

STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

STATE OF WISCONSIN,)
)
 Plaintiff,)
)
 v.)
)
 ABBOTT LABORATORIES, INC., et. al.,)
)
 Defendants.)

Case No.: 04 CV 1709

ANSWER AND DEFENSES OF DEFENDANT PHARMACIA CORPORATION TO THE STATE OF WISCONSIN'S SECOND AMENDED COMPLAINT

Defendant Pharmacia Corporation ("Pharmacia"), by and through its attorneys, answers the State of Wisconsin's Second Amended Complaint, as follows:

Preface

The Plaintiff's Second Amended Complaint ("Complaint") contains allegations that are vague, ambiguous, inflammatory or otherwise improper. Pharmacia responds only to the extent that the Complaint is susceptible to a response and to the extent that Pharmacia has information sufficient to form a belief as to the allegations. Except where an allegation is expressly admitted, Pharmacia denies each and every allegation in the Complaint. For example, to the extent that "Defendants" are lumped together or an allegation relates to other parties, Pharmacia is unable to respond to those allegations and denies them. Pharmacia also denies all allegations that contain legal arguments and conclusions of law as those allegations do not require a response

1. Admitted in part, denied in part. Pharmacia admits only that the State of Wisconsin purports to bring this action as alleged in Paragraph 1. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein. Pharmacia further denies that the State of Wisconsin is entitled to any damages or other form of relief from Pharmacia.

2. Admitted in part, denied in part. Pharmacia admits only that the State of Wisconsin purports to bring this action as alleged, but denies that there are any bases upon which to do so. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

3. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

4. — 15. Paragraphs 4 through 15 are directed at a party other than Pharmacia, and therefore Pharmacia need not respond. To the extent that a response is required of Pharmacia, the allegations are denied.

17. Admitted.

18. — 23. Paragraphs 18 through 23 are directed at a party other than Pharmacia, and therefore Pharmacia need not respond. To the extent that a response is required of Pharmacia, the allegations are denied.

24. — 25. Paragraphs 24 and 25 state legal conclusions to which no response is required. To the extent that a response is required of Pharmacia, the allegations are denied.

26. Admitted in part, denied in part. Pharmacia admits only that the market for prescription drugs is complex and involves sales to intermediaries before those drugs reach providers. Pharmacia denies the remaining allegations set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

27. — 29. Pharmacia denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 27 through 29.

30. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

31. — 33. To the extent Paragraphs 31 through 33 refer to statutes, regulations or documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia denies Plaintiff's characterization of those sources and denies the allegations in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein. To the extent Paragraphs 31 through 33 of the Complaint purport to recite laws or regulations, no response is required.

34. Admitted in part, denied in part. Pharmacia admits only that pharmaceutical industry compendia, including Red Book and First DataBank, periodically published certain pricing information for certain prescription medicines sold in this county. Pharmacia denies the remaining allegations set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

35. To the extent this paragraph refers to statutes, regulations or documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia denies Plaintiff's characterization of those sources and denies the allegations in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

36. — 38. Pharmacia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 36 through 38 of the Complaint, and on that basis denies the allegations.

39. Pharmacia denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph.

40. — 43. Pharmacia denies each and every allegation set forth in Paragraphs 40 through 43 as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

44. — 45. Paragraphs 44 through 45 appear to contain no allegations as to, or relevant to, any claims against Pharmacia and therefore requires no answer; to the extent plaintiff purports to make allegations as to Pharmacia, Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

46. To the extent this paragraph refers to documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia denies Plaintiff's characterization of those sources and denies the allegations in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

47. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein. Pharmacia specifically denies that it inflated AWP's for its pharmaceuticals.

48. Admitted in part, denied in part. Pharmacia admits only that Plaintiff attaches Exhibits to the Complaint which purport to contain pricing information. Pharmacia is without knowledge or information sufficient to form a belief as to the accuracy of the Exhibit. Pharmacia denies each and every remaining allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

49. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

50. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein. Pharmacia expressly denies that it participated in a "drug pricing scheme."

51. — 55. Pharmacia denies each and every allegation set forth in Paragraphs 51 through 55 as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

56. This paragraph appears to contain no allegations as to, or relevant to, any claims against Pharmacia and therefore requires no answer; to the extent plaintiff purports to make allegations as to Pharmacia, Pharmacia denies each and every allegation set forth in this

paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

57. — 58. Pharmacia denies each and every allegation set forth in Paragraphs 57 and 58 as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

59. To the extent this paragraph refers to documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia denies Plaintiff's characterization of those sources and denies the allegations in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

60. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein. Pharmacia expressly denies that it participated in any "unlawful" or "fraudulent scheme."

