

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

AMGEN INC., et. al.,

Defendants.

PLAINTIFF'S RESPONSE TO SANDOZ INC.'S FIRST SET OF
INTERROGATORIES

GENERAL OBJECTIONS:

1. The Plaintiff OBJECTS to the "definitions" to the extent that these "definitions" deviate from the ordinary and accepted meaning of the term. In particular, the Plaintiff specifically OBJECTS to the following "definitions."

a. Plaintiff OBJECTS to definition number 2 on the ground that an "average wholesale price" is not whatever the Defendant publishes in some book, but in accordance with its plain meaning, it is the average of the wholesale prices charged by the manufacturer in the wholesale market.

b. Plaintiff OBJECTS to definition number 5 on the ground that a "direct price" is not whatever the Defendant publishes in some book, but in accordance with its plain meaning, it is the price a retail

purchaser pays when the retailer purchases the product by contract directly from the manufacturer.

c. Plaintiff OBJECTS to definition numbers 3, 4, 6, 14, 15 and the second number "20" listed under the definition section on the ground that Defendants' suggested definitions are overbroad. To comply with this "definition" would be to make every Request over burdensome.

d. Plaintiff OBJECTS to definition number 21 on the ground that definition is not only inconsistent with ordinary usage but that it is not possible to answer a demand served upon it expecting that a response can be given from all the persons or entities described in this "definition." To comply with this "definition" would be to make every Request over burdensome.

2. The Plaintiff OBJECTS to these Requests to the extent they demand documents predicated on "what the Plaintiff knew," or "relied on," or documents about when the Plaintiff became "aware" of an act, event, fact or occurrence or when and/or why the Plaintiff did not become "aware" of something or some event, on the ground that all Requests asked in that regard demand irrelevant information, are unduly burdensome and are not likely to lead to the discovery of relevant and admissible evidence. Furthermore, the State of Wisconsin is not a person so as to facilitate the determination of what it "knew" or did not "know." Not only is this purported "knowledge" of the government not relevant, but it is not identifiable. Notwithstanding this objection, the Plaintiff has herein and previously produced documents responsive to the Requests below. The Defendants may draw whatever inferences they desire from these documents

including what a natural person associated with the document knew or might not have known.

3. The Plaintiff OBJECTS to these Requests, and in particular the instructions numbered 11 and 12, to the extent that they demand the production of documents that are as easily and readily available to the Defendants as they are to the Plaintiff.

4. The Plaintiff OBJECTS to instruction number 13 on the ground that it is inconsistent with Wis. Stat. § 804.01(5).

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

INTERROGATORIES

INTERROGATORY NO. 1:

For each Subject Drug, identify the initial MAC price applicable to each NDC and every change and date of the change to the applicable MAC price thereafter.

ANSWER:

The Plaintiff only maintains a pricing file with MAC prices going back ten segments. This data will be provided to the Defendant

Alternatively, the Plaintiff has previously provided this Defendant with the claims data. That data shows what the Plaintiff paid for this Defendant's pharmaceutical products. The Defendant can compare the amount paid with the published AWP to determine whether payment was instead based on the MAC.

INTERROGATORY NO. 2:

For each Subject Drug, provide the specific calculations and information used to determine the initial MAC price applicable to each NDC and specific calculations used to determine every change in the applicable MAC price thereafter. This Interrogatory is addressed to Plaintiff whether it currently has such information or whether it must obtain such information from any of its agents, including, but not limited to Electronic Data Systems Corporation and/or First DataBank, Inc.

ANSWER:

The Plaintiff OBJECTS to this interrogatory to the extent it suggests that the Plaintiff must obtain information from EDS or one of EDS's subcontractors to acquire information not otherwise in the possession of the State of Wisconsin on the ground that Defendant has equal access to information from EDS and FDB. The Plaintiff additionally OBJECTS to this Request on the ground that it has already been asked and answered. As to the calculation and information relating to setting the MAC by the DHFS Pharmacy Consultant, please see the deposition transcripts of Collins, Rowlands, and Boushon.

INTERROGATORY NO. 3:

Do you contend the AWP or WAC for a Subject Drug had an effect in Your setting the MAC applicable to that Drug? If yes, for each instance, Identify:

- (a) The Subject Drug by NDC and applicable MAC;
- (b) The AWP or WAC that was used by You in setting the MAC;
- (c) All other prices considered in setting the MAC; and

- (d) How the AWP or WAC for the Subject Drug was used in setting the MAC and affected the MAC.

