

STATE OF WISCONSIN

CIRCUIT COURT
Branch 7

DANE COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

AMGEN INC.
A Delaware Corporation
One Amgen Drive
Thousand Oaks, California 91320-1799

ABBOTT LABORATORIES
An Illinois Corporation
100 Abbott Park Road
Abbott Park, Illinois 60064-6400

ASTRAZENECA PHARMACEUTICALS, LP
A Delaware Corporation
1800 Concord Pike
Wilmington, Delaware 19850

ASTRAZENECA, LP
A Delaware Corporation
1800 Concord Pike
Wilmington, Delaware 19850

AVENTIS PHARMACEUTICALS, INC.
A Delaware Corporation
300-400 Somerset Corporate Blvd.
Bridgewater, New Jersey 08807-2854

BAXTER HEALTHCARE CORPORATION
A Delaware Corporation
One Baxter Parkway
Deerfield, Illinois 60015

BEN VENUE LABORATORIES, INC
A Delaware Corporation
300 Northfield Road
Bedford, Ohio 44146

Case No. 04 CV 1709

Unclassified - Civil: 30703

**SECOND AMENDED
COMPLAINT**

JURY TRIAL DEMANDED

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.
A Connecticut Corporation
900 Ridgebury Road
Ridgefield, Connecticut 06877

BOEHRINGER INGELHEIM
ROXANE, INC.
A Delaware Corporation
1809 Wilson Road
Columbus, Ohio 43216-6532

BRISTOL-MYERS SQUIBB COMPANY
A Delaware Corporation
345 Park Avenue
New York, New York 10154-0037

DEY, INC.
A Delaware Corporation
2751 Napa Valley Corporate Drive
Nap, California 94558

IMMUNEX CORPORATION
A Washington Corporation
51 University Street
Seattle, Washington 98101

IVAX CORPORATION
A Florida Corporation
4400 Biscayne Boulevard
Miami, Florida 33137

IVAX PHARMACEUTICALS, INC.
A Florida Corporation
4400 Biscayne Boulevard
Miami, Florida 33137

JANSSEN PHARMACEUTICAL PRODUCTS, LP
A New Jersey Limited Partnership
1125 Trenton-Harbourton Road
Titusville, New Jersey 08560

JOHNSON & JOHNSON, INC.
A New Jersey Corporation
One Johnson & Johnson Plaza
New Brunswick, New Jersey 08933

MCNEIL-PPC, INC.
A New Jersey Corporation
7050 Camp Hill Road
Fort Washington, Pennsylvania 19034

MERCK & COMPANY, INC.
A New Jersey Corporation
One Merck Drive
Whitehouse Station, New Jersey 08889-0100

MYLAN LABORATORIES, INC.
A Pennsylvania Corporation
1500 Corporate Drive; Suite 400
Canonsburg, Pennsylvania 15317

MYLAN PHARMACEUTICALS, INC.
A West Virginia Corporation
1500 Corporate Drive; Suite 400
Canonsburg Pennsylvania 15317

NOVARTIS PHARMACEUTICALS CORPORATION
A New Jersey Corporation
One Health Plaza
East Hanover, New Jersey 07936

ORTHO BIOTECH PRODUCTS, LP
A New Jersey Limited Partnership
700 U.S. Highway 202
Raritan, New Jersey 08869

ORTHO-MCNEIL PHARMACEUTICAL, INC.
A Delaware Corporation
1000 U.S. Route 202 South
Raritan, New Jersey 08869

PHARMACIA
A Delaware Corporation
100 Route 206 North
Peapack, New Jersey 07977

PFIZER, INC.
A Delaware Corporation
235 East 42nd Street
New York, New York 10017

ROXANE LABORATORIES, INC.

A Nevada Corporation
1809 Wilson Road
Columbus, Ohio 43216

SANDOZ, INC.

f/k/a GENEVA PHARMACEUTICALS, INC.
A Delaware Corporation
506 Carnegie Center, Suite 400
Princeton, New Jersey 08540

SCHERING-PLOUGH CORPORATION,

A New Jersey Corporation
2000 Galloping Hill Road
Kenilworth, New Jersey 07033-0530

SICOR INC.

A Delaware Corporation
19 Hughes
Irvine, California 92618-1902

SMITHKLINE BEECHAM CORPORATION

d/b/a GLAXOSMITHKLINE
A Delaware Corporation
One Franklin Plaza
Philadelphia, Pennsylvania 19102

TAP PHARMACEUTICAL PRODUCTS, INC.

An Illinois Corporation
Bannackburn Lake, Office Plaza
2355 Waukegan Road
Deerfield, Illinois 60015

TEVA PHARMACEUTICALS USA, INC.

A Delaware Corporation
650 Cathill Road
Sellersville, Pennsylvania 18960

WARRICK PHARMACEUTICALS CORPORATION

A Delaware Corporation
12125 Moya Boulevard
Reno, Nevada 89506

WATSON PHARMA, INC.
f/k/a Schein Pharmaceuticals, Inc.
A Delaware Corporation
311 Bonnie Circle
Corona, California 92880

WATSON PHARMACEUTICALS, INC
A Nevada Corporation
311 Bonnie Circle
Corona, California 92880

ZLB BEHRING, f/k/a Aventis Behring, LLC
A Delaware Corporation
1020 1st Avenue
King of Prussia, Pennsylvania 19406-0901
Defendants.

SECOND AMENDED COMPLAINT

The State of Wisconsin, by its counsel Attorney General Peggy A. Lautenschlager, complains of the defendants as follows:

I. NATURE OF THE ACTION.

1. This is a lawsuit by the State of Wisconsin to recover forfeitures, penalties and other appropriate relief, and to secure injunctive relief from defendants who are manufacturers of prescription drugs. As described in this Complaint, defendants have taken advantage of the enormously complicated and non-transparent market for prescription drugs to engage in an unlawful scheme to cause Wisconsin and its citizens to pay inflated prices for prescription drugs. The scheme involves the publication by defendants of phony “average wholesale prices,” which then become the basis for calculating the cost at which “providers” – the physicians, clinics, and pharmacies who provide these prescription drugs to patients – are reimbursed by Wisconsin. Defendants reinforce this basic tactic with other deceptive practices described in this Complaint,

including the use of secret discounts and rebates to providers and the use of various devices to keep secret the prices of their drugs currently available in the market place. By willfully engaging in this scheme, defendants have succeeded in having Wisconsin and its citizens finance windfall profits to these providers. Defendants attempt to profit from their scheme by using the lure of these windfall profits competitively to encourage providers to buy more of their drugs instead of competing in the market place solely on the basis of legitimate factors such as price and the medicinal value of their drugs.

