
STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

AMGEN INC., et. al.,

Defendants.

**PLAINTIFF'S RESPONSE TO ASTRAZENECA PHARMACEUTICALS LP'S
AND ASTRAZENECA LP'S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND FIRST SET OF INTERROGATORIES DIRECTED TO
PLAINTIFF***

1. Plaintiff's answers and objections are made solely for the purposes of this action. Plaintiff's answers are subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such Interrogatory were asked of, or statements contained herein were made by, a witness present and testifying in Court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Plaintiff's answers shall not be deemed to constitute an admission:

* AstraZeneca has submitted five prior discovery requests as part of the Defendant group. These interrogatories and requests are really at least the sixth set to be served upon the Plaintiff.

- a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or
- b. that any statement or characterization in the Requests is accurate or complete.

3. Plaintiff's answers are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and Plaintiff reserves the right to amend its answers and to raise any additional objections it may have in the future and to demand for further responses. These answers were made based upon the typical or usual interpretation of words contained in the Requests, unless a specific definition or instruction has been provided and/or agreed upon.

4. Plaintiff's answers to the Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

5. Plaintiff's answers to the Requests are submitted without prejudice to Plaintiff's right to produce evidence of any subsequently discovered fact. Plaintiff accordingly reserves its right to provide further objections and answers as additional facts are ascertained.

GENERAL OBJECTIONS

Plaintiff makes the following General Objections, which apply to each and every one of the Requests and are therefore not repeated but are incorporated by reference in each and every specific response below:

1. Plaintiff objects to AstraZeneca's "Definitions" to the extent AstraZeneca intends to expand upon or alter Plaintiff's obligations under Wisconsin statutes in

responding to the Requests. Plaintiff will comply with Wisconsin statutes in providing its answers to the Requests.

2. Plaintiff objects to the definition of the word “Document(s)” on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those imposed by the applicable Wisconsin statutes. Plaintiff further objects to the definition to the extent that it purports to require Plaintiff to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on backup tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by Plaintiff as an accommodation to AstraZeneca shall not be deemed to constitute a waiver of this objection.

3. Plaintiff objects to the Requests to the extent they are vague and ambiguous, unduly burdensome, overly broad, oppressive, duplicative, or seek documents that are neither relevant to the issues presented in this case nor reasonably calculated to lead to the discovery of admissible evidence. In particular, Plaintiff objects to all requests and interrogatories relating to either the federal rebate or the supplemental rebate on the ground that such information is not relevant and is not likely to lead to the discovery of relevant and admissible evidence.

4. Plaintiff objects to the Requests to the extent they seek information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-

client, consulting expert, investigative privileges, any common interest or joint defense privilege or agreement, or any other applicable privilege or protection.

5. Plaintiff objects to the Requests to the extent they call for information not within Plaintiff's possession, custody or control. In responding to the Requests, Plaintiff has undertaken or will undertake a reasonable diligent and reasonable search of documents and information within Plaintiff's current possession, custody or control.

6. Plaintiff objects to the Requests to the extent they call for information that is confidential, proprietary, and/or a trade secret of a third party or is protected from disclosure by an agreement with a third-party.

7. Plaintiff objects to the Requests to the extent they seek disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of AstraZeneca.

8. Plaintiff objects to the Requests to the extent that they seek to impose discovery obligations that are broader than, or inconsistent with, its obligations under Wisconsin statutes.

9. Plaintiff objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests. Plaintiff's willingness to respond to any particular Interrogatory Request is not intended to mean that Plaintiff agrees with any implications or any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests or that they are relevant to this action.

10. No objection made herein, or lack thereof, shall be deemed an admission by Plaintiff as to the existence or nonexistence of any information.

11. The information supplied herein is for use in this litigation and for no other purpose, and is supplied subject to that express limitation.

SPECIFIC OBJECTIONS

Plaintiff makes the following Specific Objections:

1. Defendant's definition of "person" is erroneous in that a governmental entity is not "person" as that term is defined under Wisconsin law.
2. Defendant's definition of "provider" is overbroad.
3. Defendant's definition of "relevant time period" is inconsistent with the "relevant time period" stated by this Defendant in response to the Plaintiff's discovery.
4. Defendant's definition of "state entity" is erroneous and ambiguous. County health departments are not part of State government.
5. Defendant's definition of "WAC" is erroneous and self serving. The wholesale acquisition cost is the cost to the wholesaler to acquire a product not "any price represented as a price"
6. Defendant's definition of the terms in paragraph "AA" are overbroad and ambiguous.
7. Defendant's instruction E is inconsistent with Defendant's response to Plaintiff's discovery.
8. Defendant's instruction G is contrary to Wis. Stat. § 804.01(5).

