

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

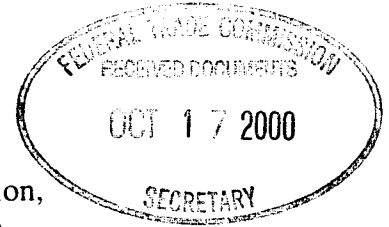
In the Matter of

HOECHST MARION ROUSSEL, INC., a corporation,
CARDERM CAPITAL L.P., a limited partnership,

and

ANDRX CORPORATION, a corporation.

Docket No. 9293



**RESPONDENT ANDRX CORPORATION'S MOTION TO COMPEL
EUGENE N. MELNYK AND BRUCE BRYDON TO APPEAR FOR
DEPOSITIONS AND PRODUCE DOCUMENTS**

Pursuant to Section 3.38 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.38, respondent Andrx Corporation ("Andrx") hereby moves for an order (i) compelling Eugene N. Melnyk and Bruce Brydon, senior executives of Biovail Corporation International, to appear for depositions and produce documents in response to Andrx's requests by no later than ten days after this motion is granted or, alternatively, (ii) precluding Complaint Counsel from calling any Biovail witnesses to testify at trial.

The bases of this motion are set forth in the accompanying Memorandum in Support of Motion to Compel Eugene N. Melnyk and Bruce Brydon to Appear for Depositions and Produce Documents (dated October 16,

2000), and the accompanying Declaration of Hal S. Shaftel, executed on October 16,
2000.

Dated: New York, New York
October 16, 2000

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP

By: Hal S. Shaftel

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MEMORANDUM IN SUPPORT OF MOTION TO COMPEL
EUGENE N. MELNYK AND BRUCE BRYDON TO APPEAR
FOR DEPOSITIONS AND PRODUCE DOCUMENTS**

Respondent Andrx Corporation ("Andrx") submits this memorandum, pursuant to Section 3.38 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.38, in support of its motion for an order (i) compelling Eugene N. Melnyk and Bruce Brydon, senior executives of Biovail Corporation ("Biovail"), to appear for depositions and produce documents in response to Andrx's requests by no later than ten days after the motion is granted or, alternatively, (ii) precluding Complaint Counsel from calling any Biovail witnesses to testify at trial.

Preliminary Statement

Biovail is once again trying to block Andrx from taking discovery from individuals who have closely collaborated with Complaint Counsel in preparing this case. Mr. Melnyk, Biovail's Chairman, was identified by Complaint Counsel on its initial witness list before recently being dropped -- as Complaint Counsel improperly seeks to "cherry pick" which Biovail executives to rely on at trial and which to keep away from

respondents. Despite having been served personally in New York with subpoenas for both deposition and document discovery, Mr. Melnyk has flatly refused to comply with the subpoenas and, indeed, did not even seek relief from this Court with respect to his discovery obligations. Mr. Brydon, Biovail's President and Chief Executive Officer, remains on Complaint Counsel's witness list unlike Mr. Melnyk. Even so, however, Mr. Brydon refuses to appear for his deposition after the parties were forced to cancel a previously scheduled date when counsel and the witness all appeared because -- much to our regret -- miscommunications over logistics resulted in the parties' failure to arrange for a court reporter (and then inability to obtain one).

As prior submissions have described, from the very inception of the FTC's investigation of this case, Biovail, including Messrs. Melnyk and Brydon, have been intimately involved in the case, and have had extensive communications with various FTC staff members. Biovail and its representatives, including Messrs. Melnyk and Brydon, have made themselves available to the FTC staff during every aspect of the proceeding, dating back to the non-public investigation. Specifically, eight Biovail employees (the most of any private entity), including Messrs. Melnyk and Brydon, appear in a June 12, 2000 letter from Complaint Counsel to respondents as individuals with whom the FTC staff communicated throughout the course of this investigation and adjudicative proceeding. Furthermore, allegations concerning Biovail appear numerous times in the FTC's Complaint (see Complaint ¶¶ 16, 20 and 21) and in Complaint Counsel's responses to Andrx's Interrogatories (see Interrogatory Responses Nos. 3, 15 and 16).

In addition to Messrs. Melnyk and Brydon, Complaint Counsel has identified Kenneth Cancellera, Biovail's in-house General Counsel, as a witness it expects

to testify at trial. To date, Mr. Cancellera is the only Biovail witness Andrx has been able to depose. Mr. Cancellera's deposition testimony, however, is certainly insufficient standing alone, as the scope of his knowledge is not the same as Messrs. Melnyk and Brydon and he does not have -- unlike Messrs. Melnyk and Brydon -- direct personal involvement in Biovail's business operations, and much of what he does know, given his position as General Counsel, is privileged.

Despite the magnitude of its involvement in Complaint Counsel's case, Biovail has consistently refused to cooperate in allowing respondents access through discovery to its executives who have spoken with the FTC staff and documents containing information relevant to this case. At the status conference on August 3, 2000, this Court made clear that Complaint Counsel would risk an order of preclusion if Biovail did not furnish appropriate deposition and document discovery. See 8/3 Tr. at 127. Indeed, Complaint Counsel itself acknowledged that "we recognize the problem if Biovail doesn't show up and make itself available, that we may very well face preclusion at the end of the day." Id. Given that respondents' opportunity to obtain discovery has been abbreviated and discovery currently is set to close on October 20, 2000, this Court should issue an order compelling Biovail to furnish the requested deposition and document discovery immediately or, alternatively, precluding Biovail witnesses from appearing on Complaint Counsel's behalf at trial.

ARGUMENT¹

A. No Legitimate Basis Exists for Mr. Melnyk to Ignore the Subpoenas Served on Him Personally and He Should Be Compelled to Provide Deposition and Document Discovery

On August 26, 2000, Mr. Melnyk was personally served in New York with a Subpoena Ad Testificandum and Subpoena Duces Tecum (the "Melnyk Subpoenas"), in accordance with the Commission's Rule of Practice 3.34(a)(1), 16 C.F.R. §3.34(a)(1). Specifically, these subpoenas were served on Mr. Melnyk at the Saratoga Race Track, in Saratoga Springs, New York. See Return of Service attached to Melnyk Subpoenas, Ex. A to Shaftel Decl. The Melnyk Subpoenas called for Mr. Melnyk to both (i) appear for a deposition on September 18, 2000, at 10:00 a.m., at the offices of Solomon, Zauderer, Ellenhorn, Frischer & Sharp in New York, and (ii) bring with him certain documents specified in an exhibit to the Melnyk Subpoenas

In response, Mr. Melnyk and his counsel, the Proskauer Rose firm (which represents Biovail in various litigation matters relating to the HMR/Andrx Stipulation), has refused to comply with the Melnyk Subpoenas. See correspondence attached as Exhibits D-H to Shaftel Decl. Rather, Andrx was advised that Mr. Melnyk would be available for questioning in Barbados on a date unilaterally designated by him -- and after several days of providing deposition testimony in a case in which Andrx is not a party. In a letter dated September 11, 2000 (Ex. D to Shaftel Decl.), Mr. Melnyk's counsel imposed the following restrictions on questioning Mr. Melnyk: Mr. Melnyk would only appear in Barbados on "a date previously scheduled for Mr. Melnyk's deposition in the New Jersey Action [in which Andrx is not a party] . . . defendants in the New Jersey Action estimate needing as much

¹ References below to the "Shaftel Decl." shall mean the accompanying Declaration of Hal S. Shaftel, executed on October 16, 2000.

as three days to complete their examination . . . [and] [w]e will object to any duplication of that examination by counsel for Andrx." Plus, Mr. Melnyk did not agree to provide any of the requested documents.

As Andrx explained to Mr. Melnyk and his counsel, it was willing to accommodate Mr. Melnyk's schedule and agree on a date convenient to him. However, Biovail's offer to make Mr. Melnyk available only in Barbados on a date selected solely by him was not acceptable for various reasons. Nothing in the rules authorized Biovail unilaterally to insist that Andrx travel to Barbados to take Mr. Melnyk's deposition and sit through a deposition scheduled in another case in which Andrx is not a party and involving many issues irrelevant to this FTC proceeding.² Indeed, New York is particularly appropriate since Mr. Melnyk is regularly in New York where he has an apartment and his counsel is present here. Beyond that, the date selected by Biovail was unworkable because Andrx's counsel had a long-scheduled business trip to the United Kingdom on that date. See Shaftel Decl., ¶ 7.

