

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

ABBOTT LABORATORIES, et al.,

Defendants.

**AVENTIS PHARMACEUTICALS INC.'S OBJECTIONS AND ANSWERS
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 804.09 of the Wisconsin Rules of Civil Procedure, Defendant Aventis Pharmaceuticals Inc. ("Aventis"), by its undersigned counsel, hereby responds to Plaintiff's First Set of Interrogatories ("Interrogatories"), dated January 27, 2005, as follows:

PRELIMINARY STATEMENT

1. By responding to the Interrogatories, Aventis does not waive or intend to waive: (a) any objections as to the competency, relevancy, materiality, privilege, status, or admissibility as evidence, for any purpose, of any documents or information produced in answer to the Interrogatories; (b) the right to object on any ground to the use of the documents or information produced in answer to the Interrogatories at any deposition, hearing, trial or other proceeding, or to their use in any pleading or submission; or (c) the right to object on any ground at any time to a demand for further answers to Interrogatories.

2. By responding that it will produce documents responsive to a particular Interrogatory, Aventis does not assert that it has responsive documents or that such documents exist, only that it will conduct a reasonable search and produce relevant, responsive, non-

privileged documents on a rolling basis as agreed upon with Plaintiff's counsel, and subject to a binding protective order of confidentiality. No objection made herein, or lack thereof, is an admission by Aventis as to the existence or non-existence of any documents.

3. The objections and answers made herein are based on Aventis's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. Aventis reserves the right to amend or supplement these objections and answers in accordance with the applicable rules and court orders and based on results of its continuing investigation.

4. The information and documents supplied herein are for use in this litigation and for no other purpose.

OBJECTIONS TO PLAINTIFF'S DEFINITIONS

1. Aventis objects to the definition of "Chargeback" as set forth in Definition No. 2 on the ground the phrase "other adjustment" is vague, ambiguous and undefined.

2. Aventis objects to the definition of "Defined Period of Time" as set forth in Definition No. 3 to the extent it calls for information from Aventis prior to August 10, 1998 or after August 10, 2004 on the ground such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence. Aventis believes that the longest statute of limitations period applicable to Plaintiff's claims began to run six years prior to the date of filing of the Complaint. While Plaintiff may be required to produce information from an earlier time based on the allegations they have chosen to plead, Aventis is not similarly constrained.

3. Aventis objects to the definition of “Incentive” as set forth in Definition No. 5 because defining “incentives” as virtually all activity between Aventis and its customers is argumentative.

4. Aventis objects to subpart (c) of Plaintiff’s definition of “National Sales Data” as set forth in Definition No. 6 on the ground the phrase “your product number” is vague, ambiguous and undefined. Aventis further objects to subparts (m) and (n) on the ground defining “payments or proposed payments in cash or in kind, chargebacks, credits, discounts such as return practice discounts, prompt pay discounts, volume discounts, on-invoice discounts, off-invoice discounts, rebates such as market share rebates, access rebates, or bundled drug rebates, free goods or samples, credits, administrative fees or administrative fee reimbursements, marketing fees, stocking fees, conversion fees, patient education fees, off-invoice pricing, educational or other grants, research funding, payments for participation in clinical trials, honoraria, speaker’s fees or payments, patient education fees or consulting fees” as “incentives” is overbroad, confusing, and argumentative.

5. Aventis objects to the definition of “Targeted Drugs” as set forth in Definition No. 9 because it is based on the utilization for a particular drug. Using this metric to define “Targeted Drugs” is overly broad and vague at this time. Aventis has filed a motion to dismiss based in part on the lack of specificity as to the proper scope of the drugs at issue in this suit. Aventis, however, remains willing to work with Plaintiff to reach an agreement defining more meaningfully what will be the true “Targeted Drugs” of this lawsuit. Because this issue is still unresolved and is pending before the Court, Aventis objects to Plaintiff’s definition of “Targeted Drugs” in these Interrogatories on the ground they are overly broad, unduly burdensome, and

seek the production of documents and/or information that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

6. Aventis objects to the extent that any of Plaintiff's Interrogatories are not limited to Aventis's practices in Wisconsin on the grounds that such Interrogatories are overly broad, unduly burdensome, and do not seek the discovery of admissible evidence.

