

STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.: 04CV1709
Unclassified Civil: 30703

ABBOTT LABORATORIES, ET AL.,

Defendants.

BAXTER HEALTHCARE CORPORATION'S RESPONSES AND
OBJECTIONS TO PLAINTIFF'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS

Pursuant to Wisconsin Statutes §§ 804.01 and 804.09, the Wisconsin Supreme Court Rules, and the Dane County Circuit Court Rules ("Wisconsin Rules"), Defendant Baxter Healthcare Corporation ("Baxter"), by its undersigned counsel, hereby objects and responds to Plaintiff's First Set of Requests for Production of Documents to All Defendants ("Document Requests"), served on January 27, 2005, as follows:

I. PRELIMINARY STATEMENT

Preliminarily, Baxter states as follows:

1. By responding to these Document 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 documents or information produced in response to the Document Requests; (b) the right on any ground to the use of the documents or information produced in response to the Document 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 Document 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 responsive to a particular Document Request, Baxter does not assert that it has responsive materials or that such materials exist, only that it will conduct a reasonable search and produce responsive, non-objectionable, non-privileged documents or information. No objection made herein, or lack thereof, is an admission by Baxter as to the existence or non-existence 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.

5. Baxter will continue to negotiate with Plaintiff in good faith to reach reasonable limits on the scope of production. However, it would be extremely burdensome, costly, and wasteful to search for and produce documents until such time as the parties agree on a list of what Plaintiff has termed "Targeted Drugs." Our correspondence with Mr. Winget-Hernandez documents our efforts to narrow the number of drugs at issue in the case. To date these efforts have been unsuccessful, primarily due to Mr. Winget-Hernandez's inability to identify the rationale for the list of "Targeted Drugs." Indeed, many of the drugs included on the initial list of "Targeted Drugs" are not manufactured by Baxter.

6. Baxter reserves the right to amend or supplement these objections and responses with additional information or documents that may become available or come to its attention, and to rely upon such information or documents in any hearing, trial, or other proceeding in this litigation consistent with said negotiations and in accordance with the applicable rules and Court orders.

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

II. GENERAL OBJECTIONS

Baxter expressly incorporates all of the General Objections set forth below into each and every Response to the Document Requests. 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 or any other objection.

(a) GENERAL OBJECTIONS TO PLAINTIFF'S DOCUMENT REQUESTS

Baxter objects generally to Plaintiff's Document Requests as follows:

1. Baxter objects to the Document Requests to the extent that they seek documents or information outside the knowledge, possession, custody, or control of Baxter, its agents or employees, or that are more appropriately sought from third parties to whom requests have been or may be directed.

2. Baxter objects to the Document Requests to the extent that they demand production of any document covered by the attorney-client privilege, work product doctrine, joint defense/prosecution privilege, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent that any such protected documents are inadvertently produced in response to the Document Requests, the disclosure of such documents shall not constitute a waiver of Baxter's right to assert the applicability of any privilege or immunity to the documents, and any such documents shall be returned to Baxter's counsel immediately upon discovery thereof.

3. Baxter objects to the Document 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 overly broad, unduly burdensome, vague, ambiguous, oppressive and/or duplicative. Baxter will not make such documents or information available for inspection.

4. Baxter objects to the Document Requests to the extent they seek documents 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.

5. Baxter objects to the Document Requests to the extent that they may be construed as calling for the production of confidential information relating to a patient. Baxter will not produce any such material 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.

6. Baxter objects to the Document Requests to the extent that they seek trade secrets, proprietary or commercially sensitive or other confidential information, and will not produce documents containing any such information unless and until an appropriate protective order, or confidentiality agreement is entered in this case.

7. Baxter objects to the Document Requests to the extent that they seek information or documents that are not within Baxter's possession, custody, or control, 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 submitted.

8. Baxter objects to any implications and to any explicit or implicit characterization of the facts, events, circumstances, or issues in the Document 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.

9. Baxter objects to the Document Requests to the extent that they purport to impose obligations beyond or inconsistent with those imposed by applicable law. Baxter will respond to the Document Requests, subject to other objections, as required by applicable Wisconsin law.

10. 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

1. Baxter objects to Plaintiff's "Definitions" to the extent they expand upon or alter Baxter's obligations under the Wisconsin Rules.

2. Baxter objects to the definition of "Average Manufacturer Price" and "AMP" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language "the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report." Baxter incorporates by reference its objection to the definition of the term "Pharmaceutical." Baxter further objects to this definition to the extent that it purports to set an accurate or legally significant definition of AMP, which is a term legally defined by federal statute.

3. Baxter objects to the definition of "Chargeback" as set forth in Definition No. 2 on the grounds that it is vague and ambiguous with respect to the language "payment, credit, or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser's acquisition cost and the price at which the Pharmaceutical

was sold to another purchaser at a contract price.” Baxter incorporates by reference its objection to the definition of the term “Pharmaceutical.”

4. Baxter objects to the definition of “Defined Period of Time” as set forth in Definition No. 3, to the extent it seeks information outside of the limitations periods applicable to the claims in the Complaint, or beyond the time period relevant to this litigation. Such documents are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence. The production to Plaintiff by Baxter of any documents outside of the limitations periods applicable to the claims in the Complaint does not constitute waiver by Baxter of this objection to Plaintiff’s “Defined Period of Time.” Baxter further objects to this Definition on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous, particularly with respect to the language “Documents relating to such period even though created before that period,” and incorporates by reference its objection to the definition of the term “Document.”

5. Baxter objects to the definition of “Document” as set forth in Definition No. 4, to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Baxter’s obligations under the Wisconsin Rules. Baxter will comply with the Wisconsin Rules. Baxter further objects to this Definition insofar as it calls 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 this Definition to the extent it requires or seeks 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 media; (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 any licensing agreement or copyright laws.