II. PARTIES AND JURISDICTION.

2. The State of Wisconsin brings this action in its sovereign capacity as a result of defendants' unlawful conduct set forth below.

3. The defendants are all pharmaceutical companies whose deceptive scheme, described in this Complaint, has resulted in drugs being sold to Wisconsin and its citizens as detailed below.

4. Defendant Abbott Laboratories ("Abbott") is an Illinois corporation with its principal place of business at 100 Abbott Park Road, Abbott Park, Illinois 60064-6400.

5. The following two defendants are hereinafter referred to as the Amgen group:

- a. Defendant Amgen Inc. ("Amgen") is a Delaware corporation in the business of manufacturing and selling pharmaceuticals. Amgen's principal place of business is located at One Amgen Drive, Thousand Oaks, California 91320-1799.
- b. Defendant Immunex Corporation ("Immunex"), a wholly owned subsidiary of Amgen since July 2002, is a Washington State corporation engaged in the business of manufacturing and selling pharmaceuticals.

Immunex's principal place of business is located at 51 University Street, Seattle, Washington, 98101.

6. Defendants AstraZeneca Pharmaceuticals, LP and AstraZeneca LP ("AstraZeneca") are related Delaware corporations with their principal place of business at 1800 Concord Pike, Wilmington, Delaware 19850.

7. Defendant Aventis Pharmaceuticals, Inc. ("Aventis") is a Delaware corporation with its principal place of business located at 300-400 Somerset Corporate Boulevard, Bridgewater, New Jersey 08807-2854.

8. Defendant Baxter Healthcare Corporation ("Baxter") is a Delaware corporation with its principal place of business at One Baxter Parkway, Deerfield, Illinois 60015.

9. The following four defendants are hereinafter referred to as the Boehringer Group:

- a. Defendant Boehringer Ingelheim Pharmaceuticals, Inc. ("BIPI"), a wholly owned subsidiary of Boehringer, is a Connecticut corporation engaged in the business of manufacturing and selling pharmaceuticals. BIPI's principal place of business is located at 900 Ridgebury Road, Ridgefield, Connecticut 06877.
- b. Defendant Boehringer Ingelheim Roxane, Inc. ("BIRI"), a wholly owned subsidiary of Boehringer Ingelheim Corporation, is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. BIRI's principal place of business is located at 1809 Wilson Road, Columbus, Ohio 43216-6532.

- c. Defendant Roxane Laboratories, Inc. (“Roxane”), a wholly owned subsidiary of Boehringer Ingelheim Corporation, is a Nevada corporation engaged in the business of manufacturing and selling pharmaceuticals. Roxane’s principal place of business is located at 1809 Wilson Road, Columbus, Ohio 43216-6532.
- d. Defendant Ben Venue Laboratories, Inc. (“Ben Venue”), a wholly owned subsidiary of Boehringer Ingelheim Corporation, is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. Ben Venue’s principal place of business is located at 300 Northfield Road, Bedford, Ohio 44146.

10. Defendant Bristol-Myers Squibb Company (“BMS”) is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. BMS’ principal place of business is located at 345 Park Avenue, New York, New York 10154-0037. Westwood-Squibb (“Westwood”) is a division of BMS.

11. Defendant Dey, Inc. (“Dey”) is a Delaware corporation with its principal place of business at 2751 Napa Valley Corporate Drive, Napa, California 94558.

12. The following five defendants are hereinafter referred to as the Johnson & Johnson Group:

- a. Defendant Johnson & Johnson (“J&J”) is a New Jersey corporation engaged in the business of manufacturing and selling pharmaceuticals. J&J’s principal place of business is located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

- b. Defendant Janssen Pharmaceutical Products, LP (“Janssen”), a wholly owned subsidiary of J&J, is a New Jersey limited partnership engaged in the business of manufacturing and selling pharmaceuticals. Janssen’s principal place of business is located at 1125 Trenton-Harbourton Road, Titusville, New Jersey 08560.
- c. Defendant Ortho-McNeil Pharmaceutical, Inc. (“Ortho McNeil”), a wholly owned subsidiary of J&J, is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. Ortho McNeil’s principal place of business is located at 1000 U.S. Route 202 South, Raritan, New Jersey 08869.
- d. Defendant Ortho Biotech Products, LP (“Ortho Biotech”), a wholly owned subsidiary of J&J, is a New Jersey limited partnership engaged in the business of manufacturing and selling pharmaceuticals. Ortho Biotech’s principal place of business is located at 700 U.S. Highway 202, Raritan, New Jersey 08869.
- e. Defendant McNeil-PPC, Inc. (“McNeil”), a wholly owned subsidiary of J&J, is a New Jersey corporation engaged in the business of manufacturing and selling pharmaceuticals. McNeil’s principal place of business is located at 7050 Camp Hill Road, Fort Washington, Pennsylvania 19034. McNeil Consumer & Specialty Pharmaceuticals (“McNeil Cons”) is a division of McNeil.

13. Defendant Merck & Company, Inc. (“Merck”) is a New Jersey corporation engaged in the business of manufacturing and selling pharmaceuticals. Merck’s principal place of business is located at One Merck Dr., Whitehouse Station, NJ 08889-0100.

14. The following two defendants are hereinafter referred to as the Mylan Group:

a. Defendant Mylan Laboratories, Inc. (“Mylan”) is a Pennsylvania corporation engaged in the business of manufacturing and selling pharmaceuticals, mainly through its subsidiaries. Mylan’s principal place of business is located at 1500 Corporate Drive, Suite 400, Canonsburg, Pennsylvania 15317.

b. Defendant Mylan Pharmaceuticals, Inc. (“Mylan Pharm”), a wholly owned subsidiary of Mylan, is a West Virginia corporation engaged in the business of manufacturing and selling pharmaceuticals. Mylan Pharm’s principal place of business is located at 1500 Corporate Drive, suite 400, Canonsburg, Pennsylvania 15317.

