
STATE OF WISCONSIN,)	
)	
Plaintiff,)	Case No.: 04-CV-1709
)	
v.)	
)	
AMGEN INC., et. al.,)	
)	
Defendants.)	

**DEFENDANTS WATSON PHARMACEUTICALS, INC.’S AND
WATSON PHARMA, INC.’S RESPONSES AND OBJECTIONS TO PLAINTIFF’S
THIRD SET OF INTERROGATORIES AND FOURTH REQUEST
FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

Pursuant to Wis. Stat. §§ 804.08 and 804.09, defendants Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. (“Watson”), by and through undersigned counsel, object and respond to Plaintiff’s Third Set of Interrogatories and Fourth Request for Production (“Plaintiff’s Requests”) as follows:

PRELIMINARY STATEMENT

1. These responses and objections are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such Plaintiff’s Requests were asked of, or statements contained herein were made by, a witness present and testifying in Court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Watson’s responses shall not be deemed to constitute admissions:
- a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or

b. that any statement or characterization in Plaintiff's Requests is accurate or complete.

3. Watson's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and Watson 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. Watson's responses to Plaintiff's Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

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

GENERAL OBJECTIONS

Watson objects generally to Plaintiff's Requests as follows:

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

2. Watson 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 imposed by the applicable Wisconsin Rules of Civil Procedure. Watson further objects to this definition to the extent that it purports to require Watson 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 Watson as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

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

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

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

RESPONSES 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.

RESPONSE TO INTERROGATORY NO. 6

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

Notwithstanding Watson's general and specific objections, and without waiving them, Watson responds 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. Watson did not engage in conduct that was improper, fraudulent, or unlawful as alleged in Plaintiff's Second Amended Complaint.
2. Watson 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 for its products. Instead, Watson's policies provide that its products should be marketed based on their clinical efficacy, their price, their uninterrupted supplies, and other product attributes.
3. Watson did not publish the AWP's for its products. The AWP's for Watson's products were published by the pricing compendia.
4. From at least 2001 to the present, Watson has provided to the pricing compendia suggested wholesale prices for products rather than AWP's.
5. 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 between the wholesale acquisition costs ("WAC") and the published AWP's.
6. 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 averages of wholesale prices.
7. It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement that published WAC's did not represent actual acquisition costs for products.
8. 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's did not represent actual averages of wholesale prices for Watson's products.
9. 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.
10. Plaintiff has periodically considered, and rejected, alternative pharmaceutical reimbursement methodologies, including methodologies that were not based on AWP.
11. In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

12. Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on AWP.
13. Watson did not misrepresent or inflate the WAC or AWP for its products.
14. Watson operates in a competitive environment as a result of which contracts and pricing terms are properly protected confidential business information.
15. As a matter of company policy, Watson does not encourage or support the use of free drugs or grants as a means of discounting the overall price of its products.
16. Plaintiff was free at all times to change its pharmaceutical reimbursement under its Medicaid program to a non-AWP based methodology.
17. Watson is unaware of Plaintiff ever enacting a statutory or regulatory definition of AWP.
18. Plaintiff was free at all times to require pharmaceutical manufacturers to provide it with their Best Price and/or average manufacturer price (“AMP”) data as a condition of preferred access to their drugs by Medicaid beneficiaries.
19. Plaintiff was able since 1991 to perform reverse calculations on unit rebate amounts received from the Centers for Medicare & Medicaid Services (“CMS”), previously the Health Care Financing Administration (“HCFA”), for any multi-source drugs receiving reimbursement from Plaintiff to ascertain the AMP for those drugs in order to assess whether reimbursement rates were reasonable.
20. Watson never affirmatively represented to Plaintiff that the AWP published for its products represented an actual average of wholesale prices.
21. Plaintiff was aware that pharmaceutical manufacturers provided discounts to customers.

Watson expressly reserves the right to supplement this Interrogatory Response in the future.

INTERROGATORY NO. 7

Identify each document that supports each such denial.