SPECIFIC REQUESTS FOR DOCUMENTS TO BE PRODUCED

REQUEST NO. 1:

All Documents referred to or relied upon in responding to the Interrogatories below.

ANSWER:

If applicable, see below.

REQUEST NO. 2:

All Documents concerning any requests by You for any information concerning the prices, costs, or reimbursement for AstraZeneca's Subject Drugs, including, but not limited to, contracts, memoranda of understanding, agreements, Provider contracts, or Communications concerning the calculation, monitoring, or payment of claims for AstraZeneca's Subject drugs.

ANSWER:

Please see Plaintiff's Response to Defendants' Second Request for Documents no. 23.

REQUEST NO. 3:

All Documents concerning Medicaid Rebates, discounts, or reimbursements for AstraZeneca's Subject Drugs, including, but not limited to, all Documents concerning unit rebate amounts; all rebate invoices, all transactional data; all Communications between You and the federal government concerning utilization and "per-unit" rebate

data; all Communications between You and AstraZeneca concerning Medicaid Rebates; and all memoranda, analyses, or other Documents in Your possession concerning Medicaid Rebates, discounts, or reimbursements for AstraZeneca's Subject Drugs.

ANSWER:

Please see Plaintiff's Response to Defendants' Second Request for Production of Documents no. 25 and 30.

REQUEST NO. 4:

All Documents concerning any negotiations by You or on Your behalf with AstraZeneca concerning Medicaid reimbursement, discounts, or pricing of pharmaceutical products.

ANSWER:

Please see Plaintiff's Answer to Defendants' Second Request for Production of Documents no. 31.

REQUEST NO. 5:

All Documents concerning the actual or estimated losses, damages, or alleged overpayments made by You as a result of AstraZeneca's alleged misconduct.

ANSWER:

Please see Plaintiff's Answer to Defendants' Second Request for Production of Documents no. 51.

REQUEST NO. 6:

All Documents constituting or concerning any requests, surveys, or other efforts conducted by You, or on Your behalf, to determine the actual acquisition costs of AstraZeneca's Subject Drugs to Providers.

ANSWER:

Please see Plaintiff's Answer to Defendants' Second Request for Production of Documents no. 55. 13(c), 14, 20, 21.

REQUEST NO. 7

All Documents supporting, refuting, or otherwise concerning Your claim, alleged in paragraph No. 40 of the Second Amended Complaint, that AstraZeneca reported "false and inflated AWP's" for its drugs.

ANSWER:

Plaintiff's investigation is ongoing. The Defendant has been previously provided with documents establishing that AstraZeneca reported a false and fraudulent price to First Data Bank. Additionally, please refer to the documents of record in the United States District Court for the District of Delaware in which this Defendant pleaded guilty to criminal and civil charges of health care fraud.

REQUEST NO. 8:

All Documents supporting, refuting, or otherwise concerning Your claim, alleged in paragraph No. 41 of the Second Amended Complaint, that AstraZeneca markets its

products on the basis that the “spread” for its drugs is higher than that of competing drugs.

ANSWER:

The Defendant has produced documents to the Plaintiff corroborating this allegation. Please see Defendant’s production of documents to the Plaintiff referencing marking Defendant’s product Zoladex. Additionally, please see the deposition of Roger Hyde, page 303 relating to Defendant’s drug Zornig.

REQUEST NO. 9:

All Documents supporting, refuting, or otherwise concerning Your claim, alleged in paragraph No. 49 of the Second Amended Complaint, that AstraZeneca has “illegally and deceptively misrepresented and inflated the wholesale acquisition cost (‘WAC’)” of its drugs.

ANSWER:

Plaintiff’s investigation is ongoing. The Defendant has been previously provided with documents establishing that it reported a false and fraudulent price to First Data Bank and that that this fraudulent act violated Wisconsin law.

REQUEST NO. 10:

All Documents supporting, refuting, or otherwise concerning Your claim, alleged in paragraph Nos. 52 through 56 of the Second Amended Complaint, that AstraZeneca has concealed the “true price” of its drugs from You.

ANSWER:

Plaintiff's investigation is ongoing. The Defendant has been previously provided with documents establishing that it reported a false and fraudulent price to First Data Bank and thus failed to report an accurate true price upon which Plaintiff could use to estimate the retailer's acquisition cost of Defendant's drugs. See also Defendant's contracts with providers.

