

3. By responding that it will produce documents or information responsive to a particular Request, Baxter does not assert that it has any responsive documents or information in its possession, custody, or control or that such materials exist, only that it will conduct a reasonable search and produce responsive, non-objectionable, non-privileged documents or information in its possession, custody, or control. No objection made herein, or lack thereof, is an admission by Baxter as to the existence or non-existence, or Baxter's possession or lack of possession, of any documents or information.

4. The responses made herein are based on Baxter's investigation to date of those sources within its control where it reasonably believes responsive information may exist. These answers are made based upon the typical or usual interpretation of words contained in Plaintiff's Requests, unless a specific definition or instruction has been provided and/or agreed upon. Notwithstanding any objection set forth herein, and without waiving any such objection, Baxter will negotiate with Plaintiff in an effort to reach an agreement regarding the scope of the Requests, and will supplement or amend these objections and responses consistent with those negotiations.

5. To the extent that Baxter's answers to Plaintiff's Requests contain information subject to the Protective Order entered on November 29, 2005 in this matter, that information must be treated accordingly.

6. The provision of documents or information pursuant to these Requests shall not be construed as a waiver of the confidentiality of any such information.

GENERAL OBJECTIONS

Baxter expressly incorporates all of the General Objections set forth below into the specific objections and responses to each Request. Any specific objections provided below are made in addition to these General Objections and failure to reiterate a General Objection below does not constitute a waiver of that General Objection or any other objection.

A. GENERAL OBJECTIONS TO PLAINTIFF'S REQUESTS

Baxter makes the following General Objections to Plaintiff's Second Set of Consolidated Discovery Requests to All Defendants (collectively, the "Requests"):

1. Baxter objects to the Requests as overly broad and unduly burdensome to the extent that they call for the identification of "each," "any" or "all" documents or items of information when relevant information can be obtained from fewer than "each," "any" or "all" documents or information. Baxter objects to the Requests to the extent they seek information or documents other than information or documents that can be located upon a search of files or other sources where such information or documents reasonably can be expected to be found.

2. Baxter objects to the Requests to the extent that they purport to seek information relating to NDCs other than those Baxter NDCs listed in the TDL Stipulation between the State and Baxter and/or relating to any Baxter products not at issue in this litigation.

3. Baxter objects to the Requests to the extent that they call for the production of documents or information that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, are overbroad, unduly burdensome, vague, ambiguous, oppressive and/or duplicative. Baxter will not make such documents or information available for inspection.

4. Baxter objects to the Requests to the extent that they demand production of any document or information covered by the attorney-client privilege, work-product doctrine, accountant-client privilege, joint defense/prosecution privilege, consulting expert rule, common-

interest doctrine, or any other legally recognized privilege, protection, immunity, or exemption from discovery. To the extent that any such protected documents or information are inadvertently produced in response to the Requests, the disclosure of such documents or information shall not constitute a waiver of Baxter's right to assert the applicability of any privilege or immunity to the documents or information. Any such inadvertently produced documents or information shall be returned to Baxter's counsel immediately upon discovery thereof.

5. Baxter objects to the Requests to the extent that they seek documents or information outside the knowledge, possession, custody, or control of Baxter, its agents, or employees, that are publicly available, that are otherwise equally accessible to Plaintiff, that have been made available to Plaintiff, or that are more appropriately sought from third parties to whom requests have been or may be directed.

6. Baxter objects to the disclosure, under any circumstance, of trade secret information where the probative value of such information in this litigation is exceeded by the potential harm to Baxter if the information were to fall into the hands of its competitors (including certain co-defendants), and further asserts each and every applicable privilege and rule governing confidentiality of this information to the fullest extent provided by the law.

7. Baxter objects to the Requests to the extent they seek documents or information relating to Baxter's activities other than those which concern the State of Wisconsin, on the grounds that such documents are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

8. Baxter objects to the Requests to the extent that they may be construed as calling for the production of confidential documents or information relating to a patient. Baxter will not produce any such documents or information to the extent it is under any obligation to maintain

the patient information in confidence. Baxter will not disclose such material unless the patient grants permission to do so.

9. Baxter objects to these Requests to the extent that they seek documents or information that Baxter obtained from third parties and cannot disclose without prior approval of such third parties.

10. Baxter objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues in the Requests. Any response by Baxter is not intended to indicate that Baxter agrees with any such implications or characterizations, or that such implications or characterizations are relevant to this litigation.

11. Baxter objects to the Requests to the extent that they seek documents or information relating to a period of time outside any applicable statute of limitations, or after the filing of the initial Complaint on June 3, 2004. The production of any documents or the provision of any other information by Baxter that pre-dates or post-dates the relevant time period shall not be deemed to constitute a waiver of this objection.

12. Baxter objects to the Requests to the extent they seek documents or information already in the possession, custody, or control of the State of Wisconsin or its agencies or attorneys, or that have already been made produced to the State of Wisconsin or its agencies or attorneys.