RESPONSE TO INTERROGATORY NO. 7

Watson objects to Interrogatory No. 7 on the same grounds as those set forth in its Response to Interrogatory No. 6 and incorporates those objections herein. In addition, Watson

objects to Interrogatory No. 7 to the extent it seeks information that is publicly available or outside Watson's possession, custody and control.

Notwithstanding Watson's general and specific objections, and without waiving them, Watson responds 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 Watson 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;
 - Information pertaining to pricing decisions; 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 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, estimated acquisition cost ("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.

Watson expressly reserves the right to supplement this Interrogatory Response 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.

RESPONSE TO INTERROGATORY NO. 8

Watson objects to Interrogatory No. 8 on the grounds that it is overly broad and unduly burdensome. Watson further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or word-product doctrine. Watson also objects to this Interrogatory to the extent it seeks information related to Watson's denials that are based in whole or part on the application of applicable laws or legal conclusions. Moreover, Watson objects to this Interrogatory to the extent that it seeks information relating to Plaintiff's Amended Complaint, which Watson did not answer. Watson also objects to this Interrogatory as premature because Watson has not yet fully identified all facts that may support its denials since investigation and discovery remain ongoing. Watson also objects to this Interrogatory to the extent it essentially would require Watson to identify facts and information designed to prove a negative.

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

Affirmative Defenses Nos. 1, 16, 17, 20, 36

- Since at least 1975, Plaintiff was aware that the published AWP's did not represent actual averages of wholesale prices for Watson'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 was able since 1991 to perform reverse calculations on unit rebate amounts received from CMS, previously HCFA, for any multi-source

drugs receiving reimbursement from Plaintiff to ascertain the AMP for those drugs in order to assess whether reimbursement rates were reasonable.

- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP.
- 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.
- Plaintiff was able since 1991 to perform reverse calculations on unit rebate amounts received from CMS, previously HCFA, for any multi-source drugs receiving reimbursement from Plaintiff to ascertain the AMP for those drugs in order to assess whether reimbursement rates were reasonable.

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

- Watson's products are sold in interstate commerce.

Affirmative Defense Nos. 7, 12, 13, 15, 25, 27-28, 30, 38, 41-43

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

Affirmative Defenses Nos. 8, 18, 24

- Plaintiff cannot establish that it was damaged by Watson's conduct. Plaintiff adopted the reimbursement methodology to further program objectives.

- Plaintiff cannot establish that any increase in Watson’s market share was attributable to Watson’s allegedly unlawful conduct as opposed to other factors.
- Plaintiff cannot establish that any increase in Watson’s market share was the result of Plaintiff’s payments as opposed to payments from Medicare or private payors.

Affirmative Defense No. 9

- To the extent that Watson 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. 10, 26-28

- Since at least 1975, Plaintiff was aware that the published AWP did not represent actual averages of wholesale prices for Watson’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 was able since 1991 to perform reverse calculations on unit rebate amounts received from CMS, previously HCFA, for any multi-source drugs receiving reimbursement from Plaintiff to ascertain the AMP for those drugs in order to assess whether reimbursement rates were reasonable.
- 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.
- 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 averages of wholesale prices.
- It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement

that published WACs did not represent actual acquisition costs for products.

- Plaintiff has not proven it complied with Wis. Stat. § 165.25(1) or Wis. Stat. § 100.18(11)(d).
- Watson did not cause providers to make a false statement to Plaintiff.
- 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 cannot establish that Watson's discounts to providers had the effect of injuring competition.
- Plaintiff did not confer any benefit on Watson.

Affirmative Defense No. 11

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

Affirmative Defense No. 14

- At all times relevant to the claims by Plaintiff, it was established industry practice for the pricing compendia to publish AWP that were for the most part higher than actual acquisition costs for pharmaceuticals. It also was commonly known and widely understood that published AWP did not represent actual averages of wholesale prices. It was also commonly known and widely understood that published WACs did not represent actual acquisition costs for products.

