

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

THE STATE OF WISCONSIN

Plaintiff,

CASE NO. 05-C-408-C

v.

ABBOTT LABORATORIES, INC., ET AL.

Defendants.

**SEPARATE DEFENDANT DEY, INC.'S RESPONSES AND
OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

PLEASE TAKE NOTICE that Defendant Dey, Inc. ("Dey") hereby responds and objects to Plaintiff the State of Wisconsin ("Plaintiff," the "State," or "Wisconsin")'s First Set of Interrogatories propounded to separate Defendant Dey Inc., dated January 27, 2005, as amended by the letter of Michael Winget-Hernandez to Christopher Palermo, dated June 3, 2005 (the "Interrogatories"):

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. Any response is made without waiving or intending to waive, but to the contrary intending to preserve and preserving: (a) the right to object, on the grounds of competency, relevancy, materiality, privilege, or admissibility as evidence for any purpose, or any other ground, to the use of the documents or information produced or provided in this or any subsequent or other proceeding; and (b) the right to object on any ground to other requests for documents, interrogatories, or other discovery proceedings involving or relating to the subject matter of the Interrogatories.

2. The information contained herein and any documents supplied in connection with the Interrogatories are for use in this litigation only and shall be used for no other purpose.

3. Where Dey states herein that it will produce documents, it will produce such documents pursuant to the Federal Rules of Civil Procedure and pursuant to the Temporary Qualified Protective Order, entered on May 11, 2005, in the action entitled *State of Wisconsin v. Abbott Laboratories, et al.*, in the Circuit Court of Dane County, Wisconsin (the “Protective Order”), to the extent such documents exist and can reasonably be obtained.

4. The responses made herein are based on Dey’s investigation to date of those sources within its control where it reasonably believes responsive information may exist, including a reasonable number of outside sales representatives. Dey reserves the right to amend or supplement these responses in accordance with applicable rules and court orders.

5. Dey objects to the Interrogatories to the extent they seek information concerning documents or things not within Dey’s possession, custody, or control.

6. Dey objects to the Interrogatories to the extent they impose on Dey an obligation to search or produce electronic mail (“email”) or other electronically stored data in any format on the grounds that such Interrogatories are overly broad, unduly burdensome, harassing, and not reasonably limited in scope. Dey will confer with Plaintiff to determine a mutually agreeable protocol for Dey and Plaintiff to respond to Interrogatories concerning information contained in electronic mail and electronic data.

7. Dey objects to the Interrogatories to the extent they require Dey to create data or process an unreasonably large amount of data, some of which Dey cannot compute at all and some of which Dey cannot compute without expending a significant amount of resources, and which is not reasonably calculated to lead to the discovery of admissible evidence.

8. Dey objects to the Interrogatories to the extent they purport to require Dey to create or analyze data that Plaintiff has the ability to create or analyze by reviewing the documents, information, or data that Dey has produced or will produce.

9. Dey objects to the Interrogatories to the extent they seek deposition testimony and witness statements that are subject to protective orders in other jurisdictions.

10. Dey objects to the Interrogatories to the extent they seek information constituting confidential or proprietary information, including, without limitation, customer identities, customer pricing, customer purchasing habits, trade secrets, and information of a commercially sensitive nature or that is protected from disclosure by statute. Dey will provide such information pursuant to the Protective Order.

11. Dey objects to the Interrogatories as overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence to the extent they seek documents or information concerning pharmaceutical products not at issue in this litigation. Dey will provide documents and information relating only to pharmaceutical products identified in the Amended Complaint, namely generic forms of acetylcysteine, albuterol sulfate, cromolyn sodium, and metaproterenol sulfate.

12. Dey objects to the Interrogatories as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent they seek documents or information concerning any discontinued product dated after the date of such product's discontinuation.

13. Dey objects to the Interrogatories to the extent they seek information concerning

branded drugs.

14. Dey objects to the Interrogatories as overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence to the extent they purport to seek information covering a period of more than 12 years – *i.e.*, from January 1, 1993 to the present.

15. Dey objects to the Interrogatories as overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent they purport to seek information or documents dated prior to the periods of statutory limitation applicable to the claims in the Amended Complaint. Dey further objects to the Interrogatories to the extent they seek information or documents created after the filing of the Complaint on June 3, 2004.

16. Dey objects to the Interrogatories to the extent they purport to impose on Dey obligations that exceed those imposed by the Federal Rules of Civil Procedure.

