

State of Wisconsin,

Plaintiff,

v.

Case No. 04 CV 1709

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AMGEN INC., et al.,

Defendants.

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PLAINTIFF'S SUPPLEMENTAL RESPONSE TO  
DEFENDANTS' FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS

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TO: Sandoz, Inc.  
f/k/a Geneva Pharmaceuticals, Inc.  
A Delaware Corporation  
506 Carnegie Center, Suite 400  
Princeton, New Jersey 08540

C/O Shannon A. Allen  
Friebert, Finerty and St. John  
Two Plaza East – Suite 1250  
330 East Kilbourn Avenue  
Milwaukee, Wisconsin 53202, and

Paul Olszowka  
White and Case, LLP  
1155 Avenue of the Americas  
New York, New York 10036

The plaintiff previously responded to the defendants' first set of interrogatories and document requests. In that response, the plaintiff objected to production because it believed to do so would require the disclosure of confidential information. Each of the defendant's has acquiesced to a production that provides to that defendant only the information pertaining to the

plaintiff's claim as against it. With that modification, the plaintiff submits this supplemental response.

**INTERROGATORY NO. 1:**

With respect to your representation in the Status Report that you have “evidence that the manufacturers caused phony and inflated wholesale prices to be published with respect to each of the listed drugs,” on the list of drugs attached to the Status Report:

- (a) Describe each evidence with respect to each defendant and each drug; and
- (b) Identify all persons with knowledge of each evidence with respect to each defendant and each drug.

**REQUEST NO. 1:**

All documents relied upon in connection with your response to Interrogatory No. 1 or that otherwise comprise, refer or relate to your evidence that each defendant “caused phony and inflated wholesale prices to be published with respect to each of the listed drugs” set forth on the list of drugs attached to the Status Report.

**SUPPLEMENTAL ANSWER:**

The plaintiff previously answered this question with a general description of upon what basis the plaintiff made its statement that the manufacturers caused phony and inflated wholesale prices to be published. *This document elaborates on that earlier response.*

- I. First, enclosed, as Exhibit A, you will find data pertaining to each defendant's prices.
- II. Second, the following documents, records, reports and the like support the conclusion that the defendants' published false and inflated wholesale prices:

A. Testimony given on December 7, 2004 to the Subcommittee on Oversight and Investigations of the U.S. House of Representatives Committee on Energy and Commerce by the following individuals.

1. Timothy P. Catlett
2. Pamela Marrs
3. Edward H. Stratmeier
4. Patrick J. O'Connell
5. David J. Balland
6. George M. Reeb
7. T. Mark Jones

Copies of the written testimony of these witnesses are readily available at <http://energycommerce.house.gov>

B. Testimony given on June 28, and June 29, 2005 to the U.S. Senate Committee on Finance by the following individuals.

1. Daniel R. Levinson
2. James W. Moorman
3. Nicholas J. Messuri
4. Dennis G. Smith
5. Beatrice Manning
6. Timothy J. Coleman
7. Robert A. Vito
8. Patrick J. O'Connell

Copies of this written testimony are available at <http://finance.senate.gov>

C. Other documents.

1. Medicaid and Medicare Drug Pricing: Strategy to Determine Market Prices. (Ex. 6 to Defs. App. To Def. Memo in Support of Motion to Dismiss Amended Complaint, January 20, 2005.)
2. Medicaid's Use of Revised Average Wholesale Prices. DHHS, OIG, September, 2001 (Defs. App. Ex. 8).
3. Testimony of James Moorman, July 17, 2003, U.S. House of Representatives Committee on Ways and Means. Available at [www.taf.org](http://www.taf.org).
4. Various court opinions as previously supplied to defendants in Wisconsin's Memorandum in Opposition to Defendants' Joint Motion to Dismiss the

