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I. INTRODUCTION

The State's challenge to this Court's jurisdiction misreads the basis for removal. This Court has diversity jurisdiction because the State has brought, among its other claims, a claim for relief on behalf of Wisconsin health insurers, alleging that these private insurers were defrauded by "inflated" AWP that were used in the pricing terms of their contracts with Pharmacy Benefit Managers ("PBMs"). As was squarely held in *State of Connecticut v. Levi Strauss*, 471 F. Supp. 363 (D. Conn. 1979), where a State seeks to recover damages for identified residents, the citizenship of those residents controls for diversity purposes. These Wisconsin health insurers are diverse from all Defendants, none of which resides in, or is incorporated in, Wisconsin. In addition, the State does not challenge the fact that, as was shown in the Notice of Removal, the claims for relief on behalf of these large Wisconsin insurers readily exceed \$75,000 per defendant.

That the State also seeks relief based on the same alleged AWP inflation on its own behalf (for alleged Medicaid overpayments), and on behalf of Wisconsin residents whose claims likely do not meet the jurisdiction threshold (for Medicare co-payments), does not rob this Court of jurisdiction. Instead, the Seventh Circuit holds that, under such circumstances, a court has supplemental jurisdiction under 28 U.S.C. § 1367 over claims by pendant plaintiffs whose claims neither arise under federal law nor satisfy the requirements of federal diversity jurisdiction so long as they arise from the same core of operative facts. See *Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928, 931 (7th Cir. 1996). Nor can the State challenge the Court's jurisdiction based on the Eleventh Amendment, because it is the plaintiff, not the defendant, in this action.

Finally, Defendants respectfully request that the Court reconsider its September 9, 2004 Order, and grant the motion for a stay of all proceedings, so as to allow this jurisdictional issue to be considered and resolved by the district court handling the AWP multidistrict litigation proceedings. The jurisdictional issues raised here, although not currently before the MDL court, are likely to repeat themselves as additional States file AWP claims. Allowing this jurisdictional question to be resolved by the one court charged with handling all federal AWP cases will serve the purposes of the multidistrict litigation statute by avoiding inconsistent federal decisions.

II. BACKGROUND

A. The Complaint.

On June 3, 2004, the State of Wisconsin filed a Complaint in state court against twenty pharmaceutical manufacturers. Like numerous other cases previously transferred and consolidated before Judge Saris in the District of Massachusetts, the six-count Complaint alleges that the Defendants improperly “inflated” the Average Wholesale Prices (AWPs) for their medicines that are reported by third-party publications. The Complaint alleges that, as a result of such AWP inflation, the State, its citizens, and Wisconsin insurers that pay prescription-drug benefits (“private payers”), have paid “inflated prices for medicines.” Compl. ¶¶ 2, 24, 38-51.

Although the State is the only named plaintiff, it purports also to prosecute claims of Wisconsin health care insurers and citizens. For example, Counts I and II, which assert fraudulent advertising claims under Wis. Stat. § 100.18, specifically allege that Wisconsin “private payers,” and citizens “have been harmed by defendants’ deceptive conduct in falsely inflating their wholesale prices,” and seek payments directly to such citizens and private payers “to restore their pecuniary loss, pursuant to Wis. Stat. § 100.18(11)(d).” Compl. ¶¶ 56, 60.

With regard to the “private payer” health insurers, such as Blue Cross Blue Shield of Wisconsin, the State alleges that the insurers have “entered into contracts with Pharmacy Benefit Managers (“PBMs”)” for drug purchases whereby the insurers agree to pay the PBM for medicines for their insureds at a discount off of AWP, “for example, AWP less 10 percent.” Compl. ¶ 50. The State further alleges that the “inflated” AWPs caused these health insurers to pay more for medicines under such PBM contracts “than if defendants accurately reported their wholesale prices.” Compl. ¶ 52.

B. Removal To Federal Court.

On July 14, 2004, defendants removed this action pursuant to 28 U.S.C. §§ 1332 and 1446 under this Court’s diversity jurisdiction, relying principally on Judge Newman’s decision in *State of Connecticut v. Levi Strauss & Co.*, 471 F. Supp. 363, 370-71 (D. Conn. 1979), and the Seventh Circuit’s decisions on supplemental jurisdiction under 28 U.S.C. § 1367. *See Stromberg Metal Works v. Press Mech’l, Inc.*, 77 F.3d 928, 930-31 (7th Cir. 1996). At the time of removal, 19 of the 20 named Defendants filed separate notices of consent to the removal. The final defendant, Gensia Sicor Pharmaceuticals, Inc. (now known as Sicor Pharmaceuticals, Inc.), filed a written consent to removal on July 27, 2004, within 30 days of the date Plaintiff alleges service on Sicor was completed.

On July 26, 2004, the State filed its motion to remand, arguing that the State, which is not a “citizen” of any State for purposes of diversity jurisdiction, was the true party in interest, and that there was not unanimous consent to removal among Defendants at the time of removal. In its remand motion, the State did not contest that the \$75,000 jurisdictional threshold had been met.

The Court initially stayed briefing on the remand motion. By Order dated September 9, 2004, however, the Court, citing *Meyers v. Bayer AG*, 143 F.Supp.2d 1044, 1046-47 (E.D. Wis. 2001), stated that it had made a preliminary assessment that remand was appropriate, and invited Defendants to file a brief in support of removal by September 22, 2004.

C. The MDL Panel And Proceedings.

As noted above, this action is one of numerous actions filed throughout the country alleging that the defendant pharmaceutical companies improperly inflated the AWP's for their respective medicines. The Multidistrict Litigation Panel ("MDL Panel") has previously transferred over forty AWP cases to the U.S. District Court for the District of Massachusetts for coordinated or consolidated pretrial proceedings. *See, e.g., In re Pharmaceutical Industry Average Wholesale Price Litigation* (MDL No. 1456), 201 F.Supp.2d 1378 (J.P.M.L. 2002).

On July 16, 2004, as required by Rule 7.5(e) of the MDL Rules, defendant Bayer Corp. filed a notice of related action with the Panel designating this action as a related "tag-along" action to those actions already transferred to the AWP MDL. (Defendants' Stay Motion, Exh. J). On August 3, 2004, the MDL Panel entered a conditional transfer order (CTO-17), finding that this action "involves questions of fact which are common to the action previously transferred to the District of Massachusetts and assigned to Judge Saris" and thus appropriately belongs before Judge Saris "for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407." (Defendants Stay Reply, Attachment 1). Plaintiff objected to the conditional transfer order, relying on the pending remand motion. This transfer issue is now fully briefed and awaiting the final decision of the MDL Panel.