17. Dey objects to the Interrogatories to the extent they seek information protected by the attorney-client privilege, the medical records privilege, the work product doctrine, the consulting expert privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule, or doctrine.

18. Dey objects to the Interrogatories to the extent they are unduly burdensome, overbroad, oppressive, or seek information irrelevant to this action or not reasonably calculated to lead to the discovery of admissible evidence.

19. Dey objects to the Interrogatories to the extent they are duplicative or redundant.

20. Dey objects to the Interrogatories to the extent they seek information that is duplicative of other materials that Dey will produce in response to Plaintiff's document demands.

21. Dey objects to the Interrogatories to the extent they are vague, ambiguous, or do not identify with sufficient particularity the information sought.

22. Dey objects to the Interrogatories to the extent they seek information relating to health insurance programs not relevant to the allegations in the Amended Complaint on the grounds that such information is neither relevant to the issues in this action nor reasonably calculated to lead to the discovery of admissible evidence.

23. Dey objects to the Interrogatories to the extent they seek information relating to Dey's activities that are outside the scope of the allegations in the Amended Complaint.

24. Dey objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues contained in the Interrogatories. Any response by Dey is not intended to indicate and does not indicate that Dey agrees with any such implication or any such explicit or implicit characterization of facts, events, circumstances, or issues contained in the Interrogatories, or that such implication or characterization is relevant to this action.

25. Dey hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any co-defendant in this action to the extent such objection or reservation of rights is not inconsistent with Dey's position in this litigation.

OBJECTIONS TO DEFINITIONS AND INSTRUCTION

26. Dey objects to Plaintiff's definition of "Average Manufacturer Price" or "AMP" on the grounds that it is vague and ambiguous.

27. Dey objects to Plaintiff's definition of "Chargeback" on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome.

28. Dey objects to Plaintiff's definition of "Defined Period of Time" as vague and ambiguous. Dey further objects to this definition as overbroad and unduly burdensome to the extent it purports to include within its scope documents or information wholly unrelated to any issue in this litigation.

29. Dey objects to Plaintiff's definition of "Document" on the grounds that it is vague, ambiguous, and overbroad. Dey further objects to this definition to the extent it includes documents that are protected by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this definition to the extent it seeks to impose obligations on Dey that are greater than, or inconsistent with, Dey's obligations under the Federal Rules of Civil Procedure. Dey further objects to this definition to the extent it purports to include within its scope documents or information containing or consisting of proprietary information, trade secrets, or information of a competitively sensitive nature.

30. Dey objects to Plaintiff's definition of "Incentive" on the grounds that it is vague and ambiguous because, *inter alia*, it utilizes numerous vague, ambiguous, or undefined terms and phrases. Dey further objects to this definition as grossly overbroad and unduly burdensome to the extent it purports to include within its scope documents or information wholly unrelated to any issue in this litigation. Dey further objects to this definition to the extent it seeks to impose obligations on Dey that are greater than, or inconsistent with, Dey's obligations under the Federal Rules of Civil Procedure. Dey further objects to this definition to the extent it purports to include within its scope documents or information containing or consisting of proprietary

information, trade secrets, or information of a competitively sensitive nature.

31. Dey objects to Plaintiff's definition of "National Sales Data" on the grounds that it is vague and ambiguous because, *inter alia*, it utilizes numerous vague, ambiguous, or undefined terms and phrases. Dey further objects to this definition as grossly overbroad and unduly burdensome to the extent it purports to seek virtually every document or all information in any way related to Dey's business activities. Dey further objects to this definition to the extent it purports to include within its scope documents or information containing or consisting of proprietary information, trade secrets, or information of a competitively sensitive nature.

32. Dey objects to Plaintiff's definition of "Pharmaceutical" as vague and ambiguous. Dey further objects to this definition as overbroad and unduly burdensome to the extent it purports to include within its scope documents or information concerning people or entities over whom Dey has no control or who have no authorization to act on behalf of Dey, or concerning actions wholly unrelated to Dey. Dey's responses to the Interrogatories are made on behalf of Dey only.

33. Dey objects to Plaintiff's definition of "Spread" as vague and ambiguous because, *inter alia*, it contains numerous vague, ambiguous, or undefined terms and phrases. Dey further objects to this definition as grossly overbroad and unduly burdensome. Dey further objects to this definition to the extent it purports to include within its scope documents or information containing or consisting of proprietary information, trade secrets, or information of a competitively sensitive nature.

