

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In re: Subpoena Duces Tecum Issued to :
AmerisourceBergen Corporation by the : Index No. 111810:06
New York State Attorney General : Hon. Joan A. Madden
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AFFIRMATION OF JOHN A. IOANNOU

JOHN A. IOANNOU, an attorney admitted to practice in the New York State Courts, affirms under the penalties of perjury that:

1. I am an Assistant Attorney General in the Antitrust Bureau of the Office of the New York Attorney General. I submit this affirmation: (a) to oppose the motion by AmerisourceBergen Corporation ("ABC") to modify the subpoena duces tecum served on ABC by the Attorney General pursuant to N.Y. Gen. Bus. L. § 343 and N.Y. Exec. L. § 63(12); and (b) to support the Attorney General's cross-motion to compel compliance with that subpoena. A copy of the subpoena is annexed as Exhibit A.

2. These proceedings arise from a confidential investigation that the Attorney General is conducting into the pricing and reimbursement rates for pharmaceutical drugs. ABC is one of the largest wholesalers of pharmaceuticals. Although subpoenaed more than five months ago, ABC has yet to produce any of the requested materials, asserting confidentiality concerns. ABC ultimately accepted almost all of the provisions in the confidentiality agreement that the Attorney General offered. As explained more fully below, ABC disputes only how long the Attorney General agrees to wait after notice to ABC before disclosing materials in circumstances not otherwise agreed to. ABC's position is without merit. The Court should direct ABC to comply fully with the Attorney General's subpoena within 10 days.

3. The State served its investigatory subpoena on ABC on April 6, 2006. (Ex. A) The

subpoena calls for ABC to produce documents and to answer interrogatories on such subjects as communications with customers and the pricing of various identified prescription pharmaceuticals. The subpoena's return date was April 21, 2006.

4. ABC did not produce the materials sought. Instead, ABC withheld production, asserting it needed express written assurances of confidentiality. Although not required to afford express written confidentiality, we sought as an accommodation to address ABC's professed concerns.

5. On April 19, 2006, I sent ABC a proposed confidentiality agreement. (See annexed Exhibit B.) That began a protracted, multi-month, negotiation of one provision after another of the proposed confidentiality arrangement. (The 18 documents within Exhibit B of the Affirmation of Alan Lewis illustrate these protracted negotiations.) Other subpoena recipients have long since responded to comparable subpoenas, in some instances without any express written confidentiality assurance. An acceptable confidentiality agreement was ultimately reached with ABC, except for one disputed provision.

6. The agreed-upon confidentiality arrangement permits the Attorney General to disclose materials that ABC designates as confidential ("Confidential Matter") to various persons, such as State employees, experts, witnesses, and enforcement personnel. Ex. B, ¶¶ 3, 4. If the Attorney General seeks to disclose ABC Confidential Matter to other persons, the Attorney General agrees to give ABC notice of that disclosure.¹ In response, ABC may seek a protective order if it objects

¹ The applicable provisions are paragraphs 5 and 5(b) of the confidentiality agreement, which is attached as Exhibit B. Editing to reflect later negotiations and agreements, paragraph 5 provides:

If this office wishes to disclose any Confidential Matter to any person other than those

to the disclosure. We therefore offered a ten day notice period, plus a five day extension if ABC serves a motion for a protective order, for a total of 15 days between notice and disclosure if ABC moves for a protective order. Ex. B. ¶ 5. That timing gives ABC the opportunity to apply to the court by order to show cause for a temporary restraining order pending hearing of the protective order motion. If no TRO is granted, the Attorney General may disclose the material after the 15 day period expires.

7. When ABC objected, we offered a total of 20 days between notice and disclosure, if ABC moves for a protective order and the court does not respond. Ex. C. In response, ABC began insisting on an overall 60 day notice period, which ABC later reduced to 45 days. Ex. D.

referred to in paragraphs 3(a) through (f) above, this office shall notify [ABC] of its intent to make such disclosure at least [ten (10)] days prior to the disclosure (the "Notice"), identifying with reasonable particularity the Confidential Matter to be disclosed. If ABC seeks to oppose disclosure, ABC may move within that ten (10) day period (the "Notice Period"), on notice to this office, in the Supreme Court of the State of New York, County of New York (the "Court"), for an order barring such disclosure (a "Protective Order Motion").

- (a) On any such Protective Order Motion, [ABC] shall have the burden of demonstrating that the documents or material identified in the Notice are Confidential Matter within the meaning of this agreement and, to the extent that [ABC] satisfies that burden, the documents or material shall not be disclosed.
- (b) Upon service of the Protective Order Motion on this office, the Notice Period shall, without further action, be deemed extended for an additional five (5) days (measured from the expiration of the Notice Period).
- (c) Upon the expiration of the period provided for in paragraph 5(b), this office may disclose the documents or information identified in the Notice unless the Court, in connection with the Protective Order Motion, directs otherwise.
- (d) Absent a Protective Order Motion or a limitation set by this office in the Notice, the documents and information identified in the Notice shall cease to be Confidential Matter for all purposes.

Now, on this motion and despite having agreed otherwise early in the confidentiality agreement negotiations, ABC argues that, if the Attorney General triggers the disclosure exception, ABC's service of a motion for a protective order, without more, should suspend the intended disclosure until the court rules on the motion. In other words, to cover this disclosure exception, ABC seeks a confidentiality procedure that would grant ABC an automatic TRO, regardless of merit, and extend that TRO beyond the hearing on ABC's protective order motion to when a ruling is made.

8. ABC's position, both on this motion and during the negotiations, is unreasonable. N.Y. Gen. Bus. Law § 343 and N.Y. Exec. Law § 63(12) confer express investigatory authority on the Attorney General. The confidentiality restrictions sought by ABC would thwart that authority and hinder effective investigations. To support its position, ABC seeks to apply CPLR 3103 to this dispute. But CPLR 3103 is a discovery provision, applicable in civil litigation, which simply cannot and should not be imported into the Attorney General's investigations.

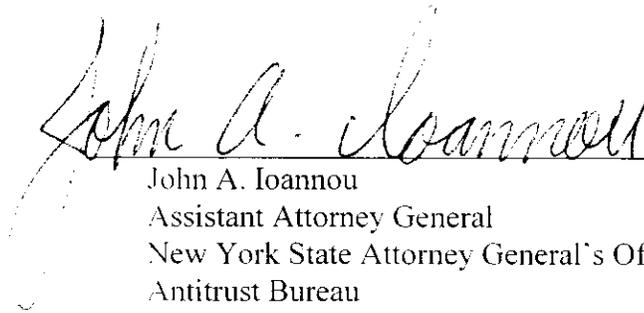
9. In addition, ABC argues that the Attorney General is required to bear the expenses of attorneys, paralegals, and others searching for and producing materials in response to the investigatory subpoena. That argument is flatly contradicted by the limited circumstances in which ABC would be entitled to reimbursement under CPLR 8001. Cost-sharing concepts, derived in the context of civil discovery, do not apply to investigatory proceedings undertaken by the Attorney General in discharge of its official responsibilities.