15. The following two defendants are hereinafter referred to as the Novartis Group:

a. Defendant Novartis Pharmaceuticals Corporation (“Novartis”) is a New Jersey corporation engaged in the business of manufacturing and selling pharmaceuticals. Novartis’ principal place of business is located at One Health Plaza, East Hanover, New Jersey 07936.

b. Defendant Sandoz, Inc. (“Sandoz”), formerly known as Geneva Pharmaceuticals, Inc., is a wholly owned subsidiary of Novartis. Sandoz is a Delaware corporation engaged in the business of manufacturing and

selling pharmaceuticals. Sandoz's principal place of business is located at 506 Carnegie Center, Suite 400, Princeton, New Jersey 08540.

16. Defendant Pfizer, Inc. ("Pfizer") is a Delaware corporation with its principal place of business at 235 East 42nd Street, New York, New York 10017. In April 2003, Pfizer acquired Pharmacia. Pfizer is also being sued for the conduct of its subsidiaries and or divisions, including, but not limited to, Warner-Lambert, Pfizer-Warner-Lambert, Division, Parke-Davis Group, and Greenstone, Ltd.

17. Defendant Pharmacia ("Pharmacia") is a Delaware corporation with its principal place of business located at 100 Route 206 North, Peapack, New Jersey 07977. Pharmacia was created through the merger of Pharmacia and Upjohn, Inc., and Monsanto Company on March 31, 2000. Pharmacia was acquired by defendant Pfizer in April 2003.

18. The following two defendants are hereinafter referred to as the Schering Group.

- a. Defendant Schering-Plough Corporation ("Schering-Plough") is a New Jersey corporation with its principal place of business located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033-0530. Schering-Plough has engaged in the practices described in this Complaint under its own name and through its wholly owned subsidiary Warrick Pharmaceuticals Corporation.
- b. Defendant Warrick Pharmaceuticals Corporation ("Warrick"), is a Delaware corporation with its principal place of business at 12125 Moya Boulevard, Reno, Nevada. Warrick is a wholly owned subsidiary of Defendant Schering-Plough and has been since its formation in 1993. Warrick manufactures generic pharmaceuticals.

19. The following four defendants are hereinafter referred to as the Teva Group.
- a. Defendant Teva Pharmaceuticals USA, Inc. (“Teva US”) is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. Teva’s principal place of business is located at 650 Cathill Road, Sellersville, Pennsylvania 18960. Teva US is a subsidiary of an Israeli Corporation, Teva Pharmaceutical Industries, Ltd. (“Teva Ltd.”).
 - b. Defendant Ivax Corp. (“Ivax”), which became a wholly owned subsidiary of Teva Ltd. on January 26, 2006, is a Florida (formerly Delaware) corporation engaged in the business of manufacturing and selling pharmaceuticals. Ivax’s principal place of business is located at 4400 Biscayne Blvd., Miami, Florida 33137.
 - c. Defendant Ivax Pharmaceuticals Inc. (“Ivax Pharm”), a wholly owned subsidiary of Ivax, is a Florida corporation engaged in the business of manufacturing and selling pharmaceuticals. Ivax Pharm’s principal place of business is located at 4400 Biscayne Blvd., Miami, Florida 33137.
 - d. Defendant Sicor, Inc., is a Delaware Corporation with its principal place of business at 19 Hughes, Irvine, California 92618-1902. Sicor is owned by Teva.

20. Defendant SmithKline Beecham Corporation, d/b/a GlaxoSmithKline, (“GlaxoSmithKline”) is a Delaware corporation with its principal place of business at One Franklin Plaza, Philadelphia, Pennsylvania 19102.

21. Defendant TAP Pharmaceutical Products, Inc. (“TAP”) is a Delaware corporation headquartered at Bannackburn Lake Office Plaza, 2355 Waukegan Road, Deerfield Illinois 60015. TAP is jointly owned by Abbott Laboratories and Takeda Chemical Industries, Ltd.

22. The following two defendants are hereinafter referred to as the Watson Group:

- a. Defendant Watson Pharmaceuticals, Inc. (“Watson”) is a Nevada corporation engaged in the business of manufacturing and selling pharmaceuticals. Watson’s principal place of business is located at 311 Bonnie Circle, Corona, California 92880.
- b. Defendant Watson Pharma, Inc., formerly known as Schein (“Watson Pharma”), a wholly owned subsidiary of Watson since 2000, is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. Watson Pharma’s principal place of business is located at 311 Bonnie Circle, Corona, California 92880.

23. ZLB Behring (“Behring”), f/k/a Aventis Behring, LLC, is a Delaware corporation with its principal place of business located at 1020 1st Avenue, King of Prussia, Pennsylvania 19406-0901.

24. This Court has jurisdiction over the plaintiffs’ claims as they involve claims arising exclusively under Wisconsin statutes and Wisconsin common law.

25. Jurisdiction and venue are proper in Dane County, Wisconsin, in that all of the defendants do substantial amounts of business there.

III. FACTUAL BACKGROUND

A. The Market For Prescription Drugs.

26. The market for prescription drugs is extremely complex. It is composed of over 65,000 separate National Drug Codes (“NDCs”) and is non-transparent. (There is a separate NDC number for each dosage and package size of each drug manufactured by each manufacturer.) The essential structure of the market is as follows. The drugs themselves are manufactured by enormous and hugely profitable companies such as defendants. Defendants sell the drugs (with varying numbers of intermediaries, primarily wholesalers, involved in the process) to physicians, clinics, and pharmacies. These physicians, clinics, and pharmacies are called “providers.” The providers then in essence resell the drugs to those requiring them when the drugs are prescribed for, administered or dispensed to those patients. Most patients have private or public health insurance coverage. Where a patient has such insurance, the price that is paid for the patient’s prescribed drug ultimately will be paid in whole or large part by a private insurance company, a self-insured entity, or a government entity in the case of Medicare and Medicaid programs. These private insurance companies, self-insured entities, and government entities are known as “payers.” More often than not, the payer will make the reimbursement payment directly to the provider, not to the patient.

27. This market structure means that the market for prescription drugs differs in two crucial respects from most markets.

