

STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

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

**ANSWER OF BRISTOL-MYERS SQUIBB COMPANY TO
PLAINTIFF’S SECOND AMENDED COMPLAINT**

Defendant Bristol-Myers Squibb Company (“Bristol-Myers”), by and through its undersigned counsel, hereby answers the state of Wisconsin’s (“Plaintiff,” “Wisconsin” or the “State”) Second Amended Complaint as follows:

Preliminary Statement

The Second Amended Complaint improperly refers to Bristol-Myers, other defendants, and third parties on a collective basis, failing to plead with requisite particularity allegations against Bristol-Myers. This is insufficient to apprise Bristol-Myers of the allegations asserted against it. Bristol-Myers has nevertheless attempted to respond to Plaintiff’s allegations to the extent possible.

To the extent the Second Amended Complaint’s allegations refer to the knowledge, conduct or actions of other persons or entities, Bristol-Myers is generally without knowledge or information sufficient to form a belief as to the truth of those allegations. Bristol-Myers states that it is answering Plaintiff’s allegations solely on behalf of itself, even when Plaintiff’s allegations refer to alleged conduct by Bristol-

Myers and other persons or entities. Bristol-Myers also states that, in answering, it is doing so only on behalf of itself and not on behalf of any separately incorporated subsidiaries or affiliates.

Bristol-Myers denies each and every allegation contained in the Second Amended Complaint, except as specifically herein admitted, and any factual averment admitted herein is admitted only as to the specific facts and not as to any conclusions, characterizations, implications, innuendos or speculation contained in any averment or in the Second Amended Complaint as a whole. Moreover, Bristol-Myers specifically denies any allegations contained in headings, footnotes, or unnumbered paragraphs in the Second Amended Complaint.

These comments and objections are incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

I. NATURE OF THE ACTION.

Specific Responses

1. Bristol-Myers denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Second Amended Complaint, except (a) admits that Plaintiff purports to bring this action and seeks certain relief, and (b) denies (i) that there is any basis on which to permit Plaintiff to do so, (ii) the existence of any “unlawful scheme to cause Wisconsin and its citizens to pay inflated prices for prescription drugs”; (iii) that Bristol-Myers is or has been involved in any such scheme; (iv) that Bristol-Myers has obtained any profits as a result of any such purported scheme, and (v) that plaintiff is entitled to any relief.

II. PARTIES AND JURISDICTION.

2. Bristol-Myers denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Second Amended Complaint, except (a) admits that Plaintiff purports to bring this action and seeks certain relief, and (b) denies that there is any basis on which to permit Plaintiff to do so. Further, Bristol-Myers denies that it has engaged in any “unlawful conduct” purportedly set forth in the Second Amended Complaint.

3. Bristol-Myers admits that it is a pharmaceutical company and that it sold some of its products in Wisconsin, but denies that it has engaged in a “deceptive scheme”; and otherwise denies the allegations in Paragraph 3 of the Second Amended Complaint. To the extent that allegations in Paragraph 3 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

4-9. The allegations in Paragraphs 4 through 9 of the Second Amended Complaint are directed to other defendants and require no response from Bristol-Myers. To the extent the allegations in Paragraphs 4 through 9 of the Second Amended Complaint are deemed to include allegations against Bristol-Myers, they are denied.

10. Bristol-Myers admits that it is a Delaware corporation with its principal place of business located at 345 Park Avenue, New York, NY 10154-0037 and that it is engaged in the manufacture and sale of pharmaceuticals. Bristol-Myers admits

that Westwood-Squibb is a subsidiary but states that none of its subsidiaries are defendants herein, and denies that it may be held liable for the acts of its subsidiaries.

11-23. The allegations in Paragraphs 11 through 23 of the Second Amended Complaint are directed to other defendants and require no response from Bristol-Myers. To the extent the allegations in Paragraphs 11 through 23 of the Second Amended Complaint are deemed to include allegations against Bristol-Myers, they are denied.

24. Bristol-Myers states that Paragraph 24 of the Second Amended Complaint consists of conclusions of law as to which no answer is required.

25. Bristol-Myers states that Paragraph 25 of the Second Amended Complaint consists of conclusions of law as to which no answer is required.

