

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into by the State of Wisconsin (the “State”) and Baxter Healthcare Corporation (“Baxter”), through their authorized representatives (hereinafter referred to as the “Parties”).

II. PREAMBLE

A. Baxter is a global healthcare company organized under the laws of the State of Delaware and headquartered in Deerfield, IL. Baxter is involved in the marketing and sale of biologics and pharmaceuticals in the United States.

B. On or about June 4, 2004, the State initiated a lawsuit (the “State Lawsuit”) against Baxter and other defendants, in the Circuit Court of Dane County, Wisconsin, Case No. 04 CV 1709, and captioned *State of Wisconsin v. Abbott Laboratories, Inc., et al.* On or about November 1, 2004, the State filed a First Amended Complaint in the State Lawsuit against Baxter and other defendants, and, on or about June 28, 2006, the State filed a Second Amended Complaint against Baxter and other defendants. The following claims have been asserted in the State Lawsuit: violations of provisions of Wisconsin’s Consumer Protection Laws and its Antitrust Laws, as well as claims for Medical Assistance Fraud and Unjust Enrichment. Each of the Parties has vigorously litigated its respective claims and defenses.

C. The State alleges that Baxter caused to be submitted claims for payment for its drugs to the State’s Medicaid Program, established pursuant to or in connection with Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1398v (the “Medicaid Program”).

D. The State contends that it has certain civil claims against Baxter for allegedly engaging in the following conduct, and as more particularly described in the State Lawsuit (hereinafter, the “Covered Conduct”):

(1) The State contends that, during the period from January 1991 through the date of this Agreement, Baxter knowingly set, reported, and maintained, or caused to be set, reported, and maintained, false, fraudulent and inflated Average Wholesale Prices (“AWPs”), Wholesale Acquisition Costs (“WACs”), Wholesale Acquisition Prices (“WAPs”) and/or Direct Prices” for its products that were substantially higher than prices that were widely and commonly available. The State also contends that Baxter knowingly used the artificial spread between the false, fraudulent, and inflated reported prices and the actual acquisition costs of Baxter’s products in marketing, promoting, and selling those products to its customers.

(2) The State contends that as a result of this Covered Conduct, Baxter engaged in unfair, deceptive or unlawful use of AWP’s in the marketing of its products, in further violation of Wisconsin state laws, as more particularly described in the State Lawsuit.

E. The State seeks various forms of relief against Baxter, including compensatory and punitive damages, penalties, forfeiture, disgorgement, injunctive relief, costs and attorneys’ fees.

F. This Agreement is neither an admission of facts or liability by Baxter, nor is it a concession by the State that the State’s claims in the State Lawsuit are not well-founded.

G. Baxter has asserted a number of defenses to the State Lawsuit and has denied and continues to deny the State’s allegations or any wrongdoing in the State Lawsuit.

H. To avoid the delay, expense, inconvenience and uncertainty of protracted litigation of the State's claims, the Parties mutually desire to reach a complete and final settlement, including a settlement and dismissal of the State Lawsuit, as set forth below.

I. The State has determined this Agreement to be in the public interest.

J. This Agreement is the result of a compromise of disputed issues of law and fact, and the Released Defendant does not admit to any violation of any statute or law, or of any liability or wrongdoing, or of the truth of any of the claims or allegations of the State, or waive any defenses thereto. The State agrees it will not urge or seek to admit this Agreement as evidence of any fault or liability of the Released Defendant in any investigation, administrative claim, action, suit, or proceeding, or federal or state court or arbitration proceeding unless ordered to do so by a state court, federal court or arbitration panel.

III. TERMS AND CONDITIONS

NOW THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. In full and final settlement of the State's claims against it, Baxter shall pay, in the aggregate, \$892,500 (Eight Hundred Ninety-Two Thousand Five Hundred Dollars).

2. Baxter shall also pay to Miner, Barnhill & Galland, P, C. the sum of \$157,500 (One Hundred Fifty-Seven Thousand Five Hundred Dollars) as fees and costs. Together with the payment set forth in paragraph 1 (collectively referred to herein as the "Settlement Amount"),

this payment is intended to fully resolve all of the State's claims in the State Lawsuit (including any claims for damages, penalties, attorneys' fees and litigation costs attributable to the litigation of those claims) against Baxter, as further explained in the section governing Releases below.

3. Baxter agrees to pay the full Settlement Amount within thirty (30) days from the Effective Date of this Agreement. Payment shall be made pursuant to Wire Instructions attached hereto as Exhibit A.

4. The Parties acknowledge that the United States may be entitled to a portion of the Settlement Amount (the "Federal Share"), the determination and payment of which shall be handled separately by and between the State and the United States. In the event that the United States is determined to be entitled to a portion of the Settlement Amount, it is understood and agreed that the State shall pay the Federal Share from the Settlement Amount.

5. It is understood and agreed that no portion of the Settlement Amount shall be allocated or attributed to or characterized as the payment of fines, penalties, or other punitive damages.