III. THIS COURT HAS JURISDICTION OVER THIS ACTION

This Court's jurisdiction over this action arises from the interplay of the Court's supplemental jurisdiction under 28 U.S.C. § 1367, and the principles discussed by then-District-Judge Newman in *State of Connecticut v. Levi Strauss*, 471 F. Supp. 363, 371 (D. Conn. 1979). First, under § 1367, as interpreted by the Seventh Circuit, federal jurisdiction is present for *all* claims arising from the same core of operative facts – including for non-diverse plaintiffs whose claims do not meet the \$75,000 jurisdictional threshold – so long as there is *one* diverse plaintiff whose claims do meet the jurisdictional minimum. Second, as held in *Levi Strauss*, where a State asserts claims on behalf of a circumscribed group of citizens seeking payments directly to those citizens, it is their citizenship, not the State's, that controls for purposes of determining diversity jurisdiction. This Court thus has diversity jurisdiction over the State's claims on behalf of the large Wisconsin health insurers, and supplemental jurisdiction over all remaining claims, including claims brought on the State's own behalf.

A. Under 28 U.S.C. § 1367, The Court Has Supplemental Jurisdiction Over Parties and Claims That Do Not Meet Diversity Jurisdiction Requirements.

The Seventh Circuit has repeatedly recognized that, under 28 U.S.C. § 1367, so long as federal jurisdiction exists for one plaintiff, the Court may exercise supplemental jurisdiction over claims by pendant plaintiffs whose claims neither arise under federal law nor satisfy the requirements of federal diversity jurisdiction. *See Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1181-82 (7th Cir. 1993); *Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928, 931 (7th Cir. 1996); *Channell v. Citicorp National Services, Inc.*, 89 F.3d 379, 385-86 (7th Cir. 1996).¹ Thus, in *Brazinski*, Judge Posner held that, pursuant to § 1367, federal

¹ Section 1367(a) provides: "Except as provided in subsection (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have

jurisdiction existed over a plaintiff bringing a state-law privacy claim, despite the fact that “[t]he parties to her suit are not of diverse citizenship, and her suit presents no federal question,” because federal-question jurisdiction was present over the claims brought by her co-plaintiffs. 6 F.3d at 1181.² In *Stromberg*, Judge Easterbrook similarly found that federal jurisdiction existed over a plaintiff’s state law claim despite the fact that the claim did not satisfy the jurisdictional minimum, because his co-plaintiff was both diverse from defendants and had a claim that satisfied the jurisdictional minimum. 77 F.3d at 931. In those cases, the only limit to the appropriate exercise of jurisdiction was that claims by the plaintiffs who did not satisfy the requirements of either federal question or diversity jurisdiction were “closely related” to the claims by the plaintiff where federal jurisdiction was present, and thus formed part of the same “case or controversy” under Article III of the Constitution. 77 F.3d. at 932; *Brazinski*, 6 F.3d at 1181.

Under the Seventh Circuit’s interpretation of § 1367, therefore, this Court may exercise supplemental jurisdiction over claims by non-diverse plaintiffs whose claims do not exceed

supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.” Subsection (b) in turn provides that, where jurisdiction is based on diversity, the court will not have supplemental jurisdiction under (a) for “claims by plaintiffs against persons made parties under Rule 14, 19, 20 or 24 of the Federal Rules of Civil Procedure” Subsection (b) has no application here, because it only precludes supplemental jurisdiction over *defendants* joined under F.R.C.P. 20, and does not preclude the exercise of supplemental jurisdiction over plaintiffs joined under the same rule, which is the case here. See *American Bldg. Maint. v. 1000 Water St. Condomin.*, 9 F. Supp. 2d 1028, 1032 (E.D. Wis. 1998) (citing *Stromberg*). In addition, subsection (b) does not apply because this exception by its terms applies only to cases initiated under Federal Rules of Civil Procedure, and thus does not apply to state-filed cases subsequently removed to federal court. Finally, subsection (c) gives the court discretion to decline to exercise supplemental jurisdiction under certain circumstances. Not only are those circumstances for declining supplemental jurisdiction not present here, but this discretionary determination is one that should be resolved in the first instance by Judge Saris, who is charged with overseeing all federal AWP cases. See *infra* at 17.

² In *Brazinski*, the complaint on its face stated only state-law claims and had been brought in state court. Defendant had removed the case to federal court on the ground that a number of the plaintiffs (but not all) were party to a collective bargaining agreement, and their state-law claims were completely preempted by the Labor Management Relations Act. See *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1181 (7th Cir. 1993).

\$75,000, so long as claims are present by diverse plaintiffs that exceed this jurisdictional minimum. Supplemental jurisdiction under § 1367 thus is present over claims by the State on its own behalf (a non-diverse plaintiff) and claims by Wisconsin citizens that do not exceed the jurisdictional minimum, because the Complaint also presents claims by large diverse private payers, such as Wisconsin Blue Cross Blue Shield, that do meet the jurisdictional minimum.³

It is to this second issue -- whether the Complaint may appropriately be read to include claims by diverse private payers whose value exceed \$75,000 -- that we now turn.

B. For Claims On Behalf Of Wisconsin Health Insurers, It Is Their Citizenship, Not The State's, That Controls For Purposes Of Diversity Jurisdiction.

The State in this action purports to wear two hats: (i) it brings claims on its own behalf, alleging that that it paid higher-than-necessary prices for drugs it purchased under its Medicaid program because it was misled by allegedly inflated AWP, Compl. ¶¶ 33-37; and (ii) it purports to bring claims on behalf of Wisconsin citizens and private payers (such as Wisconsin Blue Cross Blue Shield) alleging they paid excessive co-pays (for individual citizens) or payments to PBMs (for private payers) because of the inflated AWP, Compl. ¶¶ 38-51.⁴ As for the claims on behalf of the private payers and citizens, the State expressly seeks payments directly to these parties. Compl. ¶¶ 56(C), 60(C). Indeed, the statutory basis for this claim would only allow payments directly to these parties; the State would not receive anything. *See* Wis. Stat. § 100.18(11)(d) (authorizing court to “restore to any person any pecuniary loss suffered”); *State v. Excel Mgmt. Servs., Inc.*, 111 Wis.2d 479, 488, 331 N.W.2d 312, 316 (1983)

³ The State's remand motion completely ignores Seventh Circuit's *Stromberg* and *Brazinski* decisions and 28 U.S.C. § 1367, despite the fact that they were cited, along with *Levi Strauss*, as the basis for Defendants' removal in the Notice of Removal. Removal Notice, ¶¶ 12, 17 n.3, 19.

