

STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN INC., *et al.*,

Defendants.

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No. 04 CV 1709

Unclassified Civil: 30703

**DEFENDANT SANDOZ INC.'S RESPONSES AND OBJECTIONS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS TO DEFENDANT SANDOZ INC.**

Pursuant to §§ 804.01, 804.08 and 804.09, Wis. Stats., defendant Sandoz Inc. ("Sandoz"), by its attorneys, hereby responds and objects to Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant Sandoz Inc. as follows:

GENERAL OBJECTIONS

1. Sandoz objects to the Interrogatories and Requests to the extent that they are vague, ambiguous, cumulative, duplicative, overly broad, unduly burdensome or oppressive, or seek information or documents that are not relevant to the claims or defenses of any party or to the subject matter involved in this action or to the extent they seek documents or information beyond those permitted by the Wisconsin Rules of Civil Procedure and other applicable state and federal laws.

2. By objecting and responding to these Interrogatories and Requests, Sandoz does not in any way waive or intend to waive (a) any objections as to competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any information or documents that may be produced in response to the Interrogatories and Requests; (b) any

objections as to the vagueness, ambiguity, or other infirmity in the form of any Interrogatory or Request; (c) any objections based on the undue burden imposed by any Request; (d) any objections to the use of the documents or information that may be produced in response to the Interrogatories or Requests at any hearings or at trial; (e) any objections to any further Interrogatories or Requests involving or relating to the subject matter of the Interrogatories and Requests; and (f) any privileges, rights, or immunity under the Wisconsin Rules of Civil Procedure, statutes, or common law.

3. By stating herein that it agrees at an appropriate time to produce documents or information in response to a particular Interrogatory or Request, Sandoz does not assert that it has responsive documents or information or that such materials exist, only that it agrees that, at the appropriate time, it will conduct a reasonable search of its files that are most likely to contain responsive documents or information and produce responsive, non-objectionable, non-privileged documents revealed by such investigation. No objection made herein, or lack thereof, is an admission by Sandoz as to the existence or non-existence of any information.

4. Sandoz reserves its right to amend, to supplement, and/or to withdraw any objection set forth herein on the basis of documents or information found during its investigation or any discovery that might be taken in this action. Sandoz expressly reserves its right to rely, at any time including at trial, upon subsequently discovered documents, information or information omitted from any response as a result of mistake, oversight, or inadvertence.

5. Sandoz objects to each Interrogatory and Request to the extent it imposes or purports to impose discovery obligations greater than, or inconsistent with, Sandoz' obligations under the Wisconsin Rules of Civil Procedure and to the extent that the State seeks discovery beyond that permitted by such Rules.

6. Sandoz objects to each Interrogatory and Request to the extent it seeks information or documents protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or protection against disclosure.

7. Sandoz objects to each Interrogatory and Request to the extent it seeks the production of proprietary or commercially-sensitive information including, but not limited to, personal financial information, confidential and/or proprietary research, procedures and processes relating to the pricing of pharmaceuticals, current and past marketing plans and methods, and current and past business planning and financial information. Sandoz' production of any document or provision of information pursuant to these Interrogatories and Requests shall not be construed as a waiver of confidentiality of any such document or information.

8. Sandoz objects to each Interrogatory and Request to the extent it requires Sandoz to disclose information or produce documents outside of Sandoz' possession, custody, or control and/or no longer in existence, to seek information about or produce documents from persons not currently employed or associated with Sandoz, or to provide or search for information or produce documents in the possession, custody or control of non-parties, including former employees. At the appropriate time, Sandoz will disclose information and produce documents that are within its possession, custody or control.

9. Sandoz objects to each Interrogatory and Request to the extent it seeks information or documents already in the State's possession, custody, or control or in the possession, custody, or control of any of the State's officers, employees, agents, agencies, or departments. Sandoz further objects to each Interrogatory and Request to the extent it requires Sandoz to search for information publicly available, or to search for information or documents

for which the burden of deriving or ascertaining the information or documents is substantially the same or less for the State or any of its officers, employees, agents, agencies, or departments as it is for Sandoz.

