



1 Pursuant to Rule 33 of the Alaska Rules of Civil Procedure, Defendant  
2 Boehringer Ingelheim Pharmaceuticals, Inc. requests that the State of Alaska answer  
3 the Interrogatories below under oath within 30 days after service.

4 **INSTRUCTIONS**

5 These Interrogatories are subject to the following instructions:

6 A. The Interrogatories are not limited to information in the possession of the  
7 State of Alaska's Medicaid Program, but include information in the possession of  
8 Alaska's executive, administrative, and legislative offices and agencies as well as  
9 contractors and agents of the State, including, but not limited to, the fiscal agent for the  
10 State's Medical Assistance Programs.

11 B. If You find the meaning of any term in the Interrogatories to be unclear,  
12 then You should assume a reasonable meaning, state what the assumed meaning is,  
13 and answer the Interrogatory on the basis of that assumed meaning.

14 C. The responses, under oath, to each Interrogatory shall include all  
15 information within Your custody, possession, or control, or that of Your attorneys,  
16 investigators, agents, employees, experts retained by You, Your attorneys, or other  
17 representatives.

18 D. To the extent that the answer to any Interrogatory varies for any of the  
19 agencies defined as the "State," each agency should answer separately.

20 E. If You cannot answer an Interrogatory after exercising due diligence to  
21 secure the information to do so: (i) answer to the extent possible; (ii) state the basis for  
22 Your inability to answer the remainder; (iii) state whatever information or knowledge  
23 You have concerning the unanswered portion; and (iv) specify the type of information  
24 that You contend is not available, the reason the information is not available to You,  
25 and what You have done to locate such information.

26 F. If You decline to answer all or part of an Interrogatory based on a claim of  
27 privilege or immunity: (i) answer to the extent possible, and (ii) state the specific  
28 grounds for not answering in full and the facts You contend support Your assertion of a  
privilege or immunity, providing sufficient information to enable the claim of privilege or  
immunity to be adjudicated.

1 G. When an Interrogatory asks You to “state the basis” of or for a particular  
2 claim, assertion, allegation, or contention, please

- 3 (i) identify each and every Document (and, where pertinent, the  
4 section, article, or subparagraph thereof), which forms any part of  
5 the source of the party’s information regarding the alleged facts or  
6 legal conclusions referred to by the Interrogatory;
- 7 (ii) identify each and every Communication, which forms any part of the  
8 source of the party’s information regarding the alleged facts or legal  
9 conclusions referred to by the Interrogatory;
- 10 (iii) state separately the acts or omissions to act on the part of any  
11 Person (identifying the acts or omissions to act by stating their  
12 nature, time, and place and identifying the Persons involved) which  
13 form any part of the party’s information regarding the alleged facts  
14 or legal conclusions referred to in the Interrogatory; and
- 15 (iv) state separately any other facts, which form the basis of the party’s  
16 information regarding the alleged facts or conclusions, referred to in  
17 the Interrogatory.

18 **DEFINITIONS**

19 1. As used herein, the phrases “Actual Acquisition Cost” or “AAC” mean the  
20 net price (after discounts or rebates) that a healthcare provider or pharmacist pays to  
21 purchase a prescription drug intended for resale.

22 2. As used herein, the phrase “Alaska Medicaid” refers to Alaska’s Medicaid  
23 program administered by the Alaska Department of Health and Social Services.

24 3. As used herein, the phrase “AMP” means “Average Manufacturer Price”  
25 and shall have the meaning set forth in 42 U.S.C. § 1396r-8(k)(1).

26 4. As used herein, the phrase “APHSA” means the American Public Human  
27 Services Association.

28 5. As used herein, the phrase “Assurance Letters” refers to correspondence  
from the State to the federal government representing that its calculation of EAC is its

1 best estimate of the price generally and currently paid by providers for a drug pursuant  
2 to 42 CFR § 447.301.

3 6. As used herein, "AWP" means "Average Wholesale Price".

4 7. As used herein, the phrase "Best Price" shall have the meaning set forth in  
5 42 U.S.C. § 1396r-8(c)(1)(C).

6 8. As used herein, "CMS" means the United States Centers for Medicare and  
7 Medicaid Services and all its agents, employees, commissioners, and anyone else  
8 acting on its behalf and its sub-agencies and departments, any of its predecessors,  
9 including the Health Care Finance Administration, the Social Rehabilitative Service, and  
10 the Department of Health, Education & Welfare.