⁴ The Defendants do not concede, and in fact challenge, that the State has stated claims for which relief can be granted.

(“the legislature intended to provide remedies for those persons who had been damaged”). In addition, the claim for recovery to such Wisconsin private payers and citizens would depend on the State establishing the elements of fraud with respect to the private payers and citizens themselves, so that, for example, if a health insurer did not use AWP in its reimbursement formula, or used AWP but with full knowledge of its meaning, then no claim would exist and no recovery would be justified.

Just such circumstances were presented in *State of Connecticut v. Levi Strauss*, 471 F. Supp. 363 (D. Conn. 1979). Like here, in *Levi Strauss* the only named plaintiff was the State, which sought “recovery of the alleged unlawful overcharges incurred by the citizens of Connecticut who purchased Levi Strauss products.” *Id.* at 370. At the same time, the State of Connecticut also pursued claims on its own behalf, payable to the State’s treasury. *Id.* In *Levi Strauss*, the court ruled that, “[w]hen Connecticut claims refunds to be distributed to identifiable purchasers, the citizen status of the purchasers rather than the sovereign status of their benefactor controls for diversity purposes.” Thus, for those claims for recovery where Connecticut sought payments to identified Connecticut citizens for “alleged unlawful overcharges,” it was their citizenship that counted for determining diversity jurisdiction. *Id.*⁵ This same analysis was followed by the district court in *Butler v. Cadbury Beverages, Inc.*, No. 3:97-CV-2241, 1998 WL 422863, at *2 (D. Conn. July 1, 1998), where the court found diversity jurisdiction in an action brought by the Commissioner of the State Department of Labor, reasoning that, where the state

⁵ Ultimately, the *Levi Strauss* court granted plaintiff’s remand motion, because the jurisdictional minimum was not met for those claims where Connecticut citizens were the real parties in interest. *Levi Strauss*, 471 F. Supp. 363, 371-72 (D. Conn. 1979). As the court concluded: “Insofar as Connecticut presents claims for individuals, and thereby satisfies the citizenship requirement for diversity jurisdiction, its seeks discrete recoveries upon separate proof, and fails to meet the jurisdictional amount requirement.” *Id.* at 371.

seeks to recover damages for an identified resident, “the citizen status of that individual controls for diversity purposes.”

Levi Strauss and *Butler* follow a century of Supreme Court cases which hold that, for purposes of determining jurisdiction in an action involving a State, a court should consider the citizenship of the real party in interest for the particular claim for relief. *See Levi Strauss*, 471 F. Supp. at 371 (citing cases). For example, in *Pennsylvania v. New Jersey*, 426 U.S. 660, 665-66 (1976), the Court recognized that as to certain claims for relief Pennsylvania was the real party in interest and could engage the Court’s original jurisdiction, but as for a *parens patriae* suit to recover for taxes wrongly paid by Pennsylvania citizens to New Jersey, the real parties in interest for jurisdictional purposes were the citizens themselves, not the Commonwealth of Pennsylvania. *See also Missouri, Kansas, & Texas R.R. Co. v. H.W. Hickman*, 183 U.S. 53, 59-61 (1901) (holding that, because State would not benefit from particular claim for relief, it was not real party in interest for purposes of diversity jurisdiction); *Oklahoma v. Atchison, Topeka & Santa Fe R.R. Co.*, 220 U.S. 277, 286-89 (1911) (holding that State was not real party in interest for jurisdictional purposes where claim for relief was aimed at benefiting particular shippers within the State); *see also CCC Info. Services v. American Salvage Pool*, 230 F.3d 342, 346 (7th Cir. 2000) (“[T]he citizenship of the real party in interest is determinative when deciding whether the district court has diversity jurisdiction.”).

That the State undoubtedly has a sovereign interest with regard to *certain* claims for relief in the Complaint, such as its claim for recovery for its alleged overpayment of Medicaid benefits, is irrelevant to the question of whether large private payers are the true parties in interest for the claims that call for payments to them. For those claims, which seek payments directly to an identified group of Wisconsin insurers, it is those insurers, not the State, that are the true party in

interest. For example, the Complaint's "private payer" claim alleges that Wisconsin insurers who make payments to PBMs for medicines based on some discount off of AWP were defrauded by improperly inflated AWPs. Compl. ¶¶ 44-51. The Complaint seeks payments directly to such Wisconsin insurers, based on their having to pay "inflated prices" to PBMs under their PBM contracts for medicines. *See, e.g.*, Compl. ¶ 56.C. (requesting "restitution to restore their pecuniary loss" for Wisconsin "private payers" pursuant to Wis. Stat. § 100.18(11)(d)). And the elements of the alleged fraud against these insurers would depend on their particular circumstances, such as whether their PBM contracts in fact used AWP in its pricing terms and whether the insurer in fact was misled, and did not understand that AWP was an undiscounted list price. *See Werner v. Pittway Corp.*, 90 F. Supp. 2d 1018, 1033-34 (W.D. Wis. 2000) (requiring showing of causation and reliance to support false advertising claims under Wis. Stat. § 100.18).

For these claims on behalf of the Wisconsin insurers, the State makes no allegation that even suggests its involvement in the events that allegedly underlie the claims (which are based in private contracting decisions between the insurers and PBMs). Nor does the State contend that it is entitled to recover any of the overpayments allegedly made by such insurers. Under such circumstances, the insurers, not the State, are the real parties in interest, and their citizenship controls for purposes of determining diversity jurisdiction. The State's general interest in the welfare of its residents and in securing compliance with all its laws is insufficient to transform it into the real party in interest for such claims, "for if that were so the state would be a party in interest in all litigation; because the purpose of all litigation is to preserve and enforce rights and secure compliance with the law of the state, either statute or common." *Missouri, Kansas, & Texas R.R. Co.*, 183 U.S. at 60.

Following *Brazinski* and *Stromberg*, the fact that the State also brings claims on its own behalf does not undermine this Court's jurisdiction. Under these circumstances, the Court has diversity jurisdiction over the claims on behalf of the Wisconsin insurers and can appropriately exercise supplemental jurisdiction under § 1367 for claims by non-diverse plaintiffs (Wisconsin) or claims by diverse plaintiffs that do not meet the jurisdictional threshold (certain individual Wisconsin citizens).

