

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

Branch 7

STATE OF WISCONSIN,
Plaintiff,

v.

Case No.: 04CV1709
Unclassified Civil: 30703

ABBOTT LABORATORIES, ET AL.,
Defendants.

DEFENDANT BAXTER HEALTHCARE CORPORATION'S RESPONSES AND
OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Pursuant to Wisconsin Statutes §§ 804.01 and 804.08, 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 Interrogatories to All Defendants, served on January 27, 2005, as follows:

I. PRELIMINARY STATEMENT

Preliminarily, Baxter states as follows:

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.

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 Interrogatories 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 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.

(a) GENERAL OBJECTIONS TO PLAINTIFF'S INTERROGATORIES

Baxter objects generally to Plaintiff's Interrogatories as follows:

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. Baxter objects to the Interrogatories to the extent that they purport to impose obligations beyond or inconsistent with those imposed by applicable law. Baxter will respond to the Interrogatories, 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 PLAINTIFF’S INTERROGATORIES

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

INTERROGATORY NO. 1:

Have you ever determined an average sales price or other composite price net of any or all Incentives for a Targeted Drug during the Defined Period of Time? If so, for each Targeted Drug for which you have made such a determination, identify:

- (a) the beginning and ending dates of each period applicable to each such determination;

- (b) the applicable class(es) of trade for which each determination was made;
- (c) each average sales price or composite price determined;
- (d) the person(s) most knowledgeable regarding the determinations;
- (e) the methodology used to determine such prices;
- (f) your purpose(s) in making such determinations;
- (g) whether you disclosed any average sales price or composite price so determined to any publisher, customer, or governmental entity. If so, identify each publisher, customer or governmental entity to whom each such price was disclosed and the corresponding date of the disclosure; and
- (h) whether any such average sales price or composite price was treated as confidential or commercially sensitive financial information.

RESPONSE TO INTERROGATORY NO. 1:

Baxter objects to Interrogatory No. 1 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory is particularly vague and ambiguous with respect to the language “average sales price” and “composite price.” Baxter further objects to the Interrogatory on the grounds that it is redundant and duplicative to the extent that it seeks documents and information that Baxter will provide in response to Plaintiff’s Document Requests in this action.

Subject to and without waiving any of these objections or the General Objections, Baxter responds as follows: Baxter will produce business records from which the answer to this interrogatory can be obtained.

INTERROGATORY NO. 2:

Identify each electronic database, data table or data file that you now maintain or have maintained during the Defined Period of Time in the ordinary course of business which

contains a price for a Targeted Drug. For each such electronic data entity, identify, describe or product the following:

- (a) the name or title of each such database, data table, or data file;
- (b) the software necessary to access and utilize such data entities;
- (c) describe the structure of each database, data table or data file identified in response to Request No. 2(a) above and identify all files or tables in each such database, data table or data file. For each such file or table, identify all fields and for each field describe its contents, format and location within each file or table record or row;
- (d) the current or former employee(s) with the most knowledge of the operation or use of each data entity identified above; and
- (e) the custodian(s) of such data entity.

RESPONSE TO INTERROGATORY NO. 2:

Baxter objects to Interrogatory No. 2 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to the Interrogatory on the grounds that it is redundant and duplicative to the extent that it seeks documents and information that Baxter will provide in response to Plaintiff's Document Requests in this action. Baxter further objects to this Interrogatory to the extent it seeks the proprietary information of third parties.

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 and will include data from which the answer to this interrogatory can be obtained.

INTERROGATORY NO. 3:

Describe each type of Incentive you have offered in conjunction with the purchase of any Targeted Drug. For each such Incentive, identify:

- (a) the type(s) of incentive(s) offered for each Targeted Drug;
- (b) the class(es) of trade eligible for each Incentive;
- (c) the general terms and conditions of each Incentive; and
- (d) the beginning and ending dates of each period during which the Incentive was offered.

RESPONSE TO INTERROGATORY NO. 3:

Baxter objects to Interrogatory No. 3 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to the Interrogatory on the grounds that it is redundant and duplicative to the extent that it seeks documents and information that Baxter will provide in response to Plaintiff's Document Requests in this action.

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 and will include data from which the answer to this interrogatory can be obtained. In addition, Baxter will produce business records from which the answer to this interrogatory can be obtained.

INTERROGATORY NO. 4:

Describe in detail how you determined each price you used in the ordinary course of business of each Targeted Drug for each year during the Defined Period of Time and identify the person(s) most knowledgeable in making such determinations for each Targeted Drug for of each year.

RESPONSE TO INTERROGATORY NO. 4:

Baxter objects to Interrogatory No. 4 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, and not reasonably calculated to lead to the discovery of

admissible evidence. Baxter further objects to the Interrogatory on the grounds that it is redundant and duplicative to the extent that it seeks documents and information that Baxter will provide in response to Plaintiff's Document Requests in this action.

Subject to and without waiving any of these objections or the General Objections, Baxter responds as follows: Baxter will produce business records from which the answer to this interrogatory can be obtained.

INTERROGATORY NO. 5:

Have you ever included in your marketing of a Targeted Drug to any customer reference to the difference (or spread) between an AWP or WAC published by First DataBank, Redbook or Medi-span and the list or actual price (to any customer) of any Targeted Drug? If so, provide the following information for each Targeted Drug:

- (a) the drug name and NDC;
- (b) the beginning and ending dates during which such marketing occurred;
- (c) the name, address and telephone number of each customer to whom you marketed a spread(s); and
- (d) identify any document published or provided to a customer which referred to such difference(s) or spread(s).

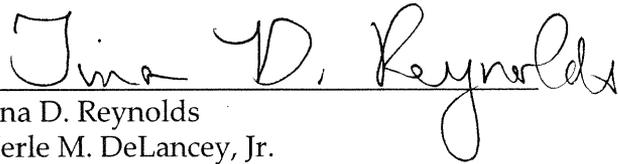
RESPONSE TO INTERROGATORY NO. 5:

Baxter objects to Interrogatory No. 5 on the grounds that it is overly broad, unduly burdensome, vague and 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: Based upon its reasonable search to date, Baxter is not aware of any instance of marketing as defined in this Interrogatory.

Dated July 6, 2005

As to Objections:



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As to Responses:

Signature page to follow.

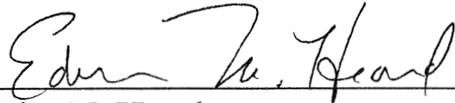
CERTIFICATE OF SERVICE

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 Interrogatories was served upon the Plaintiff's counsel listed below by U.S. Mail and upon Defendants' counsel by electronic mail.

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