11 9. As used herein, the term "Communication" means any form of written or  
12 oral Communication, including, without limitation, letters, memoranda, electronic mail,  
13 voicemail, telegrams, invoices, telephone conversations, face-to-face meetings and  
14 other similar forms of Communication or correspondence. All such communications in  
15 writing shall include, without limitation, printed, typed, handwritten, or other readable  
16 documents, whether in hardcopy, electronic mail or stored electronically on a computer  
17 disk or otherwise, contracts, correspondence, diaries, drafts (initial all and subsequent),  
18 forecasts, invoices, letters, logbooks, memoranda, minutes, notes, reports, statements,  
19 studies, surveys and any and all non-identical copies thereof.

20 10. As used herein, the word "Complaint" and the phrase "Amended  
21 Complaint" both mean the October 27, 2006 Amended Complaint filed by the State of  
22 Alaska in this case, Case Number 3AN-06-12026 Cl.

23 11. As used herein, the phrases "Concern", "Concerning", "Relate to",  
24 "Regarding", or "Relating to" mean directly or indirectly referring to, relating to,  
25 regarding, constituting, comprising, containing, setting forth, summarizing, reflecting,  
26 stating, describing, recording, noting, embodying, mentioning, studying, analyzing,  
27 evidencing, discussing, or evaluating.

28 12. As used herein, "Congress" means the legislative branch of the U.S.  
Government, individual members of Congress, and any congressional committees or  
subcommittees, including, but not limited to the Congressional Budget Office, Senate

1 Finance Committee, the House Committee on Ways and Means, the House Committee  
2 on Energy and Commerce, the Subcommittee on Oversight and Investigations of the  
3 House Committee on Energy and Commerce, and all other branches, agencies,  
4 committees, or departments, including the administrators, staff, employees, agents,  
5 consultants, accountants, or attorneys of any of the foregoing.

6 13. As used herein, the phrase "Defendants" means the defendants identified  
7 in the caption of the Amended Complaint as the defendants in this matter, Case No.  
8 3AN-06-12026, that have not been dismissed from this action and that have entered an  
9 unqualified appearance in this action.

10 14. As used herein, the word "Describe" means to describe fully by reference  
11 to underlying facts rather than by ultimate facts or conclusions of facts or law and to  
12 particularize as to time, place and manner.

13 15. As used herein, the phrases "DP", "Direct Price", or "List Price" means any  
14 figures so categorized and periodically published by a Publisher.

15 16. As used herein, "DHSS" means the Alaska Department of Health and  
16 Social Services (as well as its predecessor agencies).

17 17. As used herein, the phrases "EAC" or "Estimated Acquisition Cost" shall  
18 have the meaning ascribed to that term pursuant to 42 C.F.R. § 447.301.

19 18. As used herein, the phrase "Federal Agencies" means CMS, Health Care  
20 Financing Administration and all its predecessors, including the Social Rehabilitative  
21 Service and the Department of Health, Education & Welfare, the United States  
22 Department of Health and Human Services, the Office of the Inspector General, or the  
23 United States Department of Justice and all their agents, employees, commissioners,  
24 and anyone else acting on their behalf.

25 19. As used herein, the term "Findings" means any conclusions or statements  
26 of fact or rationale supporting a determination, proposal regulation, or statute  
27 concerning reimbursement for any pharmaceutical product, including, but not limited to,  
28 findings pursuant to 42 C.F.R. § 447.333.

20. As used herein, "FUL" means "Federal Upper Limit," the ceiling  
established by the U.S. Government for reimbursement of certain drugs dispensed to

1 Medicaid beneficiaries, and shall have the meaning ascribed to that term pursuant to 42  
2 C.F.R. § 447.332.

3 21. As used herein, "GAO" means "General Accounting Office" and all its  
4 employees, agents, attorneys, agencies, committees, or affiliates.

5 22. As used herein, "HCFA" refers to the "Health Care Financing  
6 Administration," its predecessor and successor agencies and all branches, agencies,  
7 committees, or departments, including the administrators, staff, employees, agents,  
8 consultants, accountants, or attorneys of any of the foregoing. "CMS" and "HCFA"  
9 mean the same agency and are used interchangeably throughout the requests.

10 23. As used herein, "HCPCS" means the "Healthcare Common Procedural  
11 Coding System," the medical code set used by CMS that identifies health care  
12 procedures, equipment, and supplies for claim submissions purposes.

