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Re: *State of Wisconsin v. Amgen, Inc., et al.*
Case no. 06 C 582 C

Dear Counsel:

Enclosed is a copy of Defendant Bristol-Myers Squibb Company's Answers and Objections to Plaintiff's Second Set of Interrogatories to All Defendants. Pursuant to the statutes, we are retaining the original in our file.

Sincerely,

FOLEY & LARDNER LLP

Roberta F. Howell

Enclosures

cc: Defense Counsel (via LNFS)

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003.574852.1

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

STATE OF WISCONSIN,)	
)	
Plaintiff,)	Case No.: 05 C 408 C
)	
v.)	
)	
ABBOTT LABORATORIES, ET AL.,)	
)	
Defendants.)	
)	
)	

**DEFENDANT BRISTOL-MYERS SQUIBB COMPANY’S ANSWERS AND
OBJECTIONS TO PLAINTIFF’S SECOND SET OF INTERROGATORIES
TO ALL DEFENDANTS**

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, Defendant Bristol-Myers Squibb Company (“BMS”), by its attorneys, hereby asserts the following responses and objections to Plaintiff’s Second Set of Interrogatories to All Defendants (“Interrogatories”):

PRELIMINARY STATEMENT

1. These answers are made solely for the purposes of this action. Each answer is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such Interrogatories were asked of, or statements contained

herein were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. BMS' answers shall not be deemed to constitute admissions:
 - a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or
 - b. that any statement or characterization in Plaintiff's Interrogatories is accurate or complete.

3. BMS' answers are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and BMS reserves the right to amend its answers and to raise any additional objections it may have in the future. These answers are made based upon the typical or usual interpretation of words contained in Plaintiff's Interrogatories, unless a specific definition or instruction has been provided.

4. BMS' answers to Plaintiffs' Interrogatories are submitted without prejudice to BMS' right to produce evidence of any subsequently discovered facts and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial. BMS reserves its right to provide further answers as additional facts are ascertained.

5. Any statement by BMS contained in these objections and answers that non-privileged documents or information will be produced in response to a specific Interrogatory does not mean that any such documents or information actually exist, but only that they will be produced to the extent that they exist.

6. BMS' answers to Plaintiff's Interrogatories contain information subject to the Temporary Qualified Protective Order entered in this matter by the State of Wisconsin Circuit

Court for Dane County and must be treated accordingly. BMS is producing information and documents subject to the terms of the Temporary Qualified Protective Order or to any other equivalent Protective Order that may be entered by the United States District Court for the Western District of Wisconsin.

GENERAL OBJECTIONS

BMS objects generally to Plaintiff's Interrogatories as follows:

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

2. BMS objects to these Interrogatories to the extent they call for the production of documents or information that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, joint defense/prosecution privilege, the work product doctrine, the consulting expert rule, the common interest doctrine or other applicable statutory or common law. To the extent that any such protected documents or information are inadvertently produced in response to these Interrogatories, the production of such documents or information shall not constitute a waiver of BMS' right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to BMS' counsel immediately upon discovery thereof.

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

4. BMS objects to these Interrogatories to the extent that they seek production of publicly available documents or information, or that which Plaintiff can obtain from other sources.

5. BMS objects to these Interrogatories to the extent they call for the production of trade secret, proprietary, commercially sensitive, or other confidential information.

6. BMS objects to these Interrogatories to the extent that they purport to impose obligations beyond or inconsistent with those imposed by applicable law. BMS will respond to these Interrogatories, subject to other objections, as required by applicable rules of civil procedure.

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

8. BMS incorporates the above Preliminary Statement and General Objections and the below Objections to Definitions into each answer to the Interrogatories set forth below as if set forth in full therein. The answer to an Interrogatory shall not operate as a waiver of any applicable specific or general objection to an Interrogatory.

OBJECTIONS TO DEFINITIONS

1. The term "**Average Manufacturer Price**" or "**AMP**" means the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report for purposes of the Medicaid program, pursuant to 42 U.S.C. §1396r-8.

OBJECTION: BMS objects to the definition of “Average Manufacturer Price” and “AMP” as set forth in Definition No. 1 to the extent it purports to depart from the statutory definition. BMS incorporates by reference its objection to the definition of the term “Pharmaceutical.”

2. The term “**Defined Period of Time**” means from January 1, 1993 to the present.

OBJECTION: BMS objects to the definition of “Defined Period of Time” as set forth in Definition No. 3 on the grounds that it is overly broad and unduly burdensome and vague and ambiguous. BMS objects to this definition to the extent that it seeks information from outside the statute of limitations applicable to the claims in this litigation, or beyond the time period relevant to this litigation.

SPECIFIC ANSWERS AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 6:

Do you contend that during the Defined Period of Time the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMPs of the targeted drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid rebate statute, 42 U.S.C. § 1396r-8?

ANSWER: BMS objects to Interrogatory No. 6 on the grounds that it is vague, ambiguous, and calls for a legal conclusion.

Notwithstanding BMS’s general and specific objections, and without waiving them, BMS states that federal law does not prohibit and did not prohibit, during the Defined Period of Time, the State of Wisconsin from estimating or determining AMP. In fact, for some drugs, the State can derive and could have derived the AMP from the Unit Rebate Amount during the Defined Period of Time. Alternatively, the State can require and could have

required during the Defined Period of Time (as some States do) the submission of AMP data directly from the manufacturers.

INTERROGATORY NO. 7:

If the answer to Interrogatory No. 1 [sic] is anything other than an unqualified “no,”;

- a. state all bases for such contention, and
- b. identify all documents that support such contention.

ANSWER: BMS objects to Interrogatory No. 7 on the grounds that it is vague, ambiguous, overbroad, and burdensome. BMS further objects to this interrogatory to the extent it seeks information that is publicly available to the Plaintiff.

Notwithstanding BMS’s general and specific objections, and without waiving them, BMS incorporates by reference its answer to Interrogatory No. 6 and further states that 42 U.S.C. § 1396r-8 and the state Medicaid statutes and regulations for those states that require manufacturers to submit AMP data provide support for BMS’s answer to Interrogatory No. 6.

December 14, 2006

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