Significantly, neither Mr. Melnyk nor Biovail filed a motion for a protective order or motion to quash the Melnyk Subpoenas. Even the correspondence from their counsel to Andrx's counsel postdated the deadline for making a motion. If Mr. Melnyk had a dispute with the subpoenas as to time and/or place, his recourse was to seek relief from this Court and not simply to ignore the subpoenas. Given that failure, Mr. Melnyk has waived any right he may have had to object to the Melnyk Subpoenas. The Commission's Rule of Practice 3.34 provides, "Any motion by the subject of a subpoena to limit or quash

² Complaint Counsel also has noticed depositions for locations (i.e., Washington, D.C.) where the witness does not reside. In any event, in a letter dated September 13, 2000 (Ex. E to Shaftel Decl.), Andrx specifically requested that counsel for Mr. Melnyk provide authority in support of its contention that Barbados is the proper venue for Mr. Melnyk's deposition. However, Andrx received no response whatsoever to this request.

the subpoena shall be filed within the earlier of ten (10) days after service thereof or the time for compliance thereof." The failure to make timely objection to a subpoena results in the waiver of any objection. See, e.g., In re Motorsports Merchandise Antitrust Litig., 186 F.R.D. 344, 349 (W.D. Va. 1999) ("Ordinarily, the failure to make timely objection to a subpoena duces tecum pursuant to [Rule 45(c)(2)(B), the Federal Rule of Civil Procedure commensurate to Rule 3.34] will waive any objection"); Creative Gifts, Inc. v. UFO, 183 F.R.D. 568, 571 (D.N.M. 1998) (holding that nonparty waived right to object to subpoena by failing to object within time prescribed).

It is beyond reasonable dispute that respondents should be permitted to depose Mr. Melnyk. Not only has Mr. Melnyk communicated about this case with Complaint Counsel, but he was identified on their initial witness list (see Shaftel Decl., Ex. C). Mr. Melnyk possesses unique knowledge relating to this case, including, among other things, information concerning Andrx's affirmative defenses and Biovail's communications with the FTC staff. Moreover, Mr. Cancellera testified at his deposition that that Mr. Melnyk took the lead in alleged discussions between Andrx and Biovail. Moreover, we have reason to believe that Mr. Melnyk had many other communications relevant to this proceeding, including with Biovail's agents, about which Mr. Cancellera is unaware.

Although Complaint Counsel now has dropped Mr. Melnyk from their witness list (his identification on the initial list reflects he has relevant information), they should not be allowed to "cherry pick" as to which Biovail witnesses to use and which to distance from the case because of knowledge unhelpful to them.

Biovail's argument that it is burdensome for Mr. Melnyk to appear in New York for a deposition is disingenuous. See Letter from Francis Landrey to Hal S. Shaftel, annexed as Ex. D to Shaftel Decl. The discovery record to date reflects that Mr. Melnyk is frequently in New York for both business and personal matters; in fact, he has an apartment here. Indeed, as noted above, Mr. Melnyk was served with the subpoenas while present in New York at the Saratoga Race Track, where Andrx understands Mr. Melnyk's horses frequently race. In any event, "reasonable inconvenience must be borne [by nonparties] to further the goals of discovery -- the making available to litigants all relevant and available information." Northrop Corp. v. McDonnell Douglas Corp., 751 F.2d 395,407 (D.C. Cir. 1984) (holding that inconvenience of discovery request on nonparty to litigation is insufficient reason to quash subpoena).

Here, there was no justification why Mr. Melnyk did not comply with the subpoenas personally served on him while he was in New York. If Mr. Melnyk had a dispute with the subpoenas as to time or place, his recourse was to seek relief from this Court; instead, he simply ignored them. Under these circumstances, this Court should compel Mr. Melnyk to comply with the subpoenas and appear for deposition and produce the requested documents.

B. Mr. Brydon Should Be Compelled to Appear for His Deposition

Mr. Brydon was identified on Complaint Counsel's most recent witness list as a witness that Complaint Counsel intends to call at trial. See 9/13/00 Complaint Counsel's Revised Witness List. As such, his deposition obviously is critical to respondents' trial preparation. Mr. Brydon, as a senior executive at Biovail, also is likely to have knowledge regarding key aspects of this case, including, among other things, his own communications with the FTC staff and Biovail's business activities as an alleged

competitor to Andrx. His testimony is relevant to issues such as alleged competitive harm and the restraint of trade, Biovail's activities with respect to a generic version of Cardizem CD, and the use of a Rule of Reason analysis to determine what constitutes a standard agreement in the industry.

Despite Andrx's requests, Mr. Brydon has never agreed to appear on a date or at a location that Andrx selected or to produce any documents that Andrx requested. Rather, Andrx was advised by letter from the Proskauer Rose firm, acting as Mr. Brydon's counsel, that Mr. Brydon's deposition would proceed on September 28, 2000, in his lawyer's office in Washington, D.C. -- not at Andrx's offices in New York on a date selected by Andrx, which is what Andrx would have preferred. See 9/5/00 Letter from Francis Landrey to various counsel, annexed as Ex. I to Shaftel Decl. Given that context, it was Andrx's understanding that, just as the date and place had been arranged by Mr. Brydon's counsel, the court reporter also was being arranged by them. However, Andrx's understanding was incorrect.

Regrettably, because there was a miscommunication over the logistics of arranging for a court reporter, respondents were unable to proceed with Mr. Brydon's deposition on September 28, 2000. Immediately on the morning of September 28, counsel for both Andrx and Mr. Brydon realized that no party had arranged for a court reporter. Respondents then did everything conceivable to arrange for a court reporter. Not only did counsel for respondents call multiple court reporters in the Washington, D.C. area throughout the morning, they tried to arrange, through court reporting services in New York, for a court reporter in New York to transcribe the deposition proceeding in Washington, D.C. telephonically. Even that proved ultimately unsuccessful.

By afternoon on September 28, all of the parties concluded that they would not be able to find a court reporter and Mr. Brydon was released to attend to his business. He thus did not have to remain at the deposition all day. Both on September 28 and thereafter, counsel for Andrx has expressed sincere apologies to Mr. Brydon for the confusion. Of course, counsel for Andrx also incurred cost and inconvenience as a result of having to fly to Washington, D.C. for a deposition that did not take place that day.

Since then, Mr. Brydon has refused to reschedule his deposition. To minimize any inconvenience to Mr. Brydon, Andrx repeatedly has made clear that it will take Mr. Brydon's deposition near his offices in Canada, if that is more convenient for Mr. Brydon, and on any date -- including weekends. In spite of all of Andrx's efforts to accommodate Mr. Brydon, Biovail refuses to produce him for a deposition. See 10/10/00 Letter from Francis Landrey, counsel for Biovail, to Hal S. Shaftel, attached as Ex. H to Shaftel Decl.

At the status conference before this Court on October 5, 2000, the issue of Mr. Brydon's deposition was raised. Andrx believes that the Court made clear its desire that the parties and Biovail seek a reasonable accommodation and take discovery from Mr. Brydon. The Court stated:

If they [Andrx] are willing to bend over backwards to come to where he is, and I'm not saying anybody is being unreasonable here, but it sounds like they are trying to work with you and your client.

10/5/00 Tr., at 76.

To minimize any further inconvenience to Mr. Brydon, Andrx has even offered to take Mr. Brydon's deposition near his offices in Canada on a date of his

choosing. In light of his refusal, the Court should direct him to provide the requested discovery without further delay.

C. Biovail's Continued Refusal to Provide the Requested Discovery Would Justify Precluding Complaint Counsel from Calling any Biovail Witness to Testify at Trial

The Commission's Rules of Practice, see 16 C.F.R. § 3.38(b), set forth a variety of sanctions to address discovery abuses, including authorizing the Court to "[r]ule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon [certain] testimony". See 16 C.F.R. § 3.38(b)(3).

Here, senior Biovail executives, including Messrs. Melnyk and Brydon, have collaborated closely with Complaint Counsel in preparing this case. As such, they are as a practical matter agents of the FTC staff in this matter -- they already have met extensively with FTC staff, they have agreed to appear at trial at the FTC staff's request, and they will (according to Mr. Cancellera's testimony) again meet with the FTC staff prior to any trial testimony. This Court already warned about the risk of preclusion in the event Biovail resisted discovery. See 8/3 Tr. at 127. Likewise, this Court stated in granting the motion of Biovail and certain executives to quash subpoenas personally served on them in Canada based on procedural technicalities:

The Court is confident that the parties and Biovail will be able to resolve this dispute. In the event that the parties are not able to develop an appropriate discovery schedule including the voluntary depositions of Biovail employees, Andrx may refile its motion to preclude.

Order dated July 14, 2000, at 4-5.

