

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

THE STATE OF WISCONSIN

Plaintiff,

CASE NO. 05 C 0408 C

v.

ABBOTT LABORATORIES, INC., ET AL.

Defendants.

**THE JOHNSON & JOHNSON DEFENDANTS' RESPONSES TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES**

TO: See Attached Service List

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendants Johnson & Johnson, Janssen Pharmaceutica Products, LP, Ortho-McNeil Pharmaceutical, Inc., Ortho Biotech Products, LP, and McNeil-PPC, Inc. (hereinafter the "J&J Companies"), hereby respond to Plaintiff's First Set Of Interrogatories To All Defendants as follows:

GENERAL OBJECTIONS

1. During the pendency of the J&J Companies' motion to dismiss Plaintiff's Complaint, the J&J Companies object to responding to interrogatories concerning any drug not specifically identified in Plaintiff's Complaint.

2. These responses are made without in any way waiving or intending to waive:
(i) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, information or documents produced in response to these

Interrogatories; (ii) the right to object on any ground to the use of the documents or information produced in response to the Interrogatories at any hearings or at trial; (iii) the right to object on any ground at any time for further responses to the Interrogatories; or (iv) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

3. The J&J Companies have not completed their investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the accompanying document requests are based upon, and necessarily limited by, information now available to the J&J Companies.

4. The information and documents supplied herein are for use in this litigation and for no other purpose.

5. The J&J Companies object to these Interrogatories to the extent that they seek documents and information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, or are overly broad, unduly burdensome, ambiguous or vague.

6. The J&J Companies object to these Interrogatories to the extent they call for the production of documents or information protected from disclosure under the attorney-client privilege, the work product doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents or information are inadvertently produced in response to these Interrogatories, the production of such documents or information shall not constitute a waiver of the J&J Companies' right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to the J&J Companies' counsel immediately upon discovery thereof.

7. The J&J Companies object to these Interrogatories to the extent that they seek documents and information not within the J&J Companies' possession, custody, or control or are more appropriately sought from third parties to whom requests have been or may be directed.

8. The J&J Companies object to these Interrogatories to the extent that they seek production of publicly available documents or information, or that which plaintiff can obtain from other sources.

9. The J&J Companies object to these Interrogatories to the extent they call for the production of trade secret, proprietary, commercially sensitive, or other confidential information. The J&J Companies will not produce any responsive information, including confidential business, trade secret or proprietary information, until an appropriate Protective Order or Confidentiality Agreement has been entered in this case.

10. The J&J Companies object to these Interrogatories to the extent that they seek to impose discovery obligations that are broader than, or inconsistent with, the J&J Companies' obligations under the Federal Rules of Civil Procedure.

11. The J&J Companies object to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories. The J&J Companies' response that it will produce documents in connection with a particular request, or that it has no responsive documents, is not intended to indicate that the J&J Companies agree with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories or that such implications or characterizations are relevant to this action.

12. The J&J Companies reserve the right to withhold the production of any responsive information until the court has ruled on Defendants' Motion to Dismiss in this case.

DEFINITIONS

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.

OBJECTION: The J&J Companies object to the definition of “Average Manufacturer Price” and “AMP” as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language “the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report.” The J&J Companies incorporate by reference their objection to the definition of the term “Pharmaceutical.” The J&J Companies further object to this definition to the extent that it purports to set an accurate or legally significant definition of AMP.

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.

OBJECTION: The J&J Companies object to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous with respect to the language “payment, credit or other adjustment you have provided by defendant to a purchaser of a Pharmaceutical to compensate for any difference between the purchaser’s acquisition cost and the price at which the purchaser sold the Pharmaceutical to another purchaser.” The J&J Companies incorporate by reference their objection to the definition of the term “Pharmaceutical.”

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.

OBJECTION: The J&J Companies object to the definition of “Defined Period of Time” as set forth in Definition No. 3 on the grounds that it is overly broad and unduly burdensome and vague

and ambiguous, particularly with respect to the language “Documents relating to such period,” and incorporates by reference its objection to the definition of the term “Document.” The J&J Companies object to this definition to the extent that it seeks information from outside the statute of limitations applicable to the claims in this litigation, or beyond the time period relevant to this litigation.

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 disk, 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.

