
THE STATE OF WISCONSIN

Plaintiff,

CASE NO. 04-1709

v.

AMGEN INC., et al.

Defendants.

**DEFENDANT DEY INC.'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S
EIGHTH SET OF REQUESTS FOR PRODUCTION TO ALL DEFENDANTS**

Pursuant to Wis. Stat. §§ 804.01 and 804.09, Defendant Dey, Inc. ("Dey"), by its undersigned counsel, asserts the following responses and objections to the Eighth Set of Requests for Production of Documents To All Defendants (the "Requests"), dated July 22, 2008, and propounded by Plaintiff State of Wisconsin ("Plaintiff," the "State," or "Wisconsin").

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. These responses and objections are made without in any way waiving or intending to waive, but to the contrary intending to preserve and preserving: (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 Requests; (b) the right to object on any ground to the use of the documents or information produced in response to the Requests 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 Requests; 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 herein are for use in this action and for no other purpose.

3. Any statement by Dey that it will produce documents or information responsive to the Requests does not mean that it possesses responsive materials or that such materials exist, only that it will conduct a reasonable search and produce responsive, non-objectionable, non-privileged documents or information. No response or objection made herein, or lack thereof, is an admission by Dey as to the existence or non-existence of any documents or information.

4. The responses and objections made herein are based on Dey's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. As to all matters referred to in these responses and objections to the Requests, Dey's investigation and discovery continues.

5. The specific responses and objections set forth below, and any production made pursuant to the Requests, are based upon, and necessarily limited by, information now available to Dey. Dey reserves the right to amend or supplement these responses and objections with additional documents or information that may become available or come to its attention, and to rely upon such documents or information at any hearing, trial, or other point during this action consistent with the parties' negotiations and in accordance with the applicable Wisconsin Rules of Civil Procedure, applicable local rules, and orders of the Court.

6. Dey provides its responses to the Requests and any production of documents in response to the Requests subject to the Protective Order, entered on November 29, 2005 in this action.

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

8. Dey objects to the Requests to the extent they demand the production of documents or information: (a) not within the knowledge, possession, custody, or control of Dey, its agents, or its employees; (b) that are publicly available; (c) that are otherwise equally accessible to the State; (d) that have been made available to the State; or (e) that are more appropriately sought from third parties to whom requests have been or may be directed.

9. Dey objects to the Requests to the extent they demand the production of documents or information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence, or are overly broad, unduly burdensome, vague, ambiguous, or duplicative.

10. Dey objects to the Requests to the extent that they demand 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 document or information is inadvertently produced in response to the Requests, 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.

11. Dey objects to the Requests to the extent they demand production of documents or information relating to Dey's activities other than those which concern the State,

on the grounds that such documents or information are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

12. Dey objects to the Requests to the extent they demand the production of documents or information relating to Dey's activities that are outside the scope of the allegations in the Second Amended Complaint, filed in this action on or around June 28, 2006.

13. Dey objects to the Requests to the extent they demand 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. Dey objects to the Requests as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they purport to seek information relating to a period of time after the filing of the original complaint in this action on or around June 3, 2004.

14. Dey objects to the Requests as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent they seek documents or information concerning pharmaceutical products not at issue in this litigation. Dey will provide documents and information relating only to pharmaceutical products identified in Exhibit E to the Second Amended Complaint, (the "Dey Targeted Drugs").

15. Dey objects to the disclosure, under any circumstance, of trade secrets, proprietary, or commercially sensitive information where the probative value of such information in this litigation is greatly exceeded by the potential harm to Dey if the information were to fall into the hands of its competitors, and further asserts each and every applicable privilege and rule governing confidentiality to the fullest extent provided by the law.

16. Dey objects to the Requests to the extent they demand the production of proprietary documents and/or information of third parties.

17. Dey objects to the Requests to the extent they seek to impose on Dey an obligation to search for and respond with information or material contained in electronically stored data in any format on the grounds that such Requests are overly broad, unduly burdensome, harassing, and not reasonably limited in scope.

18. Dey objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests. Any response by Dey that it will produce documents or information in connection with a particular Request, or that it has no responsive documents or information, is not intended to indicate that Dey agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Request, or that such implications or characterizations are relevant to this action.

19. Dey objects to the Requests to the extent they purport to impose obligations beyond or inconsistent with those imposed by applicable law. Dey will respond to the Requests, subject to other objections, as required by the applicable Wisconsin Rules of Civil Procedure, applicable local rules, and orders of the Court.

