

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

Branch 7

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04CV1709

Unclassified Civil: 30703

ABBOTT LABORATORIES, ET AL.,

Defendants.

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS

TO: See Attached Service List

PLEASE TAKE NOTICE that the Plaintiff requires the Defendants to provide an answer within thirty (30) days hereof at the offices of the Wisconsin Attorney General, Wisconsin, Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857 Attn: Cynthia Hirsch and Miner, Barnhill & Galland, P.C., 44 East Mifflin Street, Suite 803, Madison, WI 53703 Attn: Charles Barnhill to this First Set of Interrogatories pursuant to Rule 804.08:

DEFINITIONS

As used in these Interrogatories, the following terms shall have the meanings set forth below:

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.

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.

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.

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, 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.

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 other 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.

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 the accrual, and other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.

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.

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.

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

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.

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.

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.

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.

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).

Dated this 27 day of January, 2005.



One of Plaintiff's Attorneys

PEGGY A. LAUTENSCHLAGER
Attorney General
State Bar #1002188

MICHAEL R. BAUER
Assistant Attorney General
State Bar #1003627

CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870

FRANK D. REMINGTON
Assistant Attorney General
State Bar #1001131

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0332 (MRB)
(608) 266-3861 (CRH)
(608) 266-3542 (FDR)

CHARLES BARNHILL
State Bar #1015932

WILLIAM P. DIXON
State Bar #1012532

ELIZABETH J. EBERLE
State Bar #1037016

Miner, Barnhill & Galland, P.C.
44 East Mifflin Street, Suite 803
Madison, WI 53703
(608) 255-5200

Attorneys for Plaintiff,
State of Wisconsin