

STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN INC., *et al.*

Defendants.

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Case No. 04-CV-1709

Defendant Merck & Co., Inc.’S Objections And Responses To Plaintiff State Of Wisconsin’s Interrogatories No. 3 (To All Defendants) And Request For Production Of Documents No. 4 (To All Defendants)

Pursuant to Wis. Stat. 804.01, 804.08, and 804.09 Defendant Merck & Co., Inc. (“Merck”) provides the following objections and responses to Plaintiff’s interrogatories (Set No. 3) and requests for production of documents (Set No. 4) to all defendants:

GENERAL OBJECTIONS

1. Merck objects to the Interrogatories and Requests to the extent that they are vague, ambiguous, argumentative, duplicative, overly broad, unduly burdensome or oppressive, not reasonably calculated to lead to the discovery of admissible evidence, or seek information or documents that are not relevant to the claims or defenses of any party or to the subject matter involved in this action or to the extent they seek documents or information beyond those permitted by Wis. Stat. §§ 804.01, 804.08, and 801.09 and other applicable state laws.

2. Merck objects to the Interrogatories and Requests to the extent they seek documents or information protected from discovery by the attorney-client privilege, work product doctrine, common interest or joint defense privilege, or other privilege, or that are

otherwise immune or protected from disclosure. Merck does not intend to waive any applicable protections or privileges through the production of documents or the supplying of information in response to the Interrogatories. On the contrary, Merck specifically intends to preserve any and all applicable protections or privileges.

3. Inadvertent production of any document shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such document or any other document, or with respect to the subject matter thereof or the information contained therein, nor shall such inadvertent production waive Merck's right to object to the use of the document or the information contained therein during this or any subsequent proceeding.

4. Merck objects to the Interrogatories and Requests as overly broad and unduly burdensome to the extent that they call for the identification of "each," "any" or "all" documents or items of information when relevant information can be obtained from fewer than "each" "any" or "all" documents or information. Merck objects to the Interrogatories and Requests to the extent they seek information other than information which can be located upon a search of files or other sources where such information reasonably can be expected to be found. Any search will be limited to the relevant time period and Merck drugs at issue as set forth in Merck's prior responses to discovery and the correspondence of Merck's counsel.

5. Merck further objects to the Interrogatories and Requests to the extent they seek any confidential or proprietary information or trade secrets. Merck will only produce such information subject to and in reliance on the Protective Order entered by the Wisconsin Circuit Court for Dane County on May 11, 2005 (the "Protective Order"). The information and documents provided are for use in this litigation and for no other purpose. Merck objects to the

Interrogatories to the extent they seek confidential or proprietary information or trade secrets of a third-party or is protected from disclosure by an agreement with a third-party.

6. Merck objects to the Interrogatories and Requests to the extent that they purport to require Merck to provide a compilation, abstract, audit, and/or other document summary that does not currently exist.

7. Merck objects to the Interrogatories and Requests to the extent that they call for information or documents that are unreasonably cumulative or duplicative, are publicly available, are equally available to Plaintiff, are already in the possession of Plaintiff, or are obtainable from some other source that is more convenient, less burdensome or less expensive.

8. Merck objects to the Interrogatories and Requests to the extent that they are unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

9. Merck objects to the Interrogatories and Requests to the extent that they call for the identification or production of documents or information not within Merck's possession, custody, or control. In responding to the Interrogatories and Requests, Merck has undertaken or will undertake a reasonably diligent and reasonable search of documents and information within Merck's current possession, custody, or control.

10. Merck is responding to the Interrogatories and Requests without waiving or intending to waive, but on the contrary, preserving and intending to preserve: (a) the right to object on any proper grounds to the use of such documents or information for any purpose, in whole or in part, in any subsequent proceedings, in this action or in any other action; (b) the right to object on all grounds, at any time, to interrogatories, requests, or other discovery procedures

involving or relating to the subject of the Interrogatories and Requests to which Merck has responded herein; and (c) the right at any time to revise, correct, add to or clarify any of the answers made herein.

