
THE STATE OF WISCONSIN

Plaintiff,

CASE NO. 04-1709

v.

ABBOTT LABORATORIES, INC., et al.

Defendants.

**DEFENDANT DEY, INC.'S RESPONSE AND OBJECTIONS TO PLAINTIFF
STATE OF WISCONSIN'S INTERROGATORIES NO. 4 (TO ALL DEFENDANTS)**

TO: The State of Wisconsin

Pursuant to Wisconsin Statutes §§ 804.01 and 804.08, Defendant Dey, Inc.

("Dey"), by its undersigned counsel, asserts the following responses and objections to Plaintiff State of Wisconsin's Interrogatories No. 4 (To All Defendants) (the "Interrogatory"), dated January 16, 2007, and propounded by Plaintiff State of Wisconsin ("Plaintiff," the "State," or "Wisconsin"), as follows:

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. Dey objects to the Interrogatory to the extent it seeks to impose duties and obligations on Dey greater than Dey's duties and obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules. Dey will comply with its duties and obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules.

2. Dey provides its response subject to the Protective Order, entered on November 29, 2005, in this action.

3. Dey objects to the Interrogatory to the extent it is premature, vague, ambiguous, unduly burdensome, overbroad, oppressive or duplicative, and not limited to the

discovery of information which is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence.

4. Dey objects to the extent that Plaintiff's Interrogatory seeks information not limited to sales in the State of Wisconsin on the grounds that such Interrogatory is overly broad, unduly burdensome, and does not seek the discovery of admissible evidence.

5. Dey objects to the Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence to the extent it seeks information concerning pharmaceutical products not at issue in this litigation. Dey will provide information relating only to pharmaceutical products identified in the Second Amended Complaint.

6. Dey objects to the Interrogatory on the grounds that it is unduly burdensome to the extent that it purports to require Dey to compile, analyze, compute, and/or summarize voluminous data or information that Plaintiff has the ability to create or analyze by reviewing the documents, information, or data that Dey has produced or will produce.

7. Dey objects to the Interrogatory to the extent it demands the production of information that is privileged or otherwise protected against discovery pursuant to the attorney-client privilege, the work product doctrine, the joint defense privilege, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent any such protected information is inadvertently produced in response to the Interrogatory, the production of such information shall not constitute a waiver of Dey's right to assert the applicability of any privilege or immunity to the information, and any such information shall be returned to Dey's counsel immediately upon discovery thereof.

8. Dey objects to the Interrogatory to the extent that it demands the production of information containing trade secrets, or proprietary, commercially sensitive or other confidential information.

9. Dey objects to the disclosure, under any circumstance, of trade secret information where the probative value in this litigation is greatly exceeded by the potential harm to Dey if the information were to fall into the hands of its competitors, and further asserts each and every applicable privilege and rule governing confidentiality to the fullest extent provided by the law.

10. Dey objects to this Interrogatory to the extent. it seeks information already in Plaintiff's knowledge, possession and/or control, or information to which Plaintiff has equal access.

11. Dey objects to the Interrogatory to the extent that it demands the production of information: (a) not within the knowledge, possession, custody, or control of Dey, its agents, or its employees; (b) publicly available; or (c) more appropriately sought from third parties to whom requests have been or may be directed.

12. The response and objections are made without waiving or intending to waive, but to the contrary intending to preserve and preserving: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any documents or information produced to respond to the Interrogatory; (b) the right to object on any ground to the use of documents or information produced in response to the Interrogatory at any hearing, trial, or other point during this action; (c) the right to object on any ground at any time to a demand for further responses to the Interrogatory; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses or objections contained herein.

13. The information supplied herein is for use in this action and for no other purpose.

14. No response or objection made herein, or lack thereof, is an admission by Dey as to the existence or non-existence of any information.

15. Dey objects to the Interrogatory to the extent that it seeks information from outside of the statute of limitations applicable to the State's claims in this action, or beyond the time period relevant to this action. Dey objects to the Interrogatory as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it purports to seek information relating to a period of time after the filing of the Complaint on or around June 3, 2004.

