

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

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STATE OF WISCONSIN,	)	
	)	
Plaintiff,	)	Case No.: 05 C 408 C
	)	
v.	)	
	)	
ABBOTT LABORATORIES, ET AL.,	)	
	)	
Defendants.	)	
	)	
	)	

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**DEFENDANT BRISTOL-MYERS SQUIBB COMPANY’S ANSWERS AND  
OBJECTIONS TO PLAINTIFF’S FIRST SET OF INTERROGATORIES  
TO ALL DEFENDANTS**

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure,  
Defendant Bristol-Myers Squibb Company (“BMS”), by its attorneys, hereby asserts the  
following responses and objections to Plaintiff’s First Set of Interrogatories to All Defendants  
(“Interrogatories”):

**PRELIMINARY STATEMENT**

1. These answers are made solely for the purposes of this action. Each answer is  
subject to all objections as to competence, relevance, materiality, propriety, and admissibility,  
and to any and all other objections on any grounds that would require the exclusion of any  
statements contained herein if such Interrogatories were asked of, or statements contained

herein were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. BMS' answers shall not be deemed to constitute admissions:
  - a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or
  - b. that any statement or characterization in Plaintiff's Interrogatories is accurate or complete.

3. BMS' answers are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and BMS reserves the right to amend its answers and to raise any additional objections it may have in the future. These answers are made based upon the typical or usual interpretation of words contained in Plaintiff's Interrogatories, unless a specific definition or instruction has been provided.

4. BMS' answers to Plaintiffs' Interrogatories are submitted without prejudice to BMS' right to produce evidence of any subsequently discovered facts and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial. BMS reserves its right to provide further answers as additional facts are ascertained.

5. Any statement by BMS contained in these objections and answers that non-privileged documents or information will be produced in response to a specific Interrogatory does not mean that any such documents or information actually exist, but only that they will be produced to the extent that they exist.

6. BMS' answers to Plaintiff's Interrogatories contain information subject to the Temporary Qualified Protective Order entered in this matter by the State of Wisconsin Circuit

Court for Dane County and must be treated accordingly. BMS is producing information and documents subject to the terms of the Temporary Qualified Protective Order or to any other equivalent Protective Order that may be entered by the United States District Court for the Western District of Wisconsin.

### **GENERAL OBJECTIONS**

BMS objects generally to Plaintiff's Interrogatories as follows:

1. BMS objects to these Interrogatories to the extent that they seek documents and information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, or are overly broad, unduly burdensome, ambiguous and vague. In response to these Interrogatories, BMS will produce information (a) concerning its drugs specifically identified in the Complaint in this matter; and (b) as to which BMS has made a prior production in MDL 1456, *In re Pharmaceutical Industry Average Wholesale Price Litigation*, pending in the District of Massachusetts before Judge Patti B. Saris ("MDL 1456").

2. BMS objects to these Interrogatories to the extent they call for the production of documents or information that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, joint defense/prosecution privilege, the work product doctrine, the consulting expert rule, the common interest doctrine or other applicable statutory or common law. To the extent that any such protected documents or information are inadvertently produced in response to these Interrogatories, the production of such documents or information shall not constitute a waiver of BMS' 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 BMS' counsel immediately upon discovery thereof.

3. BMS objects to these Interrogatories to the extent that they seek documents and information not within BMS' possession, custody, or control or are more appropriately sought from third parties to whom requests have been or may be directed.

4. BMS objects to these Interrogatories to the extent that they seek production of publicly available documents or information, or that which Plaintiff can obtain from other sources.

5. BMS objects to these Interrogatories to the extent they call for the production of trade secret, proprietary, commercially sensitive, or other confidential information.

6. BMS objects to these Interrogatories to the extent that they purport to impose obligations beyond or inconsistent with those imposed by applicable law. BMS will respond to these Interrogatories, subject to other objections, as required by applicable rules of civil procedure.

7. BMS objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in these Interrogatories. BMS' response that it will produce documents or information in connection with a particular Interrogatory, or that it has no responsive documents, is not intended to indicate that BMS agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories or that such implications or characterizations are relevant to this action.

8. BMS incorporates the above Preliminary Statement and General Objections and the below Objections to Definitions into each answer to the Interrogatories set forth below as if set forth in full therein. The answer to an Interrogatory shall not operate as a waiver of any applicable specific or general objection to an Interrogatory.

## OBJECTIONS TO DEFINITIONS

1. The term “**Average Manufacturer Price**” or “**AMP**” means the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report for purposes of the Medicaid program, pursuant to 42 U.S.C. §1396r-8.