- Amended Complaint and reproduced in Wisconsin's Appendix of Authorities, March 10, 2005.
5. DHHS Health Care Financing Administration (HCFA) Program Memorandum, HCFA-Pub. 60AB, Sept. 8, 2000 (Def. App. Ex. 35).
  6. USDHHS HCFA Program Memorandum, HCFA Pub. 60AB, May 3, 2001.
  7. OIG "Medicaid Pharmacy-Actual Acquisition Cost of Brand Name Prescription Drug Products," Aug. 10, 2001 (Def. App. Ex. 36).
  8. OIG "Medicare: Payments For Covered Outpatient Drugs Exceed Providers' Cost," September, 2001 (Def. App. Ex. 37).
  9. DHSS, OIG "Medicaid Pharmacy – Additional Analyses of the Actual Acquisition Cost of Prescription Drug Products," (A-06-02-00041), September 16, 2002.
  10. DHSS, OIG "Compliance Program For Pharmaceutical Manufacturers," April, 2003, Federal Register, May 5, 2003, pp. 23731-43.
  11. Medicare Payment Advisory Commission (Medpac) "Report to the Congress: Variation and Innovation in Medicare, Chapter 9, June, 2003.
  12. Testimony of L. Dummit to U.S. Senate Finance Committee, March, 2002.
  13. DHSS Center For Medicare and Medicaid Services Proposed Rule – Payment Reform For Part B Drugs, Federal Register, August 20, 2003, pp. 50427-50452.
  14. Andy Schneider "The Role of the False Claims Act in Reducing Medicare and Medicaid Fraud by Drug Manufacturers: An Update," November, 2004 (available at [www.taf.org](http://www.taf.org)).
  15. Andy Schneider "Reducing Medicaid Fraud: The Potential of the False Claims Act, June 2003 (available at [www.taf.org](http://www.taf.org)).
  16. Wisconsin Medicaid and Badger Care Update, August, 2003 (Def. App. Ex 4).
  17. Dawn Gencarelli, "Average Wholesale Price For Prescription Drugs: Is There a More Appropriate Pricing Mechanism?" National Health Policy Forum Issue Brief No. 775, June 7, 2002 (available at [www.nhpf.org](http://www.nhpf.org)).
  18. Various exhibits, affidavits and depositions in *In Re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil 01-12257-PBS, U.S.D.C. Dist. Of Mass.
  19. Publications and data from First Data Bank, Medi-Span, and the Red Book.
  20. Various exhibits, documents, transcripts, opinions and affidavits in *In re Lupron® Marketing & Sales Practices Litigation*, MDL No. 1430, Master File No. 01-CV-10861-RGS (D.Mass.).
  21. Exhibits to litigation filed against one or more defendants in the states of Alabama, Arizona, Arkansas, California, Connecticut, California, Florida, Illinois, Kentucky, Massachusetts, Minnesota, Montana, Nevada, New York, Ohio, Pennsylvania, Texas and West Virginia. All of same are in the possession of the applicable defendants.
  22. DHSS, OIG "Medicaid Drug Price Comparison: Average Sales Price to Average Wholesale Price," June, 2005, OEI-03-05-00200.
  23. DHSS, OIG "Comparison of Medicaid Federal Upper Limit Amounts to Average Manufacturer Prices," June, 2005, OEI-03-05-00110
  24. "Report of Independent Expert Professor Ernst B. Berndt to Judge Pattie B. Saris, Feb. 9, 2005, In Re Pharmaceutical Industry, *id.*

25. "Medicaid Drug Rebate Program: Inadequate Oversight Raises Concerns About Rebates Paid to States," U.S. Government Accountability Office (f/k/a U.S. Government Accounting Office), February, 2005, GAO-05-102.
26. DHSS, OIG "How Inflated Published Prices Affect Drugs Considered For The Federal Upper Limit List," September, 2005, OEI-03-05-00350
27. DHSS, OIG "Medicaid Drug Price Comparisons: Average Manufacturer Price To Published Prices," June, 2005, OEI-05-05-00240
28. "The Truth About Drug Companies," Marcia Angell, Random House, 2004.
29. "Federal Policy Options to Contain Medicaid Drug Costs," paper by Gifford, K. and Kramer S., June 8, 2005 (available at <http://energycommerce.house.gov/108/Hearings/06222005hearing1554/Gifford.pdf>)
30. Transcript of September 21, 2001 Medicaid hearing before U.S. House of Representatives Committee on Energy and Commerce (available at <http://energycommerce.house.gov/107/action/107-65.pdf>)
31. Transcript of December 7, 2004 hearing, referenced at I. above (available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_house\\_hearings&docid=f:97275.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:97275.wais))

D. Depositions in *The State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey, Inc.; Roxane Laboratories, Inc. and Warrick Pharmaceuticals Corporation*, GV002327, Dist. Ct. Travis County, Texas.