OBJECTION: The J&J Companies object to the definition of “Document” as set forth in Definition No. 4 on the grounds that it is vague and ambiguous with respect to the language “writing,” “recording,” any kind,” “agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, facsimiles (faxes), film, graphs, letters, memos, maps, minutes,” “Executive Committee meeting minutes,” “notes, notices, photographs, reports, schedules, summaries, tables, and telegrams” “in any medium,” “written, graphic, pictorial, photographic, electronic, emails, phonographic, mechanical, taped,” “hard drives, data tapes, or otherwise” and “copies.” The J&J Companies further object to this definition to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, the J&J Companies’ obligations under the Federal Rules of Civil Procedure. The J&J Companies further object to this definition to the extent it requires or seeks to require the J&J Companies to: (i) produce documents or data in a particular form or format; (ii) convert

documents or data into a particular or different file format; (iii) produce data, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement or copyright laws.

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-invoicing 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.

OBJECTION: The J&J Companies object to the definition of “Incentive” as set forth in Definition No. 5 on the grounds that it is overly broad, unduly burdensome, ambiguous and vague, particularly with respect to the language “anything of value,” “provided,” “customer,” “lowering the consideration paid for a drug, regardless of the time it was provided,” “credits,” “discounts,” “return to practice discounts,” “prompt pay discounts,” “volume discounts,” “on-invoice discounts,” “off-invoice discounts,” “rebates,” “market-share rebates,” “access rebates,” “bundled-drug rebates,” “free goods or samples,” “administrative fees or administrative fee reimbursements,” “marketing fees,” “stocking fees,” “conversion fees,” “patient education fees,” “off-invoice pricing,” “educational or other grants,” “research funding,” “clinical trials,” “honoraria,” “speaker's fees or payments,” “patient education fees” and “consulting fees.” The J&J Companies incorporate by reference their objections to the definitions of the terms

“Chargeback” and “Pharmaceutical.” The J&J Companies further object to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

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.

OBJECTION: The J&J Companies object to the definition of “National Sales Data” in Definition No. 6 on the grounds that it is overly broad and unduly burdensome. The J&J Companies further object on the grounds that this definition is vague and ambiguous with respect

to the language “data sufficient to identify for each sales transaction,” “transaction type,” “product number,” “product description,” “NDC,” “NDC unit quantity,” “NDC unit invoice price,” “package description,” “WAC,” “you,” “contract price,” “invoice price,” “identification number,” “paid or distributed Incentives,” “accrued Incentives,” “calculated at any time” and “other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.” The J&J Companies incorporate by reference their objections to the definitions of the terms “Targeted Drugs” and “Incentive.” The J&J Companies object to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. The J&J Companies further object to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

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.

OBJECTION: The J&J Companies object to the definition of “Pharmaceutical” in Definition No. 7 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language “any drug,” “other product,” “you,” “any other manufacturer,” “prescription,” “hemophilia factors,” “biological products” and “intravenous solutions.” The J&J Companies object to this Definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. The J&J Companies further object to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Complaint on the grounds that such

information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

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 by third party payors (to purchasers of the Pharmaceuticals) for the Pharmaceuticals. 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.

OBJECTION: The J&J Companies object to the definition of “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language “actual acquisition cost,” “purchase price,” “third party payors,” “gross profit actually or potentially realized,” and “purchasers.” The J&J Companies incorporate by reference their objection to the definition of the term “Pharmaceutical.”

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.

OBJECTION: The J&J Companies object to the definition of “Targeted Drugs” in Definition No. 9 on the grounds that it is overly broad and unduly burdensome. The J&J Companies further object to this definition on the grounds that it is vague and ambiguous, particularly with respect to the language “you” and “total utilization.” The J&J Companies incorporate by reference their objections to the definitions of the terms “Defined Period of Time” and “Pharmaceutical.” The J&J Companies object to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. The J&J Companies further object to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Complaint on the grounds that such

information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

SPECIFIC RESPONSES AND OBJECTIONS TO 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 net during the Defined Period of Time? If so, for each Targeted Drug for which you have made such a determination or calculation, 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 numerical figure 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.

RESPONSE TO INTERROGATORY NO. 1: In addition to the General Objections set forth above, the J&J Companies object to Interrogatory No. 1 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The J&J Companies object to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “determined,” “average sales price,” “other composite price net,” “any or all Incentives for a Targeted Drug net,” “class(es) of trade,” “methodology,” “publisher, customer, or governmental entity,” and “commercially sensitive.”

