

December 14, 2006

Via First Class Mail

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Re: *State of Wisconsin v. Amgen Inc., et al.*
Case No. 06 C 0582 C

Dear Counsel:

Enclosed please find Novartis Pharmaceuticals Corporation's Responses and Objections to Plaintiff State of Wisconsin's Second Set of Interrogatories.

If you have any questions, don't hesitate to call.

Sincerely,

SOLHEIM BILLING & GRIMMER, S.C.

By 
Jennifer L. Amundsen

JLA/erk
Enclosure

cc: All Counsel of record (*via LNFS; w/ enclosure*)
Atty. Christine Braun (*via email; w/ enclosure.*)
Atty. Kim Grimmer (*via email; w/ enclosure*)

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

STATE OF WISCONSIN,

Honorable Barbara B. Crabb

Plaintiff,

Case No. 06 C 0582 C

v.

AMGEN INC., et al.,

Defendants.

**NOVARTIS PHARMACEUTICALS CORPORATION'S RESPONSES AND
OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S SECOND SET OF
INTERROGATORIES**

Pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure, Defendant Novartis Pharmaceuticals Corporation ("NPC"), by its undersigned counsel, responds as follows to Plaintiff State of Wisconsin's ("Plaintiff") Second Set of Interrogatories served on or about November 10, 2006 (the "Interrogatories"):

GENERAL OBJECTIONS

NPC expressly incorporates all of the General Objections set forth below into each Response to the Interrogatories. Any specific objections provided below are made in addition to these General Objections, and a failure to reiterate a General Objection below does not constitute a waiver or limitation of that or any other objection. To the extent that NPC states that it will provide information or produce documents responsive to any Interrogatory, such statement is made subject to, and without waiver or limitation of, all specific objections stated in response to such Interrogatory and all General Objections set forth below.

A. By responding to these Interrogatories, NPC does not waive or intend to waive: (i) any objections as to the competency, relevancy, materiality, or admissibility as evidence, for any purpose, of any information or documents produced in response to these Interrogatories; (ii) the right to object on any ground to the use of the information or documents produced in response to these Interrogatories at any hearing or trial; (iii) the right to object on any ground at any time to a demand for further responses to these Interrogatories; or (iv) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

B. By responding to these Interrogatories, NPC does not waive or intend to waive any privilege, for any purpose, of any information or documents produced in response to these Interrogatories. In particular, NPC objects to each Interrogatory to the extent that it purports to seek information protected by the attorney-client privilege, work-product doctrine, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections.

C. By responding that it will produce information or documents in response to a particular Interrogatory, NPC does not assert that it has responsive information or documents or that such information or documents exist, only that it will conduct a reasonable search and make available responsive, non-privileged information or documents. No objection, or lack thereof, is an admission by NPC as to the existence or non-existence of any information or documents. Where NPC already has identified specific information or documents responsive to a particular Interrogatory and states that it will produce responsive information or documents “including” certain specifically identified information or documents, “including” means “including but not limited to.”

D. These responses are based on NPC’s investigation to date of those sources within its control where it reasonably believes responsive information or documents may exist.

NPC reserves the right to amend or supplement these responses in accordance with the applicable rules and Court orders with additional information, documents, or objections that may become available or come to NPC's attention, and to rely upon such information, documents, or objections in any hearing, trial or other proceeding in this litigation.

E. NPC objects to Plaintiff's "Definitions" to the extent that they purport to expand upon or alter NPC's obligations under the Federal Rules of Civil Procedure.

F. NPC objects to these Interrogatories to the extent that they seek information not contained in documents that currently exist at NPC and purport to require NPC to create, compile, or develop new documents.

G. NPC objects to these Interrogatories to the extent that they seek production of information or documents not in NPC's custody or control, publicly available information or documents, information or documents equally available to Plaintiff, or information or documents more appropriately sought from third parties to whom subpoenas or requests could be or have been directed.

H. Given the confidential and proprietary nature of the information or documents requested, NPC's provision of information or production of documents is subject to and in reliance upon the Protective Order entered in this action by the Circuit Court for Dane County, Wisconsin on November 29, 2005, prior to the removal of this action to the United States District Court for the Western District of Wisconsin on or about October 11, 2006.

I. The information and documents produced in response to these Interrogatories are for use in this litigation and for no other purpose.

