

IN THE CIRCUIT COURT OF DANE COUNTY, WISCONSIN

THE STATE OF WISCONSIN, Plaintiff, v. ABBOTT LABORATORIES, INC., ET AL., Defendants.	Case No. 04-1709
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**DEFENDANT DEY, INC.'S RESPONSES AND OBJECTIONS
TO PLAINTIFF'S NOTICE OF DEPOSITION**

TO: The State of Wisconsin

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Pursuant to Wisconsin Statute § 804.05(2), the Wisconsin Supreme Court Rules, and the Dane County Circuit Court Rules (the "Wisconsin Rules"), defendant Dey, Inc. ("Dey"), by its undersigned counsel, hereby asserts the following responses and objections to Plaintiff's Notice of Deposition (the "Deposition Notice"), dated March 21, 2006 and propounded by plaintiff the State of Wisconsin (the "State" or "Plaintiff"), as follows:

RESERVATION OF RIGHTS AND GENERAL OBJECTIONS

Dey expressly incorporates all of the Reserved Rights and General Objections set forth below into the specific responses and objections to the Deposition Notice. Any specific

objections provided below are made in addition to these Reserved Rights and a failure to reiterate a Reserved Right below shall not constitute a waiver of that or any other objection.

1. These responses and objections are made without in any way waiving or intending to waive: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any documents or information produced in response to the Deposition Notice; (b) the right to object on any ground to the use of the documents or information produced in response to the Deposition Notice at any hearing, trial, or other point during this action; (c) the right to object on any ground at any time to a demand for further responses to the Deposition Notice; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses or objections contained herein.

2. The documents or information supplied pursuant to the Deposition Notice are for use in this action and for no other purpose.

3. The production of documents or information pursuant to the Deposition Notice shall not be construed as a waiver of the confidentiality of any such documents or information.

4. Dey objects to the Deposition Notice to the extent that it demands the production of documents or information that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, the work product doctrine, the joint defense/prosecution privilege, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents or information are inadvertently produced in response to the Deposition Notice, the production of such documents or information shall not constitute a waiver of Dey's right to assert the applicability of any privilege or immunity to the documents or information,

and any such documents or information shall be returned to Dey's counsel immediately upon discovery thereof.

5. Dey objects to the Deposition Notice to the extent that it demands production of documents or information from outside of the statute of limitations applicable to the State's claims in this action, or beyond the time period relevant to this action.

6. Dey objects to the Deposition Notice to the extent that it demands production of documents or information containing trade secrets, proprietary or commercially sensitive or other confidential information, or confidential information compiled pursuant to government regulations.

7. Dey objects to the Deposition Notice to the extent that it demands the production of proprietary documents and information of third parties.

8. Dey reserves the right to withhold the production of any responsive documents or information until the Court has ruled on Defendants' Motion to Dismiss in this action and objects on the grounds set forth in the Motion for a Protective Order filed by defendants Mylan Laboratories Inc. and Mylan Pharmaceuticals Inc. on April 11, 2006.

9. Dey objects to the Deposition Notice because it purports to compel Dey's designated representatives to be deposed over 100 miles from the location where the likely representatives reside.

10. Dey objects to the Deposition Notice to the extent that it demands production of documents or information not within Dey's possession, custody, or control.

11. Dey objects to the Deposition Notice as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to require

production of documents or information relating to pharmaceuticals not at issue in this litigation, and to the extent that it fails to sufficiently identify those pharmaceuticals that are at issue.

12. Dey objects to the Deposition Notice to the extent that it demands production of documents or information concerning drugs that have not been identified by NDC number in the First Amended Complaint.

13. Dey objects to the Deposition Notice as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to require production of documents or information compiled over a thirteen (13) year period – *i.e.*, from January 1, 1993 to the present.

14. Dey objects to the Deposition Notice to the extent it purports to impose on Dey obligations that exceed those imposed by the Wisconsin Rules of Civil Procedure.