6. Baxter objects to the definition of “Incentive” as set forth in Definition No. 5 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Baxter incorporates by reference its objections to the definitions of the term “Chargeback,” and further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

7. Baxter objects to the definition of “National Sales Data” in Definition No. 6 to the extent that it refers to information not relevant to the Plaintiff’s claims, which are limited to Wisconsin. Baxter further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation, and/or information about drugs not named in the Complaint, on the grounds that such information is 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 definition of “Pharmaceutical” in Definition No. 7 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Baxter further objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Baxter also objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation, and/or information about drugs not named in the Complaint, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

9. Baxter objects to the definition of “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous, particularly with respect to the language “actual acquisition cost,” “purchase price,” “third party payors,”

“gross profit actually or potentially realized,” and “purchasers.” Baxter incorporates by reference its objection to the definition of the term “Pharmaceutical.”

10. Baxter objects to the definition of “Targeted Drugs” in Definition No. 9 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Baxter incorporates by reference its objections to the definitions of the term “Defined Period of Time.” Baxter also objects to this Definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. Baxter further objects to this Definition to the extent it seeks information from beyond the time period relevant to this litigation, and/or information about drugs not named in the Complaint, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

III. SPECIFIC RESPONSES AND OBJECTIONS TO THE DOCUMENT REQUESTS

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

DOCUMENT REQUEST NO. 1:

All National Sales Data for each Targeted Drug during the Defined Period of Time.

RESPONSE:

Baxter objects to Document Request No. 1 on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter also objects to the extent that the Document Request calls for documents to be produced in electronic format, on the grounds that such demand is unduly burdensome or imposes discovery obligations that are broader than Baxter’s obligations under

the Wisconsin Rules.

Subject to and without waiving any of these objections or the General Objections, Baxter responds as follows: Baxter is in the process of creating a sales transaction database for use in the MDL litigation. Relevant portions of this database will be produced to Wisconsin.

DOCUMENT REQUEST NO. 2:

All Documents containing AMPs as reported or calculated by you for the Targeted Drugs OR a spread sheet or database showing all reported and calculated AMPs for each Targeted Drug over the Defined Period of Time which lists when such AMPs were reported or calculated, and the quarter to which each AMP applies.

RESPONSE:

Baxter objects to Document Request No. 2 on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter also objects to the extent that the Document Request calls for documents to be produced in electronic format, on the grounds that such demand is unduly burdensome or imposes discovery obligations that are broader than Baxter's obligations under Wisconsin law.

Subject to and without waiving any of these objections or the General Objections, Baxter will produce responsive AMPs Baxter submitted to CMS.

DOCUMENT REQUEST NO. 3:

All Documents created by you, or in your possession, that discuss or comment on the difference (or Spread) between any Average Wholesale Price or Wholesale Acquisition Cost and the list or actual sales price (to any purchaser) of any of defendants' Pharmaceuticals or any Pharmaceuticals sold by other manufacturers. Documents which merely list the AWP or WAC price and the list or actual sales price without further calculation of the difference, or without other comment or discussion of or about the spread between such prices are not sought by this Document Request.

RESPONSE:

Baxter objects to Document Request No. 3 on the grounds that it is overly broad,

unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter incorporates by reference its objection to the Plaintiff's definition of the term "Spread."

Subject to and without waiving any of these objections or the General Objections, Baxter responds as follows: Baxter will produce non-privileged documents responsive to this request.

DOCUMENT REQUEST NO. 4:

All Documents containing an average sales price or composite price identified by you in response to Interrogatory 1 of Plaintiff's First Set of Interrogatories to All Defendants.

RESPONSE:

Baxter objects to Document Request No. 4 on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Document Request on the grounds that it is it is vague and ambiguous with respect to the language "average sales price," and "composite price." Baxter also objects to the extent that the Document Request calls for documents to be produced in electronic format, on the grounds that such demand is unduly burdensome or imposes discovery obligations that are broader than Baxter's obligations under the Wisconsin Rules.

Subject to and without waiving any of these objections or the General Objections, Baxter will produce responsive, non-privileged documents.

DOCUMENT REQUEST NO. 5:

All Documents sent to or received from First DataBank, Redbook or Medi-Span regarding any price of any Targeted Drug.

RESPONSE:

Baxter objects to Document Request No. 5 on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of these objections or the General Objections, Baxter will produce responsive, non-privileged documents.

DOCUMENT REQUEST NO. 6:

All Documents in your possession prepared by IMS Health regarding a Targeted Drug or the competitor of a Targeted Drug regarding pricing, sales or market share.

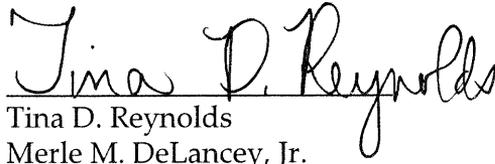
RESPONSE:

Baxter objects to Document Request No. 6 on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter also objects on the ground that the documents requested are more appropriately sought from third parties to whom the Document Request has been or should be directed.

Subject to and without waiving any of these objections or the General Objections, Baxter will produce responsive, non-privileged documents.

Dated July 6, 2005

As to Objections:



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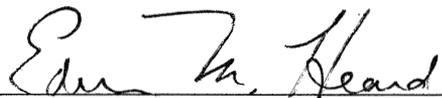
CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2005, a true and correct copy of Baxter Healthcare Corporation's Responses and Objections To Plaintiff's First Set of Requests for Production of Documents to All Defendants was served upon the Plaintiff's counsel listed below by U.S. Mail and upon Defendants' counsel by electronic mail.

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