

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

ABBOTT LABORATORIES, INC.,
et.al.,

Defendants.

PLAINTIFF'S RESPONSE TO AMGEN INC.'S FIRST INDIVIDUAL SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION DIRECTED TO PLAINTIFF¹

Pursuant to the Wisconsin Rules of Civil Procedure, the State of Wisconsin, by and through its undersigned counsel, respond to Amgen's discovery request as follows:

GENERAL OBJECTIONS:

1. The Plaintiff OBJECTS to the "definitions" which precede the discovery request to the extent that Defendants' "definitions" deviate from the ordinary and accepted meaning of the term.
2. The Plaintiff OBJECTS to those interrogatories below that can be answered with the production of the document to which the interrogatory indirectly applies. As such, pursuant to Wis. Stat. § 804.08(3), the Plaintiff elects to use the procedure set forth in Wis. Stat. § 804.09 where the interrogatory is nothing more than a demand for the production of documents.

3. The Plaintiff OBJECTS to those interrogatories below that seeks information prior to January 1, 1993. Because records prior to 1993 are outside the scope of this lawsuit, and because of logistical difficulties retrieving information or knowledge back beyond that period of time, those interrogatories are overbroad and producing responsive information is unduly burdensome.

4. The Plaintiff OBJECTS to the “instructions” in the following respects:

A. The definition offered in paragraph 11 results in making the request over burdensome. There are literally thousands of “agencies or programs” within the State. It is not possible to assume that inquiry can be made of every part of Wisconsin government in the absence of a specific direction as such.

B. The instructions demand that the Plaintiff answer the interrogatories with information possessed by legal counsel or consultants retained by the Plaintiff. The Plaintiff OBJECTS to the extent that the request demands the production of information protected by the attorney-client or work product privileges. The Plaintiff further OBJECTS on the ground that the Defendants have failed to establish the justification to demand discovery from Plaintiff’s litigation consultants or experts as required by Wis. Stat. § 804.01(d)2.

5. The Plaintiff OBJECTS to the instruction in paragraph number 5 on the ground that it is contrary to Wis. Stat. § 804.01(5).

Subject to the foregoing objections, the Plaintiff answers as follows:

¹ Amgen previously served at least three previous sets of interrogatories upon the plaintiff as part of a multi-defendant group.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each fact that supports each allegation against Amgen contained in your Second Amended Complaint.

ANSWER:

The Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad and unduly burdensome to identify each and every fact supporting every allegation in Plaintiff's Second Amended Complaint.

Notwithstanding this objection, please see the facts as stated in: (1) Plaintiff's answer to the defendants' first, second and third sets of interrogatories, (2) Plaintiff's production in response to defendants' first, second and third requests for production of documents, (3) the public records that the Plaintiff is aware the defendants have acquired from the Legislative Fiscal Bureau, the Wisconsin State Historical Society, and other state government public document repositories, (4) the data and other third party discovery shared with the defendants heretofore, and (5), the documents and interrogatory answers provided by defendant Amgen to the Plaintiff's requests.

In specific response to the instant question stated above, the Plaintiff alleged in its Second Amended Complaint that Amgen violated state law by providing First Data Bank Inc., or other price reporting service, with false and fraudulent prices knowing that the Plaintiff and other third party payors would use those false prices in reimbursing providers dispensing Amgen's prescription products. The core facts that support this allegation are as follows:

1. From the Medicaid claims data, (already given to the defendants), the defendant can compute when and for how much the Plaintiff reimbursed providers who dispensed Amgen products.
2. From records maintained by First Data Bank and Redbook, and from its own records, the defendant can determine what price or prices Amgen reported for its products and the price that these reporting services published.
3. From actual sales transaction data maintained by drug wholesale companies, (already given to the defendants), the defendant can compute a reasonable approximation of the true average wholesale cost of Amgen prescription pharmaceutical products.

These are the essential, and largely undisputed facts that support the Plaintiff's claims made in its Second Amended Complaint. For a more detailed and possibly illuminating discussion of these facts, and others, please see the Plaintiff's briefs in support of its motions for summary judgment as against defendant Sandoz and defendant Johnson & Johnson.

INTERROGATORY NO. 2:

Identify each document that supports each such fact identified in response to Interrogatory 1.

ANSWER:

Amgen already made this demand on the Plaintiff as part of an earlier joint request. Nonetheless, the Plaintiff has provided Amgen with all the relevant documents that support the allegations in the second amended complaint.

INTERROGATORY NO. 3:

Identify any and all damages you claim to have arisen from that allegations against Amgen contained in your Second Amended Complaint, and explain you methodology in calculating these alleged damages for each Amgen product.

ANSWER:

The basic formula or method of computing damages has already been explained to the defendants in response to an earlier production, including by incorporation, to Amgen. The general formula for Medicaid damages is calculated as the difference between what the Plaintiff reimbursed providers who dispensed Amgen products and what the Plaintiff should have paid had Amgen truthfully reported an accurate average wholesale price. A precise calculation of Medicaid damages pertaining to Amgen has not been calculated in part due to recent discussions concerning Amgen's ownership of and responsibility for the drug Enbrel. Furthermore, the damages are being calculated by experts and/or consultants who have not completed their work.

INTERROGATORY NO. 4:

Identify all communications that you had with Amgen, including but not limited to communications relating to pricing or reimbursement for any of its products, rebates and formulary or preferred status.

ANSWER:

The Plaintiff OBJECTS to this request on the ground that "you" is ambiguous. Amgen may have "communicated" with person, i.e. individuals of which it is not reasonably possible to confirm. Moreover, Amgen may have communicated with one or more state employees or government officials through surrogates, i.e. lobbyist or trade group, such that it is not reasonably possible to confirm. Notwithstanding these objections, the Plaintiff will produce to

Amgen documents that are in the possession of DHFS and which were received from Amgen. In fact, defendants' paralegal has already reviewed this information and marked pages for copying. Plaintiff OBJECTS to the request to the extent that it seeks documents maintained by entities other than part of the State of Wisconsin. Amgen may have communicated with EDS or Provider Synergies, both of whom have received a subpoena from the defendants, including Amgen.

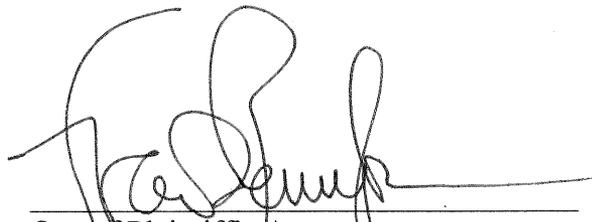
INTERROGATORY NO. 5:

Identify where, if anywhere, you defined AWP or WAC, and how they were defined.

ANSWER:

WAC and AWP are acronyms for "wholesale acquisition cost" and "average wholesale price". These terms are defined by their plain meaning which can be found in any publicly available dictionary.

Dated this 11th day of July, 2007.



One of Plaintiff's Attorneys
FRANK D. REMINGTON
Assistant Attorney General
State Bar #1001131

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3542