

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

Branch 7

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04CV1709

ABBOTT LABORATORIES, ET AL.,

Unclassified Civil: 30703

Defendants.

**DEFENDANT BEN VENUE LABORATORIES, INC.'S
SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Under Wis. Stat. § 804.08, Defendant Ben Venue Laboratories, Inc. ("Ben Venue"), by its attorneys, hereby asserts the following supplemental answers to the First Set of Interrogatories to All Defendants submitted by the State of Wisconsin ("the State") as follows:

RESERVATION OF RIGHTS

As to all matters referred to in these supplemental answers to the First Set of Interrogatories to All Defendants, Ben Venue's investigation and discovery continues. The specific responses set forth below and any production made consistent with the accompanying interrogatories are based upon, and necessarily limited by, information now available to Ben Venue. Ben Venue reserves the right to modify these objections and responses and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial.

OBJECTIONS

Ben Venue incorporates by reference all of its objections both general and specific enumerated in Ben Venue's Responses and Objections to Plaintiff's Requests for Production and Ben Venue's Answers to Plaintiff's First Set of Interrogatories, both served on Plaintiff July 15, 2005.

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 determination;
- (e) the methodology used to determine such prices;
- (f) your purpose(s) in making such determination;
- (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 TO INTERROGATORY NO. 1:

Subject to and without waiving its objections, Ben Venue states that various employees of Ben Venue may have from time to time determined an average sales price or other composite price, after certain discounts, for a Targeted Drug during the Defined Period of Time (“ASP”). Any ASP calculations performed by Ben Venue constituted individualized calculations of the amount one would derive by dividing sales dollars for a particular time period by the units sold during that same time period, after reducing credits allocated to the sale of the products. Any such ASP calculation performed did not yield an actual price charged for the subject products, nor did it yield an “average sales price or other composite price net of any or all Incentives for a Targeted Drug,” but could include such items as credits for services. Ben Venue did not have a standard methodology or practice of determining average sales price, and had no practice of calculating “average sales price” as defined by Plaintiff.

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 entry, 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 entries;
- (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 TO INTERROGATORY NO. 2:

Subject to and without waiving its objections, Ben Venue states that it has had a myriad of electronic databases, data tables or data files during the Defined Period of Time which contained pricing information related to a Targeted Drug. The charts below summarize, to the best of Ben Venue’s IT personnel’s present knowledge, the main systems and applications, not including email or individual data maintained by employees on an ad hoc basis:

1995-2001

Hardware	System	Vendor	Functions	Location of System
HP Unix Servers	MFG/PRO – Progress database system.	QAD	Order Processing, Inventory, Planning, Shipping, Purchasing and Financials	Bedford, Ohio
Microsoft Server	OCCAM (formerly CCAP) – Paradox database system	OCCAM Associates	Contract Management and Chargebacks	Bedford, Ohio

2002-PRESENT

Hardware	System	Vendor	Functions	Location of System
HP Unix Servers	MFG/PRO – Progress database system.	QAD	Order Processing, Inventory, Planning, Shipping, Purchasing and Financials	Bedford, Ohio
HP Unix Servers	CARS/IS – Oracle database system	I-many	Contract Management and Chargebacks	Bedford, Ohio

In addition to the systems identified above, since at least 2001, Ben Venue has maintained a data warehouse which houses a copy of portions of the data maintained independently by Ben Venue’s MFG/PRO and OCCAM systems, or Ben Venue’s MFG/PRO and CARS/IS systems, depending on the time period involved. The function of the data

warehouse is to provide a single access point for business users to the data which they need to access on the most frequent basis but which is maintained and processed by the separate and independent Ben Venue systems identified in the charts above.

The present employee most knowledgeable regarding the systems identified above is Dale Gormley.

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 TO INTERROGATORY NO. 3:

Subject to and without waiving its objections, Ben Venue states that it has customarily offered prompt pay discounts to wholesalers for all Ben Venue products. In addition, Ben Venue has provided a number of different discounts or rebates to its customers which varied by contract. Some of the various “incentives” (as Plaintiff has defined that term for purposes of this Interrogatory) Ben Venue has offered to its customers in connection with individually-negotiated contracts are Chargebacks, administration fee reimbursement, marketing fee reimbursement, rebate program fee reimbursement, and rebates. In addition, on occasion,

Ben Venue has provided free goods to customers in connection with its efforts to attract new business and/or prevent the loss of business to competitors.

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 TO INTERROGATORY NO. 4:

Subject to and without waiving its objections, Ben Venue states that its processes for determine wholesale acquisition cost (“WAC”) for its products varied according to market conditions by product and by year. Ben Venue’s process for determining WAC for any particular product at launch varied according to market conditions, including but not limited to the then-current WAC for existing competition in the market. Based on market conditions, Ben Venue adjusted WAC for certain Targeted Drugs after launch.

Ben Venue does not determine average wholesale price (“AWP”) for any of its products.

Ben Venue’s Hospital List Price (“HLP”) refers to the price at which Ben Venue offers its products for sale to a customer without a contract, a customer who is neither a wholesaler nor a distributor.

Ben Venue’s contract prices are the product of individual negotiations and analysis of existing and/or anticipated market conditions.

The persons most knowledgeable about the types of prices described above are David Gaugh, Scott Cormiea, and Peter Hansbury.

INTERROGATORY NO. 5: Have you ever included in your marketing of a Targeted Drug to any customer reference to the difference (or spread) between and 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 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 TO INTERROGATORY NO. 5:

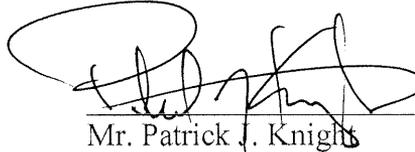
Subject to and without waiving its objections, Ben Venue states that it has neither authorized nor encouraged its sales personnel to approach customers about the difference (or spread) between AWP and WAC as a marketing strategy for its drugs (including the Targeted Drugs).

As to objections,

Of Counsel:

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A handwritten signature in black ink, appearing to read "Patrick J. Knights", is written over a horizontal line. The signature is stylized and somewhat cursive.

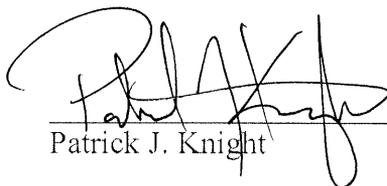
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant Ben Venue Laboratories, Inc.'s Supplemental Answers to Plaintiff's First Set of Interrogatories was served via U.S. mail on November 16, 2005, upon the following:

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