10. Sandoz objects to each Interrogatory and Request to the extent it is duplicative or cumulative of other Requests, Interrogatories, or other discovery requests propounded by the State. Each document that may be produced in response to a specific Interrogatory or Request is deemed to be produced in response to every other Request, Interrogatory, or discovery request of the State to which the document or information is or may be responsive.

11. Sandoz objects to each Interrogatory and Request as unduly burdensome to the extent it purports to seek the production of "all" documents relating to a subject matter. Subject to and without waiver of this objection, and subject to resolution of Sandoz' other objections set forth herein, Sandoz agrees that at an appropriate time it will produce non-privileged documents that are located following a reasonable search of those Sandoz' files that are most likely to contain documents or information responsive to the State's Interrogatories and Requests.

12. Sandoz reserves the right to seek reimbursement from the State for the cost of producing electronic data and documents.

13. Sandoz objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues described in the Interrogatories or Requests. Sandoz' production of documents or information in connection with a particular Interrogatory or Request is not intended to indicate that Sandoz agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues described in the Interrogatories and Requests, or that such implications or characterizations are relevant to this action.

14. Sandoz objects to the defined time period to the extent it requires documents to be produced dated after the filing of the First Amended Complaint on November 1, 2004 or outside of the relevant statute of limitations.

15. The information produced in response to these Interrogatories and Requests are for use in this litigation and for no other purpose.

**RESPONSES AND OBJECTIONS TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Sandoz incorporates its General Objections in each of the responses that follow. The specific objections set forth in each response are in addition to the General Objections and unless otherwise specified, Sandoz' responses are limited in accordance with each of its objections.

INTERROGATORIES

INTERROGATORY NO. 1: State whether Sandoz has ever manufactured, marketed, or sold any drug with the NDC labeler code 00003, 00015, 00185, 59772, 62269, or 66685. If the answer is "yes," identify each drug (by 11-digit NDC) and the beginning and ending dates for which Sandoz manufactured, marketed, or sold each drug.

RESPONSE: In addition to the foregoing General Objections, Sandoz objects to Interrogatory No. 1 to the extent that it purports to seek information about drugs not on the "Targeted Drug List" for Sandoz attached to the State's Second Amended Complaint on the grounds that it is overly broad and unduly burdensome, and seeks information that is not relevant to the claims or defense of any party and not reasonably calculated to lead to the discovery of admissible evidence.

The Interrogatory seeks information regarding drugs that are not at issue in the litigation as to Sandoz and are therefore not relevant for purposes of discovery. The State attempted at the beginning of the litigation to maintain an overbroad definition of "Targeted Drugs." On January 25, 2005, the State served Defendants with Plaintiff's First Set of Interrogatories to All Defendants and Plaintiff's First Set of Requests for Production of Documents to All Defendants,

both of which defined "Targeted Drugs" as "those drugs manufacturer by you which have total utilization under the Medicaid and Medicare Part B programs exceeding \$10,000 during the Defined Period of Time in the state of Wisconsin." In response to defendants' objections, in a May 20, 2005 letter, the State provided Sandoz with a list of targeted drugs though it maintained that the list was for the "first round of discovery." Sandoz objected to the State's definition of "Targeted Drug" in Sandoz' responses to the State's January 25, 2005 Interrogatories and Document Requests and in a October 18, 2005 letter because, among other things, any subsequent expansion of the targeted drug list would be "inefficient and unreasonable."

In an April 3, 2006 partial decision, Judge Kreuger ordered the State to re-plead in order to maintain its fraud causes of action. Specifically, Judge Kreuger held that "[e]ach Defendant is entitled to know, with as much detail as Plaintiff can provide, which of its drugs are involved and what (name, date) publication of AWP is false, and the actual price that should have been published." See April 3, 2006 Order at 13. On June 28, 2006, the State served its Second Amended Complaint with Targeted Drug lists for all the defendants which included the same list of Targeted Drugs for Sandoz as the Targeted Drugs included in the attachment to the May 20, 2005 letter. Sandoz has undertaken substantial efforts to collect and produce documents and other information in response to the previously served interrogatories and document requests based on this Targeted Drug list. Any attempts to expand the Targeted Drugs at this stage of the litigation would be extraordinarily burdensome and unfairly prejudicial, and in contravention of Judge Kreuger's April 3, 2006 Order.