ANSWER:

The Plaintiff OBJECTS to this Request on the ground that it has already been asked and answered. The MAC price was set by at least three different individuals. The Defendant has deposed all three individuals and asked each of them this question. Therefore, please see the deposition transcripts of Collins, Rowlands, and Boushon.

INTERROGATORY NO. 4:

Describe in detail the methods You have used to determine reimbursement amounts for each Subject Drug by NDC (*e.g.*, MAC, FUL, EAC, AWP, WAC, Direct Price, AMP), how and when those methods have changed from 1993 to the present and which prices were considered in determining such amounts.

ANSWER:

Plaintiff OBJECTS to this interrogatory on the ground that the term “methods” is ambiguous. The Plaintiff additionally OBJECTS to this Request on the ground that it has already been asked and answered. For a description of the reimbursement system, please see the deposition transcripts of Vavra and Gray. Additionally, the Defendants may analyze the claims data as against other known pricing information to determine the basis for reimbursement for any individual drug at any particular point in time. Lastly, please see Plaintiff’s answer to Defendants’ Second Set of Interrogatories number 11

INTERROGATORY NO. 5:

Describe in detail Your understanding of the meaning of AWP, WAC and Direct Price and Your basis for that understanding.

ANSWER:

WAC and AWP are acronyms for “wholesale acquisition cost” and “average wholesale price”. “Direct Price” is a price paid by a direct purchaser. These terms are defined by their plain meaning which can be found in any publicly available dictionary.

INTERROGATORY NO. 6:

Describe in detail every instance in which You allege Sandoz used financial incentives to hide real drug prices of the Subject Drugs, as alleged in Paragraphs 56 and 88 of the Second Amended Complaint, and for each instance:

- (a) Identify the date of the alleged act, and the individuals and drugs involved;
- (b) Identify the Provider to whom the alleged inducement(s) was (were) provided; and
- (c) Identify the inducement(s) (i.e., the free goods, educational grants, or other financial incentive(s) that were allegedly offered).

ANSWER:

Plaintiff OBJECTS to this interrogatory on the ground that it is unduly burdensome and because the information responsive to the interrogatory can be derived from documents produced by Sandoz to Plaintiff. Subject to, and without waiving this objection, Plaintiff states that information responsive to this interrogatory is contained in the documents produced by Sandoz to Plaintiff as well as the deposition testimony of

Sandoz's corporate designees Hector Armando Kellum and Ronald Hartmann and former pricing director Kevin Galownia. The incentives used by Sandoz include various forms of rebates, discounts, chargebacks, and free goods and have been provided to Sandoz's customers, including wholesalers, retail pharmacies, long-term care pharmacies, mail-order pharmacies and other providers who were reimbursed by the Wisconsin Medicaid program for Sandoz's drugs.

INTERROGATORY NO. 7:

Describe in detail every instance in which, You allege, Sandoz made a representation to You concerning AWP, WAC, or Direct Price, which You allege to be false or inflated, describing for each instance the false representation, the Subject Drugs and individuals involved, and what the "true" or accurate representation should have been and how such "true" or accurate price should have been determined.

ANSWER:

Plaintiff OBJECTS to this interrogatory on the ground that it is unduly burdensome and because the information responsive to the interrogatory can be derived from documents produced by Sandoz to Plaintiff. Subject to, and without waiving this objection, Plaintiff states that Sandoz reported WACs and AWPs to First DataBank, Red Book and Medispan for all of the subject drugs intending that First DataBank, Red Book, and Medispan publish the identical WACs and AWPs. Sandoz knew that First DataBank, Red Book, and Medispan published the identical WACs and AWPs reported by Sandoz. Accordingly, Sandoz controlled the WACs and AWPs published by these pricing

compendia. Sandoz knew that the Wisconsin Medicaid program would rely on these published prices in its reimbursement formula that sought to estimate acquisition cost. These prices were not truthful. Sandoz's reported WACs did not represent the true prices paid by wholesalers to Sandoz because they did not include discounts, rebates, chargebacks, free goods and other. Sandoz's reported AWP's did not represent the true average prices charged by wholesalers to their customers. Stated differently, the reported AWP's did not represent the true average acquisition costs of pharmacies and other Medicaid providers in the retail class of trade. Sandoz was aware of the true WACs and AWP's through, among other sources, its contracts with customers.