10. I affirm that a good faith effort has been made to resolve the issues raised in the motion and cross motion.

11. I respectfully refer the Court to our accompanying memorandum in opposition to ABC's motion to modify and in support of the Attorney General's cross-motion to compel ABC

to respond to the subpoena. For the reasons more fully set forth in our memorandum, ABC's motion should be denied, and the Attorney General's cross-motion should be granted. The Court should direct ABC to comply fully with the Attorney General's subpoena within ten days from service of notice of entry of this Court's order, or on such other date as the Court may direct.

Dated: New York, New York
September 18, 2006

A handwritten signature in black ink, reading "John A. Ioannou". The signature is written in a cursive style and is positioned above a horizontal line.

John A. Ioannou
Assistant Attorney General
New York State Attorney General's Office
Antitrust Bureau
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April 6, 2006

Via E-mail
Kimberly Franks
Counsel
AmerisourceBergen Corporation
1300 Morris Drive
Chesterbrook, PA 19087

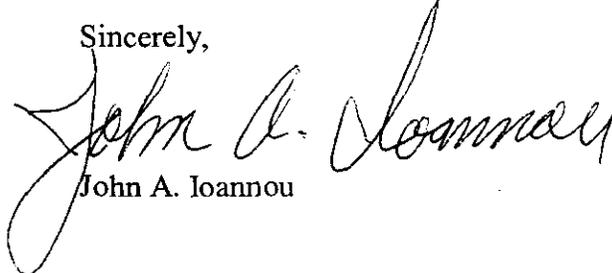
Dear Ms. Franks:

Pursuant to our telephone conversation on March 23rd, this letter will confirm your agreement to accept service of the attached Subpoena on behalf of the AmerisourceBergen Corporation.

Please call me if you have any questions.

Thank you for your cooperation.

Sincerely,


John A. Ioannou

Attachment

SUBPOENA DUCES TECUM AND INTERROGATORIES

THE PEOPLE OF THE STATE OF NEW YORK

To: **AmerisourceBergen Corporation**
c/o Kimberly Franks
Counsel
1300 Morris Place
Chesterbrook, PA 19087

WE HEREBY COMMAND, pursuant to General Business Law § 343 and Executive Law § 63(12) that, all business and excuses being laid aside, you deliver and turn over to ELIOT SPITZER, Attorney General of the State of New York, on the 21st day of April 2006 at 10:00 a.m. (or any adjourned date or time), at his office, Antitrust Bureau, Suite 26C, 120 Broadway, New York, New York 10271: (1) a written statement under oath consisting of answers to each of the interrogatories set forth in the attached Schedule A; and (2) all documents designated in the attached Schedule B that are in your possession, custody, or control.

PLEASE TAKE NOTICE that the Attorney General deems the information and documents requested to be relevant and material to a confidential law enforcement investigation concerning possible violations of New York General Business Law §§ 340 et seq., Section 1 of the Sherman Act, New York Executive Law § 63(12), and related statutes.

PLEASE TAKE FURTHER NOTICE that your failure to answer the interrogatories in Schedule A or to produce the documents identified in Schedule B at the date, time, and place specified above (or at any adjourned date and time) **may subject you to prosecution for a misdemeanor** pursuant to General Business Law § 343 and Civil Practice Law and Rules § 2308.

WITNESS, ELIOT SPITZER, Attorney General of the State of New York, this 6th day of April, 2006.

ELIOT SPITZER
Attorney General of the
State of New York

By:



JAY L. HIMES
Bureau Chief
Antitrust Bureau
Department of Law
120 Broadway, Suite 26C
New York, New York 10271

PLEASE DIRECT ALL INQUIRIES CONCERNING THIS SUBPOENA TO ASSISTANT ATTORNEY GENERAL JOHN A. IOANNOU AT (212) 416-8268 (voice), (212) 416-6015 (telecopy), or john.ioannou@oag.state.ny.us (e-mail).

SCHEDULE A

INTERROGATORIES

1. State the following:
 - a. Your correct name;
 - b. Your date and place of incorporation; and
 - c. The address of your principal place of business or main office.

2. Identify all communications between you and any customer/client concerning First DataBank's ABP price field, including any of the following:
 - a. pharmacies or pharmacy chains;
 - b. pharmacy benefit managers, including those who run non-managed care pharmacies;
 - c. home health agencies;
 - d. staff HMOs;
 - e. pharmaceutical manufacturers;
 - f. governmental and quasi-governmental entities and regulators; and
 - g. private or governmental insurers and payors.

3. Identify all communications within your company concerning First DataBank's ABP price field.

4. Identify any litigation concerning BBAWP in which you have been involved, in any way, including as a party, or non-party witness, deponent, or subpoena recipient. For each litigation, list:
 - a. the names of the parties;

- b. the date, docket number and court in which the case was filed;
 - c. any court to which the case was subsequently transferred; and
 - d. the status or final resolution of the case, if any.
5. Identify all communications with any law enforcement or regulatory entities concerning First DataBank's ABP price field.
6. Identify all communications with any legislative body concerning First DataBank's ABP price field.
7. Identify each instance that First DataBank surveyed or otherwise contacted you concerning the wholesale prices, or other prices or rates, for the NDCs listed in Exhibit A.
8. Identify all communications with, by or within any pharmaceutical or other industry trade groups or associations concerning First DataBank's ABP price field.
9. Identify all documents responsive to these Interrogatories.

SCHEDULE B

DOCUMENT REQUESTS

1. All documents concerning First Databank's ABP price field.
2. All documents concerning wholesaler surveys or contacts by First DataBank identified in response to Interrogatory 7.
3. All documents with, by or within any pharmaceutical or other industry trade groups or associations concerning First DataBank's ABP price field.
4. Produce the information for the fields listed below in a single machine readable file for all invoice entries for the NDC's listed in Exhibit A between January 1, 2000 and January 31, 2006, and sold to customers in New York State.
 - a. Date;
 - b. Eleven (11) Digit NDC Code;
 - c. Invoice Sale Number;
 - d. Customer Identification Number;
 - e. Customer Name;
 - f. Customer Billing Address;
 - g. Customer Shipping Address;
 - h. Units;
 - i. Dollar Amount Due;
 - j. Return Units;
 - k. Dollar Credits;
 - l. Discounts and Deductions;

- m. Package BBAWP or AWP;
- n. Package WAC;
- o. Chargebacks;
- p. Any other on-invoice discounts or adjustments; and
- q. Any other off-invoice discounts or adjustments.

5. All documents concerning the retention or destruction of any responsive document, or any of your policies with respect to the retention or destruction of documents requested.

6. Organizational charts sufficient to show those involved in the operation of your company during the relevant period.

7. All documents that were consulted or prepared by any person in connection with your preparation of any responses to any interrogatory propounded by this subpoena.

SCHEDULE C

INSTRUCTIONS, RULES OF CONSTRUCTION, DEFINITIONS

Instructions.

1. Verification of Interrogatory Responses. Your response to the Interrogatories set forth in Schedule A shall be verified by a signed affidavit, sworn to by a duly authorized director or officer of your company, before a person authorized to administer oaths in the jurisdiction in which the affidavit is signed. The affidavit shall further state:

a. The name, address, telephone number, and title of each person who provided information contained in the response, and the parts of the response for which that person provided information;

b. That the affiant has read the attached response, and knows its contents, and that, to the best of the affiant's knowledge, information and belief, formed after a reasonable inquiry, the response is true, complete, and correct as of the time of the affidavit.

