

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

STATE OF WISCONSIN

Plaintiff,

v.

Case No. 06-C-0582-C

AMGEN, INC., *et al.*,

[Case No. 04-CV-1709 in the Circuit Court
of Dane County Wisconsin, Branch 7]

Defendants.

**DEFENDANT MERCK & CO., INC.'S FIRST SET
OF INTERROGATORIES TO THE STATE OF WISCONSIN**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Wisconsin Rule of Civil Procedure 804.08, defendant Merck & Co., Inc., (“Merck”), by its undersigned attorneys, hereby requests that the State of Wisconsin (“Plaintiff”) respond to the following Interrogatories no later than 30 days from the date of service.

DEFINITIONS

The following terms used in these Interrogatories, whether or not capitalized, are defined as follows:

A. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatories the greatest possible responsive information, and the terms “each,” “any,” and “all” shall mean “each and every.”

B. “AWP” or “Average Wholesale Price,” for the purpose of responding to these Interrogatories, means any figure or amount so categorized by any entity or periodically published by one or more pharmaceutical industry compendia.

C. “Beneficiary” means a Person for whom You provide health insurance coverage or any other health care or health benefits through any program.

D. “Direct Price” means, subject to Your response to Interrogatory No. 1, the pricing term used by any pharmaceutical industry compendia (including First DataBank) to refer to the list or catalog price at which a manufacturer offers its drugs for sale directly to Providers.

E. “Medicaid” means the jointly funded federal-state health insurance program enacted in 1965 under Title XIX of the Social Security Act to pay for the costs of certain healthcare expenses of eligible beneficiaries.

F. “Merck Subject Drugs” means all drugs You attribute to Merck and list in Exhibits D and E to Your Second Amended Complaint, unless the parties reach an agreement to limit discovery to certain drugs or the court orders that discovery be limited to certain drugs, in which case “Merck Subject Drugs” shall refer to those drugs only.

G. “Person” means any natural person or any business, corporation, partnership, proprietorship, association, organization, governmental entity, group of Persons, or other entity of whatever nature.

H. “Plaintiff,” “State,” “Wisconsin,” “You,” and “Your” refer collectively to the Plaintiff State of Wisconsin, its citizens, private payers that pay prescription drug costs of their members, the Governor’s office, the Wisconsin Legislative Fiscal Bureau, the Wisconsin legislature (including its committees and individual legislators), the Wisconsin Department of Justice, the State of Wisconsin Department of Health and Family Services, the State of Wisconsin Medicare Program, the State of Wisconsin Medicaid Program (including Medical Assistance, BadgerCare, and SeniorCare), any other Wisconsin Medical Assistance Program, any other administrative bodies, legislative agencies, successors and predecessors, and officials,

agents, employees, commissions, boards, divisions, departments, agencies, instrumentalities, administrators, and other Persons or entities acting on their behalf and/or involved in administering, overseeing, or monitoring any State program, including Medicaid, that provides reimbursement for pharmaceutical products.

I. “Provider” means any physician, pharmacist or other individual or entity that administers, dispenses or otherwise provides prescription drugs to any Beneficiary, or any Person to whom Plaintiff provides reimbursement for drugs dispensed to a Beneficiary.

GENERAL INSTRUCTIONS

A. These Interrogatories are not limited to information in the possession of the State of Wisconsin Medicaid Program, but include information in the possession of Wisconsin’s executive, administrative, and legislative offices and agencies.

B. The responses, under oath, to each Interrogatory shall include such information as is within your custody, possession, or control, or that of your attorneys, investigators, agents, employees, experts retained by you or your attorneys or other representatives.

C. Each Interrogatory shall be answered separately.

D. To the extent that the answer to any Interrogatory varies for any of the agencies included within the definition of the “State,” each agency should answer separately.

E. Unless otherwise specifically stated, the Interrogatories below refer to the period the alleged scheme began to the present. If it is necessary to refer to a prior time to fully answer an Interrogatory, please do so.