11. Because of the over breadth of the Interrogatories and Requests and the vague and nonspecific nature of the claims against Merck in the Second Amended Complaint, it is not possible for Merck to anticipate all possible grounds for objection with respect to the particular Interrogatories and Requests set forth herein. Merck reserves the right to supplement or correct these responses and to raise any additional objections deemed necessary and appropriate in light of the results of any further review.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Merck objects to Plaintiff's definition of "**you**" on the grounds that the term as defined is vague, unreasonably overbroad, unduly burdensome, as requiring speculation and as imposing obligations broader than Wis. Stat. §§ 804.01, 804.08, and 804.09.

2. Merck objects to Plaintiff's definition of "**Document**" on the grounds that the term as defined is unreasonably overbroad, unduly burdensome, and imposes obligations broader than Wis. Stat. §§ 804.01, 804.08, and 804.09. Merck also objects to Plaintiff's definition requesting originals and all nonidentical duplicates as not relevant and unduly burdensome. Merck also objects to this definition to the extent it requires or seeks to require Merck to: (a) produce documents or data in a particular form or format; (b) convert documents or data into a particular or different file format; (c) produce data, fields, records, or reports about produced documents or data; (d) produce documents or data on any particular media; (e) search for and/or produce any documents or data on back-up tapes; (f) produce any proprietary software, data, programs, or databases; or (g) violate any licensing agreement or copyright laws. The

production of any documents or data or the provision of other information by Merck as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

3. Merck objects to Plaintiff's Instructions to the extent they purport to impose obligations broader than Wis. Stat. §§ 804.01, 804.08, and 804.09, and other applicable law.

INTERROGATORIES

INTERROGATORY NO. 6: With respect to any allegation of the Amended Complaint which you denied in your Answer state each fact that supports each such denial.

RESPONSE:

Merck objects to Interrogatory No. 6 as overbroad and unduly burdensome in purporting to request "each fact" that supports each denial in Merck's Answer to the 100-paragraph Second Amended Complaint. Multiple facts directly or indirectly support each denial in Merck's Answer and setting forth each such fact would be unduly burdensome, cumulative and not relevant. Merck also objects to Interrogatory No. 6 to the extent it essentially would require Merck to identify facts and information designed to prove a negative, such as the non-existence of a fact alleged in the Complaint. Merck further objects that Interrogatory No. 6 is premature to the extent that it seeks Merck's contentions because discovery of Plaintiff, defendants, and third parties is not yet complete. Merck further objects to the extent that Interrogatory No. 6 seeks attorney work product or trial preparation materials. Merck also objects to Interrogatory No. 6 to the extent that it seeks information related to Merck's denials that are based in whole or in part on the application of the applicable laws or legal conclusions.

Subject to and without waiving these objections Merck responds that the principal factual grounds for its denials include:

1. Merck did not engage in conduct that was improper, fraudulent, or unlawful as alleged in Plaintiff's Second Amended Complaint.
2. Prior to April 2000, the Merck drugs at issue were reimbursed by Wisconsin Medicaid based on Direct Price, not an AWP formula. Plaintiff, not Merck, subsequently decided to use an AWP-based reimbursement formula for Merck drugs.
3. Most of the Merck drugs at issue are branded, patented, self-administered drugs that are typically dispensed to Medicaid beneficiaries at a retail pharmacy. A pharmacy has no discretion in deciding which medications to use in filling prescriptions for patented drugs, and the prescribing physician does not receive the economic benefit of any reimbursement formula.
4. Most of the Merck drugs at issue are not physician-administered and prescriptions for them were not reimbursed under Medicare Part B. No Merck drugs are included in the listing attached as part of Exhibit C to the Second Amended Complaint.
5. Merck's Direct Price or WAC price is published in paper or electronic catalogs that were widely circulated, including to Wisconsin state agencies and contractors during the relevant period; these prices were thus readily available, as were the differences between these prices and the AWPs published by First DataBank and others. Merck's catalog noted the availability of prompt pay discounts. In addition, certain customers, including Wisconsin Medicaid and other Wisconsin state agencies, could and did negotiate additional rebates and discounts.
6. Merck did not misrepresent or inflate the WAC or the AWP for its products.