61. Admitted in part, denied in part. Pharmacia 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. Pharmacia denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in this paragraph.

62. Admitted in part, denied in part. Pharmacia admits only that for certain years the Wisconsin Medicaid Program reimbursed pharmacies and physicians for certain drugs at AWP minus a percentage, plus a dispensing fee. Pharmacia is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

63. To the extent this paragraph refers to statutes, regulations or documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia admits that the Wisconsin Medicaid Program reimburses certain drugs based on the State Maximum Acquisition Cost (“MAC”) program. Pharmacia is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations set forth therein.

64. — 66. Pharmacia denies each and every allegation set forth in Paragraphs 64 through 66, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

67. — 71. To the extent Paragraphs 67 through 71 refer to statutes, regulations or documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia denies Plaintiff’s characterization of those sources. Pharmacia admits only that federal law governs the manner in which Medicare Part B reimburses providers for certain drugs. Pharmacia denies the remaining allegations in these paragraphs as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

72. — 76. To the extent the allegations in Paragraphs 72 through 76 of the Complaint state legal conclusions, no response is required. Pharmacia denies the allegations in these paragraphs as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

77. Paragraph 77 states legal conclusions to which not response is required. To the extent a response is required of Pharmacia, Pharmacia denies all allegations in this paragraph.

78. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

COUNT I — Wis. Stat. § 100.18(1)

79. Pharmacia realleges and incorporates by references its responses to Paragraphs 1 through 78.

80. — 82. To the extent the allegations in Paragraphs 80 through 82 of the Complaint state legal conclusions, no response is required. To the extent Paragraphs 80 through 82 refer to statutes, regulations or documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia denies Plaintiff’s characterization of those sources. Pharmacia denies the allegations in these paragraphs as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein. Pharmacia 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 Complaint.

COUNT II — Wis. Stat. § 100.18(10)(b)

83. Pharmacia realleges and incorporates by reference its responses to Paragraphs 1 through 82.

84. — 86. To the extent the allegations in Paragraphs 84 through 86 of the Complaint state legal conclusions, no response is required. To the extent Paragraphs 84 through 86 refer to statutes, regulations or documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia denies Plaintiff’s characterization of those sources. Pharmacia denies the allegations in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

Pharmacia 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 Complaint.

COUNT III —Wisconsin Trust And Monopolies Act

87. Pharmacia realleges and incorporates by reference its responses to Paragraphs 1 through 86 of the Complaint.

88. — 91. To the extent the allegations in Paragraphs 88 through 91 of the Complaint state legal conclusions, no response is required. To the extent Paragraphs 88 through 91 refer to statutes, regulations or documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia denies Plaintiff’s characterization of those sources. Pharmacia denies the allegations in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

Pharmacia 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 Complaint.

**COUNT IV - WIS. STAT. § 49.49(4m)(a)(2)
MEDICAL ASSISTANCE FRAUD**

92. Pharmacia realleges and incorporates by reference its responses to Paragraphs 1 through 91.

93. — 95. To the extent the allegations in Paragraphs 93 through 95 of the Complaint state legal conclusions, no response is required. To the extent Paragraphs 93 through 95 refer to statutes, regulations or documents, those sources speak for themselves, and are the best evidence of their contents. Pharmacia denies Plaintiff’s characterization of those sources. Pharmacia denies the allegations in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

Pharmacia 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 Complaint.

COUNT V — Unjust Enrichment

96. Pharmacia realleges and incorporates by reference its responses to Paragraphs 1 through 95.

97. — 100. Pharmacia denies each and every allegation set forth in this paragraph as to Pharmacia, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein. Pharmacia further denies the State is entitled to a judgment or any other relief as requested in the unnumbered “WHEREFORE” paragraph following Paragraph 100 of the Complaint.

DEMAND FOR JURY

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

PHARMACIA'S DEFENSES

By alleging the matters set forth below, Pharmacia does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these matters or that Plaintiff is relieved of its burdens to prove each and every element of its claims and the damages, if any, to which it is entitled. As for its affirmative defenses, Pharmacia reasserts and reincorporates as if fully set forth herein its responses to Paragraphs 1 through 100 above:

FIRST AFFIRMATIVE DEFENSE

The State and/or its agents knew and were aware that AWP was not an average wholesale price or the actual acquisition cost of drugs. Legal and equitable principles preclude this action for damages and injunctive relief, and the Due Process Clause of the U.S. Constitution and Article 1, Section 1 of the Wisconsin Constitution preclude the State from bringing claims and seeking damages as alleged in the Complaint.

