



ROPES & GRAY LLP

ONE METRO CENTER 700 12TH STREET, NW SUITE 900 WASHINGTON, DC 20005-3948 202-508-4600 F 202-508-4650  
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC www.ropesgray.com

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Patryk J. Drescher  
(202) 508-4645  
patryk.drescher@ropesgray.com

Peggy A. Lautenschlager, Esq.  
Michael R. Bauer, Esq.  
Cynthia R. Hirsch, Esq.  
Frank D. Remington, Esq.  
Wisconsin Department of Justice  
P.O. Box 7857  
Madison, Wisconsin 53707-7857

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

Michael Winget-Hernandez, Esq.  
Winget-Hernandez, LLC  
466 Pine Crest Drive  
Troy, Virginia 22974

Re: *State of Wisconsin v. Abbott Laboratories, et al.*  
Case No. 05-C-0408-C

Dear Counsel,

Enclosed please find served upon you the Response of Defendants Schering-Plough Corporation and Warrick Pharmaceuticals Corporation to Plaintiff's Second Set of Interrogatories.

Best regards,

Patryk J. Drescher

Enclosures

cc: Defense Counsel



2. Respondents object to the Interrogatories to the extent that they demand information covered by the attorney-client privilege, the work product doctrine, third-party confidentiality agreements or protective orders, or any other applicable privilege, immunity or protection. In the event any information subject to a privilege, immunity or protection is produced or otherwise revealed by Respondents, its production is inadvertent and does not constitute a waiver of any privilege, immunity or protection.

3. Respondents object to the Interrogatories to the extent that they call upon Respondents for, and/or to reveal, legal conclusions to Plaintiff. Respondents' responses shall not be deemed to constitute admissions that any statement or characterization in the Interrogatories is accurate or complete.

4. Respondents undertake to answer the Interrogatories only to the extent required by the Federal Rules of Civil Procedure, the local rules of this Court, and other applicable law (collectively, "Rules"), and Respondents object to the Interrogatories to the extent that they purport to exceed, expand upon or conflict with those Rules. For example, and without limitation, Respondents object to Plaintiff's "definitions" to the extent Plaintiff intends to expand upon or alter the Rules.

5. Respondents have not completed their investigation and discovery relating to this case. The specific responses set forth below and any information provided pursuant to the responses are based upon, and necessarily limited by, information now available to Respondents. Respondents reserve the right, at any time, to revise, correct, and to supplement, modify, or clarify the specific responses set forth below or the information disclosed therein. By this reservation, Respondents do not, however, assume a continuing responsibility to update its

responses beyond the requirements of the Rules, and it objects to the Interrogatories to the extent they seek to impose any such continuing obligation.

6. Respondents object to each of the Interrogatories (i) to the extent they call for information generated after the date this action was commenced, or (ii) to the extent they call for information pertaining to any time outside of the limitations periods applicable to any of Plaintiff's claims; because the Interrogatories are to this extent overly broad and unduly burdensome, and seek information that is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

7. Respondents object to producing information relating to the "Average Manufacturer Price" or "AMP," as defined in Definition No. 1, as such information is not relevant to the claims or defenses of any party in this litigation. Specifically, Plaintiff has alleged wrongdoing concerning "AWP," but has failed to allege any relationship between "AWP" and "AMP." Further, Plaintiff has asserted a claim based upon the Medicaid reimbursement system that Plaintiff established, which is wholly unrelated to any AMPs that would otherwise be reported pursuant to federal law. Respondents further object to this Definition to the extent that it differs from the definition provided for this term by federal law.

8. Respondents object to the definition of "Defined Period of Time" in Definition No. 2, and to each Interrogatory to the extent that it purports to require production of documents, or seek information relating to a period of time, after January 1, 2002, when Respondents began voluntarily furnishing Wisconsin with a monthly letter reporting high and low contract prices, net of described discounts, for the previous month, because such a request seeks information and documents that are not relevant to the claims or defenses of any party, and are overly broad,

unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Except as specifically stated below, and subject to and without waiving any objection, Respondents' responses herein shall be limited to the period prior to January 1, 2002.

Respondents further object to each of the Interrogatories and the term "Defined Period of Time" because Plaintiff has failed to allege any specific misconduct or wrongdoing by Respondents during any particular period of time, and therefore the "Defined Period of Time" has no relationship to any allegations against the Respondents.

9. Respondents object to each Interrogatory to the extent that they may be construed as calling for confidential information relating to a patient. Respondents will not produce any such information to the extent they are under any obligation to maintain the patient information in confidence. Respondents will not disclose such information unless the patient grants permission to do so.

10. Respondents object to each Interrogatory as unduly burdensome to the extent that it seeks information that is available, in a way that would be less burdensome or expensive, from a public source or some other source available to the Plaintiff.

11. Respondents object to each Interrogatory to the extent that it purports to require Respondents to search through an unduly large quantity of data or to search for information that is not accessible, available or locatable without imposing an undue burden upon Respondents. Subject to and without waiving any objection, Respondents will conduct a reasonable search for responsive information that is reasonably accessible, available and locatable.