13 24. As used herein, "HHS" means the United States Department of Health and  
14 Human Services, including all its agents, employees, commissioners, and anyone else  
15 acting on its behalf and its sub-agencies and departments, and any of its predecessors,  
16 with respect to drug pricing or reimbursement.

17 25. As used herein, the phrase "J Code" refers to the subset of HCPCS code  
18 set with a high-order value of "J" that has been used to identify certain drugs and other  
19 items.

20 26. As used herein, the phrases "MAC" or "Maximum Allowable Cost" shall  
21 have the meaning set forth in 42 C.F.R. § 50.504 and shall include, but is not limited to,  
22 any MAC used by a PBM or Third Party Payor, and shall include any MAC which  
23 preceded the FUL instituted by statute in 1986.

24 27. As used herein, the phrase "Medicaid" means the jointly funded federal-  
25 state health insurance program enacted in 1965 under Title XIX of the Social Security  
26 Act to pay for the costs of certain healthcare expenses of eligible Beneficiaries.

27 28. As used herein, the phrase "Medicare Carrier" means any private  
28 insurance company contracted by CMS to administer Medicare benefits to  
beneficiaries.

1           29. As used herein, the phrase "Medicaid Drug Rebate Program" means and  
2 refers to the program established by the Omnibus Budget Reconciliation Act of 1990,  
3 42 U.S.C. § 1396r-8, as amended by the Veterans Health Act of 1992, whereby drug  
4 manufacturers have national drug rebate agreements with HHS and a pricing  
5 agreement with HHS for the Public Health Service Section 340B Drug Pricing Program.

6           30. As used herein, the phrase "Medicaid Intermediary" means and refers to  
7 any insurance company or other entity that has contracted with any State Medicaid  
8 Program to process claims for reimbursement of drugs, develop preferred drug lists,  
9 provide guidance on changes to reimbursement methodologies, or provide advice on  
10 cost savings, including its administrators, staff, employees, agents, consultants,  
11 accountants, or attorneys.

12           31. As used herein, the phrase "Medicaid Rebate" means the rebate described  
13 in 42 U.S.C. § 1396r-8 or any agreement thereunder.

14           32. As used herein, the phrase "Medicaid State Plans" shall have the meaning  
15 set forth in 42 C.F.R. § 447.333.

16           33. As used herein, "MFCU" means individual state Medicaid Fraud Control  
17 Unites, including their administrators, staff, employees, agents, consultants,  
18 accountants, or attorneys.

19           34. As used herein, the phrase "Multiple Source Drug" means a drug marketed  
20 or sold by two or more manufacturers or labelers or a drug marketed or sold by the  
21 same manufacturer or labeler under two or more different proprietary names or both  
22 under a proprietary name and without such a name.

23           35. As used herein, "NAMFCU" means the National Association of Medicaid  
24 Fraud Control Units.

25           36. As used herein, the phrases "National Drug Code" or "NDC" means the  
26 unique 11-digit code assigned to each prescription drug product sold in the United  
27 States by the U.S. Food and Drug Administration.

28           37. As used herein, "NASMD" means the National Association of State  
Medicaid Directors.

1           38. As used herein, "OIG" means the Office of the Inspector General of the  
2 Department of Health and Human Services.

3           39. As used herein, "OMB" means the Office of Management and Budget and  
4 all branches, agencies, committees, or departments, including the administrators, staff,  
5 employees, agents, consultants, accountants, or attorneys of any of the forgoing.

6           40. As used herein, the phrases "Participant" or "Beneficiary" means an  
7 individual who receives health care benefits as part of Alaska Medicaid.

8           41. As used herein, "PBM" means pharmacy benefits manager.

9           42. As used herein, the phrase "Person" means any natural person or any  
10 business, corporation, partnership, proprietorship, association, organization,  
11 governmental entity, group of Persons, or other entity of whatever nature.

12           43. As used herein, the terms "Plaintiff," "You," "Your," "State," or "Alaska"  
13 refer to the State of Alaska, including, but not limited to, the legislative and executive  
14 branches and all their specific agencies such as the Alaska Department of Health and  
15 Social Services, Alaska Medical Care Advisory Committee, Office of the Governor,  
16 Department of Corrections, Department of Revenue, the Department of Law, the  
17 Department of Administration, and any other agencies that purchase or pay for  
18 prescription drugs and any other administrative bodies, legislative agencies, all  
19 successors and predecessors, and officials, agents, employees, commissions, boards,  
20 divisions, departments, agencies, instrumentalities, administrators and other Persons or  
21 entities acting on their behalf and/or involved in administering, overseeing, or  
22 monitoring any State program, including Medicaid, that provides reimbursement for  
23 pharmaceutical products.