The J&J Companies incorporate by reference its objections to the State's definitions of the terms "Incentive," "Targeted Drugs," and "Defined Period of Time." The J&J Companies object to this Interrogatory to the extent that it seeks information outside the time period relevant to this litigation, to the extent that it seeks information not relevant to the State's claims, which are limited to Wisconsin, and to the extent that it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. The J&J Companies further object to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

Subject to and without waiving the foregoing objections and General Objections, the J&J Companies state that they do not systematically calculate average selling or composite prices as defined in Plaintiff's Interrogatory No. 1, except to the limited extent required by the Medicare Modernization Act, which prices are publicly available.

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 the data entity identified above; and
- (e) the custodian(s) of such data entity.

RESPONSE TO INTERROGATORY NO. 2: In addition to the General Objections set forth above, the J&J Companies object to Interrogatory No. 2 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The J&J Companies object to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “each,” “electronic database, data table or data file,” “you,” “ordinary course of business,” “price,” “software necessary to access and utilize such data entities,” “structure of each database, data table, or data file,” “field,” “format and location within each file or table record or row,” and “operation or use.” The J&J Companies incorporate by reference their objections to the State’s definitions of the terms “Defined Period of Time” and “Targeted Drugs.” The J&J Companies object to this Interrogatory to the extent that it seeks information outside the time period relevant to this litigation, to the extent that it seeks information not relevant to the State’s claims, which are limited to Wisconsin, and to the extent that it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. The J&J Companies further object to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

Subject to and without waiving the foregoing objections and General Objections, the J&J companies will produce sales, rebate, and chargeback data in a machine readable format for the following drugs: Procrit and Polycitra. The J&J companies are willing to work with the State or its designees to explain the sources of these data.

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.

RESPONSE TO INTERROGATORY NO. 3: In addition to the General Objections set forth above, The J&J Companies object to Interrogatory No. 3 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The J&J Companies object to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “type,” “you,” “offered,” “conjunction,” “class(es) of trade,” and “general terms and conditions.” The J&J Companies incorporate by reference their objections to the State’s definitions of the terms “Incentive,” “Targeted Drugs,” and “Defined Period of Time.” The J&J Companies object to this Interrogatory to the extent that it seeks information outside the time period relevant to this litigation, to the extent that it seeks information not relevant to the State’s claims, which are limited to Wisconsin, and to the extent that it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. The J&J Companies further object to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

Subject to and without waiving the foregoing objections and General Objections, the J&J Companies will produce documents from which the answer to this interrogatory may be determined with respect to the following drugs: Procrit and Polycitra.

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 Target Drug for each year.

RESPONSE TO INTERROGATORY NO. 4: In addition to the General Objections set forth above, the J&J Companies object to Interrogatory No. 4 on the grounds that it is overly

broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The J&J Companies object to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “describe in detail,” “each,” “used,” and “ordinary course of business.” The J&J Companies incorporate by reference their objections to the State’s definitions of the terms “Targeted Drugs” and “Defined Period of Time.” The J&J Companies object to this Interrogatory to the extent that it seeks information outside the time period relevant to this litigation, to the extent that it seeks information not relevant to the State’s claims, which are limited to Wisconsin, and to the extent that it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. The J&J Companies further object to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

Subject to and without waiving the foregoing objections and General Objections, the J&J Companies will produce documents from which the answer to this interrogatory may be determined with respect to the following drugs: Procrit and Polycitra.

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 differences or spread(s).

RESPONSE TO INTERROGATORY NO. 5: In addition to the General Objections set forth above, the J&J Companies object to Interrogatory No. 5 on the grounds that it is overly broad and unduly and not reasonably calculated to lead to the discovery of admissible evidence. The J&J Companies object to this Interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “ever included,” “your,” “marketing,” “customer,” “reference,” “any,” “AWP or WAC,” “published,” “list or actual price,” “marketed,” and “provided.” The J&J Companies incorporate by reference their objections to the State’s definitions of the terms “Targeted Drugs” and “Spread.” The J&J Companies object to this Interrogatory to the extent that it seeks information outside the time period relevant to this litigation, to the extent that it seeks information not relevant to the State’s claims, which are limited to Wisconsin, and to the extent that it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. The J&J Companies further object to this Interrogatory to the extent it seeks confidential business, trade secret or proprietary information.

Subject to and without waiving the foregoing objections and General Objections, the J&J Companies state that they are not aware of any company-approved marketing materials that reference the “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.”

Dated this 15th day of July, 2005.

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