

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 10

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

Case No. 04-CV-1709

Unclassified Civil: 30703

v.

AMGEN INC., et al.,

Defendants.

**DEFENDANT MYLAN LABORATORIES INC.'S AND MYLAN PHARMACEUTICALS
INC.'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)**

Pursuant to Wisconsin Statutes §§ 804.01, 804.08, and 804.09 Defendants Mylan Laboratories Inc. and Mylan Pharmaceuticals Inc. ("Mylan"), by its undersigned counsel, assert the following responses and objections to Plaintiff State of Wisconsin's Interrogatories No. 3 (To All Defendants) (the "Interrogatories") and Request for Production of Documents No. 4 (To All Defendants) (the "Document Requests"), dated January 12, 2007, and propounded by Plaintiff State of Wisconsin ("Plaintiff," the "State," or "Wisconsin"), as follows:

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. Mylan objects to the Interrogatories and Document Requests to the extent they seek to impose duties and obligations on Mylan greater than Mylan's duties and obligations under the Wisconsin Rules of Civil Procedure and the applicable local rules. Mylan will comply

with its duties and obligations under the Wisconsin Rules of Civil Procedure and the applicable local rules.

2. Mylan provides its responses subject to the Protective Order, entered on November 29, 2005, in this action.

3. Mylan objects to the Interrogatories and Document Requests to the extent they are premature, vague, ambiguous, unduly burdensome, overbroad, oppressive or duplicative, and not limited to the discovery of information which is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence.

4. Mylan objects to the extent that any of Plaintiff's Interrogatories and Document Requests seek documents or information not limited to sales in the State of Wisconsin on the grounds that such Interrogatories and Document Requests are overly broad, unduly burdensome, and do not seek the discovery of admissible evidence.

5. Mylan objects to the Interrogatories and Document Requests as overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence to the extent they seek documents or information concerning pharmaceutical products not at issue in this litigation. Mylan will provide information relating only to pharmaceutical products identified in the Second Amended Complaint.

6. Mylan objects to the Interrogatories and Document Requests on the grounds that they are unduly burdensome to the extent that they purport to require Mylan to compile, analyze, compute, and/or summarize voluminous data or information that Plaintiff has the ability to create or analyze by reviewing the documents, information, or data that Mylan has produced or will produce.

7. Mylan objects to the Interrogatories and Document Requests to the extent they demand the production of documents or information that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, the work product doctrine, the joint defense privilege, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent any such protected documents or information are inadvertently produced in response to the Interrogatories and Document Requests, the production of such documents or information shall not constitute a waiver of Mylan's right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to Mylan's counsel immediately upon discovery thereof.

8. Mylan objects to the Interrogatories and Document Requests to the extent that they demand the production of documents or information containing trade secrets, or proprietary, commercially sensitive or other confidential information.

9. Mylan 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 Mylan if the information were to fall into the hands of its competitors, and further asserts each and every applicable privilege and rule governing confidentiality to the fullest extent provided by the law.

10. Mylan objects to these Interrogatories and Document Requests to the extent they seek documents or information already in Plaintiff's knowledge, possession and/or control, or information to which Plaintiff has equal access.

11. Mylan objects to the Interrogatories and Document Requests to the extent that they demand the production of documents or information: (a) not within the knowledge,

possession, custody, or control of Mylan, their agents, or their employees; (b) publicly available; or (c) more appropriately sought from third parties to whom requests have been or may be directed.

12. These responses and objections are made without waiving or intending to waive, but to the contrary intending to preserve and preserving: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any documents or information produced to respond to the Interrogatories and Document Requests; (b) the right to object on any ground to the use of documents or information produced in response to the Interrogatories and Document Requests at any hearing, trial, or other point during this action; (c) the right to object on any ground at any time to a demand for further responses to the Interrogatories and Document Requests; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses or objections contained herein.

13. The documents or information supplied herein are for use in this action and for no other purpose.

14. No response or objection made herein, or lack thereof, is an admission by Mylan as to the existence or non-existence of any documents or information.

15. Mylan objects to the Interrogatories and Document Requests to the extent that they demand the production of documents or information from outside of the statute of limitations applicable to the State's claims in this action, or beyond the time period relevant to this action. Mylan objects to the Interrogatories and Document Requests as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they purport to require production of documents or seek information relating to a period of time after the filing of the Complaint on or around June 3, 2004.

16. Mylan objects to the Interrogatories and Document Requests to the extent that they demand the production of proprietary documents or information of third parties.

17. Mylan objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories and Document Requests. Any response by Mylan that it will produce documents or information in connection with a particular Interrogatory, or that it has no responsive documents or information, is not intended to indicate that Mylan agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories and Document Requests, or that such implications or characterizations are relevant to this action.

18. Mylan objects to the Interrogatories and Document Requests as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent they seek documents concerning any discontinued product dated after the date of such product's discontinuation.