13. Baxter objects to the Requests to the extent that they seek information not contained in documents that currently exist at Baxter and that would require Baxter to create, compile, or develop new documents. In particular, Baxter objects to the Requests to the extent they call for Baxter to restore and produce archived data that presently exists on media no longer utilized by Baxter and which requires the use of equipment and/or software no longer used or maintained by Baxter, on the grounds that the request is overly broad, unduly burdensome,

duplicative, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to the Requests to the extent that they seek production of any data that does not reside in complete form in an active and readily acceptable format, is presently unreadable or unusable, or cannot be verified as accurate.

14. Baxter objects to the Requests to the extent that they seek information or documents publicly available.

15. Baxter objects to the Requests to the extent that they purport to impose obligations beyond or inconsistent with those imposed by applicable law, including, but not limited to, the Wisconsin Rules of Civil Procedure. Baxter responds to these Requests, subject to other objections, as required by applicable law.

16. Baxter hereby incorporates by reference, as if fully set forth herein, any objection or reservation of rights made by any co-defendant in this action to the extent such objection or reservation of rights is not inconsistent with Baxter's position in this litigation.

B. GENERAL OBJECTIONS TO PLAINTIFF'S DEFINITIONS AND INSTRUCTIONS

Baxter makes the following General Objections to the Definitions and Instructions set forth in the Requests:

1. Baxter objects to Plaintiff's "Definitions" and "Instructions" to the extent Plaintiff intends to expand upon or alter Baxter's obligations under the Wisconsin Rules of Civil Procedure. Baxter will comply with applicable rules of civil procedure in providing its responses and objections to the Requests.

2. Baxter objects to each request and interrogatory to the extent that it calls for the identification or production of documents or information not relevant to the issues in this action nor reasonably calculated to lead to the discovery of admissible evidence, or is overly broad, unduly burdensome, ambiguous, or vague.

3. Baxter objects to the definition of “Document” on the ground that it is vague and ambiguous and to the extent it seeks to impose obligations beyond those imposed by the applicable Wisconsin Rules of Civil Procedure. Baxter further objects to this definition to the extent that it purports to require Baxter to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by Baxter as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

4. Baxter objects to the extent the Requests are directed to not only Baxter but to its “domestic or foreign parents, and any other affiliated company, subsidiary, division, joint venture or other entity having at least 10% ownership interest in [Baxter]; [Baxter’s] agents, independent contractors, directors, employees, officers, and representatives; and merged, consolidated or acquired predecessors; and any other person or entity acting or purporting to act on behalf of [Baxter]” on the grounds that such an expansive request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter will conduct a reasonable search for responsive documents but does not undertake any responsibility to search for documents in the possession of other persons or separate corporate entities, which are not in Baxter’s possession, custody or control.

5. Baxter objects to the extent that any request or interrogatory seeks information concerning Baxter products not at issue in this litigation.

6. Baxter objects to the extent that any request or interrogatory seeks information or documents outside the time period relevant to this action, or after the filing of the initial Complaint on June 3, 2004. The production of any documents or the provision of any other information by Baxter that pre-dates or post-dates the relevant time period shall not be deemed to constitute a waiver of this objection.

7. Baxter objects to the extent that any request or interrogatory seeks information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, by any common interest or joint defense agreement, or by any other applicable privilege or protection.

8. Baxter objects to the extent that any request or interrogatory calls for information that is not within Baxter's possession, custody or control. In responding to these Requests, Baxter has undertaken or will undertake a diligent and reasonable search of documents and information within Baxter's current possession, custody or control.

9. Baxter objects to the extent that any request or interrogatory calls for information that is confidential, proprietary, and/or a trade secret of a third party. Any such materials produced will be subject to the Protective Order entered in this action.

10. Baxter objects to each request and interrogatory to the extent that it seeks disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

11. Baxter expressly incorporates the above General Objections into each specific answer or response to the Requests set forth below as if set forth in full therein. The response to a request or interrogatory shall not operate as a waiver of any applicable specific or general objection to the request or interrogatory.

**RESPONSES AND SPECIFIC OBJECTIONS
TO SECOND SET OF CONSOLIDATED DISCOVERY REQUESTS**

Subject to the General Objections, and without waiving and expressly preserving all such objections, which are hereby incorporated into the responses to each Request, Baxter responds to Plaintiff's individually numbered Requests as follows:

RESPONSE TO CONSOLIDATED DISCOVERY REQUEST NO. 7

REQUEST FOR ADMISSION NO. 7: At no time has the State of Wisconsin and you agreed on the meaning or definition of average wholesale price ("AWP").

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Baxter objects to Request for Admission No. 7 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to this request on the grounds that the term "agreed" is vague, ambiguous and undefined. Baxter further objects to this request to the extent it seeks information that is not within Baxter's possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, Baxter objects to this request to the extent it implies that Baxter has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Subject to, and without waiving, its General and Specific Objections, Baxter denies Request for Admission No. 7.