III. FACTUAL BACKGROUND.

A. The Market for Prescription Drugs.

26. Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Second Amended Complaint regarding (i) insurance held by patients, (ii) the identity of the entity, if any, that pays for prescribed drugs, and (iii) the recipient(s) of payments for prescribed drugs, except Bristol-Myers admits that it manufactures and sells pharmaceutical products to its customers and that the market for prescription drugs is complex and involves sales to intermediaries before those drugs reach providers, that there are more than 65,000 NDCs, and that a separate NDC is generally assigned for each dosage and package size of each drug. Bristol-Myers denies all other allegations in Paragraph 26 of the Second Amended

Complaint that may be directed to Bristol-Myers. To the extent that the allegations in Paragraph 26 refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

27–29. To the extent that the allegations set forth in Paragraphs 27 through 29 are directed to Bristol-Myers, Bristol-Myers denies each and every allegation set forth therein. To the extent the allegations in Paragraphs 27 through 29 refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

30. To the extent the allegations in Paragraph 30 of the Second Amended Complaint are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 30 are directed to Bristol-Myers, Bristol-Myers denies all such allegations. Bristol-Myers specifically denies the existence of or that it participated in an “unlawful scheme” regarding the pricing of its drugs.

B. The Purpose of the Medicaid Program and How it Responds to the Complexity of the Drug Market.

31. Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Second Amended Complaint.

32. Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Second Amended Complaint, except admits that it participated in the Wisconsin Medicaid program.

33. The allegations in Paragraph 33 of the Second Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Bristol-Myers denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 of the Second Amended Complaint and respectfully refers the Court to 42 C.F.R. § 447.331 and 42. C.F.R. § 447.301 for the full text thereof.

34. To the extent that the allegations in Paragraph 34 of the Second Amended Complaint refer to the knowledge of, or acts of parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of such allegations in Paragraph 34. To the extent the allegations in Paragraph 34 are directed at Bristol-Myers, Bristol-Myers denies the allegations.

35. To the extent the allegations in Paragraph 35 of the First Amended Complaint are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 35 are directed at Bristol-Myers, Bristol-Myers denies the allegations. Finally, Bristol-Myers specifically states that it does not (and did not) report average wholesale prices for its products to industry publications.

36-39. Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 36 through 39 of the Second Amended Complaint, and on that basis denies the allegations.

C. **Defendants' Corruption of the Government Medicaid Assistance Programs.**

40. To the extent the allegations in Paragraph 40 of the Second Amended Complaint are directed at defendants other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 40 are directed at Bristol-Myers, Bristol-Myers denies the allegations. Bristol-Myers specifically states that it does not (and did not) report AWP's to First DataBank or any other industry pricing publication. Bristol-Myers specifically denies the existence of or involvement in any "scheme" regarding drug pricing.

41. To the extent the allegations in Paragraph 41 of the Second Amended Complaint are directed at defendants other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 41 are directed at Bristol-Myers, Bristol-Myers denies the allegations. Further, Bristol-Myers states that it did not market its drugs on the basis of "spread".

42. To the extent the allegations in Paragraph 42 of the Second Amended Complaint are directed at defendants other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 42 are directed at Bristol-Myers,

Bristol-Myers denies the allegations. Bristol-Myers specifically denies that Exhibits B-1 and B-3 to the Second Amended Complaint are “examples” of Bristol-Myers “market[ing] the spread” to its customers.

43. To the extent the allegations in Paragraphs 43 of the Second Amended Complaint are directed at defendants other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 43 are directed at Bristol-Myers, Bristol-Myers denies the allegations. Further, Bristol-Myers specifically states that it did not (and does not) report average wholesale price to industry publications.

44-45. The allegations in Paragraphs 44 through 45 of the Second Amended Complaint are directed at defendants other than Bristol-Myers, and therefore no response is required from Bristol-Myers. To the extent a response is required, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 44 through 45.

46. Bristol-Myers denies the allegations in Paragraph 46 of the Second Amended Complaint, except admits that AWP's are publicly available. Bristol-Myers states that the entry in the Federal Register at 68 Fed. Reg. 50,430 and Department of Justice (“DOJ”) prices cited in Paragraph 46 of the Second Amended Complaint speak for themselves and refers the Court to the underlying documents for the full content thereof. Bristol-Myers states that to the extent that allegations in Paragraph 46 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information

sufficient to form a belief as to the truth of those allegations. Further, Bristol-Myers specifically denies that any drugs manufactured by Bristol-Myers and set forth in Exhibit C to the Second Amended Complaint have “inflated AWP’s.”

47. The allegations in Paragraph 47 of the Second Amended Complaint are directed at defendants other than Bristol-Myers, and therefore no response is required from Bristol-Myers. To the extent a response is required, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47.

48. To the extent the allegations in Paragraph 48 of the Second Amended Complaint are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 48 are directed at Bristol-Myers, Bristol-Myers admits that Plaintiff attaches Exhibits to the Complaint, which purport to contain pricing information. Bristol-Myers denies the remaining allegations and specifically denies (a) the accuracy of the pricing information and the claim that it comports with the information required by the Court, and (b) that Bristol-Myers caused any false prices to be published by First DataBank.