24           44. As used herein, the phrases "Provider" or "Providers" means and refers to  
25 any and all persons or entities that render health care services to whom Plaintiff  
26 provides reimbursement for drugs dispensed to a Medicaid Participant or Beneficiary,  
27 including, but not limited to, pharmacists, physicians, nurses, nurse practitioners,  
28 physicians' assistants, specialty pharmacy, nursing home personnel, laboratory  
technicians, x-ray and other medical equipment technicians, and other hospital or  
physician-office personnel.

1           45. As used herein, the phrases "Publisher," "Publishers," or "Pricing  
2 Compendia" means any pharmaceutical data publishing service, including, but not  
3 limited to, Red Book, First Data Bank, Blue Book, and Medi-Span, their predecessors  
4 and successors, and all employees, agents, consultants, accountants, or attorneys of  
5 any of the foregoing.

6           46. As used herein, the phrases "Reimbursement Rate" or "Reimbursement  
7 Methodology" mean the formula used by Alaska (including all individual Alaska  
8 government agencies) to calculate the amount of payment designated by Medicaid or  
9 DHSS to reimburse healthcare providers for administering or dispensing  
10 pharmaceutical drug products to a beneficiary.

11           47. As used herein, the term "BIPI" refers to defendant Boehringer Ingelheim  
12 Pharmaceuticals, Inc.

13           48. As used herein, the phrase "Subject Drugs" means all drugs You contend  
14 are at issue in this lawsuit, viz., those drugs You identified in Your June 1, 2007 Target  
15 Drug List, for which You contend the AWP or WAC was inflated or manipulated, or upon  
16 which You otherwise contend that You are entitled to obtain relief (whether damages or  
17 other relief) in this lawsuit.

18           49. As used herein, the phrases "Wholesale Acquisition Cost" or "WAC"  
19 means any price represented by any Defendant as a price to any entity that purchases  
20 pharmaceutical products from a Manufacturer and resells such pharmaceutical products  
21 to any other Person and/or Provider, or any price periodically published as WAC by a  
22 Publisher, or WAC as used by You in the Complaint or any amendment thereto.

23           50. In these Interrogatories, the singular of any word is meant to also include  
24 the plural of that word and vice versa.

## INTERROGATORIES

### INTERROGATORY NO. 1:

25           Identify all Pricing Compendia that You have referenced at any time to calculate  
26 Reimbursement Rates for prescription drugs, specifying the timeframe during which  
27 each was used by You.

1 **INTERROGATORY NO. 2:**

2 Identify all Communications between You and any Person, organization,  
3 institution, or association, including pharmacy associations and the National Association  
4 of Chain Drug Stores, Concerning usual and customary charges, AWP, WAC, Direct  
5 Price, AMP, MAC, MAIC, EAC, FAC, FUL, Best Price, CDP, or other prices, costs, or  
6 reimbursement, or other benchmarks.

7 **INTERROGATORY NO. 3:**

8 Identify all periodicals, listservs, publications, associations, or other media or  
9 group to which You subscribe or belong and that publish or distribute information  
10 Concerning health care benefits, prices, costs, and reimbursement or state or federal  
11 health care benefit programs.

12 **INTERROGATORY NO. 4:**

13 Identify all present or former employees of the State of Alaska who have testified,  
14 provided statements to, or been interviewed by agencies of other states; CMS;  
15 NAMFCU; HHS; OIG; DOJ; the GAO; Congress; or any other federal or state institution,  
16 agency, department, or office regarding AWP, the pricing of prescription drugs, the  
17 methodologies for reimbursing prescription drugs since the inception of each Medical  
18 Assistance Program, or the establishment of EAC, including, but not limited to, the  
19 date(s) of the testimony, statement, or interview; the context of the testimony,  
20 statement, or interview (i.e., deposition, affidavit, etc.); and the subject matter of the  
21 testimony, statement, or interview.

22 **INTERROGATORY NO. 5:**

23 Identify all Persons with knowledge of any decision by You to rely or not to rely  
24 upon WAC, AWP, FAC, FUL, MAC, Best Price, AMP, or Acquisition Cost in determining  
25 Medicaid reimbursements for the Subject Drugs.

