

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

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 05 C 0408 C

ABBOTT LABORATORIES, ET AL.,

Defendants.

**DEFENDANTS WATSON PHARMA, INC.'S AND WATSON PHARMACEUTICALS,
INC.'S RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO ALL
DEFENDANTS**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and, to the extent applicable, Wisconsin Statutes §§ 804.01, and 804.08, Watson Pharma, Inc. (f/k/a Schein Pharmaceuticals, Inc.) and Watson Pharmaceuticals, Inc. (collectively "Watson"), by and through its attorneys, makes the following responses to Plaintiff's First Set of Interrogatories to All Defendants ("Interrogatories").

GENERAL OBJECTIONS

Watson expressly incorporates all of the General Objections set forth below into the specific objections for each Interrogatory. Any specific objections provided are made in addition to the General Objections and failure to reiterate a General Objection does not constitute a waiver of that, or any, objection.

1. Watson objects generally to these Interrogatories to the extent that they are in any way inconsistent with, or attempt to expand, Watson's obligations under applicable law and court rules.

2. Watson objects to the Interrogatories in their entirety to the extent that the Interrogatories seek or purport to require identification of information and/or production of documents protected from discovery by the attorney-client privilege, the attorney work product doctrine, and/or other privileges or immunities. Watson will not knowingly produce any documents or identify any information that is subject to any privilege or protection. Watson does not intend to waive any right of privilege or confidentiality. If any privileged or confidential matters are inadvertently made available for inspection, such disclosure was not intentional and should not be viewed as, and is not, a voluntary waiver of any privilege or right of confidentiality.

3. Watson objects to the Interrogatories to the extent that they call for the production of documents or information that are neither relevant to the subject matter of the pending action nor reasonable calculated to lead to the discovery of admissible evidence, are overly broad, unduly burdensome, vague, ambiguous, oppressive, and/or duplicative.

4. To the extent that any information or documents that are withheld on the basis of any objection or on any agreement of the parties are later determined by the Court to be discoverable, Watson reserved the right to move for entry of any protective order in relation to such information or documents.

5. Watson objects to the Interrogatories to the extent they seek information or documents of a confidential or proprietary nature. Watson will not provide any such information except pursuant to the terms of an appropriate protective order.

6. Watson objects to any Interrogatories that seeks information which: (a) is outside the knowledge, custody, control, or possession of Watson, its agents, or employees; (b) is already in Plaintiff's custody, control, or possession; (c) is publicly available; (d) is obtainable

with equal or greater facility by the Plaintiff; or (e) is more appropriately sought from third parties to whom requests have been made or directed.

7. Watson objects to the Interrogatories to the extent that they seek information relating to Watson's activities other than those relating to the State of Wisconsin 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. Watson objects to any implications and to any explicit or implicit characterizations of the facts, events, circumstances, or issues in the Interrogatories. Any response by Watson is not intended to indicate that Watson agrees with any such implications or characterizations, or that such implications or characterizations are relevant to this litigation.

9. Watson objects to any and every Interrogatory to the extent that it seeks information that would require Watson to create, compile, or develop new data or sources of information.

10. Watson reserves the right to make any changes in these responses if it appears that omissions or errors have been made therein, or if further or more accurate information is available. Watson has not completed its own investigation and discovery. The information provided in the responses herein and in any documents to be made available is based upon reasonable inquiry and the best information known or readily available to Watson as of the date of this response. Further investigation may reveal additional information that is responsive to these Interrogatories. Watson reserves the right to continue discovery and investigation into this matter and to present evidence, at trial or otherwise.

11. Watson reserves the right to challenge the competence, relevancy, materiality, and admissibility at trial or otherwise, of any information or documents provided in response to these Interrogatories.

12. Watson incorporates 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 objection or reservation of rights is not inconsistent with Watson's position in this litigation.

GENERAL OBJECTIONS TO PLAINTIFF'S DEFINITIONS

Watson objects generally to Plaintiff's definitions to the extent that they purport to extend the scope of the Interrogatories beyond the bounds of discoverable information in this case and to expand Watson's obligations beyond those set forth in the applicable rules. In addition, Watson makes the following objections to Plaintiff's definitions:

1. Watson objects to the definition of "Average Manufacturer Price" and "AMP" 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." Watson incorporates by reference its objection to the definition of the term "Pharmaceutical." Watson further objects to this definition to the extent that it purports to set an accurate or legally significant definition of AMP, which is a term legally defined by federal statute.

2. Watson objects to the definition of "Chargeback" on the grounds that it is vague and ambiguous with respect to the language "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.” Watson incorporates by reference its objection to the definition of the term “Pharmaceutical.”