16. Dey objects to the Interrogatory to the extent that it demands the production of proprietary information of third parties.

17. Dey objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatory. Any response by Dey that it will provide information in connection with the Interrogatory, or that it has no information, is not intended to indicate that Dey agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatory, or that such implications or characterizations are relevant to this action.

18. Dey objects to the Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information concerning any discontinued product dated after the date of such product's discontinuation.

19. Dey objects to the Interrogatory to the extent it seeks information relating to Dey's activities that are outside the scope of the allegations in the Second Amended Complaint.

20. Dey objects to the Interrogatory to the extent seeks information relating to Dey's activities other than those which concern the State, on the grounds that such information is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

21. Dey reserves the right to assert additional objections to this Interrogatory as appropriate and to amend or supplement its objections and response in accordance with the applicable rules and court orders and based on results of its continuing investigation.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Dey objects to Plaintiff's definition of "You", "Your" and "Your Company" on the grounds that it is overly broad and unduly burdensome. Dey further objects to this definition to the extent it includes entities and persons that are not parties to this action.

1. Dey objects to Plaintiff's definition of "Document" and "Documents" 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 Wisconsin Rules of Civil Procedure and any applicable local rules. 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.

2. Dey objects to the instructional paragraphs preceding the individual

Document Requests (the "Instructions") on the grounds that the Instructions are vague, ambiguous, and overly broad. Dey further objects to the Instructions as unduly burdensome to the extent they seek to impose on Dey obligations inconsistent with, or greater than, Dey's obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules.

RESPONSE AND OBJECTIONS TO INTERROGATORY NO. 12

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

INTERROGATORY No. 12:

With respect to the facts which you identify in response to interrogatories No. 6 and No. 8 (attached) identify each person having knowledge of each of these facts and identify which fact each person has knowledge of, and state the present business title, business address and home address of each such person.

DEY'S RESPONSE AND OBJECTIONS

Dey incorporates by reference herein its objections and responses to Interrogatories Nos. 6 and 8 from its Responses and Objections to Plaintiff State of Wisconsin's Interrogatories No. 3 (To All Defendants) and Request for Production of Documents No. 4 (To All Defendants). Dey further objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, and fails to identify with sufficient particularity the information sought. Dey further objects to this Interrogatory on the grounds that it purports to impose obligations that exceed those imposed by the Wisconsin Rules of Civil Procedure and any applicable local rules. Dey also objects to this Interrogatory as premature because Dey has not yet identified all individuals who may have knowledge of all of the facts that support Dey's denials and Affirmative Defenses since discovery and investigation remain ongoing. Dey

reserves the right to assert additional objections to this Interrogatory as appropriate and to amend or supplement its response and objections in accordance with the applicable rules and court orders and based on results of its continuing investigation.

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

a. The following current and former Dey employees have knowledge of the information contained in portions of Dey's responses to interrogatories No. 6 and 8 which have been verified by Dey:

- (i) Debra Bronstein
- (ii) Helen Burnham Selenati
- (iii) Hema Chandranatha
- (iv) Susan Dahl
- (v) Margarita Flores Terrell
- (vi) Todd Galles
- (vii) Eve Gmeiner Fagrell
- (viii) Ed Hugo
- (ix) Russell Johnston
- (x) Ray Joske
- (xi) Pamela Mans
- (xii) Jeremey Massett
- (xiii) Scott Maynard
- (xiv) Robert Mozak
- (xv) Chuck Nuzum
- (xvi) Joe Oberting
- (xvii) Christy Taylor

b. The following individuals have knowledge of the facts identified in response to Interrogatory No. 6, subparagraphs (b), (d), and (f) through (n), and in response to Interrogatory No. 8, subparagraphs (j), (l), (q), (m), (t), (v), (y), (bb), and (ee):

