

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 9

DANE COUNTY

STATE OF WISCONSIN,

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Plaintiff,

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v.

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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’S FIFTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Wis. Stat. § 804.09, defendant Ben Venue Laboratories, Inc. (“Ben Venue”) objects and responds to Plaintiff State of Wisconsin’s Fifth Set of Requests for Production of Documents (the “Requests”) as follows:

PRELIMINARY STATEMENT

As to all matters referred to in these answers and objections to the Requests, Ben Venue’s investigation and discovery continues. The specific responses set forth below, and any production made consistent with the accompanying 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.

RESPONSES TO REQUESTS

DOCUMENT REQUEST NO. 14: All documents relating to lobbying efforts of you, or any individual or entity acting on your behalf (including but not limited to third-party lobbyists or lobbyist organizations such as the Pharmaceutical Research and Manufacturers of America), with regard to:

- (a) the Wisconsin Medicaid program's reimbursement for prescription drugs;
- (b) other state Medicaid programs' reimbursement for prescription drugs; and
- (c) the federal Medicare program's reimbursement for prescription drugs.

Documents sought by this request include, but are not limited to:

- (a) communications with the State of Wisconsin, the Wisconsin Department of Health & Family Services, and the Wisconsin legislature (including any legislative committee or individual state legislator);
- (b) communications with other states, other state Medicaid programs, and other state legislatures (including any legislative committee or individual state legislator);
- (c) internal communications within your company;
- (d) communications between you and external third-party lobbyists or lobbyist organizations such as the Pharmaceutical Research and Manufacturers of America; and
- (e) documents identifying, describing, or relating to the amount of money spent on lobbying efforts regarding these issues.

RESPONSE:

In addition to the general objections set forth below, Ben Venue objects to Request No. 14 on the grounds that it is overly broad, unduly burdensome, and the following phrases are vague, ambiguous, and undefined: "lobbying efforts," "third-party lobbyists," "lobbyist organizations," "on your behalf," and "external third-party lobbyists." Ben Venue further objects to Request No. 14 to the extent it seeks documents relating to issues outside the scope of Plaintiff's claims, which are limited to drugs reimbursed in Wisconsin during the Relevant time period. Ben Venue objects also to subpart (e) of Request No. 14 as not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its general and specific objections, Ben Venue states it will make available for inspection and/or copying non-privileged documents relating to any lobbying as described done by Ben Venue or at Ben Venue's discretion, to the extent such documents exist.

DOCUMENT REQUEST NO. 15: Documents identifying, describing, or relating to your internal code of conduct or other policy relating to the ethical standards applicable to your employees.

RESPONSE:

In addition to the general objections set forth below, Ben Venue objects to Request No. 15 on the grounds that it is overly broad, unduly burdensome, and the following phrases are vague, ambiguous, and undefined: “other policy” and “ethical standards applicable to your employees.” Subject to and without waiving its general and specific objections, Ben Venue states it will make available for inspection and/or copying internal codes of conduct or ethics policies applicable to Ben Venue employees involved in or with responsibility for the pricing, sale and marketing of Ben Venue drugs, to the extent such documents exist.

DOCUMENT REQUEST NO. 16: Documents relating to your compliance policy or other policies designed to ensure adherence to applicable statutes, regulations and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs.

RESPONSE:

In addition to the general objections set forth below, Ben Venue objects to Request No. 16 on the grounds that it is overly broad, unduly burdensome, and the following phrases are vague, ambiguous, and undefined: “other policies” and “applicable statutes, regulations and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs.” Subject to and without waiving its general and specific objections, Ben Venue states it will make available for inspection and/or copying non-privileged documents reflecting policies designed to ensure compliance with Medicare and/or Medicaid statutes and regulations applicable to drug manufacturers, to the extent such documents exist.

DOCUMENT REQUEST NO. 17: Documents relating to any policy relating to the use or promotion of, or reference to, the spread of a drug in connection with the sales or marketing of that drug including, but not limited to:

- (a) documents that relate to or describe the policy, including consequences for violation of the policy;

- (b) documents that identify the date that the policy was established and/or became effective;
- (c) documents identifying, describing, or relating to the reason(s) for establishment of the policy;
- (d) documents identifying, describing, or relating to the distribution and dissemination of the policy to your employees;
- (e) documents identifying, describing, or relating to training provided to your employees regarding the policy; and
- (f) documents relating to any actual or potential violations of the policy, including any investigation, determination, and action taken by your company related to any such actual or potential violation.

RESPONSE:

In addition to the general objections set forth below, Ben Venue objects to Request No. 17 on the grounds that it is overly broad, unduly burdensome, and the following terms are vague, ambiguous, and undefined: “policy relating to the use or promotion of, or reference to, the spread of a drug” and “in connection with the sales or marketing of that drug.” Subject to and without waiving its general and specific objections, Ben Venue states it will make available for inspection and/or copying non-privileged documents responsive to this request, to the extent such documents exist.