7. Merck operates in a competitive environment in which contracts and pricing terms have competitive value and are thus confidential business information. Merck's agreements to provide rebates or discounts, however, typically include provisions that the provider will properly disclose such rebates or discounts to government entities.
8. In the markets for prescription drugs, Merck and other manufacturers compete vigorously for market share based on medical efficacy, cost-effectiveness, convenience, and many other factors. The confidential treatment of negotiations concerning rebates and discounts reflects competitive market conditions. As emphasized by the Federal Trade Commission and other government agencies in public reports and statements regarding the prescription drug markets, confidentiality in pricing negotiations advances competition in the marketplace.
9. Wisconsin Medicaid and its agents and contractors were active, informed participants in the competitive market for prescription drugs, exercising control by prior authorization requirements, preferred drug lists, supplemental rebate agreements and in many other ways. Plaintiff was aware that pharmaceutical manufacturers provided discounts to customers. Indeed, Wisconsin Medicaid received statutory rebates that are calculated under statutory formulas based in substantial part on rebates and discounts provided to other customers. And, beginning in 2004, Wisconsin Medicaid also negotiated supplemental rebates for certain drugs, including certain Merck drugs.
10. The difference between WAC and the published AWP for Merck drugs is readily apparent from pricing compendia, such as First DataBank, and was commonly known by governmental agencies and those involved in pharmaceutical reimbursement. It also was

commonly known that published AWP's do not represent actual averages of wholesale prices. Plaintiff, including its Secretary of the Department of Health and Family Services ("DHFS"), Division of Health Care Financing, Governor's Office, Legislative Fiscal Bureau, Joint Committee on Finance, and Department of Administration, was aware that published AWP's did not represent actual averages of wholesale prices for Merck's products. Since at least 1989, Plaintiff has received directives and/or reports from the federal government reminding it that AWP does not represent the actual average of wholesale prices.

11. AWP was understood by Wisconsin Medicaid and others to be a reference price and not actual acquisition cost. In deciding to change its reimbursement of Merck drugs from Direct Price to an AWP - 10% formula, Wisconsin Medicaid officials recognized that the reimbursement costs would increase, and presumably made that change for considered reasons of policy.
12. Merck did not "market" the so called "spread" between the reimbursement price set by Wisconsin Medicaid and acquisition cost. Merck does not have a policy of encouraging or supporting the marketing of the spread between the published AWP and the actual acquisition costs for its drugs. Nor would there be any reason for it do so, because the pharmacies that fill prescriptions for Merck drugs have no role in selecting the drug to be prescribed. Instead, Merck's policies provide that its drugs should be marketed, primarily to physicians, based on their clinical efficacy and other product attributes.
13. Merck does not provide customers with monetary grants or drugs at no cost, in lieu of discounts or rebates on any product.

14. Wisconsin's AWP reimbursement formula was not based on actual acquisition cost. The complaint has inaccurately summarized federal regulations on the meaning of Estimated Acquisition Cost ("EAC"). In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further policy goals, including ensuring access for Medicaid patients to prescription drugs.
15. Merck did not represent to Plaintiff that the AWP published for its drugs represented an actual average of wholesale prices.
16. Merck did not publish the AWP for its products. The AWP for Merck's products were published by independent publishers.
17. Merck is unaware of Plaintiff ever enacting a statutory or regulatory definition of AWP. Plaintiff has mischaracterized First DataBank's statements regarding the meaning of AWP, including the statement in Exhibit A to the Second Amended Complaint.
18. Plaintiff was free at all times to change its method of pharmaceutical reimbursement under its Medicaid program to a non-AWP-based methodology. Plaintiff has periodically considered, and rejected, alternative pharmaceutical reimbursement methodologies, including methodologies that were not AWP-based. Despite the existence of alternative reimbursement methodologies, Plaintiff continues to reimburse providers who participate in its Medicaid program for pharmaceuticals based on AWP.
19. Additional facts demonstrating directly or indirectly the inaccuracy of the allegations in the Second Amended Complaint that were denied by Merck may be ascertained by