INTERROGATORY NO. 8:

State the basis for Your claim that Sandoz used discounts, rebates and other inducements and concealed true market pricing information to avoid detection of the fraudulent pricing scheme as alleged in Paragraphs 34, 53-56, 58-59, 65 and 88-89 of the Second Amended Complaint.

ANSWER:

See answer to interrogatory 6. In addition, Sandoz's contracts with its customers contained confidentiality clauses requiring that the terms of the contracts, including the terms relating to prices, discounts, and rebates, remain confidential.

INTERROGATORY NO. 9:

For each Subject Drug, set forth, transaction by transaction, by year, by NDC number and by Provider, (a) the total number of units for which reimbursement was paid by You; (b) the ingredient cost and dispensing fee and any other amount You paid in reimbursement; (c) the prices used to determine the amount You paid in reimbursement (including prices for other manufacturers' therapeutically equivalent drugs to each Subject Drug considered as part of that determination); (d) all rebates received by You; (e) Your cost, net of rebates, supplement rebates, federal contribution, co-payments, and any other funds received by You directly or indirectly in connection with Your reimbursement for that Drug; (f) the amount by which You contend You overpaid for each Subject Drug as a result of Sandoz' conduct as alleged in Paragraphs 60, 65-66, 78, 82, 86, 91 and 95 of the Second Amended Complaint; and (g) the calculations You use to support Your contentions. For each Provider Identified, state whether You have, by action, administrative proceeding, or otherwise, sought to recover from such Provider alleged overpayments of reimbursement amounts, and if so, Identify each such action, proceeding, or other recovery effort; and if not, state the basis for your failure to do so.

ANSWER:

Questions (a), (b), and (c) can be derived from the claims data already provided to Sandoz. The Plaintiff OBJECTS to that part of (c) which asks the Plaintiff to determine what drugs would be at the time of dispensing "therapeutic equivalents" on the ground that it would be over burdensome. Notwithstanding this objection, Sandoz can use the claims data previously referenced and already provided to determine its own answer to this question.

As to (d), please see Plaintiff's answer to Sandoz's Request to produce number 23.

As to (e), the Plaintiff OBJECTS to this Request as it relates to "co-payments" on the ground that within the context of the Medicaid program and "the cost" to the State, the term is ambiguous. Notwithstanding this objection, the Defendant has all the necessary information, previously provided to it by the Plaintiff, to make these calculations.

As to (f) and (g), the Plaintiff has provided the claims data indicating what the State of Wisconsin paid. The Plaintiff has also given to this Defendant data the Plaintiff acquired from wholesalers. The Plaintiff has not finished its calculation of the overpayment. The Defendant can make its own calculation of the overpayment by deducting from what the Plaintiff paid the real and truthful average of the wholesale price of Defendant's products. Lastly, please see Plaintiff's answer to Defendants' Second Set of Interrogatories number 21.

INTERROGATORY NO. 10:

Describe in detail the basis for Your claim in Paragraphs 40-41 of the Second Amended Complaint that Sandoz marketed the "spread" to one or more Providers, identifying the statement or activity at issue, the Subject Drugs and individuals involved, when the activity occurred and the result of such activity.

ANSWER:

Plaintiff objects to this interrogatory as unduly burdensome to the extent it seeks information about every instance in which Sandoz marketed the spread. Plaintiff further

objects on the ground that the term “marketed the spread” is undefined. Subject to, and without waiving these objections, Plaintiff states that Sandoz marketed the spread every time it provided a prospective or actual purchaser with both the Sandoz contract price and the published AWP for Sandoz’s drugs. Sandoz knew that a purchaser’s profit was the difference between the purchaser’s true acquisition cost and the reimbursement it received from a third party payor. Because Sandoz knew that many third party payors, including the Wisconsin Medicaid program, based their reimbursement on Sandoz’s published AWP, Sandoz knew that by providing a prospective or actual purchaser with both the contract price and the AWP, the provider could calculate or determine the potential profit to make on Sandoz’s drugs. Moreover, Sandoz knew of the importance of the spread to its retail customers and in some instances discussed the spread with such customers. Evidence of such discussions is contained in documents produced by Sandoz to Plaintiff in this case. One such document is BATES SANDOZWIS 0388516-388519 in which Sandoz (then known as Geneva) advised a customer that “We offer substantial margins between acquisition cost and AWP for your profit potential.”