19. Mylan objects to the Interrogatories and Document Requests to the extent they seek information or documents relating to Mylan's activities that are outside the scope of the allegations in the Second Amended Complaint.

20. Mylan objects to the Interrogatories and Document Requests to the extent they demand production of documents or information relating to Mylan's activities other than those which concern the State, on the grounds that such documents or information are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

21. Mylan reserves the right to assert additional objections to these Interrogatories and Document Requests as appropriate and to amend or supplement these objections and

responses in accordance with the applicable rules and court orders and based on results of its continuing investigation.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Mylan objects to Plaintiff's definition of "You", "Your" and "Your Company" on the grounds that it is overly broad and unduly burdensome. Mylan further objects to this definition to the extent it includes entities and persons that are not parties to this action.

2. Mylan objects to Plaintiff's definition of "Document" and "Documents" on the grounds that it is vague, ambiguous, and overbroad. Mylan further objects to this definition to the extent it includes documents that are protected by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Mylan further objects to this definition to the extent it seeks to impose obligations on Mylan that are greater than, or inconsistent with, Mylan's obligations under the Wisconsin Rules of Civil Procedure and the applicable local rules. Mylan further objects to this definition to the extent it purports to include within its scope documents or information containing or consisting of proprietary information, trade secrets, or information of a competitively sensitive nature.

3. Mylan objects to the instructional paragraphs preceding the individual Document Requests (the "Instructions") on the grounds that the Instructions are vague, ambiguous, and overly broad. Mylan further objects to the Instructions as unduly burdensome to the extent they seek to impose on Mylan obligations inconsistent with, or greater than, Mylan's obligations under the Wisconsin Rules of Civil Procedure and the applicable local rules.

SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES

The General Objections and Reservations of Rights and the Objections to Definitions stated above apply to and are incorporated into each and every individual response to

the individual Interrogatories set forth below, whether or not expressly incorporated by reference in any individual response. Mylan also responds and objects specifically to the individual Interrogatories 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 such denial.

MYLAN'S RESPONSE AND OBJECTIONS

Mylan objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, and fails to identify with sufficient particularity the information sought. Mylan further objects to this Interrogatory on the grounds that it purports to impose obligations that exceed those imposed by the Wisconsin Rules of Civil Procedure and applicable local rules. Mylan further objects to this Interrogatory as premature. Discovery is in the early stages and evidence that refutes the State's allegations includes materials in the possession of the State, the federal government, and third parties.

Subject to and without waiving the foregoing general and specific objections and in addition to the testimony given by Mylan's 30(b)(6) deponent, Brian Roman, on November 16, 2006 that bears on the responses hereto, Mylan states as follows, based upon information developed during the course of this case:

a. Mylan has not engaged in conduct that was improper, fraudulent, or unlawful as alleged in Plaintiff's Second Amended Complaint.

b. Claims for reimbursement under the Medicaid and Medicare programs are filed by providers, not Mylan, and Mylan has never caused any provider to file a false claim.

Wisconsin pays Medicaid reimbursements directly to Medicaid providers, not to Mylan. The

Centers for Medicare and Medicaid Services (“CMS”) pay Medicare reimbursements directly to Medicare providers, not to Mylan. Mylan has not received any money from any Medicaid reimbursement payment made by Wisconsin.

c. AWP is not defined anywhere in Wisconsin or federal statutes or regulations and Wisconsin and the federal government (collectively the “Government”) have never provided or directed Mylan to any definition of AWP. Thus, there can be no basis for characterizing an AWP as “true” or “false” and no basis for the alleged injuries the Government allegedly suffered due to Mylan’s alleged reporting of AWPs. The AWP that Mylan sets when it launches a generic drug is established by reference to the corresponding brand name therapeutically equivalent product. It is Mylan’s practice to set an AWP for a generic drug, before the drug is ever sold, at a percentage amount below the AWP of the corresponding brand name drug. Mylan’s practice of setting AWPs for its generic products at a percentage lower than the therapeutically equivalent brand name AWPs is consistent with industry practice. Due to changes in market and competitive conditions, Mylan may, from time to time, change the AWP for its generic products.

d. Wholesale Acquisition Cost or WAC is not defined anywhere in Wisconsin’s statutes or regulations and Wisconsin has never provided or directed Mylan to any definition of WAC. Mylan’s WAC is the invoice price that Mylan charges wholesalers for its products. Mylan sets the WAC at an amount below the AWP for the drug. Due to changes in market and competitive conditions, Mylan may, from time to time, change the WAC for its generic products.

e. Mylan reports AWPs and WACs to First Data Bank and other pricing compendia. First Data Bank has publicly stated that it reported and published its own AWP and WAC prices after making its own determination concerning the reported values.