review of Merck's prior discovery responses, the deposition of Merck's representative, Michael Bannon, on July 12, 2006, and the record in this case.

Merck reserves its right to supplement this Interrogatory Answer.

INTERROGATORY NO. 7: Identify each document that supports each such denial.

RESPONSE:

Merck objects to Interrogatory No. 7 on the same grounds as those set forth in its Response to Interrogatory No. 6 and incorporates those objections herein. In addition, Merck objects to Interrogatory No. 7 to the extent it seeks information that is publicly available or outside Merck's possession, custody and control.

Subject to and without waiving these objections, the following categories of documents, among others, generally support Merck's denials of the allegations of Plaintiff's Second Amended Complaint:

1. Documents and information produced by Merck in response to Plaintiff's First Set of Requests for Production, Plaintiff's First Set of Interrogatories, Plaintiff's Written Discovery Request No. 3, and Plaintiff's Notice of Deposition of Merck, including, but not limited to, the following:
 - Pricing authorization documents;
 - Merck's catalog and standard terms of sale;
 - Communications with First DataBank and other pricing compendia;
 - Marketing plans and reports;
 - Examples of agreements for rebates;
 - Other documents.
2. Documents in the possession, custody and control of Plaintiff and other documents generated, obtained and reviewed by Plaintiff, based upon information obtained from Plaintiff's document production and other documents to date and depositions of its employees, including, but not limited to, the following:

- Plaintiff's responses to discovery by defendants in this matter, including the absence of documents or information supporting, as to Merck, Plaintiff's allegations, in Plaintiff's Responses to Defendants First Set of Interrogatories and Document Requests Directed to Plaintiff.
- Documents referring to proposed and actual changes to Wisconsin Medicaid's pharmaceutical reimbursement methodology;
- Documents referring to pharmacists' profits on the sale of products reimbursed by Wisconsin Medicaid and the role of such profits in assuring access to prescription drugs for Medicaid patients;
- Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;
- Studies conducted by Wisconsin Department of Agriculture, Trade and Consumer Protection, the University of Wisconsin, Congressman Tom Barrett, the Federal Trade Commission, HCFA, Dr. David Kreling, and various other consultants and entities concerning pharmaceutical pricing and reimbursement;
- Governor's budget proposals related to Medicaid and documents analyzing those proposals;
- Issue papers written by the Legislative Fiscal Bureau and the Department of Health Family Services ("DHFS") on pharmaceutical reimbursement;
- OIG, GAO, CBO, and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;
- Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
- Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
- Issues, briefing, and concept papers on pharmaceutical reimbursement and costs by the Office of Strategic Finance;
- Written testimony of DHFS Secretary concerning pharmaceutical reimbursement;
- Emails between DHFS and the Governor's office concerning pharmaceutical reimbursement;

- Wholesaler data from state-run entities that purchase drugs directly from wholesalers;
 - Documents comparing prices paid by Wisconsin Medicaid to those paid by other State entities;
 - Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
 - Documents related to the Governor's Pharmacy Reimbursement Commission;
 - Budget documents from the Department of Administration related to pharmaceutical reimbursement;
 - Audits of Wisconsin's Medicaid program;
 - Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement;
 - Media articles discussing pharmaceutical reimbursement;
3. Documents received, or expected to be received, from third-parties including, but not limited to, the following:
- Federal government;
 - Other states;
 - Third-parties subpoenaed in this case; and
 - Wholesaler data produced by third-parties.
4. Documents in the public domain.