Affirmative Defense No. 18

- Since at least 1975, Plaintiff was aware that the published AWP did not represent actual averages of wholesale prices for Watson'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 was able since 1991 to perform reverse calculations on unit rebate amounts received from CMS, previously HCFA, for any multi-source drugs receiving reimbursement from Plaintiff to ascertain the AMP for those drugs in order to assess whether reimbursement rates were reasonable.
- 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 AWPs did not represent actual averages of wholesale prices.
- It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement that published WACs did not represent actual acquisition costs for products.
- Watson did not cause providers to make a false statement to Plaintiff.
- Plaintiff cannot establish that Watson's discounts to providers had the effect of injuring competition.
- Plaintiff did not confer any benefit on Watson.

Affirmative Defense No. 19

- 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. 21

- Watson did not control the AWPs published by the pricing compendia.
- From at least 2001 to the present, Watson has provided to the pricing compendia suggested wholesale prices for products rather than AWPs.
- Since at least 1975, Plaintiff was aware that the published AWPs did not represent actual averages of wholesale prices for Watson'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 was able since 1991 to perform reverse calculations on unit rebate amounts received from CMS, previously HCFA, for any multi-source drugs receiving reimbursement from Plaintiff to ascertain the AMP for those drugs in order to assess whether reimbursement rates were reasonable.
- 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. 22

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

Affirmative Defense No. 23

- Watson’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. 24

- Plaintiff cannot establish that it was damaged by Watson’s conduct.
- Since at least 1975, Plaintiff was aware that the published AWPs did not represent actual averages of wholesale prices for Watson’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 was able since 1991 to perform reverse calculations on unit rebate amounts received from CMS, previously HCFA, for any multi-source

drugs receiving reimbursement from Plaintiff to ascertain the AMP for those drugs in order to assess whether reimbursement rates were reasonable.

- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 29

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

Affirmative Defense No. 31

- Plaintiff did not confer a benefit on Watson.
- Any increased sales and/or market share Watson received during the relevant time period was not the result of unlawful conduct.
- Plaintiff cannot establish that any increase in Watson’s market share was attributable to Watson’s allegedly unlawful conduct as opposed to other factors.
- Plaintiff cannot establish that any increase in Watson’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 did not represent actual averages of wholesale prices for Watson’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 was able since 1991 to perform reverse calculations on unit rebate amounts received from CMS, previously HCFA, for any multi-source drugs receiving reimbursement from Plaintiff to ascertain the AMP for those drugs in order to assess whether reimbursement rates were reasonable.

- Plaintiff continues to reimburse providers, who participate in its Medicaid program, for pharmaceuticals based on published AWP.
- In adopting its various reimbursement methodologies over time, Plaintiff adopted and utilized these methodologies to further program goals, including ensuring access.

Affirmative Defense No. 32

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

Affirmative Defense No. 33

- A written rebate agreement exists between Watson 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. 34

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

Affirmative Defense No. 35, 37

- Watson has never represented that the AWP published by the pricing compendia represent actual averages 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 AWP did not represent actual averages of wholesale prices.
- It was commonly known within certain governmental agencies and within the pharmaceutical industry and by those involved with reimbursement that published WACs did not represent actual acquisition costs for products.
- Since at least 1975, Plaintiff was aware that the published AWP did not represent actual averages of wholesale prices for Watson’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 was able since 1991 to perform reverse calculations on unit rebate amounts received from CMS, previously HCFA, for any multi-source drugs receiving reimbursement from Plaintiff to ascertain the AMP for those drugs in order to assess whether reimbursement rates were reasonable.
- 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. 39

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

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. 43

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

Watson expressly reserves the right to supplement this Interrogatory Response in the future.

INTERROGATORY NO. 9

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

RESPONSE TO INTERROGATORY NO. 9

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

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

1. Documents Watson 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 to and agreed upon between the parties including, but not limited to, the following:
 - Communications with the pricing compendia;
 - Sales and other data;
 - Customer contracts;
 - Information pertaining to pricing decisions; 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; and
- Rebate contract between Plaintiff and Watson.

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.

Watson expressly reserves the right to supplement this Interrogatory Response 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?

RESPONSE TO INTERROGATORY NO. 10

Watson objects to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, vague, and ambiguous. Watson further objects to this Interrogatory because “any official of the State” is vague and undefined and because this Interrogatory is not limited by timeframe.

