



3. TAP's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and TAP reserves the right to amend its responses and to raise any additional objections it may have in the future. These responses 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.

4. To the extent TAP's responses to Plaintiff's Requests contain confidential information subject to the Protective Order in this matter, they must be treated accordingly.

5. TAP's responses to Plaintiff's Requests are limited to the TAP products currently at issue in this litigation, namely certain NDCs of Prevacid<sup>®</sup> and Prevpac<sup>®</sup> (hereinafter referred to as "Prevacid<sup>®</sup>").<sup>1</sup>

6. TAP's responses to Plaintiff's Requests are submitted without prejudice to TAP's right to produce evidence of any subsequently discovered fact. TAP accordingly reserves its right to provide further responses and answers as additional facts are ascertained.

### **GENERAL OBJECTIONS**

TAP objects generally to Plaintiff's Requests as follows:

1. TAP objects to Plaintiff's "Definitions" to the extent they expand upon or alter TAP's obligations under the Wisconsin Rules of Procedure, in responding to Plaintiff's Requests. TAP will comply with the Wisconsin Rules of Civil Procedure in responding to Plaintiff's Requests.

2. TAP objects to the definition of the word "Document(s)" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those

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<sup>1</sup> The State's Second Amended Complaint identifies Actos as a TAP product. As TAP has repeatedly advised the State, TAP has never manufactured, marketed, or sold Actos.

imposed by the applicable Wisconsin Rules of Civil Procedure. TAP further objects to this definition to the extent that it purports to require TAP to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by TAP as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

3. TAP objects to Plaintiff's Requests to the extent they call for the identification or production of documents or information not relevant to the issues in this action or not reasonably calculated to lead to the discovery of admissible evidence.

4. TAP objects to Plaintiff's Requests to the extent they seek information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, any common interest or joint defense agreement, or any other applicable privilege or protection.

5. TAP objects to Plaintiff's Requests to the extent they call for information not within TAP's possession, custody or control. In responding to Plaintiff's Requests, TAP has undertaken or will undertake a reasonably diligent search of documents and information within TAP's current possession, custody or control.

6. TAP objects to Plaintiff's Requests to the extent they call for information that is confidential, proprietary, and/or a trade secret of a third-party or is protected from disclosure by an agreement with a third-party.

7. TAP objects to Plaintiff's Requests to the extent they seek disclosure of information that is a matter of public record, is equally available to Plaintiff, or is already in Plaintiff's possession.

8. TAP incorporates the above General Objections into each specific response to Plaintiff's Requests set forth below. A response to Plaintiff's Requests shall not operate as a waiver of any applicable specific or general objection.

### **ANSWERS AND OBJECTIONS TO INTERROGATORIES**

#### **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:** TAP objects to Interrogatory No. 6 on the grounds that it is overly broad and unduly burdensome. TAP further objects to this Interrogatory to the extent it seeks information protected by the work-product doctrine. TAP also objects to this Interrogatory to the extent it seeks information related to TAP's denials that are based in whole or part on the application of applicable laws or legal conclusions. Moreover, TAP objects to this Interrogatory to the extent that it seeks information relating to Plaintiff's Amended Complaint, which TAP did not answer. TAP also objects to this Interrogatory as premature because TAP has not yet fully identified all facts that may support its denials since investigation and discovery remain ongoing. TAP also objects to this Interrogatory to the extent it essentially would require TAP to identify facts and information designed to prove a negative.

Notwithstanding TAP's general and specific objections, and without waiving them, TAP answers that, based upon diligent review and investigation to date, the following

facts, among others, generally support its denials to the allegations of Plaintiff's Second

Amended Complaint:

1. TAP did not engage in conduct that was improper, fraudulent, or unlawful as alleged in Plaintiff's Second Amended Complaint.
2. TAP 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 cost ("AAC") for Prevacid®.
3. It was commonly known among governmental agencies, within the pharmaceutical industry, and by those involved with reimbursement that there was a mark-up between the wholesale acquisition costs ("WAC") and the published AWP.
4. It was commonly known among governmental agencies, within the pharmaceutical industry, and by those involved with reimbursement that published AWP did not represent actual averages of wholesale prices.
5. 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 actual averages of wholesale prices for TAP's products.
6. 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.
7. Plaintiff has periodically considered, and rejected, alternative pharmaceutical reimbursement methodologies, including methodologies that were not AWP-based.
8. In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access to care.
9. Plaintiff's applicable regulations continue to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP.
10. TAP did not misrepresent the wholesale acquisition cost ("WAC") or AWP for Prevacid®.
11. TAP sold Prevacid® to customers at or near WAC.