The appropriateness of an order of preclusion in the event of Biovail's continued obstruction of the discovery process is supported by Bradgate Associates Inc. v. Fellows, Read & Associates, Inc., 1992 U.S. Dist. 4668 (D.N.J. 1992), where the District Court affirmed the magistrate's ruling precluding the testimony of a witness at trial when the plaintiff had failed to

proffer that witness for a pre-trial deposition, stating that the magistrate's preclusion ruling "cannot be found to be unjust or an abuse of discretion" under Fed. R. Civ. P. 37(b)(2)(B). Id. at *4. Similarly, in Magee v. Paul Revere Life Insurance Co., 178 F.R.D. 33 (E.D.N.Y. 1998), the court held that sanctioning the plaintiff by precluding the testimony of his witness at trial was permissible where the witness had failed to appear for deposition; this failure was imputed to the plaintiff as his failure to produce a witness for deposition when that witness could be produced at trial. Magee, 178 F.R.D. at 38. In so doing the court rejected the plaintiff's argument that Fed. R. Civ. P. 45 was the exclusive remedy available to the defendant (i.e., sanctioning the witness), and held that Rule 37(d) was available to punish the plaintiff for failure to produce for deposition a witness who it had the capacity to produce at trial. Id.

If Mr. Melnyk's and Mr. Brydon do not provide the requested discovery, an order precluding reliance by Complaint Counsel on testimony at trial from any Biovail witnesses would be clearly warranted.

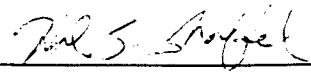
Conclusion

For the foregoing reasons, Andrx respectfully requests that this Court grant its motion for an order compelling Messrs. Melnyk and Brydon to appear for depositions and produce documents within ten business days of the order granting this motion or,

alternatively, precluding any Biovail witness from testifying at trial at Complaint Counsel's behest.

Dated: New York, New York
October 16, 2000

SOLOMON, ZAUDERER, ELLENHORN,
FRISCHER & SHARP

By: 

Louis M. Solomon

Hal S. Shaftel

Colin A. Underwood

Teresa A. Gonsalves

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New York, New York 10111

(212) 956-3700

Attorneys for Respondent Andrx Corporation

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

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HOECHST MARION ROUSSEL, INC., a corporation,
CARDERM CAPITAL L.P., a limited partnership,

and

ANDRX CORPORATION, a corporation.

Docket No. 9293

DECLARATION OF HAL S. SHAFTEL

HAL S. SHAFTEL, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of Solomon, Zauderer, Ellenhorn, Frischer & Sharp, counsel for respondent Andrx Corporation ("Andrx"). I submit this declaration in support of Andrx Corporation's motion, pursuant to the Commission's Rule of Practice 3.38, 16 C.F.R. § 3.31, compelling deposition and document discovery from or, alternatively, providing Complaint Counsel from calling any Biovail witness to testify at trial.

2. Annexed hereto as Exhibit A is a copy of the Subpoena Duces Tecum and Subpoena Ad Testificandum personally served on Mr. Melnyk on August 26, 2000, in New York.

3. On June 12, 2000, Complaint Counsel identified Messrs. Melnyk and Brydon as individuals with whom the FTC staff has communicated throughout the course of this investigation and adjudicative proceeding. A copy of the June 12 letter is annexed hereto as Exhibit B.

4. On June 14, 2000, Messrs. Melnyk and Brydon were identified as witnesses Complaint Counsel intended to call at trial. A copy of Complaint Counsel's Preliminary Witness List, dated June 14, 2000, is annexed hereto as Exhibit C.

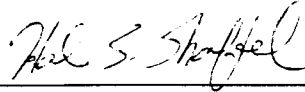
5. Counsel for Andrx has conferred extensively with counsel for Biovail in an effort in good faith to resolve by agreement the issues raised in the accompanying motion and has been unable to reach such an agreement. Attached hereto as Exhibits D through I are copies of correspondence relating to the parties' efforts to resolve this dispute. See Exhibit D, 9/11/00 letter from Landrey to Shaftel; Exhibit E, 9/13/00 letter from Shaftel to Landrey; Exhibit F, 9/14/00 letter from Landrey to Shaftel; Exhibit G, 10/7/00 letter from Shaftel to Landrey; Exhibit H, 10/10/00 letter from Landrey to Shaftel; and Exhibit I, 9/25/00 letter from Landrey to various counsel.

6. In addition to the communications reflected in the correspondence, I spoke to Francis Landrey, counsel to Biovail and its executives, about these matters on September 28, 2000. However, as the correspondence reflects, the parties reached an impasse and Biovail has resisted providing the requested discovery.

7. The testimony of Kenneth Cancellera, Biovail's in-house General Counsel, reflects that Mr. Melnyk is frequently in New York, where he has an apartment, for both business and personal reasons. We also learned that he regularly visits New York to watch his horses race at New York-area race tracks. In addition to New York being a convenient place for Mr. Melnyk, Andrx's counsel had scheduling conflicts (including long-standing business appointments in the United Kingdom) preventing them from attending a deposition on September 19, 2000, in Barbados.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York, on October 16, 2000.

A handwritten signature in cursive script, appearing to read "Hal S. Shaftel".

HAL S. SHAFTEL



SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO
Biovail Corporation International,
by Eugene N. Melnyk

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6

3. PLACE OF PRODUCTION OR INSPECTION
Solomon, Zauderer, Ellenhorn, Friescher &
Sharp
45 Rockefeller Plaza
New York, New York 10111

4. MATERIAL WILL BE PRODUCED TO

Respondent, Andrx Corporation (Deposition)

5. DATE AND TIME OF PRODUCTION OR INSPECTION

September 18, 2000 10:00 a.m.

6. SUBJECT OF PROCEEDING

In the matter of Hoechst Marion Rouseel, Inc., et al.

In the matter of Hoechst Marion Roussel, Inc., et al.

7. MATERIAL TO BE PRODUCED
See Exhibit A

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell
The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Solomon, Zauderer, Ellenhorn, Friescher &
Sharp

45 Rockefeller Plaza
New York, New York 10111

Counsel for the Respondent, Andrx Corporation

DATE ISSUED

20 JUN 2000

SECRETARY'S SIGNATURE

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served (check the method used)

SUBPOENA DUCES TECUM

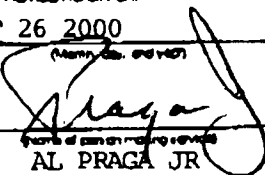
- in person
- by registered mail
- by leaving copy at principal office or place of business. To wit:

EUGENE N MELNYK
SARATOGA RACE TRACK
PRIVATE BOX A55
SARATOGA SPGS, NY 12866

on the person named herein on:

AUGUST 26 2000

(Month, day, and year)



(Name of person making service)
AL PRAGA JR

PROCESS SERVICE

(Check this)

Felicia M. Baskerville s/28/00
FELICIA M. BASKERVILLE
 Notary Public, State of New York
 No. XO1BA6003289
 Qualified in Albany County
 Commission Expires March 9, 2003

RETURN OF SERVICE

I hereby certify that a duplicate original of the within
subpoena was duly served (check the method used)

SUBPOENA AD TESTIFICANDUM

- in person.
- by registered mail.
- by leaving copy at principal office or place of business, to wit:

EUGENE N MELNYK
SARATOGA RACE TRACK
PRIVATE BOX 155
SARATOGA SPRGS, NY 12866

on the person named herein on:

AUGUST 26 2000

(month, day, and year)

AL PRAGA JR

PROCESS SERVICE

(Check box)

Felicia M. Baskerville 8/29/00

FELICIA M. BASKERVILLE
 Notary Public, State of New York
 No. XO1BA6003289
 Qualified in Albany County
 Commission Expires March 9, 2002

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

1. As used here, the term "Biovail" shall refer to Biovail International Corporation, and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, consultants (including public relations consultants and Anne George, John Grimaldi, Michael Sitrick, Steven Seiler or Sitrick and Company), controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

2. As used herein, the term "Andrx" shall refer to Andrx Pharmaceuticals, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

3. As used herein, the term "HMR" shall mean Hoeschst Marion Roussel and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

4. As used herein, the term "Proskauer" shall refer to Proskauer Rose LLP, including its partners, employees, agents, consultants or other person action for or on behalf of any of them.

5. As used herein, the term "Teva" shall refer to Teva Pharmaceutical Industries, Ltd. and each of its predecessors, successors, groups, divisions, subsidiaries

(including without limitation Teva Pharmaceuticals USA) and affiliates and each of their present or former officers, directors, employees, agents, consultants, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

6. As used herein, the term "Elan" shall refer to Elan Corporation, plc and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, consultants, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

7. As used herein, the term "Mylan" shall refer to Mylan Laboratories, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, consultants, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

8. As used herein, the term "Forest" shall refer to Forest Laboratories, Inc. and each of its predecessors, successors, groups, divisions, subsidiaries and affiliates and each of their present or former officers, directors, employees, agents, consultants, controlling shareholders (and any entity controlled by any such controlling shareholder) or other person acting for or on behalf of any of them.

