
STATE OF WISCONSIN,)	
)	
Plaintiff,)	Case No.: 04-CV-1709
)	Unclassified – Civil: 30703
v.)	
)	
ABBOTT LABORATORIES, et al.,)	
)	
Defendants.)	
)	

DEFENDANTS WATSON PHARMACEUTICALS, INC. AND WATSON PHARMA, INC.'S OBJECTIONS AND RESPONSES TO PLAINTIFF STATE OF WISCONSIN'S SECOND SET OF CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS

Pursuant to Wis. Stat. §§ 804.08, 804.09, and 804.11, defendants Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. (“Watson”), by their attorneys, object and respond to Plaintiff’s Second Set of Consolidated Discovery Requests to All Defendants (“Requests”) as follows:

PRELIMINARY STATEMENT

1. The objections and responses provided herein are for use in this action and for no other purpose and are provided subject to that limitation.
2. Watson’s responses are made without in any way waiving or intending to waive:
 - (i) any objections as to the competency, relevancy, materiality, propriety, privilege, or admissibility as evidence, for any purpose, of any information or documents produced in response to the Requests; (ii) the right to object on any ground to the use of the information or documents produced in response to the Requests at any hearings or at trial; (iii) the right to object on any ground at any time to a demand for further responses to the Requests; or (iv) the

right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

3. Watson's objections and responses shall not be deemed to constitute admissions:
 - a. that any particular document or thing exists, is relevant, nonprivileged, or admissible in evidence; or
 - b. that any statement or characterization in the Requests is accurate or complete.

4. Watson's responses are made based upon reasonable review and diligent investigation to date. Watson reserves the right to amend its responses and to raise any additional objections it may have in the future.

5. To the extent that Watson's responses to the Interrogatories and Requests concern information or documents subject to the Protective Order in this action, they must be treated accordingly.

GENERAL OBJECTIONS TO REQUESTS, DEFINITIONS, AND INSTRUCTIONS

1. Watson objects to the Requests to the extent that they are vague, ambiguous, argumentative, duplicative, overly broad, unduly burdensome or oppressive, or seek information or documents that are not relevant to the claims or defenses of any party or to the subject matter involved in this action, or to the extent they seek documents or information beyond that provided for by the Wisconsin Rules of Civil Procedure, and other applicable state and federal laws.

2. Watson objects to the Requests to the extent they seek documents or information protected from discovery by the attorney-client privilege, work product doctrine or other privilege, or that are otherwise immune or protected from disclosure. Watson does not intend to waive any applicable protections or privileges through the production of documents or the supplying of information in response to the Requests. On the contrary, Watson specifically intends to preserve any and all applicable protections or privileges.

3. Watson objects to the Requests to the extent that they seek admissions as to legal conclusions.

4. Watson objects to the Requests to the extent that they seek disclosure of information or documents that are publicly available, equally available to the Plaintiff or already in the possession, custody, or control of the Plaintiff.

5. Watson objects to the Requests to the extent that they seek information or documents from outside the statute of limitations applicable to the claims in this action, beyond 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 Watson that pre-dates or post-dates the relevant time period shall not be deemed to constitute a waiver of this objection.

6. Inadvertent production of any document shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such document or any other document, or with respect to the subject matter thereof or the information contained therein, nor shall such inadvertent production waive Watson's right to object to the use of the document or the information contained therein during this or any subsequent proceeding.

7. Watson objects to the Requests to the extent they seek documents other than those that can be located upon a search of files where such documents reasonably can be expected to be found.

8. Watson objects further to the Requests to the extent they seek any other confidential, proprietary or commercially sensitive information, and trade secrets. Any such materials will be subject to the protective order in this action.

9. Watson objects to the Requests to the extent they call for information or documents relating to business or practices that are inapplicable to the providers reimbursed by Plaintiff. Unless otherwise specified, Watson's responses will be limited to information and documents about their business or practices applicable in the United States generally or to Wisconsin in particular and with respect to the types of providers that are reimbursed by the State of Wisconsin under Medicare and Medicaid.

10. Watson objects to the Requests to the extent that they purport to require Watson to provide a compilation, abstract, audit, and/or other document summary that does not currently exist.

11. Watson objects to the Requests to the extent that they are unreasonably cumulative or that they call for documents that are duplicative, or publicly available, or are obtainable from some other source that is more convenient, less burdensome or less expensive.

12. Watson objects to the Requests to the extent that they are unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

13. Watson is responding to the Requests without waiving or intending to waive, but on the contrary, preserving and intending to preserve: (a) the right to object on any proper grounds to the use of such documents or information for any purpose, in whole or in part, in any subsequent proceedings, in this action or in any other action; (b) the right to object on all grounds, at any time, to the Requests, or other discovery procedures involving or relating to the subject of the Requests to which Watson has responded herein; and (c) the right at any time to revise, correct, add to or clarify any of the responses made herein.

14. Watson objects to the Requests to the extent they call for the production of information or documents not within its possession, custody, or control or that are more appropriately sought from third parties to whom requests have been or may be directed.