12. TAP operates in a competitive environment as a result of which contracts and pricing terms are properly protected confidential business information.
13. Plaintiff was free at all times to change the pharmaceutical reimbursement formula of its Medicaid program to a non-AWP-based methodology.
14. TAP is unaware of Plaintiff ever enacting a statutory or regulatory definition of AWP.
15. Plaintiff was free at all times to require pharmaceutical manufacturers to submit Best Price and/or AMP data as a condition of preferred access to their drugs by Medicaid beneficiaries.
16. TAP never represented to Plaintiff that the AWP's published for Prevacid<sup>®</sup> represented an actual average of wholesale prices.
17. Plaintiff knew that some providers acquired drugs at prices far below AWP, including the Veterans Administration, 340B providers, and providers in other government discount programs.
18. Plaintiff was aware that pharmaceutical manufacturers provided discounts to their customers.
19. Since 2001, TAP has submitted to Plaintiff on a quarterly basis the average sales price ("ASP") for Prevacid<sup>®</sup>.
20. The net reimbursement paid by Plaintiff for Prevacid<sup>®</sup> was less than the product's WAC, factoring in Medicaid rebates that TAP paid to the State.
21. Plaintiff knew that some providers acquired drugs at prices far below AWP, including the Veterans Administration, 340B providers, and providers in other government discount programs.

TAP reserves the right to supplement this Interrogatory Answer in the future.

**INTERROGATORY NO. 7:**

Identify each document that supports each such denial.

**ANSWER:** TAP objects to Interrogatory No. 7 on the same grounds as those set forth in its Answer to Interrogatory No. 6 and incorporates those objections herein. In addition, TAP objects to Interrogatory No. 7 to the extent it seeks information that is publicly available or outside TAP's possession, custody and control.

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

1. Documents TAP has produced, or will produce, in response to Wisconsin's First Set of Requests for Production and its Written Discovery Request No. 3 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;
  - Customer contracts; 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 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 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
  - Wisconsin claims data
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.

TAP 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:** TAP objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. TAP further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or word-product doctrine. TAP also objects to this Interrogatory to the extent it seeks information related to TAP's denials that are based in whole or part on the application of applicable laws or legal conclusions. Moreover,

TAP objects to this Interrogatory to the extent that it seeks information relating to Plaintiff's Amended Complaint, which TAP did not answer. TAP also objects to this Interrogatory as premature because TAP has not yet fully identified all facts that may support its denials since investigation and discovery remain ongoing. TAP also objects to this Interrogatory to the extent it essentially would require TAP to identify facts and information designed to prove a negative.

Notwithstanding TAP's general and specific objections, and without waiving them, TAP answers that, based upon diligent review and investigation to date, the following facts, among others, generally support TAP's Affirmative Defenses, as set forth in its Answer to Plaintiff's Second Amended Complaint:

Affirmative Defenses Nos. 1, 22, 23, 28, 42

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for Prevacid®.
- 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.
- It was commonly known among governmental agencies, within the pharmaceutical industry, and by those involved with reimbursement that published AWP's did not represent actual averages of wholesale prices.
- Plaintiff's applicable regulations continue 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 to care.
- Plaintiff knew that some providers acquired drugs at prices far below AWP, including the Veterans Administration, 340B providers, and providers in other government discount programs.

Affirmative Defenses Nos. 2-4, 43

- Based upon Plaintiff's production to date, it appears that Plaintiff undertook few, 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 Defenses Nos. 6, 40, 50-57

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for Prevacid®.
- 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.
- It was commonly known among governmental agencies, within the pharmaceutical industry, and by those involved with reimbursement that published AWP's did not represent actual averages of wholesale prices.
- Plaintiff's applicable regulations continue 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 to care.
- Plaintiff has not proven it complied with Wis. Stat. § 165.25(1) or Wis. Stat. § 100.18(11)(d).
- TAP 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).
- TAP sold its Prevacid® to customers at or near WAC.

- Plaintiff was aware that pharmaceutical manufacturers provided discounts to customers.
- Plaintiff has not proven that TAP's discounts to providers had the effect of injuring competition.
- Plaintiff did not confer any benefit on TAP.

Affirmative Defense No. 7

- The setting of Medicaid and Medicare reimbursement rates and the administration of those programs is under the exclusive authority of the United States and the State legislature as well as CMS and State administrative agencies. Such policy-making responsibilities are not properly before the judicial branch.