49. To the extent the allegations in paragraph 49 are directed to Bristol-Myers, Bristol-Myers denies that it provided inflated information regarding WAC (or WLP). WLP is the price at which Bristol-Myers sells its products to wholesalers. Bristol-Myers admits that it offers discounts and rebates from its list price, or WLP, for certain customers on certain products, and that competitively sensitive pricing

information is confidential. Bristol-Myers denies the remaining allegations and expressly denies that it “misrepresented and inflated” the WLP of its drugs. To the extent that the allegations in Paragraph 49 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

IV. DEFENDANTS’ EXACERBATION OF THE COMPLEXITIES OF THE MARKET AND AFFIRMATIVE CONCEALMENT OF THEIR WRONGDOING.

50. Bristol-Myers denies the allegations in Paragraph 50 of the Second Amended Complaint that are directed to Bristol-Myers and states that it engaged in legitimate competition regarding the prices of its drugs. Bristol-Myers further expressly denies the existence of, or participation in a “drug pricing scheme,” or of “purposely concealing” such “scheme” from the State. To the extent that the allegations in Paragraph 50 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

51. Bristol-Myers denies the allegations in Paragraph 51 of the Second Amended Complaint that are directed to Bristol-Myers except admits that prices of pharmaceutical products with NDC numbers are subject to change. To the extent that the allegations in Paragraph 51 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is

without knowledge or information sufficient to form a belief as to the truth of those allegations.

52. To the extent that the allegations in Paragraph 52 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations. To the extent that the allegations in Paragraph 52 of the Second Amended Complaint are directed to Bristol-Myers, Bristol-Myers denies the allegations in Paragraph 52 of the Second Amended Complaint and states that it engaged in legitimate competition regarding the prices of its drugs. Bristol-Myers expressly denies the existence of or engagement in “marketing schemes which conceal the true price” of drugs.

53. To the extent the allegations in Paragraph 53 of the Second Amended Complaint are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 53 are directed at Bristol-Myers, Bristol-Myers admits that at times it offers certain discounts and rebates to certain customers on certain products and that discounts may produce wholesaler chargebacks. Bristol-Myers denies the remaining allegations of Paragraph 53, and specifically denies the existence of or engagement in any “scheme,” intended to “create the impression that the ‘wholesale price’ of the drug is higher than it really is.”

54. To the extent that the allegations in Paragraph 54 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities

other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations. To the extent that the allegations in Paragraph 54 of the Second Amended Complaint refer to the knowledge, conduct or actions of Bristol-Myers, Bristol-Myers denies the allegations in Paragraph 54 of the Second Amended Complaint.

55. To the extent the allegations in Paragraph 55 of the Second Amended Complaint are directed at defendants other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 55 are directed at Bristol-Myers, Bristol-Myers admits that at times it offers certain discounts and rebates to certain customers on certain products and that these discounts and rebates may vary based on classes of trade. Bristol-Myers specifically denies obscuring the true price for its drugs. Bristol-Myers denies the remaining allegations of Paragraph 55.

56. To the extent the allegations in Paragraph 56 of the Second Amended Complaint are directed at defendants other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 56 are directed to Bristol-Myers, Bristol-Myers denies the allegations.

57. Bristol-Myers denies the allegations in Paragraph 57 of the Second Amended Complaint that are directed to Bristol-Myers. Bristol-Myers expressly denies utilizing an “inflated AWP” or a “phony price spread,” or that it intentionally manipulated the nation’s drug reimbursement system. To the extent that the allegations

in Paragraph 57 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

58. Bristol-Myers denies the allegations in Paragraph 58 of the Second Amended Complaint that are directed to Bristol-Myers. Bristol-Myers further denies that it has engaged in any “scheme” relating to drug pricing. Bristol-Myers denies that any “scheme” or “inflated spread” for drug pricing existed. Bristol-Myers admits that it offers discounts and rebates for certain customers on certain products, and that competitively sensitive pricing information is confidential. To the extent that the allegations in Paragraph 58 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

59. Bristol-Myers denies the allegations in Paragraph 59 of the Second Amended Complaint that are directed to Bristol-Myers. Specifically, Bristol-Myers denies that it ever reported AWP (as opposed to WLP) to industry publications. Bristol-Myers further denies that it ever published AWP or WAC (as opposed to WLP). To the extent that the allegations in Paragraph 59 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

60. Bristol-Myers denies the allegations in Paragraph 60 of the Second Amended Complaint that are directed to Bristol-Myers. To the extent that the allegations in Paragraph 60 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, including without limitation, the State of Wisconsin, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations. Certain of the allegations in Paragraph 60 of the Second Amended Complaint state legal conclusions, to which no response is required.

