

STATE OF WISCONSIN

CIRCUIT COURT
Branch 9

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

ABBOTT LABORATORIES, et al.,

Defendants.

**DEFENDANT DEY, INC.'S RESPONSES AND OBJECTIONS TO
PLAINTIFF STATE OF WISCONSIN'S SIXTH SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS 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 Sixth Set of Requests for Production of Documents To All Defendants (the "Requests"), dated January 14, 2008, 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 vague, ambiguous, unduly burdensome, overbroad, oppressive, duplicative, or 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 Requests 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 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 or other defendants to whom requests have been or may be directed.

10. 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.

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

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

13. 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.

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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

The General Objections and Reservations of Rights stated above apply to and are incorporated into Dey's objections to the definitions and instructions in the Requests. 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 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 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 Plaintiff's definition of "Together Rx programs" on the grounds that that it is vague and ambiguous.

4. Dey objects to the Instruction paragraphs (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 and Instructions 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. 20

The following documents relating to the Together Rx programs:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient costs of covered prescription drugs, including but not limited to, any formula for reimbursement based on the average wholesale price ("AWP") of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;
- (d) documents identifying or relating to the eligibility requirements for participation in the Together Rx programs; and
- (e) documents identifying your prescription drugs covered by the Together Rx 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: "reimbursement," "ingredient cost," and "average wholesale price ('AWP')." Dey objects to this Request as unduly burdensome, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, Dey states that, based upon a reasonable search, Dey is not aware of any documents in its possession, custody, or control that are responsive to this Request.

Document Request No. 21

All documents relating to any program of yours that provides, or is marketed as providing, a discount or savings to consumers for any of your prescription drugs. Examples of such programs are the Novartis Savings Program a/k/a the Novartis Care Plan (Novartis Care Card), Pfizer for Living Program (Pfizer Share Card), Pfizer U Share Prescription Drug Discount Card, and the GlaxoSmithKline Orange Card. This request includes, but is not limited to, the following documents:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient costs of covered prescription drugs, including but not limited to, any formula for reimbursement based on the AWP of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;
- (d) documents identifying or relating to the eligibility

requirements for participation in the program; and

- (e) documents identifying your prescription drugs covered by the program.

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 and phrases that are themselves vague, ambiguous, overbroad, or undefined, including: "any program of yours that provides, or is marketed as providing, a discount or savings to consumers, "reimbursement," "ingredient cost," and "AWP." 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. Dey further objects to this Request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, Dey states that it will produce customer contract files containing documents potentially responsive to this Request.

Dated this 13 day of February, 2008.

BELL, GIERHART & MOORE, S.C.

By: _____

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