

STATE OF WISCONSIN,

)

Plaintiff,

)

Case No.: 04 CV 1709

)

v.

)

AMGEN INC., ET AL.,

)

)

Defendants.

)

)

)

**REPLY MEMORANDUM OF PHARMACIA CORPORATION IN SUPPORT OF  
ITS INDIVIDUAL MOTION TO DISMISS THE AMENDED COMPLAINT**

In its Individual Memorandum In Support of Its Motion to Dismiss the Amended Complaint (the “Individual Memorandum”), defendant Pharmacia Corporation (“Pharmacia”) demonstrated that the Amended Complaint fails to allege any misconduct by Pharmacia with the particularity required by Wisc.Stat.Ann. § 802.03(2).<sup>1</sup> Rather, plaintiff merely lumps Pharmacia in an alleged “scheme” with all of the other defendants, with no specificity as to Pharmacia. This tactic does not satisfy § 802.03(2). *Friends of Kenwood v. Green*, 2000 WI App 217, ¶ 14, 239 Wis. 2d 78, 619 N.W.2d 271.

Indeed, the Amended Complaint is so utterly deficient as to Pharmacia that plaintiff has not even tried to defend it, offering no response to the Individual Memorandum. This is not surprising, because the Amended Complaint is indefensible. Other than describing Pharmacia’s state of incorporation and principal place of business (¶ 20), the Amended Complaint refers to only two Pharmacia products. (Am. Compl. ¶¶ 39, 42). Plaintiff alleges that one of these products, Adriamycin, had a “spread” of \$207.93 (Am. Compl. ¶ 39) and that the other, Solu-

<sup>1</sup> Pharmacia also joins in the Defendants’ Reply Memorandum in Support of Their Joint Motion to Dismiss the Amended Complaint.

Medrol, had a spread of \$16.39 (Am. Compl. ¶ 42). Plaintiff's Amended Complaint contains no allegations explaining how or why these "spreads" could possibly be fraudulent. Moreover, plaintiff neglects to mention that, in the government report that plaintiff attaches as to the Amended Complaint in an effort to establish "inflated AWP's" (Am. Cmpl. ¶ 42), Adriamycin (along with several other Pharmacia products) are listed among the drugs for which Medicare carriers are to continue reimbursing based on AWP despite the alleged "spreads." Thus, the federal government, knowing of the "spreads" about which plaintiff complains, did not find the spread to be fraudulent.

In sum, the Amended Complaint fails to allege a basis for any claim against Pharmacia, even under Wisconsin's general notice pleading requirements. *See K-S Pharmacies v. Abbott Labs.*, No. 94 CV 2384, 1996 WL 33323859 (Dane Cty. Cir. Ct. May 17, 1996) (setting forth notice pleading requirements). Because the Amended Complaint lacks particularized – or even generalized – allegations against Pharmacia, the Amended Complaint should be dismissed.

Dated: April 19, 2005

Respectfully submitted,

By: 

Beth Kushner SBN 1008591

Timothy Feeley

VON BRIESEN & ROPER, S.C.

411 East Wisconsin Avenue, Suite 700

Milwaukee, WI 53202

Tele: 414.287.1373

Fax: 414.276.6281

John C. Dodds

Kimberly K. Heuer

Erica Smith-Klocek

MORGAN, LEWIS & BOCKIUS, LLP

1701 Market Street

Philadelphia, PA 19103

Tele: 215.963.5000

Fax: 215.963.5001

Scott A. Stempel  
MORGAN, LEWIS & BOCKIUS, LLP  
1111 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
Tele: 202.739.3000  
Fax: 202.739.3001

*Counsel for PFIZER INC.*