Affirmative Defense No. 8

- To the extent that TAP 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 Defense No. 9

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

Affirmative Defenses Nos. 10, 24, 29-30, 45, 47

- Plaintiff cannot establish that it was damaged by TAP's conduct. Plaintiff adopted the reimbursement methodology to further program objectives.
- Plaintiff cannot establish that any increase in TAP's market share was attributable to TAP's allegedly unlawful conduct as opposed to other factors.
- Plaintiff cannot establish that any increase in TAP's market share was the result of Plaintiff's payments as opposed to payments from Medicare or private payors.
- The net reimbursement paid by Plaintiff for Prevacid<sup>®</sup> was less than the product's WAC, factoring in Medicaid rebates that TAP paid to the State.

Affirmative Defense Nos. 11, 14, 16-17, 21, 30-32, 37, 41, 48-49, 52-56, 60-61

- These defenses are purely legal in nature and thus, require no reference to facts for support.

Affirmative Defense No. 12

- TAP'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. 13

- A written rebate agreement exists between Amgen 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 into pursuant to 42 U.S.C. § 1396r-8.

Affirmative Defense No. 15

- At the time that TAP launched Prevacid<sup>®</sup> in 1995, it was already established industry practice for the pricing compendia to publish AWP's that were higher than actual acquisition costs for pharmaceuticals. It also was commonly known and widely understood that AWP's did not represent actual averages of wholesale prices.

Affirmative Defense No. 18

- 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. 19-20:

- Prevacid<sup>®</sup> is sold in interstate commerce.

Affirmative Defense No. 24, 29-30, 45

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices pharmaceutical 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.
- It was commonly known among governmental agencies, within the pharmaceutical industry, and by those involved with reimbursement that published AWP's did not represent actual averages of wholesale prices.
- Plaintiff's applicable regulations continue 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 to care.
- TAP did not cause providers to make a false statement to Plaintiff.
- Plaintiff has not proven that TAP's discounts to providers had the effect of injuring competition.
- Plaintiff did not confer any benefit on TAP.

Affirmative Defense No. 25, 27, 31

- Plaintiff has provided no particularized allegations (the "who, what, when, where, and how") describing TAP's allegedly fraudulent conduct.

Affirmative Defense No. 26

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

Affirmative Defense No. 26, 36

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

Affirmative Defense No. 29

- Plaintiff did not confer a benefit on TAP.
- Any increased sales and/or market share TAP received during the relevant time period was not the result of unlawful conduct.
- Plaintiff has not proven that any increase in TAP's market share was attributable to TAP's allegedly unlawful conduct as opposed to other factors.

- Plaintiff has not proven that any increase in TAP'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 actual averages of wholesale prices for pharmaceutical 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.
- It was commonly known among governmental agencies, within the pharmaceutical industry, and by those involved with reimbursement that published AWP's did not represent actual averages of wholesale prices.
- Plaintiff's applicable regulations continue 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 to care.

Affirmative Defense No. 33-35, 38

- TAP has never represented that the AWP's published by the pricing compendia represent actual averages of wholesale prices for Prevacid®.
- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for pharmaceutical 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 Medicaid pharmaceutical reimbursement methodology to a non-AWP-based system.
- It was commonly known among governmental agencies, within the pharmaceutical industry, and by those involved with reimbursement that published AWP's did not represent actual averages of wholesale prices.

- Plaintiff's applicable regulations continue 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 healthcare access for its Medicaid beneficiaries.

Affirmative Defense No. 39

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

Affirmative Defense No. 44

- 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. 46

- TAP 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 actual averages of wholesale prices for pharmaceutical 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.
- It was commonly known among governmental agencies, within the pharmaceutical industry, and by those involved with reimbursement that published AWP's did not represent actual averages of wholesale prices.
- Plaintiff's applicable regulations continue 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 to care.

Affirmative Defense No. 47

- Plaintiff has not proven that it was damaged by TAP's conduct.
- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for pharmaceutical 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.
- It was commonly known among governmental agencies, within the pharmaceutical industry, and by those involved with reimbursement that published AWP's did not represent actual averages of wholesale prices.
- Plaintiff's applicable regulations continue to reimburse providers, who participate in the 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 to care.

Affirmative Defense No. 58

- Plaintiff's claims are barred to the extent they seek to recover reimbursement for pharmaceutical products purchased directly or indirectly by third party payors providing Medicaid Managed Care or similar plans to Plaintiff or that any alleged inflated charges for such products were absorbed in whole or in part by such plans.