34. Dey objects to Plaintiff's definition of "Targeted Drugs" as vague and ambiguous and to the extent that the definition includes drugs that are not listed in the Amended Complaint.

35. Dey objects to the definition of any word or phrase defined in the “DEFINITIONS” section but not thereafter used in any of the Interrogatories on the grounds that such definition is irrelevant and prolix.

36. Dey objects to the instructional paragraph following the individual Interrogatories prefaced by an asterisk (“*”) (the “Instruction”) on the grounds that the Instruction is vague, ambiguous, and overly broad. Dey further objects to the Instruction as unduly burdensome to the extent it seeks to impose on Dey obligations inconsistent with, or greater than, Dey’s obligations under the Federal Rules of Civil Procedure.

SPECIFIC RESPONSES AND OBJECTIONS TO THE INTERROGATORIES

The General Objections and Reservations of Rights and the Objections to Definitions stated above apply to and are incorporated into each and every individual response to the individual Interrogatories set forth below, whether or not expressly incorporated by reference in any individual response. Dey also responds and objects specifically to the individual Interrogatories as follows:

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.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this interrogatory to the extent it requires Dey to produce or make available for inspection information regarding "ASP" as defined by the Centers for Medicare and Medicaid Services ("CMS") because CMS ASPs are wholly unrelated to the Medicaid reimbursement system upon which the State bases its claims. Dey objects to the terms and phrases "average sales price," "other composite price net of any or all Incentives," and "methodology" as vague, ambiguous, and overbroad. Dey also objects to this interrogatory as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin and because it seeks identification of virtually every document in Dey's possession in some way relating to average sales price. Dey further objects to this interrogatory as unintelligible. Dey further objects to this interrogatory to the extent it seeks proprietary information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this request to the extent it seeks information that is duplicative of other materials Dey will produce in response to Plaintiff's discovery requests.

Subject to and without waiving the foregoing general and specific objections, Dey states that:

(a) Dey understands that the term "average sales price" can have many different definitions depending on the methodology used and the context in which it is calculated.

Broadly defined, Dey understands that average sales price means sales dollars divided by units

sold. Dey's monthly accrual-based sales reports are a primary source of information regarding Dey's average sales price calculations, according to Dey's understanding of the term average sales price, for the Subject Drugs as calculated by the accounting department for internal business purposes. These numbers are estimates and include many judgmental accruals which may be later adjusted as better information becomes available. Dey will produce or make these reports available at a mutually agreeable time and place.

(b) Dey's accounting department calculates an average sales price for internal business use that generally includes all classes of trade for the Subject Drugs. Other calculations may, at certain times, be made for specific classes of trade, such as hospital, etc. Methodologies for the calculation of average sales price for various classes of trade may differ depending on the variables involved.

(c) *See* Response 1(a).

(d) Dey believes that current and former employees that have knowledge of how Dey's accounting department calculates average sales price for internal business use include current employees Scott Maynard, Joseph Oberting, Mark Middleton, Ann Ryden, Kevin Moloughney, Don Stein, and Pam Marrs and former employees Lewis Mow and Shelagh Sullivan.

(e) *See* Response 1(a).

(f) Dey's reasons for calculating an internal average sales price for the Subject Drugs include reviewing price trends, preparing budgets and forecasts and various other business analysis.

(g) Dey does not disclose its average sales prices to publishers or customers. Dey does disclose its Medicare ASPs in accordance with CMS guidelines.

(h) Dey treats its internal average sales prices as confidential and commercially sensitive financial information.

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.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this interrogatory as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin.

Dey further objects to this interrogatory as vague and ambiguous because, *inter alia*, it contains numerous terms that are themselves vague, ambiguous, or undefined, including “electronic database,” “data table,” and “data file.” Dey further objects to this interrogatory as overbroad and unduly burdensome to the extent it seeks information unrelated to any issue in this action.

Dey further objects to this interrogatory to the extent it seeks proprietary information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege.

Subject to and without waiving the foregoing general and specific objections, Dey states that:

(a)-(e): The BPCS, Chargeback and Rebate Systems: Dey maintains electronic files on Business Planning and Control System (“BPCS”) software that is run on an IBM AS/400 system. The BPCS application was designed for use by a wide variety of manufacturing companies and includes functions for financial information, manufacturing processes, distribution, logistics, and cross-product applications. BPCS contains many features that Dey does not use because they are not applicable to Dey’s business. There are also several custom applications developed in-house for Dey, including the chargebacks and rebates applications that are located on the AS/400 and interfaces with BPCS.

