

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

AMGEN INC., *et. al.*,

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT TAP PHARMACEUTICAL PRODUCTS INC.'S
FIRST¹ SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO THE STATE OF WISCONSIN

Pursuant to the Wisconsin Rules of Civil Procedure, the State of Wisconsin, by and through its undersigned counsel, respond to TAP Pharmaceutical Product Inc.'s "First Set of Interrogatories" 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 the "instructions" in the following respects:

¹ TAP has previously submitted at least eight separate requests to produce documents and interrogatories as part of a larger defendant group. This is the first set submitted individually by defendant TAP.

A. Paragraph A intrudes on the attorney client and attorney work product privilege.

B. Paragraph J is contrary to Wis. Stat. § 804.01(5).

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

INTERROGATORIES

INTERROGATORY NO. 1:

Did You use or consider TAP ASP Information provided to You as part of the TAP 2001 Settlement?

ANSWER:

The Plaintiff OBJECTS to the term “consider” on the ground that it is vague and ambiguous. Notwithstanding this objection, the requirement that TAP submit prices to Wisconsin was part of the consideration underlying the civil settlement agreement and an obligation that TAP assumed as a signatory to that agreement. Beyond receiving the information provided to the Plaintiff by TAP as part of this settlement, no other use has been made of the information in the operation of the State Medicaid Program.

INTERROGATORY NO. 2:

What individuals or agencies were part of the decision whether to use or consider TAP ASP Information in evaluating, revising, or setting payments to Providers under Plaintiff’s Medicaid Program?

ANSWER:

The Plaintiff OBJECTS to the term “consider” on the ground that it is vague and ambiguous. Notwithstanding this objection, it is not known whether there was any occasion in which a person employed within the Department of Health and Family Services was asked to use the information that TAP provided to the State of Wisconsin for the purpose of setting payments to providers as part of the Medicaid program.

INTERROGATORY NO. 3:

Describe how TAP ASP Information has been used, relied upon, referenced, or considered in evaluating, revising, or setting payments to Providers under Plaintiff’s Medicaid Program.

ANSWER:

It does not appear that the TAP ASP Information was used in evaluating, revising, or setting payments to Providers under Plaintiff’s Medicaid Program.

INTERROGATORY NO. 4:

When, if ever, did You begin to use, rely upon, reference, or consider TAP ASP Information in evaluating, revising, or setting payments to Providers under Plaintiff’s Medicaid Program?

ANSWER:

See answer to no. 3 above.

REQUEST FOR DOCUMENTS TO BE PRODUCED

REQUEST 1:

All documents referred to or used in responding to the Interrogatories below.

ANSWER:

No documents are referred above and the only documents possibly used in responding would be the ones that TAP sent to the plaintiff.

REQUEST 2:

Documents concerning Your receipt, use or consideration of TAP ASP Information.

ANSWER:

See response to request no. 1.

REQUEST 3:

Documents concerning Your decision whether to use or consider TAP ASP Information.

ANSWER:

See response to request no. 1.

REQUEST 4:

Documents concerning or describing how TAP ASP Information has been used, relied upon, referenced, or considered in evaluating, revising, or setting payments to Providers under Plaintiff's Medicaid Program.

ANSWER:

See response to request no. 1.

REQUEST 5:

Documents demonstrating or relating to Communications between You and the National Association of Medicaid Fraud Control Units ("NAMFCU") concerning the TAP 2001 Settlement (or any investigation or inquiry that preceded the 2001 Settlement), including internal analyses, memoranda, reports, and reviews related to communications with NAMFCU.

ANSWER:

Plaintiff OBJECTS to this request on the ground that communications with the National Association of Medicaid Fraud Control Units are privileged communications, attorney work product and are protected from disclosure under the deliberative process privilege. The 2001 settlement with defendant TAP arose from the federal criminal investigation and prosecution of TAP.

REQUEST 6:

Documents relating to Your consideration, evaluation, or analysis of the TAP 2001 Settlement.

ANSWER:

See answer to Request No. 5 above.

REQUEST 7:

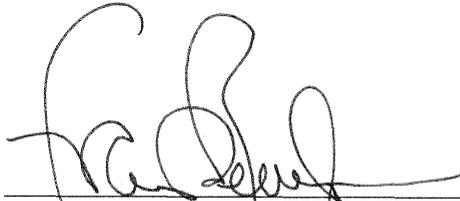
Documents relating to or describing reimbursement methodologies utilized by Plaintiff for the TAP Subject Drugs.

ANSWER:

The Plaintiff OBJECTS to this request on the ground that the term “reimbursement methodologies” is ambiguous. Notwithstanding this objection, to the extent it seeks documents relevant to the methodology for calculating the damages in this case, the Plaintiff has previously produced to defendant TAP all of the claims data maintained by the Department of Health and Family Services on the fee for service side. The Plaintiff has already produced to TAP all of the encounter data on the managed care side. Additionally, the Plaintiff has produced data acquired from pharmaceutical wholesale companies. The calculation of the damaged sought from the

defendants, including TAP, will be made by one or more experts and will be produced at an appropriate time and when finished.

Dated this 11th day of July, 2007.

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

One of Plaintiff's Attorneys
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