Merck reserves the right to supplement this Interrogatory Answer.

INTERROGATORY NO. 8: With respect to each affirmative defense you assert in your Answer to the Amended Complaint state the facts which support that defense.

RESPONSE:

Merck objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. Merck further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work-product doctrine. Merck also objects to this Interrogatory to the extent it seeks information related to Merck's defenses that are based in whole or part on the application of applicable laws or legal conclusions. Merck also objects to this Interrogatory because Merck has not yet fully identified all facts that may support its denials since investigation and discovery remain ongoing. Merck also objects to this Interrogatory to the extent it essentially would require Merck to identify facts and information designed to prove a negative.

Subject to and without waiving these objections, the following facts, among others, generally support Merck's Affirmative Defenses, as set forth in its Answer to Plaintiff's Second Amended Complaint:

- Merck incorporates the facts set forth its response to Interrogatory No 6 and the documents referenced in its response to Interrogatory No. 7.
- Since at least 1975, Plaintiff was aware that published AWP's did not represent actual averages of wholesale prices for drugs.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government reminding it that AWP does not represent the actual average of wholesale prices.
- It was commonly known and widely understood within the relevant governmental agencies and within the pharmaceutical industry and by those involved with public and private reimbursement systems that published AWP's did not represent actual averages of wholesale prices.
- Based upon Plaintiff's document production to date, it appears that Plaintiff conducted little, if any, inquiry to determine EAC.
- Plaintiff submitted state plans and state plan amendments to the federal government concerning the rate at which it would reimburse pharmaceuticals under its Medicaid Program. These plans were reviewed and approved by the federal government.

- Merck’s drugs at issue are sold in interstate commerce.
- Plaintiff has not established that it complied with Wis. Stat. § 165.25(1) or Wis. Stat. § 100.18(11)(d).
- Merck did not cause providers to make a false statement to Plaintiff.
- The Attorney General is not authorized to seek forfeitures under § 100.26(4) and § 100.264(2).
- Plaintiff did not confer any benefit on Merck.
- Plaintiff cannot establish that any discounts provided by Merck to providers had the effect of injuring competition.
- Merck’s prompt pay discounts were not secret. Merck’s negotiated agreements to provide discounts and rebates typically required provider disclosure of such discounts and rebates to government entities.
- Merck’s discounts include functional discounts for certain direct purchasing distributors that demonstrate their ability to increase efficiency of the distribution of Merck’s products.
- Plaintiff’s claims include, at least in part, claims involving the business of insurance.
- The Medicare Prescription Drug, Improvement and Modernization Act of 2003, 42 U.S.C. § 1395, changed pharmaceutical reimbursement under Medicare Part B from an AWP-based system to an ASP-based system.
- Merck did not control the AWPs published by First DataBank and other pricing compendia.
- Plaintiff has not named as defendants the parties who received the alleged “excessive” reimbursements.
- Merck’s conduct and activities are distinct from and independent of the conduct and activities of each of the other defendants named in this action.
- Plaintiff has provided no particularized allegations (the “who, what, when, where, and how”) describing Merck’s allegedly fraudulent conduct.
- Any increased sales and/or market share Merck received during the relevant time period was not the result of unlawful conduct.
- Plaintiff cannot establish that any increase in Merck’s market share was attributable to Merck’s allegedly unlawful conduct.

- Plaintiff cannot establish that any increase in Merck's market share was the result of Plaintiff's payments as opposed to payments from Medicare or private payors.
- Plaintiff cannot establish that it was damaged by Merck's conduct.
- Plaintiff adopted the reimbursement methodology to further program objectives.
- Merck and Plaintiff are parties to written agreements that address the subject of reimbursement for the Merck drugs at issue by the Wisconsin Medicaid program.
- The reimbursement rates set for Wisconsin's Medicaid program and Medicare Part B are lawful, government-set rates.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP's.
- Additional facts directly or indirectly supporting Merck's affirmative defenses may be derived from Merck's prior discovery responses and the deposition testimony of Michael Bannon, and the record in this case.
- Any and all applicable facts asserted by any other defendant not otherwise asserted herein.