The Contracts Department System: Dey’s contracts department uses a system called the “Contracts Department System” that was developed in-house as an add-on component to BPCS. The Contracts Department System runs on the AS/400 and functions much the same as BPCS. Employees in the contracts department enter contract prices into the Contracts Department System which are then downloaded into BPCS on a daily basis.

Pricing and Rebate Matrices: Dey’s contracts department also uses a pricing matrix and a rebate matrix. Both matrices are contained on excel spreadsheets. The pricing matrix has been in use since July 2000 and the rebate matrix has been in use since April 1997.

Other: Various spreadsheets contain pricing information.

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.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this interrogatory as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin. Dey further objects to this interrogatory as vague and ambiguous because, *inter alia*, it contains numerous terms that are themselves vague, ambiguous, or undefined, including “general terms and conditions.” Dey further objects to this interrogatory as unintelligible. Dey objects to the term “Incentive” because it is vague and may have multiple meanings depending on the context in which the term is used. Dey further objects to this interrogatory to the extent it seeks proprietary information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this request to the extent it seeks information that is duplicative of other materials Dey will produce in response to Plaintiff’s discovery requests.

Subject to and without waiving the foregoing general and specific objections, Dey states that:

(a)-(d): Dey will produce or make available for inspection a rebate matrix, promotional materials, and customer contract files that contain documents that are responsive to this Request at a mutually agreeable time and place.

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.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this interrogatory as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin.

Dey further objects to this interrogatory as vague and ambiguous because, *inter alia*, it contains numerous terms that are themselves vague, ambiguous, or undefined, including “ordinary course of business.” Dey further objects to this interrogatory as unintelligible. Dey further objects to this interrogatory as grossly overbroad and unduly burdensome because it purports to seek all information concerning any of Dey’s prices without regard to their relevance to any issue in this action. Dey further objects to this interrogatory to the extent it seeks proprietary information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this request to the extent it seeks information that is duplicative of other materials Dey will produce in response to Plaintiff’s discovery requests.

Subject to and without waiving the foregoing general and specific objections, Dey states that:

AWP Pricing: Dey’s current understanding of AWP is based on the use of the term by the pharmaceutical industry over the last several decades and Dey refers Plaintiff to the documents produced by Dey for the written record of Dey’s historical understanding of AWP. Publicly available information dating back as early as 1968 clearly demonstrates that AWP is understood to be a “sticker price” within the industry and by government authorities. This understanding about AWP has been reiterated again and again by officials at both the federal and state level, most notably by the Office of the Inspector General of the United States Department of Health and Human Services.

Dey has calculated its AWP’s for the Subject Drugs by using the following method: Prior to launching a new drug, senior sales and marketing executives and employees

discuss appropriate AWP for the drug and then communicate those decisions to the appropriate personnel. Early on in Dey's business, Ed Edelstein of First National Data Bank, a reporting service, advised Dey that, for purposes of acceptance by the reporting services of Dey's product as a generic, AWP for that product should be a minimum of 10% below the innovator product's AWP, and historically, Dey has observed this principle.

The only generic drug that Dey has launched between 1998 and the present is Ipratropium Bromide Nasal Spray ("Ipra Nasal"). During the winter and spring of 2002/2003, Dey planned and implemented the launch of Ipra Nasal. Dey's Ipra Nasal was the first generic to go to market after it received FDA approval on Friday, March 28, 2003. As of August 31, 2003, Dey had sold only 21,024 units of Ipra Nasal, approximately 228,000 units less than Dey's marketing department had originally anticipated prior to the product's launch. Approximately one year later, in the spring of 2004, Dey discontinued selling Ipra Nasal due to poor sales. Dey notes that its AWP on this product was significantly lower than its competitors.

Generally, it is Dey's practice to set an AWP for the Subject Drugs before they are first sold and not to subsequently change that AWP, although there are some instances to the contrary depending on market and/or other forces. Dey understands that this is consistent with industry practice.

From 1993 to 2002, Robert Mozak, Dey's former vice president of sales and marketing, and various employees in Dey's marketing department, including former employees Debra Bronstein, Helen Burnham Selenati, and Todd Galles, participated in recommending, or determining AWP prices for the Subject Drugs. More recently, the persons responsible for reviewing AWP pricing for the Subject Drugs include Christy Taylor, and Ray Joske, and to

some degree, various members of the contracts, sales, marketing, and finance departments, including Russ Johnston.

