

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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| STATE OF WISCONSIN, |) | |
| |) | CASE NO. 05-C-0408-C |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| ABBOTT LABORATORIES, ET AL., |) | |
| |) | |
| Defendants |) | |
| |) | |
| |) | |
| |) | |

**RESPONSE OF DEFENDANTS SCHERING-PLOUGH CORPORATION AND
WARRICK PHARMACEUTICALS CORPORATION TO PLAINTIFF'S FIRST
SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to the Federal Rules of Civil Procedure, Schering-Plough Corporation (“Schering-Plough”) and Warrick Pharmaceuticals Corporation (“Warrick”), (collectively “Respondent”), by and through their undersigned counsel, respond to Plaintiff’s First Set of Requests for Production of Documents (“Requests”) as follows:

GENERAL OBJECTIONS

1. Respondent provides this response without waiver of or prejudice to its right, at any later time, to raise objections to: (a) the relevance, materiality, or admissibility of (i) the Request or any part thereof, (ii) statements made in this response to the Request or any part thereof, or (iii) any document produced pursuant to this response; or (b) any further demand for discovery involving or relating to the matters raised in the Request.

2. Respondent objects to the place and time directed for the production of documents. Subject to and without waiving any objection set forth herein, Respondent will produce responsive documents and/or make them available for inspection and designation for copying at a mutually-agreeable time and location.

3. Respondent objects to the Request to the extent that it demands production of any document covered by the attorney-client privilege or the work product doctrine, third-party confidentiality agreements or protective orders, or any other applicable privilege, immunity or protection. In the event any document subject to a privilege, immunity or protection is produced by Respondent, its production is inadvertent and does not constitute a waiver of any privilege, immunity or protection.

5. Respondent objects to the Requests to the extent that it calls upon Respondent for, and/or to reveal, legal conclusions to Plaintiff. Respondent's responses shall not be deemed to constitute admissions (i) that any particular document or thing exists, is relevant, or admissible in evidence, or (ii) that any statement or characterization in the Request is accurate or complete.

6. Respondent has not completed its investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the responses are based upon, and necessarily limited by, information now available to Respondent. Respondent reserves the right, at any time, to revise, correct, and to supplement, modify, or clarify the specific responses set forth below or the information disclosed therein. By this reservation, Respondent does not, however, assume a continuing responsibility to update its responses beyond the requirements of the Federal

Rules of Civil Procedure and the local rules of this Court, and it objects to the Requests to the extent they seek to impose any such continuing obligation.

7. In the responses that follow, a statement that responsive documents will be produced does not mean that: (a) any documents exist; or (b) they are in Respondent's possession, custody, or control.

1. Respondent undertakes to answer the Requests only to the extent required by the Federal Rules of Civil Procedure, the local rules of this Court, and other applicable law (collectively, "Rules"), and Respondent objects to the Requests to the extent that they purport to exceed, expand upon or conflict with those Rules. For example, and without limitation, Respondent objects to Plaintiff's "definitions" to the extent Plaintiff intends to expand upon or alter the Rules. Respondent further objects to the definitions of "Document," as set forth in Definition No. 4 to the extent they seek to impose discovery obligations that are broader than, or inconsistent with, Respondent's obligations under the Rules.

2. Respondent objects to each of the Requests (i) to the extent they call for information generated after the date this action was commenced, or (ii) to the extent they call for information pertaining to any time outside of the limitations periods applicable to any of Plaintiff's claims; because the Requests are to this extent overly broad and unduly burdensome, and seek information that is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

3. Respondent objects to producing information relating to the defined term "Average Manufacturer Price" or "AMP" set forth in Definition No. 1, as such

information is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Plaintiff has asserted a claim based upon the Medicaid reimbursement system it established, which is wholly unrelated to any AMPs that would otherwise be reported pursuant to the federal statute. Respondent further objects to this Definition to the extent that it is broader than the definition provided to this term by federal statute.

4. Respondents object to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous with respect to the language “payment, credit or other adjustment you have provided by defendant to a purchaser of a Pharmaceutical to compensate for any difference between the purchaser’s acquisition cost and the price at which the purchaser sold the Pharmaceutical to another purchaser.” Respondents incorporate by reference their objection to the definition of the term “Pharmaceutical.”

5. Respondents object to the definition of “Defined Period of Time” as set forth in Definition No. 3 on the grounds that it is overly broad and unduly burdensome and vague and ambiguous, particularly with respect to the language “Documents relating to such period,” and incorporates by reference its objection to the definition of the term “Document.” Respondents object to this definition to the extent that it seeks information from outside the statute of limitations applicable to the claims in this litigation, or beyond the time period relevant to this litigation.

6. Respondent objects to the definition of “Incentive” set forth in Definition No. 5 on the ground that it is vague and ambiguous. Respondent further objects to the

extent the term “Incentive” is used to characterize various types of “discounts” and “rebates.” This characterization lacks factual foundation and depends upon a legal conclusion. Use of this argumentative characterization is a device intended by Plaintiff to assume away an evidentiary burden borne exclusively by Plaintiff – namely, whether “discounts” or “rebates” are in fact “Incentives.”