The State's remand motion ignores the import of *Brazinski*, *Stromberg*, and § 1367. For example, the State spends the bulk of its motion arguing that the State is not "stripped of its sovereignty" by including claims for relief for Wisconsin citizens and organizations in its Complaint. (Remand Motion at 5-8). That much certainly is true – Wisconsin continues, for example, to be the true party in interest for its claims for recovery of Medicaid drug payments – but, as detailed above, this is irrelevant to the question whether the Court may properly maintain supplemental jurisdiction over such claims where it has jurisdiction over the private insurer claims.⁶

Moreover, and contrary to the State's motion (Remand Mot. at 10-11), *Levi Strauss* itself did not hinge its analysis on a finding that the State of Connecticut was only a nominal plaintiff. Instead, Judge Newman recognized that Connecticut sought recovery both for itself *and* for identified citizens. *Levi Strauss & Co.*, 471 F. Supp. at 370. The fact that Connecticut had a claim for recovery to the State's treasury, however, did not change the court's conclusion that,

⁶ It is for this same reason that the cases relied upon by the State from outside the Seventh Circuit (Remand Motion at 5-7) are inapposite. These cases dealt with the question whether the state plaintiff was properly deemed only a nominal party for the particular claims asserted; they did not involve circumstances, as here, where the state is acknowledged to be the real party in interest for some claims for relief, but not others, and court has supplemental jurisdiction over the claims where the state is the real party in interest. See *State of New York v. G.M. Corp.*, 547 F. Supp. 703, 705-06 (S.D.N.Y. 1982); *Moore ex rel. State of Miss. v. Abbott Laboratories, Inc.*, 900 F. Supp. 26, 32 (S.D. Miss. 1995). Significantly, these cases did not discuss, much less resolve, the import of the Seventh Circuit's

for the claims for payments to a group of Connecticut residents, the residents were the real parties in interest and their citizenship governed its consideration of diversity jurisdiction.

C. Wisconsin “Private Payers” Are Diverse From Each Of The Defendants.

The Complaint identifies the “private payer” claimants as “Wisconsin organizations” that “pay prescription drug costs of their members.” Compl. ¶¶ 2, 52. As shown in Defendant’s Notice of Removal, examples of such “Wisconsin organizations” are Blue Cross Blue Shield of Wisconsin, based in Milwaukee, Security Health Plan, based in Marshfield, Wisconsin, and Dean Health Plan, based in Madison, Wisconsin. Removal Notice, ¶ 25. In addition, there is no dispute that not one of the corporate defendants is incorporated in Wisconsin or maintains its principal place of business in the State. Compl. ¶¶ 4-21.

These private-payer plaintiffs, therefore, are diverse from all the named Defendants. The State asserts, with no specifics, that at least some of these “private payer” claimants share a residence with one of the twenty Defendants, and argues that this eliminates complete diversity among the parties in interest and the Defendants. Remand Motion at 12. The State also claims that it seeks recovery for former Wisconsin residents that have since moved out of state, and inevitably now share a residence with one of the Defendants. *Id.* This Court’s jurisdiction is dictated by the face of the Complaint, however, not the State’s post-removal characterization of the parties. *See* 16 Wright, Miller & Cooper, *Federal Practice and Procedure* § 107.14(2)(f)(i) (“case is removable based on diversity jurisdiction if the initial pleading setting forth claim for relief ... alleges facts indicating diversity”). And the Complaint plainly limits the non-State

Brazinski and *Stromberg* decisions, discussed above, which authorize supplemental jurisdiction over pendent plaintiffs that are neither diverse nor meet the jurisdictional minimum.

claimants to “Wisconsin organizations,” and “its citizens.” So defined, there is complete diversity between those private claimants and the twenty non-Wisconsin Defendants.

In any event, the State’s argument again ignores *Brazinski* and *Stromberg*, which recognize an exception to the complete diversity rule for cases that are subject to 28 U.S.C. § 1367. *See Channell v. Citicorp National Services, Inc.*, 89 F.3d 379, 385 (7th Cir. 1996) (recognizing that the complete diversity rule “has been curtailed for cases within the scope of § 1367”). *Cf. Liberty Mutual Ins. Co. v. Construction Management Serv.*, No. 99 C 6906, 2001 WL 1159203, at *3-4 (N.D. Ill. Sept. 28, 2001) (holding, in diversity action, that court could maintain supplemental jurisdiction over defendant that did not satisfy diversity-jurisdiction requirements); *Corporate Resources, Inc. v. Southeast Suburban Ambulatory Center, Inc.*, 774 F. Supp. 503, 506 (N.D. Ill. 1991) (same). Under *Stromberg*, only one plaintiff need satisfy the requirements of diversity jurisdiction, so long as the claims of other plaintiffs fall within the Court’s supplemental jurisdiction under § 1367.

D. There Is No Dispute That The \$75,000 Jurisdictional Threshold Has Been Met.

The State’s remand motion does not challenge the showing in Defendant’s Removal Notice that the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* Removal Notice ¶¶ 18-28. In any event, any such challenge would have been unsuccessful.

To satisfy this element of diversity jurisdiction, all that is necessary is that it “is plausible” that the stakes for the claims by diverse parties exceed \$75,000. *See Rubel v. Pfizer Inc.*, 361 F.3d 1016, 1020 (7th Cir. 2004) (“Removal is proper if the defendant’s estimate of the stakes [as exceeding \$75,000] is plausible”); *see also Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 366 (7th Cir. 1993) (jurisdictional amount requirement met if “reasonable probability” that a plaintiff’s claim exceeds \$75,000); *West Bend Elevator v. Rhone-Poulenc S.A.*, 140 F. Supp.2d.

963, 966 (E.D. Wis. 2000) (jurisdictional amount may be met by combining actual and punitive damages available for plaintiff's claim). In addition, under *Stromberg*, as long as *one* plaintiff satisfies the \$75,000 jurisdictional threshold against each defendant, then the Court has supplemental jurisdiction over all the claims brought in the same Complaint pursuant to 28 U.S.C. § 1367. *Stromberg*, 77 F.3d at 930-31.