- (i) Linda Boone Abbott, Department of Health and Human Services, Office of Evaluation and Inspections ("OEI")
- (ii) Suzanne Bailey, OEI
- (iii) Peggy Bartels, Wisconsin Department of Health and Family Services ("Wisconsin DHFS")
- (iv) Erin Bliss, OEI
- (v) Peter Blouke, Montana Department of Public Health and Human Services ("Montana DPHHS")
- (vi) Charles Booth, Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS")
- (vii) Randal Bowsher, Montana DPHHS
- (viii) Denise Brunett, Montana DPHHS
- (ix) Margaret Bullock, Montana DPHHS
- (x) Isabelle Buonocore, OEI
- (xi) Jeff Buska, Montana DPHHS
- (xii) Edward K. Burley, OEI
- (xiii) Mike Boushon, Wisconsin DHFS
- (xiv) Madeline Carpinelli, OEI
- (xv) Pamela Carson, CMS
- (xvi) John Chappuis, Montana DPHHS
- (xvii) Mary Beth Clarke, OEI
- (xviii) Natalie Coen, OEI
- (xix) Mary Angela Collins, Montana DPHHS

- (xx) Theodore Collins, Wisconsin DHFS
- (xxi) Gary Crayton, Florida Agency for Health Care Administration ("Florida AHCA")
- (xxii) Dr. Alfred Dally, Wisconsin DHFS
- (xxiii) Mary Dalton, Montana DPHHS
- (xxiv) Tricia Davis, OEI
- (xxv) Chris Decker, Pharmacy Society of Wisconsin
- (xxvi) Nancy-Ann Min DeParle, CMS
- (xxvii) Charles Duarte, Nevada Division of Health Care Financing and Policy ("Nevada DHCFP")
- (xxviii) David DuPre, CMS
- (xxix) Tanaz Dutia, OEI
- (xxx) Ken Dybevik, Wisconsin DHFS
- (xxxi) Yvonne Dyson, CMS
- (xxxii) Dr. Emmanuel Ebo, Nevada Mental Health and Behavioral Health Services
- (xxxiii) Nancy Ellery, Montana DPHHS
- (xxxiv) Ayana Everett, OEI
- (xxxv) Kevin Farber, OEI
- (xxxvi) Lisa A. Foley, OEI
- (xxxvii) Karen Folk, OEI
- (xxxviii) Linda Frisch, OEI
- (xxxix) Jennifer Gera, OEI
- (xl) Rob Gibbons, OEI
- (xli) David Graf, OEI
- (xlii) Carrie Gray, Wisconsin DHFS

- (xliii) Joyce M. Greenleaf, OEI
- (xliv) Rita Hallet, Wisconsin DHFS
- (xlv) Cynthia Hansford, OEI
- (xlvi) Allan Hansen, Myers & Stauffer LC
- (xlvii) Cheryl A. Harris, CMS
- (xlviii) Russell W. Hereford, OEI
- (xlix) Michael Hillerby, State of Nevada
- (l) Scott Horning, OEI
- (li) Charles Hunter, Montana DPHHS
- (lii) Jeffrey Ireland, Montana DPHHS
- (liii) Michael Jackson, Florida Pharmacy Association
- (liv) Robert A. Katz, OEI
- (lv) Charles W. Kazlett, CMS
- (lvi) Janet Kilian, OEI
- (lvii) Ruben J. King-Shaw, Jr., Florida AHCA
- (lviii) George Kitchens, Florida AHCA
- (lix) Tom Komaniecki, OEI
- (lx) Terry Krantz, Montana DPHHS
- (lxi) Martha B. Kvall, OEI
- (lxii) Fred Kwan, OEI
- (lxiii) Daniel Lai, OEI
- (lxiv) Shane Lanzo, OEI
- (lxv) Mary Lau, Retail Association of Nevada
- (lxvi) Cynthia Lawrence, Nevada DHCFF
- (lxvii) Erin Lemire, OEI