Where the response to any Interrogatory is made on information and belief, the sources of that information and belief shall be stated in the affidavit.

2. Incomplete Response. If you do not have sufficient information to answer an Interrogatory fully, submit as complete an answer as possible and explain why the answer is incomplete. For that part of the answer for which information is lacking:

a. Submit your best estimate or judgment, so identified, and state the basis of the estimate or judgment;

b. Submit such information available to you as comes closest to providing

the information requested;

c. Where incomplete answers are submitted, and you believe that other sources of more complete or accurate information exist, identify and describe those sources.

3. Affidavit of Compliance. Submit an affidavit of compliance, stating:

a. The name, address, telephone number, and title of each person who made the search of your files for the documents called for in Schedule B, and the location of the files searched;

b. That a complete and comprehensive search was made for the documents;

c. That all documents which are responsive to the Subpoena, except those that you claim are privileged, are included in your production to the Attorney General;

d. That the documents submitted are authentic and genuine;

e. Which documents are produced under each paragraph and subparagraph of the Subpoena, and under which paragraphs and subparagraphs of the Subpoena no documents are produced.

4. Grouping and Numbering of Documents. For each document, specify the paragraph number of the document request to which the document pertains, and the office location where the document is maintained in the ordinary course of business (e.g., John Smith's files). Identify the documents by consecutive numbers placed in their lower right-hand corners. This numbering system will identify documents from your files and facilitate their handling and return to you.

5. Retention of Documents. All copies of any documents responsive to the

Subpoena, and not produced pursuant to an agreement with this Office, shall be retained in your files without alteration or modification until written consent by the Attorney General has been received permitting you to dispose of such documents.

6. Possession, Custody, and Control. These requests call for all responsive documents or information in your possession, custody or control. This includes without limitation documents or information possessed or held by any of your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries or persons from whom you have a right or entitlement to request information, whether or not such information or documents are on your premises. If documents or information are responsive to a request and in your control, but not in your possession or custody, identify the person with possession or custody.

7. Privilege. Where a claim of privilege is asserted in objecting to all or any part of any request, and a document or information is not provided based upon that assertion, you are directed, pursuant to General Business Law § 343, to file with the Attorney General a statement in writing under oath, and in such statement:

a. The attorney asserting the privilege shall, in the objection to the request, or part of a request:

1. Identify the privilege relied on (including assertion of the work product doctrine);

2. State whether a similarly-based claim of privilege has previously been made in any action or investigation;

3. If the answer to (2) is yes, state what disposition was made of each such claim; and

4. If only part of its contents is claimed to be privileged, state the full text of the non-privileged part or, in lieu thereof, prepare and produce a copy of it from which the part claimed to be privileged has been redacted.

b. The following information shall be provided in the objection:

1. For documents:

a. The date, title, subject, description and purpose of the document;

b. The identity and position of the author and of the addressees or other recipients; and

c. Such other information as is sufficient to identify the document, including the relationship of the author and addressee to each other.

2. For oral communications:

a. The identity of the person making the communication and the identity of persons present while the communication was made and the relationship of the persons present to the person making the communication; and

b. The date, place, subject, and purpose of the communication.

8. Objections. Where an objection to all or any part of any Interrogatory is made on grounds of privilege, your attorney shall further submit, with the objection or objections, a writing certifying that, to the best of the signer's knowledge, information, and belief, formed

after reasonable inquiry, the objection is:

a. Warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and

b. Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of investigation or litigation.

9. Continuing Production. The obligation to provide information and documents responsive to this Subpoena is a continuing one. Accordingly, if at any time you obtain knowledge or become aware that additional information or documents in your possession, custody or control are responsive to any paragraph of this Subpoena, you are to provide the information or documents within ten days following the date upon which you first obtained such knowledge or awareness.

10. No Oral Modifications. No agreement by the Attorney General's Office or any of its representatives purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding unless confirmed or acknowledged in writing, or made of record in open court, by a representative of the Attorney General's Office.

11. Relevant Period. This Subpoena seeks information concerning the period January 1, 2000 to and including the date of your response to this Subpoena. All documents or information concerning this period shall be provided.

12. Electronic Production. Electronic production in appropriate cases is encouraged. However, no such production will be acceptable unless, in advance of production, you advise this Office of the formats and methods that you propose to use, and secure this Office's written acceptance of your proposal. By way of general guidance, electronic production

should be made in a Summation-ready format, with document images combined with or linked to searchable text files containing the content of the document itself. Searchable and sortable data fields should be linked to or combined with each document. These data fields should contain at least the following information: (a) the production (“Bates”) number of the document, (b) the file location, identified by natural person and, where applicable, office, where the document is maintained in the ordinary course of business (e.g., Jane Smith’s files), (c) the date of the document, and (d) whether the document’s original is in electronic or paper form. For electronic production purposes, any email attachments should be included with, and treated as part of, the email itself.

Rules of Construction

1. “All” The term “all” shall be construed as all and each.
2. “And/Or.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.
3. “Any” means one or more.
4. “Each” means each and every.
5. “Including” means including but not limited to.
6. “Number/Tense.” The use of the singular form of any word includes the plural and vice versa. In addition, the use of any tense of any verb includes all other tenses of the verb.

Definitions

As used in this Subpoena, the following terms have the following meanings:

1. “Alternative Benchmark Price” (“ABP”) has the meaning in the following URL:

http://www.firstdatabank.com/customer_support/drug_pricing_policy/. See relevant excerpts attached as Exhibit B.

2. “Blue Book Average Wholesale Price” (“BBAWP”) means the figure reported by First DataBank to its customers in the “BBAWP” or “AWP” data fields, as described at the following URL: http://www.firstdatabank.com/customer_support/drug_pricing_policy/. See relevant excerpts attached as Exhibit B.

3. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

4. “Concerning” means discussing, describing, relating to, referring to, reflecting, containing, analyzing, studying, reporting or commenting on, setting forth, considering, recommending, pertaining to, evidencing or constituting, in whole or in part.

5. “Document” means the original and any non-identical copy (whether different from the original because of handwritten notes or underlining made in the document, attachments affixed thereto, or otherwise) or drafts of the document, any handwritten, typewritten, printed, recorded or graphic matter, however produced or reproduced, and any mechanical, magnetic or electronic recording of any voice, sound, image or data, or materials on or in any computer system or computer storage (as defined below), in your possession, custody or control, wherever located. For additional clarity, “document” also refers to electronic data that have been deleted but can be restored, and also includes all metadata and all hidden electronic data such as auto-expanding cells, hidden cells or layered information in Excel or Lotus 123 spreadsheets; embedded images, pictures or tables in documents and e-mails; and dynamic elements in any electronic file.

a. “Computer storage” means any disk, mini-disk, floppy disk, flash drive, hard drive, disk drive, cartridge, personal computer, network, tape, backup, disaster recovery, or any other means of storing, recording, or retaining information generated or maintained on any computer system.

b. “Computer system” means any computer storing or processing any information or document responsive to this Subpoena, including without limitation word processors, personal computers, personal digital assistants, portable laptop and notebook computers, cellular telephones, pagers, voice-mail systems, servers, network terminals, hard drives, computer network systems, mainframes, or any other means of storing or processing magnetic, graphic, photographic, or other descriptive materials or any data or information.

