

3. By responding that it will produce documents or information responsive to a particular Request, Baxter does not assert that it has responsive documents or information 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. 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. Baxter's answers to Plaintiff's Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

6. Baxter is searching diligently for responsive information and documents, but the Requests are unreasonably broad, which makes it unduly burdensome, if not impossible, for Baxter to complete any comprehensive collection and review process. Baxter will negotiate with Plaintiff in good faith to reach reasonable limits on the scope of production, and reserves the right to amend or supplement these objections and responses, as necessary, with additional information or subsequently discovered facts or with 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 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 for 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 INTERROGATORIES AND REQUEST FOR PRODUCTION

Baxter makes the following General Objections to Plaintiff's Interrogatories No. 3 and Request for Production of Documents No. 4 (collectively, the "Requests"):

1. Baxter objects to the Requests to the extent that they are premature.
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, 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 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 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 in this litigation is greatly 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 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 the 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 made available 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 require Baxter to create, compile, or develop new documents.

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 Rules of Civil Procedure. Baxter responds to these Requests, subject to other objections, as required by applicable law.

15. 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

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 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 and seek to impose discovery obligations that are broader than, or inconsistent with, Baxter's obligations under the Wisconsin Rules. 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.

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. Baxter will comply with the Wisconsin Rules. Baxter further objects to this definition to the extent that 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 that 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 medium; (e) search form 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.

ANSWERS TO INTERROGATORIES NO. 3

Subject to the General Objections and Preliminary Statement, and without waiving and expressly preserving all such objections, which are hereby incorporated into the responses to each Request, Baxter answers Plaintiff's Interrogatories No. 3 as follows:

INTERROGATORY NO. 6:

With respect to any allegation of the Amended Complaint which you denied in your Answer state each fact that supports each such denial.

ANSWER:

Baxter objects to this Interrogatory on the grounds that it is premature, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Interrogatory on the grounds that a number of Baxter's denials were expressly based on Baxter's lack of knowledge or information regarding the Amended Complaint's assertions, and this Interrogatory thus seeks information that is outside of the knowledge, possession, custody, or control of Baxter and its agents and employees. Baxter also objects to the Interrogatory on the grounds that it seeks information protected by the attorney-client privilege and work-product doctrine.

Subject to and without waiving any of these objections or its General Objections, Baxter responds that, based upon diligent review and investigation to date, the following facts, among others, generally supports its denials to the allegations of the Plaintiff's Second Amended Complaint:

1. Baxter did not engage in conduct that was improper, fraudulent, or unlawful as alleged in Plaintiff's Second Amended Complaint.
2. Baxter does not have a policy encouraging or supporting the marketing or manipulating of the spread between the published average wholesale price ("AWP") and the actual acquisition costs ("AAC") for its products. Instead, Baxter's policies provide that its products should be marketed based on their clinical efficacy and other product attributes.

3. Baxter did not publish the AWP for its products. The AWP for Baxter's products were published by the pricing compendia.
4. It was commonly known within certain governmental agencies and within the pharmaceutical industries and by those involved with reimbursement that there was a mark-up of some amount between the wholesale acquisition costs ("WAC") and the published AWP.
5. It was commonly known within certain governmental agencies and within the pharmaceutical industries and by those involved with reimbursement that published AWP did not represent actual average of wholesale prices.
6. Plaintiff purchased drugs and therapies at market prices directly for the benefit of its citizens throughout the period at issue in the case.
7. Plaintiff, including the Secretary of the Department of Health and Family Services ("DHFS"), Division of Health Care Financing, Governor's Office, Legislative Fiscal Bureau, Joint Committee on Finance, and Department of Administration, was aware that published AWP did not represent the actual average of wholesale prices for Baxter's products.
8. Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
9. Plaintiff has periodically considered, and rejected, alternative pharmaceutical reimbursement methodologies, including methodologies that were not AWP-based.
10. In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.
11. Plaintiff continues to reimburse providers who participate in its Medicaid program for pharmaceuticals based on AWP.
12. Baxter did not misrepresent or inflate the wholesale acquisition cost ("WAC") or AWP for its products.
13. Baxter operates in a competitive environment as a result of which contracts and pricing terms are properly protected confidential business information.
14. Plaintiff was free at all times to change its pharmaceutical reimbursement under its Medicaid program to a non-AWP-based methodology.
15. Baxter is unaware of Plaintiff ever enacting a statutory or regulatory definition of AWP.

