

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 BOEHRINGER INGELHEIM PHARMACEUTICALS, INC.'S
SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Under Wis. Stat. § 804.08, Defendant Boehringer Ingelheim Pharmaceuticals, Inc. ("BIPI"), 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, BIPI'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 BIPI. BIPI 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

BIPI incorporates by reference all of its objections, both general and specific, enumerated in BIPI's Responses and Objections to Plaintiff's Requests for Production and BIPI'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, BIPI states that various employees of BIPI may have, from time to time, determined an average sales price or other composite price, after discounts, for a Targeted Drug during the Defined Period of Time (“ASP”). Any ASP calculations performed by BIPI 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 matters as credits for services. BIPI 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, BIPI 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 BIPI'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:

1994-1996

Hardware	System	Vendor	Functions	Location of System
AS/400	BPCS (Business Planning and Control System)	SSA (System Software Associates)	Order Processing and Accounts Receivable	Ridgefield, CT
AS/400	Custom Code		Contracts and Chargebacks	Ridgefield, CT

June 1996-April 1997

Hardware	System	Vendor	Functions	Location of System
AS/400	BPCS (Business Planning and Control System)	SSA (System Software Associates)	Order Processing and Accounts Receivable	Ridgefield, CT
AS/400	Custom Code		Contracts and Chargebacks	Ridgefield, CT
HP	Data Warehouse	Developed by BIPI	Data Warehouse	Ridgefield, CT

April 1997-November 2000

Hardware	System	Vendor	Functions	Location of System
AS/400	BPCS (Business Planning and Control System)	SSA (System Software Associates)	Order Processing and Accounts Receivable	Ridgefield, CT/Burlington, Canada
AS/400	Custom Code		Contracts and Chargebacks	Ridgefield, CT
HP	Data Warehouse	Developed by BIPI	Data Warehouse	Ridgefield, CT

December, 2000 - Present

Hardware	System	Vendor	Functions	Location of System
HP	SAP	SAP	Order Processing and Accounts Receivable	Ridgefield, CT
HP	CARS/IS (Contract Administration and Rebate System)	Imany	Contracts and Chargebacks	Ridgefield, CT
HP	ACTA Data Warehouse	ACTA	Data Warehouse	Ridgefield, CT

A present employee with general knowledge regarding the systems identified above is Ed DiPaola.

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, BIPI states that it has customarily offered prompt pay discounts to purchasers for all BIPI products. In addition, BIPI 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) BIPI has offered to its customers in connection with individually-negotiated contracts are Chargebacks, new item allowance, administration fees, and rebates.

With respect to its wholesaler customers, BIPI has offered several different inventory control programs for specific products during specific time periods. Some of these programs included the Channel Distribution Performance Program and the Distribution Performance Agreement. In general, these programs provided discounts (not to exceed 1.5%) to wholesalers for performance in maintaining inventory in line with historic levels.

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, BIPI states that its processes for determining wholesale acquisition cost ("WAC") for its products varied according to market

conditions by product and by year. Based on market conditions, BIPI adjusted WAC for certain Targeted Drugs after launch.

For part of the Defined Period of Time, BIPI set average wholesale price (“AWP”) for its products generally at WAC plus twenty percent (20%). During the Defined Period of Time, BIPI ceased setting and/or reporting AWP for its products. BIPI does not presently determine AWP for any of its products.

BIPI’s Direct Price refers to the price at which BIPI offers its products for sale to a customer without a contract, a customer who is neither a wholesaler nor a distributor.

Generally Direct Price for BIPI products is set at WAC plus five percent (5%).

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

Pricing of BIPI’s Targeted Drugs is a shared responsibility within BIPI. BIPI marketing personnel with responsibility for a particular product (sometimes referred to as the “product team”) formulate pricing recommendations in consultation with other BIPI personnel. Membership in the product teams responsible in the first instance for formulating and recommending pricing actions has varied over time and by product. Prior to 2000, those recommendations were presented to senior BIPI Prescription Medicine Business Unit personnel for further discussion and/or modification before being passed on to Executive Management for final approval. Since 2000, pricing recommendation from the product teams have been presented to BIPI’s Pricing and Terms Committee (the “PTC”), which is the body responsible for making pricing decisions.

The person most knowledgeable about the types of prices described above is Christine Marsh.

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 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).

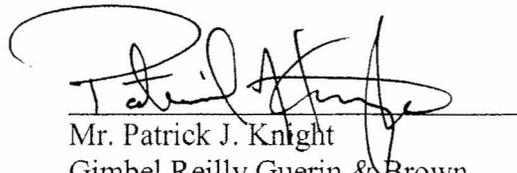
ANSWER TO INTERROGATORY NO. 5:

Subject to and without waiving its objections, BIPI 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. Knight", is written over a horizontal line. The signature is stylized and cursive.

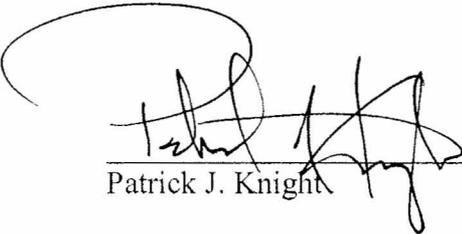
Mr. Patrick J. Knight
Gimbel Reilly Guerin & Brown
Two Plaza East, Suite 1170
330 East Kilbourn Avenue
Milwaukee, WI 53202
Tel: 414- 271-1440
Fax: 414-271-7680

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant Boehringer Ingelheim Pharmaceuticals, Inc.'s Supplemental Answers to Plaintiff's First Set of Interrogatories was served via mail on December 6, 2005, upon the following:

Frank D. Remington
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Charles Barnhill
William P. Dixon
Elizabeth J. Eberle
Miner, Barnhill & Galland, P.C.
44 East Mifflin Street, Suite 803
Madison, WI 53703



Patrick J. Knight

VERIFICATION

STATE OF CONNECTICUT)
) SS:
COUNTY OF FAIRFIELD)

Christine Marsh, being duly sworn, deposes and states that she is authorized by Boehringer Ingelheim Pharmaceuticals, Inc. to verify the foregoing Defendant Boehringer Ingelheim Pharmaceuticals, Inc.'s Supplemental Answers to Plaintiff's First Set of Interrogatories and hereby verifies the same; that certain matters stated therein are not within her personal knowledge, and the facts stated therein have been assembled by authorized employees and counsel of Boehringer Ingelheim Pharmaceuticals, Inc., and deponent is informed that the facts stated therein are true.

Christine G. Marsh

Christine G. Marsh

Sworn to before me and subscribed in my presence this 18th day of November, 2005.

Beverly A. Thulin

Notary Public

BEVERLY A. THULIN
NOTARY PUBLIC
MY COMMISSION EXPIRES 4/30/2009