6. “Identify”, when used in reference to documents, means to provide the:

- a. Type of document (letter, memo, etc.);
- b. General subject matter;
- c. Date of the document; and
- d. Author(s), addressee(s) and recipient(s).

This identification shall be done with sufficient particularity to enable the Attorney General to request production through Subpoena or otherwise. In lieu of identifying a document, the Attorney General will accept production of the document, designation of the source from which you obtained the document, and identification of each person you believe to have received a copy of the document.

7. “Identify”, when used in reference to a communication other than a document,
means

to provide the:

- a. Date of the communication;
- b. Type of communication (telephone conversation, meeting, etc.);
- c. Place where the communication took place;
- d. Identity of the person who made the communication;
- e. Identify of each person who received the communication or was present when it was made; and
- f. Subject matter discussed.

8. “Identify”, when used in reference to persons, means to provide the:

- a. person’s full name;
- b. present or last known address, and when referring to a natural person, additionally home and business phone numbers; and
- c. the present or last known place of employment, job title, supervisor and dates so employed (previous positions, dates and supervisors should also be included).

9. “Person” means any natural person, or any business, governmental entity or association.

10. “Wholesale Acquisition Cost” (“WAC”) means any term you used to communicate the type of pricing information you at times called “WAC”.

11. “You” or “your” means the entity to which this Subpoena is addressed, and includes: (a) its present and former directors, officers, agents, employees, attorneys, or other persons acting on its behalf; and (b) all predecessors, successors, parent corporations,

subsidiaries, divisions or affiliates.

You are here: [Homepage](#) > [Customer Support](#) > [Drug Pricing Policy](#)

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Drug Pricing Policy

First DataBank Inc. publishes several drug price data fields, including Wholesale Acquisition Cost, Direct Price, Suggested Wholesale Price, Blue Book AWP and Alternative Benchmark Price.

Wholesale Acquisition Cost (WAC) (previously referred to as Net Wholesale Price) as published by First DataBank represents the manufacturer's (for purposes of this Drug Price Policy, the term "manufacturer" includes manufacturers, repackagers, private labelers and other suppliers) published catalog or list price for a drug product to wholesalers. WAC does not represent actual transaction prices and does not include prompt pay or other discounts, rebates or reductions in price. First DataBank does not perform any independent investigation or analysis of actual transaction prices for purposes of reporting WAC. First DataBank relies on manufacturers to report or otherwise make available the values for the WAC data field.

Direct Price as published by First DataBank represents the manufacturer's published catalog or list price for a drug product to non-wholesalers. Direct Price does not represent actual transaction prices and does not include prompt pay or other discounts, rebates or reductions. First DataBank does not perform any independent investigation or analysis of actual transaction prices for purposes of reporting Direct Price. First DataBank relies on manufacturers to report or otherwise make available the values for the Direct Price data field.

Suggested Wholesale Price (SWP) as published by First DataBank represents the manufacturer's suggested price for a drug product from wholesalers to their customers (i.e., retailers, hospitals, physicians and other buying entities). SWP is a suggested price and does not represent actual transaction prices. First DataBank relies on manufacturers to report or otherwise make available the values for the SWP data field.

Blue Book AWP (BBAWP) as published by First DataBank is intended to represent an average of wholesalers' catalog or list prices for a drug product to their customers (i.e., retailers, hospitals, physicians and other buying entities). However, for those drug products generally not distributed through the wholesaler sales channel, the BBAWP data field will reflect the same value as the Direct Price data field.

First DataBank historically relied upon wholesalers to provide information relating to their catalog or list prices for purposes of publishing the BBAWP data field. First DataBank periodically surveyed full-line national wholesalers to determine the average mark-up applied to a manufacturer's line of products or a specific product. The average mark-up of the wholesaler(s) responding to the survey was

FREQUENTLY ASKED QUESTIONS

For answers to frequently asked questions regarding the drug price policy announcement, please [click here](#).

LETTER TO CUSTOMERS

To view the letter regarding the updated Drug Pricing Policy, please [click here](#).

MANUFACTURERS LIST

For a list of manufacturers and the relevant products that do not report or make available a WAC or Direct Price, please [click here](#).

applied against the WAC or Direct Price with the resulting value populating the BBAWP field. In certain instances, the responding wholesaler(s) would accept a manufacturer's suggested wholesale price, in which case the BBAWP and SWP data fields would reflect the same value.

First DataBank has discontinued surveying drug wholesalers for information relating to their catalog or list prices. However, for purposes of publishing BBAWP, First DataBank has "frozen" the last average wholesale mark-up previously provided to First DataBank through the wholesaler survey process and will no longer update such mark-up. Upon receipt of a change in drug pricing from a manufacturer, this mark-up is applied against the WAC or, if a WAC is not available, the Direct Price, with the resulting value populating the BBAWP field. For those manufacturer product lines for which wholesalers historically accepted the manufacturer's Suggested Wholesale Price, First DataBank will continue to populate the Blue Book AWP and the Suggested Wholesale Price data fields with the same value. As a result, Blue Book AWP will vary solely as a result of changes in pricing information provided by manufacturers.

For those drug manufacturers and lines of products for which First DataBank does not maintain a historical mark-up (e.g., new manufacturers), BBAWP will be determined by applying a standardized mark-up of 25% for prescription drugs and 23% for over-the-counter drugs over the manufacturer's WAC or, if a WAC is not available, over the manufacturer's Direct Price. To the extent that neither the WAC nor the Direct Price is available, First DataBank will populate the BBAWP and the Suggested Wholesale Price data fields with the same value. The standardized mark-ups adopted by First DataBank were determined through a historical analysis of the Blue Book AWP for prescription and over-the-counter drugs as published by First DataBank, as further described below under "Alternative Benchmark AWP." However, for those drug products generally not distributed through the wholesaler sales channel, the BBAWP data field will reflect the same value as the Direct Price data field.

BBAWP does not represent actual transaction prices and does not include prompt pay or other discounts, rebates or reductions. First DataBank does not perform any independent investigation or analysis of actual transaction prices for purposes of reporting BBAWP. BBAWP may not accurately approximate a wholesaler's catalog or list price for the sale of a drug product to its customers. Further, wholesalers may not use catalog or list prices as a basis for determining actual transaction prices. First DataBank does not perform any independent investigation or analysis of list or catalog prices for purposes of reporting BBAWP and no longer surveys wholesalers for purposes of publishing BBAWP.

Alternative Benchmark Price (ABP). Commencing on or about March 31, 2005, First DataBank will publish an additional data field as an alternative benchmark to BBAWP. This Alternative Benchmark Price will be based solely upon a manufacturer's WAC or, if the WAC is not available, the manufacturer's Direct Price. The Alternative Benchmark Price will not give effect to the SWP provided by manufacturers, regardless of whether such value historically was accepted by wholesalers. First DataBank will calculate the Alternative Benchmark Price by applying standardized mark-ups to the manufacturer's WAC or Direct Price, as follows:

Prescription drugs. For prescription drugs, First DataBank will utilize a standardized mark-up of 25% over the manufacturer's WAC or, if a WAC is not available, over the manufacturer's Direct Price.