7. Insofar as any Interrogatory seeks information to which the foregoing Objections to Plaintiff's Definitions apply, Aventis's specification or failure to note particular Objections to Plaintiff's Definitions shall not constitute a waiver or limitation of those Objections to Plaintiff's Definitions with respect to any individual Interrogatory.

8. Unless otherwise stated, Aventis responds to the following Interrogatories according to its interpretation and definition of the terms and phrases addressed above.

INTERROGATORIES

Subject to the Objections to Definitions stated above, and without waiving or limiting and expressly preserving all such objections, Aventis responds to Plaintiff's individually-numbered Interrogatories as follows:

INTERROGATORY NO. 1: Have you ever determined an average sales price or other composite price net of any or all Incentives for a Targeted Drug during the Defined Period of Time? If so, for each Targeted drug for which you have made such a determination, identify:

- (a) the beginning and ending dates of each period applicable to each such determination;
- (b) the applicable class(es) of trade for which each determination was made;
- (c) each average sales price or composite price determined;
- (d) the person(s) most knowledgeable regarding the determinations;
- (e) the methodology used to determine such prices;
- (f) your purpose(s) in making such determinations;

- (g) whether you disclosed any average sales price or composite price so determined to any publisher, customer, or governmental entity. If so, identify each publisher, customer or governmental entity to whom each such price was disclosed and the corresponding date of the disclosure; and
- (h) whether any such average sales price or composite price was treated as confidential or commercially sensitive financial information.

ANSWER: Aventis objects to this Interrogatory on the ground that the terms “average sales price” and “other composite price” are vague, ambiguous and undefined. Aventis also objects to this Interrogatory because, since the service of these discovery requests, the parties have unsuccessfully discussed narrowing the scope of drugs in this case. Since this issue is presently unresolved and before the Court in Defendants’ motion to dismiss, Aventis objects to the use of “Targeted Drug” in this Interrogatory because it is overly broad and vague at present. Aventis further objects to Plaintiff’s definition of “Incentives” as argumentative because it characterizes essentially any activity between Aventis and its customers as an “incentive.”

Subject to and without waiving these objections, Aventis states that it did not have one internal definition of “average sales price.” For many of its pharmaceutical products, Aventis computed gross-to-net sales data that took into consideration chargebacks, rebates, and administrative fees provided to customers. Notwithstanding that the scope of drugs in this matter has not yet been defined, Aventis previously produced to plaintiffs sales data, and chargeback, rebate, and administrative fees data for five of its drugs -- Allegra®, Amaryl®, Azmacort®, DDAVP®, and Nasacort® -- on July 22, 2005. Once the scope of drugs at issue is resolved, either by the parties or through Court order, Aventis will supplement this interrogatory answer subject to an appropriate protective order of confidentiality.

INTERROGATORY NO. 2: Identify each electronic database, data table or data file that you now maintain or have maintained during the Defined Period of Time in the ordinary course

of business which contains a price for a Targeted Drug. For each such electronic data entity, identify, describe or produce the following:

- (a) the name or title of each such database, data table, or data file;
- (b) the software necessary to access and utilize such data entities;
- (c) describe the structure of each database, data table or data file identified in response to Request No. 2(a) above and identify all files or tables in each such database, data table or data file. For each such file or table, identify all fields and for each field describe its contents, format and location within each file or table record or row.
- (d) the current or former employee(s) with the most knowledge of the operation or use of each data entity identified above; and
- (e) the custodian(s) of such data entity.

ANSWER: Aventis objects to this Interrogatory because—since the service of these discovery requests—the parties have unsuccessfully discussed narrowing the scope of drugs in this case. Since this issue is presently unresolved and before the Court in Defendants’ motion to dismiss, Aventis objects to the use of “Targeted Drug” in this Interrogatory because it is overly broad and vague at this time. Aventis further objects to “Defined Period of Time” to the extent it calls for information prior to August 10, 1998 or after August 10, 2004.