28. First, in most markets, demand for a product is determined by the ultimate consumers of the product. This is not the case for prescription drugs. In the prescription drug market, the decision to use a prescription drug is overwhelmingly made not by the recipient of the drug – the patient – but by physicians, by hospitals in which the patient is treated, home

health care agencies, long term care pharmacies or (with respect to the decision to use generic drugs versus brand-name drugs) a pharmacy. Since prescription drugs are dispensed only on a physician's order, the physician has the principal say in what drug will be chosen for the patient. However, hospitals, particularly teaching hospitals, also have considerable influence over this choice. If a hospital decides to put one drug as opposed to a competing drug on its "formulary" (the list of drugs that the hospital stocks), the result will be that the physicians (particularly residents and attending physicians who are employed by the hospital) will likely order that drug rather than a competing drug. Long term care pharmacies also have similar formularies. Likewise, although pharmacists do not prescribe drugs, pharmacists can exert important influence over the choice of which drug the patient will purchase where there is a choice between buying different generic versions of the same drug.

29. A second difference of the prescription drug market from more ordinary markets is that in ordinary markets, the ultimate consumer of the product pays for it directly. In the prescription drug market, however, most payments for drugs are made by "payers" through private or public insurance programs.

30. This structure of the prescription drug market produces the following fundamental fact that underlies defendants' unlawful scheme: if a defendant drug manufacturer can cause a "payer" to reimburse for defendant's drug at a higher price than the price the provider paid to buy the drug from the defendant, there will be a "spread" between the two prices, and that "spread" is retained by the provider as profit. The larger the "spread" that can be created for a particular drug, the greater the incentive the provider has for choosing, or for influencing the choice of, that drug rather than a drug of a competing manufacturer.

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

31. The purpose of Wisconsin's Medicaid program is to provide medical assistance to the State's neediest citizens.

32. Wisconsin, through its Medicaid program, is a huge purchaser of drugs, purchasing over \$610 million annually. Although participation by the defendants in the Wisconsin Medicaid program is purely voluntary, because of the size of the Wisconsin Medicaid program, all defendants have chosen to participate and sell drugs to Wisconsin's Medicaid participants. Thus, Wisconsin may at any given time have to reimburse a pharmacist for any of the drugs of any of the defendants—a universe of many thousands of drugs.

33. Wisconsin's task is further complicated in that Federal law places limits on what Wisconsin may pay for any particular drug. According to 42 C.F.R. § 447.331, Wisconsin may reimburse pharmacists at “the lower of the — 1) Estimated acquisition costs plus reasonable dispensing fees established by the agency; or 2) Providers' usual and customary charges to the general public.” 42 C.F.R. § 447.331. The “estimated acquisition cost” “means the agency's estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of drug most frequently purchased by providers.” 42 C.F.R. § 447.301. Thus, pursuant to federal law, the highest price Wisconsin can pay for a drug is the estimated acquisition cost of that drug to a provider.

34. Defendants have hidden the wholesale prices at which they sell their drugs, and their knowledge about the prices at which wholesalers sell their drugs to providers, (as described in more detail herein) thus depriving Wisconsin of access to the pricing information it needs to estimate accurately the acquisition cost of defendants' drugs. Because neither Wisconsin nor any other state has the knowledge base required to accurately estimate defendants' drug prices, entire

businesses have grown up to provide pricing information to the states and others. Two of these are of particular importance in this case. They are First DataBank and the Redbook. These compendiums purport to supply accurate price information on defendants' drugs through information obtained from defendants themselves.

35. Wisconsin, as most other states, has chosen First DataBank as its primary price source. First DataBank purports to supply the states with accurate information about the average wholesale price ("AWP") of all drugs which it receives from the drug manufacturers themselves. As First DataBank explained the concept of the Average Wholesale Price to its customers in September 1991:

Average Wholesale Price (AWP) is perhaps the most misunderstood concept in the pharmaceutical industry. The purpose of this article is to describe what is meant by AWP and to explain some of the underlying concepts involved in the acquisition, determination and maintenance of First DataBank's AWP.

AWP represents an average price which a wholesaler would charge a pharmacy for a particular product. The operative word is *average*. AWP never means that every purchase of that product will be exactly at that price. There are many factors involved in pricing at the wholesale level which can modify the prices charged even among a group of customers from the same wholesaler. AWP was developed because there had to be some price which all parties could agree upon if machine processing was to be possible.

At First DataBank, all pricing information is received in hard copy from the manufacturers. Catalogs, price updates, and other information reach us by fax, Federal Express, or U.S. mail. In the past two years, fax transmission has streamlined the acquisition of data to a large extent.

Exhibit A.

For virtually the entire time period relevant hereto, First DataBank has represented that its published prices reflect actual average wholesale prices.

36. Because Wisconsin, like most states, has no consistent source of systematic information about providers' acquisition cost for the drugs that it reimburses, Wisconsin has

relied on the prices reported to First DataBank by defendants and published by First DataBank, to estimate the acquisition cost of most of its drugs. Consistent with the explanation of AWP by First DataBank that some providers pay less than the published AWP and some more – that the AWP is only an average of wholesale prices – Wisconsin set its reimbursement rate at AWP minus 10% for most of the relevant period. Wisconsin also pays the provider a dispensing fee. It has never been Wisconsin's intention to pay more for a drug than the cost of that drug to a provider.

37. As a practical matter, Wisconsin, as most other states, is dependant on the First DataBank pricing reports for the maintenance of its Medicaid claims processing system. Wisconsin contracts with EDS, a company whose business is to electronically process on a real-time basis claims for drugs prescribed, or administered to, Wisconsin Medicaid participants. At the time a prescription is presented to a pharmacy, the pharmacy submits a real-time claim to EDS electronically through what is called a Point-of-Sale (POS) claims processing system. Upon receipt, the POS system monitors the reimbursement claim for eligibility, covered drugs, Medicaid cost containment policies, and pricing. EDS then sends a real time response which includes the authorized payment and any patient liability, for example a co-pay. Thereafter EDS sends Remittance and Status Reports (R&S) to Medicaid certified providers for paid real-time claims.

38. First DataBank sends its updated AWP's for the thousands of NDC codes listed in its data base to EDS on a weekly basis and this information is entered into the system. These prices become the basis for Wisconsin's reimbursements to providers. There is no other electronic source for this information.

39. Thus, Wisconsin is functionally dependent on the accuracy of the data supplied by First DataBank, and supplied to First DataBank by the defendants, in meeting its obligation to pay providers no more than its estimated actual acquisition cost of their drugs.

