

THE STATE OF WISCONSIN

Plaintiff,

CASE NO. 04-1709

v.

ABBOTT LABORATORIES, et al.

Defendants.

**DEFENDANT DEY, INC.'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF STATE OF WISCONSIN'S REQUEST FOR  
PRODUCTION OF DOCUMENTS NO. 5 (TO ALL DEFENDANTS)**

Pursuant to Wisconsin Statutes §§ 804.01 and 804.09 Defendant Dey, Inc.

("Dey"), by its undersigned counsel, asserts the following responses and objections to Plaintiff State of Wisconsin's Request for Production of Documents No. 5 (To All Defendants) (the "Requests"), dated June 27, 2007, and propounded by Plaintiff State of Wisconsin ("Plaintiff," the "State," or "Wisconsin"), as follows:

**GENERAL OBJECTIONS AND RESERVATION OF RIGHTS**

1. Dey objects to the Requests to the extent they seek to impose duties and obligations on Dey greater than Dey's duties and obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules. Dey will comply with its duties and obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules.

2. Dey provides its responses subject to the Protective Order, entered on November 29, 2005, in this action.

3. Dey objects to the Requests to the extent they are premature, vague, ambiguous, unduly burdensome, overbroad, oppressive or duplicative, and not limited to the discovery of

information which is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence.

4. Dey objects to the extent that any of Plaintiff's Requests seek documents not limited to sales in the State of Wisconsin on the grounds that such Requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

5. 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 concerning pharmaceutical products not at issue in this litigation. Dey will provide documents relating only to pharmaceutical products identified in the Second Amended Complaint.

6. Dey objects to the Requests to the extent they demand the production of documents that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, the work product doctrine, the joint defense privilege, the consulting expert rule, the common interest doctrine, investigative privileges, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent any such protected documents are inadvertently produced in response to the Requests, the production of such documents shall not constitute a waiver of Dey's right to assert the applicability of any privilege or immunity to the documents, and any documents shall be returned to Dey's counsel immediately upon discovery thereof.

7. Dey objects to the Requests to the extent that they demand the production of documents containing trade secrets, or proprietary, commercially sensitive or other confidential information.

8. Dey objects to the disclosure, under any circumstance, of trade secret information where the probative value 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.

9. Dey objects to these Requests to the extent they seek documents already in Plaintiff's knowledge, possession and/or control, or information to which Plaintiff has equal access.

10. Dey objects to the Requests to the extent that they demand the production of documents that are: (a) not within the possession, custody, or control of Dey, their agents, or their employees, (b) publicly available; or (c) more appropriately sought from third parties to whom requests have been or may be directed.

11. These responses and objections are made without 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 produced in response to the Requests; (b) the right to object on any ground to the use of documents 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.

12. The documents supplied herein are for use in this action and for no other purpose.

13. No response or objection made herein, or lack thereof, is an admission by Dey as to the existence or non-existence of any documents.

14. Dey objects to the Requests to the extent that they demand the production of documents 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 require production of documents or seek information relating to a period of time after the filing of the Complaint on or around June 3, 2004.

15. Dey objects to the Requests to the extent that they demand the production of proprietary documents of third parties.

16. 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 in connection with a particular Request, or that it has no responsive documents, 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 Requests, or that such implications or characterizations are relevant to this action.

17. 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 concerning any discontinued product dated after the date of such product's discontinuation.

18. Dey objects to the Requests to the extent they seek information or documents relating to Dey's activities that are outside the scope of the allegations in the Second Amended Complaint.

19. Dey objects to the Requests to the extent they demand production of documents relating to Dey's activities other than those which concern the State, on the grounds that such documents are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

20. Dey objects to the Requests to the extent they purport to impose on Dey an obligation to search or produce email or other electronically stored data in any format on the grounds that such Requests are overly broad, unduly burdensome, harassing, and not reasonably limited in scope.

21. Dey reserves the right to assert additional objections to these Requests as appropriate and to amend or supplement these objections and responses in accordance with the applicable rules and court orders and based on results of its continuing investigation.

#### **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. Dey objects to Plaintiff's definition of "You", "Your" and "Your Company" on the grounds that they are overly broad and unduly burdensome. Dey further objects to these definitions to the extent they include entities and persons 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 overbroad. 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 it purports to include within its scope documents containing or consisting of proprietary information, trade secrets, or information of a

competitively sensitive nature. 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 Plaintiff's definition of "Spread" to the extent any implications may be drawn from this definition and to any explicit or implicit characterization of facts, events, circumstances, or issues associated with this definition.

4. Dey objects to the Instruction paragraphs preceding the individual Requests (the "Instructions") on the grounds that the Instructions are vague, ambiguous, and overly broad. Dey further objects to the Instructions as unduly burdensome 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 Instructions to the extent that they demand the production of documents 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 further objects to the Instructions to the extent they purport to require production of documents or seek information relating to a period of time after the filing of the Complaint on or around June 3, 2004.