V. THE INJURY TO GOVERNMENTAL HEALTH PLANS CAUSED BY DEFENDANTS' FALSE WHOLESALE PRICES.

A. The Wisconsin Medicaid Program.

61. Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Second Amended Complaint, except admits only that Wisconsin Medicaid is a joint state and federal program which pays for medical care, including prescription drug benefits, for certain Wisconsin citizens and that BadgerCare and SeniorCare provide certain benefits for those Wisconsin citizens that meet their respective eligibility requirements.

62-63. The allegations in Paragraphs 62 through 63 of the Second Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Bristol-Myers denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 62 through 63 of the Second Amended Complaint and respectfully refers the Court to 42 C.F.R. § 447.332 for a full and complete reading of that provision.

64. Bristol-Myers denies the allegations in Paragraph 64 of the Second Amended Complaint. To the extent that allegations in Paragraph 64 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

65. Bristol-Myers denies the allegations in Paragraph 65 of the Second Amended Complaint that are directed to Bristol-Myers. Specifically, Bristol-Myers denies that Bristol-Myers “publish[es] false and inflated wholesale prices” and further denies that it “knowingly enabled providers of drugs to Medicaid recipients to charge Wisconsin false and inflated prices” for drugs. To the extent that the allegations in Paragraph 65 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

66. Bristol-Myers denies the allegations in Paragraph 66 of the Second Amended Complaint. To the extent that the allegations in Paragraph 66 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

B. Medicare.

67. Bristol-Myers admits the allegations set forth in Paragraph 67 of the Second Amended Complaint.

68. Bristol-Myers admits the allegations set forth in Paragraph 68 of the Second Amended Complaint.

69. To the extent the allegations in Paragraph 69 of the Second Amended Complaint state legal conclusions, no response is required. Bristol-Myers denies the remaining allegations in Paragraph 69 of the Second Amended Complaint.

70. To the extent the allegations in Paragraph 70 of the Second Amended Complaint state legal conclusions, no response is required. Bristol-Myers admits that federal law governs the manner in which Medicare Part B reimburses providers for certain drugs. Bristol-Myers is without knowledge or information sufficient to form a belief as to whether the summary of law set forth in Paragraph 70 is accurate in all instances and respectfully refers the Court to 42 C.F.R. § 405.517. Accordingly, to the extent a response is required of Bristol-Myers, Bristol-Myers denies the allegations in Paragraph 70 of the Second Amended Complaint.

71. Bristol-Myers denies the allegations in Paragraph 71 of the Second Amended Complaint that are directed to Bristol-Myers. Specifically, Bristol-Myers denies that it ever reported AWP's or any "false and inflated" pricing information to industry publications and specifically denies that Medicare Part B participants must always pay 20% of the allowable cost. To the extent that the allegations in Paragraph 71 of the Second Amended Complaint refer to the knowledge, conduct or actions of persons or entities other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of those allegations.

VI. DEFENDANTS' CONDUCT WAS INTENTIONALLY IN DISREGARD OF ESTABLISHED LAW.

72-76. To the extent the allegations in Paragraphs 72 through 76 of the Second Amended Complaint state legal conclusions, no response is required. To the extent the allegations are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations are directed at Bristol-Myers, Bristol-Myers denies the allegations. With respect to the allegations in Paragraph 73 of the Second Amended Complaint, Bristol-Myers states that it sells substantial amounts of its drugs at prices that are within 5% of its wholesale list price (“WLP”).

77. To the extent the allegations in Paragraph 77 of the Second Amended Complaint state legal conclusions, no response is required. To the extent a response is required, Bristol-Myers denies the allegations in Paragraph 77 of the Second Amended Complaint.

VII. HARM TO WISCONSIN AND ITS CITIZENS

78. To the extent the allegations in Paragraph 78 of the Second Amended Complaint are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or sufficient information to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 78 are directed at Bristol-Myers, Bristol-Myers denies the allegations.

COUNT 1 – Violation of Wis. Stat. § 100.18(1)

79. Bristol-Myers realleges and incorporates by reference its responses to Paragraphs 1 through 78.

80. To the extent the allegations in Paragraph 80 of the Second Amended Complaint state legal conclusions, no response is required and Bristol-Myers respectfully refers the Court to Wis. Stat. § 100.18(1). To the extent the allegations in Paragraph 80 are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 80 are directed at Bristol-Myers, Bristol-Myers denies the allegations.

