

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05 C 0408C
)	
ABBOTT LABORATORIES, ET AL.,)	
)	
Defendants.)	

**TAP PHARMACEUTICAL PRODUCTS INC.'S ANSWER TO PLAINTIFF'S
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant TAP Pharmaceutical Products Inc. ("TAP") responds to Plaintiff's First Set of Requests for Production of Documents (the "Requests") as follows:

PRELIMINARY STATEMENT

A. TAP serves these responses while defendants' motion to dismiss Plaintiff's Amended Complaint is pending. After Plaintiff served its first set of written discovery to defendants, defendants moved to stay discovery while defendants' motion to dismiss is pending. At the hearing on defendants' stay motion, the Wisconsin state court advised Plaintiff to narrow its requests and to seek only limited discovery from defendants while defendants' motion to dismiss is pending. TAP has prepared these responses consistent with the Wisconsin state court's directive.

B. TAP's investigation for information responsive to the Requests continues. TAP's responses to the Requests are based on information available at this time. TAP reserves the right to supplement and/or amend these responses at any time before trial.

C. Where TAP states herein that it will produce or has produced documents in accordance with the Federal Rules of Civil Procedure, it will produce such documents to the extent that they exist and can be reasonably obtained.

D. TAP's specific objections to each Request are in addition to the general limitations and objections set forth in this and the next sections. These limitations and objections form a part of the response to each and every Request and are set forth here to avoid repetition. Thus, the absence of a reference to a general objection should not be construed as a waiver of the general objection as to a specific request.

E. By stating that TAP will produce any documents or things responsive to a particular request, TAP does not represent that any such documents or things exist or are within its custody, care, or control.

F. Any information and/or documents supplied in response to the Requests is for use in this litigation and for no other purpose.

G. All documents and information that TAP agrees to make available to Plaintiff in response to the Requests will be made available pursuant to either: (a) the Temporary Qualified Protective Order that was entered in the State court action on or about May 11, 2005; or (b) the Protective Order entered in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, No. 01 CV 12257 (PBS) (D. Mass.), on or about December 13, 2002.

H. To the extent that the Interrogatories seek information relating to Lupron[®], a TAP product, TAP objects to producing this information because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The State has agreed to settle and release any of its claims in this case relating to Lupron[®]. Released claims include any claims against any person or entity relating to Lupron[®] transactions where the cost, reimbursement

amount or price of the Lupron[®] was based in any part on AWP or any other price for Lupron[®]. TAP and the State have submitted their settlement agreement to the Honorable Richard G. Stearns, a federal judge in Boston who is overseeing a nationwide class action settlement with respect to Lupron[®], for final approval. *In re Lupron Marketing and Sales Practices Litigation*, Case No. 01-CV-10861, MDL No. 1430 (RGS) (D. Mass). If and when Judge Stearns approves the settlement agreement between TAP and the State, the State has agreed to dismiss with prejudice any of its Lupron[®]-related claims in this case. Furthermore, a releasor, such as the State, agrees that it will not seek to establish liability based, in whole or in part, on any released claims. Thus, the State should not be entitled to any Lupron[®]-related discovery in this case. TAP and the State originally agreed to defer any dispute over the discoverability of any Lupron[®]-related information in this matter until after Judge Stearns approves (or disapproves) the settlement agreement and, if it is approved, the State dismisses any of its Lupron[®]-related claims in this case with prejudice. The State now contends that it did not so agree. Regardless of the parties' dispute over the agreement to defer, TAP submits that it would be premature to address Lupron[®]-related discovery before the Lupron[®] claims in this matter are dismissed with prejudice.

GENERAL OBJECTIONS

I. TAP generally objects to the Requests to the extent they seek information that is protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, the consulting expert privilege, third-party confidentiality agreements or protective orders, or any other applicable privilege, rule or doctrine.

J. TAP generally objects to the Requests to the extent they seek confidential and/or proprietary information.

K. TAP generally objects to the Requests to the extent they exceed the scope of discovery permitted under the Federal Rules of Civil Procedure, Wisconsin law, or other applicable law.

L. TAP generally objects to the Requests to the extent they are duplicative of Plaintiff's other discovery requests.

M. TAP generally objects to the Requests to the extent that: (a) the discovery sought by any request is unreasonably cumulative or duplicative, or is obtainable from some other source (including, but not limited to, a public source) that is more convenient, less burdensome, or less expensive; and (b) compliance with any request would be unduly burdensome, unduly expensive, harassing, annoying, or oppressive.

N. TAP generally objects to the Requests to the extent they seek information about products not named in the Amended Complaint.

