

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 9

DANE COUNTY

STATE OF WISCONSIN,

)

Plaintiff,

)

)

v.

)

Case No. 04-CV-1709

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ABBOTT LABORATORIES, ET AL.,

)

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Defendants.

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)

**BEN VENUE LABORATORIES, INC.'S RESPONSES AND OBJECTIONS TO
PLAINTIFF STATE OF WISCONSIN'S SECOND SET OF CONSOLIDATED
DISCOVERY REQUESTS TO ALL DEFENDANTS**

Defendant Ben Venue Laboratories, Inc. ("Ben Venue") hereby responds and objects to Plaintiff's Second Set of Consolidated Discovery Requests to All Defendants ("Discovery Requests").

PRELIMINARY STATEMENT

1. As to all matters referred to in these responses and objections to the Discovery Requests, Ben Venue's investigation and discovery continues. The specific responses set forth below, and any production made consistent with the accompanying Discovery Requests, are based upon, and necessarily limited by, information now available to Ben Venue. Ben Venue reserves the right to modify or supplement these responses and objections, to raise any additional objections deemed necessary and appropriate in light of the results of any further review, and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial.

SPECIFIC RESPONSES AND OBJECTIONS TO DISCOVERY REQUESTS

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 its General Objections set forth below, Ben Venue objects to Request for Admission No. 7 on the grounds that the term “agreed” is vague, ambiguous and undefined. Ben Venue also objects to this Request to the extent it implies that Ben Venue has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP. Ben Venue further objects to this Request because it incorrectly assumes that Ben Venue is or could be aware of every communication with the State of Wisconsin.

Subject to and without waiving its objections, Ben Venue denies Request for Admission No. 7.

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 set forth below, Ben Venue objects to Interrogatory No. 7 on the grounds that it is overly broad and unduly burdensome. Ben Venue further objects to this Interrogatory on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. Additionally, Ben Venue objects to this Interrogatory to the extent it implies that Ben Venue 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, Ben Venue incorporates by reference its objections and response to Request for Admission No. 7. Ben Venue further 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 a mathematical average of prices. Ben Venue also 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 a mathematical average of prices. Ben Venue additionally states that Plaintiff is already in

possession of documents from which the answer to this Interrogatory may be obtained. Additionally, Ben Venue 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 set forth below, Ben Venue objects to Request for Production of Documents No. 7 on the grounds that it is overly broad and unduly burdensome.

Subject to and without waiving its objections, Ben Venue incorporates by reference its objections and response to Interrogatory No. 7. Ben Venue further states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's custody or control.

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 set forth below, Ben Venue objects to Request for Admission No. 8 on the grounds that the term "agreed" is vague, ambiguous and undefined. Additionally, Ben Venue objects to this Request to the extent it implies that Ben Venue has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of

WAC. Ben Venue also objects to this Request because it incorrectly assumes that Ben Venue is or could be aware of every communication with the State of Wisconsin.

Subject to and without waiving its objections, Ben Venue denies Request for Admission No. 8.

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 set forth below, Ben Venue objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. Ben Venue further objects to this Interrogatory on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. Additionally, Ben Venue objects to this Interrogatory to the extent it implies that Ben Venue 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 objections, Ben Venue incorporates by reference its objections and response to Request for Admission No. 8. Ben Venue further 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. Ben Venue also 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, Ben Venue 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 set forth below, Ben Venue objects to Request for Production of Documents No. 8 on the grounds that it is overly broad and unduly burdensome.

Subject to and without waiving its objections, Ben Venue incorporates by reference its objections and response to Interrogatory No. 8. Ben Venue states that this Request seeks documents or information equally available to Plaintiff or already in Plaintiff's custody or control.

GENERAL OBJECTIONS

1. Ben Venue adopts and incorporates by reference, as if fully set forth herein, its General Objections to Plaintiff's First Set of Consolidated Discovery Requests to All Defendants.

Dated: August 11, 2008

Respectfully submitted,

/s/ Ceylan Ayasli Eatherton

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*Attorneys for Defendant Ben Venue
Laboratories, Inc.*

CERTIFICATE OF SERVICE

I, Ceylan Ayasli Eatherton, hereby certify that on this 11th day of August, 2008, a true and correct copy of the foregoing was served on all counsel of record by Lexis Nexis File & Serve®.

/s/ Ceylan Ayasli Eatherton
Ceylan Ayasli Eatherton

VERIFICATION

STATE OF OHIO)

)SS.

COUNTY OF CUYAHOGA)

David R. Gaugh, being first duly sworn, on oath deposes and states that he is authorized by Ben Venue Laboratories, Inc. to verify the foregoing Ben Venue Laboratories, Inc.'s Responses and Objections to Plaintiff State of Wisconsin's Second Set of Consolidated Discovery Requests to All Defendants and hereby verifies the same; that some of the facts and matters set forth therein are not within his personal knowledge; that the facts and matters set forth therein have been assembled by authorized employees and counsel of Ben Venue Laboratories, Inc.; and that he is informed that the facts and matters set forth therein are true to the best of Ben Venue Laboratories, Inc.'s present knowledge and recollection.


David R. Gaugh

Subscribed and sworn to before me
this 5th day of August, 2008.

Scott R. Lillback
Type / Print Name

Scott R. Lillback
Notary Public

My Commission expires: April 13, 2013

SCOTT R. LILLBACK
Notary Public, STATE OF OHIO
My Commission Expires.....
Recorded in Cuyahoga County