16. Plaintiff was free at all times to require pharmaceutical manufacturers to provide it with their Best Price (“BP”) and/or Average Manufacturer’s Price (“AMP”) data as a condition of preferred access to their drugs by Medicaid beneficiaries. For each product reimbursed by the State, Baxter provided the AMP and BP to the State on a quarterly basis.
17. Baxter never affirmatively represented to Plaintiff that the AWP published for its products represented an actual average of wholesale prices.
18. Plaintiff was aware that pharmaceutical manufacturers provided discounts to customers.

Baxter expressly reserves the right to supplement this Interrogatory Answer in the future.

INTERROGATORY NO. 7:

Identify each document that supports each such denial.

ANSWER:

Baxter objects to this Interrogatory on the grounds that it is premature, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter further objects to this Interrogatory on the grounds that a number of Baxter’s denials were expressly based on Baxter’s lack of knowledge or information regarding the Amended Complaint’s assertions, and this Interrogatory thus seeks information that is outside of the knowledge, possession, custody, or control of Baxter and its agents and employees. Baxter also objects to the Interrogatory on the grounds that it seeks information protected by the attorney-client privilege and work product doctrine.

Subject to and without waiving any of these objections or its General Objections, Baxter responds that, based upon diligent review and investigation to date, the following categories of documents, among others, generally support its denials to the allegations in Plaintiff’s Second Amended Complaint:

1. Documents Baxter has produced, or will produce, in response to Plaintiff’s outstanding discovery requests, in a manner to be negotiated and agreed upon between the parties, including, but not limited to, the following:

- Communications with the pricing compendia;
 - Sales and other data;
 - Communications between Baxter and its customers;
 - Customer contracts;
 - Pricing information; and
 - Other documents.
2. Documents in the possession, custody and control of Plaintiff and other documents generated, obtained and reviewed by Plaintiff, based upon information obtained from Plaintiff's document production and other documents to date and depositions of its employees, including, but not limited to, the following:
- Documents referring to proposed changes to Wisconsin Medicaid's pharmaceutical reimbursement methodology;
 - Documents referring to pharmacists' profits on the sale of products reimbursed by Wisconsin Medicaid;
 - Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;
 - Studies conducted by the Wisconsin Department of Agriculture, Trade and Consumer Protection, the University of Wisconsin, Congressman Tom Barrett, the Federal Trade Commission, HCFA, Dr. David Kreling, and various other consultants and entities concerning pharmaceutical pricing and reimbursement;
 - Governor's budget proposals related to Medicaid and documents analyzing those proposals;
 - Issue papers written by the Legislative Fiscal Bureau and the Department of Health Family Services ("DHFS") on pharmaceutical reimbursement;
 - OIG, GAO, CBO, and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;

- Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
 - Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
 - Issues, briefing, and concept papers on pharmaceutical reimbursement and costs by the Office of Strategic Finance;
 - Written testimony of the DHFS Secretary concerning pharmaceutical reimbursement;
 - Emails between DHFS and the Governor's office concerning pharmaceutical reimbursement;
 - Wholesaler data from state-run entities that purchase drugs directly from wholesalers;
 - Documents comparing prices paid by Wisconsin Medicaid to those paid by other state entities;
 - Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
 - Documents related to the Governor's Pharmacy Reimbursement Commission;
 - Budget documents from the Department of Administration related to pharmaceutical reimbursement;
 - Audits of Wisconsin's Medicaid program;
 - Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement; and
 - Media articles discussing pharmaceutical reimbursement.
3. Documents received, or expected to be received, from third-parties including, but not limited to, the following:
- Federal government;
 - Other states;

- Third parties subpoenaed in this case; and
- Wholesaler data produced by third parties.

Baxter expressly reserves the right to supplement this Interrogatory Answer in the future.

INTERROGATORY NO. 8:

With respect to each affirmative defense you assert in your Answer to the Amended Complaint state the facts which support that defense.

ANSWER:

Baxter objects to this Interrogatory on the grounds that it is premature, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter also objects to the Interrogatory on the grounds that it seeks information protected by the attorney-client privilege and work-product doctrine. Baxter further objects to this Interrogatory 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.

Subject to and without waiving any of these objections or its General Objections, based upon diligent review and investigation to date, the following facts, among others, generally support Baxter's Affirmative Defenses asserted in its Answer to Plaintiffs' Second Amended Complaint:

Affirmative Defenses Nos. 1, 17, 18, 21, 36:

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent the actual average of wholesale prices for Baxter's products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.

- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWPs.
- Plaintiff purchased drugs and therapies at market prices directly for the benefit of its citizens throughout the period at issue in the case.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defenses Nos. 2-4:

- Based upon Plaintiff's production to date, it appears that Plaintiff undertook little, if any, studies to determine EAC.

Affirmative Defense No. 5:

- Plaintiff submitted state plans and state plan amendments to the federal government concerning the rate at which it would reimburse pharmaceuticals under its Medicaid Program. These plans were reviewed and approved by the federal government.

Affirmative Defense No. 6:

- Baxter's products are sold in interstate commerce.

Affirmative Defense Nos. 7, 9, 13, 14, 16, 26-27, 30, 32, 41-45

- These defenses are legal in nature.

Affirmative Defenses Nos. 19, 43-44

- Plaintiff cannot establish that it was damaged by Baxter's conduct. Plaintiff adopted the reimbursement methodology to further program objectives.
- Plaintiff cannot establish that any increase in Baxter's market share was attributable to Baxter's allegedly unlawful conduct as opposed to other factors.
- Plaintiff cannot establish that any increase in Baxter's market share was the result of Plaintiff's payments as opposed to payments from Medicare or private payors.

Affirmative Defense No. 8

- Plaintiff's payments were made with full knowledge of the definition and true nature of AWP and the payments were made without compulsion.

Affirmative Defense No. 10

- To the extent that Baxter has engaged in lobbying or related efforts before Congress and/or other regulatory agencies, such conduct is protected by the First Amendment and *Noerr-Pennington*.

Affirmative Defenses Nos. 11, 27-29

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent the actual average of wholesale prices for Baxter's products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on AWP.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.
- It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement that published AWP's did not represent actual average wholesale prices.
- Plaintiff has not proven it complied with Wis. Stat. § 165.25(1) or Wis. Stat. § 100.18(11)(d).
- Baxter did not cause providers to make a false statement to Plaintiff.
- The Attorney General is not authorized to seek forfeitures under § 100.26(4) and § 100.264(2).
- Plaintiff was aware that pharmaceutical manufacturers provided discounts to customers.

- Plaintiff has not proven that Baxter's discounts to providers had the effect of injuring competition.
- Plaintiff did not confer any benefit on Baxter.

Affirmative Defense No. 12

- Plaintiff has not proven it complied with Wis. Stat. § 165.25(1) or Wis. Stat. § 100.18(11)(d).

Affirmative Defense No. 15

- It was commonly known and widely understood that AWP's did not represent the actual average of wholesale prices.

Affirmative Defense No. 18

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent the actual average of wholesale prices for Baxter's products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on AWP.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.
- It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement that published AWP's did not represent actual average wholesale prices.
- Plaintiff purchased drugs and therapies at market prices directly for the benefit of its citizens throughout the period at issue in the case.
- Baxter did not cause providers to make a false statement to Plaintiff.
- Plaintiff cannot establish that Baxter's discounts to providers had the effect of injuring competition.

- Plaintiff did not confer any benefit on Baxter.

Affirmative Defense No. 20

- Medicare Prescription Drug, Improvement and Modernization Act of 2003, 42 U.S.C. § 1395, changed pharmaceutical reimbursement under Medicare from an AWP-based system to an ASP-based system.

Affirmative Defense No. 22

- Baxter did not control the AWP's published by the pricing compendia.
- Since at least 1975, Plaintiff was aware that the published AWP's did not represent the actual average of wholesale prices for Baxter's products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff purchased drugs and therapies at market prices directly for the benefit of its citizens throughout the period at issue in the case.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP's.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 23

- Plaintiff has not named as defendants parties who received the alleged "excessive" reimbursements.

Affirmative Defense No. 24

- Baxter's conduct and activities are distinct from and independent of the conduct and activities of the other defendants named in this action.

Affirmative Defense No. 25

- Plaintiff continues to reimburse providers, who participate in the Medicaid program, for pharmaceuticals based on AWP.

- Plaintiff cannot establish that it was damaged by Baxter’s conduct.
- Since at least 1975, Plaintiff was aware that the published AWP’s did not represent the actual average of wholesale prices for Baxter’s products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff purchased drugs and therapies at market prices directly for the benefit of its citizens throughout the period at issue in the case.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP’s.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and used these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 31

- Plaintiff has provided no particularized allegations (the “who, what, when, where and how”) describing Baxter’s allegedly fraudulent conduct.