26 **INTERROGATORY NO. 6:**

27 Identify all employees and agents of the State of Alaska (including former and  
28 present employees and agents) who have or had authority to access the Unit Rebate  
Amounts for the Subject Drugs.

1 **INTERROGATORY NO. 7:**

2 Identify all steps taken by You to comply with the "equal access" provision found  
3 in 42 U.S.C. § 1396a(a)(30).

4 **INTERROGATORY NO. 8:**

5 Identify the "number of instances" in which Alaska set Reimbursement Rates for  
6 drugs at rates lower than the FUL "pursuant to the State MAC programs," as alleged in  
7 paragraph 71 of the Complaint.

8 **INTERROGATORY NO. 9:**

9 For each of BIPI's Subject Drugs, identify any drugs "with greater medicinal  
10 value," as that phrase is used in paragraph 58 of the Complaint.

11 **INTERROGATORY NO. 10:**

12 For BIPI's Subject Drugs, identify those for which You contend BIPI used AWP in  
13 any way to obtain (a) increased sales; (2) market share; or (3) profits at the expense of  
14 Alaska, as alleged in paragraph 91 of the Complaint.

15 **INTERROGATORY NO. 11:**

16 For any of BIPI's Subject Drugs identified in response to the previous  
17 interrogatory, state the original market share, the increased market share, and the  
18 competitor(s) whose market share(s) were decreased.

19 **INTERROGATORY NO. 12:**

20 For each of the following positions (and their predecessor positions / divisions /  
21 offices / programs) within the Alaska Department of Health and Social Services, please  
22 identify the persons who held each position from 1987 to present:

- 23 a. Commissioner
- 24 b. Deputy Commissioner of Operations
- 25 c. Assistant Commissioner, Finance and Management Services
- 26 d. Director of the Division of Health Care Services (formerly Division of Medical  
27 Assistance)
- 28 e. Deputy Director of the Division of Health Care Services (formerly Division of  
Medical Assistance)

- 1 f. Manager, Office of Program Review
- 2 g. Pharmacy Program Manager
- 3 h. Manager/Head of Medicaid Management Information System
- 4 h. Each deputy commissioner, assistant commissioner, director, section
- 5 manager/head, and manager/head of any division, office, or program who has
- 6 or had any responsibility Related to the Alaska Medicaid program.

7 **INTERROGATORY NO. 13:**

8 For each person identified in response to the previous interrogatory, please state  
9 all contact information You have for each person, including each person's telephone  
10 number(s), present and former address(es), email address(es), current and former  
11 employer(s), physical home address(es), and mailing address(es).

12 **INTERROGATORY NO. 14:**

13 Do You contend, excluding any dispensing fee, that any reimbursement by You  
14 to a Provider for a Subject Drug dispensed to a Beneficiary that exceeded the price paid  
15 by the Provider to acquire the Subject Drug constituted an unlawful overpayment?

16 //

17 //

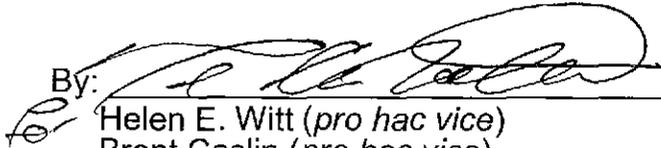
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1 **INTERROGATORY NO. 15:**

2 Identify the name, title, telephone number, address, and email address of any  
3 present or former employee(s) of the State of Alaska who assisted in responding to any  
4 of these Interrogatories or any of the Requests for Production in the Defendants' First  
5 Set of Requests for Production of Documents to Plaintiff State of Alaska, specifying the  
6 dates each such person was employed by the State and which Interrogatories or  
7 Requests for Production each such person assisted in preparing.

8 DATED: November 28, 2007

Respectfully submitted:

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10  
11 By: 

Helen E. Witt (*pro hac vice*)  
Brent Caslin (*pro hac vice*)  
Amanda J. Wong (*pro hac vice*)  
Sasha K. Danna (*pro hac vice*)

14 KIRKLAND & ELLIS LLP

15  
16  
17 By: 

Thomas Matthews (Bar No. 8511179)  
Kenneth Schoolcraft (Bar No. 8310146)

19 MATTHEWS & ZAHARE

20 Attorneys for Defendants  
21 BOEHRINGER INGELHEIM  
22 PHARMACEUTICALS, INC.; BOEHRINGER  
23 INGELHEIM ROXANE, INC. F/K/A ROXANE  
24 LABORATORIES, INC.  
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