9. As used herein, the term "Direct Purchaser" shall refer to a purchaser who buys Cardizem[®] CD directly from HMR.

10. As used herein, the term "Indirect Purchaser" shall refer to a purchaser who buys Cardizem[®] CD from a source other than HMR, whether a wholesaler, retailer or some other source.

11. As used herein, the term "Substitute Cardiovascular Drug" shall mean any branded and/or generic drug which you understand some persons use or may use as a substitute in whole or in part for, or in lieu of, Cardizem[®] CD, including but not limited to therapeutic class.

12. As used herein, the term "person" shall mean any natural person, firm, partnership, corporation, incorporated association, organization, joint venture, cooperative, governmental body or other form of legal entity.

13. The word "document" or "documents" as used herein includes, without limitation, writings and printed matter of every kind and description, correspondence, memoranda, agreements, contracts, photographs, drawings, notes, records (tape, disc or other) or any communication, statements, invoices, purchase orders, records of hearings, reports of decisions of state or federal governmental agencies, telegrams, summaries or records of telephone conversations, summaries of records of personal interviews, diaries, graphs, reports, notebooks, note charts, plans, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations opinions or reports of consultants, motion picture film, brochures, pamphlets, advertisements circulars, press releases, drafts marginal comments appearing on any document, microfilm, microfiche, computer printouts, programs, tapes, cassettes, disks, magnetic drums, and punch cards, all data stored in computer banks, all nonidentical copies of any item listed above and all other writings of any kind.

14. The word "communication" or "communications" as used herein means any effort to convey information, whether written or oral, recorded or unrecorded, including, but not limited to: (a) speeches and lectures, (b) statements, (c) monologues, (d) dialogues, (e) telephone conversations and conferences, (f) discussions, (g) confer-

ences, (h) debates, (i) arguments, (j) discourses, (k) interviews, (l) conversations, (m) consultations, and (n) information conveyed through documents.

15. As used herein, the term "concerning" means related to, referring to, describing, evidencing or constituting.

16. Unless otherwise stated, each paragraph or subparagraph herein shall be construed independently and without reference to any other paragraph or subparagraph for purpose of limitation.

17. If it is claimed that any document responsive to any request is privileged, work product or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product or other ground for nondisclosure. As to any such document, state: (a) the reason for withholding it or other information relating to it; (b) the author of the documents; (c) each individual to whom the original or a copy of the document was sent; (d) the date of the documents or oral communication; (e) the general subject matter of the document; and (f) any additional information on which you base your claims of privilege. Any part of an answer to which you do not claim privilege or work product should be given in full.

18. Unless otherwise stated, the use of a verb in any tense shall be construed as the use of the verb in all other tenses as necessary to bring within the scope of the document requests that which might otherwise be construed outside its scope.

19. As used herein, the singular includes the plural and vice versa; the words "and" and "or" shall be both conjunctive and disjunctive; the word "all" means "any and all"; the word "any" means "any and all"; the word "including" means "including without limitation"; the word "he" or any other masculine pronoun includes any individual regardless of sex.

20. In the event that any document required to be identified or produced has been destroyed, lost, discarded or otherwise disposed of, any such document is to be identified as completely as possible, including, without limitation, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

21. Unless otherwise indicated, the time period covered by these interrogatories and document requests is from January 1, 1995 to date.

22. Whenever a document request, in whole or in part, calls for documents already supplied by Biovail in answer to a similar document request served in this action, you need not repeat information already supplied, provided that you clearly indicate in your answer to the document request (a) the portion of the document request for which the information called for has already been supplied by Biovail, and (b) the specific document request (or subpart thereof) in answer to which Biovail has already supplied the requested documents.

SPECIFIC REQUESTS FOR DOCUMENTS

1. All documents Biovail produced in the action captioned Biovail Corporation International v. Hoechst Aktiengesellschaft, et al., N.J. No. 98-1434 (MTB)(SRC).

2. All documents concerning regulatory approval, or the absence thereof, from any governmental agency, department or organization in the United States, Canada or elsewhere, including any employee, agent or representative thereof, in connection with Biovail manufacturing, developing, producing, licensing, marketing or selling any Substitute Cardiovascular Drug or diltiazem, including but not limited to any New Drug Application (NDA) or Abbreviated NDA (ANDA).

3. All documents concerning any communications between Biovail and any Direct Purchaser or Indirect Purchaser of Cardizem[®] CD, concerning (i) HMR; (ii) Andrx; (iii) Cardizem[®] CD; and/or (iv) Cartia XT.

4. All documents concerning any communications between Biovail and any potential manufacturer of a generic version of Cardizem[®] CD, including but not limited to Faulding Inc., concerning (i) HMR; (ii) Cardizem[®] CD; (iii) Andrx; and/or (iv) Cartia XT.

5. All documents concerning any communications between, on the one hand, Biovail (including its attorneys, public relations contractors (Anne George, John Grimaldi, Michael Sitrick, Steven Seiler, or Sitrick and Company) or other representatives and, on the other hand, any law firm, including but not limited to Lowey, Dannenberg, Benporad & Selinger, P.C., Berman, Devaleno, Pease & Tabacco, Boies & Schiller, LLP, Niewald, Waldeck & Brown, P.C., Aronovitz & Associates, P.A., Garwin, Bronzaft, Gerstein & Fisher, L.L.P., Calvin, Richardson & Verner, concerning (i) HMR; (ii) Andrx; (iii) Cardizem[®] CD; and/or (iv) Cartia XT.

6. All documents concerning any purported agreement(s) between Andrx and HMR, including, but not limited to, any documents concerning the negotiation, execution, and/or modification of any such agreement(s).

7. All documents concerning Andrx's generic version of Cardizem[®] CD (Cartia XT).

8. All documents concerning any business relationship or proposed business relationship between Biovail and HMR.

9. All documents concerning meetings of the Board of Management, Board of Directors, or Managing Directors of Biovail at which any of the following

subjects were raised, discussed or included on the agenda: (i) Cardizem[®] CD; (ii) potential, actual or past competition for Cardizem[®] CD in North America or Canada; (iii) Andrx; and (iv) litigation or governmental investigation concerning generic competition for Substitute Cardiovascular Drugs.

10. All communications between Biovail and the FTC concerning: (i) HMR; (ii) Andrx; (iii) any purported agreements between HMR and Andrx; (iv) Cardizem[®] CD; (v) Andrx's generic version of Cardizem[®] CD or any other generic version of Cardizem[®] CD; (vi) the market for Cardizem[®] CD; or (vii) the 100-day exclusivity period or the Mova decision.

11. All documents concerning George Cary (or his law firm), including, without limitation, documents constituting or communications between George Cary (or anyone else at his law firm) and the FTC with respect to (i) HMR; (ii) Andrx; (iii) Cardizem[®] CD; and/or (iv) Caria XT.

12. All studies, market analyses or other documents concerning any market or submarket for Substitute Cardiovascular Drugs, including, without limitation, those analyses concerning the impact of a generic Cardizem[®] CD.

13. All documents concerning Biovail's actual or anticipated sales, revenues, royalties, or other payments or income from or based on Biovail's actual or planned generic version of Cardizem[®] CD.

14. All documents concerning Biovail's actual or anticipated prices or its policies or practices for setting, marketing or determining prices for Biovail's actual or planned generic version of Cardizem[®] CD.

15. All documents concerning any proposals or plans by Biovail with respect to the actual or anticipated commencement of commercial marketing of Biovail's generic version of Cardizem® CD.

16. All documents concerning communications with Sitrick and Company, or any principals, employees, or agents thereof, concerning Cardizem® CD or HMR or Andrx.

17. Any agreements ever operative between Biovail and Teva and/or any affiliated entities concerning in whole or in part Cardizem® CD or any generic version thereof.

18. All documents and communications concerning any agreements ever operative between Biovail and Teva and/or any affiliated entities concerning in whole or in part Cardizem® CD or any generic version thereof.

19. Any operative agreements between Biovail and Elan and/or any affiliated entities concerning in whole or in part Adalat or any generic version thereof.

20. All documents and communications concerning any operative agreements between Biovail and Elan and/or any affiliated entities concerning in whole or in part Adalat or any generic version thereof.

21. Any operative agreements between Biovail and Mylan and/or any affiliated entities concerning in whole or in part Verelan or any generic version thereof.