O. TAP's responses to the Requests are made without in any way waiving: (a) the right to object on the grounds of competency, relevancy, materiality, privilege, or other grounds of admissibility as evidence for any purpose in any subsequent proceeding in this action or any other action; and (b) the right to object on any ground to other discovery requests involving or relating to the subject matter of these Requests. Furthermore, TAP is providing responses in an effort to expedite discovery in this action and not as an indication or admission by TAP of the relevancy, materiality or admissibility of the responses. TAP preserves all objections to Plaintiff's use of such responses at trial.

P. To the extent applicable, TAP adopts and incorporates by reference any objections to the Requests made by any other defendant in this matter.

OBJECTIONS TO DEFINITIONS

Q. TAP objects to the definition of the terms "Average Manufacturer Price" and "AMP" as vague and ambiguous. TAP incorporates by reference its objection to the definition of the term "Pharmaceutical." TAP further objects to the definition to the extent it purports to set an accurate or legally significant definition of AMP.

R. TAP objects to the definition of the term "Chargeback" as vague and ambiguous, particularly with respect to the phrase "payment, credit, or other adjustment you have provided to a purchaser of a Pharmaceutical to compensate for any difference between the purchaser's acquisition cost and the price at which the purchaser sold the Pharmaceutical to another purchaser." TAP incorporates by reference its objection to the definition of the term "Pharmaceutical."

S. TAP objects to the definition of the term "Defined Period of Time" as overly broad, unduly burdensome, and vague and ambiguous with respect to the phrase "Documents relating to such period." TAP incorporates by reference its objection to the term "Document." TAP further objects to the definition to the extent it seeks information from outside the statute of limitations applicable to the claims in this litigation, or beyond the time period relevant to this litigation.

T. TAP objects to the definition of the term "Document" as vague and ambiguous. TAP further objects to this definition to the extent it seeks to impose discovery obligations that exceed or are inconsistent with the requirements of the Federal Rules of Civil Procedure. TAP further objects to this definition to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, the consulting expert privilege, or any other privilege or exemption recognized under federal, Wisconsin, or other applicable law. TAP further objects to this definition to the extent it seeks to: (i) require TAP to produce documents or data in a

particular form or format; (ii) convert information into a particular file format; (iii) produce data, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, or other information; or (vii) violate any licensing agreement or copyright laws.

U. TAP objects to the definition of "Incentive" as overly broad, unduly burdensome, vague and ambiguous. TAP incorporates by reference its objection to the definition of the term "Chargeback." TAP further objects to this definition to the extent it seeks information outside of the time period relevant to this litigation.

V. TAP objects to the definition of "National Sales Data" as overly broad, unduly burdensome, vague and ambiguous. TAP incorporates by reference its objections to the definitions of the terms "Targeted Drugs" and "Incentives." TAP further objects to this definition to the extent it refers to information not relevant to the State's claims, which are limited to Wisconsin. TAP further objects to this definition to the extent it seeks information beyond the time period relevant to this litigation, or information about drugs not named in the Amended Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to discovery of admissible evidence.

W. TAP objects to the definition of "Pharmaceutical" as overly broad, unduly burdensome, vague and ambiguous. TAP further objects to the extent it refers to information not relevant to the State's claims, which are limited to Wisconsin. TAP further objects to this definition to the extent that it seeks information beyond the time period relevant to this litigation, or information about drugs not named in the Amended Complaint on the grounds that such

information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to discovery of admissible evidence.

X. TAP objects to the definition of "Spread" as overly broad, unduly burdensome, vague and ambiguous. TAP incorporates by reference its objections to the definition of the term "Pharmaceutical."

Y. TAP objects to the definition of the term "Targeted Drug" in the Requests and in the State's letter from Michael Winget-Hernandez dated June 3, 2005 on the grounds that it is overly broad and unduly burdensome. TAP further objects to this definition as vague and ambiguous, particularly with respect to the terms "you" and "total utilization." TAP further objects to this definition to the extent it includes drugs not sold by TAP. TAP incorporates by reference its objection to the term "Defined Period of Time." TAP further objects to this definition to the extent it refers to information not relevant to the State's claims, which are limited to Wisconsin. TAP further objects to this definition to the extent it seeks information beyond the time period relevant to this litigation, or information about drugs not named in the Amended Complaint on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to discovery of admissible evidence.

Z. TAP objects to the inclusion of defined terms in the definition section that are not used in the Requests.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

REQUEST NO. 1: All National Sales Data for each Targeted Drug during the Defined Period of Time.*

ANSWER: In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad and unduly burdensome in seeking information over a twelve-year period and is not

limited to drugs identified in the Complaint; (ii) is not limited to sales affecting or relating to the State of Wisconsin; (iii) is vague and ambiguous, particularly with respect to the term "National Sales Data;" (iv) seeks confidential and/or proprietary information; and (v) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. TAP incorporates by reference its objections to the definitions of the terms "Defined Period of Time," "National Sales Data" and "Targeted Drug." In addition, TAP incorporates by reference the objections set forth in paragraph H above.

Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists, responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron[®] (see paragraph H of the Preliminary Statement above).

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.*

ANSWER: In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad and unduly burdensome to the extent it seeks information over a twelve-year period and is not limited to the drugs identified in the Complaint; (ii) is not limited to the State of Wisconsin; (iii) is vague and ambiguous, particularly with respect to the terms "AMP," "calculated," "reported," "database" and "lists;" (iv) seeks confidential and/or proprietary information; (v) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (vi) seeks information protected by the attorney-client privilege and/or the work product doctrine; (vii) seeks information protected under the Medicaid Rebate Statute and TAP's Medicaid Rebate agreement with CMS; and (viii) seeks information that the State can derive based on information in its possession. TAP incorporates by reference

its objections to the definition of the terms “AMP,” “Document,” and “Targeted Drug.” In addition, TAP incorporates by reference the objections set forth in paragraph H above.

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 prices (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 request.

ANSWER: In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad and unduly burdensome in seeking documents over a twelve-year period and is not limited to drugs identified in the Complaint; (ii) is not limited to the State of Wisconsin; (iii) is vague and ambiguous, particularly with respect to the terms "possession," "discuss," "comment," "difference," "Average Wholesale Price," "Wholesale Acquisition Cost," "list or actual sales price," "purchaser" and "calculation;" (iv) seeks confidential and/or proprietary information and (v) seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, TAP incorporates by reference the objections set forth in paragraph H above.

Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists, responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron® (see paragraph H of the Preliminary Statement above).

REQUEST NO. 4: All Documents containing an average sales price or composite price identified by you in response to Interrogatory No. 1 of Plaintiff’s First Set of Interrogatories to All Defendants.*

ANSWER: In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad and unduly burdensome in seeking documents over a twelve-year period and is not limited to drugs identified in the Complaint; (ii) is vague and ambiguous, particularly with

respect to the terms "containing," "average sales price" and "composite price;" (iii) seeks confidential and/or proprietary information; and (iv) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, TAP incorporates by reference the objections set forth in paragraph H above.

Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists, responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron[®] (see paragraph H of the Preliminary Statement above).

REQUEST NO. 5: All Documents sent to or received from First DataBank, Redbook and Medi-span regarding the price of any Targeted Drug.

ANSWER: In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad and unduly burdensome in seeking documents over a twelve-year period and not limited to drugs identified in the Complaint; (ii) is vague and ambiguous; (iii) seeks confidential and/or proprietary information; (iv) seeks information outside of TAP's possession, custody, or control; and (v) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. TAP incorporates by reference its objections to the definition of the terms "Document" and "Targeted Drug." In addition, TAP incorporates by reference the objections set forth in paragraph H above.

Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists, responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron[®] (see paragraph H of the Preliminary Statement above).

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.

ANSWER: In addition to its General Objections, TAP objects to this Request because it: (i) is overly broad and unduly burdensome in seeking documents over a twelve-year period and is not limited to drugs identified in the Complaint; (ii) is vague and ambiguous, particularly with respect to the terms "prepared," "competitor," "pricing," "sales" and "market share;" (iii) seeks confidential and/or proprietary information; (iv) seeks information that the State can obtain from IMS Health; (v) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. TAP incorporates by reference its objections to the definitions of the terms "Document" and "Targeted Drug." In addition, TAP incorporates by reference the objections set forth in paragraph H above.

Subject to and without waiving its objections, TAP will make available to Plaintiff, at a mutually agreeable time and place and to the extent such information exists, responsive information, if any, that TAP has produced in MDL 1456 for any TAP product identified in the Amended Complaint except Lupron[®] (see paragraph H of the Preliminary Statement above).

Dated: July 22, 2005

Respectfully Submitted,

DEFENDANT TAP PHARMACEUTICAL
PRODUCTS INC.



Allen C. Schlinsog, Jr.
Mark A. Cameli
Reinhart Boerner Van Deuren s.c.
1000 North Water Street
P.O. Box 2965
Milwaukee, WI 53201-2965
(414)298-1000
(414)298-8097 (fax)

Lynn M. Stathas
Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street
P.O. Box 2018
Madison, WI 53701-2018
(608)229-2200
(608)229-2100 (fax)

Of Counsel

James R. Daly
Jeremy P. Cole
JONES DAY
77 West Wacker
Chicago, IL 60601-1692
312.782.3939
312.782.8585 (fax)