Over-the-counter drugs. For over-the-counter drugs, First DataBank will utilize a standardized mark-up of 23% over the manufacturer's WAC or, if a WAC is not available, over the manufacturer's Direct Price.

Notwithstanding the foregoing, for those drug products generally not distributed through the wholesaler sales channel, the Alternative Benchmark Price data field will reflect the same value as the Direct Price data field.

First DataBank will not publish the Alternative Benchmark Price for any drug product for which a manufacturer fails to report or otherwise make available the WAC or Direct Price. A list of manufacturers and the relevant products that do not report or make available a WAC or Direct Price will be available on our website at http://www.firstdatabank.com/customer_support/drug_pricing_policy.

The standardized mark-ups adopted by First DataBank were determined through a historical analysis of the BBAWP for all prescription and over-the-counter drugs as published by First DataBank as of December 31, 2001-2004. Such analysis included only those product lines for which a wholesaler mark-up was applied against WAC or Direct Price and generally excluded any product line or specific drug product for which a wholesaler accepted a manufacturer's suggested wholesale price. Such analysis further excluded all private label drug products, repackaged drug products, bulk chemicals, herbals and non-drug items. The standardized mark-up represents the cumulative average difference between the (i) BBAWP and (ii) WAC or Direct Price (as applicable) for the universe of prescription drug products and over-the-counter drug products, as the case may be, included on the NDDF Plus™ database at the relevant times, with the resulting cumulative averages rounded to the nearest whole percentage point.

Following a reasonable period of time necessary to allow First DataBank customers to evaluate and adopt the Alternative Benchmark Price, First DataBank intends to discontinue reporting BBAWP under its current methodology and to substitute the Alternative Benchmark Price as its sole AWP data field. However, to insure that First DataBank will be able to continue offering its customers a comprehensive database of pricing information, First DataBank intends to continue publishing BBAWP at least until such time as manufacturers report or otherwise make available to First DataBank either the WAC or Direct Price for at least 95% of all prescription and over-the-counter products contained in the NDDF Plus database. As of June 30, 2005, manufacturers reported WAC or Direct Price for approximately 57% of all prescription and over-the-counter products contained in the NDDF Plus database. First DataBank will update the foregoing percentage on a quarterly basis.

The Alternative Benchmark Price will be made available to all NDDF Plus and Drug Information Framework customers. Most NDDF Plus and Drug Information Framework™ customers will automatically receive the Alternative Benchmark Price data field as part of their regularly scheduled pricing file updates. However, those customers receiving a customized version of the NDDF Plus database or the

NDDF St. Louis (PIF) database must contact the First DataBank Customer Service Department to arrange for delivery of the Alternative Benchmark Price data field. In addition, the Alternative Benchmark Price data field is currently not included in the PriceProbe™ and PricePoint Rx™ products.

First DataBank relies on manufacturers and other third parties to report or otherwise make available the values for the above referenced drug price data fields and, as a result, such data fields are subject to the availability of the relevant information. First DataBank reserves the right, in its sole discretion, to change this Drug Price Policy without notice. Please check back and refer to First DataBank's Drug Price Policy as you review and utilize the pricing information contained in First DataBank's products.

Please contact Customer Service at 800-633-3453 if you have any questions.

John Ioannou - RE: Subpoena duces tecum from the State of New York directed to AmerisourceBergen Corporation

From: John Ioannou
To: Weiner, Paul
Date: 4/19/2006 5:01:38 PM
Subject: RE: Subpoena duces tecum from the State of New York directed to AmerisourceBergen Corporation
CC: Ford, Zanetta

CORRECTION - Disregard previous e-mail.

Paul,

1. I attach our standard confidentiality agreement;
2. ABC may give notice to First Data (or anybody else) that it has received this subpoena; and
3. Interrogatory 2 - to clarify, I suggested (or meant to suggest?) we would be willing to initially accept limiting your e-mail search to an agreed list of individuals, and of limiting your search to your the active file (under the assumption the active file went back two years). We of course reserve our rights.

Thank you for your cooperation. Regards, John.

John A. Ioannou
Assistant Attorney General, Antitrust Bureau
New York State Office of the Attorney General
120 Broadway, 26th Fl.
New York, N.Y. 10271
Tel: (212) 416-8268
Fax: (212) 416-6015
E-mail: john.ioannou@oag.state.ny.us

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>>> "Weiner, Paul" <weinerpd@BIPC.com> 04/19/06 12:02 PM >>>
John --

Please allow this e-mail to follow up our discussion from this morning.

As we discussed:

- You agreed to extend the time that AmerisourceBergen Corporation ("ABC") has to produce information in response to the subpoena until 30 days from today, or until May 19, 2006. Please



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
120 BROADWAY
SUITE 2601
NEW YORK, NEW YORK 10271
(212) 416-8268 (VOICE)
(212) 416-6015 (TELECOPY)
JOHN.IOANNOU@OAG.STATE.NY.US (E-MAIL)

ANTITRUST BUREAU

ELIOT SPITZER
ATTORNEY GENERAL

April , 2006

Dear M. :

Confidentiality Agreement for [Name] Investigation

The paragraphs below set forth the agreement, when signed as provided below, between the New York State Office of the Attorney General and [Name] (“[Name]”), regarding the treatment of certain documents and information that [Name] asserts are confidential (“Confidential Matter”), which [Name] produces to this office in response to a subpoena, dated December 2, 2005, pursuant to N.Y. Gen. Bus. Law § 343 (the “investigation”).

1. [Name] shall stamp or place the word “confidential” on each document or item of information produced to this office [Name] seeks to designate as Confidential Matter. The documents or information designated as Confidential Matter shall be limited to material containing pricing, financial, marketing, planning, or cost information of [Name] that constitutes trade secrets or similarly sensitive business information that is not made generally available to persons outside of [Name].

2. Except as provided in this agreement or as otherwise required by law, this office shall not disclose any Confidential Matter to any third party. For purposes of this agreement unless the context requires otherwise:

(a) “Disclose” and “disclosure” of any Confidential Matter pursuant to the terms of this agreement: (i) may include disclosure of the contents of Confidential Matter, either orally, in writing, or by providing a copy of the Confidential Matter to the person to whom

disclosure is made; and (ii) shall not include delivery of Confidential Matter by this office to a copying service for purposes of reproducing the material in either hard copy or electronic form for use in connection with the investigation; and

(b) "In writing" or "written," when used in reference to an agreement, shall include electronic mail (e-mail) or facsimile communication.