22. All documents and communications concerning any operative agreements between Biovail and Mylan and/or any affiliated entities concerning in whole or in part Verelan or any generic version thereof.

23. Any operative agreement between Biovail and Forest and/or any affiliated entities concerning Tiazac or any generic version thereof.

24. All documents and communications concerning any operative agreement between Biovail and Forest and/or any affiliated entities concerning Tiazac or any generic version thereof.

25. All documents concerning any agreement or arrangement, concerning which you are aware, involving an innovator or brand name pharmaceutical company, and a generic company, that marketed any form of:

- (a) payment from the brand name company to the generic company; or
- (b) licensing and/or royalty arrangements between the brand name company and the generic company.

26. All documents concerning any investigation by or on behalf of the FTC or any other governmental entity concerning Andrx and/or HMR.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition

June 12, 2000

VIA FACSIMILE

Hal Shaftel, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, NY 10111

Peter Bernstein, Esq.
Shook Hardy & Bacon, L.L.P.
600 14th Street, N.W.
Suite 800
Washington, DC 20005-2004

Re: Hoechst-Andrx Generic Cardizem, FTC Docket No. 9293

Dear Hal and Peter:

Pursuant to our agreement, as reflected in my June 6, 2000 correspondence to Hal Shaftel and Jonathan Lupkin, we are identifying, based on a reasonable and diligent search, all individuals with whom the FTC staff communicated during the investigation that gave rise to the complaint in this matter, with the exception of certain physicians not affiliated with any of the entities identified in our Initial Disclosures. Our provision of this information (as part of this agreement) should not be construed as a concession that respondents are entitled to this information, nor that the identity of these individuals has not been properly withheld on the basis of the informant privilege.

[REDACTED]	
Astra Pharmaceuticals	<ul style="list-style-type: none">• Sheila Kennedy (Action Team Leader for Plendil)• Bryan Dunlap (outside counsel)
Bayer Corp.	<ul style="list-style-type: none">• Philip Proger (outside counsel)

Biovail Corporation	<ul style="list-style-type: none"> • Eugene Melnyk (Chairman) • Bruce Brydon (President and CEO) • Ken Cancellera (General Counsel) • Rolf Reininghaus (VP of Business Development) • John Dubeck (outside counsel) • Steve Kaiser (outside counsel) • George Cary (outside counsel) • Neil Gilman (outside counsel)
Elan Corporation	<ul style="list-style-type: none"> • Laurence Sorkin (outside counsel)
Faulding, Inc.	<ul style="list-style-type: none"> • Andrew Berdon (General Counsel) • Harry Davis (outside counsel)
G.D. Searle & Co.	<ul style="list-style-type: none"> • Kathryn Kullman (in-house counsel)
Mylan Pharmaceuticals	<ul style="list-style-type: none"> • Tom Newbraugh (in-house counsel)
Pfizer Pharmaceuticals	<ul style="list-style-type: none"> • Patrick Holmes (Medical Director and Team Leader, Calcium Channel Blocker Team) • Marc Brotman (in-house counsel) • Kent Bernard (in-house counsel)
Watson Pharmaceuticals	<ul style="list-style-type: none"> • Richard Reinish (outside counsel)
The Wilkenson Group	<ul style="list-style-type: none"> • Kenneth Wildstein (in-house counsel)
Actna/U.S. Healthcare	<ul style="list-style-type: none"> • Bob Jackson (VP of Pharmacy) • Ed Curran (VP of Formulary Management) • Don Liu (in-house counsel) • Sharlene Carson (in-house counsel)
Amerinet	Paul Chilcott (Director of Operations of the Pharmacy Contracting Unit)
Blue Cross/Blue Shield Association - Federal Employees Program	<ul style="list-style-type: none"> • Jim Hook (Director of Pharmacy Programs) • Janice Anderson (Head of the Pharmacy and Therapeutics Committee) • Dr. Chris Keyes (President of Clinical Pharmacy Associates) • Jill Klein (in-house counsel) • Catherine Howard (in-house counsel)

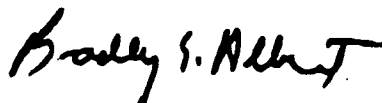
Humana Healthcare	<ul style="list-style-type: none"> • Dr. Reeves (Chief Medical Officer) • Fred Brownfield (Director of Pharmacy and Industry Relations) • Gary Reed (in-house counsel)
United Healthcare	<ul style="list-style-type: none"> • Eric Bergen (VP of Formulary Management) • Dean Goldberg (Chairman of the Pharmacy and Therapeutics Committee)
Kaiser Permanente	<ul style="list-style-type: none"> • Tony Beretta (Government Relations) • Dale Kramer (Director of Material Services) • Scott Simmer (outside counsel)
Care Mark, Inc.	<ul style="list-style-type: none"> • Yvonne Southwell (VP of Clinical Services) • Julie Fogarty (in-house counsel)
Express Scripts	<ul style="list-style-type: none"> • Don Hagen (VP of Pharmaceutical Business Development) • Thomas Boudreau (General Counsel)
Health Services Corporation of America	<ul style="list-style-type: none"> • Terry Smith (VP of Pharmacy Division) • Kevin Spaeth (outside counsel)
Merck-Medco	<ul style="list-style-type: none"> • Jacob Blatt (VP of Generic Drug Purchasing) • Bert Weinstein (in-house counsel)
PCS Health Systems, Inc.	<ul style="list-style-type: none"> • Craig Mattson (Director of Clinical Management) • Theresa Crouse (in-house counsel)
Food and Drug Administration	<ul style="list-style-type: none"> • Douglas Sporn (Former Director, Office of Generic Drugs) • Gordon Johnston (Former Deputy Director, Office of Generic Drugs) • Ted Sherwood (Office of Generic Drugs) • Peter Rickman (Office of Generic Drugs) • Cecelia Parise (Office of Generic Drugs) • Don Hare (Office of Generic Drugs) • Eileen Rhodes (Office of Generic Drugs) • David Roeder (Division of Cardio-Renal Products) • Elizabeth Dickinson (Office of General Counsel)

Mr. Hal Shaftel
Mr. Peter Bernstein
June 12, 2000
Page 4

	<ul style="list-style-type: none">• Alfred Engelberg - Former counsel to Generic Pharmaceutical Industry Association
Pharmaceutical Research and Manufacturers Assoc.	<ul style="list-style-type: none">• Ken Ewing (outside counsel)
National Pharmaceutical Alliance	<ul style="list-style-type: none">• Daniel Jarcho (outside counsel)

If you have any questions, please do not hesitate to contact me.

Sincerely,



Bradley S. Albert

cc: Peter Safir (via facsimile)

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

HOECHST MARION ROUSSEL, INC.,
a corporation,

CARDERM CAPITAL L.P.,
a limited partnership,

and

ANDRX CORPORATION,
a corporation.

Docket No. 9293

COMPLAINT COUNSEL'S PRELIMINARY WITNESS LIST

Pursuant to the Court's scheduling order, complaint counsel hereby designates those persons whom we currently contemplate calling to testify as witnesses at the hearing in this matter. We reserve the right to present testimony, by deposition or orally by live witness, from any other person who has been or may be identified by respondents as a potential witness in this matter and any person from whom discovery is sought. We also reserve the right to supplement this witness list as circumstances may warrant, in accordance with the Court's scheduling order. Finally, we reserve the right not to call any of the persons listed herein to testify at the hearing, as circumstances may warrant.

Subject to these reservations of rights, our preliminary list of witnesses is as follows:

THIRD PARTY WITNESSES

1. **Fred Brownfield**

Mr. Brownfield is the Director of Formulary Management and Contracting for Humana Healthcare. We expect Mr. Brownfield to testify generally about Humana's prescription drug coverage program, contracting, and cost-containment strategies, and, in particular, Humana's selection of prescription cardiovascular agents for its formulary.

2. **Bruce Brydon**

Mr. Brydon is the President and Chief Executive Officer of Biovail Corporation International. We expect Mr. Brydon to testify generally about the pricing and marketing of generic pharmaceutical products, and in particular, generic Cardizem CD. We also expect Mr. Brydon to testify generally about Biovail's efforts to develop once-a-day diltiazem products. In addition, we expect Mr. Brydon to testify about his participation in a series of meetings which took place between Hoechst Marion Roussel and Biovail Corporation in or around August 1997.

3. **Kenneth Cancellara**

Mr. Cancellara is the General Counsel of Biovail Corporation International. We expect Mr. Cancellara to testify about his participation in a series of meetings which took place between Hoechst Marion Roussel and Biovail Corporation in or around August 1997. In addition, we expect Mr. Cancellara to testify generally about Biovail's efforts to develop once-a-day diltiazem products, and the laws and regulations governing the development, approval, and marketing of drugs in the United States. We also expect Mr. Cancellara to testify about Biovail's efforts to enter into a licensing arrangement with Andrx.