C. Defendant's Corruption of the Government Medicaid Assistance Programs.

40. Defendants have defeated the intent of the Medicaid Program to pay providers at a rate no greater than their acquisition cost by reporting false and inflated AWP's to First DataBank and/or by reporting prices which, they knew, because of the manner of First DataBank's operations, would misrepresent defendants' true wholesale prices. One purpose of this scheme was and is to create the spread between the true wholesale price of a drug and the false and inflated AWP reported by First DataBank and thereby increase the incentive for providers to choose the drug for their patients, or, at a minimum, to counteract the same tactic used by a competitor.

41. The higher the spread between the AWP and the wholesale price the provider actually pays, the more profit a provider can make. Defendants often market their products by pointing out (explicitly and implicitly) that their drug's spread is higher than that of a competing drug.

42. One example of how defendants market this spread is Adriamycin, one of the drugs used in treating breast cancer. Defendant Pharmacia reported an AWP of \$241.36 for Adriamycin in April 2000 when the drug was actually selling at wholesale for as low as \$33.43, creating a "spread" of \$207.93. These spreads were then advertised to oncology providers in promotions which emphasized a wide margin of profit. Other examples of this conduct are contained in the documents attached hereto as Exhibits B-1 through B-6.

43. All of the defendants have inflated the reported average wholesale prices of their drugs and those of their subsidiaries to levels far beyond the real average wholesale price of their drugs and those of their subsidiaries. One high-ranking industry executive has described it as the industry practice to do so.

44. In 2004, high ranking executives of defendants Roxanne, Dey, Aventis and Barr testified in Congress that the AWP was not a legitimate price. And, defendant Dey's chief financial officer testified before Congress as follows: "Why doesn't Dey lower its AWP on generic drugs? The simple answer is that given the system that now exists our customers won't buy from us if we lower our AWP."

45. Dey brought a lawsuit against First DataBank, the publisher of the medical compendium that Wisconsin Medicaid relies on for prescription drug pricing, because it published the *actual* average wholesale price of Dey's drugs instead of the false average wholesale price sent to the publisher by Dey. Dey's principal allegation in that lawsuit was that the publication of its actual prices for drugs was inconsistent with the practice in the industry of accepting and publishing reported, inflated AWPs, and that such publication put Dey at a competitive disadvantage because it had no "spread" to advertise.

46. Attached as Exhibit C to this Complaint is a list of drugs manufactured by the defendants and/or their subsidiaries that the U.S. Department of Justice, after an extensive investigation, found to have inflated AWPs. The U.S. Department of Health and Human Services concluded, with respect to all drugs utilized in the Medicare Program that "[a] general conclusion reached in reviewing GAO [General Accounting Office] and OIG [Office of Inspector General] data is that there is a level of overstatement in the listed AWP for *all*

drugs” Payment Reform for Part B Drugs, 68 Fed. Reg. 50,430 (August 20, 2003)

(emphasis added).

47. Examples of the defendants’ practices of inflating AWP’s include the following:

| Manufacturer/Drug | 2000 AWP | 2000 Available Price | Spread | % Spread |
|--|-----------|----------------------|-----------|----------|
| Baxter Dextrose | \$ 542.88 | \$ 86.40 | \$ 456.48 | 528% |
| Ben Venue/Bedford Labs Etoposide, 20 ml. | \$ 550.00 | \$ 45.13 | \$ 504.87 | 1119% |
| Pharmacia/Upjohn Methylprednisolone Sodium Succinate (Solu- Medrol) | \$ 21.90 | \$ 5.51 | \$ 16.39 | 297% |

48. Plaintiff has secured the false prices defendants caused to be published from First DataBank, the business supplying Wisconsin and most other states with pricing information for use in its Medicaid program. Wisconsin has also secured data showing the true average wholesale prices of defendants’ drugs from two of the three major national drug wholesalers: Cardinal and AmerisourceBergen. (Most of the defendants have so far failed to produce comprehensive pricing data even though plaintiff has had an outstanding request for this material for over a year.) As required by the Court, attached as Exhibit D is a chart containing a summary of reported and actual wholesale prices for one NDC for each targeted drug. For each of these NDCs Exhibit D compares the false prices published in First DataBank to the true average annual wholesale prices of the major wholesalers for each year from 1995 through 2004, where such data are available. Plaintiff has generated these summaries for hundreds of other NDC codes relating to the drugs targeted by Wisconsin but the material is too voluminous to attach in hard copy to the complaint. As a result plaintiff is submitting these materials in a compact disc format as Exhibit E.

49. Defendants have similarly illegally and deceptively misrepresented and inflated the wholesale acquisition cost ("WAC") of their drugs, making it appear that any reduction in the purchase price beyond the listed WAC would result in a loss to the wholesaler and was, hence, unachievable, when in fact the WAC was often secretly discounted by the defendants to purchasers other than the Medicaid and Medicare programs through an elaborate charge back system.

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

50. Defendants have been able to succeed in their drug pricing scheme for more than a decade by exacerbating the complexities of the incredibly huge, and dauntingly complex, drug market, and by purposely concealing their pricing scheme from Wisconsin and other payers, as set forth below.

51. The published wholesale price of the thousands of NDC numbered drugs may, and often does, change at any time. As a consequence, just to track the current published prices of drugs utilized by a state's citizens requires resources and expertise that most states do not have.

52. Defendants have further exacerbated the inherent complexities of the drug market by utilizing marketing schemes which conceal the true price of their drugs in the following different ways.

53. First, defendants sell their drugs in a unique manner which hides the true price of their drugs. This scheme works as follows. Upon agreeing on a quantity and price of a drug with a provider, or group of providers, the defendants purport to sell the agreed upon drugs to wholesalers with whom they have a contractual arrangement, at a price they call the Wholesale Acquisition Cost ("WAC"). The WAC may be higher than the price agreed upon by the provider

and the drug manufacturer. The wholesaler then ships the product to the provider, charging the provider the (lower) price originally agreed upon by the drug manufacturer and the provider. When the wholesaler receives payment from the provider, it charges the manufacturer for the difference between the price agreed-to between the manufacturer and the provider and the WAC, and sends a bill to the manufacturer, called a “charge back,” for the difference between the WAC and the price actually paid by the provider. These charge backs, (or shelf adjustments, or other economic inducements) are kept secret, so that it appears that the wholesaler actually purchased the drug at the higher WAC price. The effect of this practice is to create the impression that the “wholesale price” of the drug is higher than it really is. Defendants hide other actual price reductions by directly paying providers market share rebates which are calculated long after the actual purchase dates of the drugs.