3. Subject to paragraph 4 below, this office may disclose Confidential Matter to:

(a) any employee of the New York State Attorney General's office;

(b) any agent, expert or consultant used by the office for the purpose of assisting the investigation;

(c) any State Attorney General, the U.S. Department of Justice, the Federal Trade Commission, or other law enforcement offices ("Enforcement Personnel") for the purposes of facilitating joint or coordinated investigation of, or litigation involving [Name], between this office and such Enforcement Personnel, or to enable Enforcement Personnel to investigate or litigate allegedly unlawful or otherwise actionable conduct;

(d) any person who, at the time of the disclosure, is either employed by [Name], or retained by [Name] in connection with the investigation;

(e) any person identified as having received, or who is otherwise known to have received, the document or information;

(f) any witness in the investigation, during an interview by this office or during transcribed or otherwise recorded proceedings conducted by this office, so long as this office reasonably believes that disclosure is appropriate to further the investigation, and takes reasonable steps to minimize apparent prejudice to [Name]'s competitive position; and

(g) any other person pursuant to paragraph 5 below.

4. With respect to the disclosures authorized by paragraph 3:

(a) As a condition of disclosure to any person referred to in paragraphs 3 (b) and (c), the person to whom disclosure is to be made shall be furnished with a copy of this agreement and shall agree in writing to be bound by it.

(b) This office shall notify [Name] of those Enforcement Personnel to whom disclosure is made pursuant to this paragraph 3(c).

(c) When any Confidential Matter is disclosed to a person pursuant to paragraph 3(f), this

office shall not provide a copy of Confidential Matter to the witness or the witness's counsel unless: (i) otherwise required by law or order of a court of competent jurisdiction; or (ii) provided under the procedure set out in paragraph 5 below.

5. If this office wishes to disclose any Confidential Matter to any person other than those referred to in paragraphs 3(a) through (f) above, this office shall notify [Name] of its intent to make such disclosure at least five days prior to the disclosure (the "Notice"), identifying with reasonable particularity the Confidential Matter to be disclosed. If [Name] seeks to oppose disclosure, [Name] may move within that ten (10) day period (the "Notice Period"), on notice to this office, in the Supreme Court of the State of New York, County of New York (the "Court"), for an order barring such disclosure (a "Protective Order Motion").

(a) On any such Protective Order Motion, [Name] shall have the burden of demonstrating that the documents or material identified in the Notice are Confidential Matter within the meaning of this agreement and, to the extent that [Name] satisfies that burden, the documents or material shall not be disclosed.

(b) Upon service of the Protective Order Motion on this office, the Notice Period shall, without further action, be deemed extended for an additional five days (measured from the expiration of the Notice Period).

(c) Upon the expiration of the period provided for in paragraph 5(b), this office may disclose the documents or information identified in the Notice unless the Court, in connection with the Protective Order Motion, directs otherwise.

(d) Absent a Protective Order Motion or a limitation set by this office in the Notice, the documents and information identified in the Notice shall cease to be Confidential Matter for all purposes.

6. This office shall, upon the termination of the pending investigation of [Name], together with any subsequent related investigation or proceeding instituted by this office, notify [Name] of such termination. Unless otherwise required by law, on or after 60 days of the termination of this office's investigation, together with any resulting litigation, this office may have destroyed or returned at [Name]'s option and expense all Confidential Matter provided by [Name] and provide notice to [Name] that it has done so.

7. The Attorney General may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony provided pursuant to the Subpoena as it determines necessary in any litigation or other enforcement action.

8. With respect to any documents or information that [Name] designates as Confidential Matter, this office may apply to the Supreme Court of the State of New York, County of New York, at any time, for an order: (a) determining that particular documents or other information are not

properly designated as Confidential Matter; or (b) limiting the extent to which the parts of particular documents or other information may properly be designated as Confidential Matter; or (c) granting such other relief as may be appropriate. Any such motion shall be on notice to [Name], unless this office determines that prior notice could impair the confidentiality or integrity of the investigation, or unless otherwise provided by law.

9. Any notice periods referenced in this agreement shall be calculated from the date of receipt. Any notice required or permitted to be given under this agreement shall be in writing and may be transmitted by facsimile and shall be presumed received by the person to whom it is directed on the date transmitted. Any such facsimile shall be directed to the following numbers:

Sims Hacher & Bart LLP: (212) 222-1111
Attn: William Smith, Esq.

New York State Office of the Attorney General, Antitrust Bureau: (212) 416-6015
Attn: John A. Ioannou

Please sign below to indicate [Name]'s agreement to these terms.

Sincerely,

John A. Ioannou
Assistant Attorney General

Agreed to by:
[Name]

Agreed to by:
State of New York
Office of the Attorney General

By: _____
William Smith, Esq.
Sims Hacher & Bart LLP

By: _____
Jay L. Himes, Esq.
Bureau Chief
Antitrust Bureau

From: John Ioannou
To: Weiner, Paul
Date: 5/15/2006 4:45:26 PM
Subject: RE: RE: Subpoena duces tecum from the State of New York directed to AmerisourceBergen Corporation

Paul,

In response to, and to add to your e-mail:

1. Historical Data - NY would request ABC make its best efforts to produce the data as soon as possible; and
2. E-mail Searches - to add to what you said, in addition to "ABP", we agreed ABC will use the search term "average benchmark price".

With respect to the confidentiality agreement:

paragraph 4 (formerly paragraph 3) - NY cannot accept the changes made by ABC;

paragraph 6 (formerly paragraph 5) - we will agree to notify ABC twenty (20) days prior to disclosure. However, NY does not accept ABC's changes to 6(b).

Please call me should you have any questions. Regards, John.

John A. Ioannou
Assistant Attorney General, Antitrust Bureau
New York State Office of the Attorney General
120 Broadway, 26th Fl.
New York, N.Y. 10271
Tel: (212) 416-8268
Fax: (212) 416-6015
E-mail: john.ioannou@oag.state.ny.us

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>>> "Weiner, Paul" <weinerpd@BIPC.com> 5/15/2006 3:47 PM >>>

John --

Following up on our discussion:

- * you understand and accept the logistics and expenses involved in harvesting the historical data sought via the subpoena, including the time requirements detailed in my prior e-mail; and
- * before you can agree to limit the e-mail searches as ABC has proposed, you want to review an organizational chart for ABC. We will provide one promptly. In the meantime, we agreed that ABC should hold off on conducting any e-mail searches.

From: John Ioannou
To: Weiner, Paul
Date: 5/19/2006 2:29:00 PM
Subject: RE: RE: Subpoena duces tecum from the State of New York directed to AmerisourceBergen Corporation

Paul,

All comments that follow refer to your 5/4/2006 redline draft:

New York will not accept ABC's changes to paragraph 6(b), however, as I previously noted, we would be willing to increase the number of days before any disclosure, as described in paragraph 6, to twenty (20) days.

Paragraph 4 - first sentence, delete the rest of the sentence after the word "Court". Last sentence, delete the word "only";

Paragraph 5(a) - delete "and (f)";

Paragraph 7 - second sentence, delete the word "ABC's" after the phrase "have returned or destroyed at" and replace with "NYAG's"

In addition, reinsert paragraph 7 from **my original draft** which reads: "The Attorney General may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony provided pursuant to the Subpoena as it determines necessary in any litigation or other enforcement action."

Thank you for you continued cooperation. Regards, John.

