut AWP matter;
- Electronic data relating to transactional data for drugs at issue in the MDL class-action case from January 1, 1991 through March 31, 2004 and AMPs for the MDL drugs at issue from January 1, 1997 through September 6, 2002;

- All scanned Warrick paper documents that had been produced in the MDL and/or the states, as well as some Warrick documents that had not been previously produced in the MDL or states, including state pricing file documents. (RGX Bates ranges). Note that pricing letters that had been produced in the West Virginia and Florida AWP matters were produced with the WWV and WFL Bates Ranges, respectively;
- Scanned Schering Corporation paper documents from Schering's and Warrick's offices that had been selected by the MDL plaintiffs (not including a set of Schering documents that had been reviewed by MDL plaintiffs but not selected) (RGX and SP-MNYCC Bates Ranges);
- Schering Corporation and Warrick sales, pricing and rebate data CDs and e-media produced in the MDL (SP-MNYCC Bates Ranges, including direct sales data CD (SP-MNYCC 0000002); indirect sales data CD (SP-MNYCC 0000003); AMP data CD (SP-MNYCC 0000004); Warrick General Ledger Files CD (SP-MNYCC 0000005); Albuterol AWP data CD (SP-MNYCC 0000006); rebate data CD (SP-MNYCC 0000008));
- All of Harvey Weintraub's deposition transcripts and exhibits (except for some errata sheets) (RGX Bates Ranges, RGX 0000001-0001605) and all other deposition transcripts produced in the MDL matter, including those taken in connection with the Texas albuterol litigation and the West Virginia AWP litigation (SP-MNYCC 0012436-0016059);
- Electronic documents (e-mail, network and hard drive) gathered from Schering Corporation and Warrick in 2004 for the MDL (SPF Bates Ranges and RGXB Bates Ranges) and Warrick electronic documents (e-mail only) gathered in 2005 for the Connecticut AWP matter (WCT Bates Ranges);
- The scanned Warrick paper production from the Texas matter concerning albuterol, which covers the time period 1993-2003 (RGXA Bates Ranges);
- Documents selected by a group of state plaintiffs in June 2006 from the 131 boxes of paper documents from the Texas matter (TXRGA, TXRGB, TXRGC and TXRGD Bates Ranges). In addition, the sample set from these boxes produced in Florida, West Virginia and Connecticut was produced with WCT Bates Ranges;
- Predominantly Warrick documents responsive to subpoenas in the Boston AWP investigation and those produced to HHS-OIG and the Commerce Committee, and produced in the West Virginia AWP matter in 2002-2003. (RGXA Bates Ranges);
- CDs containing call notes previously produced in the MDL (RGCA 0000001-0000002); and
- A CD of Contract Logs previously produced in the MDL (RGCA 0000003).

(c) Given the extensive searches already conducted and documents already provided to the Plaintiffs, Respondents object to any further request that they search for documents as unduly burdensome.

18. Respondents expressly incorporate these General Objections into each specific response to the request set forth below as if set forth in full therein. These General Objections form a part of the response to each and every request and are set forth here to avoid the unnecessary duplication and repetition that would result from restating them for each response below. The response to a request shall not operate as a waiver of any applicable specific or general objection to a request.

RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS

REQUEST FOR PRODUCTION NO. 23: Attached hereto as Exh. 1 is a copy of a blank form entitled "HDMA Standard Product Information Pharmaceutical Products." Please produce all such forms that you have completed (as to any or all of the information on such forms) for any of your drugs from January 1, 1991 to the present as well as all documents that identify each person or entity, if any (including but not limited to Cardinal health, McKesson Corporation, or Amerisource Bergen Corporation, or any of their predecessor entities), to whom you sent or provided any such forms and the dates that you sent or provided such forms to any such person or entity.

RESPONSE:

In addition to their General Objections, Respondents specifically object to Request for Production No. 23 as seeking materials that cannot reasonably be expected to lead to the discovery of relevant and admissible evidence. The form attached to the Requests as Exhibit 1 is copyrighted 2005. The Plaintiffs filed this case in February 2005. Any completed copy of the form, if any even exists was therefore almost certainly created after the date this suit was initiated. Schering-Plough does not manufacture or market drugs and therefore has no documents regarding "its" drugs. Subject to and without waiving any of the foregoing General or Specific Objections, Respondents produce herewith certain documents in a form similar to Exhibit 1 to the Requests. *See* RGWIS0288188 to RGWIS0288198.

REQUEST FOR PRODUCTION NO. 24: Any documents reflecting communications with drug wholesalers (including but not limited to Cardinal Health, McKesson Corporation, or

Amerisource Bergen Corporation, or any of their predecessor entities) relating to: (a) AWP, SWP, WAC, MAC, FUL, or direct price; or (b) any pricing compendia including but not limited to First DataBank, Medispan and Red Book.

RESPONSE:

In addition to their General Objections, Respondents specifically object to Request for Production No. 24 as vague with respect to its use of the undefined acronym "SWP". Schering-Plough does not manufacture or market drugs and therefore has no documents regarding "its" drugs. Subject to and without waiving either their General or Specific Objections, Respondents state that they have already produced or are producing herewith the responsive documents that could be located as a result of the reasonable search, collection and production described in their General Objections and object to any request that additional searches be conducted. *See* RGWIS0288188 to RGWIS0288198.

REQUEST FOR PRODUCTION NO. 25: Documents relating to any contract or agreement with any health-care provider (including but not limited to retail pharmacies (chain or independent), doctors, or long-term care facilities) to share in the profits earned by such provider in connection with the provider's sale or dispensing of any of your prescription drugs.

RESPONSE:

In addition to their General Objections, Respondents object to Request No. 25 as vague with respect to the use of the term "your drugs." Schering-Plough does not manufacture or market drugs and therefore has no documents regarding "its" drugs. Subject to and without waiving either their General or Specific Objections, Respondents state that they are not aware of responsive documents that could be located as a result of the reasonable search described in their General Objections.

Dated: August 21, 2008

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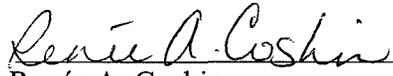
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*Attorneys for Defendants Schering-Plough Corp.,
and Warrick Pharmaceuticals Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August 2008, a true and correct copy of the foregoing document was served upon all counsel of record via Lexis Nexis File & Serve electronic service.


Renée A. Coshin