
STATE OF WISCONSIN,

)
)

Plaintiff,

)
)

Case No. 04-CV-1709
Unclassified-Civil: 30703

v.

)
)

AMGEN INC., et al.,

)
)

Defendant.

)
)

)

**DEFENDANT ABBOTT LABORATORIES INC.'S RESPONSES
AND OBJECTIONS TO PLAINTIFF'S SECOND SET
OF CONSOLIDATED DISCOVERY REQUESTS**

Pursuant to Wis. Stat. §§ 804.1, 804.08, 804.09 and 804.11, Defendant Abbott Laboratories Inc. ("Abbott"), by its attorneys, responds and objects to Plaintiff's Second Set of Consolidated Discovery Requests (the "Requests") as follows:

PRELIMINARY STATEMENT

1. Abbott's responses to the Requests are based on information available at this time. Abbott's investigation for information responsive to the Requests continues. Abbott reserves the right to supplement and/or amend these responses (and its production of documents) at any time before trial.

2. Where Abbott states herein that it will produce or has produced documents in accordance with the Wisconsin Rules of Civil Procedure, it will produce such documents to the extent that they exist and can be reasonably obtained.

3. Abbott's specific objections to each request are in addition to the general limitations and objections set forth in this and the next sections. These limitations and objections form a part of the response to each and every request and are set forth here to avoid repetition. Thus, the absence of a reference to a general objection should not be construed as a waiver of the general objection as to a specific request.

3. By stating that Abbott will produce any documents or things responsive to a particular request, Abbott does not represent that any such documents or things exist or are within its custody, care, or control.

4. The information and documents supplied herein are for use in this litigation and for no other purpose.

5. If and where Abbott states herein that it will produce documents in accordance with the Wisconsin Rules of Civil Procedure, it will provide such documents to the extent they exist and can be reasonably obtained. Abbott's responses are limited to documents within its possession, custody or control, and that are reasonably accessible.

6. Abbott's responses to the Requests are submitted without prejudice to Abbott's right to produce evidence of any subsequently discovered fact. Abbott accordingly reserves its right to further production as additional facts are ascertained.

7. To the extent Abbott's responses to the Requests contain information subject to the Protective Order entered on November 29, 2005 in this matter, such information must be treated accordingly.

GENERAL OBJECTIONS TO REQUESTS

1. Abbott generally objects to the Requests to the extent they seek information or documents not relevant to the issues in this action and not reasonably calculated to lead to the discovery of admissible evidence.

2. Abbott generally objects to the Requests to the extent they seek information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, consulting-expert privilege, joint-defense privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule or doctrine.

3. Abbott generally objects to the Requests to the extent they seek confidential and/or proprietary information.

4. Abbott generally objects to the Requests to the extent they exceed the scope of discovery permitted under the Wisconsin Rules of Civil Procedure, Wisconsin law, or other applicable law or Court order.

5. Abbott generally objects to the Requests to the extent they are duplicative of Plaintiff's other discovery requests.

6. Abbott generally objects to the Requests to the extent that: (a) the discovery sought by any request is unreasonably cumulative or duplicative, or is obtainable from some other source (including, but not limited to, a public source) that is more convenient, less burdensome, or less expensive; and (b) compliance with any request would be unduly burdensome, unduly expensive, harassing, or oppressive.

7. Abbott generally objects to the Requests to the extent they seek information about products not named in the Second Amended Complaint.

8. Abbott's responses to the Requests are made without in any way waiving: (a) the right to object on the grounds of competency, relevancy, materiality, privilege, or other grounds of admissibility as evidence for any purpose in any subsequent proceeding in this action or any other action; and (b) the right to object on any ground to other discovery requests involving or relating to the subject matter of the Requests. Furthermore, Abbott is providing responses in an effort to expedite discovery in this action and not as an indication or admission by Abbott of the relevancy, materiality or admissibility of the responses. Abbott preserves all objections to Plaintiff's use of such responses at trial.

9. Abbott objects to the time period covered by the Requests to the extent it encompasses any time period after June 3, 2004, the date Plaintiff filed its original Complaint in this case.

10. To the extent applicable, Abbott adopts and incorporates by reference any objections to the Requests made by any other defendant in this matter.

11. Abbott expressly incorporates the above General Objections into each specific response to the Requests set forth below as if set forth in full therein. The response to a Request shall not operate as a waiver of any applicable specific or general objection to the Request.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Abbott objects to Plaintiff's "Definitions" and "Instructions" contained within the Requests to the extent Plaintiff intends to expand upon or alter Abbott's obligations under the Wisconsin Rules of Civil Procedure.

2. Abbott objects to the definition of the term "Document" as vague and ambiguous. Abbott further objects to this definition to the extent it seeks to impose discovery obligations that exceed or are inconsistent with the requirements of the Wisconsin Rules of Civil Procedure. Abbott further objects to this definition to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, the consulting expert privilege, the joint-defense privilege or any other privilege or exemption recognized under Wisconsin or other applicable law. Abbott further objects to this definition to the extent it seeks to: (i) require Abbott to produce documents or data in a particular form or format; (ii) convert information into a particular file format; (iii) produce data, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, or other information; or (vii) violate any licensing agreement or copyright laws.