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: NPC objects to the definition of “Average Manufacturer Price” and “AMP” as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language “the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report.” NPC further objects to this definition to the extent that it purports to set an accurate or legally significant definition of the term “AMP” or “average manufacturer price.”

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

OBJECTION: NPC objects to the definition of “Defined Period of Time” as set forth in Definition No. 2 to the extent that it seeks information or documents outside the limitations periods applicable to the claims in the Second Amended Complaint, or beyond the time period relevant to this litigation, on the grounds that such information is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. NPC’s production of any information or documents outside of the limitations periods applicable to the claims in the Second Amended Complaint in this action does not constitute a waiver by NPC of this objection. In addition, NPC objects to the definition of “Defined Period of Time” to the extent that it purports to require that NPC search for and produce documents generated or assembled either prior to January 1, 1997, which was the date NPC was created by operation of merger following approval by the Federal Trade Commission on December 17, 1996, or after September 30, 2003, the date on which the State of Nevada’s Amended Second Amended

Complaint in the action styled *In Re Pharmaceutical Industry Average Wholesale Price Litigation* (D. Mass.), MDL No. 1456, brought by the Nevada Attorney General and containing similar allegations against NPC to those alleged by Plaintiff, was publicly filed, thereby placing Plaintiff on notice of the allegations against NPC, on the ground that such documents are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence.

**SPECIFIC RESPONSES 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?

RESPONSE TO INTERROGATORY NO. 6: In addition to its foregoing General Objections and Objections to Definitions, NPC objects to Interrogatory No. 6 on the grounds that it purports to require NPC to take a position as to a legal conclusion (*i.e.*, whether Plaintiff was, or was not, at some unspecified time, prohibited from determining the AMPs for NPC drugs based on the rebates paid to Plaintiff by NPC) and then provide discovery with respect to such legal conclusion. As such, this Interrogatory targets legal analysis and, therefore, purports to require the provision of information that is protected from disclosure by the attorney-client and/or attorney work product privileges. In addition, NPC objects to this Interrogatory on the grounds that the phrase “could have determined” is vague and ambiguous, making it impossible for NPC to formulate a response. NPC further objects to this Interrogatory on the ground that it seeks information that is, as best, only marginally relevant to the causes of action and allegations asserted in Plaintiff’s Second Amended Complaint, which is devoid of any reference to AMP. Moreover, NPC states that, notwithstanding the marginal relevance of AMP to the claims in this

case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(e) who was deposed by Plaintiff on September 20, 2006 and provided testimony, based on her personal knowledge, about this topic. (See Oxner 9/20/06 Tr. at 148-50.) Notwithstanding the foregoing objections, and without waiver of the attorney-client and/or attorney work product privileges, NPC states that it is unaware of any federal law that prohibited the State of Wisconsin from determining 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.

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.

RESPONSE TO INTERROGATORY NO. 7: In addition to its foregoing General Objections and Objections to Definitions, NPC objects to Interrogatory No. 7 on the grounds that it purports to require NPC to produce information or documents pertaining to a legal conclusion (*i.e.*, whether Plaintiff was, or was not, at some unspecified time, prohibited from determining the AMPs for NPC drugs based on the rebates paid to Plaintiff by NPC) and then provide discovery with respect to such legal conclusion. As such, this Interrogatory targets legal analysis and, therefore, purports to require the provision of information that is protected from disclosure by the attorney-client and/or attorney work product privileges. In addition, NPC objects to this Interrogatory to the extent that it purports to require NPC to identify “all” documents described by the Interrogatory, and to the extent that it seeks information that is publicly available, on the grounds that it is unduly burdensome, cumulative, duplicative, and vexatious. NPC further objects to this Interrogatory on the ground that it seeks information that is, at best, only

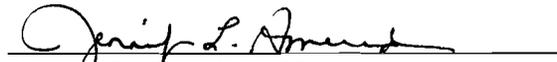
marginally relevant to the causes of action and allegations asserted in Plaintiff's Second Amended Complaint, which is devoid of any reference to AMP. Moreover, NPC states that, notwithstanding the marginal relevance of AMP to the claims in this case, NPC produced a knowledgeable witness pursuant to Wis. Stat. § 804.05(2)(e) who was deposed by Plaintiff on September 20, 2006 and provided testimony, based on her personal knowledge, about this topic. (See Oxner 9/20/06 Tr. at 148-50.)

Dated this 14th day of December, 2006.

Respectfully submitted,

Novartis Pharmaceuticals Corporation

By its attorneys,



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