SECOND AFFIRMATIVE DEFENSE

Some or all of the State's claims against Pharmacia arise from the State's failure to follow its federal and state statutory and regulatory obligations to properly establish appropriate reimbursement rates. To the extent that the State established Medicaid reimbursement rates by reference to AWP, the State violated federal law in failing to establish Medicaid reimbursement rates as prescribed by federal law. The State is precluded by federal law from seeking damages, especially by reference to a different, lower AWP as alleged.

THIRD AFFIRMATIVE DEFENSE

The State was required by federal law to conduct surveys and have statistics and data justifying, and to represent and warrant to the federal government, that its Medicaid reimbursement rates for single source drugs were necessary and appropriate, as a condition to

obtaining federal funds. This action, with respect to single source drugs, is inconsistent with and precluded by the State's actions, representations and promises, and assumes that, with respect to single source drugs, the State made false claims to the federal government to obtain federal funds.

FOURTH AFFIRMATIVE DEFENSE

The claims alleged herein, based on the facts alleged, are barred by the State's own negligence or gross negligence. Among other things, the claims disregard the State's obligations under federal law, and they ignore the State's affirmative misstatements and declarations that were intended to cover up and hide from view of the federal regulatory authority, and the State's citizens and taxpayers, the State's failings referred to herein, as well as other inappropriate conduct by the State.

FIFTH AFFIRMATIVE DEFENSE

The State's reimbursement rates for drugs for Medicaid recipients were filed with, reviewed, and approved by a federal regulatory agency with authority to do so under the Medicaid Act. Actions in a state court seeking relief, including alleged damages, contending that rates approved by a federal regulatory agency do not apply are precluded by the Supremacy Clause. This action is barred by the Supremacy Clause of the Constitution.

SIXTH AFFIRMATIVE DEFENSE

The State's claims are preempted by the Commerce Clause and/or the dormant Commerce Clause of the United State Constitution.

SEVENTH AFFIRMATIVE DEFENSE

The State'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 there under.

EIGHTH AFFIRMATIVE DEFENSE

The State's claims against Pharmacia are barred, in whole or in part, because it has suffered no damages as a result of the matters alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

The State'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 Pharmacia in judicial, legislative, or administrative proceedings of any kind or at any level of government.

TENTH AFFIRMATIVE DEFENSE

The State fails to state a claim against Pharmacia upon which relief may be granted.

ELEVENTH AFFIRMATIVE DEFENSE

The State has no standing or capacity to bring some or all of the claims.

TWELFTH AFFIRMATIVE DEFENSE

To the extent that the State obtains, or is barred from, recovery in any other case predicated on the same factual allegations, the State is barred from seeking recovery against Pharmacia based on the Complaint pursuant to the doctrines of *res judicata* and collateral estoppel, and the prohibition on double recovery for the same injury.

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

The State's claims against Pharmacia are barred because Pharmacia has complied with all applicable laws or regulations of the federal and state governments.

SIXTEENTH AFFIRMATIVE DEFENSE

The State's claims against Pharmacia are barred, in whole or in part, by the applicable statutes of limitations and repose, and by the doctrines of laches, estoppel and waiver.

SEVENTEENTH AFFIRMATIVE DEFENSE

The State's claims are barred, in whole or in part, because they violate Pharmacia's rights under the Due Process and *Ex Post Facto* clauses of the United States Constitution and Wisconsin Constitution, insofar as the State seeks to impose liability retroactively for conduct that was not actionable at the time it occurred.

EIGHTEENTH AFFIRMATIVE DEFENSE

Pharmacia's statements or actions were not the cause of any injury to or alleged loss by the State.