The \$75,000 jurisdictional threshold is met here for the reasons detailed in the Defendants' Notice of Removal. First, based on the allegations of the Complaint and public information, the claims asserted on behalf of large private payers in Wisconsin – with hundreds of thousands of members – undoubtedly exceed \$75,000 for each Defendant. Second, where, as here, injunctive relief is requested, the Seventh Circuit recognizes that the defendant's cost of complying with the injunction counts toward establishing the jurisdictional minimum. *See Rubel*, 361 F.3d at 1017. The costs of the injunctive relief requested – requiring in part that each Defendant create a unique pharmaceutical price-reporting scheme for Wisconsin residents – will far exceed \$75,000 per Defendant.

E. Plaintiff's Eleventh Amendment Challenge To Jurisdiction Is Baseless.

The State wrongly claims that the Court's exercise of jurisdiction would impinge on its sovereign status and violate the Eleventh Amendment. Numerous courts of appeals have held, however, that the Eleventh Amendment has no application where the State is a plaintiff as opposed to a defendant. *E.g., People of the State of Cal. v. Dynegy, Inc.*, 375 F.3d 831, 848 (9th Cir. 2004) (“[A] state that voluntarily brings suit as a plaintiff in state court cannot invoke the Eleventh Amendment when the defendant seeks removal to a federal court of competent jurisdiction.”); *Oklahoma ex rel. Edmondson v. Magnolia Marine Transp. Co.*, 359 F.3d 1237, 1239 (10th Cir. 2004) (same); *Regents of Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1564

(Fed. Cir. 1997) (“[T]he Eleventh Amendment applies to suits ‘against’ a state, not suits by a state.”).

The Eleventh Amendment thus imposes no restriction on removal here. The State chose to include claims for recovery by identified Wisconsin citizens and organizations in its Complaint. If federal jurisdiction is present, as shown above, then the State can have no claim that it is being improperly forced into litigation in federal court.

IV. THE DEFENDANTS HAVE SATISFIED THE RULE OF UNANIMITY

The State claims that the case should be remanded because one defendant, Defendant Sicor Pharmaceuticals, did not file a consent to removal at the time the removal notice was filed on July 14, 2004. (Remand Mot. at 12-14). But there is no dispute that Sicor did file a valid consent on July 27, 2004, and that this consent was filed well within 30 days of the State’s service of the Complaint on Sicor, which the State contends happened on July 7, 2004. *See* Remand Motion, Exh. C. The removal statute requires nothing more. 28 U.S.C. § 1446(b); *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

In *Murphy Brothers*, the Supreme Court ruled that, under 28 U.S.C. § 1446, the 30-day removal period for a defendant does not begin upon mere notice of a lawsuit, but instead is triggered solely by formal receipt of service. *Murphy Brothers*, 526 U.S. at 347. As the Court reasoned, “An individual or entity named as a defendant is not obliged to engage in litigation unless notified of the action, and brought under the court’s authority, by formal process.” *Id.* Thus, “a defendant is ‘required to take action’ as a defendant – that is, bound by the thirty day limit on removal – ‘only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend.’” *Marano Enterprises of Kansas*

v. Z-Teca Restaurants, 254 F.3d 753, 756 (8th Cir. 2001) (quoting *Murphy Brothers*, 526 U.S. at 347).

Here, *all* Defendants filed consent to removal within thirty days of service of the Complaint on them. Following *Murphy Brothers*, there is no requirement under 28 U.S.C. § 1446(b) that a defendant in a multi-defendant case file such consent to removal before thirty days from service on that defendant, simply because other defendants had been served earlier.

This position is supported by this Court’s reasoning in its pre-*Murphy Brothers* decision in *Higgins v. Kentucky Fried Chicken*, 953 F. Supp. 266 (W.D. Wis. 1997). There, the Court recognized that, under “the plain reading” of § 1446(b), “Defendant A has thirty days from receipt of the initial pleading in which to initiate removal or join in a co-defendant’s removal petition. Period.” *Id.* at 270. Indeed, in *Higgins*, this Court approvingly cited the Fourth Circuit’s decision in *McKinney v. Board of Trustees of Mayland Comm. Coll.*, 955 F.2d 924, 926-927 (4th Cir. 1992), which squarely held that a later-served defendant has a full thirty days from receipt of service to join a previously filed removal petition. *Higgins*, 953 F. Supp. at 270.

Any other rule would amount to a rewriting of § 1446(b), which does not hinge a defendant’s right to remove within thirty days of *its* receipt of service upon the timing of service on *other* defendants. Instead, § 1446(b) provides that the “petition for removal . . . be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleadings.” Given the Supreme Court’s ruling that “by service or otherwise” means service of process and not mere notice, there can be no serious dispute that each defendant has removed, or joined in a removal, within the 30-day period required by the statute.

V. THIS COURT SHOULD RECONSIDER DEFENDANTS' STAY MOTION.

Finally, Defendants respectfully request that the Court reconsider its September 9, 2004 Order and grant their motion to stay all proceedings, including the pending remand motion, until the MDL Panel renders a final decision on whether to transfer this action to the MDL proceedings before Judge Saris in the District of Massachusetts. As discussed in the stay motion, Judge Saris is overseeing proceedings for over forty AWP cases, including a number initiated by states and counties, which raise many of the same legal and factual issues that are present in this action.⁷ Judge Saris has devoted substantial time and resources in analyzing the numerous jurisdictional, factual, and legal issues raised in these AWP cases. Although the precise jurisdictional issues raised here are not currently before Judge Saris, they are likely to be repeated as additional states proceed with similar AWP actions. A stay thus would allow Judge Saris to address such issues in a consistent and coordinated fashion.

The likelihood that additional state-sponsored AWP complaints will be filed is high. For example, the Arizona Attorney General's office recently issued a "Request for Proposal" seeking assistance from outside counsel to evaluate "pharmaceutical wholesale pricing practices," including the alleged overstatement of AWP, and to consider initiating litigation against pharmaceutical manufacturers. *See* Exhibit B hereto at 3 (selected pages from RFP). It is thus likely that the jurisdictional issues raised before this Court will be repeated in future AWP cases. The interest under the multidistrict statute of avoiding conflicting federal judgments would be well served by allowing Judge Saris to consider and resolve such issues. *See In re Ivy*, 901 F.2d

⁷ For the Court's convenience and information, attached as Exhibit A is a copy of a September 2004 Status Report to Judge Saris concerning the AWP cases pending before her, broken out between government entity cases and private class cases. Notably, the overlap between this action and the AWP MDL is especially stark, because Wisconsin Citizen Action is one of only eleven named plaintiffs in the Amended Master Class Action Complaint before Judge

7, 9 (2d Cir. 1990) (recognizing that “[c]onsistency as well as economy is served” by having MDL court handle jurisdiction issues that were was capable of arising in numerous cases).