F. If you cannot answer an Interrogatory after exercising due diligence to secure the information to do so: (i) answer to the extent possible; (ii) state the basis for your inability to answer the remainder; (iii) state whatever information or knowledge you have concerning the

unanswered portion; and (iv) specify the type of information that you contend is not available to you, the reason the information is not available to you, and what you have done to locate such information.

G. If you decline to answer all or part of an Interrogatory based on a claim of privilege or immunity: (i) answer to the extent possible, and (ii) state the specific grounds for not answering in full and the facts you contend support your assertion of a privilege or immunity, providing sufficient information to enable the claim of privilege or immunity to be adjudicated.

H. If you claim that any specific Interrogatory is objectionable: (i) identify the portion of such Interrogatory claimed to be objectionable and state the nature and basis of the objection; (ii) identify any information withheld pursuant to such objection with sufficient particularity and in sufficient detail to permit the court to determine whether the information falls within the scope of such objection; and (iii) answer any portion of such Interrogatory that is not claimed to be objectionable.

I. When an Interrogatory asks You to “state the basis” of or for a particular claim, assertion, allegation, or contention: (i) identify each and every document (and, where pertinent, the section article, or subparagraph thereof) that forms any part of the source of Your information regarding the alleged facts or legal conclusions referred to by the Interrogatory; (ii) identify each and every communication that forms any part of or the source of Your information regarding the alleged facts or legal conclusions referred to by the Interrogatory; (iii) state separately the acts or omissions to act on the part of any Person that form any part of the Your information regarding the alleged facts or legal conclusions referred to in the Interrogatory; and (iv) state separately any other fact that forms the basis of Your information regarding the alleged facts or conclusions referred to in the Interrogatory.

J. These Interrogatories are continuing in nature as required by the Federal Rules of Civil Procedure, the Wisconsin Rules of Civil Procedure, or other rules governing this matter so as to require, whenever necessary, continuing supplementation of responses between the initial date set for response and the end of trial.

INTERROGATORIES

Interrogatory No. 1

Do You accept the definition of Direct Price as set forth in the Definitions section of these Interrogatories? If You do not accept that definition, please set forth here Your definition of “Direct Price” that the State accepts and answer the Interrogatories that follow consistently with Your definition.

Interrogatory No. 2

Separately as to each Request to Admit that Plaintiff does not wholly and unequivocally admit:

- a. state the basis for any denial or failure to admit;
- b. identify any Person with knowledge of the facts relevant to the denial or failure to admit and describe the facts of which they have knowledge;
- c. describe the reasonable inquiry you undertook to gain information to admit or deny the matter;

Interrogatory No. 3

Do You assert that Wisconsin Medicaid reimbursed Providers for Merck Subject Drugs based on AWP prior to the Second Quarter of 2000?

Interrogatory No. 4

For each calendar quarter prior to Second Quarter of 2000, please identify the basis or bases upon which You reimbursed Providers for each of the Merck Subject Drugs.

Interrogatory No. 5

Are You asserting claims for Merck Subject Drugs that were reimbursed based on Direct Price, rather than AWP?

If so,

- a. state the basis for such claims;
- b. describe Your understanding of the meaning of “Direct Price,” including any changes in your understanding over time;
- c. identify any person with knowledge of the basis for Your understanding; and
- d. identify any documents or communications that reflect the basis for Your understanding

Interrogatory No. 6

Why did You stop using Direct Price as the basis for reimbursing Merck Subject Drugs?

Interrogatory No. 7

For any Merck Subject Drug for which You assert any claim other than for reimbursement of a Provider by Wisconsin Medicaid, state the basis for each such claim, identify the Merck Subject Drugs to which the claim applies, and identify any person with knowledge of the factual basis for the claim.

Dated this 22nd day of December 2006.

By: /s/ Michael P. Crooks
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Certificate of Service

I, Robert B. Funkhouser, hereby certify that on this 22nd day of December, 2006, a true and correct copy of the foregoing Defendant Merck & Co., Inc.'s First Set of Interrogatories to the State of Wisconsin was served on all counsel of record by Lexis Nexis File & Serve®

/s/ Robert B. Funkhouser