

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION

FILED
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STATE OF ARKANSAS

CAROLYN STALEY
CIRCUIT COURT CLERK
PLAINTIFF

V.

CASE NO. CV-04-634

**DEY, INC.; WARRICK
PHARMACEUTICALS CORPORATION;
SCHERING-PLOUGH CORPORATION;
AND SCHERING CORPORATION**

DEFENDANTS

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR JUDGMENT ON
THE PLEADINGS**

Plaintiff, the State of Arkansas ("State"), submits the following Response to Defendant's Motion for Judgment on the Pleadings brought jointly by the Defendants Dey, Inc., Warrick Pharmaceuticals Corporation, Schering-Plough Corporation, and Schering Corporation (hereinafter "Defendants").

- (1) Plaintiff has more than adequately complied with Rule 8 and Rule 9(b) of the Arkansas Rules of Civil Procedure. Plaintiff has pled facts that entitle it to relief and has pled all fraud claims with particularity.
- (2) The Attorney General has statutory authority to bring this cause of action on behalf of Medicaid since the statutory exclusions listed under 4-88-101(3) do not apply to the Department of Human Services. Alternatively, even if the Court holds the exclusions applicable, the Attorney General possessed all proper authority to bring suit.

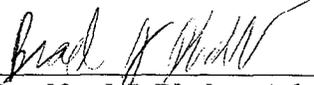
- (3) The Plaintiff alleges sufficient facts showing that the Defendants made false representations about the price of their drugs and that the Plaintiff justifiably relied upon those representations when reimbursing for Defendants' drugs. These facts show the Plaintiff is entitled to judgment under common law fraud.
- (4) The Plaintiff is entitled to recover money for Defendants' misrepresentations regardless of whether or not payment was made based on AWP. Had the Defendants reported an accurate AWP the Plaintiff would have reimbursed less.
- (5) The statute of limitations does not run against the Plaintiff's common law fraud count under the doctrine of *nullum tempus occurrit regi*. The Plaintiff alleges facts sufficient to show that it is entitled to toll the five-year limitations period under the Arkansas Deceptive Trade Practices Act since the Defendants concealed the true price of their drugs from the Plaintiff.

A Memorandum in Support of this Response is filed herewith.

WHEREFORE, for the reasons set forth above, the Plaintiff respectfully requests that the Court enter an Order denying Defendants Motion for Judgment on the Pleadings and granting such other relief to which the Plaintiff is entitled.

Respectfully submitted,

MIKE BEEBE
ATTORNEY GENERAL

By: 
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CERTIFICATE OF SERVICE

I, Bradford J. Phelps, Assistant Attorney General, do hereby certify that a copy of the foregoing was served by hand delivery on this 5th day of May, 2004:

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