Affirmative Defense No. 33

- Plaintiff did not confer a benefit on Baxter.
- Any increased sales and/or market share Baxter received during the relevant time period was not the result of unlawful conduct.
- Plaintiff cannot establish that any increase in Baxter’s market share was attributable to Baxter’s allegedly unlawful conduct as opposed to other factors.
- Plaintiff cannot establish that any increase in Baxter’s market share was the result of Plaintiff’s payments as opposed to payments from Medicare or private payors.
- Since at least 1975, Plaintiff was aware that the published AWP’s did not represent the actual average of wholesale prices for Baxter’s products.

- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWPs.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 34

- The reimbursement rates set for Wisconsin's Medicaid program and Medicare Part B are lawful, government-set rates.

Affirmative Defense No. 35, 37

- Baxter has never represented that the AWPs published by the pricing compendia represent the actual average of wholesale prices for its products.
- It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement that published AWPs did not represent actual average wholesale prices.
- Since at least 1975, Plaintiff was aware that the published AWPs did not represent the actual average of wholesale prices for Baxter's products.
- Since at least 1989, Plaintiff has received directives and/or reports from the federal government that AWP does not represent the actual average of wholesale prices.
- Plaintiff was free at all times to change its pharmaceutical reimbursement methodology under Medicaid to a non-AWP-based system.
- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWPs.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 38

- Plaintiff has not proven it complied with Wis. Stat. § 100.18(11)(d).

Affirmative Defense No. 39

- It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement that there was a mark-up of some amount between the WAC and the published AWP.

Affirmative Defense No. 40

- Plaintiff has not named as defendants parties who received the alleged “excessive” reimbursements.”
- Plaintiff cannot establish that any alleged overcharge or supracompetitive price was passed on to the State.

Affirmative Defense No. 42

- Any facts asserted by any other defendant not otherwise stated herein.

Affirmative Defense No. 45

- A written rebate agreement exists between Baxter and the Secretary of the Department of Health and Human Services (“HHS”) on behalf of HHS and certain States, entitled, “Rebate Agreement between the Secretary of Health and Human Services and the Manufacturer Identified in Section XI of this Agreement”, which was entered pursuant to 42 U.S.C. § 1396r-8.
- Baxter and Plaintiff are parties to an agreement whereby Plaintiff is entitled to receive certain rebates based upon Baxter’s submission of its AMP and BP data. Plaintiff’s use of this data and Baxter’s products are in exchange for allowing Baxter to participate in Plaintiff’s Medicaid program.

Baxter expressly reserves the right to supplement this Interrogatory Answer in the future.

INTERROGATORY NO. 9:

Identify each document that supports the facts upon which you base each such affirmative defense.

ANSWER:

Baxter objects to this Interrogatory on the grounds that it is premature, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Baxter also objects to the Interrogatory on the grounds that it seeks information protected by the attorney-client privilege and work-product doctrine. Baxter further objects to this Interrogatory 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.

Subject to and without waiving any of these objections or its General Objections, Baxter responds that, based upon diligent review and investigation to date, the following categories of documents, among others, generally support the Affirmative Defenses asserted in Baxter's Answer to Plaintiff's Second Amended Complaint:

1. Documents Baxter has produced, or will produce, in response to Plaintiff's outstanding discovery requests, in a manner to be negotiated and agreed upon between the parties, including, but not limited to, the following:
 - Communications with the pricing compendia;
 - Sales and other data;
 - Communications between Baxter and its customers;
 - Customer contracts;
 - Pricing documents; and
 - Other documents.
2. Documents in the possession, custody and control of Plaintiff and other documents generated, obtained and reviewed by Plaintiff, based upon information obtained from Plaintiff's document production and other documents to date and depositions of its employees, including, but not limited to, the following:

- Documents referring to proposed changes to Wisconsin Medicaid's pharmaceutical reimbursement methodology;
- Documents showing that Plaintiff purchased drugs and therapies at market prices directly for the benefit of its citizens throughout the period at issue in the case.
- Documents referring to pharmacists' profits on the sale of products reimbursed by Wisconsin Medicaid;
- Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;
- State plans and state plan amendments;
- Studies conducted by Wisconsin Department of Agriculture, Trade and Consumer Protection, the University of Wisconsin, Congressman Tom Barrett, the Federal Trade Commission, HCFA, Dr. David Kreling and various other consultants and entities concerning pharmaceutical pricing and reimbursement;
- Governor's budget proposals related to Medicaid and documents analyzing those proposals;
- Issue papers written by the Legislative Fiscal Bureau and DHFS on pharmaceutical reimbursement;
- OIG, GAO, CBO, and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;
- Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
- Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
- Issues, briefing, and concept papers on pharmaceutical reimbursement and costs by the Office of Strategic Finance;
- Written testimony of the DHFS Secretary concerning pharmaceutical reimbursement;