INTERROGATORY NO. 2: State whether Sandoz has ever reported AWP's or WAC's to First DataBank, Redbook, or Medispan, for any drug with the NDC labeler code 00003, 00015, 00185, 59772, 62269, or 66685. If the answer is "yes," identify each drug (by 11-digit NDC) and the beginning and ending dates for which Sandoz reported AWP's or WAC's.

RESPONSE: In addition to its foregoing General Objections, Sandoz objects to Interrogatory No. 2 on the grounds set forth in its Response to Interrogatory No. 1, above.

INTERROGATORY NO. 3: State whether Sandoz has ever reported “average manufacturer price” or “AMP” (as that term is defined in the federal Medicaid statute, 42 U.S.C. §1396r-8, *et seq.*) for any drug with the NDC labeler code 00003, 00015, 00185, 59772, 62269, or 66685. If the answer is “yes,” identify each drug (by 11-digit NDC) and the beginning and ending dates for which Sandoz reported an AMP for the drug.

RESPONSE: In addition to its foregoing General Objections, Sandoz objects to Interrogatory No. 3 on the grounds set forth in its Response to Interrogatory No. 1, above.

INTERROGATORY NO. 4: State whether Sandoz has ever paid a rebate to any state, including the State of Wisconsin, pursuant to the federal Medicaid statute, 42 U.S.C. §1396r-8, *et seq.*, for any drug with the NDC labeler code 00003, 00015, 00185, 59772, 62269, or 66685. If the answer is “yes,” identify each drug (by 11-digit NDC) and the beginning and ending dates for which Sandoz paid rebates.

RESPONSE: In addition to its foregoing General Objections, Sandoz objects to Interrogatory No. 4 on the grounds set forth in its Response to Interrogatory No. 1, above. Sandoz further objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome to the extent it seeks information regarding Medicaid rebates paid to states other than Wisconsin. Sandoz also objects to this Interrogatory to the extent it seeks information or documents already in the State’s possession, custody, or control or in the possession, custody, or control of any of the State’s officers, employees, agents, agencies, or departments.

INTERROGATORY NO. 5: State the current or last-known home address, home telephone number, business address, business telephone number, cell-phone number, personal e-mail address, business e-mail address, and social security number for each of the following individuals:

- (a) Kevin Galownia;
- (b) Kristy Ronco; and
- (c) any former Sandoz employee who had responsibility for communicating with First DataBank, Redbook, or Medispan regarding pricing information for Sandoz drugs, including but not limited to AWP and WAC, between January 1, 1993 and the present.

RESPONSE: In addition to the foregoing General Objections, Sandoz objects to Interrogatory No. 5 on the grounds that the plaintiff seeks information that is not relevant to the claims or defense of any party and not reasonably calculated to lead to the discovery of admissible evidence. Sandoz further objects to the Plaintiff contacting Kristy Ronco or Rick Rogerson, both of whom are represented by White & Case LLP. Any communications to Ms. Ronco or Mr. Rogerson regarding their former employment at Sandoz should be directed to White & Case LLP. Subject to and without waiving the foregoing objections or the General Objections, Sandoz will provide the last known addresses for the listed individuals and any other employee with responsibility for communicating with First DataBank, Redbook, or Medispan, to the extent such information is available to Sandoz.

(a) Kevin Galownia's last known address is:

Address: 8905 Spruce Mill Drive, Yardley, PA 19067

Phone: 215-499-9119

(b) Kristy Ronco's last known address is:

Address: 43 Nicklaus Lane, Farmingdale, NJ 07727

Phone: 732-938-5198

(c) Rick Rogerson's last known address is:

Address: 32 Chestnut Trail, Flemington, NJ 08822

Phone: Not available

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: All documents relating to Sandoz's supplemental response to interrogatory no. 5 of plaintiff's first set of interrogatories to all defendants which states that Sandoz "...has established and follows a policy of not discussing actual or potential reimbursement that might be earned by a customer in connection with any aspect of negotiations over potential purchases of its products." This request includes, but is not limited to, the following documents:

- (a) documents that relate to or describe the policy, including consequences for violation of the policy;
- (b) documents that identify the date that the policy was established and/or became effective;
- (c) documents identifying, describing, or relating to the reason(s) for establishment of the policy;
- (d) documents identifying, describing, or relating to the distribution and dissemination of the policy to Sandoz employees;
- (e) documents identifying, describing, or relating to training provided to Sandoz employees regarding the policy; and
- (f) documents relating to any actual or potential violations of the policy, including any investigation, determination, and action taken by Sandoz related to any such actual or potential violation.

RESPONSE: In addition to the foregoing General Objections, Sandoz specifically objects to Request No. 1 on the grounds that it is overly broad and unduly burdensome and to the extent it seeks information protected by the attorney-client privilege and/or work-product doctrine. Sandoz further objects on the grounds that the Request purports to seek "all" documents relating to the supplemental interrogatory response, which would include drafts and other work product and privilege material that Sandoz should not be burdened with including on a privilege log. Subject to and without waiving the foregoing objections or the General Objections, Sandoz will produce non-privileged documents responsive to subparts (a)-(e) of this Request, as Sandoz understands its terms, to the extent such documents exist and can be located through a reasonable search of the files likely to include such documents. Sandoz objects to

subpart (f) of this Request to the extent that it seeks information protected by the attorney-client privilege and/or work-product doctrine.

REQUEST FOR PRODUCTION NO. 2: All documents relating to Rx America LLC, the mail-order pharmacy owned jointly by Sandoz (or its predecessor company, Geneva Pharmaceuticals Inc.) and American Drug Stores, including but not limited to:

- (a) documents relating to the creation, establishment, and ownership of Rx America LLC; and
- (b) documents relating to the income, profits, or other monies earned by Geneva as co-owner of Rx America LLC.

RESPONSE: In addition to the foregoing General Objections, Sandoz objects to Request No. 2 on the grounds that it is overly broad and unduly burdensome, and seeks information that is not relevant to the claims or defense of any party and not reasonably calculated to lead to the discovery of admissible evidence. For example, the Request seeks “all” documents regarding the specified topic, without further specification and regardless of their relevance.

REQUEST FOR PRODUCTION NO. 3: All documents relating to the merger, acquisition, purchase, or other business transaction between Sandoz (or its predecessor company, Geneva Pharmaceuticals Inc.) and each of the following entities:

- (a) E.R. Squibb and Sons Inc. (or other entity assigned NDC labeler code 00003);
- (b) Mead Johnson & Co Sub Bristol Myers Co. (or other entity assigned NDC labeler code 00015);
- (c) Eon Labs (or other entity assigned NDC labeler code 00185);
- (d) Apothecon Inc Div BMS (or other entity assigned NDC labeler code 59772);
- (e) Geneva Pharmaceuticals Inc. Apothecon (Apothecon/Invamed) (or other entity assigned NDC labeler code 62269); and
- (f) Lek Pharmaceuticals (or other entity assigned NDC labeler code 66685).

This request includes, but is not limited to, documents identifying whether Sandoz assumed liabilities for the conduct of any of the above entities occurring prior to the merger, acquisition, purchase, or other business transaction.

RESPONSE: In addition to its foregoing General Objections, Sandoz specifically objects to Request No. 3 on the grounds set forth in its Response to Interrogatory No. 1, above.

REQUEST FOR PRODUCTION NO. 4: Documents relating to Sandoz's reporting of AWP's or WACs to First DataBank, Redbook, or Medispan, for drugs with the NDC labeler code 00003, 00015, 00185, 59772, 62269, or 66685, including documents identifying the dates that Sandoz reported AWP's or WACs for such drugs.

RESPONSE: In addition to its foregoing General Objections, Sandoz specifically objects to Request No. 4 on the grounds set forth in its Response to Interrogatory No. 1, above.

REQUEST FOR PRODUCTION NO. 5: Documents relating to Sandoz's reporting of "average manufacturer price" or "AMP" (as that term is used in federal Medicaid statute, 42 U.S.C. §1396r-8, *et seq.*) for drugs with the NDC labeler code 00003, 00015, 00185, 59772, 62269, or 66685.