3. Watson objects to the definition of “Defined Period of Time” to the extent it seeks information outside of the limitations periods applicable to the claims in the Complaint, or beyond the time period relevant to this litigation. Such information is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. The production or provision of any information or materials by Watson outside of the limitations periods applicable to the claims in the Complaint does not constitute waiver of this objection to Plaintiff’s “Defined Period of Time.” Watson further objects to this Definition on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous, particularly with respect to the language “Documents relating to such period even though created before that period,” and incorporates by reference its objection to the definition of the term “Document.”

4. Watson objects to the definition of “Document” to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Watson’s obligations under the applicable rules. Watson further objects to this definition insofar as it calls for Watson to search the information that was not generated in the form of written or printed records, or to create or re-create printouts from electronic data compilations, on the grounds that such a request would be unduly burdensome and oppressive.

5. Watson objects to the definition of “Incentive” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Watson incorporates by reference its objections to the definitions of the term “Chargeback, “ and further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

6. Watson objects to the definition of “National Sales Data” to the extent that it refers to information not relevant to the Plaintiff’s claims, which are limited to Wisconsin. Watson further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation, and/or information about drugs not named in the Complaint, or 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. Watson objects to the definition of “Pharmaceutical” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Watson further objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Watson also objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation, and/or information that is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

8. Watson objects to the definition of “Spread” 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.” Watson incorporates by reference its objection to the definition of the term “Pharmaceutical.”

9. Watson objects to the definition of “Targeted Drugs” on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Watson incorporates by reference its objections to the definition of the term “Defined Period of Time.” Watson further objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Watson further objects to this definition to the extent it seeks

information from beyond the time period relevant to this litigation and/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.

RESPONSES TO INDIVIDUAL 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

Watson objects to this Interrogatory on the grounds that it is compound and contains multiple subparts. Watson objects to this Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this Interrogatory and to a May 25, 2005 letter from Plaintiff's counsel purporting to define "Targeted Drug" for purposes of these Interrogatories as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Watson objects to this Interrogatory as vague and ambiguous in its use of the terms "average sales price," "other composite price," "regarding the price," and "Targeted Drug." Watson objects to this Interrogatory on the grounds that it is redundant and duplicative to the extent that it seeks documents and information that Watson will provide in response to Plaintiff's Document Requests in this action. Moreover, to the extent that this interrogatory seeks documents in the custody, control, or possession of third parties, the interrogatory is improper and unduly burdensome.

Subject to, and without waiving any of these objections or the General Objections, Watson makes the following response: For each of its drug products, Watson calculates an internal net average sales price, which is a net price across all customers. This price for a product takes into account items such as cash discounts, rebates, chargebacks, stocking fees, and accruals for returns. The internal net average sales price is highly confidential and is not distributed to anyone outside of the company. Pursuant to the Medicare Prescription Drug, Improvement and Modernization Act of 2003 ("MMA") and its implementing regulations, Watson also calculates and submits to the Centers for Medicare and Medicaid Services quarterly an Average Sales Price ("ASP") for its drugs that are reimbursed under Medicare Part B. Pursuant to section 1927(b)(3)(A) of the Social Security Act ("the Act"), Watson also calculates

and submits quarterly an Average Manufacturer Price (“AMP”), as defined in section 1927(k)(1) of the Act, for its drugs that are subject to a Medicaid Drug Rebate Agreement. Section 1927(b)(3)(D) of the Act provides that both the Medicare ASP information and the AMP information is confidential and shall not be disclosed by the Secretary of the Department of Health and Human Services (or any contractors) in a form which discloses the identity of a specific manufacturer or the prices charged for drugs by such manufacturer. The person who is most knowledgeable about the calculation of these prices is Kathleen Barclay in Watson’s Contract Operations Department.

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 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 an 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

Watson objects to this Interrogatory on the grounds that it is compound and contains multiple subparts. Watson objects to this Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this Interrogatory and to a May 25, 2005 letter from Plaintiff's counsel purporting to define "Targeted Drug" for purposes of these Interrogatories as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Watson objects to this Interrogatory as vague and ambiguous in its use of the terms "describe," "electronic data base, data table or data file," "Defined Period of Time," "price," "Targeted Drug," "data entity," "structure of each database, data table or data file," "fields," and "contents, format and location within each file or table record or row." Watson objects to this Interrogatory on the grounds that it is redundant and duplicative to the extent that it seeks documents and information that Watson will provide in response to Plaintiff's Document Requests in this action. Moreover, to the extent that this Interrogatory seeks documents in the custody, control, or possession of third parties, the Interrogatory is improper and unduly burdensome.

Subject to, and without waiving any of these objections or the General Objections, Watson makes the following response: Watson maintained certain pricing, invoicing, and sales data on a MANFAC system until about 2003 when it switched over to an SAP system. Much of the MANFAC data from Watson was converted and transferred into the SAP system. As a result, it is believed that reasonably reliable data are available for the period 1997 through the first quarter of 2004 on total net and gross sales nationally and by specific customer and by NDC number, as well as on credits and chargebacks by specific customer and by NDC number. Direct and indirect pricing on drugs over the relevant time period should also be available. Some of the

information was maintained by Schein Pharmaceuticals, Inc. ("Schein"), prior to its acquisition by Watson, and may not have converted properly. The person most knowledgeable about how the data are stored is Kathleen Barclay in Watson's Contract Operations Department. Data can be generated most conveniently on Excel spreadsheets and Access databases.

