

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION

STATE OF ARKANSAS

PLAINTIFF

v.

NO. CIV 04-634

DEY, INC.; WARRICK PHARMACEUTICALS  
CORPORATION; SCHERING-PLOUGH  
CORPORATION; and SCHERING CORPORATION

DEFENDANTS

**DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendants Dey, Inc., Warrick Pharmaceuticals Corporation, Schering-Plough Corporation, and Schering Corporation ("Defendants"), pursuant to Ark. R. Civ. Pro. 12(c) move for a judgment on the pleadings. The Complaint brought by Attorney General of the State of Arkansas ("Plaintiff") on behalf of the State of Arkansas ("State"), its Medicaid Program, and its citizens has failed to state facts upon which relief could be granted under Ark. R. Civ. P. 12(b)(6), 8, and 9(b). As grounds for this motion Defendants state:

- (1) In pleading Count I: Violation of the Arkansas Deceptive Trade Practices Act, Plaintiff fails to comply with Ark. R. Civ. Pro. 8 and 9(b), requiring all claims in Arkansas to plead facts showing that the pleader is entitled to relief and further requiring all claims relying on averments of fraud to be stated with particularity. Count I also is deficient because the directors of the Arkansas Department of Human Services have not required or authorized the Attorney General to bring this action as explicitly required by statute and because the Attorney General has no authority to seek money damages for violations of that statute;

- (2) In pleading Count II: Common Law Fraud, Plaintiff fails to comply with Ark. R. Civ. Pro. 8 and 9(b), requiring all claims in Arkansas to plead facts showing that the pleader is entitled to relief and further requiring all claims relying on averments of fraud to be stated with particularity. Plaintiff also fails to state a proper claim because the State does not and cannot adequately allege that Defendants made a false representation, that the Plaintiff reasonably relied on a false representation, or that Defendants' alleged representations caused harm;
- (3) Arkansas's complex reimbursement formula specifies that reimbursement may have no relation whatsoever to any Defendant's published AWP, and judgment should enter for Defendants on any claims relating to drugs for which the State reimbursed at a rate not tied to any Defendant's published AWP;
- (4) Both of Plaintiff's claims are limited by the applicable statute of limitations.

A Memorandum in Support of this Motion is filed herewith.

WHEREFORE, for the reasons set forth above, Defendants respectfully request that the Court grant their motion for judgment on the pleadings and enter an Order entering judgment in favor of defendants on all counts of the Complaint; and providing such other relief as the Court deems just and proper.

Respectfully submitted,

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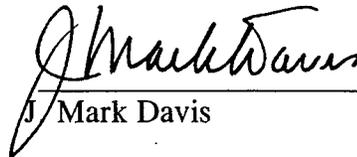
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by hand delivery this 22<sup>nd</sup> day of  
April, 2004, on:

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