INTERROGATORY NO. 11:

Describe in detail any communication between You and Sandoz concerning AWP, WAC, drug pricing, acquisition costs or any other cost information, including but not limited to any Request by You for any such information.

ANSWER:

The Plaintiff OBJECTS to this Request on the ground that it has already been asked and answered. Please see Plaintiff’s answer to Defendants’ Second Request for

Production of Documents numbers 30 and 31 and the documents previously produced to all Defendants containing correspondence between DHFS and the Defendant.

INTERROGATORY NO. 12:

Identify all employees and agents of the State who were personally misled by each and every misrepresentation made by Sandoz that You claim to be false with respect to the actual prices of Sandoz' products.

ANSWER:

The Plaintiff OBJECTS to this interrogatory on the ground that it is over burdensome and not likely to lead to the discovery of relevant and admissible evidence. The issue in this law enforcement action is not whether some state employee was "misled," but rather whether Defendant Sandoz made false, fraudulent or deceptive statements.

INTERROGATORY NO. 13:

Describe in detail each category of damages for which You seek recovery from Sandoz in this action, including the amount of damages, the methodology used to calculate or derive that amount, and all facts and documents upon which You rely to support your claims as to the nature and extent of each category of damages.

ANSWER:

The Plaintiff OBJECTS to this Request on the ground that it has already been asked and answered. The Plaintiff has repeatedly articulated the methodology it intends to employ to calculate the amount to be recovered from each of the Defendants. The

precise amount to be recovered has not yet been computed. Please see Plaintiff's Response to Defendants' Second Set of Interrogatories numbers 14 and 15; Plaintiff's Response to Defendants' Second Request for Production of Documents number 51, and Plaintiff's Supplemental Response to Defendants' First Set of Interrogatories numbers 1, 3-6, 8 and 14.

INTERROGATORY NO. 14:

For each Subject Drug, state what information You had concerning any price published, available or paid for the Subject Drugs, including, without limitation

- (a) The sources of such information, including fields or types of information You obtained for such drugs from First DataBank, Inc. Redbook or any other pricing service;
- (b) Identify the persons knowledgeable concerning the price information available to You;
- (c) Any changes over time in the information.

ANSWER:

The Plaintiff OBJECTS to (c) above on the ground that it is unclear what it is being asked. Pricing information for the Wisconsin Medicaid Program was provided to EDS through one of its subcontractors FDB. Presumably FDB is knowledgeable about the prices it provided to EDS. The individuals who has served as the State's contact at EDS for the Medical Assistance Programs is Mark Gajewski

INTERROGATORY NO. 15:

If You contend that any Federal Upper Limit for a Subject Drug was inflated, separately for each such FUL, state the basis for such claims, including the date, place and manner of any conduct by Sandoz that You claim gives rise to such claims, Identify the persons with knowledge of the basis of Your contention and Identify what the Federal Upper Limit should have been.

ANSWER:

Plaintiff has not yet completed its analysis of the Federal Upper Limits applicable to Sandoz's drugs during the relevant time period. When Sandoz reported a fraudulent WAC that was used to calculate the FUL, Sandoz also caused the FUL to be inflated and therefore false. (*See* answer to interrogatory 7). In such cases, and where the Wisconsin Medicaid program reimbursed providers based on that FUL, Sandoz's false WAC caused the Wisconsin Medicaid program to overpay not just for Sandoz's drug, but for all generic drugs that were subject to that FUL. Moreover, had Sandoz reported true AWP's for its drugs that were subject to FULs, the Wisconsin Medicaid program's reimbursement for such drugs would not have been based on the FUL, but rather on estimated acquisition cost (because the estimated acquisition cost would be less than the FUL).

INTERROGATORY NO. 16:

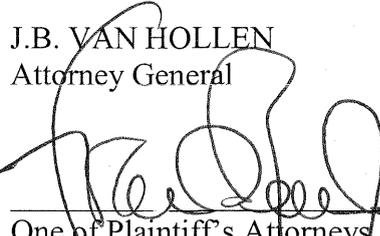
Identify and quantify each instance in which Sandoz increased the market share for a Subject Drug by any action alleged in Paragraph 99 of the Second Amended Complaint.

ANSWER:

A specific calculation of increased market share by Sandoz as a result of its unlawful activity has not been made.

Dated this 30th day of November, 2007.

J.B. VAN HOLLEN
Attorney General

A handwritten signature in black ink, appearing to read 'Frank D. Remington', is written over a horizontal line.

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