John A. Ioannou
Assistant Attorney General, Antitrust Bureau
New York State Office of the Attorney General
120 Broadway, 26th Fl.
New York, N.Y. 10271
Tel: (212) 416-8268
Fax: (212) 416-6015
E-mail: john.ioannou@oag.state.ny.us

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>>> "Weiner, Paul" <weinerpd@BIPC.com> 5/17/2006 9:08 PM >>>

John --

I talked with my client regarding the timing issue, and ABC cannot agree to paragraph 6(b) unless the language is changed as we have proposed, for the reasons I have previously noted.

From: "Weiner, Paul" <paul.weiner@bipc.com>
To: "John Ioannou" <John.ioannou@oag.state.ny.us>
Date: 7/12/2006 2:21:42 PM
Subject: RE: RE: Subpoena duces tecum from the State of NewYorkdirected to AmerisourceBergen Corporation

John --

Following up our recent telephone calls, please allow this e-mail to confirm:

*

you and Mr. Hubbard were going to check on whether your office would agree to extend the time limitation in paragraph 6 and 6(b) of the Confidentiality Agreement from 20 days (see your e-mail from May 15) to 60 days;

*

you have determined that your office: (a) will not agree to anything more than a 10 day notice period; (b) is insisting that paragraph 6(b) state that any confidential documents automatically lose their Confidential designation if a Court does not act on any Motion for a Protective Order within the 10 day period; and (c) will not agree to ABC's request that paragraph 6(b) provide that if, after notice, ABC files a Motion for a Protective Order, all relevant documents shall retain their Confidential designation until the Court rules on such motion.

As we discussed today, I will touch base with my client to inform them of this development, and contact you shortly to advise how we intend to proceed.

Thanks.

--Paul.

Paul D. Weiner

Buchanan Ingersoll & Rooney PC

1835 Market Street, 14th Floor

Philadelphia, PA 19103-2985

(215) 665-3880 (direct)

(215) 665-8760 (fax)

weinerpd@bipc.com (e-mail)

www.bipc.com <<http://www.bipc.com/>> (web)

From: Weiner, Paul

Paul D. Weiner
(215) 665-3880
paul.weiner@bipc.com

1835 Market Street
14th Floor
Philadelphia, PA 19103-2985
T 215 665 8700
F 215 665 8760
www.buchananingersoll.com

August 8, 2006

*via facsimile (212-416-6015)
and first class U.S. mail*

John A. Ioannou
Robert Hubbard
Assistant Attorney General, Antitrust Bureau
New York State Office of the Attorney General
120 Broadway, 26th Floor
New York, NY 10271

Re: Subpoena issued by Attorney General of the State of New York against
ABDC concerning, *inter alia*, First DataBank's new "ABP Price field" (the
"NYAG Subpoena")

Dear Counsel:

Following up on our discussion from Friday:

- the NYAG Subpoena seeks information and data from ABC that is highly confidential and proprietary and not available to the general public.
- ABC intends to voluntarily comply with the NYAG Subpoena, and has been working diligently to gather and harvest responsive electronic data. Given that such data and information has significant economic value to ABC, both parties agree that its production should be subject to confidentiality protections, and have been negotiating the terms of a Confidentiality Agreement.
- as you know, ABC believes that the CPLR expressly applies to subpoenas issued pursuant to section 343 of the Donnelly Act, like the one in this matter. Indeed, section 343 specifically references and incorporates the provisions of the CPLR 2304, stating (emphasis supplied):

Any person, persons, partnership, corporation, company trust or association, who has been served with subpoena pursuant to this section may make a motion, pursuant to section twenty-three hundred four [2304] of the civil practice law and rules, to quash, fix conditions, or modify such subpoena

August 8, 2006

Page - 2 -

- accordingly, ABC has proposed language in the Confidentiality Agreement that provides if a Motion for Protective Order is filed by ABC, all "Confidential" information will continue to be treated as "Confidential" *until the Court rules on the Motion*. This language is not only consistent with the mandates of CPLR § 3103(b), but also with justice and fairness.
- The NYAG has taken the position that the CPLR does not apply to subpoenas issued pursuant to section 343 of the Donnelly Act, claiming, *inter alia*:

GBL 343 says nothing about the CPLR and the Court analyzes 343 without importing the CPLR, but rather construes what the statute says. In short, our investigatory power is not limited to the CPLR.

- based on that position, the NYAG is insisting that the language in the Confidentiality Agreement provide that if the NYAG seeks to disclose Confidential Information to the general public, it will give ABC notice, and ABC then has a mere ten (10) days (the "10 Day Notice Period") to not only file a Motion for Protective Order, but also to obtain a Court ruling on that Motion. According to the NYAG's proposed language, *if the Court does not rule within this limited (ten) 10 day time frame, the Confidential Information automatically loses its Confidentiality designation*.
- your office had previously proposed extending the 10 Day Notice Period to 60 days, however, your office ultimately would not agree to move off of the 10 day period.
- On Friday, you asked me to set forth a "final" proposal to resolve this matter.
- I also noted during our call that if it becomes necessary to litigate the confidentiality issue, ABC will seek to be reimbursed for all of its costs and fees incurred to harvest electronic data in response to the Subpoena.

I have had an opportunity to talk with my client and ABC will agree to a forty-five (45) day time period for the Notice Period. Pursuant to your request, I enclose a revised version of the Confidentiality Agreement that incorporates the 45 day time period.

If ABC's offer is not acceptable to the NYAG, ABC will be left with no option but to file a Motion to Fix Conditions or Modify Non-Party Civil Subpoena Pursuant to CPLR 2304. Hopefully, that will not be necessary.

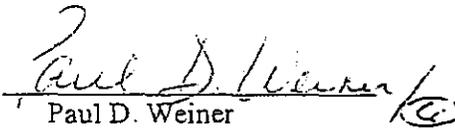
I have enclosed a draft of that Motion (without exhibits), that sets forth ABC's position in greater detail, for your review. ABC will hold off on filing that motion until we hear back from your office.

August 8, 2006
Page - 3 -

Please contact me after you have had an opportunity to further consider these matters.

Very truly yours,

BUCHANAN INGERSOLL & ROONEY PC

By: 
Paul D. Weiner

PDW/cj
Enclosure

cc: Alan Lewis, Esquire (w/encl.)



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
ATTORNEY GENERAL

120 BROADWAY
SUITE 2601
NEW YORK, NEW YORK 10271
(212) 416-8268 (VOICE)
(212) 416-6015 (TELECOPY)
JOHN IOANNOU@OAG.STATE.NY.US (E-MAIL)

ANTITRUST BUREAU

August 8, 2006

via facsimile and first class U.S. mail
Paul D. Weiner
Buchanan Ingersoll & Rooney PC
1835 Market Street, 14th Floor
Philadelphia, PA 19103-2985

Re: Subpoena served on AmerisourceBergen Corporation on April 6, 2006

Dear Mr. Weiner:

Confidentiality Agreement for First DataBank ABP Price Field Investigation

The paragraphs below set forth the agreement, when signed as provided below, between the New York State Office of the Attorney General (the "NYAG") and AmerisourceBergen Corporation ("ABC"), regarding the treatment of certain documents and information that ABC asserts are confidential ("Confidential Matter"), which ABC produces to the NYAG in response to a subpoena, dated April 6, 2006, pursuant to N.Y. Gen. Bus. Law § 343 (the "Investigation").