7. Respondents object to the definition of “National Sales Data” as set forth in Definition No. 6 on the grounds that it is overly broad and unduly burdensome. Respondents further object on the grounds that this definition is vague and ambiguous with respect to the language “data sufficient to identify for each sales transaction,” “transaction type,” “product number,” “product description,” “NDC,” “NDC unit quantity,” “NDC unit invoice price,” “package description,” “WAC,” “you,” “contract price,” “invoice price,” “identification number,” “paid or distributed Incentives,” “accrued Incentives,” “calculated at any time” and “other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.” Respondents incorporate by reference their objections to the definitions of the terms “Targeted Drugs” and “Incentives.” Respondents object to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Respondents further object to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

8. Respondents object to the definition of “Pharmaceutical” as set forth in Definition No. 7 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language “any drug,” “administered,” “other product,” “you,” “any other manufacturer,” “prescription,” “injectibles,” “infusibles,” “inhalants,” “hemophilia factors,” “biological products” and “intravenous solutions.” Respondents object to this Definition to the extent that it refers to information not relevant to the State’s claims, which are limited to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Amended Complaint. Respondents further object to this definition to the extent that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

9. Respondent objects to the definition of “Spread” set forth in Definition No. 8 on the ground that it is vague and ambiguous.

10. Respondents object to the definition of “Targeted Drugs” in Definition No. 9 on the grounds that it is overly broad and unduly burdensome. Respondents further object to this definition on the grounds that it is vague and ambiguous, particularly with respect to the language “you” and “total utilization.” Respondents incorporate by reference their objections to the definitions of the terms “Defined Period of Time” and “Pharmaceutical.” Respondents object to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Respondents further object to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Complaint on the grounds that such information is neither relevant to the subject

matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

17. Respondent objects to each request to the extent that it may be construed as calling for the production of confidential information relating to a patient. Respondent will not produce any such material to the extent it is under any obligation to maintain the patient information in confidence. Respondent will not disclose such material unless the patient grants permission to do so.

18. Respondent objects to the Requests as unduly burdensome to the extent that they seek documents that are available, in a way that would be less burdensome or expensive, from a public source or some other source available to the Plaintiff.

19. Respondent objects to the Requests to the extent that they purport to require Respondent to search through an unduly large number of documents or to search for documents that are not accessible, available or locatable without imposing an undue burden upon Respondent. Subject to and without waiving any objection, Respondent will conduct a reasonable search for responsive documents that are reasonably accessible, available and locatable.

21. Respondent objects to these Requests to the extent they seek information regarding drugs other than the drugs that are at issue in this litigation or concern matters not related to Wisconsin, because such information is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

22. Any production of documents or information responsive to requests to which Respondent has objected is not intended to and does not waive those or any other objections.

23. Respondent objects to the Request to the extent that it seeks confidential or proprietary information, and will not produce documents containing confidential or proprietary information unless and until an appropriate protective order is entered. Respondent's production and responses to the Request are supplied for use in this litigation and for no other purpose.

24. Respondent objects to the Request to the extent that it is indefinite and/or fails to describe the categories of documents to be produced with reasonable particularity, and to the extent that it employs terms or definitions that render the Request vague or ambiguous. Except as otherwise stated, Respondent will interpret any such term based on its understanding of the term's usage, if any, by Respondent and/or in the pharmaceutical industry.

25. Respondent expressly incorporates these General Objections into each specific response to the request set forth below as if set forth in full therein. These General Objections form a part of the response to each and every request and are set forth here to avoid the unnecessary duplication and repetition that would result from restating them for each response below. The response to a request shall not operate as a waiver of any applicable specific or general objection to a request.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: All National Sales Data for each Targeted Drug during the Defined Period of Time.*

Response to Request No. 1:

In addition to the General Objections set forth above, Respondent objects to Request No. 1 because it is overly broad, unduly burdensome, and seeks information not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to Request No. 1 to the extent that it requests documents not within Respondent's possession, custody or control. Respondent further objects to Request No. 1 to the extent that, *inter alia*, (i) it is not properly limited to the drugs at issue in Wisconsin; and (ii) it seeks documents regarding the defined terms National Sales Data; Targeted Drug; and Defined Period of Time.

Subject to and without waiving these specific objections or its General Objections, Respondent will produce non-privileged, relevant, responsive portions of sales transactions data documents produced in the MDL litigation.

REQUEST NO. 2: All Documents containing AMPs as reported or calculated by you for the Targeted Drugs or a spread sheet or database showing all reported and calculated AMPS for each Targeted Drug over the Defined Period of Time which lists when such AMPs were reported or calculated, and the quarter to which each AMP applies.*

Response to Request No. 2:

In addition to the General Objections set forth above, Respondent objects to Request No. 2 because it is overly broad, unduly burdensome, and seeks information not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the

discovery of admissible evidence. Respondent further objects to this Request to the extent that it requests documents not within Respondent's possession, custody or control. Respondent further objects to Request No. 2 to the extent that, *inter alia*, (i) it is not properly limited to the drugs at issue in Wisconsin; (ii) it seeks documents regarding the defined term AMPs; and (iii) it seeks "[a]ll [d]ocuments containing AMPs." Respondent further objects to Request No. 2 to the extent that it is duplicative and cumulative of other requests.

