

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 03-CI-1135
DIVISION II**

**COMMONWEALTH OF KENTUCKY
Ex. Rel. GREGORY D. STUMBO, Attorney General**

PLAINTIFF

vs.

**WARRICK PHARMACEUTICALS CORPORATION
SCHERING-PLOUGH CORPORATION
SCHERING CORPORATION
DEY, INC.**

DEFENDANTS

**DEFENDANT DEY, INC.'S FIRST SET
OF INTERROGATORIES TO PLAINTIFF**

Pursuant to Ky. R. Civ. P. 33, Defendant Dey, Inc. ("Dey") hereby demands that Plaintiff, Commonwealth of Kentucky, answer the following interrogatories. Plaintiff is required to respond to these Interrogatories no later than September 20, 2004.

DEFINITIONS

1. The term "document" is used in its broadest sense and means and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped or produced or reproduced by any other means. The term "document" means and includes, without limitation, all appraisals, records, personal notes, e-mails, cablegrams, telexes, facsimiles, studies, calendars, day-timers, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries, records or recordings of telephone conversations, summaries or records of personal conversations of interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, work papers, memoranda, statements, summaries, reports,

journals, billing records, invoices, correspondence, letters, financial statements, balance sheets, accounting entries, audits, tax returns, loan documents, and/or all written or recorded matter of any kind whatsoever. The term "document" also means and includes every other means by which information is recorded or transmitted including, without limitation, photographs, videotapes, tape recordings, microfilms, punchcards, computer programs, printouts, computer disks, diskettes or CD-ROMs, software, all recordings made through data processing or computer techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any nonidentical copies (*e.g.*, those bearing notations or marks not found on the original document).

2. The term "person" means a natural person, a group of natural persons acting as individuals, a group of individuals acting in a collegial capacity (*e.g.*, as a committee, board of directors, agency, etc.), a corporation, a partnership, a limited partnership, a limited liability partnership, a joint venture, a limited liability corporation, a government or governmental agency and/or any other incorporated or unincorporated business, government or entity.

3. The term "concerning" means referring to, relating to, regarding, constituting, comprising, containing, setting forth, summarizing, reflecting, stating, describing, recording, noting, embodying, mentioning, studying, analyzing, evidencing, discussing, or evaluating, whether directly or indirectly.

4. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) by any means, including, but not limited to, letter, facsimile, e-mail, voicemail, memorandum, telephone, or any other type of document.

5. The phrases “documents which relate to,” “documents relating to” and “entries relating to” mean documents or entries containing, constituting, showing or relating to or referring to in any way, directly or indirectly, including documents underlying, supporting, now or previously attached or appended to, or used in the preparation of, any document called for by these Interrogatories.

6. The term “identify” means:

(a) when referring to a natural person, state the person’s full name, present or last known home address and telephone number; present or last known position, business affiliation or occupation; name, address and telephone number of present employer; and name, address and telephone number of employer at the time of the occurrence, if different from that of the present employer;

(b) when referring to an entity other than a natural person, state the full name and type of said entity; the business address of the entity; and the identities of the entity’s officers or managers; and

(c) when referring to a document, state the full name of the person(s) who authored or formulated the document; the full name and address of the person(s) who received the document; the date of the document’s creation or formulation; the name, address and job title of the document’s present custodian; the title of the document; a description of the document’s contents and purpose; and the page or pages containing the information to be identified.

7. To state “the identity.” of a person, document or thing means to identify the person, document or thing as provided in paragraph 6, above.

8. The phrase “describe in detail” means provide a complete factual summary that (a) sets forth, in chronological order, the substance of any fact, action, occurrence, act, conduct, event, circumstance, or communication concerning the item in question; and (b) sets forth any and all evidence demonstrating, evidencing, supporting, or tending to show any fact, action, occurrence, act, conduct, event, circumstance, or communication concerning, the item in question.