4. **Carmine Durham**

Mr. Durham is the Director of Cardiovascular products for Knoll Pharmaceuticals. We expect Mr. Durham to testify about the sales, marketing, pricing, and product positioning of Isoptin SR, a prescription product containing the active ingredient verapamil.

5. **Dean Goldberg**

Mr. Goldberg is the Vice President of Clinical Pharmacy Management for United Healthcare. We expect Mr. Goldberg to testify generally about United's prescription drug coverage program, contracting, and cost-containment strategies, and, in particular, United's selection of prescription cardiovascular agents for its formulary.

6. Don Hagen

Mr. Hagen is the Vice President of Client and Pharmaceutical Business Development for Express Scripts. We expect Mr. Hagen to testify generally about Express Scripts' prescription drug coverage program, contracting, and cost-containment strategies, and, in particular, Express Scripts selection of prescription cardiovascular agents for its formulary.

7. Bob Jackson

Mr. Jackson is the Vice President of Pharmacy and Head of Clinical Pharmaceutical Management for Aetna US Healthcare. We expect Mr. Jackson to testify generally about Aetna's prescription drug coverage program, contracting, and cost-containment strategies, and, in particular, Aetna's selection of prescription cardiovascular agents for its formulary.

8. Dale Kramer

Mr. Kramer is the Director of Material Services, Pharmacy Operations for Kaiser Permanente. We expect Mr. Kramer to testify generally about Kaiser's prescription drug coverage program, contracting, and cost-containment strategies, and, in particular, Kaiser's selection of prescription cardiovascular agents for its formulary.

9. Eugene Melnyk

Mr. Melnyk is the Chairman of Biovail Corporation International. We expect Mr. Melnyk to testify about his participation in a series of meetings which took place between Hoechst Marion Roussel and Biovail Corporation in or around August 1997. In addition, we expect Mr. Melnyk to testify generally about Biovail's efforts to develop once-a-day diltiazem products, and the laws and regulations governing the development, approval, and marketing of drugs in the United States. We also expect Mr. Melnyk to testify about Biovail's efforts to enter into a licensing arrangement with Andrx.

10. Thomas Nee

Mr. Nee is the Director of Marketing/Cardiovascular for Forest Pharmaceuticals, Inc. We expect Mr. Nee to testify about the sales, marketing, pricing, and product positioning of Tiazac, a prescription drug product containing the active ingredient diltiazem.

11. Colonel Dan Remund

Colonel Remund is the Director of the Department of Defense's Pharmacoeconomic Center and co-chair of the DOD's Pharmacy & Therapeutics Committee. We expect Colonel Remund to testify generally about the DOD's prescription drug coverage program, contracting,

and cost-containment strategies, and, in particular, DOD's selection of prescription cardiovascular agents for its formulary.

12. Josh Tarnoff

Mr. Tarnoff is the current Marketing Director for Respiratory, and former Marketing Director for Cardiovascular, for AstraZeneca Pharmaceuticals. We expect Mr. Tarnoff to testify about the sales, marketing, pricing, and product positioning of Plendil, a prescription drug product containing the active ingredient felodipine.

13. Robert Wrobel

Mr. Wrobel is Vice President and Chief Legal Counsel for Alpharma. We expect Mr. Wrobel to testify about Alpharma's agreement to waive its FDA-granted right, as the first generic company to file a Paragraph IV certification under the Hatch-Waxman Act, to 180-days of marketing exclusivity.

14. United States Food & Drug Administration

We expect to call an individual from the Food and Drug Administration to testify generally about the regulatory approval process for Abbreviated New Drug Applications and regulations relating to the implementation of the Hatch-Waxman amendments. We intend to supplement this preliminary witness list with the name of the individual likely to testify after this person has been identified.

15. The Veterans Administration

We expect to call an individual from Veterans Administration to testify generally about the VA's prescription drug coverage program and cost-containment strategies, and, in particular, the VA's selection of prescription cardiovascular agents for its formulary. We will supplement this preliminary witness list with the name of the individual likely to testify after this person has been identified.

RESPONDENTS

1. Kelly Blinzler

Ms. Blinzler is the Manager of Forecasting for Hoechst Marion Roussel, Inc. We expect Ms. Blinzler to testify generally about Hoechst's sales projections and forecasting for prescription pharmaceutical products and, in particular, for Cardizem CD.

2. Elizabeth Braham

Ms. Braham is the Director of Financial Planning and Reporting for Hoechst Marion Roussel, Inc. We expect Ms. Braham to testify generally about Hoechst's financial planning, reporting, and forecasting for prescription pharmaceutical products and, in particular, for Cardizem CD.

3. Chih-Ming Chen

Dr. Chen is the Chief Scientific Officer and Co-Chairman of Andrx Corporation. We expect Dr. Chen to testify about Andrx's research and development efforts for its generic versions of Cardizem CD. We also expect Dr. Chen to testify about patents covering Cardizem CD and generic versions of Cardizem CD.

4. James Costigan

Mr. Costigan is a member of the law firm of Hedman, Gibson & Costigan, P.C., and was counsel to Andrx in the Southern District of Florida patent infringement litigation involving Hoechst Marion Roussel and Andrx. We expect Mr. Costigan to testify about his involvement in the patent infringement litigation and in the negotiation and drafting of the Hoechst/Andrx Stipulation and Agreement.

5. Randy Glover

Mr. Glover is the Vice President, Manufacturing Operations of Andrx Corporation. We expect Mr. Glover to testify generally about Andrx's manufacturing capabilities, and in particular, for its generic versions of Cardizem CD.

6. Elliott Hahn

Dr. Hahn is the President of Andrx Corporation. We expect Dr. Hahn to testify generally about his involvement in the negotiation and drafting of the Hoechst/Andrx Stipulation and Agreement. We also expect Dr. Hahn to testify about Andrx's development, manufacture, pricing, and marketing of its generic version of Cardizem CD.

7. Thomas Heyman

Mr. Heyman is a member in the law firm of Jones, Day, Reavis & Pogue, and was counsel to Hoechst Marion Roussel in the Southern District of Florida patent infringement litigation involving Hoechst Marion Roussel and Andrx. We expect Mr. Heyman to testify about his involvement in the patent infringement litigation and in the negotiation and drafting of the Hoechst/Andrx Stipulation and Agreement.

8. Scott Lodin

Mr. Lodin is a Vice President and General Counsel of Andrx Corporation. We expect Mr. Lodin to testify about his involvement in the negotiation and drafting of the Hoechst/Andrx Stipulation and Agreement and Stipulation and Order. We also expect Mr. Lodin to testify about Andrx's development, manufacture, pricing, and marketing of its generic version of Cardizem CD, and the laws and regulations governing the development, approval, and marketing of drugs in the United States.

9. Angelo Malahias

Mr. Malahias is the Vice President and Chief Financial Officer of Andrx Corporation. We expect Mr. Malahias to testify about Andrx's financial performance, viability, projections, and outlook.

10. Karen Rice

Ms. Rice is a Product Manager for Andrx Corporation. We expect Ms. Rice to testify generally about market planning and forecasting for prescription drug products, and in particular for generic versions of Cardizem CD.

11. Louis Solomon

Mr. Solomon is a member in the law firm of Solomon, Zauderer, Ellenhorn, Frischer & Sharp, and counsel to Andrx Corporation. As the primary negotiator, on behalf of Andrx, of the Hoechst/Andrx Stipulation and Agreement and Stipulation and Order, we expect Mr. Solomon to testify regarding his involvement in the negotiation and drafting of these documents.

12. James M. Spears

Mr. Spears is a member in the law firm of Shook, Hardy & Bacon and counsel to Hoechst Marion Roussel, Inc. As the primary negotiator, on behalf of Hoechst, of the Hoechst/Andrx Stipulation and Agreement and Stipulation and Order, we expect Mr. Spears to testify about his involvement in the negotiation and drafting of these documents.

13. Edward Stratemeier

Mr. Stratemeier is the General Counsel of Hoechst Marion Roussel, Inc. We expect Mr. Stratemeier to testify regarding his involvement in the negotiation and drafting of the Hoechst/Andrx Stipulation and Agreement and Stipulation and Order. In addition, we expect Mr. Stratemeier to testify regarding his participation in a series of meetings between Hoechst Marion Roussel and Biovail Corporation in and around August 1997. We also expect Mr.