DOCUMENT REQUEST NO. 18: Documents identifying or describing the reimbursement formula for prescription drugs used by the Wisconsin Medicaid Program, including but not limited to its formula for estimating acquisition cost or its use of AWP.

RESPONSE:

In addition to the general objections set forth below, Ben Venue objects to Request No. 18 on the grounds that it is overly broad, unduly burdensome, and the following terms are vague, ambiguous, and undefined: “identifying” and “the reimbursement formula.” Ben Venue further objects to Request No. 18 to the extent it seeks documents relating to issues outside the scope of Plaintiff’s claims, which are limited to drugs reimbursed in Wisconsin during the Relevant time period. Subject to and without waiving its general and specific objections, Ben Venue states it

will make available for inspection and/or copying non-privileged documents responsive to this request, to the extent such documents exist.

DOCUMENT REQUEST NO. 19: All documents relating to the National Pharmaceutical Council, including but not limited to the following:

- (a) documents relating to your membership in the National Pharmaceutical Council;
- (b) all correspondence between you and the National Pharmaceutical Council;
- (c) all annual publications of the National Pharmaceutical Council entitled “Pharmaceutical Benefits Under State Medical Assistance Programs.”

RESPONSE:

In addition to the general objections set forth below, Ben Venue objects to Request No. 19 on the grounds that it is overly broad, unduly burdensome and seeks information that is publicly available. Ben Venue objects to subpart (a) of Request No. 19 to the extent that it implies that Ben Venue was, or has been, a member of the National Pharmaceutical Council. Ben Venue further objects to Request No. 19 to the extent it seeks documents relating to issues outside the scope of Plaintiff’s claims, which are limited to drugs reimbursed in Wisconsin during the Relevant time period. Subject to and without waiving its general and specific objections, Ben Venue states it will make available for inspection and/or copying non-privileged documents responsive to subparts (b) and (c) of this request, to the extent such documents exist.

GENERAL OBJECTIONS

1. Ben Venue objects to the definition of “Document(s)” as set forth in Definition 2 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Ben Venue further objects to this definition to the extent that it purports to require Ben Venue to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or

produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by Ben Venue as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

2. Ben Venue objects to the Requests to the extent they seek information or documents outside the knowledge of Ben Venue, its agents or employees, or information or documents not within the possession, custody or control of Ben Venue, its agents or employees.

3. Ben Venue objects to the Requests to the extent that they seek information or documents covered by the attorney-client privilege, work product privilege, or any other applicable privilege. In the event that Ben Venue supplies information or produces a documents that is privileged, its production is inadvertent and does not constitute waiver of any privilege.

4. Ben Venue objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues contained in the Requests. Ben Venue's response that it has or will produce documents or information in connection with the Requests, or that it has no responsive document or information, does not indicate that any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests is accurate, relevant to this litigation, or that Ben Venue agrees with such implications or characterizations.

5. Ben Venue objects to the Requests to the extent that they are unreasonably cumulative or duplicative or that they call for information or documents that are publicly available, or are obtainable from some other source that is more convenient, less burdensome or less expensive.

6. Ben Venue objects to the Requests to the extent that they call for information that is confidential, proprietary, and/or a trade secret of a third party.

7. Ben Venue objects to the Requests as overly broad and unduly burdensome to the extent that they call for the identification of “all” documents when relevant information can be obtained from fewer than “all” documents. Ben Venue objects to the Requests to the extent they seek documents other than documents that can be located upon a search of files or other sources where such documents reasonably can be expected to be found.

8. Ben Venue objects to the Requests to the extent they purport to impose upon Ben Venue duties and/or obligations broader than or inconsistent with those imposed by the Wisconsin Rules of Civil Procedure or other rules or orders of this Court.

9. Ben Venue objects to the Requests to the extent that they are unreasonably burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation.

10. Ben Venue objects to the Requests to the extent that they call for the identification or production of documents or information not relevant to the issues in this action or not reasonably calculated to lead to the discovery of admissible evidence.

11. Ben Venue objects to the Requests to the extent they seek information or documents generated or compiled in the course of the defense of this action or any other AWP litigation.

12. The documents and information provided in response to the Requests are for use in this litigation and for no other purpose.

13. Documents produced in response to the Requests may contain information subject to the Protective Order in this matter and must be treated accordingly.

Ben Venue expressly incorporates these General Objections into each specific response to the Requests set forth above as if set forth in full therein. The responses to the Requests shall not operate as a waiver of any applicable general objection.

Dated: July 27, 2007

Respectfully submitted,

/s/ Ceylan Ayasli Eatherton

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