9. “Plaintiff” means the Commonwealth of Kentucky, including, without limitation, the office of the Kentucky Attorney General, the Kentucky Cabinet, the Kentucky Cabinet for Health Services, the Kentucky Medicaid program, the Office of the Inspector General, the Department for Medicaid Services, the Office of the Ombudsman, Drug Management Review Advisory Board, Drug Technical Advisory Committee, Pharmacy and Therapeutics Advisory Committee, the Kentucky Board of Pharmacy, and any other Kentucky agency, program, and elected or appointed official, as well as agents, employees, representatives, commissions, divisions, departments, agencies, instrumentalities, administrators, or anyone else acting on behalf of any of the foregoing.

10. “Medicare” means the federal Medicare Program under 42 U.S.C. §§ 1395-1395pp.

11. “Complaint” means the Amended Complaint filed in this action on or about October 14, 2003.

12. “Dey” means Dey, Inc. and any predecessor or successor corporation and includes directors, officers, employees, agents, representatives and other persons acting on Dey’s behalf, including attorneys.

13. "Warrick" means Warrick Pharmaceuticals Corp. and any predecessor or successor corporation and includes directors, officers, employees, agents, representatives and other persons acting on Warrick's behalf, including attorneys.

14. "Schering-Plough" means Schering-Plough Corp. and any predecessor or successor corporation and includes directors, officers, employees, agents, representatives and other persons acting on Schering-Plough's behalf, including attorneys.

15. "Schering" means Schering Corp. and any predecessor or successor corporation and includes directors, officers, employees, agents, representatives and other persons acting on Schering's behalf, including attorneys.

16. "Defendants" means Warrick, Schering-Plough, Schering, and Dey.

17. "Provider" means any entity or physician who provides health care, including prescription drugs, to any Participant or Beneficiary or any person to whom Plaintiff provides reimbursement for drugs dispensed to a Patient or Beneficiary.

18. "Subject Drugs" means the drugs listed in the table annexed to the Complaint as Exhibit 1 and any other drug which is in any manner the subject of the claims in this action.

19. "Publisher" means any pharmaceutical price publishing service, including, without limitation, Red Book, First DataBank, Blue Book, and Medi-Span.

20. "Participant" and "Beneficiary" mean a person for whom Plaintiff provides eligible health care or health insurance through any program, including, without limitation, the Kentucky Medicaid program and Medicare Part B.

21. The term "you" means the Plaintiff and/or any representative, employee, or agent of the Plaintiff who responds to, or is consulted in connection with responses to, these Interrogatories.

22. "Medicaid Rebate" means any rebate paid pursuant to 42 U.S.C. § 1396r-8 or an agreement thereunder.

INSTRUCTIONS

For the purposes of these Interrogatories, the following instructions apply:

A. If you contend that any individual interrogatory is objectionable in whole or in part, state with particularity your objection and all bases therefor, and respond to the portion of the interrogatory to which you do not object.

B. These Interrogatories are continuing in nature and require further and supplemental responses in the event you obtain or discover additional information between the time of your initial response and the time of trial.

C. If the answer to all or any part of any interrogatory is not presently known or available, include a statement to that effect, furnish the information known or available, and respond to the entire interrogatory by supplemental answer in writing and under oath at such time as the entire answer becomes known or available. If an estimate can be reasonably made in place of unknown information, set forth the best estimate, clearly designated as such, in place of the unknown information and describe the basis upon which the estimate is made.

D. These Interrogatories seek all information in Plaintiff's possession, custody or control, including information in the possession of Plaintiff's present or past agents, accountants, employees, attorneys, and any other person or entity acting on Plaintiff's behalf, except to the extent that such information is privileged.

E. The singular form of any word includes the plural, the plural includes the singular, and masculine pronouns denote correlative feminine pronouns.

F. The use of a verb in any tense shall be construed as the use of the verb in all other tenses wherever necessary to bring within the scope of these Interrogatories all documents or information that might otherwise be construed as outside the scope of these Interrogatories.

G. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Interrogatories all documents or information that might otherwise be construed as outside the scope of these Interrogatories.

H. To the extent these Interrogatories seek the identity of an "employee," "employees," or a "person employed," they seek the identity of any current or former employee, including political appointees and volunteers.

I. Unless otherwise provided herein, all words and phrases used herein shall be accorded their ordinary meanings and shall be interpreted in their common, ordinary senses.