WAC Pricing: Dey's understanding is that WAC generally means the invoice price charged by a pharmaceutical manufacturer to drug wholesalers. It is common knowledge that WAC does not include the net effect of discounts from invoice prices (based on volume of purchase, speed of payment, and other factors), rebates, chargebacks, administration fees, and other cost adjustments which are well-known and commonplace in the pharmaceutical industry and can affect, to a greater or lesser degree, the actual "final" cost to each purchaser. These discounts may not be determined until some months after the date of the invoice. Therefore, as a matter of common knowledge to both government and industry, WAC may well not be representative of actual market costs to those entities which are being reimbursed under Medicaid.

Dey has calculated its WAC prices for the Subject Drugs by using the following method: Prior to launching a new Subject Drug, senior sales and marketing executives and employees discuss appropriate WAC prices for the Subject Drugs and then communicate those decisions to the appropriate personnel. Historically, Dey's practice has been to set WAC prices for its Subject Drugs at levels consistent with competitive pricing reported in publicly available sources. It is Dey's general practice to reduce WAC prices for the Subject Drugs on a periodic basis as prices for such drugs erode in the marketplace, although there are some situations to the contrary due to market or other forces.

From 1993 to 2002, Robert Mozak, Dey's former vice president of sales and marketing, and various employees in Dey's marketing department, including former employees Debra Bronstein, Helen Burnham Selenati, and Todd Galles, participated in recommending or

determining WAC prices for the Subject Drugs. More recently, the persons responsible for reviewing WAC pricing for the Subject Drugs, include Pam Marrs, Christy Taylor, and Ray Joske, and to some degree, various members of the contracts, sales, marketing, and finance departments, including Russ Johnston.

ASP Pricing: See Response 1(a)-(h).

AMP Pricing: Dey understands that “AMP” means average manufacturers’ price in accordance with the guidelines set forth by the Centers for Medicare and Medicaid Services (“CMS”). Dey calculates its AMPs in accordance with the guidelines set forth by CMS. Certain employees in Dey’s accounting department have knowledge of how Dey calculates or has calculated AMP. Current employees that have knowledge of how Dey calculates or has calculated its AMP include Jeremy Massett, Joseph Oberting, Mark Middleton, Scott Maynard, and Pamela Marrs. Former employees that may have knowledge of how Dey calculates or has calculated its AMP include Kim Schroeder and Lewis Mow.

Contract Pricing: Dey provides contract pricing to certain customers that enter into contracts with Dey to set the price at which those customers are entitled to purchase the Subject Drugs. Dey’s contract pricing is driven by market competition. From 1993 to 2002, Robert Mozak, Dey’s former vice president of sales and marketing, and various employees in Dey’s contracts and sales and marketing departments participated in recommending or determining contract prices for the Subject Drugs. More recently, the persons responsible for reviewing pricing, including contract pricing for the Subject Drugs in some instances, include Pam Marrs, Christy Taylor, and Ray Joske, and to some degree, various members of the contracts, sales, marketing, and finance departments, including Russ Johnston and Jerry Crank.

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).

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this interrogatory as overbroad and unduly burdensome because it, *inter alia*, covers a period of more than 12 years and is not limited to the State of Wisconsin.

Dey further objects to this interrogatory as vague and ambiguous because, *inter alia*, it contains numerous terms that are themselves vague, ambiguous, or undefined, including "spread" and "marketing." Dey further objects to this interrogatory as unintelligible. Dey further objects to this interrogatory to the extent it seeks proprietary information, trade secrets, or information of a competitively sensitive nature. Dey further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this request to the extent it seeks information that is duplicative of other materials Dey will produce in response to Plaintiff's discovery requests.

Subject to and without waiving the foregoing general and specific objections, Dey states that:

(a)-(d): Dey will produce or make available for inspection documents that may be responsive to this interrogatory at a mutually agreeable time and place.

Dated: July 14, 2005

Respectfully submitted,

By: 
John Markson (State Bar No. 1018620)
John Moore (State Bar No. 1010235)
Francis X. Sullivan (State Bar No. 1030932)

Bell, Gierhart & Moore, S.C.
44 East Mifflin Street
P.O. Box 1807
Madison, WI 53701

Counsel for Defendant
Dey, Inc.

Of Counsel:

Paul F. Doyle
Christopher C. Palermo
Antonia F. Giuliana
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, New York 10178
(212) 808-7800