- Emails between DHFS and the Governor's office concerning pharmaceutical reimbursement;
 - Wholesaler data from state-run entities that purchase drugs directly from wholesalers;
 - Documents comparing prices paid by Wisconsin Medicaid to those paid by other State entities;
 - Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
 - Documents related to the Governor's Pharmacy Reimbursement Commission;
 - Budget documents from the Department of Administration related to pharmaceutical reimbursement;
 - Audits of Wisconsin's Medicaid program;
 - Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement;
 - Media articles discussing pharmaceutical reimbursement; and
 - Rebate contract between Plaintiff and Baxter.
3. Documents received, or expected to be received, from third-parties including, but not limited to, the following
- Federal government;
 - Other states;
 - Third-parties subpoenaed in this case; and
 - Wholesaler data produced by third-parties.

Baxter's investigation and search is ongoing, and Baxter expressly reserves the right to supplement this Interrogatory Answer in the future.

INTERROGATORY NO. 10:

Have you ever communicated directly with any official of the State of Wisconsin about the prices of any of your drugs, including AWP, WACs, or any other prices irrespective of the nomenclature used.

ANSWER:

Baxter objects to this Interrogatory 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 Interrogatory 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.

Subject to and without waiving any of these objections or its General Objections, based on its investigation and diligent review to date, Baxter responds that the State of Wisconsin sends invoices to Baxter on a quarterly basis seeking Medicaid rebate payments. Based on this information, Baxter, in turn, pays rebates to the State. With its rebate payments, Baxter voluntarily disclosed actual transaction prices to the State in the form of its AMP and BP for each of the relevant Baxter BioScience therapies. Baxter BioScience reported its AMPs and BPs to the State from 1991 to the present with the exception of the time period from the fourth quarter of 1997 to the second quarter of 1999. In addition, on occasion, Baxter has had communications with the State of Wisconsin to advise the State about price increases for Baxter products, to discuss reimbursement rates that are lower than sale prices, and possibly to discuss other related issues.

Baxter's investigation and search is ongoing, and Baxter expressly reserves the right to supplement this Interrogatory Answer in the future.

INTERROGATORY NO. 11:

If the answer to Interrogatory No. 10 is yes, identify all such communications by date, time and purpose, the persons who communicated this information, the persons to whom this information was communicated, who said what to whom or who wrote what to whom, and identify any documents containing or describing the information communicated to Wisconsin officials.

ANSWER:

Baxter objects to this Interrogatory 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 Interrogatory 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.

Subject to and without waiving any of these objections or its General Objections, Baxter responds that it has produced or, in a manner to be negotiated and agreed upon between the parties, will produce non-privileged responsive documents to the State of Wisconsin from which the answer to this Interrogatory may be derived or ascertained.

RESPONSES TO DOCUMENT REQUESTS NO. 4

DOCUMENT REQUEST NO. 12:

Produce each document identified in response to Interrogatory Nos. 7, 9 and 11.

RESPONSE:

Baxter objects to this Document Request on the grounds that it is premature, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of

admissible evidence. Baxter also objects to this Request on the grounds that it seeks information protected by the attorney-client privilege and work-product doctrine. 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.

Subject to and without waiving any of these objections or its General Objections, Baxter responds that it has produced or, in a manner to be negotiated and agreed upon between the parties, will produce non-privileged responsive documents identified in its Answers to Interrogatories Nos. 7, 9, and 11.

DOCUMENT REQUEST NO. 13:

Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.)

RESPONSE:

Baxter objects to this Document 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. Baxter also objects to this Document Request to the extent it seeks documents produced in the Brand Name Prescription Drugs Antitrust Litigation because neither Baxter nor its corporate successors or affiliates was a party to that litigation.

Respectfully submitted,

Dated: March 13, 2007

AS TO OBJECTIONS

By: /s/ Merle M. Delancey, Jr.
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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 Interrogatories No. 3 (To All Defendants) and Request for Production of Documents No. 4 (To All Defendants) to be served on all counsel of record electronically via LexisNexis File & Serve system on March 13, 2007.

/s/ Jodi Trulove
Jodi Trulove