Merck reserves its right to supplement this Interrogatory Answer.

INTERROGATORY NO. 9: Identify each document that supports the facts upon which you base each such affirmative defense.

RESPONSE:

Merck objects to Interrogatory No. 9 on the same grounds as those set forth in its Answer to Interrogatory No. 8 and incorporates these objections herein. In addition, Merck objects to this Interrogatory to the extent it seeks information that is publicly available, equally or more available to Plaintiff, or outside Merck's possession, custody and control.

Subject to and without waiving these objections, the following categories of documents, among others, generally support the Affirmative Defenses asserted in Merck's

Answer to Plaintiff's Second Amended Complaint:

1. Documents and information produced by Merck in response to Plaintiff's First Set of Requests for Production, Plaintiff's First Set of Interrogatories, Plaintiff's Written Discovery Request No. 3, and Plaintiff's Notice of Deposition of Merck, including, but not limited to, the following:
 - Pricing authorization documents;
 - Merck's catalog and standard terms of sale;
 - Communications with First DataBank and other pricing compendia;
 - Marketing plans and reports;
 - Examples of agreements for rebates;
 - Other documents.

2. Documents in the possession, custody and control of Plaintiff and other documents generated, obtained and reviewed by Plaintiff, based upon information obtained from Plaintiff's document production and other documents to date and depositions of its employees, including, but not limited to, the following:
 - Plaintiff's responses to discovery by defendants in this matter, including the absence of documents relating to Merck in Plaintiff's Responses to Defendants First Set of Interrogatories and Document Requests Directed to Plaintiff
 - Documents referring to proposed and actual changes to Wisconsin Medicaid's pharmaceutical reimbursement methodology;
 - Documents referring to pharmacists' profits on the sale of products reimbursed by Wisconsin Medicaid and the role of such profits in assuring access to prescription drugs for Medicaid patients;
 - Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;
 - State plans and state plan amendments;

- Studies conducted by Wisconsin Department of Agriculture, Trade and Consumer Protection, the University of Wisconsin, Congressman Tom Barrett, the Federal Trade Commission, HCFA, Dr. David Kreling and various other consultants and entities concerning pharmaceutical pricing and reimbursement;
- Governor's budget proposals related to Medicaid and documents analyzing those proposals;
- Issue papers written by the Legislative Fiscal Bureau and DHFS on pharmaceutical reimbursement;
- OIG, GAO, CBO, and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;
- Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
- Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
- Issues, briefing, and concept papers on pharmaceutical reimbursement and costs by the Office of Strategic Finance;
- Written testimony of DHFS Secretary concerning pharmaceutical reimbursement;
- Emails between DHFS and the Governor's office concerning pharmaceutical reimbursement;
- Wholesaler data from state-run entities that purchase drugs directly from wholesalers;
- Documents comparing prices paid by Wisconsin Medicaid to those paid by other State entities;
- Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
- Documents related to the Governor's Pharmacy Reimbursement Commission;
- Budget documents from the Department of Administration related to pharmaceutical reimbursement;
- Audits of Wisconsin's Medicaid program;

- Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement;
 - Media articles discussing pharmaceutical reimbursement;
 - Agreements between Plaintiff and Merck, and agreements between Plaintiff and Providers.
3. Documents received, or expected to be received, from third-parties including, but not limited to, the following:
- Federal government;
 - Other states;
 - Third-parties subpoenaed in this case; and
 - Wholesaler data produced by third-parties.
4. Documents in the public domain.

Merck reserves its right to supplement this Interrogatory Answer.

