

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

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STATE OF WISCONSIN,  Plaintiff,  vs.  AMGEN, INC., et. al.,  Defendants.	Case No.: 06-C-0582-C
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**THE JOHNSON & JOHNSON DEFENDANTS’ ANSWERS AND OBJECTIONS TO  
PLAINTIFF’S SECOND SET OF INTERROGATORIES TO ALL DEFENDANTS**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Western District of Wisconsin, and, to the extent applicable, Wisconsin Rule of Civil Procedure 804.08, defendants Johnson & Johnson, Janssen Pharmaceutica, Inc. (formerly Janssen Pharmaceutica Products, L.P.), Ortho-McNeil Pharmaceutical, Inc., Ortho Biotech Products, L.P., and McNeil-PPC, Inc. (collectively, the “Johnson & Johnson Defendants”), by their attorneys, object and respond to Plaintiff’s Second Set of Interrogatories as follows:

**PRELIMINARY STATEMENT**

1. These answers and objections 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. The Johnson & Johnson Defendants' 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 Second Set of Interrogatories is accurate or complete.

3. The Johnson & Johnson Defendants' answers are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and the Johnson & Johnson Defendants reserve the right to amend their answers and to raise any additional objections they may have in the future. These answers are made based upon the typical or usual interpretation of words contained in Plaintiff's Second Set of Interrogatories, unless a specific definition or instruction has been provided and/or agreed upon.

4. The Johnson & Johnson Defendants' answers to Plaintiff's Second Set of Interrogatories contain information subject to the Protective Order in this matter and must be treated accordingly.

5. The Johnson & Johnson Defendants' responses to Plaintiff's Second Set of Interrogatories are submitted without prejudice to The Johnson & Johnson Defendants' right to produce evidence of any subsequently discovered fact. The Johnson & Johnson Defendants accordingly reserve their right to provide further responses and answers as additional facts are ascertained.

### **GENERAL OBJECTIONS**

The Johnson & Johnson Defendants object generally to Plaintiff's Second Set of Interrogatories as follows:

1. The Johnson & Johnson Defendants object to Plaintiff's "Definitions" to the extent Plaintiff intends to expand upon or alter the Johnson & Johnson Defendants' obligations under the Federal Rules of Civil Procedure, the Court's Local Rules, and, to the extent applicable, the Wisconsin Rules of Procedure, in responding to the Interrogatories. The Johnson & Johnson Defendants will comply with applicable rules of civil procedure in providing their answers to Plaintiff's Second Set of Interrogatories.

2. The Johnson & Johnson Defendants object to each interrogatory to the extent that it calls for the identification or production of documents or information not relevant to the issues in this action and is not reasonably calculated to lead to the discovery of admissible evidence.

3. The Johnson & Johnson Defendants object to Plaintiffs' definition of "Average Manufacturer Price" or "AMP" on the ground that it is vague and ambiguous. The Johnson & Johnson Defendants further object to this definition to the extent it purports to state an accurate or legally significant definition.

4. The Johnson & Johnson Defendants object to Plaintiff's definition of "Defined Period of Time" on the grounds that the phrase as defined is overbroad and burdensome, and purports to require the production of documents or information that are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. The Johnson & Johnson Defendants further object to this definition to the extent it seeks documents or information from outside the statute of limitations applicable to the claims in this litigation, or beyond the time period relevant to this litigation.

5. The Johnson & Johnson Defendants object to the extent that any interrogatory seeks information that is protected from disclosure by the work product doctrine,

the attorney-client, accountant-client, consulting expert, or investigative privileges, by any common interest or joint defense agreement, or by any other applicable privilege or protection.

6. The Johnson & Johnson Defendants object to each interrogatory to the extent that it calls for information not within their possession, custody or control. In responding to these interrogatories, the Johnson & Johnson Defendants have undertaken or will undertake a diligent and reasonable search of documents and information within the Johnson & Johnson Defendants' current possession, custody or control.

7. The Johnson & Johnson Defendants object to each interrogatory to the extent that it calls for information that is confidential, proprietary, and/or a trade secret of a third party.

8. The Johnson & Johnson Defendants object to each interrogatory to the extent that it seeks disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

9. The Johnson & Johnson Defendants expressly incorporate the above General Objections into each specific 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 a request.

### **ANSWERS 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:** The Johnson & Johnson Defendants object to Interrogatory No. 6 on the grounds that it is vague, ambiguous, and calls for a legal conclusion.

Notwithstanding the Johnson & Johnson Defendants' general and specific objections, and without waiving them, the Johnson & Johnson Defendants state 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 during the Defined Period of Time the AMP from the Unit Rebate Amount. Also, the Johnson & Johnson Defendants are not aware of any federal or other prohibition during the Defined Period of Time that would have prevented the State from requesting AMP or enacting a state statute that would have required its submission.

**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:** The Johnson & Johnson Defendants object to Interrogatory No. 7 on the grounds that it is vague, ambiguous, overbroad, and burdensome. The Johnson & Johnson Defendants further object to this interrogatory to the extent it seeks information that is publicly available to the Plaintiff.

Notwithstanding the Johnson & Johnson Defendants' general and specific objections, and without waiving them, the Johnson & Johnson Defendants incorporate by reference their answer to Interrogatory No. 6 and further state 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 the Johnson & Johnson Defendants' answer to Interrogatory No. 6.

December 14, 2006



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L.P., and McNeil-PPC, Inc.

**Certificate of Service**

I, James Richgels, hereby certify that on this 14th day of December, 2006, a true and correct copy of THE JOHNSON & JOHNSON DEFENDANTS' ANSWERS AND OBJECTIONS TO PLAINTIFF'S SECOND SET OF INTERROGATORIES TO ALL DEFENDANTS was served on all counsel of record by Lexis Nexis File & Serve®.

A handwritten signature in black ink, appearing to read "James Richgels", is written over a horizontal line. The signature is stylized and cursive.