f. For Mylan's products to be eligible for Medicaid coverage, federal law requires Mylan to enter into a Rebate Agreement with the Secretary of the Department of Health and Human Services, who enters into the agreement on behalf of states with Medicaid programs, including Wisconsin. *See* 42 U.S.C. § 1396r-8(a)(1). The Rebate Agreement requires Mylan to pay rebates to Wisconsin based on the Average Manufacturer Price ("AMP") for its products. *See* 42 U.S.C. § 1396r-8(b)(1)(A). The Rebate Agreement requires Mylan to provide to CMS on a quarterly basis the AMP for its products that are reimbursed by Medicaid. *See* 42 U.S.C. § 1396r-8(b)(3). Both federal statute and the Rebate Agreement define AMP as the average unit price paid to Mylan by wholesalers for its products. *See* 42 U.S.C. § 1396r-8(k)(1). Under the Rebate Agreement, Mylan must include in its AMP calculation certain discounts and other price reductions which reduce the price paid for Mylan's products. While the federal government has maintained AMPs as confidential, Wisconsin Medicaid officials have the necessary information to determine the AMP for each of Mylan's generic products by performing a simple arithmetic calculation, *i.e.*, dividing the Unit Rebate Amount by 11%, the applicable rebate percentage for generic drugs. *See* 42 U.S.C. § 1396r-8(c)(3)(A-B). (Prior to January 1, 1994, the rebate percentage was 10%. *See* 42 U.S.C. § 1396r-8(c)(3)(A-B). Wisconsin Medicaid officials have never asked Mylan to report its AMPs directly to Wisconsin. Mylan has paid rebates to Wisconsin, further lowering Wisconsin's costs.

g. During the relevant time period, federal statute and the Medicaid Rebate Agreement did not obligate Mylan to report AWP or WAC.

h. During the relevant time period, Wisconsin and the federal government have been aware that AWP and WAC do not reflect providers' acquisition costs. Wisconsin has received directives and/or reports from the federal government that AWP does not reflect the cost to

providers for Mylan's drugs. Indeed, any suggestion by Wisconsin that AWP should represent what providers pay for drugs is contradicted by the State's own Medicaid reimbursement methodology. If AWPs were the same as providers' acquisition costs, a provider could not accept payment at below AWP without losing money on every transaction. Likewise, the Health Care Financing Administration ("HCFA") (now CMS) has advised the States that WAC is not equal to providers' acquisition cost. Since that time, Wisconsin has received directives and/or reports from the federal government that WAC does not include discounts and price reductions that may affect the net price. The federal government recently defined WAC in the Medicare Reform Act, as follows: "The term 'wholesale acquisition cost' means, with respect to a drug or biological, the manufacturer's list price for the drug or biological to wholesalers or direct purchasers in the United States, *not including prompt pay or other discounts, rebates or reductions in price*, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data." 42 U.S.C. § 1395w-3a(c)(6)(B) (emphasis added).

i. Mylan has never represented to Wisconsin that the AWP published for its products represented actual costs or the average of wholesale prices paid by anyone or that WAC included all price discounts. The evidence will show that Wisconsin was informed by various sources, including drug manufacturers, that AWPs did not represent actual wholesale prices that were paid or charged for drugs. The evidence will also show that Wisconsin was informed by various sources, including drug manufacturers, that WAC was the invoice price generally charged to wholesalers and did not include the net effect of discounts from the invoice price (based on volume of purchases, speed of payment and other factors), rebates, chargebacks,

administrative fees and other costs adjustments which were well known and commonplace in the industry.

j. Contrary to the allegations, reimbursement payments made by Wisconsin Medicaid and the Medicare Part B program were often not based on published AWP for Mylan's drugs. Since 1990, Wisconsin has reimbursed at the lowest of four possible numbers: (1) the drug's AWP less a certain percentage; (2) the Medicaid provider's reported "usual and customary" charge for the drug; (3) a drug's Federal Upper Limit ("FUL"), a maximum reimbursement rate for a drug set by the federal government; or (4) Maximum Allowable Cost ("MAC"), a maximum reimbursement rate for a drug set by Wisconsin. Under the methodology used by Medicare Part B to calculate reimbursement and co-payment amounts for multiple-source drugs, the AWP used for reimbursement for a Mylan drug may not be the AWP reported by Mylan. Reimbursement is based on either the AWP of the therapeutically equivalent brand name drug, which cannot be Mylan's AWP, or the median of the AWP of the therapeutically equivalent generic drugs.

k. Federal law requires that Wisconsin's Medicaid payments "are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. § 1396a(a)(30)(A). Participation by providers in the Wisconsin Medicaid program is voluntary. To ensure that its Medicaid beneficiaries have adequate access to medical care, the Wisconsin Medicaid program utilizes an AWP-based reimbursement methodology to provide an economic incentive for providers' participation. In so doing, Wisconsin balances the interests of three constituencies: the beneficiaries (to whom Wisconsin was obligated to maintain access), the

providers (who needed an economic incentive to serve Wisconsin Medicaid clients), and the taxpayers (to whom the State was accountable for costs.)

