

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

STATE OF WISCONSIN,)	
)	
Plaintiff,)	Case No.: No. 06-C-0582-C
)	
v.)	
)	
ABBOTT LABORATORIES, ET AL.,)	
)	
Defendants.)	

**DEFENDANT BAXTER HEALTHCARE CORPORATIONS’S OBJECTIONS AND
RESPONSES TO PLAINTIFF’S SECOND SET OF INTERROGATORIES TO ALL
DEFENDANTS**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Western District of Wisconsin, and, to the extent applicable, Wisconsin Rule of Civil Procedure 804.08, defendant, Defendant Baxter Healthcare Corporation (“Baxter”), by its undersigned counsel, hereby objects and responds to Plaintiff’s Second Set of Interrogatories to All Defendants as follows:

PRELIMINARY STATEMENT

1. By responding to these Interrogatories, 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 produced in response to the Interrogatories; (b) the right on any ground to the use of information produced in response to the Interrogatories 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 Interrogatories; 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 information responsive to a particular Interrogatory, Baxter does not assert that it has responsive information or that such materials exist, only that it will conduct a reasonable search and produce responsive, non-objectionable, non-privileged information. No objection made herein, or lack thereof, is an admission by Baxter as to the existence or non-existence of any 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 Second Set of Interrogatories, unless a specific definition or instruction has been provided and/or agreed upon.

5. Baxter's answers to Plaintiff's Second Set of Interrogatories contain information subject to the Protective Order in this matter and must be treated accordingly

6. Baxter's responses to Plaintiff's Second Set of Interrogatories are submitted without prejudice to Baxter's right to produce evidence of any subsequently discovered fact. 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 Interrogatories shall not be construed as a waiver of the confidentiality of any such information.

GENERAL OBJECTIONS

8. Baxter expressly incorporates all of the General Objections set forth below into the specific objections for each Interrogatory. 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.

9. Baxter objects to the Interrogatories 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.

10. Baxter objects to the Interrogatories to the extent that they seek information 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 information is inadvertently produced in response to the Interrogatories, 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 information.

11. Baxter objects to the Interrogatories to the extent that they seek 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.

12. Baxter objects to the Interrogatories 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.

13. Baxter objects to the Interrogatories 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.

14. Baxter objects to the Interrogatories to the extent they seek 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.

15. Baxter objects to the Interrogatories 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 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.

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

17. 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.

GENERAL OBJECTIONS TO PLAINTIFF'S DEFINITIONS

18. Baxter objects to Plaintiff's "Definitions" to the extent Plaintiff intends to expand upon or alter Baxter's obligations under the Federal Rules of Civil Procedure, the Court's Local Rules, and, to the extent applicable, the Wisconsin Rules of Procedure, in responding to the Interrogatories. Baxter will comply with applicable rules of civil procedure in providing its answers to Plaintiff's Second Set of Interrogatories.

19. Baxter objects to Plaintiffs' definition of "Average Manufacturer Price" or "AMP" on the ground that it is vague and ambiguous. Baxter further objects to this definition to the extent it purports to state an accurate or legally significant definition.

20. Baxter objects to Plaintiff's definition of "Defined Period of Time" on the grounds that the phrase as defined is overbroad and burdensome, and purports to require the production of documents or information that are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this definition to the extent it seeks documents or information from outside the statute of limitations applicable to the claims in this litigation, or beyond the time period relevant to this litigation.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 6:

Do you contend that during the Defined Period of Time the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMPs of the targeted drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid rebate statute, 42 U.S.C. § 1396r-8?

ANSWER: Baxter objects to Interrogatory No. 6 on the grounds that it is vague, ambiguous, and calls for a legal conclusion.

Notwithstanding Baxter's general and specific objections, and without waiving them, Baxter states that federal law does not prohibit and did not prohibit the State of Wisconsin from estimating or determining an AMP for Baxter products. In fact, for many and, perhaps, all of Baxter's products, the State can derive and could have derived an AMP from the Unit Rebate Amount. The State can also require and could have required Baxter to submit AMP data directly to the State, as other states do.

Moreover, Baxter's BioScience division has reported its AMP and BP data to the State on a quarterly basis since 1991. Due to the transfer of its Medicaid price reporting operations from California to Illinois in 1997 and an administrative oversight after the transfer, BioScience's AMP and BP data was not transmitted to the State between the fourth quarter of 1997 and the second quarter of 1999, but had the State requested the data during that time, Baxter would have provided it immediately.

INTERROGATORY NO. 7:

If the answer to Interrogatory No. 1 [sic] is anything other than an unqualified "no,"

- a. state all bases for such contention, and
- b. identify all documents that support such contention.

ANSWER: Baxter objects to Interrogatory No. 7 on the grounds that it is vague, ambiguous, overbroad, and burdensome. Baxter further objects to this interrogatory to the extent it seeks information that is publicly available to the Plaintiff.

Notwithstanding Baxter's general and specific objections, and without waiving them, Baxter incorporates by reference its answer to Interrogatory No. 6 and further states that 42 U.S.C. § 1396r-8 and the State Medicaid statutes and regulations for those states that require manufacturers to submit AMP data provide support for Baxter's answer to Interrogatory No. 6.

December 20, 2006

Respectfully submitted,

Dated: December 21, 2006

By: /s/ Jason M. Bruno
Merle M. DeLancey, Jr. (*pro hac vice*)
Jason M. Bruno (*pro hac vice*)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006-5403
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

Bruce A. Schultz SB
Coyne, Niess, SB
Schultz, Becker & Bauer, S.C
150 E. Gilman Street
Madison, WI 53703
Phone: (608) 255-1388
bschultz@cnsbb.com

Counsel for Defendant
BAXTER HEALTHCARE CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Baxter Healthcare Corporation's Responses and Objections to Plaintiff's Amended Deposition and Accompanying Document Requests to be served on all counsel of record electronically via LexisNexis File & Serve system on December 21, 2006.

/s/ Jason Bruno
Jason Bruno