Subject to and without waiving these objections, Aventis states that it maintains a variety of information electronically for its pharmaceutical products. Notwithstanding that the scope of drugs in this matter has not yet been defined, Aventis previously produced to plaintiffs electronic data for five of its drugs -- Allegra®, Amaryl®, Azmacort®, DDAVP®, and Nasacort® -- on July 22, 2005. Data included in that production was gathered from several electronic databases that provided invoice data, and data pertaining to chargebacks, rebates, and administrative fees paid by Aventis (or its legacy companies). In its July 22, 2005, correspondence accompanying that production, Aventis described the scope and source of electronic data in detail. Once the

scope of drugs at issue is resolved, either by the parties or through Court order, Aventis will supplement this interrogatory answer subject to an appropriate protective order of confidentiality. Further responding, Aventis states that current employees Barbara Goetz and David Iuliani are individuals knowledgeable about these data.

INTERROGATORY NO. 3: Describe each type of Incentive you have offered in conjunction with the purchase of any Targeted Drug. For each such Incentive, identify:

- (a) the type(s) of Incentive(s) offered for each Targeted Drug;
- (b) the class(es) of trade eligible for each Incentive;
- (c) the general terms and conditions of each Incentive; and
- (d) the beginning and ending dates of each period during which the Incentive was offered.

ANSWER: Aventis objects to this Interrogatory because—since the service of these discovery requests—the parties have unsuccessfully discussed narrowing the scope of drugs in this case. Since this issue is presently unresolved and before the Court in Defendants’ motion to dismiss, Aventis objects to the use of “Targeted Drug” in this Interrogatory because it is overly broad and vague at this time. Aventis further objects to Plaintiff’s definition of “Incentives” as argumentative because it characterizes essentially any activity between Aventis and its customers as an “incentive.” Aventis further objects that this Interrogatory seeks information about Aventis’s practices beyond those affecting the state of Wisconsin. Aventis further objects to the extent that this Interrogatory calls for information related to occurrences prior to August 10, 1998 and/or after August 10, 2004 on the ground such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, Aventis interprets this Interrogatory as seeking information relating to its use of discounts, chargebacks, or rebates with customers. Notwithstanding that the scope of drugs in this matter has not yet been defined, Aventis previously produced to plaintiffs electronic data for five of its drugs -- Allegra®, Amaryl®, Azmacort®, DDAVP®, and Nasacort® -- on July 22, 2005. Data included in that production was gathered from several electronic databases that provided invoice data, and data pertaining to chargebacks, rebates, and administrative fees paid by Aventis (or its legacy companies). In its July 22, 2005, correspondence accompanying that production, Aventis described the scope and source of electronic data in detail. Once the scope of drugs at issue is resolved, either by the parties or through Court order, Aventis will supplement this interrogatory answer subject to an appropriate protective order of confidentiality.

INTERROGATORY NO. 4: Describe in detail how you determined each price you used in the ordinary course of business of each Targeted Drug for each year during the Defined Period of Time and identify the person(s) most knowledgeable in making such determination for each Targeted Drug for each year.

ANSWER: Aventis objects to this Interrogatory because—since the service of these discovery requests—the parties have unsuccessfully discussed narrowing the scope of drugs in this case. Since this issue is presently unresolved and before the Court in Defendants’ motion to dismiss, Aventis objects to the use of “Targeted Drug” in this Interrogatory because it is overly broad and is vague at this time. Aventis further objects to “Defined Period of Time” to the extent it calls for information created either prior to August 10, 1998 or after August 10, 2004.