l. The Government has never limited Medicaid and Medicare reimbursement payments to a provider's acquisition cost for a product by its use of AWP. Rather, Wisconsin Medicaid and the Medicare Part B program have used AWP as a benchmark price to ensure providers cover their costs and receive a profit and beneficiaries have access to medical care. Reimbursement for prescription drugs is intended to cover the ingredient cost of the drug, the costs incurred by a provider in dispensing the product, and a reasonable profit to the provider. Wisconsin's dispensing fees do not cover dispensing costs incurred by provider, much less provide a profit. As a result, Wisconsin has used, and continues to use, an AWP-based reimbursement methodology to compensate for this shortfall in dispensing fees and to ensure that providers earn a profit on Medicaid transactions. Wisconsin was free at all times to change its pharmaceutical reimbursement under its Medicaid program to non-AWP-based methodology. In fact, Wisconsin has periodically considered, and rejected, alternative pharmaceutical reimbursement methodologies, including methodologies that were not based on AWP. Meanwhile, when the federal government switched Medicare reimbursement from an AWP-based system to a system based on Average Sales Price, it significantly increased dispensing fees.

m. Through its AWP-based reimbursement methodology, Wisconsin's Medicaid program knowingly provides larger "spreads" or margins for generic drugs than for brand-name drugs in order to provide an incentive for pharmacies to dispense lower-cost generic drugs. Generic drugs are typically less costly than brand-name drugs. Therefore, even though Wisconsin's reimbursement for a generic drug may give a provider a larger "spread" than a

reimbursement for a brand name drug, its total reimbursement payment for the generic drug will still be lower than that for a brand-name drug, thereby saving Wisconsin money. As “spreads” for generic drugs increase, Wisconsin benefits, because the larger spreads increase incentives for providers to dispense generic drugs. Moreover, contrary to Wisconsin’s claims, Mylan does not benefit from increased spreads.

n. As Wisconsin’s own claims data will confirm, prices charged in market transactions by providers, wholesalers and others exceed the AWP of generic products, including Mylan’s products.

Mylan makes a good faith effort below to identify by example the facts set forth above that provide the basis for Mylan’s denials of the specific allegations in the Amended Complaint:

Paragraph (a) supports Mylan’s denial of the following allegations in the Amended Complaint: ¶¶ 1, 2, 3, 24, 25, 27, 32, 39, 40, 41, 43, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 64, 65, 66, 70, 71, 73, 75, 76, 77, 80-82, 84-86, 94-95, 97-100.

Paragraph (b) supports Mylan’s denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 32, 50, 54, 58, 60, 65, 73, 80-82, 84-86, 94-95, 97-100.

Paragraph (c) supports Mylan’s denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 40, 43, 48, 49, 50, 52, 58, 59, 60, 65, 66, 70, 71, 73, 75, 80-82, 84-86, 94-95, 97-100.

Paragraph (d) supports Mylan’s denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 40, 48, 49, 50, 52, 54, 59, 60, 65, 73, 75, 80-82, 84-86, 94-95, 97-100.

Paragraph (e) supports Mylan’s denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 40, 48, 49, 50, 52, 53, 54, 65, 70, 73, 78, 80-82, 84-86, 94-95, 97-100.

Paragraph (f) supports Mylan's denial of the following allegations in the Amended Complaint: ¶¶ 1, 24, 25, 27, 50, 59, 60, 66, 80-82, 84-86, 94-95, 97-100.

Paragraph (g) supports Mylan's denial of the following allegations in the Amended Complaint: ¶¶ 25, 27, 39, 50, 60, 80-82, 84-86, 94-95, 97-100.

Paragraph (h) supports Mylan's denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 39, 40, 50, 53, 55, 58, 59, 60, 65, 66, 70, 80-82, 84-86, 94-95, 97-100.

Paragraph (i) supports Mylan's denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 39, 43, 48, 49, 50, 52, 53, 57, 59, 60, 65, 66, 70, 80-82, 84-86, 94-95, 97-100.

Paragraph (j) supports Mylan's denial of the following allegations in the Amended Complaint: ¶¶ 25, 27, 39, 40, 50, 64, 65, 70, 80-82, 84-86, 94-95, 97-100.

Paragraph (k) supports Mylan's denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 32, 40, 41, 50, 60, 66, 80-82, 84-86, 94-95, 97-100.

Paragraph (l) supports Mylan's denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 50, 60, 65, 66, 70, 71, 80-82, 84-86, 94-95, 97-100.

Paragraph (m) supports Mylan's denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 40, 41, 50, 58, 60, 65, 66, 70, 80-82, 84-86, 94-95, 97-100.

Paragraph (n) supports Mylan's denial of the following allegations in the Amended Complaint: ¶¶ 1, 25, 27, 43, 50, 53, 58, 60, 66, 80-82, 84-86, 94-95, 97-100.

INTERROGATORY NO. 7:

Identify each document that supports each such denial.