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;
- d) the beginning and ending dates of each period during which the Incentive was offered.

Response to Interrogatory No. 3

Watson objects to this Interrogatory on the grounds that it is compound and contains multiple subparts. Watson objects to this Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this Interrogatory and to a May 25, 2005 letter from Plaintiff's counsel purporting to define "Targeted Drug" for purposes of these Requests as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Watson objects to this Interrogatory as vague and ambiguous in its use of the terms "describe," "Incentive," "in conjunction with the purchase of any Targeted Drug," "Targeted Drug," "type(s) of Incentive(s)," "class(es) of trade eligible," and "general terms and conditions." Watson objects to this Interrogatory on the grounds that it is redundant and duplicative to the extent that

it seeks documents and information that Watson will provide in response to Plaintiff's Document Requests in this action. Moreover, to the extent that this Interrogatory seeks documents in the custody, control, or possession of third parties, the Interrogatory is improper and unduly burdensome.

Subject to, and without waiving any of these objections or the General Objections, Watson responds as follows: Since 2000, Watson and Schein have generally offered the following types of incentives to certain customers: rebates based on volume of products purchased (occasionally weighted to favor purchases of certain products), reduced prices for institutional use, administrative fees, stocking allowances, shelving allowances, prompt pay discounts, promotional allowances, and outcomes incentives. Detailed information about each of these types of programs varies by customer and by type of drug. More specific answers to these questions may be readily ascertained from the documents Watson previously provided in In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL Docket No. 1456 ("AWP MDL") that pertain to the drug(s) identified in the Exhibits to the State's Complaint.

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

Watson objects to this Interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this Interrogatory and to a May 25, 2005 letter from Plaintiff's counsel purporting to define

“Targeted Drug” for purposes of these Interrogatories as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested. Watson objects to this Interrogatory as vague and ambiguous in its use of the terms “describe,” “determined,” “price,” “Targeted Drug,” and Defined Period of Time.” Watson objects to this Interrogatory on the grounds that it is redundant and duplicative to the extent that it seeks documents and information that Watson will provide in response to Plaintiff’s Document Requests in this action. Moreover, to the extent that this Interrogatory seeks documents in the custody, control, or possession of third parties, the Interrogatory is improper and unduly burdensome.

Subject to, and without waiving any of these objections or the General Objections, Watson responds as follows: Watson does not have a formal process for determining prices or price changes. With regard to InFED (the only branded product identified in the State’s Complaint), Watson uses factors such as the following to set contract price for the product: prices of competitors’ products, what Watson believes the market will bear for its product, and clinical profile of Watson’s product. The person most knowledgeable about the pricing for InFED is Timothy Callahan, Vice President, Sales and Marketing. The remaining products identified in the State’s Complaint are generic products. The price for a generic product is generally determined by the following factors: cost to produce the product, market forces, and the number of competitors on the market. The person most knowledgeable about the pricing for generic products is Andrew Boyer, Vice President, Sales and Marketing. A change to a price generally occurs as a result of a price request that comes through the National Accounts Team to an informal pricing team, including the pricing manager. The informal pricing team will make a decision on the price request based upon the information in the request, and if the price is

approved, the pricing manager signs off on the price and submits it to the Bids and Contracts Team, which is responsible for making sure that the appropriate price is in the system. More specific answers to these questions may be readily ascertained from the documents Watson previously provided in the AWP MDL that pertain to the drug(s) identified in the Exhibits to the State's Complaint.

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

Watson objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Watson objects to this Interrogatory and to a May 25, 2005 letter from Plaintiff's counsel purporting to define "Targeted Drug" for purposes of these Interrogatories as overly broad and unduly burdensome in that Plaintiff has failed to offer allegations sufficient to support the scope of discovery requested.

Watson objects to this Interrogatory as vague and ambiguous in its use of the terms "marketing," "Targeted Drug," "AWP or WAC published by First DataBank, Redbook or Medi-span, "list or actual price (to any customer)," "marketed a Targeted Drug in whole or in part," and "document published or provided to a customers."

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

Dated: Sept. 15, 2005

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2005, a true and correct copy of Defendants Watson Pharma, Inc.'s and Watson Pharmaceuticals, Inc.'s Response to Plaintiff's First Set of Interrogatories to all Defendants was served on all Parties as set forth below:

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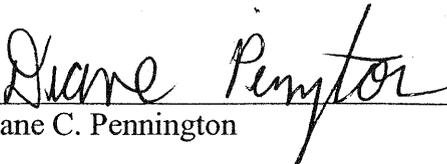
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