81. To the extent the allegations in Paragraph 81 of the Second Amended Complaint state legal conclusions, no response is required and Bristol-Myers respectfully refers the Court to Wis. Stat. § 100.264(2) and Wis. Stat. § 100.18(1) for the full text thereof. To the extent the allegations in Paragraph 81 are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 81 are directed at Bristol-Myers, Bristol-Myers denies the allegations.

82. To the extent the allegations in Paragraph 82 of the Second Amended Complaint state legal conclusions, no response is required. To the extent the allegations in Paragraph 82 are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 82 are directed at Bristol-Myers, Bristol-Myers denies the allegations. Bristol-Myers further denies that the State is entitled to a judgment or any other relief as

requested in the unnumbered “WHEREFORE” paragraph following Paragraph 82 of the Second Amended Complaint.

COUNT II – Violation of Wis. Stat. § 100.18(10)(b)

83. Bristol-Myers realleges and incorporates by reference its responses to Paragraphs 1 through 82.

84. To the extent the allegations in Paragraph 84 of the Second Amended Complaint state legal conclusions, no response is required and Bristol-Myers respectfully refers the Court to Wis. Stat. § 100.18(10) and Wis. Stat. § 100.18(10)(b) for the full text thereof. To the extent the allegations in Paragraph 84 are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 84 are directed at Bristol-Myers, Bristol-Myers denies the allegations.

85. To the extent the allegations in Paragraph 85 of the Second Amended Complaint state legal conclusions, no response is required and Bristol-Myers respectfully refers the Court to Wis. Stat. § 100.264(2) and Wis. Stat. § 100.18(10)(b) for the full text thereof. To the extent the allegations in Paragraph 85 are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 85 are directed at Bristol-Myers, Bristol-Myers denies the allegations.

86. To the extent the allegations in Paragraph 86 of the Second Amended Complaint state legal conclusions, no response is required. Bristol-Myers further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered “WHEREFORE” paragraph following Paragraph 86 of the Second Amended Complaint.

COUNT III – Violation of the Wisconsin Trust and Monopolies Act

87. Bristol-Myers realleges and incorporates by reference its responses to Paragraphs 1 through 86.

88-89. To the extent the allegations in Paragraphs 88 through 89 of the Second Amended Complaint state legal conclusions, no response is required. To the extent the allegations in Paragraphs 88 through 89 are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraphs 88 through 89 are directed at Bristol-Myers, Bristol-Myers denies the allegations. Finally, the Second Amended Complaint does not allege facts or claims in connection with “Pharmacy Benefit Managers” and Bristol-Myers accordingly denies all such claims to the extent such claims are alleged in Paragraph 88 of the Second Amended Complaint.

90. To the extent the allegations in Paragraph 90 of the Second Amended Complaint state legal conclusions, no response is required and Bristol-Myers respectfully refers the Court to Wis. Stat. § 133.05 for the full text thereof. To the extent the allegations in Paragraph 90 are directed at parties other than Bristol-Myers, Bristol-

Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 90 are directed at Bristol-Myers, Bristol-Myers denies the allegations.

91. To the extent the allegations in Paragraph 91 of the Second Amended Complaint state legal conclusions, no response is required. Bristol-Myers further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered “WHEREFORE” paragraph following Paragraph 91 of the Second Amended Complaint.

COUNT IV – Violation of Wis. Stat. § 49.49(4m)(a)(2) Medical Assistance Fraud

92. Bristol-Myers realleges and incorporates by reference its responses to Paragraphs 1 through 91.

93. To the extent the allegations in Paragraph 93 of the Second Amended Complaint are directed at defendants other than Bristol-Myers, Bristol-Myers is without knowledge or sufficient information to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraph 93 are directed at Bristol-Myers, Bristol-Myers admits that it produces, markets and sells pharmaceutical products some of which are sold to entities and individuals in the State of Wisconsin. Bristol-Myers is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations.

94. To the extent the allegations in Paragraph 94 of the Second Amended Complaint state legal conclusions, no response is required and Bristol-Myers respectfully refers the Court to Wis. Stat. § 49.49(4m)(a)(2) for the full text thereof. To

the extent the allegations in Paragraph 94 are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 94 are directed at Bristol-Myers, Bristol-Myers denies the allegations.

95. To the extent the allegations in Paragraph 95 of the Second Amended Complaint state legal conclusions, no response is required and Bristol-Myers respectfully refers the Court to Wis. Stat. § 893.87 for the full text thereof. To the extent the allegations in Paragraph 95 are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent the allegations in Paragraph 95 are directed at Bristol-Myers, Bristol-Myers denies the allegations. Bristol-Myers further denies that the State is entitled to a judgment or any other relief as requested in the unnumbered “WHEREFORE” paragraph following Paragraph 95 of the Second Amended Complaint.