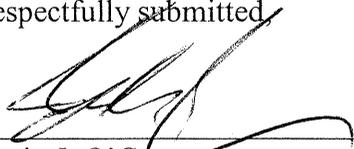
VI. CONCLUSION

For these reasons, as well as those relied upon in the Notice of Removal, Plaintiff’s Motion to Remand should be denied. In the alternative, this Court should stay any action on the remand motion pending the MDL Panel’s final decision on whether to transfer this action to the MDL proceedings before Judge Saris in the District of Massachusetts.

Dated: September 22, 2004.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that I, Thomas M. Sobol, an attorney, caused a true and correct copy of the foregoing Status Report to be served on all counsel of record electronically on September 1, 2004, pursuant to Section D of Case Management Order No. 2.

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MDL 1456 STATUS CHART – GOVERNMENT ENTITY CASES

GOVERNMENT ENTITY CASE	MDL DOCKET NUMBER	ORIGINAL JURISDICTION	STATUS
Montana v. Abbott Labs., Inc. et al.	02-CV-12084-PBS	Removed to D. Mont.	<ul style="list-style-type: none"> • No Pending Motions
Nevada v. American Home Products, Inc. et al ("Nevada II")	02-CV-12086-PBS	Removed to D. Nev.	<ul style="list-style-type: none"> • July 19 2004 – B. Braun's Motion to Re-Dismiss the State of Nevada's Amended Complaint for Improper Service and Lack of Personal Jurisdiction <ul style="list-style-type: none"> ◦ Withdrawn by B. Braun as moot on August 2, 2004
California ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Labs., Inc. et al.	03-CV-11226-PBS	Removed to C.D. Cal.	<ul style="list-style-type: none"> • Renewed Motion to Remand <i>sub judice</i> <ul style="list-style-type: none"> ◦ Hearing held on December 12, 2003 ◦ Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims filed by Plaintiff on December 18, 2003 ◦ Response filed by Abbott on January 9, 2004 • Briefing on motion to dismiss postponed pending a ruling on renewed motion to remand
County of Suffolk v. Abbott Labs., Inc. et al.	03-CV-10643-PBS	E.D.N.Y.	<ul style="list-style-type: none"> • Motions to Dismiss <i>sub judice</i> <ul style="list-style-type: none"> ◦ Hearing held on December 12, 2003 ◦ March 18, 2004 – Brief of the United States as Amicus Curiae ◦ April 9, 2004 – Defendants' Brief in Response to the Amicus Curiae Briefs of the United States and the Commonwealth of Massachusetts ◦ April 23, 2004 – United States' Reply Brief as Amicus Curiae ◦ June 14, 2004 – Defendants' Notice of Supplemental Authority in the Suffolk case ◦ June 18, 2004 – Plaintiff Suffolk County's Response To Defendants' Notice Of Supplemental Authority ◦ June 24, 2004 – Defendants' Motion to Strike Plaintiffs' Response to Defendants' Notice of Supplemental Authority, or for Leave to File a Reply ◦ June 28, 2004 – Plaintiff Suffolk County's Opposition To Defendants' Motion To Strike Suffolk's Response To Defendants' Notice Of Supplemental Authority ◦ June 29, 2004 – Order denying Motion to Strike Response to Defendants' Notice of Supplemental Authority
County of Rockland v. Abbott Labs., Inc. et al.	03-CV-12347-PBS	S.D.N.Y.	<ul style="list-style-type: none"> • No Pending Motions • Stipulation in place extending defendants' time to answer until 30 days after decision on motions to dismiss Suffolk County complaint
County of Westchester v. Abbott Labs., Inc. et al.	n/a	S.D.N.Y.	<ul style="list-style-type: none"> • No Pending Motions • Stipulation in place extending defendants' time to answer until 30 days after decision on motions to dismiss Suffolk County complaint



MDL 1456 STATUS CHART – PRIVATE CLASS CASES

PRIVATE CLASS CASES	MDL DOCKET NO.	ORIGINAL JURISDICTION	STATUS
Master Consolidated Class Action	Master File 01-CV-12257-PBS	D. Mass. pursuant to JPML Order	<ul style="list-style-type: none"> • April 27, 2004 – Plaintiff Suffolk County’s Motion Respecting Coordinated Discovery <i>sub judice</i> <ul style="list-style-type: none"> ○ May 11, 2003 – Response of Liaison Counsel to Suffolk County’s Motion Respecting Coordinated Discovery ○ May 24, 2004 – Plaintiff Suffolk County’s Reply on Motion Respecting Coordinated Discovery ○ May 26, 2004 – Plaintiffs’ Motion to File A Surreply In Opposition to Suffolk County’s Reply on Motion Respecting Coordinating Discovery; Liaison and Plaintiff Counsels’ Surreply to Suffolk County’s Reply on Motion Respecting Coordinated Discovery ○ May 28, 2004 – Memorandum of Bristol–Myers Squibb Company in Response To The Motion Of County Of Suffolk Addressing The Role Of Liaison Counsel For All Plaintiffs ○ May 28, 2004 – Response of Liaison Counsel to BMS Memorandum Addressing the Role of Liaison Counsel ○ June 22, 2004 – Order Granting Plaintiffs’ Motion for Leave to File a Surreply in Opposition to Suffolk County’s Reply on Motion Respecting Coordinating Discovery • May 3, 2004 – Plaintiffs’ Motion to Compel The Production of Documents Created During the Relevant Time Period from Defendants Abbott Laboratories, Astrazeneca, Schering Plough, Sicor and Together Rx Defendants <i>sub judice</i> (Magistrate Bowler) <ul style="list-style-type: none"> ○ May 17, 2004 – Certain Defendants’ Notice of Opposition to Plaintiffs’ Motion to Compel the Production of Certain Documents and Consent Motion for an Extension of Time ○ May 26, 2004 – Notice of Withdrawal of Plaintiffs’ Motion to Compel the Production of Documents Created During the Relevant Time Period Directed at Defendant Schering–Plough (<i>Note: withdrawal applies only to Schering-Plough</i>) ○ May 27, 2004 – Consent Motion for an Extension of Time to Oppose the Motion to Compel ○ May 27, 2004 – Opposition of the Together Rx Defendnats to Plaintiffs’ Motion to Compel the Production of Documents ○ May 28, 2004 – Notice Of Withdrawal Of Plaintiffs’ Motion To Compel The Production Of Documents Created During The Relevant Time Period Directed At Defendant Abbott Laboratories