INTERROGATORY NO. 7: If your response to request for admission no. 7 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of AWP that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (c) state whether you contend that the State of Wisconsin and you agree on the definition of AWP provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;

- (d) if your answer to subpart (c) is “no,” identify the last date when you contend the State of Wisconsin and you agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory;
- (f) if your answer to subpart (e) is “yes,” describe in detail the manner in which the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person’s participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of AWP;
- (g) identify all documents supporting your response to request for admission no. 7;
- (h) identify all documents supporting your answer to interrogatory no. 7, including all subparts; and
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 7, including all subparts.

ANSWER: In addition to its General Objections, which are incorporated herein by reference, Baxter objects to Interrogatory No. 7 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to this request on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. Baxter further objects to this request to the extent it seeks information that is not within Baxter’s possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, Baxter objects to this request to the extent it implies that Baxter has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of AWP.

Subject to, and without waiving, its General and Specific Objections, Baxter states that both it and the State of Wisconsin understood throughout the entire relevant time period that AWP is a reimbursement benchmark, and does not represent an actual average of wholesale prices. Baxter further states that the State of Wisconsin chose and continues to use AWP as a basis for reimbursement despite, and in part because of its understanding that AWP does not

represent an actual average of wholesale prices. Baxter additionally states that Plaintiff is already in possession of documents from which the answer to this interrogatory may be obtained. Additionally, Baxter refers Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information generally responsive to this interrogatory.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7: Produce all documents identified in your response to interrogatory no. 7.

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Baxter objects to Request for Production of Documents No. 7 on the grounds that it is overly broad and unduly burdensome. Baxter also objects to this request to the extent it seeks information that is not within Baxter's possession, custody or control, publicly available, or more readily available to Plaintiff. Baxter also incorporates by reference its answer and objections to Interrogatory No. 7 of these Requests.

Subject to, and without waiving, its General and Specific Objections, Baxter states that Plaintiff is already in possession of documents generally responsive to this request.

RESPONSES TO CONSOLIDATED DISCOVERY REQUEST NO. 8

REQUEST FOR ADMISSION NO. 8: At no time has the State of Wisconsin and you agreed on the meaning or definition of wholesale acquisition cost ("WAC").

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Baxter objects to Request for Admission No. 8 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to this request on the grounds that the term "agreed" is vague, ambiguous and undefined. Baxter further objects to this request to the extent it seeks information that is not within Baxter's possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, Baxter objects to this request to the extent it

implies that Baxter has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Subject to, and without waiving, its General and Specific Objections, Baxter denies Request for Admission No. 8.

INTERROGATORY NO. 8: If your response to request for admission no. 8 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of WAC that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;
- (c) state whether you contend that the State of Wisconsin and you agree on the definition of WAC provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;
- (d) if your answer to subpart (c) is “no,” identify the last date when you contend the State of Wisconsin and you agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory;
- (f) if your answer to subpart (e) is “yes,” describe in detail the manner in which the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person’s participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of WAC;
- (g) identify all documents supporting your response to request for admission no. 8;
- (h) identify all documents supporting your answer to interrogatory no. 8, including all subparts;
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 8, including all subparts.

ANSWER: In addition to its General Objections, which are incorporated herein by reference, Baxter objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to this request on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. Baxter further objects to this request to the extent it seeks information that is not within Baxter’s possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, Baxter objects to this request to the extent it implies that Baxter has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC.

Subject to, and without waiving, its General and Specific Objections, Baxter states that both it and the State of Wisconsin understood throughout the entire relevant time period that WAC is a list price for pharmaceutical products that does not include customary prompt-pay discounts or other discounts. Baxter further states that Plaintiff is already in possession of documents from which the answer to this interrogatory may be obtained. Such documents include, but are not limited to, federal statutes, reports from various branches of the federal government and, upon information and belief, documents from the files of various agencies of the State of Wisconsin. Additionally, Baxter refers Plaintiff to Defendants’ briefing and attached exhibits filed in response to Plaintiff’s motions for summary judgment, which contain information generally responsive to this interrogatory.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8: Produce all documents identified in your response to interrogatory no. 8.

RESPONSE: In addition to its General Objections, which are incorporated herein by reference, Baxter objects to Request for Production of Documents No. 8 on the grounds that it is overly broad and unduly burdensome. Baxter further objects to this request on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. Baxter further objects to this request to the extent it seeks information that is not within Baxter’s

possession, custody or control, publicly available, or more readily available to Plaintiff. Baxter also incorporates by reference its answer and objections to Interrogatory No. 8 of these Requests.

Subject to, and without waiving, its General and Specific Objections, Baxter states that Plaintiff is already in possession of documents generally responsive to this request.

Dated: August 11, 2008

By: /s/ Merle M. DeLancey
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Counsel for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Defendant Baxter Healthcare Corporation's Responses and Objections to Plaintiff State of Wisconsin's Second Set of Consolidated Discovery Requests To All Defendants to be served on all counsel of record electronically, via Lexis-Nexis File & Serve, on August 11, 2008.

/s/ Charles V. Mehler III
Charles V. Mehler III