J. These Interrogatories are submitted for the purpose of discovery in this action and shall not be deemed to constitute a waiver of any objection(s) that may be made at trial to the introduction of evidence by any party concerning subjects covered by these Interrogatories, or as an admission of the relevance or materiality of any matter covered by these Interrogatories.

K. Unless otherwise stated, the relevant period for these Interrogatories is the period from January 1, 1993 to the present. If, in order to provide a complete or accurate response to an interrogatory, you must refer to a time period both partially within and partially without the relevant period, you are instructed to do so.

INTERROGATORIES

1. Identify and list every alleged misrepresentation, omission or fraudulent statement upon which You base your claims against Dey in this action. With regard to each alleged misrepresentation, omission or fraudulent statement, please identify:

(a) The nature and content of the alleged misrepresentation, omission or fraudulent statement;

RESPONSE:

(b) The person who allegedly made such purported misrepresentation or fraudulent statement;

RESPONSE:

(c) The person(s) to whom such alleged misrepresentation or fraudulent statement was made;

RESPONSE:

(d) The date on which such alleged misrepresentation or fraudulent statement occurred; and

RESPONSE:

(e) All documents upon which you rely for your assertion that Dey made such alleged misrepresentation, omission or fraudulent statement.

RESPONSE:

2. To the extent Plaintiff purports to recover alleged damages and/or restitution on behalf of Kentucky Medicare, Part B beneficiaries, as alleged in Paragraph 3 of the Complaint, identify:

(a) Each instance in which each of the Subject Drugs manufactured by Dey was purchased by a Kentucky Medicare, Part B beneficiary on whose behalf Kentucky is seeking to recover damages and/or restitution, identifying each such beneficiary by name, address and telephone number;

RESPONSE:

(b) Each Provider from whom each of the Subject Drugs manufactured by Dey was purchased by a Kentucky Medicare, Part B beneficiary;

RESPONSE:

(c) By year and individual Participant or Beneficiary, the amount paid in the form of co-payments by each Kentucky Medicare, Part B beneficiary for the Subject Drugs manufactured or marketed by Dey;

RESPONSE:

(d) The amount of alleged damages and/or restitution to which each Kentucky Kentucky Medicare, Part B beneficiary is purportedly entitled from Dey;

RESPONSE:

(e) The detailed basis for the calculation of the amounts set forth in Interrogatory 2(c); and

RESPONSE:

(f) For each Kentucky Medicare, Part B beneficiary on whose behalf You are bring a claim, please explain, with specificity and detail, the factual and legal bases for the claim.

RESPONSE:

3. Describe the factual basis for Your allegation in paragraph 21 of the Complaint that Dey “knowingly, willfully and intentionally provided false and inflated AWP and other pricing information” for its drugs, specifically identifying:

- (a) the date(s) each such alleged false and inflated AWP was provided;

RESPONSE:

- (b) how each of those AWPs was false and inflated;

RESPONSE:

(c) the date(s) on which the Kentucky Medicaid Program allegedly made payment based upon each of those alleged false and inflated AWPs;

RESPONSE:

- (d) the amount of each payment that was made; and

RESPONSE:

- (e) to whom each such payment was made.

RESPONSE:

4. With respect to the allegations of paragraph 27 of the Complaint that Dey “fraudulently increased the amount providers are reimbursed,” identify:

- (a) each Provider whose reimbursement was fraudulently increased; and

RESPONSE:

(b) the amount by which each Provider's reimbursement was fraudulently increased.

RESPONSE:

5. Identify each and every instance in which Dey "knowingly, willfully, and intentionally concealed its drugs' true AWP" from Kentucky Medicaid as alleged in paragraph 28 of the Complaint. For each instance,

(a) Identify what the "true AWP" was, specifying the price(s) you contend Dey should have reported as the AWP of each of the Subject Drugs for the Relevant Period;

RESPONSE:

(b) State the meaning of the term "true AWP" as used in paragraph 28 of the Complaint;

RESPONSE:

(c) Identify the actions of Dey that constituted a knowing, willful, and intentional concealment;

RESPONSE:

(d) Identify any legal basis You rely upon that would require Dey to disclose any alleged concealment to Plaintiff.