MYLAN'S RESPONSE AND OBJECTIONS

Mylan refers to and incorporates herein its objections and responses to Plaintiff's Interrogatory No. 6. Additionally, Mylan objects to Interrogatory No. 7 to the extent that it seeks information that is publicly available or outside Mylan's possession, custody and control.

Subject to and without waiving the foregoing general and specific objections, Mylan states that, based upon diligent review and investigation to date, the following categories of documents, among others, generally support its denials to allegations of Plaintiff's Second Amended Complaint:

a. Documents Mylan has produced, or will produce, in response to Wisconsin's requests for documents, including, but not limited to, the following:

- (i) Correspondence with the pricing compendia;
- (ii) Sales data;
- (iii) Contracts for the purchase of Mylan's products; and
- (iv) AMP/Rebate information.

b. 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:

- (i) Documents referring to proposed changes to Wisconsin's Medicaid's pharmaceutical reimbursement methodology;
- (ii) Documents referring to providers' profits on the sale of products reimbursed by Wisconsin;
- (iii) Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;

- (iv) 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;
- (v) Governor's budget proposals related to Medicaid and documents analyzing those proposals;
- (vi) Issue papers written by the Legislative Fiscal Bureau and the Department of Health Family Services ("DHFS") on pharmaceutical reimbursement;
- (vii) OIG, GAO, CBO, and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;
- (viii) Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
- (ix) Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
- (x) Issues, briefing, and concept papers on pharmaceutical reimbursement and costs by the Office of Strategic Finance;
- (xi) Written testimony of DHFS Secretary concerning pharmaceutical reimbursement;
- (xii) Emails between DHFS and the Governor's office concerning pharmaceutical reimbursement;
- (xiii) Wholesaler data from state-run entities that purchase drugs directly from wholesalers;
- (xiv) Documents comparing prices paid by Wisconsin Medicaid to those paid by other State entities;
- (xv) Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
- (xvi) Documents related to the Governor's Pharmacy Reimbursement Commission;
- (xvii) Budget documents from the Department of Administration related to pharmaceutical reimbursement;
- (xviii) Audits of Wisconsin's Medicaid program;

- (xix) Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement; and
- (xx) Media articles discussing pharmaceutical reimbursement;
- c. Documents received, or expected to be received, from third-parties including, but not limited to, the following:
 - (i) Federal government;
 - (ii) Other states;
 - (iii) Third-parties subpoenaed in this case; and
 - (iv) Wholesaler data produced by third-parties.
- d. Documents obtained or produced by other defendants.

INTERROGATORY NO. 8

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

MYLAN'S RESPONSE AND OBJECTIONS

Mylan objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, and fails to identify with sufficient particularity the information sought. Mylan further objects to this Interrogatory on the grounds that it purports to impose obligations that exceed those imposed by the Wisconsin Rules of Civil Procedure and the applicable local rules. Mylan further objects to this Interrogatory as premature. Discovery is in the early stages and evidence that refutes the State's allegations includes materials in the possession of the State, the federal government, and third parties.

Subject to and without waiving the foregoing general and specific objections, Mylan makes a good faith effort below to identify by example facts as appropriate at this stage in the litigation that supports its affirmative defenses:

a. Mylan's First, Second, Seventh, Eighteenth, Twentieth, Twenty-First, Twenty-Third, Twenty-Fourth, Twenty-Ninth, Thirty-Third, Thirty-Ninth, Forty-Fourth, Forty-Eighth, Sixty-Fourth, Sixty-Eighth and Seventy-First Affirmative Defenses are legal in nature and therefore require no reference to facts for support.

b. For its Third and Forty-Third Affirmative Defenses, Mylan adopts the facts set forth in subparagraphs a through m of its response to Plaintiff's Sixth Interrogatory.

c. Mylan's Fourth Affirmative Defense is legal in nature. Moreover, tolling of the applicable statutes of limitations is not appropriate for the reasons set forth in subparagraphs f, h, i, k, l, and m of its response to Plaintiff's Sixth Interrogatory.

d. For its Fifth, Sixth, Eighth, Eleventh, Twelfth, Sixteenth, and Nineteenth Affirmative Defenses, Mylan adopts the facts set forth in subparagraphs f, h, i, k, l, and m of its response to Plaintiff's Sixth Interrogatory.

e. For its Ninth Affirmative Defense, Mylan adopts the facts set forth in subparagraph j of its response to Plaintiff's Sixth Interrogatory.

f. For its Tenth Affirmative Defense, Mylan adopts the facts set forth in subparagraphs b, e, g, h, i, j, k, l, and m of its response to Plaintiff's Sixth Interrogatory.

g. For its Thirteenth Affirmative Defense, Mylan adopts the facts set forth in subparagraphs a, c, d, e, and f of its response to Plaintiff's Sixth Interrogatory.