54. Second, defendants further inhibit the ability of Wisconsin and other ultimate purchasers to learn the true cost of their drugs by wrapping the sales agreements they negotiate with providers in absolute secrecy, terming them trade secrets and proprietary, to preclude providers from telling others the actual price they paid.

55. Third, defendants further obscure the true prices for their drugs with their policy of treating different so-called classes of trade differently. Thus, for the same drug, pharmacies are given one price, hospitals another, and doctors yet another.

56. Fourth, some defendants have hidden their real drug prices by providing free drugs and phony grants to providers as a further means of discounting the overall price of their drugs. For example, defendant TAP has pled guilty to a federal criminal indictment for engaging in such conduct, and paid \$875 million in fines and damage, and defendant AstraZeneca paid

\$355 million to settle federal fraud charges that it induced doctors to falsely bill Medicare and Medicaid.

57. Defendants have hidden their motives for utilizing an inflated AWP from the public. Indeed, one official, a high ranking employee of Dey, even went so far as to lie under oath about Dey's marketing of its spread. Only with the disclosure of materials secured by litigants in recent discovery has it become apparent that one reason defendants were intentionally manipulating the nation's drug reimbursement system was to compete for market share on the basis of a phony price spread, instead of the true selling price of their drugs or the medicinal efficacy of these drugs to their users.

58. Defendants have further concealed their conduct by making sure that all of the entities purchasing drugs directly from the defendants (and, hence, knowledgeable about the true price of their drugs) have had an incentive to keep defendants' scheme secret. Defendants' scheme permits all providers, pharmacies, physicians, and hospitals/clinics, to make some profit off defendants' inflated spread, because all of them are reimbursed in some manner on the basis of the AWP for at least some of the drugs they sell or administer. For providers, therefore, the greater the difference between the actual price and the reported AWP, the more money they make. Thus, providers willingly sign drug sales contracts requiring them to maintain secrecy about the prices they pay for drugs.

59. Defendants have themselves continuously concealed the true price of their drugs and continued to publish deceptive AWPs and WACs as if they were real, representative prices. Indeed, in the 2000 edition of Novartis' Pharmacy Benefit Report, an industry trade publication, the glossary defines AWP as follows:

Average wholesale price (AWP) – A published suggested wholesale price for a drug, based on the average cost of the drug to a pharmacy from representative

sample of drug wholesalers. There are many AWP's available within the industry, AWP is often used by pharmacies to price prescriptions. Health plans also use AWP – usually discounted – as the basis for reimbursement of covered medications.

Novartis Pharmacy Benefit Report: Facts and Figures, 2000 Edition, East Hanover, NJ, Novartis Pharmaceuticals Corporation, p. 43.

60. Defendants' unlawful scheme has completely corrupted the market for prescription drugs. Instead of competing on prices and medicinal value alone, the defendants have deliberately sought to create a powerful financial incentive for providers to prescribe drugs based primarily on the spread between the true price of a drug and its published AWP or WAC. Creating incentives for providers to prescribe drugs based on such a spread is inconsistent not only with Wisconsin statutes, but also its public policy. Large price spreads on higher priced drugs encourage providers to prescribe more expensive drugs instead of their lower priced substitutes, thereby increasing the cost of healthcare, and competition on the basis of such spreads has the potential to influence (consciously or unconsciously) providers to prescribe less efficacious drugs over ones with greater medicinal value. Because of defendants' concealment of their scheme, Wisconsin and its citizens have unknowingly underwritten this perversion of competition in the drug market. In sum, defendants have been, and continue to be, engaged in an insidious, deceptive scheme that is causing Wisconsin and its citizens to pay scores of millions of dollars a year more than they should for their prescription drugs, and may well be inducing some providers to prescribe less efficacious drugs.

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

A. The Wisconsin Medicaid Program.

61. Medicaid is a joint federal and state health care entitlement program authorized by federal law, with mandatory and optional provisions for eligibility and benefits covered,

including prescription drugs. Wisconsin Medicaid has three major programs: (1) Medicaid provides for very low-income children, parents, pregnant women, and elderly and disabled adults; (2) BadgerCare provides for children and parents with income up to 185% of the federal poverty level; and (3) SeniorCare provides prescription medicines to seniors with income up to 240% of the federal poverty level. In fiscal year 2004-05, Wisconsin Medicaid expenditures are projected to total \$4.4 billion including \$4.1 billion for Medicaid, \$176 million for BadgerCare and \$108 million for SeniorCare. As of October 2004, enrollment totals include Medicaid – 617,000, BadgerCare – 91,000, and SeniorCare – 90,000. Total enrollment, 798,000 Wisconsin citizens, represents approximately 14% of the state population. The Medicaid pharmacy program provides a drug benefit to 275,304 recipients. Medicaid drug expenditures are projected to be \$610 million or 8% of the Medicaid budget in 2004-05 and SeniorCare drug expenditures are projected to be \$95 million. Since 2001, the cost of prescription drugs in the Wisconsin Medicaid program has increased approximately 49% from \$408 million to \$610 million.

62. With some exceptions, reimbursement to pharmacies and physicians for drugs covered by the Wisconsin Medicaid Program is made at the AWP minus a percentage (currently 13 percent), plus a dispensing fee.

63. For a minority of the drugs purchased by Wisconsin the state sets its reimbursement rate at either the Federal Upper Limit (“FUL”) or at a rate established by the State Maximum Acquisition Cost (“MAC”) program. For multi-source drugs that have at least three suppliers, the Center for Medicaid Services (“CMS”) generally establishes federal upper limits or FULs, defined as 150% of the least costly therapeutic equivalent (using all national compendia) that can be purchased by pharmacies in quantities of 100 tablets or capsule or, in the case of liquids, the commonly listed size. 42 C.F.R. § 447.332. As a practical matter CMS relies

on the published AWP to set most of its FULs. The states may also set reimbursement rates for these drugs at rates lower than the FUL pursuant to the State MACing program and Wisconsin has done so in a number of instances.

64. At all times, each defendant was aware of the reimbursement formula used in the Wisconsin Medicaid Program and the reliance of the Medicaid Program on the defendants' reported AWP.

65. By publishing false and inflated wholesale prices, and by keeping their true wholesale prices secret, defendants have knowingly enabled providers of drugs to Medicaid recipients to charge Wisconsin false and inflated prices for these drugs, and interfered with Wisconsin's ability to set reasonable reimbursement rates for these drugs.