Stratemeier to testify about the laws and regulations governing the development, approval, and marketing of drugs in the United States.

14. Hoechst § 3.33(c) deponent regarding sales and marketing of Cardizem CD

We expect an individual from Hoechst Marion Roussel to testify about Hoechst's sales and marketing activities related to Cardizem CD.

15. Andrx § 3.33(c) deponent regarding sales and marketing of generic Cardizem CD

We expect an individual from Andrx to testify about Andrx's sales and marketing activities related to generic versions of Cardizem CD.

Respectfully Submitted,



Markus H. Meier
Bradley S. Albert
Daniel A. Kotchen

Counsel Supporting the Complaint

Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Dated: June 14, 2000

CERTIFICATE OF SERVICE

I, Markus H. Meier, hereby certify that on June 14, 2000, I caused a copy of the Complaint Counsel's Preliminary Witness List to be served upon the following persons via facsimile and first-class mail.

James M. Spears, Esq.
Shook, Hardy & Bacon, L.L.P
600 14th Street, N.W.
Suite 800
Washington, DC 20005-2004

Peter O. Safir, Esq.
Kleinfeld, Kaplan, and Becker
1140 19th Street, N.W.
9th Floor
Washington, DC 20036

Louis M. Solomon
Solomon, Zauderer, Ellenhorn,
Frischer, & Sharp
45 Rockefeller Plaza
New York, NY 10111



Markus H. Meier
Markus H. Meier
Counsel Supporting the Complaint

PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-8299
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LOS ANGELES
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Francis D. Landrey
Attorney at Law

Direct Dial 212.969.3530
flandrey@proskauer.com

September 11, 2000

BY FAX

Hal S. Shaftel, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, N.Y. 10111

Re: ***Biovail Corporation International v. Hoechst Aktiengesellschaft, et al., Civil Action No. 98-1434 (FSH)(SRC) (the "New Jersey Action") and In the Matter of Hoechst Marion Roussel, Inc. and Andrx Corporation, Docket No. 9293 (the "FTC Proceeding")***

Dear Hal:

In voluntary compliance with the subpoenas that Andrx purports to have served on Biovail and Eugene Melnyk in the FTC Proceeding (and without waiving any defenses of jurisdiction, service, or other objections that Biovail and Mr. Melnyk may have to those subpoenas), Mr. Melnyk will be available for a deposition in the New Jersey Action and the FTC Proceeding in response to that subpoena starting on September 19 in Barbados (where, as you know, he lives and works). I understand that counsel for defendants in the New Jersey Action have arranged for a room for the deposition at the Grand Barbadian Hotel in Bridgetown Barbados ((246) 426-4000).

This is a date that has been previously scheduled for Mr. Melnyk's deposition in the New Jersey Action, and I am copying this letter to all counsel in the New Jersey Action for their information. It is my understanding that counsel for defendants in the New Jersey Action estimate needing as much as three days to complete their examination of Mr. Melnyk. We will object to any duplication of that examination by counsel for Andrx or the FTC. I have discussed this procedure with Markus Meier at the FTC and understand that the FTC has no objection to this procedure of taking Mr. Melnyk's deposition simultaneously in the New Jersey Action and the FTC Proceeding. Due to the burden on Mr. Melnyk and Biovail, the dates set aside for Mr.

Hal S. Shaftel, Esq.
September 11, 2000
Page 2

Melnyk's deposition starting September 19 are the only dates on which he will be made available for you to depose him in the FTC Proceeding.

Biovail considers making Mr. Melnyk available for his deposition in Barbados as discussed above to constitute full compliance with the subpoenas served on Mr. Melnyk.

Sincerely,



Francis D. Landrey

cc: Markus Meier, Esq.
James M. Spears, Esq.
Liza Walsh & Brendan Judge, Esqs.
Michelle Mangrum, Esq.
Peter Safir, Esq.
Paul Schlieffman, Esq.
Lindsey H. Taylor, Esq.

PROCESSED
2000

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP

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EMILY STERN

September 13, 2000

Francis D. Landrey, Esq.
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036-8299

Re: In the Matter of Hoechst Marion Roussel, Inc.,
FTC Docket No. 9293

Dear Francis:

I am disturbed by your September 11 letter, in which you continue to play games and thwart legitimate -- indeed, crucial -- discovery. I do not know what you mean by writing that you will make Mr. Melnyk available "[i]n voluntary compliance with the subpoenas" at a different location, on a different date, and subject to different conditions than the subpoenas require. Plus, your letter wholly ignores the document request aspect of the subpoenas served on Mr. Melnyk. The subpoenas are proper and indisputably were personally served in New York on Mr. Melnyk. His failure to comply will subject him to contempt, and we reserve all our rights.

I indicated to you that we would consider a reasonable accommodation on the deposition date, taking into account the tight FTC discovery schedule. The dates, however, you proposed are not acceptable -- I have a long-planned business trip out of the country during that time period. In addition, combining the FTC deposition with a deposition in a separate action in which Andrx is not even a party will be prejudicial to Andrx and otherwise raise a host of practical problems. The other conditions you suggest imposing on the deposition are not acceptable. As for location, New York is appropriate -- indeed, Complaint Counsel also noticed depositions requiring witnesses to travel to other jurisdictions. If you believe you have authority holding otherwise, please provide it to me for consideration.

You claim that there is some "burden on Mr. Melnyk" by having him deposed in New York. Yet, you know he is regularly here for business and social reasons

Francis D. Landrey, Esq.
September 13, 2000
Page 2

-- indeed, we understand he has an apartment in New York and is routinely in the state to watch his horses race. (We served him while he was watching his horses at the track in Saratoga.)

Your comment that making Mr. Melnyk available at a location and date different from what is set forth in the subpoenas is in "full compliance" with his obligations and "are the only dates on which he will be made available . . . in the FTC Proceeding" does not only flout the law but is the height of arrogance. We are confident that the Administrative Law Judge will feel he has the authority to decide where and when Mr. Melnyk will be deposed, if it needs to get to that.

I invite you to discuss with me a mutually acceptable date in September for Mr. Melnyk's deposition in New York. In the alternative, you will leave us no choice but to seek to hold Mr. Melnyk in contempt and avail ourselves of all our remedies.

Very truly yours,

A handwritten signature in cursive script that reads "Hal S. Shaftel / gcc". The signature is written in black ink and is positioned above the typed name.

Hal S. Shaftel

HSS/gcc

cc: Counsel of Record

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September 14, 2000

BY TELECOPIER

Hal S. Shaftel, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, New York 10111

Re: ***Biovail Corporation International v. Hoechst Aktiengesellschaft, et al., Civil Action No. 98-1434 (FSH)(SRC) (the "New Jersey Action") and In the Matter of Hoechst Marion Roussel, Inc. and Andrx Corporation, Docket No. 9293 (the "FTC Proceeding")***

Dear Hal:

Your response to Mr. Melnyk's willingness to make himself available for his deposition in the FTC Proceeding in Barbados starting September 19 in conjunction with his deposition in the New Jersey Action demonstrates that Andrx has no real interest in obtaining relevant testimony from Mr. Melnyk. By Mr. Melnyk's offer, you have been provided a full and fair opportunity to put your questions to Mr. Melnyk, to attend while other parties to the FTC Proceeding question him, and to make full use of the entire transcript at trial in that proceeding. These were precisely the procedures employed when you insisted on the immediate deposition of Mr. Sitrick. As that deposition demonstrates, producing Mr. Melnyk for a single deposition in both the New Jersey Action and the FTC Proceeding will not in any way prejudice Andrx. On the contrary, the separate depositions upon which you insist are specifically designed to prejudice Biovail and Mr. Melnyk and to maximize the burdens imposed on them in responding to your unreasonable discovery demands.

Your complaint about the timing of the deposition of Mr. Melnyk in Barbados is plainly disingenuous. The deposition starts on September 19, the day after the date set forth in your subpoena. If you cannot personally attend certainly Louis Solomon, Michael Lazaroff or one of the other lawyers working on the matter could attend.

Hal S. Shaftel, Esq.
September 14, 2000
Page 2

Mr. Melnyk's response to your subpoena, served on him when he was on vacation in upstate New York, is entirely reasonable. His willingness to appear the day after that noticed in your subpoena at a location that is within easy travel distance of New York more than satisfies any possible claims you may have that Mr. Melnyk needs to appear for a deposition in response to your subpoena.