h. For its Fourteenth Affirmative Defense, Mylan adopts the facts set forth in subparagraphs a, c, d, and f of its response to Plaintiff's Sixth Interrogatory.

i. For its Fifteenth Affirmative Defense, Mylan adopts the facts set forth in subparagraphs b, e, f, h, i, k, l, and m of its response to Plaintiff's Sixth Interrogatory.

j. For its Seventeenth Affirmative Defense, Mylan states that Wisconsin's Medicaid program is jointly funded by Wisconsin and the federal government. The federal government's portion of the funding varies from year to year but is always at least 50% of Wisconsin's total Medicaid expenditure.

k. For its Twenty-Second Affirmative Defense, Mylan adopts the facts set forth in subparagraphs f, h, and i of its response to Plaintiff's Sixth Interrogatory.

l. For its Twenty-Fifth and Thirty-Fourth Affirmative Defenses, Mylan states that its products are sold in interstate commerce. Mylan is permitted by law to set prices within the exercise of its business judgment. For the purposes of this law suit, Plaintiff seeks to retroactively impose definitions of the terms AWP and WAC contrary to the existing, industry-wide understanding of those terms. State and federal agencies, along with private third-party payors and other entities throughout the nation, have established payment methodologies which use AWP and WAC as pricing benchmarks. In some cases, these payment methodologies are memorialized in statutes, regulations, rules, contracts and insurance policies. If Mylan is forced to modify its AWPs and WACs to conform to the meanings which Plaintiff now seeks to impose, the payment methodologies currently used by government agencies and other entities will be substantially affected, thereby placing an undue burden on commerce throughout the nation.

m. For its Twenty-Sixth and Sixtieth Affirmative Defense, Mylan states that Plaintiff alleges to have suffered damage by allegedly relying on prices allegedly provided by Mylan to First DataBank and allegedly published in public sources made available by First DataBank. At all times, Mylan had the right to provide these prices to First DataBank for publication in publicly available sources.

n. For its Twenty-Seventh and Twenty-Eighth Affirmative Defenses, Mylan adopts the facts set forth in subparagraphs b and e of its response to Plaintiff's Sixth Interrogatory.

o. For its Thirtieth, Thirty-Sixth, and Sixty-Ninth Affirmative Defenses, Mylan adopts the facts set forth in subparagraphs k, l, and m of its response to Plaintiff's Sixth Interrogatory.

p. For its Thirty-First Affirmative Defense, Mylan adopts the facts set forth in subparagraphs a, b, c, d, and e of its response to Plaintiff's Sixth Interrogatory.

q. For its Thirty-Second Affirmative Defense, Mylan states that the reimbursement methodologies, which set the amount the providers received for claims submitted under the Medicare and Medicaid programs, were established through a political process with varying political goals, including the goals that providers volunteer to participate in the programs and that such participating providers earn a profit on the drugs dispensed or administered under the programs. Indeed, to ensure Medicaid beneficiaries have adequate access to medical care, Wisconsin utilizes an AWP-based reimbursement methodology that allegedly provides for the so-called "spread" – alleged by Plaintiff to be the difference between a provider's acquisition cost for a drug and the amount of reimbursement the provider is paid for that drug. This "spread" created by the Medicare and Medicaid programs is an integral element in maintaining the viability of the programs, particularly in light of the inadequate dispensing fees provided for under such programs. Upon information and belief, Plaintiff and other payors have long been aware of the existence of the "spread" and have managed, maintained and used the "spread" they created to ensure adequate access to pharmaceuticals for the indigent and other customer groups and to adequately reimburse providers.

r. For its Thirty-Fifth Affirmative Defense, Mylan adopts the facts set forth in subparagraphs a, b, and e of its response to Plaintiff's Sixth Interrogatory.

s. For its Thirty-Seventh, Thirty-Eighth, and Fifty-Seventh Affirmative Defenses, Mylan adopts the facts set forth in subparagraphs j, k, l, and m of its response to Plaintiff's Sixth Interrogatory.

t. For its Fortieth Affirmative Defense, Mylan states that the reimbursement rates set for Wisconsin's Medicaid program and the Medicare Part B program are government-set rates.

u. For its Forty-First and Sixty-Sixth Affirmative Defenses, Mylan states that Plaintiff has not proven it complied with Wis. Stat. § 165.25(1) or Wis. Stat. § 100.18(11)(d).

v. For its Forty-Second Affirmative Defense, Mylan states that the Medicare Prescription Drug, Improvement and Modernization Act of 2003, changed pharmaceutical reimbursement under Medicare from an AWP-based system to an ASP-based system.

w. For its Forty-Fifth Affirmative Defense, Mylan adopts the facts set forth in subparagraph b of its response to Plaintiff's Sixth Interrogatory.

x. For its Forty-Sixth and Forty Seventh Affirmative Defenses, Mylan adopts any and all applicable facts asserted by any other defendant not otherwise asserted herein.