66. As a consequence, Wisconsin's Medicaid program has paid more for prescription drugs than it would have paid if defendants had published their true wholesale prices.

B. Medicare.

67. Medicare is a health insurance program created by the federal government for the elderly and disabled and other eligible persons. 42 U.S.C. 1395, *et. seq.* Typically, individuals become eligible for Medicare health insurance benefits if they are over 65 years of age, disabled, or have end stage renal disease. There are two major components of the Medicare Program, Part A and Part B.

68. Medicare Part B is an optional program that provides coverage for some healthcare services for Wisconsin's participating elderly and disabled citizens not covered by Part A. 42 U.S.C. 1395j through 1395w-4. Medicare Part B is supported by government funds and premiums paid by eligible individuals who choose to participate in the program.

69. At issue here is Medicare Part B's limited benefit for drugs which are provided either: (a) incident to a physician's service and cannot generally be self-administered; or (b) in conjunction with the medical necessity of an infusion pump or nebulizer or other durable medical device payable under Medicare's DME benefit equipment (DME).

70. In order to calculate the portion Medicare recipients must pay for Part B benefits, the Medicare program has generally relied upon the falsely reported AWP. For example, from January 1, 1999, the methodology for calculating the allowable cost of multiple source drugs and biologicals is 95% of the lesser of the median average wholesale price for all sources of the generic forms of the drug or biological or lowest average wholesale price of the brand name form of the drug or biological. 42 C.F.R. § 405.517. (Prior to this change the Medicare Program reimbursed providers on the basis of the full AWP rate.) Medicare then pays eighty percent (80%) of the allowable cost. The remaining 20% is paid as a co-payment by the Medicare Part B beneficiary, or for eligible individuals, by the Medicaid Program. In addition, Medicare Part B beneficiaries are required to pay an annual deductible amount before Part B benefits are payable.

71. Because Medicare Part B participants must pay 20 percent of the allowable cost, which is based on the AWP, for their medications, and because defendants have published false and inflated AWPs for their drugs, Medicare Part B participants are paying substantially more for their co-pay—either directly or through higher insurance premiums defraying the cost of this co-pay—than they would pay if defendants published their true wholesale prices. Indeed, with respect to at least some drugs, the 20% co-pay for the Medicare Part B participant is greater than the entire cost of the drug.

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

72. Defendants had a duty to deal completely honestly with the State of Wisconsin and they so knew.

73. Moreover, it has uniformly been the law for over 60 years that it is unlawful for a seller to cause to be circulated a price at which no, or few, sales are actually expected, whether it is called a list price, suggested price, or benchmark price. *E.g., FTC v. Colgate-Palmolive Co.*, 380 U.S. 372 (1965); *FTC v. The Crescent Publishing Group, Inc.*, 129 F.Supp.2d. 311 (S.D.N.Y. 2001). Defendants either knew of this law or acted in reckless and willful disregard of it.

74. Wisconsin has specifically declared that it is a deceptive practice [Wis. Stat. §100.18(10)(b)], to call a price a wholesale price if retailers are actually purchasing the product at less.

75. Congressional hearings have excoriated the pharmaceutical industry for causing untrue AWP's to be published.

76. Defendants have willfully ignored, and continue to ignore, 1) their duty to Wisconsin to behave with scrupulous honesty, 2) case law uniformly holding that their pricing practices are unlawful, 3) Wisconsin's clear statutory prohibition of their conduct and 4) the reprimands of Congress.

77. As a result, penalties and forfeitures, consistent with Wisconsin's statutory scheme, are mandated in this case.

VII. HARM TO WISCONSIN AND ITS CITIZENS.

78. Defendants' unlawful activities have significantly and adversely impacted Wisconsin and its citizens. Wisconsin has had to pay more for the drugs it purchases through its

Medicaid program. Wisconsin Medicare Part B participants, who are primarily elderly and disabled citizens, have had to pay higher co-pays for their prescriptions than if defendants had truthfully reported the wholesale prices of their drugs.

COUNT I — Violation of Wis. Stat. § 100.18(1)

79. Plaintiff State of Wisconsin realleges and incorporates by reference all previous allegations.

80. Defendants' conduct described above violates Wis. Stat. § 100.18(1), which prohibits representations with the intent to sell, distribute, or increase the consumption of merchandise when the representation contains any assertion, representation, or statement of fact that is untrue, deceptive, or misleading.

81. Defendants' conduct constitutes a violation against the elderly and disabled pursuant to Wis. Stat. § 100.264(2) in that the defendants' conduct that violates Wis. Stat. § 100.18(1) was perpetrated against the elderly and/or disabled; and (a) each defendant should have known that its conduct was perpetrated against the elderly and/or disabled; (b) each defendant caused an elderly or disabled person to lose assets essential to the health or welfare of those persons; or (c) the defendants' conduct caused economic loss that elderly or disabled persons are more likely to suffer due to age, poor health, impaired understanding, or restricted mobility.

82. Wisconsin and its citizens participating in the Medicare Part B program have been harmed by defendants' deceptive conduct in falsely inflating their wholesale prices in that they have paid far more for the drugs manufactured by defendants than they would have paid had the defendants truthfully reported the average wholesale prices of their drugs.

WHEREFORE Plaintiff State of Wisconsin prays that the Court:

- A. Grant judgment for the plaintiff State of Wisconsin.
- B. Enjoin the defendants from continuing the unlawful practices described above.
- C. Grant plaintiff State of Wisconsin, its citizens, and State programs who have been harmed by defendants' practices, restitution to restore their pecuniary loss, pursuant to Wis. Stat. § 100.18(11)(d).
- D. Grant plaintiff its costs and attorneys' fees.
- E. Impose forfeitures against the defendants as required by Wis. Stat. §§ 100.26(4) and 100.264(2), and the appropriate penalty assessments and costs as required by Wisconsin law.
- F. Grant such other and further relief as this Court deems just and equitable.

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

83. Plaintiff State of Wisconsin realleges and incorporates by reference all previous allegations.

84. Wisconsin Stat. § 100.18(10)(b) explicitly states that it is deceptive to represent the price of any merchandise as a manufacturer's or wholesaler's price, or a price equal thereto, unless the price is not more than the price that retailers regularly pay for the merchandise. Defendants' conduct in causing to have published wholesale prices that were and are significantly greater than the true average prices for drugs paid by pharmaceutical retailers (pharmacists and healthcare providers) was, and is, a deceptive act within the meaning of Wis. Stat. § 100.18(10).