COUNT V – Unjust Enrichment

96. Bristol-Myers realleges and incorporates by reference its responses to Paragraphs 1 through 95.

97-100. To the extent the allegations in Paragraphs 97 through 100 are directed at parties other than Bristol-Myers, Bristol-Myers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. To the extent the allegations in Paragraphs 97 through 100 are directed at Bristol-Myers, Bristol-Myers denies the allegations. Bristol-Myers further denies that the State is entitled to a judgment or any other relief as requested in the

unnumbered “WHEREFORE” paragraph following Paragraph 100 of the Second Amended Complaint.

DEMAND FOR JURY

Bristol-Myers denies that the State has asserted any viable claims that would necessitate a trial by jury.

BRISTOL-MYERS’ DEFENSES

Without assuming any burden of proof or burden of going forward not required by law, Bristol-Myers alleges the following defenses:

First Defense

Plaintiff fails to state a claim against Bristol-Myers upon which relief may be granted.

Second Defense

Plaintiff lacks standing to bring its claim, including but not limited to the State’s asserted status in *parens patriae*, to recover expenditures by Wisconsin Medicaid or to seek injunctive relief.

Third Defense

Plaintiff’s claim is barred, in whole or in part, by the political question and separation of powers doctrines.

Fourth Defense

Plaintiff’s claim is barred, in whole or in part, by the filed rate doctrine.

Fifth Defense

Plaintiff’s claim is barred, in whole or in part, by the state action doctrine.

Sixth Defense

Plaintiff's claims are barred, in whole or in part, by the *Noerr-Pennington* doctrine to the extent that such claims are premised, in whole or in part, on alleged statements or conduct by Bristol-Myers in judicial, legislative or administrative proceedings of any kind or at any level of government.

Seventh Defense

Plaintiff's claims are preempted, in whole or in part, by federal law, including without limitation the Federal Employment Retirement Income and Security Act of 1974, the Federal Medicare Act, and the Federal Medicaid Act, including all amendments to the same and all regulations promulgated thereunder.

Eighth Defense

Plaintiff's claims against Bristol-Myers are barred, in whole or in part, by the applicable statutes of limitations and repose, rule of repose, and by the doctrines of laches, estoppel, and waiver.

Ninth Defense

Any and all actions taken by Bristol-Myers with respect to any of the matters alleged in the Second Amended Complaint were taken in good faith and in accordance with established industry practice.

Tenth Defense

Bristol-Myers' statements or actions were not the proximate cause or cause in fact of any injury to or alleged loss by Plaintiff.

Eleventh Defense

To the extent that Plaintiff attempts to seek equitable relief against Bristol-Myers, Plaintiff is not entitled to such relief because it has an adequate remedy at law.

Twelfth Defense

Plaintiff's claims against Bristol-Myers for injunctive relief were mooted by the passage of the 2003 Medicare reform legislation.

Thirteenth Defense

Plaintiff's claims against Bristol-Myers are barred, in whole or in part, due to its failure to join indispensable parties and for misjoinder of parties.

Fourteenth Defense

Plaintiff's claims against Bristol-Myers are barred, in whole or in part, because it has suffered no damages as a result of the matters alleged in the Second Amended Complaint.

Fifteenth Defense

To the extent Plaintiff obtains recovery in any other case predicated on the same factual allegations, plaintiff is barred from seeking recovery against Bristol-Myers based on the Second Amended Complaint pursuant to the doctrine of res judicata and collateral estoppel, and the prohibition on double recovery for the same injury.

Sixteenth Defense

Plaintiff's claims are barred, in whole or in part, to the extent that plaintiff has released, settled, entered into an accord and satisfaction or otherwise compromised its claims.

Seventeenth Defense

Plaintiff's claims against Bristol-Myers are barred because Bristol-Myers has complied with all applicable regulations of the federal and state governments.

Eighteenth Defense

Plaintiff's claims against Bristol-Myers for damages are barred, in whole or in part: (1) because it failed to mitigate its damages, and its failure to mitigate damages should proportionately reduce the recovery of plaintiff and the allocation of any fault, if any exists, attributable to Bristol-Myers; (2) because it would be unjustly enriched if allowed to recover any portion of the damages alleged in the Second Amended Complaint; (3) by the voluntary payment doctrine and/or the doctrine of consent and/or ratification; (4) to the extent that plaintiff has paid for products manufactured, marketed and sold by Bristol-Myers after the filing of plaintiff's original complaint; and (5) because they are speculative and remote and because of the impossibility of ascertaining and allocating those alleged damages.