y. For its Forty-Ninth, Fiftieth, Fifty-First, Fifty-Second, Fifty-Third and Fifty-Fourth Affirmative Defenses, Mylan states that Plaintiff's claims are barred by prior settlements and recoveries in other actions under the doctrine of res judicata.

z. For its Fifty-Sixth Affirmative Defense, Mylan states that, based upon Plaintiff's production to date, it appears that Plaintiff undertook few, if any, studies to determine EAC.

aa. For its Fifty-Eighth and Fifty-Ninth Affirmative Defenses, Mylan adopts the facts set forth in subparagraphs c and d of its response to Plaintiff's Sixth Interrogatory and further states that the public disclosure of Mylan's wholesale prices, net of all cash discounts and other price reductions, would place Mylan at a severe competitive disadvantage, as it would expose Mylan's pricing to Mylan's competitors. During the relevant time period, the Federal Government recognized this legitimate business concern and required CMS to maintain reported AMPs as confidential by statute.

bb. For its Sixty-First affirmative defense, Mylan states that its conduct and activities are distinct from and independent of the conduct and activities of the other defendants named in this action.

cc. For its Sixty-Second affirmative defense, Mylan states that Wisconsin submitted its reimbursement plans to the federal government. The plans were reviewed and approved by the federal government.

dd. For its Sixty-Third affirmative defense, Mylan states that, to the extent that it has engaged in lobbying or related efforts before Congress and/or other regulatory agencies, such conduct is protected by the First Amendment and the *Noerr-Pennington* doctrine.

ee. For its Sixty-Sixth Affirmative Defense, Mylan adopts the facts set forth in subparagraphs c and d of its response to Plaintiff's Sixth Interrogatory.

ff. For its Sixty-Seventh Affirmative Defense, Mylan states that a written rebate agreement exists between Mylan Pharmaceuticals Inc. and the Secretary of HHS, on behalf of HHS and certain States, including Wisconsin, which was entered into pursuant to 42 U.S.C. § 1396r-8. The Rebate Agreement requires Mylan to pay rebates to Wisconsin based on the AMPs and Best Prices for its products. The Rebate Agreement requires Mylan to provide to CMS the

AMP and Best price information for its products that are reimbursed by Medicaid. The Rebate Agreement circumscribes all of Mylan's price-reporting obligations to Wisconsin.

gg. For its Seventieth Affirmative Defense, Mylan states that its conduct was justified by legitimate, pro-competitive business concerns and that it has not engaged in any conduct that has restrained competition.

INTERROGATORY NO. 9

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

MYLAN'S RESPONSE AND OBJECTIONS

Mylan refers to and incorporates herein its objections and responses to Plaintiff's Interrogatory No. 8. Additionally, Mylan objects to Interrogatory No. 9 to the extent that it seeks information that is publicly available or outside Mylan's possession, custody and control.

Subject to and without waiving the foregoing general and specific objections, Mylan states that, based upon diligent review and investigation to date, the following categories of documents, among others, generally support its denials to allegations of Plaintiff's Second Amended Complaint:

a. Documents Mylan has produced, or will produce, in response to Wisconsin's requests for documents, including, but not limited to, the following:

- (i) Correspondence with the pricing compendia;
- (ii) Sales data;
- (iii) Contracts for the purchase of Mylan's products; and
- (iv) AMP/Rebate information.

b. 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:

- (i) Documents referring to proposed changes to Wisconsin's Medicaid's pharmaceutical reimbursement methodology;
- (ii) Documents referring to providers' profits on the sale of products reimbursed by Wisconsin;
- (iii) Documents referring to provider participation in Wisconsin's Medicaid program and its relationship to provider reimbursement for pharmaceutical products;
- (iv) 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;
- (v) Governor's budget proposals related to Medicaid and documents analyzing those proposals;
- (vi) Issue papers written by the Legislative Fiscal Bureau and the Department of Health Family Services ("DHFS") on pharmaceutical reimbursement;
- (vii) OIG, GAO, CBO, and other governmental reports provided to Plaintiff concerning pharmaceutical reimbursement and any responses thereto;
- (viii) Communications between DHFS and providers, pharmacies, or trade associations regarding pharmaceutical reimbursement and/or costs;
- (ix) Communications between DHFS and other states or the federal government regarding pharmaceutical reimbursement and/or costs;
- (x) Issues, briefing, and concept papers on pharmaceutical reimbursement and costs by the Office of Strategic Finance;
- (xi) Written testimony of DHFS Secretary concerning pharmaceutical reimbursement;
- (xii) Emails between DHFS and the Governor's office concerning pharmaceutical reimbursement;
- (xiii) Wholesaler data from state-run entities that purchase drugs directly from wholesalers;

- (xiv) Documents comparing prices paid by Wisconsin Medicaid to those paid by other State entities;
 - (xv) Information from CMS concerning AWP, EAC, or changes in pharmaceutical reimbursement;
 - (xvi) Documents related to the Governor's Pharmacy Reimbursement Commission;
 - (xvii) Budget documents from the Department of Administration related to pharmaceutical reimbursement;
 - (xviii) Audits of Wisconsin's Medicaid program;
 - (xix) Communications between EDS (or one of its subcontractors) and Plaintiff concerning cost containment measures for pharmaceutical reimbursement; and
 - (xx) Media articles discussing pharmaceutical reimbursement;
- c. Documents received, or expected to be received, from third-parties including, but not limited to, the following:
- (i) Federal government;
 - (ii) Other states;
 - (iii) Third-parties subpoenaed in this case; and
 - (iv) Wholesaler data produced by third-parties;
- d. Documents obtained or produced by other defendants.