PRIVATE CLASS CASES	FILED CHECK NO.	ORIGINAL JURISDICTION	STATUS
Master Consolidated Class Action (continued)			<p>(Note: withdrawal applies only to Abbott Laboratories)</p> <ul style="list-style-type: none"> o June 8, 2004 – Notice of Withdrawal of Plaintiffs’ Motion to Compel the Production of Documents Created During the Relevant Time Period Directed at Defendant AstraZeneca. (Note: withdrawal applies only to AstraZeneca) o June 9, 2004 – Plaintiffs’ Reply Memorandum In Support of Motion To Compel The Production of Documents Created During The Relevant Time Period From The Together Rx Defendants o June 22, 2004 – Order granting Plaintiffs’ Motion to Withdraw Motion to Compel Directed at Abbott Laboratories o June 22, 2004 – Order granting AstraZeneca’s Assented to Motion for Extension of Time to File Response to Plaintiffs’ Motion to Compel o June 22, 2004 – Order finding as Moot AstraZeneca’s Motion for Extension of Time to Oppose Plaintiffs’ Motion to Compel o Awaiting scheduling of hearing or ruling by Court as to Together Rx Defendants. <ul style="list-style-type: none"> • June 15, 2004 – Track 1 Defendants’ Motion for a Protective Order Precluding Plaintiffs from Taking Depositions Noticed on May 27, 2004 <i>sub judice</i> (Magistrate Bowler) <ul style="list-style-type: none"> o June 24, 2004 – Plaintiffs’ Opposition to Motion for Protective Order • July 1, 2004 – Plaintiffs’ Motion to Compel the Production of HHS ASP Documents Relating to All Defendants <i>sub judice</i> (Magistrate Bowler) <ul style="list-style-type: none"> o July 16, 2004 – Defendants’ Opposition to Plaintiffs’ Motion to Compel HHS ASP Documents o July 19, 2004 – Defendant Sicom Inc. and Sicom Pharmaceuticals, Inc.’s Opposition to Plaintiffs’ Motion to Compel HHS ASP Documents • July 1, 2004 – Defendant BMS’s Motion to Compel Plaintiffs to Provide Proper Answers to Interrogatories <i>sub judice</i> (Magistrate Bowler) <ul style="list-style-type: none"> o July 15, 2004 – Plaintiffs’ Opposition to Motion to Compel “Proper Answers” to BMS’s Contention Interrogatories • July 15, 2004 – Plaintiffs’ Motion to Compel BMS to Answer Interrogatories <i>sub judice</i> (Magistrate Bowler)



PRIVATE CLASS CASES	WDL DOCKET NO.	ORIGINAL JURISDICTION	EVENTS
<p>Master Consolidated Class Action (continued)</p>			<ul style="list-style-type: none"> o July 30, 2004 – Response of Defendant Bristol-Meyers Squibb Company to Plaintiffs’ Motion to Compel BMS to Answer Interrogatories • July 26, 2004 – Amgen Motion to Dismiss Corrected AMCC <i>sub judice</i> <ul style="list-style-type: none"> o August 9, 2004 – Plaintiffs’ Opposition to Amgen Motion to Dismiss Corrected AMCC o August 31, 2004 – Amgen Motion for Leave to File Reply and attached Reply In Support of Amgen Motion to Dismiss Plaintiffs’ Corrected AMCC <i>sub judice</i> • July 30, 2004 – Defendants’ Motion to Enforce the Subpoena For, and Compel, the Deposition of Patricia Kay Morgan <i>sub judice</i> (Magistrate Judge Bowler) <ul style="list-style-type: none"> o Filed simultaneously with Defendants Motion to File Under Seal Portions of the Deposition Transcript of Patricia Kay Morgan Cited in Their Motion to Compel <i>sub judice</i> o August 13, 2004 – Plaintiffs’ Response to Defendants’ Motion to Enforce the Subpoena For, and Compel, the Deposition of Patricia Kay Morgan o August 25, 2004 – First Data Bank’s Memorandum in Opposition to Motion to Compel Discovery and in Support of Counter-Motion to Limit All Subpoenas Seeking Additional Discovery from this Non-Party <ul style="list-style-type: none"> ▪ Response to Counter-Motion due by September 13, 2004 o August 25, 2004 – First Data Bank’s Motion to File Under Seal the Deposition Transcript of Patricia Kay Morgan <i>sub judice</i> • August 4, 2004 – Plaintiffs’ Motion to Compel Against AstraZeneca <i>sub judice</i> <ul style="list-style-type: none"> o August 23, 2004 – AstraZeneca’s Cross-Motion for a Protective Order Relating to the April 2, 2004 Amended Notice of Rule 30(b)(6) Deposition <i>sub judice</i> o August 23, 2004 – AstraZeneca’s Memorandum in Opposition to Plaintiffs’ Motion to Compel and in Support of Cross-Motion for a Protective Order Relating to the April 2, 2004 Amended Notice of Rule 30(b)(6) Deposition



PRIVATE CLASS CASES	MDL DOCKET NO.	ORIGINAL JURISDICTION	STATUS
Master Consolidated Class Action (continued)			<ul style="list-style-type: none"> • August 16, 2004 – Plaintiffs’ Motion to Compel the Production of Documents from McKesson Corporation <ul style="list-style-type: none"> ○ Response due by September 2, 2004 • August 20 – AstraZeneca’s Motion for a Protective Order Limiting the Scope of Certain Third Party Subpoenas <ul style="list-style-type: none"> ○ Response due by September 7, 2004 • August 24, 2004 – Plaintiffs’ Motion to Compel B. Braun of America to Make Supplemental Rule 30(b)(6) Designation filed simultaneously with Motion for Leave to File Under Seal <ul style="list-style-type: none"> ○ Response due by September 10, 2004 • August 24, 2004 – Plaintiffs’ Motion to Add B. Braun Medical, Inc. as a Defendant filed simultaneously with Motion for Leave to File Under Seal <ul style="list-style-type: none"> ○ Response due by September 10, 2004 • August 27, 2004 – BMS’s Motion to Compel Documents from StateWide and UFCW and Motion for a Protective Order against the July 8, 2004 Notice of Rule 30(b)(6) Deposition <ul style="list-style-type: none"> ○ Response due by September 13, 2004 • August 31, 2004 – Defendants’ Motion to Compel Aetna U.S. Healthcare, Humana, Inc. and Cigna Corporation to Comply with Deposition Subpoenas <ul style="list-style-type: none"> ○ Response due by September 17, 2004
Thompson v. Abbott Labs., Inc. et al.	03-CV-11286-PBS	Removed to N.D. Cal.	<ul style="list-style-type: none"> • Consolidated into Master Class Action
Turner v. Abbott Labs., Inc. et al.	03-CV-10696-PBS	Removed to N.D. Cal.	<ul style="list-style-type: none"> • Consolidated into Master Class Action
Congress of California Seniors v. Abbott Labs., Inc. et al.	03-CV-10216-PBS	Removed to C.D. Cal.	<ul style="list-style-type: none"> • Consolidated into Master Class Action
International Union of Operating Engineers, Local No. 68 Welfare Fund v. AstraZeneca PLC et al.	n/a	Removed to D.N.J.	<ul style="list-style-type: none"> • Motion to Remand filed in District of New Jersey prior to transfer; briefed while pending in District of New Jersey