Notwithstanding Watson’s general and specific objections, and without waiving them, Watson responds that, based upon diligent review and investigation to date, other than communications with Provider Synergies regarding placement on Wisconsin’s Preferred Drug List, it is unaware of any communications directly with the State concerning the pricing of Watson’s products. Discovery, however, remains ongoing. Consequently, Watson expressly reserves the right to supplement this Interrogatory Response 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.

RESPONSE TO INTERROGATORY NO. 11

Watson objects to Interrogatory No. 11 on the ground that it is overly broad and unduly burdensome. Watson further objects to this Interrogatory on the ground that it is not limited by timeframe.

Notwithstanding Watson's general and specific objections, and without waiving them, Watson 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 TO REQUEST NO. 12

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

Notwithstanding Watson's general and specific objections, and without waiving them, Watson agrees to produce non-privileged documents identified in its Responses to Interrogatory Nos. 7, 9, and 11 in a manner to be negotiated and agreed upon between the parties. Watson 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.)

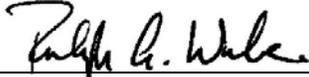
RESPONSE TO REQUEST NO. 13

Watson 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 Watson and/or products not at issue in this litigation. Watson further objects to this Request to the extent

it seeks documents produced in the Brand Name Prescription Drugs Antitrust Litigation because Watson was not a party to that litigation. In addition, Watson objects to this Request because it is duplicative of Request No. 3 in Plaintiff's First Set of Requests for Production of Documents to Watson, in response to which Watson has already produced documents. Watson further objects to this Request to the extent it seeks information in the possession of Plaintiff or more appropriately sought from third parties.

Notwithstanding Watson's general and specific objections, and without waiving them, Watson 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 this 13th day of March, 2007.

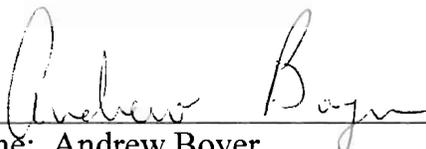
By: 

Ralph A. Weber, SBN 1001563
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309 North Water Street, Suite 700
Milwaukee, WI 53202
Tel: (414) 224-7698
Fax: (414) 224-6116

*Counsel for Defendants Watson
Pharmaceuticals, Inc. and Watson Pharma,
Inc.*

AS TO INTERROGATORY RESPONSES

Andrew Boyer, being duly sworn, deposes and states that he is the Senior Vice President, Sales and Marketing, U. S. Generics Division for Watson Pharma, Inc., and that he verifies **DEFENDANTS WATSON PHARMACEUTICALS, INC.'S AND WATSON PHARMA, INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES AND FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**; that certain of the matters stated therein are not within the personal knowledge of deponent; that the facts therein have been assembled by authorized employees and counsel of Watson Pharma, Inc. and Watson Pharmaceuticals, Inc. ("Watson"); that the responses set forth therein, subject to inadvertent and undiscovered errors, are based upon and therefore necessarily limited by the records and information still in existence, presently recollected, and thus far discovered in the course of preparation of those responses; and, consequently, Watson reserves the right to make any changes in the responses if it appears at any time that omissions or errors have been made therein, or that more accurate information is available; and that subject to the limitations set forth herein, said responses are true to the best of his knowledge, information and belief.


Name: Andrew Boyer

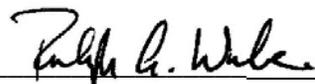
Subscribed and sworn to before me on this 13 day of March, 2007, by
ANDREW BOYER

[SEAL]


Notary Public, State of New Jersey
My Commission expires: 2/25/2011

Certificate of Service

I, Ralph A. Weber, hereby certify that on this 13th day of March 2007, a true and correct copy of **DEFENDANTS WATSON PHARMACEUTICALS, INC.'S AND WATSON PHARMA, INC.'S 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®.

A handwritten signature in black ink, appearing to read "Ralph A. Weber", is written over a horizontal line.

Ralph A. Weber