12. Respondents object to each Interrogatory to the extent that (1) it seeks information regarding drugs other than the drugs that are at issue in this litigation or (2) concerns matters not related to Wisconsin, because such information is not relevant to the subject matter involved in

the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

13. Respondents object to the Interrogatories to the extent the answers to such Interrogatories may be derived or ascertained from documents produced by Respondents in response to Plaintiff's First Set of Requests for Production of Documents.

14. Respondents object to the Interrogatories to the extent that they are indefinite and/or fail to describe the information requested with reasonable particularity, and to the extent that they employ terms or definitions that render the Interrogatories vague or ambiguous. Except as otherwise stated, Respondents will interpret any such term based on their understanding of the term's usage, if any, by Respondents and/or in the pharmaceutical industry.

15. Respondents' responses to the Interrogatories are supplied for use in this litigation and for no other purpose.

16. Respondents expressly incorporate 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 objections or reservation of rights is not inconsistent with Respondents' position in this litigation.

17. Respondents object to the production of any information encompassed within one of the General Objections set forth herein or within one of the Specific Objections set forth below. In the event any information submitted falls within any objection, its production does not constitute waiver of the objection. Respondents expressly incorporate their General Objections into each specific response to the Interrogatories set forth below. Any Specific Objections provided below are made in addition to these General Objections and failure to reiterate a General Objection below does not constitute a waiver or limitation of that or any other objection.

The response to an interrogatory shall not operate as a waiver of any applicable Specific or General Objection.

### **ANSWERS TO INTERROGATORIES**

#### **INTERROGATORY NO. 6:**

Do you contend that during the Defined Period of Time the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMPs of the targeted drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid rebate statute, 42 U.S.C. § 1396r-8?

**ANSWER:** In addition to the General Objections set forth above, Respondents object to Interrogatory No. 6 because, *inter alia*, its use of the terms "could have determined" and "targeted drugs" renders it vague, ambiguous, overbroad, and unduly burdensome. Respondents further object to this Interrogatory because its use of a double-negative statement renders it unintelligible. Respondents further object to this Interrogatory to the extent that it requires Respondents to: (i) produce information regarding the defined terms "Average Manufacturer Price" or "AMP" because these terms are wholly unrelated to the Medicaid reimbursement system upon which plaintiff bases its claims; and (ii) produce information regarding the defined terms as such information falls outside the relevant time period covered in this case.

Subject to and without waiving these specific objections or their General Objections, Respondents respond to this Interrogatory as follows: Federal law does not prohibit and did not prohibit during the Defined Period of Time the State of Wisconsin from estimating or determining AMP. In fact, for some drugs, the State can derive and could have derived during the Defined Period of Time the AMP from the Unit Rebate Amount. Alternatively, the State can require and could have required during the Defined Period of Time (as some do) the submission of AMP data directly from the manufacturers.

**INTERROGATORY NO. 7:**

If the answer to Interrogatory No. 1 is anything other than an unqualified "no,";

- a. state all bases for such contention, and
- b. identify all documents that support such contention.

**ANSWER:** In addition to the General Objections set forth above, Respondents object to Interrogatory No. 7 on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Respondents further object to this Interrogatory to the extent that it requires Respondents to: (i) produce information regarding the defined terms "Average Manufacturer Price" or "AMP" because these terms are wholly unrelated to the Medicaid reimbursement system upon which plaintiff bases its claims; and (ii) produce information regarding the defined terms as such information falls outside the relevant time period covered in this case.

Subject to and without waiving these specific objections or their General Objections, Respondents respond to this Interrogatory as follows: Respondents incorporate by reference their answer to Interrogatory No. 6 and further state that 42 U.S.C. § 1396r-8 and the state Medicaid statutes and regulations for those states, such as Texas for example, that require manufacturers to submit AMP data provide support for Respondents' answer to Interrogatory No. 6.

Dated December 14, 2006



J. Steven Baughman  
Patrik J. Drescher  
ROPES & GRAY LLP  
One Metro Center  
700 12<sup>th</sup> Street, N.W.  
Suite 900  
Washington, DC 20005  
Telephone: (202) 508-4600  
Facsimile: (202) 508-4650

Brien T. O'Connor  
ROPES & GRAY LLP  
One International Place  
Boston, MA 02110-2624  
Telephone: (617) 951-7000  
Facsimile: (617) 951-7050

Earl H. Munson, SBN 1008156  
BOARDMAN, SUHR, CURRY  
& FIELD LLP  
One South Pinckney Street, 4<sup>th</sup> Floor  
Madison, WI 53703  
Telephone: (608) 257-9521  
Facsimile: (608) 283-1709

*Attorneys for Defendants Schering-Plough Corp., and  
Warrick Pharmaceuticals Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of December 2006, a true and correct copy of Schering-Plough Corporation's and Warrick Pharmaceuticals Corporation's Response to Plaintiff's Second Set of Interrogatories was served upon all counsel of record via Lexis Nexis File & Serve electronic service.

  
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Patryk J. Drescher