15. Dey objects to the Deposition Notice to the extent the topics and document demands are duplicative or redundant of material and information requested in Plaintiff's First Set of Requests for Production of Documents and Plaintiff's Third Set of Document Requests. Dey restates and incorporates Dey's Responses and Objections to Plaintiff's First Set of Requests for Production of Documents and Dey's Responses and Objections to Plaintiff's Third Set of Document Requests.

16. Dey objects to the Deposition Notice to the extent it is vague, ambiguous, or does not identify with sufficient particularity the documents or information sought.

17. Dey objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues in the Deposition Notice. Any response by Dey is not intended to indicate that Dey agrees with any implication or explicit or implicit characterization

of the facts, events, circumstances, or issues in the Deposition Notice, or that such implication or characterization is relevant to this action.

18. Dey objects to the production of witnesses to testify concerning matters that have already been addressed in previous testimony that has been produced to Plaintiff.

19. Dey hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any co-defendant in this action to the extent such objection or reservation of rights is not inconsistent with Dey's position in this litigation, and Dey incorporates its prior objections propounded in response to Plaintiff's document demands.

SPECIFIC RESPONSES AND OBJECTIONS

Subject to the Reserved Rights and General Objections, and without waiving and expressly preserving all such rights and objections, which are hereby incorporated into the response and objection to each topic and request, Dey responds and objects to the State's deposition topics in its Notice as follows:

TOPIC NO. 1:

The evidence or information, if any, about which it is aware, which shows that any of the drugs listed on the attached sheet ("deposition drugs") were purchased by retail pharmacies at a price equal to or greater than the then current Average Wholesale Price (AWP) published in either First Data Bank or the Red Book in any year from 1993 to the present.

RESPONSE:

Dey objects to this topic on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because among other things, it purports to require information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this topic on the grounds that it is vague and ambiguous, particularly with respect to the language "the then current Average Wholesale Price

(AWP)” and “the Red Book.” Dey also objects to the extent that this topic asks for information that is unknown to Dey.

TOPIC NO. 2:

The evidence or information about which it is aware which shows, or which defendant believes may tend to show, that the published AWP was higher than the price pharmacies were actually paying for any of the deposition drugs in each year from 1993 to the present.

RESPONSE

Dey objects to this topic on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because among other things, it purports to require information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this topic on the grounds that it is vague and ambiguous, particularly with respect to the language “may tend to show” and “published AWP.” Dey also objects to this topic to the extent it is duplicative or redundant. Dey also objects to the extent that this topic asks for information that is unknown to Dey.

TOPIC NO. 3:

What contacts Dey Inc., or its subsidiaries, have had with First Data Bank or the Red Book about any of the deposition drugs.

RESPONSE

Dey objects to this topic on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because among other things, it purports to require information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this topic on the grounds that it is vague and ambiguous, particularly with respect to the language “contacts” and “the Red Book,” and on the ground that it is overbroad insofar as it purports to encompass all documents and communications.

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, Dey will produce a witness knowledgeable about Dey's corporate practice with respect to the subject matter of this topic at a mutually agreeable time and place.

TOPIC NO. 4:

Whether Dey Inc., or any of its subsidiaries, ever communicated to either First Data Bank or the Red Book that the published Average Wholesale Prices of their drugs were neither a price that was actually an average of wholesale prices, nor a price that was actually paid by the retail classes of trade and, if so, when such communications took place and of what they consisted.

RESPONSE

Dey objects to this topic on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Dey also objects to this topic on the grounds that it is vague and ambiguous, particularly with respect to the language "the Red Book," "published Average Wholesale Prices," "actually an average of wholesale prices," and "the retail classes of trade." Dey also objects on the ground and to the extent that the topic is not limited to a reasonable number of identified drugs and is overbroad.

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, Dey will produce a witness knowledgeable about its overall corporate practice with respect to the subject matter of this topic at a mutually agreeable time and place.

TOPIC NO. 5:

The Average Manufacturer's Price (AMP) reported to the federal government of each of the targeted drugs in each year since 1993.