NINETEENTH AFFIRMATIVE DEFENSE

The State's claims against Pharmacia for injunctive relief were mooted by the passage of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

The State's claims are barred, in whole or in part, because any injuries sustained by Plaintiff were the result of its own conduct or the intervening or superseding conduct of third-parties.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The State's claims against Pharmacia are barred, in whole or in part, due to the State's failure to join indispensable defendants.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The State's claims against Pharmacia are misjoined with the State's claims against other defendants and must be severed.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The State's claims against Pharmacia for damages are barred, in whole or in part, (1) because it failed to mitigate its damages, if any; (2) because it would be unjustly enriched if allowed to recover any portion of the damages alleged in the Complaint; (3) by the doctrine of consent and/or ratification to the extent the State has paid for products manufactured, marketed and sold by Pharmacia after the filing of the State's original Complaint; (4) because the claims are speculative and remote; and (5) because of the impossibility of ascertaining and allocating of the alleged damages.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Pharmacia 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 the State, with respect to the same alleged injuries.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Pharmacia denies that it has engaged in any conduct that entitles the State to recover penalty assessments and avers that the State's Complaint fails to state a claim upon which penalty assessments may be awarded to the State.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The claims contained in the Complaint, which seek the recovery of penalty assessments, under Wisconsin law, violate the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States of America on the following grounds:

- a) it is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose penalty assessments, which are penal in nature, against a civil defendant upon the State's satisfying a burden of proof which is 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 Pharmacia, which violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- c) 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, which violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- d) the procedures pursuant to which any penalty assessments would be awarded result in the imposition of different penalties for the same or similar acts, and thus violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- e) the procedures pursuant to which any penalty assessments would be awarded permit the imposition of penalty assessments in excess of the maximum criminal fine for the

same or similar conduct, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and

f) the procedures pursuant to which any penalty assessments would be awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution.

TWENTY-EIGHTH AFFIRMATIVE 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 Pharmacia;

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-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

To the extent that the State attempts to seek equitable relief against Pharmacia, the State is not entitled to such relief because the State has an adequate remedy at law.

THIRTY-FIRST AFFIRMATIVE DEFENSE

The State's unjust enrichment claims are barred, in whole or in part, because Pharmacia has not accepted or retained any benefits under circumstances where it would be inequitable for Pharmacia to do so.

THIRTY-SECOND AFFIRMATIVE DEFENSE

The State's unjust enrichment claims are barred, in whole or in part, because the State has no authority to bring such claims either on behalf of itself or on behalf of Medicare Part B participants.

THIRTY-THIRD AFFIRMATIVE DEFENSE

The State's unjust enrichment claims against Pharmacia are barred, in whole or in part, by contracts to which the State and Pharmacia are parties.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

The State's claims are barred, in whole or in part, by the filed rate doctrine.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Pharmacia has not knowingly made or caused to be made any false statements or representation of material fact, as required under Wis. Stat. § 49.49(4m)(a)(2).

THIRTY-SIXTH AFFIRMATIVE DEFENSE

The State's claims are barred in whole or in part because the State did not rely on the allegedly fraudulent statements or representations of Pharmacia.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

The State's claims are barred in whole or in part because Pharmacia has made no assertion, representation or statement of fact which is "untrue," "deceptive," "misleading" or "misleading" as required under Wis. Stat. §§ 100.18(1) and 100.18(10)(b).

THIRTY-EIGHTH AFFIRMATIVE 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-NINTH AFFIRMATIVE DEFENSE

The State's claims are barred in whole or in part because 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.

FORTIETH AFFIRMATIVE DEFENSE

The State's claims are barred in whole or in part with respect to any alleged overcharge or supracompetitive price because such supracompetitive price, if any, was absorbed in whole or in part by a person and/or entity that purchased the medicine directly, and/or by an intermediate indirect purchaser, and was not passed through to the Plaintiff.

FORTY-FIRST AFFIRMATIVE DEFENSE

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

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

Pharmacia adopts by reference any additional applicable defense pled by any other defendants not otherwise pled herein.

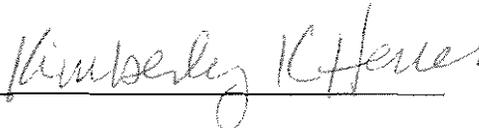
FORTY-FOURTH AFFIRMATIVE DEFENSE

Pharmacia 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 reserves its right to amend its answer to assert such defense.

WHEREFORE, Pharmacia prays that this Court: (1) dismiss Wisconsin's Complaint with prejudice and enter judgment in favor of Pharmacia against the State; (2) award Pharmacia 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,

By: 

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Counsel for Pharmacia Corporation

Certificate of Service

I, Kimberly K. Heuer, hereby certify that on this 11th day of August, 2006, a true and correct copy of the foregoing Answer and Affirmative Defenses of Defendant Pharmacia Corporation to the State of Wisconsin's Second Amended Complaint was served on all counsel of record by Lexis Nexis File & Serve®.

/s/ Kimberly K. Heuer
Kimberly K. Heuer