**OBJECTION:** BMS objects to the definition of “Average Manufacturer Price” and “AMP” as set forth in Definition No. 1 to the extent it purports to depart from the statutory definition. BMS incorporates by reference its objection to the definition of the term “Pharmaceutical.”

2. The term “**Chargeback**” means any payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser’s acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.

**OBJECTION:** BMS objects to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous. BMS incorporates by reference its objection to the definition of the term “Pharmaceutical.”

3. The term “**Defined Period of Time**” means from January 1, 1993 to the present and Documents relating to such period even though created before that period.

**OBJECTION:** BMS objects 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.” BMS objects 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.

4. The term “**Document**” means any writing or recording of any kind, including, without limitation, agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, facsimiles (faxes), film, graphs, letters, memos, maps, minutes (particularly Board of Directors and/or Executive Committee meeting minutes), notes, notices, photographs, reports, schedules, summaries, tables, and telegrams, in any medium, whether written, graphic, pictorial, photographic, electronic, emails, phonographic, mechanical, taped, saved on computer disc [sic], hard drives, data tapes, or otherwise, and every non-identical copy. Different versions of the same Document, such as different copies of a written record bearing different handwritten notations, are different Documents within the meaning of the term as used. In case originals or original non-identical copies are not available, “Document” includes copies of originals or copies of non-identical copies as the case may be.

**OBJECTION:** BMS objects to the definition of “Document” as set forth in Definition No. 4 on the grounds that it is vague and ambiguous. BMS further objects to this definition to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, BMS’ obligations under the Federal Rules of Civil Procedure. BMS further objects to this definition to the extent it requires or seeks to require BMS to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format from that which the documents are now stored; (iii) produce metadata constituting attorney work product, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes and/or such other storage media that may be inaccessible in the normal course of business; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement or copyright laws.

5. The term “**Incentive**” means anything of value provided to a customer which would lower the consideration paid for a drug, regardless of the time it was provided (for example, at the time of invoicing, shipment, or payment, or monthly quarterly, annually, or at any time or on any other basis) and regardless of its name. The term “Incentive” therefore includes, but is not limited to, payments or proposed payments in cash or in kind, Chargebacks, credits, discounts such as return to 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.

**OBJECTION:** BMS objects to the definition of "Incentive" as set forth in Definition No. 5 on the grounds that it is overly broad, unduly burdensome, ambiguous and vague, particularly with respect to the language "anything of value," "provided," "customer," "lower the consideration paid for a drug, regardless of the time it was provided," "credits," "discounts," "return to practice discounts," "prompt pay discounts," "volume discounts," "on-invoice discounts," "off-invoice discounts," "rebates," "market-share rebates," "access rebates," "bundled-drug rebates," "free goods or samples," "administrative fees or administrative fee reimbursements," "marketing fees," "stocking fees," "conversion fees," "patient education fees," "off-invoice pricing," "educational or other grants," "research funding," "clinical trials," "honoraria," "speaker's fees or payments," "patient education fees" and "consulting fees." BMS incorporates by reference its objections to the definitions of the terms "Chargeback" and "Pharmaceutical."

6. The term "**National Sales Data**" means data sufficient to identify for each sales transaction involving the Targeted Drugs the following information:

- (a) transaction date;
- (b) transaction type;
- (c) your product number;
- (d) product description;
- (e) package description;
- (f) NDC;
- (g) NDC unit quantity;
- (h) NDC unit invoice price;
- (i) NDC unit WAC (assigned by you);

- (j) contract price;
- (k) invoice price;
- (l) customer name, identification number, address and class of trade;
- (m) all paid or distributed Incentives;
- (n) all accrued Incentives calculated at any time identifying the amount of the accrual, its nature or type, the date of accrual, and other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.

**OBJECTION:** BMS objects to the definition of “National Sales Data” in Definition No. 6 on the grounds that it is overly broad and unduly burdensome. BMS further objects 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.” BMS incorporates by reference its objections to the definitions of the terms “Targeted Drugs” and “Incentives.”

7. The term “**Pharmaceutical**” means any drug or other product, whether sold by you, or any other manufacturer, which requires a physician’s or other prescriber’s prescription, including, but not limited to, “biological” products such as hemophilia factors and intravenous solutions.

**OBJECTION:** BMS objects to the definition of “Pharmaceutical” 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,” “other prescriber’s,” “hemophilia factors,” “biological products”

and “intravenous solutions.” BMS objects to this Definition to the extent that it refers to information not relevant to Plaintiff’s claims, which are limited to Wisconsin.

