

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

Branch 7

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04CV1709

ABBOTT LABORATORIES, ET AL.,

Unclassified Civil: 30703

Defendants.

**BOEHRINGER INGELHEIM ROXANE INC.'S RESPONSES AND OBJECTIONS TO
PLAINTIFF STATE OF WISCONSIN'S WRITTEN
DISCOVERY REQUEST NO. 3 (TO ALL DEFENDANTS)**

Pursuant to Wisconsin Rule of Civil Procedure 804.09, defendant Boehringer Ingelheim Roxane Inc. f/k/a Roxane Laboratories Inc. ("BIRI"), by its attorneys, objects and responds to Plaintiff's Written Discovery Request No. 3 to All Defendants ("Requests") as follows:

RESERVATION OF RIGHTS

As to all matters referred to in these responses and objections to these Requests, BIRI'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 BIRI. BIRI reserves the right to modify these objections and responses and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial.

GENERAL OBJECTIONS

BIRI incorporates by reference all of its General Objections enumerated in BIRI's Responses and Objections to Plaintiff's Requests for Production and BIRI's Answers to Plaintiff's First Set of Interrogatories, both served on Plaintiff July 15, 2005.

BIRI's responses to the Requests contain information subject to the Final Protective Order entered on November 29, 2005 in this matter and must be treated accordingly.

BIRI expressly incorporates its 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 a Request.

OBJECTIONS TO DEFINITIONS

BIRI's responses are made based upon the typical or usual interpretation of words contained in the Requests, unless a specific definition or instruction has been provided and/or agreed upon. Notwithstanding any objection set forth herein, and without waiving any such objection, BIRI will confer with Plaintiff in an effort to reach an agreement regarding the scope of the Requests, and will supplement or amend these objections and responses consistent with those negotiations.

BIRI further incorporates by reference all of its objections to definitions enumerated in BIRI's Responses and Objections to Plaintiff's Requests for Production and BIRI's Answers to Plaintiff's First Set of Interrogatories, both served on Plaintiff July 15, 2005.

BIRI objects to the definition of "Documents" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those imposed by the applicable Wisconsin Rules of Civil Procedure. BIRI further objects to this definition to the extent that it purports to require BIRI 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 BIRI as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

BIRI objects to the definition of “you,” “your,” and “your company” to the extent Plaintiff attributes to those terms definitions other than the plain and ordinary meaning of those terms and to the extent that, through Plaintiff’s definitions, Plaintiff seeks to impose on BIRI obligations beyond those required by Wisconsin law. BIRI specifically objects to Plaintiff’s definition of these terms to the extent such definition seeks to impose on BIRI the obligation to identify and/or produce documents in the possession of entities other than BIRI.

RESPONSE TO SPECIFIC REQUESTS

REQUEST NO. 7:

All documents listed in Appendix A attached hereto in unredacted form. Each of these documents is identified in the Third Amended Master Consolidated Class Action Compliant Amended to Comply With the Court’s Class Certification Order on the page listed in Appendix A and with the bates number identified in Appendix A. (Those without bates numbers are otherwise identified, e.g., paragraph 290).

RESPONSE: BIRI objects to Request No. 7 on the grounds that it is ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. BIRI further objects to Request No. 7 because no documents are requested of BIRI and all other requested documents are publicly available or outside BIRI’s possession, custody or control.

REQUEST NO. 8:

Documents discussing or concerning the policy and practice of each defendant concerning the disclosures providers and pharmacy benefit managers may make of the drug price information they receive from the defendant or drug wholesalers from 1993 to the present.

RESPONSE: BIRI objects to Request No. 8 on the grounds that it is overly broad, unduly burdensome, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. BIRI further objects to Request No. 8 on the grounds that the phrases “drug price information” and “disclosures” are vague and undefined and on the grounds that the request may call for information and documents outside BIRI’s possession, custody and control. Subject to and without waiving the foregoing objections, BIRI will produce responsive documents, if any.

REQUEST NO. 9:

Exemplar agreements between each defendant and providers and pharmacy benefit managers applying defendants’ policies and practices relating to the disclosures such entities may make of the drug price information they receive from defendant or wholesalers.

RESPONSE: BIRI objects to Request No. 9 on the grounds that it is overly broad, unduly burdensome, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. BIRI further objects to Request No. 9 on the grounds that the phrases “exemplar agreements,” “drug price information,” and “disclosures” are vague and undefined. BIRI also objects to this request on the grounds that the request may call for information and documents outside BIRI’s possession, custody and control and that it is not limited to a particular time frame. Subject to and without waiving the foregoing objections, BIRI will produce responsive documents, if any.

REQUEST NO. 10:

Any sworn statement or deposition of any current or former employee or agent relating to any claim or investigation about or connected with: a) whether the defendant's published Average Wholesale Price (AWP) was or is inaccurate, or b) whether the defendant's published Wholesale Acquisition Cost (WAC) was or is inaccurate, or c) whether the defendant misrepresented its Average Wholesale Price or Wholesale Acquisition Cost to any publication, person, entity, or official, or d) whether the defendant violated a federal "best price" law or regulation, or e) whether the defendant's agents furnished free samples to providers for improper reasons.

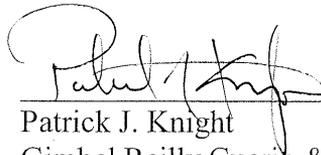
RESPONSE: BIRI objects to Request No. 10 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. BIRI further objects on the grounds that the terms "claim," "investigation," "accurate" "inaccurate" and "improper reasons" are vague and ambiguous and that the phrases "Average Wholesale Price," "Wholesale Acquisition Cost," "federal 'best price' law or regulation," and "free samples" are undefined. BIRI objects to this request to the extent it seeks documents or information related to non-BIRI employees. BIRI further objects to this request to the extent it calls for a legal conclusion or seeks documents that may not be produced pursuant to a protective order in another proceeding. BIRI also objects on the grounds that Request No. 10 is not limited to a particular time frame.

Subject to and without waiving the foregoing objections, (i) to the extent that BIRI maintains such transcripts in its possession, (ii) subject to the protections provided by the Final Protective Order entered in this cause, and (iii) on the condition that Plaintiff executes an agreement to be bound by the protective orders applicable to *State of Texas v. Dey, Inc., et al.*, Case No. GV002327, District Court of Travis County, Texas, 53rd Judicial District; *State of Texas v. Roxane Laboratories Inc. et al.*, Case No. GV3-03079, District Court of Travis County, Texas, 201st Judicial District; and *State of Connecticut v. Day, Inc., et al.*, Docket No.: TTD-X07-CV-03 0083296S, Connecticut Superior Court, BIRI will produce transcripts of the

depositions of its former employees taken in the aforementioned litigation. BIRI additionally acknowledges the testimony of Leslie Paoletti given on December 7, 2004 before the United States House of Representatives Committee on Energy and Commerce. Upon information and belief, a transcript of Ms. Paoletti's testimony is publicly available.

Dated this 9th day of January, 2006.

Respectfully submitted,



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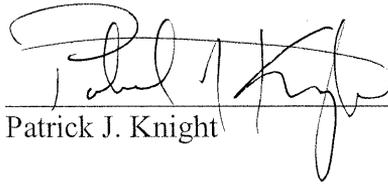
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Boehringer Ingelheim Roxane, Inc.'s Responses and Objections to Plaintiff's Written Discovery Request No. 3 to All Defendants was served via United States Mail and electronic mail on January 9, 2006, upon the following:

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