1. ABC shall stamp or place the word "CONFIDENTIAL" on each document or item of information produced to this office ABC seeks to designate as Confidential Matter. In the case of electronically-stored information, or information that is produced in an electronically-stored format, ABC shall stamp the physical medium by which the information is transmitted (e.g. computer tape, computer disk, CD Rom, etc.) as "CONFIDENTIAL." If the NYAG shall create any readable report or output from such Confidential Matter, the NYAG shall prominently label each page of such output report as "CONFIDENTIAL." ABC may also denominate any response to any written discovery request Confidential Material by stamping the cover or first page, "CONFIDENTIAL."

2. The documents or information designated as Confidential Matter shall be limited to material containing pricing, financial, marketing, planning, or cost information that constitutes trade secrets, confidential and proprietary information or similarly sensitive business and commercial information, including without limitation information that ABC is required to maintain as confidential pursuant to current contractual agreements, that is not made generally available to persons outside of ABC.

3. Except as provided in this agreement or as otherwise required by law, this office shall not disclose any Confidential Matter to any third party. For purposes of this agreement unless the context requires otherwise:

(a) "Disclose" and "disclosure" of any Confidential Matter pursuant to the terms of this agreement: (i) may include disclosure of the contents of Confidential Matter, either orally, in writing, or by providing a copy of the Confidential Matter to the person to whom disclosure is made; and (ii) shall not include delivery of Confidential Matter by this office to a copying service for purposes of reproducing the material in either hard copy or electronic form for use in connection with the Investigation; and

(b) "In writing" or "written," when used in reference to an agreement, shall include a letter or facsimile communication.

4. Limited Disclosure and Use of Confidential Material: The NYAG has a duty to preserve confidentiality of the Confidential Material, shall not make any further disclosure of Confidential Material except as authorized below or by order of Court, and shall use it only for purposes of the Investigation, subject to the parameters of this agreement. The NYAG, subject to paragraph 5 below, may only disclose Confidential Matter to:

(a) any employee of the NYAG's office;

(b) any agent, expert or consultant used by the NYAG's office for the purpose of assisting the Investigation;

(c) any State Attorney General, the U.S. Department of Justice, the Federal Trade Commission, or other law enforcement offices ("Enforcement Personnel") for the purposes of facilitating joint or coordinated investigation of, or litigation involving the Investigation, between this office and such Enforcement Personnel, or to enable Enforcement Personnel to investigate or litigate allegedly unlawful or otherwise actionable conduct;

(d) any person who, at the time of the disclosure, is either employed by ABC, or retained by ABC in connection with the Investigation;

(e) any person identified as having received, or who is otherwise known to have received, the document or information;

(f) any witness in the Investigation, during an interview by the NYAG or during transcribed or otherwise recorded proceedings conducted by the NYAG, so long as the NYAG office reasonably believes that disclosure is appropriate to further the Investigation, and takes reasonable steps to minimize apparent prejudice to ABC's business and competitive position; and

(g) any other person pursuant to paragraph 6 below.

5. With respect to the disclosures authorized by paragraph 4:

(a) As a condition of disclosure to any person referred to in paragraphs 4(b), (c) and (f), the person to whom disclosure is to be made shall be furnished with a copy of this agreement and shall agree in writing to be bound by it.

(b) The NYAG shall notify ABC in writing of those Enforcement Personnel to whom disclosure is made pursuant to paragraph 4(c).

(c) When any Confidential Matter is disclosed to a person pursuant to paragraph 4(f), this office shall not provide a copy of Confidential Matter to the witness or the witness's counsel unless: (i) otherwise required by law or order of a court of competent jurisdiction; or (ii) provided under the procedure set out in paragraph 6 below.

6. If this office wishes to disclose any Confidential Matter to any person other than those referred to in paragraphs 4(a) through (f) above, this office shall notify ABC in writing of its intent to make such disclosure at least ten (10) days prior to the disclosure (the "Notice"), identifying with reasonable particularity the Confidential Matter to be disclosed. If ABC seeks to oppose disclosure, ABC may move within that ten (10) day period (the "Notice Period"), on notice to the NYAG, in the Supreme Court of the State of New York, County of New York (the "Court"), for an order barring such disclosure (a "Protective Order Motion").

(a) On any such Protective Order Motion, ABC shall have the burden of demonstrating that the documents or material identified in the Notice are Confidential Matter within the meaning of this agreement.

(b) Upon service of the Protective Order Motion on this office, the Notice Period shall, without further action, be deemed extended for an additional forty five (45) days (measured from the expiration of the Notice Period).

(c) Upon the expiration of the period provided for in paragraph 5(b), this office may disclose the documents or information identified in the Notice unless the Court, in connection with the Protective Order Motion, directs otherwise.

- (d) Absent a timely filing for a Protective Order Motion or a limitation set by the NYAG in the Notice, the documents and information identified in the Notice shall cease to be Confidential Matter for all purposes.

7. This office shall, upon the termination of the pending Investigation, together with any subsequent related investigation or proceeding instituted by this office, notify ABC in writing of such termination. Unless otherwise required by law, on or after 60 days of the termination of the Investigation, together with any resulting litigation, the NYAG will have destroyed or returned, at ABC's option, all Confidential Matter provided by ABC, and shall provide written notice to ABC that it has done so. Unless otherwise ordered or agreed, neither the termination of the Investigation nor the termination of employment of any person who has had access to any Confidential Material shall relieve such person from the terms of this Agreement.

8. With respect to any documents or information that ABC designates as Confidential Matter, this office may apply to the Supreme Court of the State of New York, County of New York, at any time, for an order: (a) determining that particular documents or other information are not properly designated as Confidential Matter; or (b) limiting the extent to which the parts of particular documents or other information may properly be designated as Confidential Matter; or (c) granting such other relief as may be appropriate. Any such motion shall be on written notice to ABC.

9. Any notice periods referenced in this agreement shall be calculated from the date of receipt. Any notice required or permitted to be given under this agreement shall be in writing and may be transmitted by facsimile and shall be presumed received by the person to whom it is directed on the date transmitted. Any such facsimile shall be directed to the following numbers:

For ABC:

Buchanan Ingersoll & Rooney PC : (215) 665-8760
Attn: Paul D. Weiner, Esquire
1835 Market Street, 14th Floor
Philadelphia, PA 19103-2985
(215) 665-3880

with a copy to:

Jonathan Sturz, Esquire: (610) 727-3643
Litigation Counsel
AmerisourceBergen Corporation
1034 Tyler Drive
Newtown Square, PA 19073

For the NY State Office of the Attorney General:

New York State Office of the Attorney General, Antitrust Bureau: (212) 416-6015
Attn: John A. Ioannou

Please sign below to indicate ABC's agreement to these terms.

Sincerely,

John A. Ioannou
Assistant Attorney General

Agreed to by:
AmerisourceBergen Corporation

Agreed to by:
State of New York
Office of the Attorney General

By: _____
Paul D. Weiner, Esq.
Buchanan Ingersoll & Rooney PC

By: _____
Jay L. Himes, Esq.
Bureau Chief
Antitrust Bureau