Nineteenth Defense

Bristol-Myers is entitled to a set-off, should any damages be awarded against it, for the entire amount of all damages or settlement amounts recovered by plaintiff, with respect to the same alleged injuries.

Twentieth Defense

Any damages recovered by the plaintiff from Bristol-Myers must be limited by the applicable statutory ceilings on recoverable damages.

Twenty-First Defense

Plaintiff fails to allege facts or a cause of action against Bristol-Myers sufficient to support a claim for compensatory damages, attorneys' fees and/or legal fees, or any other relief.

Twenty-Second Defense

The Second Amended Complaint fails to state a claim for which penalty assessments can be awarded. To the extent penalty assessments are sought, Plaintiff's penalty assessments claims against Bristol-Myers: (1) have no basis in law or fact; (2) are not recoverable because the allegations of the Second Amended Complaint are legally insufficient to support a claim for penalty assessments against Bristol-Myers; (3) cannot be sustained because the laws regarding the standards for determining liability for and the amount of penalty assessments fail to give Bristol-Myers prior notice of the conduct for which penalty assessments may be imposed and the severity of the penalty that may be imposed, and are void for vagueness in violation of Bristol-Myers' Due Process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Wisconsin; (4) cannot be sustained because any award of penalty assessments exceeding the limits authorized by the laws or other comparable laws would violate Bristol-Myers' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would be improper under the Constitution, common law and laws of the State of Wisconsin; (5) cannot be sustained because an award of penalty assessments in this case, combined with any prior, contemporaneous, or subsequent judgments against Bristol-

Myers for penalty assessments arising from the design, development, manufacture, fabrication, distribution, supply, marketing, sale, or use of Bristol-Myers' products would constitute impermissible multiple punishments for the same wrong, in violation of Bristol-Myers' Due Process and Equal Protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would constitute double jeopardy in violation of the Constitution, common law, and statutory laws of the State of Wisconsin; (6) cannot be sustained because any award of penalty assessments without the apportionment of the award separately and severally between or among the alleged joint tortfeasors, as determined by the alleged percentage of the wrong committed by each alleged tortfeasor, would violate Bristol-Myers' Due Process and Equal Protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would be improper under the Constitution, common law, and public policies of the State of Wisconsin; and (7) cannot be sustained because any award of penalty assessments, which are penal in nature, without according Bristol-Myers the same protections that are accorded to all criminal defendants, including the protection against unreasonable searches and seizures, the privilege against self-incrimination, and the rights to confront adverse witnesses, a speedy trial, and the effective assistance of counsel, would violate Bristol-Myers' rights guaranteed by the Fourth, Fifth, and Sixth Amendment as incorporated into the Fourteenth Amendment to the United States Constitution and would be improper under the Constitution, common law, and public policies of the State of Wisconsin.

Twenty-Third Defense

To the extent penalty assessments are sought, Plaintiff's claims for penalty assessments against Bristol-Myers cannot be sustained because an award of penalty assessments by a jury that: (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a penalty assessments award; (2) is not adequately instructed on the limits of penalty assessments imposed by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from awarding penalty assessments, or determining the amount of an award of penalty assessments, in whole or in part on the basis of invidiously discriminatory characteristics, including without limitation the residence, wealth, and corporate status of Bristol-Myers; (4) is permitted to award penalty assessments under a standard for determining liability for penalty assessments that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes penalty assessments permissible; (5) is not properly instructed regarding plaintiff's burden of proof with respect to each and every element of a claim for penalty assessments; and (6) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards, would violate Bristol-Myers' Due Process and Equal Protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and would be improper under the Constitution, common law, and public policies of the State of Wisconsin.

Twenty-Fourth Defense

The recovery of penalty assessments by the State in this action would violate Article I, sections 1, 6, 7, 8 and 11 of the Wisconsin Constitution on the following grounds:

- a) it is impermissible to impose penalty assessments, which are penal in nature, upon a civil defendant upon the State satisfying a burden of proof less than the “beyond a reasonable doubt” burden of proof required in criminal cases;
- b) the procedures pursuant to which any penalty assessments would be awarded fail to provide a reasonable limit on the amount of the award against Bristol-Myers;
- c) the procedures pursuant to which any penalty assessments would be awarded are unconstitutionally vague;
- d) the procedures pursuant to which any penalty assessments would be awarded fail to provide specific standards for the amount of the award of penalty assessments;
- e) the award of penalty assessments in this case would constitute a deprivation of property without due process; and
- f) the procedures pursuant to which any penalty assessments would be awarded permit the imposition of an excessive fine.