RESPONSE:

6. Identify each instance in which You requested pricing information directly from Dey or any other Manufacturer.

RESPONSE:

7. State the AWP used for reimbursement purposes for each NDC of each Subject Drug, including the time period during which the AWP was used.

RESPONSE:

8. Please state, by year and by NDC, the total number of units of each dosage form and strength and package size of each Subject Drug manufactured or marketed by Dey for which reimbursement was paid by You to each Provider. Please provide the yearly total number of units both as an aggregate figure and by Provider. Identify all Documents relating to or reflecting the information provided in response to this Interrogatory.

RESPONSE:

9. Please state, by year and by NDC, the dollar amount paid for reimbursement by You to Providers for each Subject Drug manufactured or marketed by Dey.

Please provide the yearly dollar amounts both as an aggregate figure and by the Provider. Identify all documents relating to or reflecting the information provided in response to this Interrogatory.

RESPONSE:

10. Describe in detail whether Plaintiff contends that Dey is liable solely by virtue of the existence of a so-called "spread" between the published AWP for a prescription drug and the price paid by Providers to acquire such prescription drug and, if so, state how large You contend the spread must be (as a percentage of Provider acquisition cost) to constitute grounds for liability.

RESPONSE:

11. If Plaintiff's reimbursement for any of the Subject Drugs was limited by either the federal upper limit (or "FUL") or a maximum allowable cost (or "MAC"), then for each such drug state:

(a) its name and NDC number;

RESPONSE:

(b) whether a FUL or MAC was applicable and the amount thereof; and

RESPONSE:

(c) the period(s) of time during which each FUL or MAC figure was applicable to each such drug.

RESPONSE:

12. State Plaintiff's definition of the terms "free goods," "educational grants," and "other incentives," as alleged in Paragraph 40 of the Complaint.

RESPONSE:

13. Identify each and every instance in which Dey allegedly provided "free goods," "educational grants" and "other financial incentives," indicating:

(a) the date such incentive was allegedly provided;

RESPONSE:

(b) a specific description of the incentive that was allegedly provided;

RESPONSE:

(c) the person allegedly providing such incentive;

RESPONSE:

(d) the person to whom such incentive was allegedly provided; and

RESPONSE:

(e) the factual basis for Plaintiff's allegations that these "incentives lowered the actual prices of Defendants' drugs, increased their market share and resulted in increased profits for providers."

RESPONSE:

14. State whether Plaintiff knew, at any time, that the AWP's published by the Publishers for the Subject Drugs did not necessarily reflect Provider's acquisition cost for the Subject Drugs and, if so, state:

RESPONSE:

(a) the identity of all persons possessing such knowledge; and

RESPONSE:

(b) when each of these persons first knew that the AWP's published by the Publishers did not necessarily reflect the actual acquisition cost for the Subject Drugs.

RESPONSE:

15. State whether, at any time, Plaintiff made any effort to obtain any Provider's acquisition cost for the Subject Drugs and if so:

- (a) identify the persons from whom such information was sought; and

RESPONSE:

- (b) identify any documents obtained.

RESPONSE:

16. If the answer to Interrogatory 15 is in the negative, state in detail Plaintiff's reasons for not making any effort to obtain any Provider's acquisition cost for the Subject Drugs.

RESPONSE:

17. Identify all persons who participated in the determination or calculation of Medicaid Rebates owing to Plaintiff.

RESPONSE:

18. Identify each person employed by Plaintiff responsible for communicating with Federal Agencies concerning the reimbursement of Providers for prescription drugs dispensed pursuant to any program.

RESPONSE:

19. State whether Plaintiff ever compared reported AWP's with the prevailing prices at which drugs are available to Providers and if so:

RESPONSE:

(a) identify all documents concerning or reporting the results of such comparison;

RESPONSE:

(b) identify each drug for which such a comparison was performed, by name and NDC number;

RESPONSE:

(c) state the date on which each such comparison was prepared; and

RESPONSE:

- (d) identify all persons who participated in any such comparisons.