15. Watson objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests. Watson's response that it will produce information or documents in connection with a particular Request is not intended to indicate that Watson agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests or that such implications or characterizations are relevant to this action.

16. Watson objects to the Requests as overly broad and unduly burdensome to the extent they call for the identification of "each," "any," or "all" when relevant information can be obtained from fewer than "each," "any," or "all."

17. Watson objects to the Requests to the extent they are not limited to the Watson drugs at issue in this action.

18. Watson objects to each Request as vague, overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it is not limited in time. Watson further objects to each Request to the extent it seeks documents or information from outside the time period relevant to this litigation or outside the statute of limitations applicable to the claims in this litigation.

19. Watson objects to each Request to the extent it purports to be directed not only to Watson, but also to its corporate parents, subsidiaries, affiliates, or other entities other than Watson on the grounds that such an expansive scope is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

20. Watson 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 Watson's position in this action.

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

OBJECTIONS TO DEFINITIONS

1. Watson objects to the definition of "Document" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous. Watson also objects to this definition to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, Watson's obligations under Wisconsin rules, statutes, or other applicable law. Watson further objects to this definition to the extent it requires or seeks to require Watson: (i) to produce documents or data in a particular form or format; (ii) to convert documents or data into a particular or different file format; (iii) to produce data, fields, records, or reports about produced documents or data; (iv) to produce documents or data on any particular media; (v) to search for and/or produce any documents or data on back-up tapes; (vi) to produce any proprietary software, data, programs, or databases; or (vii) to violate any licensing agreement or copyright laws.

2. Watson objects to the definition of "Identify" as set forth in Definition No. 2 on the grounds that it is overly broad and unduly burdensome.

3. Watson objects to Plaintiff's definition of "You," "Your" and "Your company" as vague, overbroad, as requiring speculation, and as imposing unreasonable burdens beyond the requirements of the Wisconsin Rules of Civil Procedure. Watson objects that the definition would require Watson to speculate as to "any other person or entity acting or purporting to act on

your behalf” and object to the extent the definition would include entities other than those specifically included in this action by the Plaintiff.

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

Without waiving and subject to its General and Specific Objections, Watson denies RFA No. 7 for the reasons set forth below in response to Interrogatory 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.

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

Notwithstanding its General and Specific Objections, and without waiving them, Watson 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 price charged by wholesalers to their customers. This fact was conveyed in 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. By way of further response, Watson states that Wisconsin Medicaid had access to extensive information concerning pharmacy acquisition costs, including pharmacists; rebate information; reports by federal agencies and third parties, manufacturers and wholesalers; pharmacies; other state entities that purchase pharmaceuticals;

other state programs that reimbursed for pharmaceuticals; and many other sources. This information indicated that AWP's are not mathematical averages of prices paid by pharmacies. Despite this knowledge, Wisconsin elected to use AWP as its reimbursement benchmark. Watson also states that Plaintiff is already in possession of documents from which the answer to this interrogatory may be obtained. Additionally, Watson 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.

Watson further states that the State of Wisconsin used pricing benchmark data compiled and/or published by First DataBank. During the relevant time period, First DataBank continuously and consistently defined, in its monthly Price Alert publication, AWP as "either the published suggested wholesale price obtained from the manufacturer/labeler or the price commonly charged by wholesalers as determined by survey." By electing to rely upon the pricing benchmark data published by First DataBank, the State of Wisconsin adopted First DataBank's methodology, including its explicit definition of AWP. In addition, by electing to rely upon the pricing benchmark data published by First DataBank, the State of Wisconsin effectively appointed First DataBank as its agent for the purposes of collecting pricing benchmark data, and therefore First DataBank acted as the State of Wisconsin's agent when it defined AWP as "either the published suggested wholesale price obtained from the manufacturer/labeler or the price commonly charged by wholesalers as determined by survey." Furthermore, on August 23, 2000, Schein Pharmaceutical, Inc. (now known as Watson Pharma, Inc.) sent a letter to First DataBank (acting as agent for the State of Wisconsin and its Department of Health & Family Services), stating that Schein had reported, for AWP's, "manufacturer suggested list prices to providers." Thereafter, and notwithstanding that this letter

expressly advised the State's agent (First DataBank) that Schein had adopted the practice of reporting suggested wholesale list prices as AWP, the State of Wisconsin continued to rely on the pricing benchmark data compiled and/or published by First DataBank, and accordingly, at least by August 23, 2000, the State had effectively agreed to the practice of reporting suggested wholesale list prices as AWP. Further, Watson states that its investigation and discovery are ongoing and although it is not aware at this time of any direct communications between Watson and the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, regarding whether or not the State of Wisconsin agreed with First DataBank's definition of AWP and/or Watson's practice of reporting suggested wholesale list prices as AWP, Watson will supplement its response as required.

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

RESPONSE TO RPD NO. 7: Watson incorporates herein by reference its General Objections. In addition, Watson objects to this Request for Production ("RPD") on the grounds that it is overly broad, unduly burdensome, and duplicative of requests for production previously propounded by the Plaintiff and to which Watson has already responded. Watson also objects to this request to the extent it seeks information that is not within Watson's possession, custody or control, publicly available, or more readily available to Plaintiff. Watson also incorporates by reference its answer and objections to Interrogatory No. 7 of these Requests.