Twenty-Fifth Defense

To the extent penalty assessments are sought, Plaintiff’s claims for penalty assessments against Bristol-Myers cannot be sustained because an award of penalty assessments that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount of penalty assessments that may be imposed, would: (1) violate Bristol-Myers’ due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution; (2) violate Bristol-Myers’

right not to be subjected to an excessive award; and (3) be improper under the Constitution, common law, and public policies of the State of Wisconsin.

Twenty-Sixth Defense

Some or all of Plaintiff's claims against Bristol-Myers arise from Plaintiff's failure to follow its federal and state statutory and regulatory obligations to properly establish appropriate reimbursement rates.

Twenty-Seventh Defense

Plaintiff's unjust enrichment claims are barred, in whole or in part, because Bristol-Myers did not retain any money belonging to the State as a result of any alleged overpayments as required under Wisconsin law.

Twenty-Eighth Defense

Plaintiff's claims for injunctive relief against BMS are barred by the doctrines of *in pari delicto* and/or unclean hands.

Twenty-Ninth Defense

BMS adopts by reference any additional applicable defense pled by any other defendant not otherwise pled herein.

Thirtieth Defense

Bristol-Myers hereby gives notice that it intends to rely upon any other and additional defense that is now or may become available or appear during, or as a result of the discovery proceedings in this action and hereby reserve its right to amend its answer to assert such defense.

Thirty-First Defense

The State and/or its agents knew and were aware that AWP was not an actual average wholesale price or the actual acquisition cost of drugs. Legal and equitable principles, therefore, preclude this action for damages and injunctive relief, and the Due Process Clause of the U.S. Constitution precludes Plaintiff from bringing claims and seeking damages as alleged in the Second Amended Complaint.

Thirty-Second Defense

The State's claims are barred in whole or in part because, on information and belief, it did not consult with the Governor of the State of Wisconsin and/or the Department of Agriculture, Trade and Consumer Protection prior to bringing this suit.

Thirty-Third Defense

The State's claims against Bristol-Myers under the Wisconsin Consumer Protection Act are barred in whole or in part to the extent that the Act (1) does not allow (or did not allow at the time the conduct was alleged herein) for recovery by indirect purchasers; and (2) does not govern conduct that is predominantly interstate in nature.

Thirty-Fourth Defense

The State fails to state with particularity facts to support its fraud claims against Bristol-Myers, in violation of Wis. Stat. § 802.03(2).

Thirty-Fifth Defense

Bristol-Myers has made no assertion, representation or statement of fact which is "untrue," "deceptive," or "misleading," as required under Wis. Stat. §§ 100.18(1) and 100.18(10)(b).

Thirty-Sixth Defense

The State's claims under Wis. Stat. 100.18 are barred, in whole or part, to the extent the claims involve the insurance business.

Thirty-Seventh Defense

Any damages, forfeiture or penalties recoverable by the State from Bristol-Myers are limited by the applicable statutory ceilings.

Thirty-Eighth Defense

The State has no authority to seek restitution for third parties based on any alleged violation of section 49.49(4m)(a)(2).

Thirty-Ninth Defense

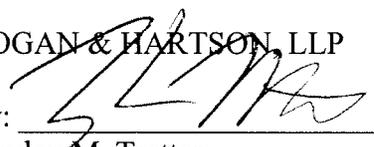
The State's claims are barred in whole or in part if it did not consult with the Governor of the State of Wisconsin and/or the Department of Agriculture, Trade and Consumer Protection prior to bringing this suit.

WHEREFORE, Bristol-Myers prays that this Court: (1) dismiss Wisconsin's Complaint with prejudice and enter judgment in favor of Bristol-Myers against the State; (2) award Bristol-Myers its costs and expenses; and (3) award such other and further relief as the Court may deem just and proper.

August 11, 2006

Respectfully submitted,

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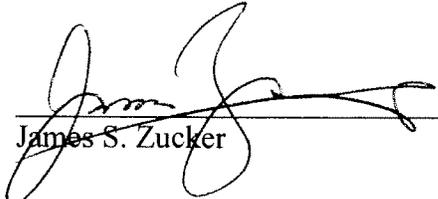
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*Attorneys for Defendant Bristol-Myers
Squibb Company*

Certificate of Service

I, James S. Zucker, hereby certify that on this 11th day of August, 2006, a true and correct copy of the foregoing Answer and Affirmative Defenses of Defendant Bristol-Myers Squibb Company to the State of Wisconsin's Second Amended Complaint was served on all counsel of record by Lexis Nexis File & Serve®.

Dated: August 11, 2006


James S. Zucker