- (lxviii) Amy Lin, OEI
- (lxix) Patti Loyack, OEI
- (lxx) Keith MacDonald, Nevada DHCFP
- (lxxi) George F. MacKenzie, Wisconsin DHFS
- (lxxii) Benjamin T. Mandi, OEI
- (lxxiii) Shannon Man, Montana DPHHS
- (lxxiv) Ann Maxwell, OEI
- (lxxv) Barry McCoy, OEI
- (lxxvi) Lauren McNulty, OEI
- (lxxvii) Susan McLeod, Florida AHCA
- (lxxviii) Emily Melnick, OEI
- (lxxix) Nancy Molyneaux, OEI
- (lxxx) Neil Montavani, OEI
- (lxxxi) Mark Moody, Wisconsin DHFS
- (lxxxii) William Moran, OEI
- (lxxxiii) Linda Moscoe, OEI
- (lxxxiv) Kathy Munson, Montana DPHHS
- (lxxxv) Carol Neeno, Wisconsin DHFS
- (lxxxvi) Helene Nelson, Wisconsin DHFS
- (lxxxvii) Robert Nieman, CMS
- (lxxxviii) Christine Nye, Wisconsin DHFS
- (lxxxix) Laurie Olson, Nevada State Pharmacy Assistance Program
- (xc) Andrew Peterson, OEI
- (xci) Daniel Wade Peterson, Montana DPHHS
- (xcii) Kevin Piper, Wisconsin DHFS

- (xciii) Dorothy Poulsen, Montana DPHHS
- (xciv) Duane Preshinger, Montana DPHHS
- (xcv) Kenneth R. Price, OEI
- (xcvi) Robert Sharpe, Florida AHCA
- (xcvii) Lourdes Puntonet, OEI
- (xcviii) Linda Ragone, OEI
- (xcix) Vivek Rao, OEI
- (c) Lucille M. Rinaldo, CMS
- (ci) Brian Ritchie, OEI
- (cii) Thomas J. Robertson, OEI
- (ciii) Craig Schneider, OEI
- (civ) Louise Schoggen, OEI
- (cv) David Schrag, OEI
- (cvi) Amy Sernyak, OEI
- (cvii) Thomas Scully, CMS
- (cviii) Ethan Shaw, OEI
- (cix) Jim Smith, Smith & McGowan
- (cx) Laurie Squartsoff, Nevada DHCFP
- (cxi) Elise Stein, OEI
- (cxii) Mark Stiglitz, OEI
- (cxiii) Chester Stroyny, CMS
- (cxiv) Timothy Stratton, University of Montana
- (cxv) Sue Sutter, Marshland Pharmacy
- (cxvi) Ronald Swenson, Nevada Department of Information Technology
- (cxvii) David Tawes, OEI

- (cxviii) Barbara Tedesco, OEI
- (cxix) Christopher Thompson, Nevada DHCFP
- (cxx) Penny Thompson, OEI
- (cxxi) April Townley, Nevada DHCFP
- (cxxii) Ivan E. Troy, OEI
- (cxxiii) James Vavra, Wisconsin DHFS
- (cxxiv) David Veroff, OEI
- (cxxv) Robert A. Vito, OEI
- (cxxvi) Bruce Vladeck, CMS
- (cxxvii) Stuart R. Wright, OEI
- (cxxviii) Jerry Wells, Florida AHCA
- (cxxix) Alan White, Wisconsin DHFS
- (cxxx) Mike Willden, Nevada Department of Health and Human Services
- (cxxxii) Donna Wong, Wisconsin Office of the Governor
- (cxxxiii) Mark R. Yessian, OEI

c. The following individuals who are currently or previously employed by First DataBank have knowledge of how pricing compendia determine published AWP and WACs:

- (i) Joseph Hirschmann;
- (ii) Patricia Kay Morgan;
- (iii) James Breen; and
- (iv) Ed Edelstein.

Dated: April 4, 2007.

**AS TO OBJECTIONS AND
SUBPARAGRAPHS (b) AND (c) TO
RESPONSE TO INTERROGATORY NO. 12 :**

By: 
Jo arkson (State Bar No. 1018620)
Jo Moore (State Bar No. 1010235)

Bell, Gierhart & Moore, S.C.
44 East Mifflin Street
P.O. Box 1807
Madison, WI 53701
Phone: (608) 257-3764
Fax: (608) 257-3757

Attorneys 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
Phone: (212) 808-7800
Fax: (212) 808-7897