1. Bien, Timothy, Deposition, 4/25/2005
2. Bronstein, Debra, Deposition, 3/11/2003
3. Collie, Cynthia Jane, Deposition, 2/19/2003
4. Galles, Todd, Deposition, 2/6/2003
5. Gmeiner, Eve Fagrell, Deposition, 1/20/2003
6. Gough, Walter, Deposition, 2/6/2002
7. Graf, Al, Deposition, 2/11/2003
8. Hirschmann, Joe, Deposition, 11/12/2002
9. Johnston, Russell Ray, Deposition, 5/1/2002
10. Kapur, Raman, Deposition, 3/7/2002
11. Lapila, Larry, Deposition, 3/21/2003
12. MARRS, Pam – V1, Deposition, 5/2/2002
13. MARRS, Pam – V2, Deposition, 4/16/2003
14. Morgan, Kay, Deposition, 00/00/0000
15. Mozak, Robert Francis – V1, Deposition, 11/1/2001
16. Mozak, Robert Francis, Deposition, 4/30/2002
17. Mozak, Robert Francis, Deposition, 11/6/2002
18. Mozak, Robert Francis, Deposition, 3/13/2003
19. Pope, Mark, Deposition
20. Rhodus, Susan, Deposition, 4/26/05; 4/27
21. Rhodus, Susan, Deposition, 7/4/2004
22. Rice, Charles – V1, Deposition 10/30/2001
23. Rice, Charles – V2, Deposition, 11/7/2002

24. Rice, Charles – V3, Deposition, 3/24/2003
25. Schondelmeyer, Stephen – V1, Deposition 6/16/2003
26. Schondelmeyer, Stephen – V2, Deposition, 6/17/2003
27. Schondelmeyer, Stephen – V3, Deposition, 11/25/2003
28. Selenati, Helen, Sworn Statement Confidential, 8/15/2002
29. Sherman, Jerome, Deposition, 3/6/2002
30. Tate, Willia, Deposition, 2/7/2003
31. Tipton, Bruce, Deposition, 2/13/2003
32. Uhl, Ross, Deposition, 2/24/2003
33. Uhl, Ross, Sworn Statement, 8/26/2002
34. Upp, Richard, Deposition, 2/14/2003
35. Van Schaften, John, Deposition, 3/8/2002
36. Weintraub, Harvey – V1, Deposition, 11/7/2001
37. Weintraub, Harvey – V2, Deposition, 11/8/2001
38. Weintraub, Harvey – 3, Deposition, 2/12/2003
39. Weintraub, Harvey – V4, Deposition, 5/6/2003
40. Weintraub, Harvey – V5, Deposition, 2/26/2004
41. Zahn, Richard, Deposition, 1/15/2003

III. Third, the State has participated in the following enforcement actions relating to one or more of the defendants and their respective falsification or illegal manipulation of prices:

1. TAP, October 2001, relating to Lupron
2. Schering Plough, July 2004, relating to Claritin
3. Pfizer/Warner Lambert, October 2002, relating to Lipitor
4. Pfizer, May 2004, relating to Neurontin
5. GlaxoSmithKline, April 2003, relating to Paxil and Flonase
6. Bayer, April 2003, relating to Cipro and Adalat CC
7. Bayer, January 2001, relating to Kogenate, Koate-HP and Gamimmune
8. Dey, June 2003, relating to Albuteral
9. AstraZeneca, June 2003, relating to Zoladex

IV. Fourth, the State is participating in one capacity or another in ongoing investigations through its membership in the National Association of Medicaid Fraud Control Units relating to one or more manufacturers and some aspect of pharmaceutical pricing or marketing. Further information and documents cannot be shared because these law enforcement investigations are currently under state or federal court seal.

IV. Fifth, attached as Exhibit B, is a list of records, documents, correspondence and the like pertaining to the appropriate defendant.

V. Sixth, in the context of confidential discussions with individual defendants, certain defendants have made admissions which support the statement the plaintiff made in its status report that the manufacturers have caused phony and inflated wholesale prices to be published.

These defendants know who they are and what they have said.

Dated this 3<sup>rd</sup> day of April, 2006.

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Exhibit B

Documents produced by Geneva/Sandoz to the Office of the Attorney General for the State of Wisconsin:

The State of Wisconsin has reviewed and copied documents produced by Geneva/Sandoz to the Office of the Attorney General for the State of California in connection with that office's AWP investigation. Among the documents that support plaintiff's allegations that Sandoz has caused false and inflated wholesale prices to be published are Bates SANDOZ CAL 0096506-0096512.

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