REQUEST NO. 11:

All Documents concerning any alleged misrepresentation or omission by AstraZeneca which You claim You relied upon with respect to reimbursing for AstraZeneca's Subject drugs.

ANSWER:

The Plaintiff relied on the prices the Defendant published or caused to be published by First Data Bank. This information has been previously provided to this Defendant.

REQUEST NO. 12:

All Documents concerning ASP data provided to the State by AstraZeneca, including, but not limited to, Documents reflecting, concerning, or discussing Your receipt of this data, and Documents concerning or describing how this data has been used, relied upon, or considered in evaluating, revising, or setting payments to Providers under Your Medicaid Program.

ANSWER:

Please see Plaintiff's response to Defendants' Fourth Set of Interrogatories and Defendants' Fourth Request for Production of Documents.

REQUEST NO. 13:

All Documents relating to the purchase of AstraZeneca's Subject Drugs by State Entities, including, but not limited to, the prices at which these drugs were acquired by these State entities.

ANSWER:

Please see Plaintiff's answer to Defendants' Second Request for Production of Documents no. 27.

REQUEST NO. 14:

All Documents concerning rebates paid to You by AstraZeneca under the state supplemental rebate program, including, but not limited to, Documents reflecting, concerning, or discussing Your receipt of these rebates.

ANSWER:

Rebate agreements for the supplemental rebate program are in the possession of Provider Synergies the party with whom this Defendant contracted. The Defendant has subpoenaed and received information and data from Provider Synergies. Between its own records and the information acquired from Provider Synergies, the Defendant has or has access to all responsive documents.

REQUEST NO. 15:

All Documents concerning Your discussions or negotiations with AstraZeneca concerning potential rebates under the state supplemental rebate program, including, but not limited to, documents relating to Your acceptance or rejection of rebate offers from AstraZeneca.

ANSWER:

The Plaintiff OBJECTS to this question on the ground that “rebate offers” is ambiguous. The Plaintiff also OBJECTS on the ground that the Defendant is in possession of all relevant documents.

REQUEST NO. 16:

All documents concerning how Medicaid Rebates or supplemental rebates supplied by AstraZeneca were utilized or spent by You.

ANSWER:

These receipts are deposited into the state’s general fund in a segregated account for the Medicaid Program. The Plaintiff OBJECTS to this request to document all disbursements from this fund on the ground that it is over burdensome and not likely to lead to the discovery of relevant evidence.

REQUEST NO. 17:

All Documents and data concerning the prices, costs, or reimbursement for AstraZeneca’s Subject Drugs provided to You by third parties, including, but not limited

to, retail pharmacies, wholesalers, Providers, provider groups, pricing compendia, and other States in response to formal or informal requests.

ANSWER:

The Plaintiff has already produced data from wholesalers, pricing compendia, and retail chain drug stores. To the extent that the Plaintiff's counsel acquired data or documents, the Plaintiff OBJECTS to this request on the ground that such information is protected from disclosure as attorney work product. Otherwise see Plaintiff's answer to the last time their Defendant asked this question. See Plaintiff's Response to Defendants' Second Request for Production of Document no. 55.

REQUEST NO. 18:

All Documents concerning or discussing prices available to or paid by Covered Entities for AstraZeneca's Subject Drugs, including, but not limited to, Documents reflecting or concerning Your receipt of this pricing information, and Documents reflecting or concerning how this information has been used, relied upon, or considered in evaluating, revising, or setting payments to Providers under Your Medicaid Program.

ANSWER:

The Plaintiff OBJECTS to this request on the ground that it is over burdensome to produce this information and because it is not relevant to any issue in this enforcement action and because it is not likely to lead to the discovery of relevant and admissible evidence.

REQUEST NO. 19:

All Documents reflecting Communications between any of your employees or agents and any other party, including, but not limited to, Providers, fiscal agents or contractors, pharmaceutical companies, pharmacy associations, and other states concerning dispensing fees, dispensing costs, or the pricing or reimbursement of AstraZeneca's Subject Drugs.

ANSWER:

The Plaintiff OBJECTS to this request on the ground that it is overbroad and ambiguous. See also Plaintiff's Response to Defendants' Second Request for Production of Documents no. 6 and 21.

Notwithstanding this objection, the Plaintiff has already produced its general correspondence files including communications between the DHFS and the Defendant and other persons.

REQUEST NO. 20:

All Documents supporting the elements of each of the claims You assert against AstraZeneca in the Second Amended Complaint.