REQUEST NO. 3: All Documents created by you, or in your possession, that discuss or comment on the difference (or Spread) between any Average Wholesale Price or Wholesale Acquisition Cost and the list or actual sales price (to any purchaser) of any of defendants' Pharmaceuticals or any Pharmaceuticals sold by other manufacturers. Documents which merely list the AWP or WAC price and the list or actual sales price without further calculation of the difference, or without other comment or discussion of or about the spread between such prices are not sought by this request.

Response to Request No. 3:

In addition to the General Objections set forth above, Respondent objects to Request No. 3 because it is overly broad, unduly burdensome, and seeks information not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to Request No. 3 to the extent that it requests documents not within Respondent's possession, custody or control. Respondent further objects to Request No. 3 to the extent that, *inter alia*, (i) it is not properly limited to the drugs at issue in Wisconsin; (ii) it seeks documents regarding the defined terms Spread and Pharmaceuticals; and (iii) it seeks "[a]ll [d]ocuments."

Subject to and without waiving these specific objections or its General Objections, Respondent will produce non-privileged documents, if any, responsive to this request.

REQUEST NO. 4: All Documents containing an average sales price or composite price identified by you in response to Interrogatory No. 1 of Plaintiff's First Set of Interrogatories to All Defendants.*

Response to Request No. 4:

In addition to the General Objections set forth above, Respondent objects to Request No. 4 because it is overly broad, unduly burdensome, and seeks information not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to Request No. 4 to the extent that it requests documents not within Respondent's possession, custody or control. Respondent further objects to Request No. 4 to the extent that it, *inter alia*, (i) requires Respondent to produce information regarding the defined terms "average sales price" and "composite price" because these terms are wholly unrelated to the Medicaid reimbursement system upon which plaintiff bases its claims; and (ii) it is not properly limited to the drugs at issue in Wisconsin.

Subject to and without waiving these specific objections or its General Objections, Respondent responds as follows: During the relevant time period, Respondent did not generally calculate or report average sales prices or composite prices for the Targeted Drugs, and therefore, Respondent does not believe that any responsive documents exist.

REQUEST NO. 5: All Documents sent to or received from First DataBank, Redbook and Medi-span regarding the price of any Targeted Drug.

Response to Request No.5:

In addition to the General Objections set forth above, Respondent objects to Request No. 5 because it is overly broad, unduly burdensome, and seeks information not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to Request No. 5 to the extent that it requests documents not within Respondent's possession, custody or control. Respondent further objects to Request No. 5 in that the documents requested are more appropriately sought from third parties to whom the document request has been or should be directed. Respondent further objects to Request No. 5 to the extent that, *inter alia*, (i) it is not properly limited to the drugs at issue in Wisconsin; and (ii) it seeks documents regarding the defined term Targeted Drug.

Subject to and without waiving these specific objections or its General Objections, Respondent will produce non-privileged documents, if any, responsive to this request.

REQUEST NO. 6: All Documents in your possession prepared by IMS Health regarding a Targeted Drug or the competitor of a Targeted Drug regarding pricing, sales or market share.

Response to Request No. 6:

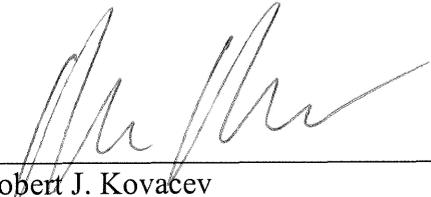
In addition to the General Objections set forth above, Respondent objects to Request No. 6 because it is overly broad, unduly burdensome, and seeks information not relevant to the subject matter involved in the pending action, including the claim or

defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Respondents further objects to the terms “competitor of a Targeted Drug” and “regarding pricing, sales or market share,” on the grounds that these terms are vague and ambiguous. Respondent further objects to Request No. 6 in that the documents requested are more appropriately sought from third parties to whom the document request has been or should directed. Respondent further objects to Request No. 6 to the extent that, *inter alia*, (i) it is not properly limited to the drugs at issue in Wisconsin; and (ii) it seeks documents regarding the defined term Targeted Drug.

Subject to and without waiving these specific objections or its General Objections, Respondent responds as follows: The request as stated, *inter alia*, potentially encompasses a vast number of documents not relevant to the subject matter involved in the pending action. Accordingly, Respondent will produce non-privileged documents, if any, responsive to this request, subject to the Plaintiff narrowing this request to seek documents that are reasonably calculated to lead to the discovery of admissible evidence in this litigation.

Dated July 15th, 2005

As to Objections:



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*Attorneys for Defendants Schering-Plough
Corp., and Warrick Pharmaceuticals Corp.*

As to Responses:

Signature page to follow.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2005, a true and correct copy of Schering-Plough Corporation's and Warrick Pharmaceuticals Corporation's Response to Plaintiff's First Set of Requests for Production of Documents was served upon the Plaintiff's counsel listed below by U.S. Mail and upon Defendants' counsel by electronic mail.

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