

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

STATE OF WISCONSIN,)	CASE NO. 05-C-0408-C
)	
Plaintiff,)	
)	
v.)	
)	
ABBOTT LABORATORIES, ET AL.,)	
)	
Defendants.)	
)	
)	
)	

**RESPONSE OF DEFENDANTS SCHERING-PLOUGH CORPORATION AND
WARRICK PHARMACEUTICALS CORPORATION TO
PLAINTIFF’S FIRST SET OF INTERROGATORIES**

Pursuant to the Federal Rules of Civil Procedure, Schering-Plough Corporation (“Schering-Plough”) and Warrick Pharmaceuticals Corporation (“Warrick”) (collectively “Respondent”), by and through their undersigned counsel, respond to Plaintiff’s First Set of Interrogatories (“Interrogatories”) as follows:

GENERAL OBJECTIONS

1. Respondent provides this response without waiver of or prejudice to its right, at any later time, to raise objections to: (a) the relevance, materiality, or admissibility of (i) the Interrogatories or any part thereof, (ii) statements made in this response to the Interrogatories or any part thereof, or (iii) any information produced pursuant to this response; or (b) any further demand for discovery involving or relating to the matters raised in the Interrogatories.

2. Respondent objects 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 Respondent, its production is inadvertent and does not constitute a waiver of any privilege, immunity or protection.

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

4. Respondent has not completed its 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 Respondent. Respondent reserves 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, Respondent does not, however, assume a continuing responsibility to update its responses beyond the requirements of the Federal Rules of Civil Procedure and the local rules of this Court, and it objects to the Interrogatories to the extent they seek to impose any such continuing obligation.

5. Respondent undertakes 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 Respondent objects to the Interrogatories to the extent that they purport to exceed, expand upon or conflict with those Rules. For

example, and without limitation, Respondent objects to Plaintiff's "definitions" to the extent Plaintiff intends to expand upon or alter the Rules. Respondent further objects to the definitions of "Document," as set forth in Definition No. 4 to the extent they seek to impose discovery obligations that are broader than, or inconsistent with, Respondent's obligations under the Rules.

6. Respondent objects 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 Requests 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. Respondent objects to producing information relating to the defined term "Average Manufacturer Price" or "AMP" set forth in Definition No. 1, as 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. Specifically, Plaintiff has asserted a claim based upon the Medicaid reimbursement system it established, which is wholly unrelated to any AMPs that would otherwise be reported pursuant to the federal statute. Respondent further objects to this Definition to the extent that it is broader than the definition provided to this term by federal statute.

8. Respondents 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.” Respondents incorporate by reference their objection to the definition of the term “Pharmaceutical.”

9. Respondents 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.” Respondents 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.

10. Respondent objects to the definition of “Incentive” set forth in Definition No. 5 on the ground that it is vague and ambiguous. Respondent further objects to the extent the term “Incentive” is used to characterize various types of “discounts” and “rebates.” This characterization lacks factual foundation and depends upon a legal conclusion. Use of this argumentative characterization is a device intended by Plaintiff to assume away an evidentiary burden borne exclusively by Plaintiff – namely, whether “discounts” or “rebates” are in fact “Incentives.”

11. Respondents object to the definition of “National Sales Data” as set forth in Definition No. 6 on the grounds that it is overly broad and unduly burdensome. Respondents 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.” Respondents incorporate by reference their objections to the definitions of the terms “Targeted Drugs” and “Incentives.” Respondents object to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Respondents 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.

12. Respondents object to the definition of “Pharmaceutical” as set forth 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,” “administered,” “other product,” “you,” “any other manufacturer,” “prescription,” “injectibles,” “infusibles,” “inhalants,” “hemophilia factors,” “biological products” and “intravenous solutions.” Respondents object to this Definition to the extent that it refers to information not relevant to the State’s claims, which are limited to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Complaint. Respondents further object to this definition to the extent 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.

13. Respondent objects to the definition of “Spread” set forth in Definition No. 8 on the ground that it is vague and ambiguous.

14. Respondents object to the definition of “Targeted Drugs” in Definition No. 9 on the grounds that it is overly broad and unduly burdensome. Respondents further object to this definition on the grounds that it is vague and ambiguous, particularly with respect to the language “you” and “total utilization.” Respondents incorporate by reference their objections to the definitions of the terms “Defined Period of Time” and “Pharmaceutical.” Respondents object to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Respondents 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 Amended 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.

15. Respondent objects to each interrogatory to the extent that they may be construed as calling for confidential information relating to a patient. Respondent will not produce any such information to the extent it is under any obligation to maintain the patient information in confidence. Respondent will not disclose such information unless the patient grants permission to do so.

16. Respondent objects 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.

17. Respondent objects to each interrogatory to the extent that it purports to require Respondent 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 Respondent. Subject to and without waiving any objection, Respondent will conduct a reasonable search for responsive information that is reasonably accessible, available and locatable.

18. Respondent objects to each interrogatory to the extent that it seeks information regarding drugs other than the drugs that are at issue in this litigation or concern 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.