ANSWER:

The Plaintiff OBJECTS to this request on the ground that it is overbroad.

INTERROGATORIES

INTERROGATORY NO. 1:

For each of AstraZeneca's Subject Drug for which You claim to have overpaid, state the total amount You paid in reimbursements for each NDC in each quarter and the total amount You paid in dispensing fees for each NDC in each quarter.

ANSWER:

The Plaintiff has already answered this question and described the data upon which it relies. Plaintiff has also produced all relevant data upon which this Defendant could make its own calculation. See Plaintiff's Answer to Defendants' Second Set of Interrogatories no. 3.

INTERROGATORY NO. 2:

Identify, by drug name, NDC, and quarter, the amount that You contend You overpaid for each of AstraZeneca's Subject Drug as a result of AstraZeneca's alleged misconduct, as described in the Second Amended Complaint, and describe how those amounts were calculated.

ANSWER:

See answer to Interrogatory no. 1.

INTERROGATORY NO. 3:

State each fact on which You base Your claim, alleged in paragraph Nos. 40 through 49 of Your Second Amended Complaint, that AstraZeneca provided or caused to be provided false and inflated AWP's and WAC's, and for each such instance:

- a) Identify what the true AWP or WAC allegedly was; and the AstraZeneca Subject Drug You assert was involved;
- b) Identify every instance in which any Person currently or formerly employed by or serving as a contractor to You was misled or deceived by a misrepresentation; and
- c) Identify every Document you rely on in support of Your claim.

ANSWER:

The Defendant is in possession of its own data from which it can calculate an accurate wholesale acquisition cost and average wholesale price. Plaintiff has provided this Defendant with data from three wholesale companies which enables this Defendant to make a calculation of the average of the wholesale prices for its drugs. Plaintiff has also produced its claims data. Plaintiff OBJECTS to the remaining portions of this interrogatory on the ground that it is ambiguous and as to “(c)” overbroad.

INTERROGATORY NO. 4:

Identify all Persons currently or formerly employed by You, or who currently or formerly served as a contractor to You, with any knowledge of or responsibility for the following, and for each such Person, state the subject of information that Person is likely to have:

- a) Any claim or allegation asserted in Your Second Amended Complaint with regards to AstraZeneca;
- b) The methodology or methodologies that You use to determine the amount You pay providers for AstraZeneca’s Subject Drugs;
- c) The negotiation of or execution of any contract, memorandum, or agreement between You and any Provider concerning Your reimbursement for AstraZeneca’s Subject Drugs or AWP’s for such drugs;

- d) The processing of payments for Provider claims for reimbursement regarding AstraZeneca's Subject Drugs;
- e) The adoption, rejection, amendment to, consideration, or negotiation of any State supplemental rebate program for any of AstraZeneca Subject Drugs;
- f) Establishing, considering, or setting of the dispensing fees or fees for professional services payable in connection with the supply or administration of AstraZeneca's Subject Drugs by You; and,
- g) The AWP, AMP, MAC, WAC, EAC, Best Price, or other prices, costs reimbursement rates, or other benchmarks for AstraZeneca's Subject Drugs.

ANSWER:

Ms. Kimberly Smithers is knowledgeable about the process in which claims for reimbursement are submitted and paid by the Department of Health and Family Services in the state Medicaid Program. Mr. James Vavra is knowledgeable about the Medicaid claims process. Mr. Alan White is a person generally knowledgeable about Provider Agreements for services to the State Medicaid Program. Mr. James Vavra is a person generally knowledgeable about dispensing fees paid to providers as part of the Wisconsin Medicaid Program.

Plaintiff OBJECTS to the remaining portions of this interrogatory on the ground that it is overbroad and unduly burdensome. Plaintiff also OBJECTS on the ground that these questions were already asked and answered. See Plaintiff's Answers to Defendants' Second Set of Interrogatories nos. 7 and 11.

INTERROGATORY NO. 5:

Identify each Provider who actually received allegedly inflated amounts of reimbursement from You as a result of AstraZeneca's alleged misconduct. For each

Provider Identified, state whether You have sought to recover from such Provider alleged overpayments of reimbursement amounts, and, if so, Identify each action, proceeding, or other effort by which you attempted to recover such alleged overpayments; and if not, state the basis for your failure to do so.

ANSWER:

See Plaintiff's Answer to Defendants' Second Set of Interrogatories no. 21.

INTERROGATORY NO. 6:

Identify each and every representation, whether written or oral, made by AstraZeneca to the State that You claim to be false, and for each such representation state:

- a) the author or source of the representation;
- b) the recipient of the representation;
- c) the date of the representation;
- d) the form of the representation;
- e) the content of the representation.