85. Defendants' conduct constitutes a violation against the elderly and disabled pursuant to Wis. Stat. § 100.264(2) in that the defendants' conduct that violates Wis. Stat.

§ 100.18(10)(b) was perpetrated against the elderly and/or disabled; and (a) each defendant should have known that its conduct was perpetrated against the elderly and/or disabled; (b) each defendant caused an elderly or disabled person to lose assets essential to the health or welfare of those persons; or (c) the defendants' conduct caused economic loss that elderly or disabled persons are more likely to suffer due to age, poor health, impaired understanding or restricted mobility.

86. Wisconsin and its citizens participating in the Medicare Part B program have been harmed by defendants' deceptive conduct in falsely inflating their average wholesale prices in that they have paid far more for the drugs manufactured by defendants than they would have paid had the defendants truthfully reported the average wholesale prices of their drugs.

WHEREFORE plaintiff State of Wisconsin prays that the Court:

- A. Grant judgment for the plaintiff State of Wisconsin.
- B. Enjoin the defendants from continuing the unlawful practices described above.
- C. Grant plaintiff State of Wisconsin and its citizens who have been harmed by defendants' practices, restitution to restore their pecuniary losses, pursuant to Wis. Stat. § 100.18(11)(d).
- D. Grant plaintiff its costs and attorneys' fees.
- E. Impose forfeitures against the defendants as required by Wis. Stat. §§ 100.26(4) and 100.264(2), and the appropriate penalty assessments and costs as required by Wisconsin law.
- F. Grant such other and further relief as this Court deems just and equitable.

COUNT III — Violation Of the Wisconsin Trust And Monopolies Act

87. Plaintiff State of Wisconsin realleges and incorporates by reference all previous allegations.

88. All of the defendants have discounted secretly from defendants' published prices with the intent and effect of injuring competition and creating artificially inflated markets and market prices for their products. Additionally, the defendants have paid Pharmacy Benefit Managers secret discounts, rebates, and other economic benefits with the intent and effect of artificially inflating the private payer market for their products. As a result of this unlawful conduct, the market for the drugs manufactured by defendants has been artificially distorted, and the prices Wisconsin and its citizens have paid for defendants' drugs increased beyond that which would have existed absent defendants' unlawful discounts and rebates.

89. Defendants have concealed the extent and nature of their unlawful activities as described above.

90. Defendants' conduct violates Wis. Stat. § 133.05, which prohibits the secret payment of rebates, refunds, commissions or unearned discounts.

91. Wisconsin and its citizens have been damaged by defendants' conduct in that they have paid more for drugs than they would have paid if defendants had not engaged in the unlawful scheme described herein.

WHEREFORE plaintiff prays that the Court:

- A. Grant judgment for the plaintiff.
- B. Enjoin the defendants from continuing the unlawful practices described above.

- C. Impose forfeitures against the defendants as required by Wis. Stat. § 135.04(4), and the appropriate penalty assessments and costs as required by Wisconsin law.
- D. Grant Wisconsin and those injured by defendants' conduct threefold the damages suffered as a result of defendants' unlawful conduct.
- E. Grant plaintiff its costs and attorneys' fees.
- F. Grant such other and further relief as the Court deems just.

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

92. Plaintiff State of Wisconsin realleges and incorporates by reference all previous allegations.

93. Each of the defendants produces, markets, and sells pharmaceutical products for which the State of Wisconsin Medicaid Program makes a payment.

94. Each of the defendants knowingly made or caused to be made false statements or representations of material fact for use in the determination and calculation of payment by the Wisconsin Medicaid Program in violation of Wis. Stat. § 49.49(4m)(a)(2).

95. Each of the defendants used a variety of schemes, devices, agreements and false statements, and misrepresentations that had the effect of increasing the amount the Wisconsin Medicaid Program paid as part of the Medicaid Program. The governing statute of limitations for this Count and Count V is set forth in Wis. Stats. § 893.87.

WHEREFORE, the plaintiff respectfully requests:

- A. An amount reasonably necessary to remedy the harmful effect of the defendants' false and misleading publication and dissemination of their AWP.

- B. Forfeitures in the amount of not less than \$100 and not more than \$15,000 for each AWP reported by each defendant for the last ten years.
- C. The reasonable and necessary costs of investigation and prosecution of this case, including actual attorneys' fees.

COUNT V — Unjust Enrichment

96. Plaintiff State of Wisconsin realleges and incorporates by reference all previous allegations.

97. As a result of defendants' misleading pricing information, Wisconsin and its Medicare Part B participants purchased drugs at prices greater than they would have had defendants not engaged in unlawful conduct.

98. Each defendant knew that Wisconsin and its Medicare Part B participants were being overcharged by pharmacy providers and physicians as a direct result of defendants' misleading pricing information.

99. As a result of defendants' unlawful conduct, defendants obtained increased sales, market share and profits at the expense of Wisconsin and its citizens.

100. Each defendant knew that it was not entitled to the profits it realized from the increased sales and market share that resulted from the excessive payments made by Wisconsin and its citizens.

WHEREFORE plaintiff prays that this Court:

- A. Grant judgment for plaintiff.
- B. Enjoin the defendants from continuing the unlawful practices described above.

- C. Require the defendants to disgorge all profits they realized as a result of their unlawful conduct.
- D. Grant plaintiff its costs and attorneys' fees.
- E. Grant such other and further relief as the Court deems just.

PLAINTIFF DEMANDS TRIAL BY JURY OF 12.

Dated this 27th day of June, 2006.



One of Plaintiff's Attorneys

PEGGY A. LAUTENSCHLAGER
Attorney General
State Bar #1002188

MICHAEL R. BAUER
Assistant Attorney General
State Bar #1003627

CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870

FRANK D. REMINGTON
Assistant Attorney General
State Bar #1001131

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0332 (MRB)
(608) 266-3861 (CRH)
(608) 266-3542 (FDR)

CHARLES BARNHILL
State Bar #1015932

WILLIAM P. DIXON

State Bar #1012532

ELIZABETH J. EBERLE

State Bar #1037016

Miner, Barnhill & Galland, P.C.
44 East Mifflin Street, Suite 803
Madison, WI 53703
(608) 255-5200

Attorneys for Plaintiff,
State of Wisconsin