As to location, Mr. Melnyk is well within his rights to insist on Barbados because Barbados, where Mr. Melnyk resides and regularly transacts business, is not within 100 miles of New York. See Fed. R. Civ. P. Rules 45 and 81(a)(3) (which makes clear that the Federal Rules apply to "proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States . . . except as otherwise provided by statute . . ."). As to threats of contempt, if you have a court order, please produce it. If you plan to apply to the Administrative Law Judge and the FTC for permission to seek such a court order (see 16 CFR § 3.38(c)), we insist that Biovail be given notice and an opportunity to bring all the facts surrounding your unreasonable refusal to proceed with Mr. Melnyk's deposition as offered to the attention of the FTC and the courts. We reserve all rights in any such proceeding to defend against Andrx's harrasing efforts to depose Mr. Melnyk including, among other things, jurisdictional defenses, the utter irrelevance to the FTC Proceeding of Mr. Melnyk's testimony, and the fact that your refusal to proceed with the deposition in Barbados next week constitutes a forfeiture of whatever rights Andrx might otherwise have had to take Mr. Melnyk's deposition.

As to the document subpoena, we do not believe that by your subpoena you have acquired jurisdiction over Biovail, a Canadian corporation. The document requests are, in any event, plainly overbroad and burdensome and are not reasonably designed to obtain documentary evidence relevant to the FTC Proceeding. In an effort to resolve this matter, however, and without waiving any of Biovail's defenses to the subpoena, Biovail is prepared to make available to Andrx all documents it is to produce in the New Jersey Action in supplementation of its prior document productions in that action. That supplemental production will include all Biovail documents you may reasonably require concerning the relevant market and the sales and marketing of Cardizem CD, Cardizem CD generic, Tiazac or Tiazac generic. It will also include a full supplementation of any communications Biovail has had with the FTC or the media

Hal S. Shaftel, Esq.
September 14, 2000
Page 3

concerning topics relevant to your proceeding. We also note that such a production goes well beyond what Andrx has agreed to produce in response to Biovail's subpoena in the New Jersey Action.

Sincerely,



Francis D. Landrey

FDL/jv

cc: Michael L. Koon, Esq.
Michelle R. Mangrum, Esq.
Markus Meier, Esq.
Peter O. Safir, Esq.
James M. Spears, Esq.
Lindsey H. Taylor, Esq.
Liza M. Walsh, Esq.

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October 7, 2000

Via Facsimile

Francis D. Landrey, Esq.
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036-8299

Re: In the Matter of Hoechst Marion Roussel, Inc., Carderm
Capital L.P., and Andrx Corporation, FTC Docket No. 9293

Dear Francis:

As you know, we continue to seek the depositions of Messrs. Melnyk and Brydon in the FTC proceeding, plus the production of the documents set forth in the subpoena served on Mr. Melnyk. Quite remarkably, Mr. Melnyk simply snubbed the lawful subpoena personally served on him in New York. As you also know, Biovail had counsel present at the October 5 conference before the Administrative Law Judge when the status of Biovail-related discovery was discussed. I believe a fair reading of Judge Chappell's comments is for the parties to make a genuine effort to work out the Biovail discovery disputes. To that end, we are prepared -- as we have made clear before -- to make reasonable accommodations for the timing of these depositions (taking the discovery schedule into account). We also have expressed our willingness -- now on several occasions -- to depose Mr. Brydon in Canada, if that would convenience him.

Despite our repeated offers, we have not heard anything productive from you. We still hope to resolve these matters short of motion practice, which is what Judge Chappell clearly wants us to take another serious stab at doing. However, we are facing a very tight discovery schedule and, therefore, need a response from you by no later than October 11, 2000. If we do not have a satisfactory resolution by then, we will have no

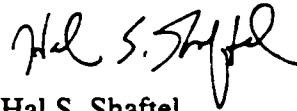
Francis D. Landrey, Esq.

October 7, 2000

Page 2

choice but to promptly file motion(s) to compel, for contempt, or for preclusion, relating to the Biovail witnesses. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hal S. Shaftel". The signature is written in a cursive style with a large, looping "H" and "S".

Hal S. Shaftel

cc: Other Counsel

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October 10, 2000

BY TELECOPIER

Hal S. Shaftel, Esq.
Solomon, Zauderer, Ellenhorn, Frischcr & Sharp
45 Rockefeller Plaza
New York, New York 10111

Re: *In the Matter of Hoechst Marion Roussel, Inc., et al.*,
FTC Docket No. 9293 (the "FTC Proceeding")

Dear Mr. Shaftel:

I write in response to your October 7, 2000 letter concerning your desire to schedule the depositions of Bruce Brydon and Eugene Melnyk in the FTC Proceeding.

Contrary to your assertions, Mr. Melnyk did not "snub" the subpoena delivered to him while in New York on vacation. Mr. Melnyk is a citizen of Canada and a resident of Barbados and made himself available for deposition in Barbados on the day after the date specified in the subpoena. Despite Mr. Melnyk's right to insist that the deposition be taken at his place of residence and usual place of business (*i.e.*, Barbados), you refused to attend. Under the circumstances, Andrx plainly has waived whatever right it might otherwise have had to insist that Mr. Melnyk appear for a deposition. As I explained in our previous correspondence on this subject, Biovail and Mr. Melnyk reserve all rights to contest your claimed entitlement to Mr. Melnyk's testimony and, by previously offering as an accommodation to Andrx an opportunity to take his deposition in Barbados, neither waived any defenses to the subpoenas.

With respect to the request that we again produce Mr. Brydon for a deposition, it is only through your own inexcusable neglect that you were unable to depose Mr. Brydon when he appeared for that purpose in Washington D.C. on Thursday, September 28. On that occasion, Mr. Brydon, Biovail's General Counsel and I spent two days of our time, and incurred the costs of being in Washington, for a deposition that you were unable to take only because you neglected to arrange for a court reporter. You now want Biovail to incur an additional expenditure of time and

Hal S. Shaftel, Esq.
October 10, 2000
Page 2

expense without even offering to compensate Biovail for the time of its executives and the expenses it unnecessarily incurred in connection with Mr. Brydon's previous appearance. Once you have stated your willingness to compensate Biovail for these items, we will address your request that he again appear for a deposition.

Sincerely,

A handwritten signature in black ink, appearing to read "F. D. Landrey", with a long horizontal stroke extending to the right.

Francis D. Landrey

FDL/

cc: Markus M. Meier, Esq.
James M. Spears, Esq.
Paul S. Schleifman, Esq.

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September 25, 2000

BY TELECOPIER

Markus M. Meier, Esq.
Federal Trade Commission
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601 Pennsylvania Avenue, N.W.
Washington, DC 20580

Paul S. Schleifman, Esq.
Shook, Hardy & Bacon L.L.P.
Hamilton Square
600 Fourteenth Street, N.W.
Suite 800
Washington, DC 20005-2004

Hal S. Shaftel, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, New York 10111

Re: *In re Hoechst Marion Rousell, Inc., et al.* (FTC Docket No. 9293)

Dear Markus, Paul and Hal:

This will confirm that Bruce Brydon will appear for his deposition in the above-captioned proceeding on Thursday, September 28 and that Kenneth Cancellara will appear for his

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Markus M. Meier, Paul S. Schleifman, and Hal S. Shaftel
September 25, 2000
Page 2

deposition the following day, Friday, September 29. The depositions will start at 9:30 A.M. and will be held at our offices in Washington — 1233 20 Street NW, Suite 800.

Sincerely,



Francis D. Landrey

FDL/

cc: James Spears
Michael Koon

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

HOECHST MARION ROUSSEL, INC., a corporation,
CARDERM CAPITAL L.P., a limited partnership,

and

ANDRX CORPORATION, a corporation.

DOCKET NO. 9293

**PROPOSED ORDER ON RESPONDENT ANDRX CORPORATION'S
MOTION TO COMPEL EUGENE N. MELNYK AND BRUCE BRYDON TO APPEAR
FOR DEPOSITIONS AND PRODUCE DOCUMENTS**

On October 16, 2000, pursuant to Section 3.38 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.38, Respondent Andrx Corporation ("Andrx") filed a motion for an order (i) compelling Eugene N. Melnyk and Bruce Brydon, senior executives of Biovail Corporation, to appear for depositions and produce documents in response to Andrx's requests by no later than ten days after the motion is granted or, alternatively, (ii) precluding Complaint Counsel from calling any Biovail witnesses to testify at trial.

Respondent Andrx's motion is hereby GRANTED. Messrs. Melnyk and Brydon are hereby ordered to appear for depositions and produce documents in response to Andrx's requests by no later than ten days after the date of this Order. In the event that Messrs. Melnyk and Brydon do not do so by that date, Complaint Counsel will be precluded from calling any Biovail witnesses to testify at trial.

ORDERED:

D. MICHAEL CHAPPELL
ADMINISTRATIVE LAW JUDGE

Dated: October __, 2000