19. Respondent objects to the Interrogatories to the extent the answers to such interrogatories may be derived or ascertained from documents to be produced by Respondent in response to Plaintiff's First Set of Requests for Production of Document.

20. Respondent objects 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, Respondent will interpret any such term

based on its understanding of the term's usage, if any, by Respondent and/or in the pharmaceutical industry.

21. Respondent's responses to the Interrogatories are supplied for use in this litigation and for no other purpose.

22. Respondent objects to the production of any information falling 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. Respondent expressly incorporates these General Objections into each specific response to the interrogatories set forth below as if set forth full therein. These General Objections form a part of the response to each and every interrogatory and are set forth here to avoid the unnecessary duplication and repetition that would result from restating them for each response below. The response to an interrogatory shall not operate as a waiver of any applicable specific or general objection to a request.

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.

Response to Interrogatory No. 1:

In addition to the General Objections set forth above, Respondent objects to Interrogatory No. 1 because its use of the terms “average sales price” and “composite price” renders it vague and ambiguous. Respondent further objects on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to this Interrogatory to the extent that it requires Respondent to: (i) produce information regarding the defined terms “average sales price” and “composite price” because these terms are wholly unrelated to the Medicaid reimbursement system upon which plaintiff bases its claims; (ii) produce information regarding the defined terms as such information falls outside the relevant time period covered in this case; and (iii) identify “the person(s) most knowledgeable regarding the determinations.” Respondent further objects to this Interrogatory on the grounds that it is redundant and duplicative to the extent that the answers sought can be

ascertained by plaintiff from documents and information that will be provided in response to Plaintiff's Document Requests in this action.

Subject to and without waiving these specific objections or its General Objections, Respondent responds to this Interrogatory as follows: During the relevant time period, Respondent did not generally calculate or report average sales prices or composite prices for the Targeted Drugs.

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.

Response to Interrogatory No. 2:

In addition to the General Objections set forth above, Respondent objects to Interrogatory No. 2 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to this Interrogatory to the extent it seeks the proprietary information of third parties. Finally, Respondent objects to this Interrogatory on the grounds that it is redundant and duplicative to the extent that the answers sought can be ascertained by plaintiff from documents and information that will be provided in response to Plaintiff's Document Requests in this action.

Subject to and without waiving these specific objections or its General Objections, Respondent responds to this Interrogatory as follows: Respondent has created sales transactions data files for use in the MDL litigation. To the extent any portions of these data files are relevant and responsive, they will be produced to Plaintiff and will include data from which the answer to this Interrogatory can be obtained.

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 classes) 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, Respondent objects to Interrogatory No. 3 because its use of the term “Incentive” renders it vague and ambiguous. Respondent further objects to the extent the term “Incentive” is used to characterize various types of “discounts” and “rebates.” This characterization lacks factual foundation and depends upon a legal conclusion. Use of this argumentative characterization is a device intended by Plaintiff to assume away an evidentiary burden borne exclusively by Plaintiff - namely, whether “discounts” or “rebates” are in fact “Incentives.”

Subject to and without waiving these specific objections or its General Objections, Respondent, relying on what it understands constitutes the term “incentive,” Respondent responds to this Interrogatory as follows: The information requested by this Interrogatory may be ascertained or derived from Respondent’s business records to be produced in this case, and the burden of deriving or ascertaining the answer is substantially the same for the requesting party as for the responding party. These business records will be produced pursuant to Plaintiff’s First Set of Requests for Production.

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.

Response to Interrogatory No. 4:

In addition to the General Objections set forth above, In addition to the General Objections set forth above, Respondent objects to Interrogatory No. 2 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects on the grounds that the Interrogatory is redundant and duplicative to the extent that it seeks documents and information that will be provided in response to Plaintiff's Document Requests in this action.

Subject to and without waiving these specific objections or its General Objections, Respondent responds to this Interrogatory as follows: The information requested by this Interrogatory may be ascertained or derived from Respondent's business records to be produced in this case, and the burden of deriving or ascertaining the answer is substantially the same for the requesting party as for the responding party. These business records will be produced pursuant to Plaintiff's First Set of Requests for Production.

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).

Response to Interrogatory No. 5:

In addition to the General Objections set forth above, Respondent objects to Interrogatory No. 5 because its use of the term “Spread” renders it vague and ambiguous. Respondent further objects on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these specific objections or its General Objections, Respondent responds to this Interrogatory as follows: Based upon its reasonable search to date, Respondent is not aware of any instance of marketing as defined in this Interrogatory.

Dated July 15th, 2005

As to Objections:



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As to Responses:

Signature page to follow.

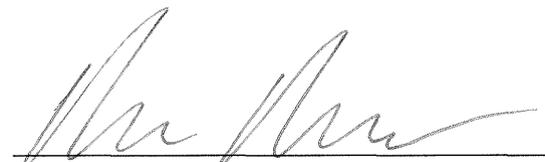
CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2005, a true and correct copy of Schering-Plough Corporation's and Warrick Pharmaceuticals Corporation's Response to Plaintiff's First Set of Interrogatories was served upon the Plaintiff's counsel listed below by U.S. Mail and upon Defendants' counsel by electronic mail.

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