20. Dey hereby incorporates by reference as fully set forth herein any reserved rights or objections made by any co-defendant in this action to the extent such reserved rights or objections are not inconsistent with Dey's position in this action.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

The General Objections and Reservations of Rights stated above apply to and are incorporated into Dey's objections to the definitions and instructions set forth below. Dey also objects to the definitions and instructions as follows:

1. Dey objects to Plaintiff's definition of "you," "your," and "your company" on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome to the extent they seek information outside the knowledge of Dey, or documents not within the possession, custody, or control of Dey. Dey further objects to this definition on the grounds that it is vague and ambiguous because, *inter alia*, it contains terms and phrases that are themselves vague, ambiguous, and undefined, including but not limited to "subsidiaries," "divisions," "predecessors," "officers," "agents," and "all other persons." Dey further objects to this definition on the grounds that it seeks the production of documents and information protected from disclosure under the attorney-client privilege, the work-product doctrine, the joint defense privilege, the common interest doctrine, or any other legally recognized privilege, immunity or exemption from discovery. Dey further objects to this definition as overly broad and unduly burdensome to the extent it purports to include individuals and entities that are not parties to this action.

2. Dey objects to Plaintiff's definition of "document" and "documents" on the grounds that it is vague, ambiguous, and overly broad. Dey further objects to this definition to the extent it includes documents that are protected by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this definition to the extent it seeks to impose obligations on Dey that are greater than, or inconsistent with, Dey's obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules. Dey further objects to this definition to the extent that it purports to require Dey 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 Dey as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

3. Dey objects to the Instruction paragraphs to the extent they seek to impose on Dey obligations inconsistent with, or greater than, Dey's obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules. Dey further objects to the Instruction No. 1 on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome to the extent it seeks documents not within the possession, custody, or control of Dey. Dey further objects to Instruction No. 3 as unduly burdensome.

SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS

Dey expressly incorporates all of the above-stated General Objections, Reservation of Rights, and the Objections to Definitions and Instructions into each and every response and objection to the Requests set forth below. Any specific objection provided below is made in addition to these Objections and Reserved Rights and a failure to reiterate an Objection or Reserved Right below shall not constitute a waiver of that or any other objection.

DOCUMENT REQUEST NO. 23

Attached hereto as Exh. 1 is a copy of a blank form entitled "HDMA Standard Product Information Pharmaceutical Products." Please produce all such forms that you have completed (as to any or all of the information on such forms) for any of your drugs from January 1, 1991 to the present as well as all documents that identify each person or entity, if any (including but not limited to Cardinal Health, McKesson Corporation, or Amerisource Bergen Corporation, or any of their predecessor entities), to whom you sent or provided any such forms and the dates that you sent or provided such forms to any such person or entity.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence on the grounds that, *inter alia*, it seeks documents concerning pharmaceutical products other than the Dey Targeted Drugs, and to the extent it demands the production of documents relating to a period of time after the filing of the original complaint in this action on or around June 3, 2004.

Subject to and without waiving the foregoing general and specific objections, Dey states that its prior document productions contain documents that may be responsive to this Request

DOCUMENT REQUEST NO. 24

Any documents reflecting communications with drug wholesalers (including but not limited to Cardinal Health, McKesson Corporation, or Amerisource Bergen Corporation, or any of their predecessor entities) relating to: (a) AWP, SWP, WAC, MAC, FUL, or direct price; or (b) any pricing compendia including but not limited to First Databank, Medispan, and Red Book.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence on the grounds that, *inter alia*, it seeks documents concerning pharmaceutical products other than the Dey Targeted Drugs, and to the extent it demands the production of documents relating to a period of time after the filing of the original complaint in this action on or around June 3, 2004. Dey further objects to this Request on the grounds that it is vague and ambiguous because, *inter alia*, it contains terms that are vague, ambiguous, overbroad, or undefined, including but not limited to: "AWP," "SWP," "MAC," "FUL," "direct price," "WAC," and "relating to."

Subject to and without waiving the foregoing general and specific objections, Dey states that its prior productions contain customer contract files that may be responsive to this Request.

DOCUMENT REQUEST NO. 25

Documents relating to any contract or agreement with any health-care provider (including but not limited to retail pharmacies (chain or independent), doctors, or long-term care facilities) to share in the profits earned by such provider in connection with the provider's sale or dispensing of any of your prescription drugs.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence on the grounds that, *inter alia*, it seeks documents concerning pharmaceutical products other than the Dey Targeted Drugs, and to the extent it demands the production of documents relating to a period of time after the filing of the original complaint in this action on or around June 3, 2004. Dey further objects to this Request on the grounds that it is vague and ambiguous because, *inter alia*, the terms "profits" and "relating to" are vague, ambiguous, and undefined.

Subject to and without waiving the foregoing general and specific objections, Dey states that it is not aware of any documents responsive to this Request.

Dated: August 21, 2008



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