STATE OF ARIZONA
ARIZONA OFFICE OF THE ATTORNEY GENERAL
REQUEST FOR PROPOSAL

SOLICITATION NUMBER: AG05-0001

DESCRIPTION: Outside Counsel – Pharmaceutical Practices

SOLICITATION DUE DATE: August 26, 2004, 3:00 pm Local Arizona Time.

QUESTIONS DUE DATE: August 18, 2004, 3:00 pm Local Arizona Time.

ELECTRONIC DOCUMENTS: An electronic copy of this Solicitation is available upon request. Send request to jerry.connolly@azag.gov. The Solicitation on file in the Arizona Office of the Attorney General, Procurement Office shall have precedence over any differing documents.

OFFER DELIVERY LOCATION: Arizona Office of the Attorney General, located at 1275 West Washington Street, Phoenix, Arizona 85007. Mailing address is Arizona Office of the Attorney General; Purchasing; 1275 West Washington Street, Phoenix, AZ 85007-2926.

In accordance with ARS § 41-2534 competitive sealed proposals for the services specified will be received by Arizona Office of the Attorney General Procurement at the specified location until the time and date cited above. Offers received by the correct time and date will be opened and the name of each Offeror will be publicly read. Offers must be in the actual possession of the Arizona Office of the Attorney General, Procurement Office, on or prior to the Solicitation Due Date and Time, and at the location indicated above. Late offers shall not be considered.

Offers must be submitted in a sealed package with the Request for Proposal number and the Offeror's name and address clearly indicated on the package. Additional instructions for preparing a proposal are provided in the Uniform and Special Instructions to Offeror as contained within this Request for Proposal.

Offerors are Strongly Encouraged to Carefully Read the Entire Request for Proposals

Solicitation Contact Person:

Jerry Connolly, Contract Officer
Office of the Attorney General
Purchasing Unit
1275 West Washington Street
Phoenix, AZ 85007
Telephone Number: (602) 542-8030
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Jerry Connolly

Jerry Connolly
Contract Management Supervisor

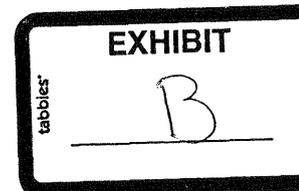


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	I. SCOPE OF WORK	Office of the Attorney General
	SOLICITATION NO: AG05-0001	1275 W Washington Phoenix, AZ 85007-2928

1 PURPOSE

The purpose of this contract is to retain legal counsel to aid the Arizona Attorney General (AGO) in its evaluation and possible litigation of unfair or illegal pharmaceutical wholesale pricing practices.

2 BACKGROUND

The State of Arizona is evaluating pharmaceutical wholesale pricing practices, including the pharmaceutical manufacturers' and or related parties' practice of overstating the average wholesale price of prescription drugs and providing inducements to medical providers and others to promote the sale of their prescription drug products at overstated prices.

This Request for Proposal is to provide the AGO the ability to contract with law firms, singularly or in conjunction with other firms, interested in and capable of assisting the State in its evaluation and institution of litigation, if appropriate. The AGO is interested in proposals under which the firm or firms would agree to be compensated for all litigation costs and other out-of-pocket costs from any monies recovered by way of settlement or judgment.

3 GOALS

A lawsuit would seek to enjoin the named defendants from engaging in the conduct described in the Background Section of this RFP, recover damages, and obtain any other appropriate relief. The Attorney General will consider proposals seeking remedies for claims under one or a combination of the following claims: the State's Consumer Fraud Act (A.R.S. § 44-1521 et seq.), the State's Antitrust Act (A.R.S. § 44-1401 et seq.), the State's racketeering statutes (A.R.S. § 13-2301) and/or any other legal theories relating to the conduct described above.

4 HIERARCHY

The retention of counsel is intended to aid the Attorney General in representing the State of Arizona in a major matter. The Attorney General will be actively involved in all stages of this matter and deciding all major issues, including whether to file suit, when to file suit, who to file suit against, approval of the asserted claim or claims and whether and on what basis to settle or proceed to trial.



I. SCOPE OF WORK

SOLICITATION NO: AG05-0001

Office of the Attorney General

1275 W Washington
Phoenix, AZ
85007-2926

5 SCOPE OF WORK TASKS

The Counsel shall be responsible for the following tasks and shall perform these tasks in accordance with the Method of Approach prepared by the Counsel in responding to this Request for Proposal and as accepted by the Office of the Attorney General.

- 5.1 Evaluation of Legality of Pharmaceutical Wholesale Pricing Practices
- 5.2 Decision Process
- 5.3 Pre-Litigation Activities
- 5.4 Litigation Support
- 5.5 Post-Litigation Support

6 REPORTING

Counsel shall prepare and submit monthly reports to the AGO summarizing activities from the previous month and detailing the costs incurred. Where expenses are disbursed or are incurred by Counsel which also benefit other clients of Counsel in other, similar litigation, only the portion of such expenses fairly and properly allocable to Plaintiff(s) in the Litigation shall be claimed as reasonable expenses of prosecuting the Litigation. The report shall also include activities planned for the upcoming month and budgetary costs associated with these activities. The report shall be due by the seventh day of each month. Reports shall be prepared in a format and of a quality approved by the Attorney General.