RESPONSE

Dey objects to this topic on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because among other things, it purports to require information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this topic on the grounds that it is vague and ambiguous, particularly with respect to the language “Average Manufacturer’s Price (AMP),” “the federal government,” and “the targeted drugs.”

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, Dey will produce a witness knowledgeable about the subject matter of this topic at a mutually agreeable time and place.

TOPIC NO. 6:

Any evidence which shows that the actual average wholesale price at which any of the targeted drugs sold in any given year was greater than the AMP.

RESPONSE

Dey objects to this topic on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because among other things, it purports to require information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this topic on the grounds that it is vague and ambiguous, particularly with respect to the language “the actual average wholesale price,” “the targeted drugs,” and “the AMP.” Dey also objects to this topic to the extent that it demands information from outside of the statute of limitations applicable to the State’s claims in this action, or beyond the time period relevant to this action.

DOCUMENT REQUESTS

Subject to the Reserved Rights and General Objections, and without waiving and expressly preserving all such rights and objections, which are hereby incorporated into the response and objection to each request, Dey responds and objects to the State's duces tecum demands in its Deposition Notice as follows:

REQUEST NO. 1:

All evidence or information showing that any of the targeted drugs was sold at a price equal to or greater than the published AWP from 1993 to the present.

RESPONSE

Dey objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to require production of documents or information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this request on the grounds that it is vague and ambiguous, particularly with respect to the language "the targeted drugs" and "the published AWP."

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, Dey states that its prior productions contain documentation that may be responsive to this request for the drugs listed in the First Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate).

REQUEST NO. 2:

For the same period all evidence or information showing that actual average wholesale prices of its targeted drugs were less than the published AWP.

RESPONSE

Dey objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to require

production of documents or information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this request on the grounds that it is vague and ambiguous, particularly with respect to the language “actual average wholesale prices” and “its targeted drugs.”

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, Dey states that its prior productions contain documentation that may be responsive to this request for the drugs listed in the First Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate).

REQUEST NO. 3:

For the same time period any evidence of communications between Dey Inc. and the Red Book about or concerning any of the targeted drugs.

RESPONSE

Dey objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to require production of documents or information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this request on the grounds that it is vague and ambiguous, particularly with respect to the language “the Red Book” and “the targeted drugs.”

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, Dey states that its prior productions contain price notification letters that Dey sent to price reporting databases for the drugs listed in the First Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate.)

REQUEST NO. 4:

For the same time period the reported AMPs of each targeted drug.

RESPONSE

Dey objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to require production of documents or information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this request on the grounds that it is vague and ambiguous, particularly with respect to the language “the reported AMPs” and “each targeted drug.”

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, Dey states that its prior productions contain AMPs for the drugs listed in the First Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate.)

REQUEST NO. 5:

For the same time period any evidence defendant has showing that the actual average wholesale price of any of the targeted drugs was greater than the reported AMP.

RESPONSE

Dey objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to require production of documents or information relating to pharmaceuticals not at issue in this litigation. Dey also objects to this request on the grounds that it is vague and ambiguous, particularly with respect to the language “the actual average wholesale price,” “the targeted drugs,” and “the reported AMP.”

Subject to and without waiving any of these objections, the General Objections, or the Reserved Rights, Dey states that its prior productions contain documentation that may be responsive to this request for the drugs listed in the First Amended Complaint (namely, generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate).

Dated: May 10, 2006

As to Objections:


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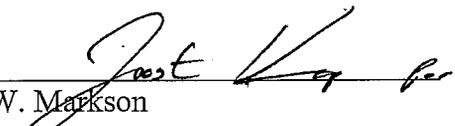
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CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of May 2006, a true and correct copy of Defendant Dey, Inc.'s Responses and Objections to Plaintiff's Notice of Deposition was served upon Plaintiff the State of Wisconsin's counsel, listed below, by hand delivery and upon Defendants' counsel by electronic mail.

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