RESPONSE: In addition to its foregoing General Objections, Sandoz specifically objects to Request No. 5 on the grounds set forth in its Response to Interrogatory No. 1, above.

REQUEST FOR PRODUCTION NO. 6: Documents relating to Sandoz's payment of rebates to any state, including the State of Wisconsin, pursuant to the federal Medicaid statute, 42 U.S.C. §1396r-8, *et seq.*, for drugs with the NDC labeler code 00003, 00015, 00185, 59772, 62269, or 66685.

RESPONSE: In addition to its foregoing General Objections, Sandoz specifically objects to Request No. 6 on the grounds set forth in its Response to Interrogatory No. 1, above. Sandoz further objects to this Request on the grounds that it is overly broad and unduly burdensome to the extent it seeks information regarding Medicaid rebates paid to states other than Wisconsin. Sandoz also objects to this Request to the extent it seeks information or documents already in the State's possession, custody, or control or in the possession, custody, or control of any of the State's officers, employees, agents, agencies, or departments.

REQUEST FOR PRODUCTION NO. 7: Job descriptions for any employee with responsibility for communicating with First DataBank, Redbook, or Medispan regarding pricing information for Sandoz drugs, including but not limited to AWP and WAC, between January 1, 1993 and the present.

RESPONSE: In addition to the foregoing General Objections, Sandoz objects to Request No. 7 on the grounds that it is overly broad and unduly burdensome, and seeks information that is not relevant to the claims or defense of any party and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, Sandoz will produce documents responsive to this Request, as Sandoz understands its terms, to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 8: All documents relating to GeriMed, including but not limited to:

- (a) communications between Sandoz and GeriMed;
- (b) requests for proposals from GeriMed; and
- (c) bid proposals submitted by Sandoz to GeriMed.

RESPONSE: In addition to the foregoing General Objections, Sandoz objects to Request No. 8 on the grounds that it is vague, ambiguous, overly broad and unduly burdensome, and seeks information that is not relevant to the claims or defense of any party and not reasonably calculated to lead to the discovery of admissible evidence. For example, the Request seeks “all” documents regarding the specified topic, without further specification and regardless of their relevance, and uses the undefined phrases “requests for proposals” and “bid proposals.” Sandoz further objects that the Request is duplicative of Request No. 3 of Plaintiff’s First Set of Requests for Production of Documents to All Defendants and Interrogatories Nos. 3 and 4 of Plaintiff’s First Set of Interrogatories To All Defendants.

Subject to and without waiving the foregoing objections or the General Objections, Sandoz will produce its contract files for GeriMed.

REQUEST FOR PRODUCTION NO. 9: Notes of meetings or communications between Sandoz employees and actual or potential customers such as retail pharmacies, chain pharmacies, mail-order pharmacies, long-term care pharmacies, wholesalers, and physicians.

RESPONSE: In addition to the foregoing General Objections, Sandoz objects to Request No. 9 on the grounds that it is vague, ambiguous, overly broad and unduly burdensome, and seeks information that is not relevant to the claims or defense of any party and not reasonably calculated to lead to the discovery of admissible evidence. The Request is not limited by subject matter or to entities operating in Wisconsin. The Request is also not limited to communications regarding the targeted drugs in this litigation. Sandoz also objects to the extent the request is duplicative of other document requests and interrogatories, including but not limited to Request No. 3 of Plaintiff's First Set of Requests for Production of Documents to All Defendants and Interrogatories Nos. 3 and 4 of Plaintiff's First Set of Interrogatories To All Defendants.

Dated: March 22, 2007

FRIEBERT, FINERTY & ST. JOHN, S.C.

By: 

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CERTIFICATE OF SERVICE

I, Shannon Allen, hereby certify that on this 22nd day of March, 2007, a true and correct copy of the foregoing Defendant Sandoz Inc.'s Responses and Objections to Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant Sandoz Inc. was caused to be served on the plaintiff's counsel via first class mail and to all counsel of record by Lexis Nexis File & Serve.

/s/ Shannon A. Allen