RESPONSE:

20. State whether Plaintiff has, by action, administrative proceeding, or otherwise, sought to recover alleged overpayments from the Providers who allegedly received “excessive amounts” of reimbursement from Plaintiff and if so:

RESPONSE:

- (a) identify each such action or proceeding by its title and case or docket number;

RESPONSE:

- (b) state where the action or proceeding is pending;

RESPONSE:

- (c) state whether the proceeding is continuing or completed;

RESPONSE:

- (d) identify the counsel for the Provider in each such proceeding; and

RESPONSE:

- (e) state the recovery, if any, Plaintiff obtained.

RESPONSE:

21. Set forth a detailed calculation of each form, type, or variety of damages or restitution Plaintiff seeks in this action, including punitive damages or civil penalties, along with a detailed explanation of the basis upon which Plaintiff seeks each form, type, or variety of damages sought; the methodology You employed in calculating such damages, all assumptions made when calculating such damages; and all documents supporting such damages.

RESPONSE:

22. Identify the “spread,” as the term is used in the Complaint, for those of the Subject Drugs marketed or manufactured by Dey, and identify the individuals who allegedly determined the “spread”; explain how they allegedly determined the “spread”; identify all documents used in determining the alleged “spread”; and identify all documents relating to the information provided in response to this Interrogatory.

RESPONSE:

23. Describe in detail the factual basis for your allegation in paragraphs 31-36, 38, 49, 59, and 64 that Defendants “market[ed] the ‘spread,’” including the dates on which the alleged “marketing the ‘spread’” occurred, the place where the alleged “marketing of the ‘spread’ occurred,” the names of employees or representatives of Dey who allegedly “market[ed] the ‘spread,’” the Provider to whom the “spread” as allegedly marketed; the drug that was allegedly marketed; and an identification of any documents on which you relied in making these allegations.

RESPONSE:

24. Identify every person employed or formerly employed by Plaintiff to whom Dey made any representation concerning the Subject Drugs, including, without limitation, representations concerning the AWP of a Subject Drug, identify each person acting on Dey’s behalf who made such representation and identify all documents containing or reflecting any such representations.

RESPONSE:

25. Identify any Person whom You or Your attorneys expect to use as an expert witness in conjunction with this litigation and, as to each such Person, state:

- (a) the subject on which the Person is expected to provide expert testimony;

RESPONSE:

(b) the substance of the facts and opinions as to which such Person is expected to render an opinion;

RESPONSE:

(c) the Documents such Person reviewed in connection with rendering his or her opinion;

RESPONSE:

(d) a summary of the grounds for each such opinion;

RESPONSE:

(e) each judicial or administrative proceeding in which each such Person has testified or is currently expected to testify;

RESPONSE:

(f) the Person's educational, employment and professional background;

RESPONSE:

(g) any publications and non-published reports or studies that such Person has authored, co-authored or helped to write or research;

RESPONSE:

(h) any other information that You may use to qualify such Person as an expert or that bears on such Person's expertise; and

RESPONSE:

(i) whether such Person has been previously retained by You, Your attorneys or their law firms, including, but not limited to the circumstances of such employment.

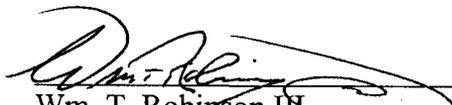
RESPONSE:

26. Identify each Person consulted or relied upon, or who provided documents or who otherwise constituted a source of factual information, in connection with the preparation of responses to these Interrogatories, listing with respect to each such person the number(s) of the Interrogatories to which he or she helped to respond or as to which he or she was consulted or relied upon or otherwise constituted a source of factual information.

RESPONSE:

Dated: August 13, 2004

Respectfully submitted,



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Co-Counsel for Defendant Dey, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant Dey, Inc.'s First Set of Interrogatories was served this 13th day of August, 2004 by regular U.S. Mail, postage prepaid, upon the individuals listed below:

C. David Johnstone, Esq.
Janet M. Graham, Esq.
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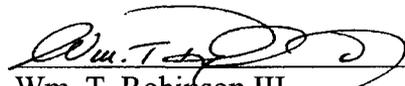
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