Affirmative Defense No. 59

- TAP has supplied ASPs for Prevacid<sup>®</sup> directly to the State since 2001.

Affirmative Defense No. 60-61

- Any and all applicable facts asserted by any other defendant not otherwise asserted herein.

TAP 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:** TAP objects to Interrogatory No. 9 on the same grounds as those set forth in its Answer to Interrogatory No. 8 and incorporates those objections herein. In addition, TAP objects to this Interrogatory to the extent it seeks information that is publicly available or outside TAP's possession, custody and control.

Notwithstanding TAP's general and specific objections, and without waiving them, TAP answers that, based upon diligent review and investigation to date, the following categories of documents, among others, generally support the Affirmative Defenses asserted in TAP's Answer to Plaintiff's Second Amended Complaint:

1. Documents TAP has produced, or will produce, in response to Wisconsin's First Set of Requests for Production and its Written Discovery Request No. 3 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;
  - Customer contracts; 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;
  - 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 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;
  - Rebate contracts between Plaintiff and TAP; and
  - Wisconsin's claims data.
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.

TAP 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:** TAP objects to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. TAP further objects to this Interrogatory because “any official of the State” is vague and undefined and because this Interrogatory is not limited by timeframe. TAP further objects to this Interrogatory to the extent it calls for information within Plaintiff’s possession.

Notwithstanding TAP’s general and specific objections, and without waiving them, TAP answers that since 2001 it has submitted to Plaintiff on a quarterly basis the average sales price (“ASP”) for all TAP products. TAP 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:** TAP objects to Interrogatory No. 11 on the ground that it is overly broad and unduly burdensome. TAP further objects to this Interrogatory on the ground that it is not limited by timeframe. TAP further objects to this Interrogatory to the extent it calls for information within Plaintiff’s possession.

Notwithstanding TAP’s general and specific objections, and without waiving them, TAP agrees to produce business records, in a manner to be negotiated and agreed upon between the parties, from which the answer to Interrogatory No. 11 may be obtained.

## **RESPONSES AND OBJECTIONS TO REQUEST FOR PRODUCTION**

### **REQUEST NO. 12:**

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

**RESPONSE:** TAP objects to Request No. 12 on the ground that it is overly broad and unduly burdensome. TAP further objects to this Interrogatory to the extent it seeks documents that are publicly available or outside TAP's possession, custody and control.

Notwithstanding TAP's general and specific objections, and without waiving them, TAP agrees to produce non-privileged documents identified in its Answers to Interrogatory Nos. 7, 9, and 11 in a manner to be negotiated and agreed upon between the parties. TAP also directs Plaintiff to its own production and productions by third-parties.

### **REQUEST NO. 13:**

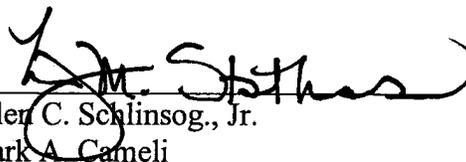
Produce any documents commenting on, concerning or about how or to what extent wholesalers mark up drugs for resale including, but not limited to, any documents relating to the case of Brand Name Prescription Drugs Antitrust Litigation, 94 C 897 (N.D. Ill.).

**RESPONSE:** TAP objects to Request No. 13 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it reports to require information relating to "drugs" without specification as to which "drugs," thus including products that are not manufactured, marketed, or distributed by TAP and/or products not at issue in this litigation. TAP further objects to this Request to the extent it seeks documents produced in the Brand Name Prescription Drugs Antitrust Litigation because TAP was not a party to that litigation. In addition, TAP objects to this Request because it is duplicative of Request No. 3 in Plaintiff's First Set of Requests for Production of Documents to TAP, in response to which TAP has already agreed to produce documents. TAP further

objects to this Request to the extent it seeks information in Plaintiff's possession or more appropriately sought from third parties.

Notwithstanding TAP's general and specific objections, and without waiving them, TAP agrees to undertake a limited search for non-privileged documents potentially responsive to this request in a manner to be negotiated and agreed upon between the parties.

Dated: March 13, 2007



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**Certificate of Service**

I, Lynn M. Stathas, hereby certify that on this 13th day of March 2007, a true and correct copy of **TAP LABORATORIES' RESPONSES AND OBJECTIONS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES AND FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS** was served on all counsel of record by Lexis Nexis File & Serve®.

  
Lynn M. Stathas