Subject to and without waiving these objections, Aventis states that it determines an appropriate Wholesale Acquisition Cost (“WAC”) for each product prior to its launch into the market. Aventis (and its legacy companies) determined the WAC for each product based on a variety of factors, including but not limited to an analysis of similar products in the market,

alternative therapies available, and the value of the product to the patient in comparison with those factors. The WAC for Aventis's products represents the undiscounted list price that is charged to its direct customers. After a product's launch, Aventis (and its legacy companies) periodically implemented price increases for its products, in accordance with market conditions. Until 2001, Aventis (and its legacy companies) also suggested an "Average Wholesale Price" (AWP) for each product to the price compendia. These AWP suggestions were based on Aventis's understanding of the historical computation of AWP as an industry term-of-art of the price compendia—which typically amounted to approximately 20-25% mark-up over WAC. Accordingly, prior to 2001 Aventis (and its legacy companies) typically suggested an AWP for its products that was 20-25% above WAC.

Given the unique considerations and circumstances accompanying any one particular product, the individuals knowledgeable about the pricing described above will differ by product. When the scope of products at issue is resolved, either by the parties or through Court order, Aventis will supplement this interrogatory.

INTERROGATORY NO. 5: Have you ever included in your marketing of a Targeted Drug to any customer reference to the difference (or spread) between an AWP or WAC published by First DataBank, Redbook or Medi-span and the list or actual price (to any customer) of any Targeted Drug? If so, provide the following information for each Targeted Drug:

- (a) the drug name and the NDC;
- (b) the beginning and ending dates during which such marketing occurred;
- (c) the name, address and telephone number of each customer to whom you marketed a Targeted Drug in whole or in part by making a reference to such difference(s) or spread(s); and
- (d) identify any document published or provided to a customer which referred to such difference(s) or spread(s).

ANSWER: Aventis objects to this Interrogatory because the terms “marketing” and “list price or actual price” are vague, ambiguous and undefined. Aventis further objects to this Interrogatory because—since the service of these discovery requests—the parties have unsuccessfully discussed narrowing the scope of drugs in this case. Since this issue is presently unresolved and before the Court in Defendants’ motion to dismiss, Aventis objects to the use of “Targeted Drug” in this Interrogatory because it is overly broad and is vague at this time. Aventis further objects that this Interrogatory seeks information about Aventis’s practices beyond those affecting the state of Wisconsin. Aventis further objects to the extent that this Interrogatory calls for information related to occurrences prior to August 10, 1998 and/or after August 10, 2004 on the ground 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.

Subject to and without waiving these objections, Aventis states that it will supplement its Answer to this Interrogatory when the scope of products is resolved, subject to an appropriate protective order of confidentiality.

AVENTIS PHARMACEUTICALS INC.

By 

Stephen Hurley, Esq.

Marie Stanton, Esq.

Andrew Erlandson, Esq.

HURLEY, BURISH & MILLIKEN, S.C.

10 E. Doty Street

Madison, Wisconsin 53703

Tel: (608) 257-0945

Michael L. Koon, Esq.

SHOOK, HARDY & BACON L.L.P.

2555 Grand Boulevard

Kansas City, MO 64108

Tel: (816) 474-6550

Fax: (816) 421-5547

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

9th day of December, 2005 I hereby certify that a copy of the foregoing was mailed, postage prepaid, this to the following:

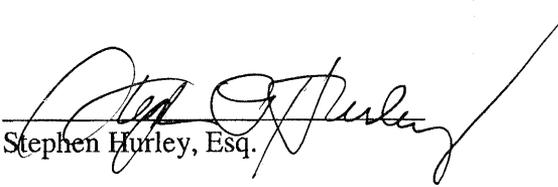
Peggy A. Lautenschlager, Esq.
Attorney General
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857

Michael R. Bauer, Esq.
Assistant Attorney General
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857

Cynthia R. Hirsch, Esq.
Assistant Attorney General
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857

Frank D. Remington, Esq.
Assistant Attorney General
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857

Charles Barnhill, Esq.
William P. Dixon, Esq.
Elizabeth J. Eberle, Esq.
MINER, BARNHILL & GALLAND, P.C.
44 East Mifflin Street, Suite 803
Madison, Wisconsin 53707


Stephen Hurley, Esq.