3. Abbott objects to the definition of the term "Identify" to the extent it seeks to impose obligations that exceed or are inconsistent with the requirements of the Wisconsin Rules of Civil Procedure, the Court's Local Rules and Orders, or other applicable law.

4. Abbott objects to the definition of "Incentive" on the grounds that it is overly broad, unduly burdensome, ambiguous and vague, particularly with respect to the language "anything of value," "provided," "customer," "reward a customer or other party for promoting,

prescribing, dispensing or administering a Pharmaceutical or course of treatment,” “lowering the cost of a Pharmaceutical to the customer in any way, regardless of the time the ‘incentive’ was provided,” “credits,” “discounts,” “return to practice discounts,” “prompt pay discounts,” “volume discounts,” “on-invoice discounts, “off-invoice discounts,” “rebates,” “market-share rebates,” “access rebates,” “bundled-drug rebates,” “free goods or samples,” “administrative fees or administrative fee reimbursements,” “marketing fees,” “stocking fees,” “conversion fees,” “patient education fees,” “off-invoice pricing,” “educational or other grants,” “research funding,” “clinical trials,” “honoraria,” “speaker’s fees or payments,” “patient education fees” and “consulting fees.” Abbott further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

5. Abbott objects to the definition of “You,” “Your,” and “Your Company” as overly broad and unduly burdensome. Abbott further object to this definition to the extent it seeks to impose obligations broader than, or inconsistent with, Abbott’s obligations under the Wisconsin Rules of Civil Procedure and the Court’s Local Rules and Orders.

6. Abbott objects to the Instructions for Interrogatories on the grounds that they are unduly burdensome. Abbott further objects to these Instructions to the extent that they purport to impose obligations broader than, or inconsistent with Abbott’s obligations under the Wisconsin rules, statutes, or other applicable law. Abbott also objects to these Instructions to the extent that they seek information in the possession of Abbott’s “attorneys,” and “anyone else subject to... [Abbott’s] attorneys’ control.”

7. Abbott objects to the Instructions for Requests for Production of Documents on the ground that they are unduly burdensome. Abbott further objects to these Instructions to the

extent that they purport to impose obligations broader than, or inconsistent with, Abbott's obligations under the Wisconsin rules, statute or other applicable law. Abbott also objects to these Instructions to the extent that they seek collection of documents from Abbott's "attorneys or their agents," "employees," "representatives," or "investigators."

8. Abbott objects to each request and interrogatory to the extent that it seeks disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of Plaintiff.

9. Abbott objects to the Instructions for Requests for Admission to the extent that they purport to impose obligations broader than, or inconsistent with, Abbott's obligations under the Wisconsin rules, statutes, or other applicable law.

SPECIFIC RESPONSES AND OBJECTIONS

Subject to and without waiving the foregoing General Objections, which are incorporated by reference in the responses below, Abbott responds to the Requests as follows:

CONSOLIDATED DISCOVERY REQUEST NO. 7

REQUEST FOR ADMISSION NO. 7: At no time has the State of Wisconsin and you agreed on the meaning or definition of average wholesale price ("AWP").

RESPONSE: In addition to the General Objections set forth above, Abbott objects to this Request on the grounds that it is overly broad and unduly burdensome. Abbott further objects to this Request on the grounds that the term "agreed" is vague, ambiguous and undefined. Abbott further objects to this Request to the extent it seeks information that is not within Abbott's possession, custody or control, is publicly available, or is more readily available to Plaintiff. Additionally, Abbott objects to this Request to the extent it implies that Abbott has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Subject to and without waiving its objections, Abbott denies this Request.

INTERROGATORY NO. 7: If your response to request for admission no. 7 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of AWP that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (c) state whether you contend that the State of Wisconsin and you agree on the definition of AWP provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;
- (d) if your answer to subpart (c) is “no,” identify the last date when you contend the State of Wisconsin and you agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory;
- (f) if your answer to subpart (e) is “yes,” describe in detail the manner in which the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person’s participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of AWP;
- (g) identify all documents supporting your response to request for admission no. 7;
- (h) identify all documents supporting your answer to interrogatory no. 7, including all subparts; and
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 7, including all subparts.

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Abbott objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome. Abbott further objects to this Interrogatory on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. Abbott further objects to this

Interrogatory to the extent it seeks information that is not within Abbott's possession, custody or control, is publicly available, or is more readily available to Plaintiff. Additionally, Abbott objects to this Interrogatory to the extent it implies that Abbott has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Subject to and without waiving its General and Specific Objections, Abbott states that both it and the State of Wisconsin understood throughout the entire relevant time period that AWP is a reimbursement benchmark, and does not represent an actual average of wholesale prices. Abbott further states that the State of Wisconsin chose and continues to use AWP as a basis for reimbursement despite, and in part because of, its understanding that AWP does not represent an actual average of wholesale prices. Abbott further states that Plaintiff is already in possession of documents from which the answer to this Interrogatory may be obtained. Additionally, Abbott refers Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information generally responsive to this Interrogatory.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7: Produce all documents identified in your response to interrogatory no. 7.