ANSWER:

The Defendant authored and reported to medical compendia, (i.e. Redbook, First Data Bank), a false average wholesale price at all times relevant to this enforcement action.

INTERROGATORY NO. 7:

Identify all statutes, regulations, rules or other authority on which you rely to claim that AstraZeneca had a legal duty to price its prescription drugs in a particular way; to refrain from discounting the prices of its prescription drugs; to refrain from confidential price negotiations concerning its prescription drugs; or to publicly disclose the results of confidential price negotiations.

ANSWER:

See Plaintiff's Answer to Defendants' Second Set of Interrogatories no. 4.

INTERROGATORY NO. 8:

Describe whether and for what purposes You have used ASP data provided by AstraZeneca, including, but not limited to, how such information has been used, relied upon or considered in evaluating, revising, or setting payments to Providers under Your Medicaid Program.

ANSWER:

See Plaintiff's Response to Defendants' Fourth Set of Interrogatories and Requests to Produce.

INTERROGATORY NO. 9:

Identify all Persons or agencies that were part of the decision whether or not to use, rely upon, reference, or consider AstraZeneca's ASP data in evaluating, revising, or setting payments to Providers under Your Medicaid Program.

ANSWER:

See Plaintiff's Response to Defendants' Fourth Set of Interrogatories and Requests to Produce.

INTERROGATORY NO. 10:

Identify when, if ever, You began to use, rely upon, or consider AstraZeneca's ASP data in evaluating, revising, or setting payments to Providers under Your Medicaid Program.

ANSWER:

See Plaintiff's Response to Defendants' Fourth Set of Interrogatories and Requests to Produce.

INTERROGATORY NO. 11:

Identify any Covered Entity pricing information related to AstraZeneca's Subject Drugs that you have received, and describe how such information has been used, relied upon, or considered in evaluating, revising, or setting payments to Providers under Your Medicaid Program.

ANSWER:

The Plaintiff OBJECTS to this interrogatory on the ground that entities entitled to purchase products through the Public Health Services Act's 340B drug pricing program are irrelevant and immaterial to this litigation. Notwithstanding this objection, 340B prices were not used to estimate the acquisition cost for retail pharmacies acquisition costs.

INTERROGATORY NO. 12:

Identify all Persons currently or formerly employed by You, or who currently or formerly served as a contractor to You, who received or reviewed rebates paid to the State by AstraZeneca for its Subject Drugs under the federal Medicaid rebate program and state supplemental rebate program.

ANSWER:

This information is received and reviewed by EDS. Ms. Ellen Orsburne currently works in the area involving rebates at the Department of Health and Family Services.

INTERROGATORY NO. 13:

If before you filed the Complaint in this case, you undertook efforts to obtain the “true average wholesale prices” referred to in Paragraph 48 of the Second Amended Complaint for any AstraZeneca Subject Drug, describe such efforts and Identify each person involved in such efforts.

ANSWER:

The Plaintiff OBJECTS to this interrogatory on the ground that it is overbroad and ambiguous and unduly burdensome. The Wisconsin Medicaid Program endeavored to estimate the acquisition costs for providers in the retail class of trade in a number of ways, all of which have been previously described to the Defendant. Plaintiff OBJECTS to the extent this interrogatory requests the disclosure of attorney works product. By in large the Defendant has thwarted all efforts at determining the true average wholesale price.

INTERROGATORY NO. 14:

State the cost to the State per unit by drug name, NDC, and quarter paid for AstraZeneca's Subject Drugs net of credits for all federal rebates and state supplemental rebates and federal matching funds.

ANSWER:

Plaintiff has not made this calculation.

INTERROGATORY NO. 15:

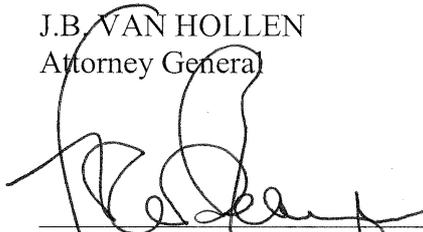
Identify by drug name, NDC, and quarter, all rebates paid to the State for AstraZeneca's Subject Drugs, including, but not limited to, any rebates paid under the federal Medicaid rebate program and state supplemental rebate program.

ANSWER:

These payments were made by this Defendant. Please refer to your own records.

Dated this 16th day of December, 2007.

J.B. VAN HOLLEN
Attorney General



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