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 AWPs, WACs, or any other prices irrespective of the nomenclature used.

MYLAN'S RESPONSE AND OBJECTIONS

Mylan objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Mylan further objects to this Interrogatory on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including

“communicated,” “official,” “AWPs,” “WACs,” and “other prices irrespective of the nomenclature used”. Mylan further objects to this Interrogatory to extent it seeks information concerning pharmaceutical products not at issue in this litigation. Mylan further objects to this Interrogatory to the extent it purports to require Mylan to identify information that are already within Plaintiff’s possession, custody, or control. Mylan further objects to this Interrogatory as premature. Discovery is in the early stages and evidence that refutes the State’s allegations includes materials in the possession of the State, the federal government, and third parties.

Subject to and without waiving the foregoing general and specific objections, Mylan states that the evidence will show that various drug manufacturers communicated to Wisconsin what AWP’s and WAC’s represented.

In addition, Mylan’s productions include price notification letters and contract files that may be responsive to this Interrogatory.

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.

MYLAN’S RESPONSE AND OBJECTIONS

Mylan objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Mylan further objects to this Interrogatory on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including “communications,” and “Wisconsin officials”. Mylan further objects to this Interrogatory to the extent it seeks information not in Mylan’s possession, custody, or control. Mylan further objects to this Interrogatory to the extent it seeks documents containing confidential or proprietary

information. Mylan further objects to this Interrogatory to extent it seeks information concerning pharmaceutical products not at issue in this litigation. Mylan further objects to this Interrogatory to the extent the information Plaintiff seeks is not in Mylan's possession, custody, or control. Mylan further objects to this Interrogatory to the extent it purports to require Mylan to identify information or documents that are already within Plaintiff's possession, custody, or control.

Subject to and without waiving the foregoing general and specific objections, Mylan refers Plaintiff to Response to Interrogatory No. 10.

SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS

The General Objections and Reservations of Rights and the Objections to Definitions stated above apply to and are incorporated into each and every individual response to the individual Document Request set forth below, whether or not expressly incorporated by reference in any individual response. Mylan also responds and objects specifically to the individual Document Requests as follows:

DOCUMENT REQUEST NO. 12

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

MYLAN'S RESPONSE AND OBJECTIONS

Mylan refers to and incorporates herein its objections and responses to plaintiff's interrogatories numbered 7, 9, and 11.

Subject to and without waiving the foregoing general and specific objections, Mylan states that it will produce communications between Mylan and the State of Wisconsin, if any, that may be responsive to this Request that relate to pharmaceutical products at issue in this action.

DOCUMENT REQUEST NO. 13

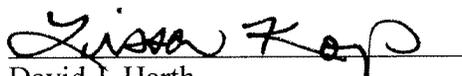
Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.)

MYLAN'S RESPONSE AND OBJECTIONS

Mylan objects to this Document Request on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Mylan further objects to this Document Request as overbroad and unduly burdensome because, *inter alia*, it seeks information for an unspecified period of time. Mylan further objects to this Document Request on the grounds that it contains terms that are themselves vague, ambiguous, overbroad, or undefined, including "wholesalers," "drugs," "resale," and "Brand Name Prescription Drugs Antitrust Litigation". Mylan further objects to this Document Request to the extent it seeks documents not in Mylan's possession, custody, or control. Mylan further objects to this Document Request to the extent it seeks documents that are protected by protective orders in other actions. Mylan further objects to this Document Request to the extent it seeks documents containing confidential or proprietary information. Mylan further objects to this Document Request to extent it seeks information concerning pharmaceutical products not at issue in this litigation.

Dated: April 4, 2007.

AS TO ALL OBJECTIONS:



David J. Harth
David E. Jones
Lissa R. Koop
Heller Ehrman LLP
One East Main Street, Suite 201
Madison, Wisconsin 53703
Tel: (608) 663-7460
Fax: (608) 663-7499

*Attorneys for Defendants Mylan Laboratories Inc.
and Mylan Pharmaceuticals Inc.*

Of Counsel

William A. Escobar

Neil Merkl

Christopher C. Palermo

Kelley Drye & Warren LLP

101 Park Avenue

New York, New York 10178

Tel: (212) 808-7800

Fax: (212) 808-7897