### **SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

The General Objections and Reservations of Rights and the Objections to Definitions stated above apply to and are incorporated into each and every individual response to

the individual Requests set forth below, whether or not expressly incorporated by reference in any individual response. Dey also responds and objects specifically to the individual Requests as follows:

**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.

**DEY'S RESPONSE AND OBJECTIONS**

Dey objects to this Request on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Dey further objects to this Request on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including “lobbying efforts,” “third-party lobbyists,” “lobbyist organizations,” and “external third-party lobbyists.” Dey further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege and/or work-product doctrine. Dey objects to this Request to the extent it seeks documents unrelated to the Wisconsin Medicaid program, Medicare program, and/or outside the scope of the allegations in the Second Amended Complaint.

Subject to and without waiving the foregoing general and specific objections, Dey refers Plaintiff to its prior document production containing potentially responsive documents to this Request and agrees to undertake a reasonable search for non-privileged documents regarding the Wisconsin Medicaid program or the Medicare program that are potentially responsive to this Request.

**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.

**DEY'S RESPONSE AND OBJECTIONS**

Dey objects to this Request on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Dey further objects to this Request on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including “internal code of conduct,” “other policy,” and “ethical standards applicable to your employees.” Dey further

objects to this Request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Dey further objects to this Request to the extent it demands the production of documents that are privileged or otherwise protected against discovery.

Subject to and without waiving the foregoing general and specific objections, Dey refers Plaintiff to its prior document production containing potentially responsive documents to this Request, and Dey agrees to undertake a reasonable search for the portion of its code of conduct concerning sales and marketing practices insofar as they relate to reimbursement for prescription drugs under the Wisconsin Medicaid program or the Medicare program.

**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.

**DEY'S RESPONSE AND OBJECTIONS**

Dey objects to this Request on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Dey further objects to this Request on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including "compliance policy," "other policies," and "applicable statutes, regulations, and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs." Dey further objects to this Request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Dey further objects to this Request to the extent it demands the production of documents that are privileged or otherwise protected against discovery.

Subject to and without waiving the foregoing general and specific objections, Dey refers Plaintiff to its prior document production containing potentially responsive documents to this Request, and Dey agrees to undertake a reasonable search for the portion of its compliance

policy concerning sales and marketing practices insofar as they relate to reimbursement for prescription drugs under the Wisconsin Medicaid program or the Medicare program.

**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 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.

**DEY'S RESPONSE AND OBJECTIONS**

Dey objects to this Request on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Dey further objects to this Request on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including “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.” Dey further objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in this Request. Any response by Dey that it will produce documents in connection with this particular Request, or that it has no

responsive documents, is not intended to indicate that Dey agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in this Request, or that such implications or characterizations are relevant to this action. Dey further objects to this Request to the extent that it demands the production of documents that are privileged or otherwise protected against discovery.

Subject to and without waiving the foregoing general and specific objections, Dey agrees to undertake a reasonable search for policies concerning sales and marketing practices insofar as they relate to reimbursement for prescription drugs under the Wisconsin Medicaid program or the Medicare program which are potentially responsive to this Request.

**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.

**DEY'S RESPONSE AND OBJECTIONS**

Dey objects to this Request on the grounds that it contains terms that are vague, ambiguous, potentially overbroad, or undefined, including "identifying," "describing," and "formula for estimating acquisition cost."

Subject to and without waiving the foregoing general and specific objections, Dey refers Plaintiff to its prior document production containing potentially responsive documents to this Request.

**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;

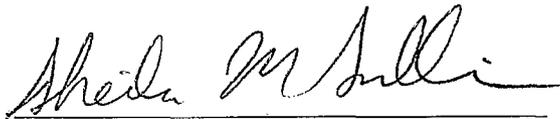
- (b) all correspondence between you and the National Pharmaceutical Council;
- (c) all annual publications of the National Pharmaceutical Council entitled "Pharmaceutical Benefits Under State Medical Assistance Programs."

**DEY'S RESPONSE AND OBJECTIONS**

Dey objects to this Request on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Dey further objects to this Request to the extent that it seeks information that is publicly available or outside of Dey's possession, custody, and control. Dey further objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, Dey agrees to undertake a reasonable search for non-privileged documents potentially responsive to this Request.

Dated: July 27, 2007



John M. Moore  
Sheila Sullivan  
BELL, GIERHART & MOORE, S.C.  
44 East Mifflin Street  
P.O. Box 1807  
Madison, WI 53701  
Telephone: (608) 257-3764  
Facsimile: (608) 257-3757  
*Attorneys for Defendant Dey, Inc.*

Of Counsel:

Paul F. Doyle  
William A. Escobar  
Neil Merkl  
Christopher C. Palermo  
KELLEY DRYE & WARREN LLP  
101 Park Avenue  
New York, New York 10178

Telephone: (212) 808-7800  
Facsimile: (212) 808-7897  
*Additional Attorneys for Defendant Dey, Inc.*

STATE OF WISCONSIN

CIRCUIT COURT  
Branch 9

DANE COUNTY

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THE STATE OF WISCONSIN

Plaintiff,

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**CERTIFICATE OF SERVICE**

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I hereby certify that I caused a true and correct copy of Defendant Dey, Inc.'s Response to Plaintiff State of Wisconsin's Request for Production of Documents No. 5 (to all Defendants) to be served on counsel of record by transmission to LNFS pursuant to the order dated December 20, 2005.

Dated this 27th day of July, 2007.

  
Clifford Katz