Without waiving and subject to its General and Specific Objections, Watson responds that all non-privileged documents in its possession, custody or control that could be located after reasonable search are responsive to this request have been or will be produced.

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 TO RFA NO. 8: In addition to its General Objections, which are incorporated herein by reference, Watson objects to RFA No. 8 on the grounds that it is overly broad and unduly burdensome. Watson further objects to this request on the grounds that the term “agreed” is vague, ambiguous and undefined. Watson further objects to this request to the extent it seeks information that is not within Watson’s possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, Watson objects to this request to the extent it implies that Watson has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC. Finally, Watson objects to this RFA on the grounds that it purports to require Watson to admit or deny allegations concerning issues that are not relevant to the subject matter of this action because, upon information and belief, the State of Wisconsin did not use WAC for reimbursement in the Wisconsin Medicaid or Medicare programs and therefore WACs are not relevant to the Plaintiff’s claims in this action.

Without waiving and subject to its General and Specific Objections, Watson denies RFA No. 8 for the reasons set forth in response to Interrogatory 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.

RESPONSE TO INT. NO. 8: In addition to its General Objections, which are incorporated herein by reference, Watson objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. Watson also objects to this request on the grounds that the terms “agreed” and “together developed” are vague, ambiguous and undefined. Watson further objects to this request to the extent it seeks information that is not within Watson’s possession, custody or control, publicly available, or more readily available to Plaintiff. Additionally, Watson objects to this request to the extent it implies that Watson has a legal duty to reach an explicit agreement with the State of Wisconsin as to the definition of WAC. Finally, Watson objects to this RFA on the grounds that it purports to require Watson to admit or deny allegations concerning issues that are not relevant to the subject matter of this action because, upon information and belief, the State of Wisconsin did not use WAC for reimbursement in the Wisconsin Medicaid or Medicare programs and therefore WACs are not relevant to the Plaintiff’s claims in this action.

Notwithstanding its General and Specific Objections, and without waiving them, Watson states that both it and the State of Wisconsin understood throughout the entire relevant time period that WAC is commonly understood to mean the cost invoiced to wholesalers in connection with their acquisition of a particular product from a manufacturer, not including any discounts, rebates, chargebacks or other adjustments. Watson 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. Watson also 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. Furthermore, the State of Wisconsin and its Department of Health & Family Services used pricing benchmark data compiled and/or published by recognized drug-industry third-party publishers. The publishers, and the drug industry, understood WAC to be the cost invoiced to wholesalers in connection with their acquisition of a particular product from a manufacturer, not including any discounts, rebates, chargebacks or other adjustments. One specific example of an industry definition is that Red Book, an independent third-party publisher of pricing information, defined WAC as the "manufacturer's quoted list price to wholesale distributors" that "does not reflect any deal terms or specialized contract pricing." In other words, Red Book defined WAC as an undiscounted invoice price to wholesalers. The State of Wisconsin, by not furnishing and publicizing a different definition of WAC, ratified that definition and therefore approved the practice of reporting WACs that reflected the price paid by wholesalers to acquire products from manufacturers, not including any discounts, rebates or chargebacks. Further, Watson states that

its investigation and discovery are ongoing and although it is not aware at this time of any direct communications between Watson and the State of Wisconsin, its Department of Health & Family Services, or any employee thereof, regarding whether or not the State of Wisconsin agreed to any such practice, Watson will supplement its response as required.

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

RESPONSE TO RPD NO. 8: Watson incorporates herein by reference its General Objections. In addition, Watson objects to this RPD on the grounds that it is overly broad, unduly burdensome, and duplicative of requests for production previously propounded by the Plaintiff and to which Watson has already responded. Watson also objects to this request to the extent it seeks information that is not within Watson's possession, custody or control, publicly available, or more readily available to Plaintiff. Watson further objects to this RPD on the grounds that it purports to require Watson to produce documents that are not relevant to the subject matter of this action because, upon information and belief, the State of Wisconsin did not use WAC for reimbursement in the Wisconsin Medicaid or Medicare programs and therefore WACs are not relevant to the Plaintiff's claims in this action. Watson also incorporates by reference its answer and objections to Interrogatory No. 8 of these Requests.

Without waiving and subject to its General and Specific Objections, Watson responds that all non-privileged documents in its possession, custody or control that could be located after reasonable search are responsive to this request have been or will be produced.

Dated this 11th day of August, 2008.

GASS WEBER MULLINS LLC
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s/Daniel S. Elger

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Certificate of Service

I hereby certify that on this 11th day of August 2008, a true and correct copy of **DEFENDANTS WATSON PHARMACEUTICALS, INC. AND WATSON PHARMA, INC.'S OBJECTIONS AND RESPONSES TO PLAINTIFF STATE OF WISCONSIN'S SECOND SET OF CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS** was served on all counsel of record by Lexis Nexis File U& Serve ®.

s/Daniel S. Elger