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Abbott objects to this Request on the grounds that it is overly broad and unduly burdensome. Abbott also objects to this Request to the extent it seeks information that is not within Abbott's possession, custody or control, is publicly available, or is more readily available to Plaintiff. Abbott incorporates by reference its answer and objections to Interrogatory No. 7 above.

Subject to and without waiving its General and Specific Objections, Abbott states that Plaintiff is already in possession of documents generally responsive to this Request.

CONSOLIDATED DISCOVERY REQUEST NO. 8

REQUEST FOR ADMISSION NO. 8: At no time has the State of Wisconsin and you agreed on the meaning or definition of wholesale acquisition cost (“WAC”).

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Abbott objects to this Request on the grounds that it is overly broad and unduly burdensome. Abbott further objects to this Request on the grounds that the term “agreed” is vague, ambiguous and undefined. Abbott further objects to this Request to the extent it seeks information that is not within Abbott’s possession, custody or control, is publicly available, or more readily available to Plaintiff. Additionally, Abbott objects to this Request to the extent it implies that Abbott has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Based on its General and Specific Objections, Abbott denies this Request.

INTERROGATORY NO. 8: If your response to request for admission no. 8 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of WAC that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of WAC provided in response to subpart (a) of this interrogatory
- (c) state whether you contend that the State of Wisconsin and you agree on the definition of WAC provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;
- (d) if your answer to subpart (c) is “no,” identify the last date when you contend the State of Wisconsin and you agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory;
- (f) if your answer to subpart (e) is “yes,” describe in detail the manner in which the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory, including (1) the identity of each

person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person's participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of WAC;

- (g) identify all documents supporting your response to request for admission no. 8;
- (h) identify all documents supporting your answer to interrogatory no. 8, including all subparts;
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 8, including all subparts.

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Abbott objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome. Abbott further objects to this Interrogatory on the grounds that the terms "agreed" and "together developed" are vague, ambiguous and undefined. Abbott further objects to this Interrogatory to the extent it seeks information that is not within Abbott's possession, custody or control, is publicly available, or is more readily available to Plaintiff. Additionally, Abbott objects to this Interrogatory to the extent it implies that Abbott has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Subject to and without waiving its General and Specific Objections, Abbott states that both it and the State of Wisconsin understood throughout the entire relevant time period that WAC is a list price for pharmaceutical products that does not include customary prompt-pay discounts or other discounts. Abbott further states that Plaintiff is already in possession of documents from which the answer to this Interrogatory may be obtained. Such documents include, but are not limited to, federal statutes, reports from various branches of the federal government and, upon information and belief, documents from the files of various agencies of the State of Wisconsin. Additionally, Abbott refers Plaintiff to Defendants' briefing and

attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information generally responsive to this Interrogatory.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8: Produce all documents identified in your response to interrogatory no. 8.

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Abbott objects to this Request on the grounds that it is overly broad and unduly burdensome. Abbott further objects to this Request on the grounds that the terms "agreed" and "together developed" are vague, ambiguous and undefined. Abbott further objects to this Request to the extent it seeks information that is not within Abbott's possession, custody or control, is publicly available, or is more readily available to Plaintiff. Abbott also incorporates by reference its answer and objections to Interrogatory No. 8 of these Requests.

Subject to and without waiving its General and Specific Objections, Abbott states that Plaintiff is already in possession of documents generally responsive to this Request.

Dated: August 11, 2008

/s/ Lee Ann Russo
James R. Daly
Lee Ann Russo
Jeremy P. Cole
JONES DAY
77 West Wacker Drive
Chicago, IL 60601-1692
Phone: (312) 782-3939
Fax: (312) 782-8585

Allen C. Schlinsog., Jr.
Mark A. Cameli
REINHART BOERNER VAN DEUREN S.C.
1000 North Water Street
Post Office Box 2965
Milwaukee, WI 53201-2965
Phone: (414) 298-1000
Fax: (414) 298-8097

Lynn M. Stathas

REINHART BOERNER VAN DEUREN S.C.
22 East Mifflin Street
Post Office Box 2018
Madison, WI 53701-2018
Phone: (608) 229-2200
Fax: (608) 229-2100

*Attorneys for Defendant Abbott Laboratories
Inc.*

Certificate of Service

I, Lee Ann Russo, hereby certify that on this 11th day of August 2008, a true and correct copy of **ABBOTT LABORATORIES INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S SECOND SET OF CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS** was served on all counsel of record by Lexis Nexis File & Serve®.

/s/ Lee Ann Russo _____
Lee Ann Russo