8. The term “**Spread**” is used to refer to the difference between the actual acquisition cost or purchase price of a Pharmaceutical (paid by purchasers of the Pharmaceuticals) and the reimbursement rate paid by third party payors (to purchasers of the Pharmaceuticals) for the Pharmaceutical. Third party payors include the Medicare program, Medicaid program, and private insurance. Thus, the Spread is the gross profit actually or potentially realized by the purchasers of the Pharmaceuticals for those Pharmaceuticals ultimately paid for by third party payors.

**OBJECTION:** BMS objects to the definition of “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language “actual acquisition cost,” “purchase price,” “reimbursement rate,” “third party payors,” “gross profit actually or potentially realized,” and “purchasers.” BMS incorporates by reference its objection to the definition of the term “Pharmaceutical.”

9. The term “Targeted Drugs” means those drugs manufactured by you which have total utilization under the Medicaid and Medicare Part B program exceeding \$10,000 during the Defined Period of Time in the state of Wisconsin.

**OBJECTION:** BMS objects to the definition of “Targeted Drugs” in Definition No. 9 on the grounds that it is overly broad and unduly burdensome. BMS further objects to this definition on the grounds that it is vague and ambiguous, particularly with respect to the language “you,” “drugs,” and “total utilization.” BMS incorporates by reference its objection to the definition of the term “Defined Period of Time.” BMS incorporates General Objection No. 1, to the extent that this Definition seeks information concerning drugs not specifically identified in the Complaint.

### **SPECIFIC ANSWERS AND OBJECTIONS TO INTERROGATORIES**

**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.

**RESPONSE TO INTERROGATORY NO. 1:**

In addition to the General Objections and Objections to Definitions set forth above, BMS objects to Interrogatory No. 1 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. BMS further objects to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “determined,” “average sales price,” “composite price” “net of any or all Incentives” “class(es) of trade,” “methodology,” “publisher, customer, or governmental entity” and “such price.” Subject to and without waiver of the foregoing, BMS states that prior to 2004, BMS did not routinely calculate average sales prices (ASPs) or “composite prices” for its prescription drug products, and searching for those discrete or rare instances in which such prices may have been calculated would be extraordinarily burdensome and oppressive. To the extent BMS began reporting ASPs for its prescription drugs to the Federal Government in 2004, that information is not reasonably calculated to lead to the discovery of evidence relevant to this action. In MDL 1456, Magistrate Judge Bowler ruled that the ASP data BMS reported to the government need not be produced by defendants.

**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 Interrogatory 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.

**RESPONSE TO INTERROGATORY NO. 2:**

In addition to the General Objections and Objections to Definitions set forth above, BMS objects to Interrogatory No. 2 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. BMS objects to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “each,” “electronic database, data table or data file,” “you,” “ordinary course of business,” “price,” “electronic data entity,” “software necessary to access such data entities,” “structure of each database, data table, or data file,” “fields,” “format and location within each file or table record or row” and “operation or use.” Subject to and without waiving the foregoing Preliminary Statement, General Objections, Objections to Definitions and Specific Objections, BMS will direct Plaintiff to (i) pricing data and documents BMS produced in MDL 1456, which BMS will be producing to Plaintiff in response to Plaintiff’s First Set of Requests for Production of Documents to All Defendants; and (ii) the deposition transcripts of its employees Yung Chik, Zoltan Szabo, John Ehret and Michelle Hand, which explain the databases and other methods by which pricing data have been kept by BMS.

**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.

**RESPONSE TO INTERROGATORY NO. 3:**

In addition to the General Objections and Objections to Definitions set forth above, BMS objects to Interrogatory No. 3 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. BMS objects to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “type” “you,” “offered,” “in conjunction with,” “class(es) of trade” and “general terms and conditions.” Subject to and without waiving the foregoing, see Response to Interrogatory No. 2, *supra*.

**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 determinations for each Targeted Drug for each year.

**RESPONSE TO INTERROGATORY NO. 4**

In addition to the General Objections and Objections to Definitions set forth above, BMS objects to Interrogatory No. 4 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. BMS further objects to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “in detail,” “you,” “determined,” “each price,” “used” and “ordinary course of business.”

**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) or any Targeted Drug? If so, provide the following information for each Targeted Drug:

- (a) the drug name and 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).

**RESPONSE TO INTERROGATORY NO. 5:**

In addition to the General Objections and Objections to Definitions set forth above, BMS objects to Interrogatory No. 5 on the grounds that it is overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. BMS objects to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “ever included,” “your,” “marketing,” “customer,” “reference,” “any,” “difference,” “AWP,” “WAC,” “published,” and “list or actual price.” Subject to and without waiver of the foregoing, BMS will direct Plaintiff to exhibits to the depositions of its sales representatives produced in MDL 1456, which BMS will be producing to Plaintiff in response to Plaintiff’s First Set of Requests for Production of Documents to All Defendants.

Dated: July 15, 2005

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