

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.: 04CV1709

ABBOTT LABORATORIES, et al.,

Defendants.

**DEFENDANT BAXTER HEALTHCARE CORPORATION'S RESPONSES AND
OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S EIGHTH SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

Pursuant to the Wisconsin Rules of Civil Procedure (the "Wisconsin Rules"), Defendant Baxter Healthcare Corporation (hereinafter, "Baxter"), by its undersigned counsel, hereby objects and responds to Plaintiff State of Wisconsin's Eighth Set of Requests for Production of Documents to All Defendants, served on July 22, 2008 (collectively, the "Requests"), as follows:

PRELIMINARY STATEMENT

Preliminarily, Baxter states as follows:

1. By responding to the Requests, Baxter does not waive or intend to waive:
(a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any information or documents produced in response to the Requests; (b) the right on any ground to the use of information produced in response to the Requests at any hearing, trial, or other point during the litigation; (c) the right to object on any ground at any time to a demand for further response to the Requests; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

2. The information and documents supplied herein are for use in this litigation and for no other purpose.

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.

5. To the extent Baxter's responses for the Requests contain information subject to the Protective Order entered by the Court in this matter on November 29, 2005, such information must be treated accordingly. 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 FOR PRODUCTION OF DOCUMENTS

Baxter makes the following General Objections to Plaintiff's 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 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 produced to the State of Wisconsin or its agencies or attorneys.

12. 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.

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

14. 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 Supreme Court Rules, the Wisconsin Rules of Civil Procedure, and

the Rules and orders of this Court. Baxter responds to these Requests, subject to other objections, as required by applicable law.

15. Baxter objects to the Requests to the extent they seek information concerning drugs/therapies which Baxter believes should be dismissed from this action. These drugs/therapies include, but are not limited to, Anesthesia and Critical Care legacy drugs/therapies, for which utilization is typically very low. Baxter further objects to the Requests to the extent that they seek information concerning any drugs/therapies or NDCs other than those listed in the TDL Stipulation between the State and Baxter.

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

2. Baxter objects to Plaintiff's definitions of "you," "your," and "your company," as set forth in Definition No. 1, to the extent they purport to imply any control by Baxter over any other entity or seek to impose discovery obligations that are broader than, or inconsistent with, Baxter's obligations under the Wisconsin Rules of Civil Procedure. The definitions are overbroad, unduly burdensome, and vague because they seek the production of information not in the control or custody of Baxter, require Baxter to search the files of third

parties, and require Baxter to speculate as to the identities of individuals and business entities encompassed within the definitions. 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.

3. Baxter objects to the definitions of "document" and "documents," as set forth in Definition No. 2, to the extent that they seek to impose discovery obligations that are broader than, or inconsistent with, Baxter's obligations under the Wisconsin Rules of Civil Procedure. Baxter will comply with the Wisconsin Rules of Civil Procedure. Baxter further objects to these definitions to the extent that they call for Baxter to search for information that was not generated in the form of written or printed records, or to create or re-create printouts from electronic data compilations, on the grounds that such a request would be unduly burdensome and oppressive. Baxter also objects to these definitions to the extent that they require or seek to require Baxter to: (a) produce documents or data in a particular form or format; (b) convert documents or data into a particular or different file format; (c) produce data fields, records, or reports about produced documents or data; (d) produce documents or data on any particular medium; (e) search for and/or produce any documents or data on back-up tapes; (f) produce any proprietary software, data, programs, or databases; or (g) violate a licensing agreement or copyright laws. 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.

RESPONSES AND SPECIFIC OBJECTIONS TO DOCUMENT 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:

DOCUMENT REQUEST NO. 23:

Attached hereto as Exh. 1 is a copy of a blank form entitled "HDMA Standard Product Information Pharmaceutical Products." Please produce all such forms that you have completed (as to any or all of the information on such forms) for any of your drugs from January 1, 1991 to the present as well as all documents that identify each person or entity, if any (including but not limited to Cardinal Health, McKesson Corporation, or Amerisource Bergen Corporation, or any of their predecessor entities), to whom you sent or provided any such forms and the dates that you sent or provided such forms to any such person or entity.

RESPONSE:

Baxter objects to this Request on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Request to the extent that it seeks information that is publicly available or is already in the possession, custody, or control of the State of Wisconsin or its agencies or attorneys, or that has been made available to the State of Wisconsin or its agencies or attorneys, or that is more appropriately sought from third parties to whom requests have been or may be directed. Baxter also objects to this Request to the extent it seeks documents relating to drugs other than the Baxter drugs and NDCs at issue in this case and documents created outside the relevant time frame of this case.

Subject to, and without waiving, any of these objections or its General Objections, Baxter responds that it has already produced any non-privileged documents in its possession, custody, or control that are responsive to this Request.

DOCUMENT REQUEST NO. 24:

Any documents reflecting communications with drug wholesalers (including but not limited to Cardinal Health, McKesson Corporation, or Amerisource Bergen Corporation, or any of their

predecessor entities) relating to (a) AWP, SWP, WAC, MAC, FUL, or direct price; or (b) any pricing compendia including but not limited to First DataBank, Medispan, and Red Book.

RESPONSE:

Baxter objects to this Request on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Request on the grounds that the following phrases are vague, ambiguous, and undefined: “AWP,” “SWP,” “WAC,” “MAC,” “FUL,” and “direct price.” In addition, Baxter objects to this request on the grounds that it is not limited by timeframe.

Subject to, and without waiving, any of these objections or its General Objections, Baxter responds that it has already produced any non-privileged documents in its possession, custody, or control that are responsive to this Request.

DOCUMENT REQUEST NO. 25:

Documents relating to any contract or agreement with any health-care provider (including but not limited to retail pharmacies (chain or independent), doctors, or long-term care facilities) to share in the profits earned by such provider in connection with the provider’s sale or dispensing of any of your prescription drugs.

RESPONSE:

Baxter objects to this Request on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Request on the grounds that the phrases “health-care provider” and “share in the profits earned by such provider in connection with the provider’s sale or dispensing of any of your prescription drugs” are vague, ambiguous, and undefined. Baxter also objects to this Request to the extent it seeks documents relating to drugs other than the Baxter drugs at issue in this case and documents created outside the relevant time frame of this case.

Subject to, and without waiving, any of these objections or its General Objections, Baxter states that it does not believe it had or has any profit-sharing agreements with healthcare

providers with respect to outpatient sales. Accordingly, Baxter does not have any documents responsive to this Request.

Dated: August 21, 2008

By: /s/ Merle M. DeLancey
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Counsel for Defendant
BAXTER HEALTHCARE CORPORATION

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 Eighth Set Of Requests For Production Of Documents To All Defendants to be served on all counsel of record electronically, via Lexis-Nexis File & Serve, on August 21, 2008.

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