INTERROGATORY NO. 10: Have you ever communicated directly with any official of the State of Wisconsin about the prices of any of your drugs, including AWP, WAC, or any other prices irrespective of the nomenclature used.

RESPONSE:

Merck objects to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Merck further objects to this Interrogatory because “any official of the State” is vague and undefined and because this Interrogatory is not limited by timeframe.

Subject to and with waiving its objections: Yes.

INTERROGATORY NO. 11: If the answer to Interrogatory No. 10 is yes, identify all such communications by date, time, and purpose, the persons who communicated this information, the

persons to whom this information was communicated, who said what to whom or who wrote what to whom, and identify any documents containing or describing the information communicated to Wisconsin officials.

RESPONSE:

Merck objects to Interrogatory No. 11 on the ground that it is overly broad and unduly burdensome. Merck further objects to this Interrogatory on the grounds that it is not limited by time frame, and is inconsistent with the scope of Plaintiff's responses to discovery.

Subject to and without waiving its objections, Merck agrees to undertake a reasonable search of the files of the offices or Merck employees with responsibility for communications with identifiable Wisconsin officials for the Merck drugs at issue and to produce business records from which the answer to Interrogatory No. 11 may be obtained.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 12: Produce each document identified in response to Interrogatory Nos. 7, 9 and 11.

RESPONSE:

Merck objects to Request No. 12 on the grounds that it is overly broad and unduly burdensome. Merck further objects to Request No. 12 to the extent it seeks documents that are publicly available or outside Merck's possession, custody, or control.

Subject to and without waiving its objections, Merck agrees to produce responsive, non-privileged Merck documents to the extent not publicly available or previously produced in a manner to be negotiated and agreed upon between the parties. Merck also directs Plaintiff to its own production and production by third-parties.

DOCUMENT REQUEST NO. 13: Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.).

RESPONSE:

Merck objects to Request No. 13 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Merck further objects because the Request purports to require information relating to "drugs" without specification as to which "drugs," thus including products that are not manufactured, marketed, or distributed by Merck and/or products not at issue in this litigation. Merck further objects to this Request to the extent it seeks information in the possession of Plaintiff, information equally or more available to Plaintiff than to Merck, or documents more appropriately sought from third parties. Merck also objects to the Request for "any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation," as not relevant, unduly burdensome, and overbroad. Merck also objects that Plaintiff reimbursed the Merck drugs at issue based on Direct Price prior to April 2000, and that wholesaler markups are accordingly not relevant to Plaintiff's claims against Merck.

Dated: this 15th of March, 2007.

By: s/Michael P. Crooks
Michael P. Crooks (State Bar #01008918)
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Attorneys for Defendant Merck & Co., Inc.

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF MONTGOMERY:

Harry J. Rieck, being fully sworn, deposes and says:

I am Senior Director of Hospital National Accounts Sales & Marketing of Merck & Co., Inc., a defendant in the above entitled action. I have read the foregoing Responses to Plaintiff's Interrogatories (Set No. 3) and subscribe them on behalf of Merck & Co., Inc.; the foregoing answers are based on personal knowledge, on information communicated to me by employees and agents of Merck & Co., Inc. acting within the scope and course of their employment, or on information obtained from the books and records of Merck & Co., Inc.; and I believe the foregoing Responses to Interrogatories are true and correct.

Harry J. Rieck

SWORN TO AND SUBSCRIBED before me, this 15 day of March 2007.

Nancy B. James
NOTARY PUBLIC

My Commission expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Nancy B. James, Notary Public
Upper Gwynedd Twp., Montgomery County
My Commission Expires Mar. 11, 2010
Member, Pennsylvania Association of Notaries

Certificate of Service

I, Robert B. Funkhouser, hereby certify that on this 15th day of March, 2007, a true and correct copy of the foregoing was served on all counsel of record by Lexis Nexis File & Serve[®].

s/ Robert. B. Funkhouser

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