6. Within three (3) business days following receipt by the State of the payment of the Settlement Amount, the State shall file a Stipulation of Dismissal of Claims with Prejudice in the form attached hereto as Exhibit B and shall take all other necessary steps to cause the prompt dismissal with prejudice of all claims against Baxter in the State Lawsuit. The State agrees that it is not presently prosecuting, will not prosecute or pursue, and will not seek recovery from any *qui tam* "whistleblower" lawsuits or other claims or investigations relating to the Covered Conduct.

7. Subject to the exceptions in Paragraph 8 below, and in consideration of the obligation of Baxter as set forth in this Agreement, conditioned upon the payment in full of the Settlement Amount, the State, on behalf of itself, and its officers, agents, agencies, and departments, agrees to release Baxter, its predecessors, and its current and former parents, divisions, subsidiaries, successors, and assigns, including Baxter International Inc., and its current and former directors, officers, and employees, from any civil or administrative monetary claim that the State or any of its political subdivisions has asserted, could have asserted, or may assert in the future against Baxter for any claims submitted or caused to be submitted to the State Medicaid program, or any other State program, based upon or arising out of the Covered Conduct. The payment of the Settlement Amount fully discharges all such entities and individuals from any obligations to pay restitution, damages, and/or any fine or penalty to the State for the Covered Conduct.

8. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following claims or liabilities: (a) any criminal, civil or administrative claims arising under State revenue codes; (b) any criminal liability not specifically released by this Agreement; (c) any civil or administrative liability that Baxter has or may have under any state statute, regulation or rule not covered by this release; (d) any liability for any conduct other than the Covered Conduct; (e) any claims based upon obligations created under this Agreement; (f) except as explicitly stated in this Agreement, any administrative liability, including exclusion from the State's Medicaid Program; (g) any express or implied warranty claims or other claims for defective or deficient products and/or services provided by Baxter; or (h) any claim based on a failure to deliver items or services due.

9. In consideration of the obligations of Baxter as set forth in this Agreement, conditioned upon Baxter's payment of the Settlement Amount, the State agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the State's Medicaid Program against Baxter, its predecessors, and its current or former parents, divisions, subsidiaries, successors, and assigns based upon the Covered Conduct. The State's Medicaid Fraud Control Unit further agrees to refrain from recommending, causing or attempting to cause any administrative action or sanction, including debarment, by any other government agency of the State for the Covered Conduct. Nothing in this Agreement precludes the State from taking action against Baxter in the event that it is excluded by the federal government, or for conduct and practices other than the Covered Conduct. The State does not release Baxter from any claims or actions which may be asserted by private payors or insurers, including those that are paid by a state's Medicaid program on a capitated basis.

10. Nothing in this Agreement, or the Parties' willingness to enter into this Agreement, shall be construed as an admission by any person or entity, any liability or wrongdoing of any Party, or of the truth of any allegations in the State Lawsuit or in any other AWP-related complaint against Baxter. Baxter expressly denies that it is liable as alleged in the State Lawsuit. The Agreement shall not be admissible in evidence for any such purpose in any proceeding, except for purposes of enforcement of its terms.

11. Notwithstanding the preceding Paragraph, this Agreement may be used by either party and pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, and may be filed, offered, and received into evidence, and otherwise used for such defense.

12. The undersigned Baxter representative represents that he is fully authorized to enter into and execute this Agreement on behalf of Baxter. The undersigned State representatives represent that they are signing this Agreement in their official capacities and that they are fully authorized to enter into and execute this Agreement on behalf of the State and its respective agencies, including the State Medicaid Program.

13. None of the Parties to this Agreement shall be considered the drafter of this Agreement or any included provision for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter.

14. This Agreement shall be governed by and interpreted according to the substantive laws of the State of Wisconsin without regard to its choice of law or conflict of laws principles.

15. The parties consent to venue to enforce the terms of this Agreement in the Circuit Court for Dane County, Wisconsin.

16. This Agreement shall be construed and interpreted to effectuate the Parties' intent, which is to resolve completely the State Lawsuit and claims with respect to Baxter.

17. This Agreement constitutes the complete agreement between the Parties with regard to the settlement and dismissal of the State Lawsuit.

18. This Agreement shall not be modified in any respect except by a writing executed by all parties to this Agreement. The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver by any Party of any

breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneous with this Agreement.

19. This Agreement shall be binding on all successors, transferees, heirs and assigns of the Parties.

20. Each Party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary to carry out this Agreement.

21. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement. Facsimile or .PDF signatures shall be valid signatures as of the date thereof.

22. Except as otherwise provided herein, each Party shall bear its own legal and other costs incurred in connection with the State Lawsuit, including the preparation and performance of this Agreement.

23. This Agreement is effective as of the date of signature of the last signatory to the Agreement.

FOR THE STATE: OF WISCONSIN

FOR THE STATE OF WISONSIN
MEDICAID PROGRAM

By: _____

By: _____

Date: _____

Date: _____

Charles Barnhill
Miner, Barnhill & Galland PC
44 East Mifflin Street, Suite 803
Madison, WI 53703

Charles Barnhill
Miner, Barnhill & Galland PC
44 East Mifflin Street, Suite 803
Madison, WI 53703

BAXTER HEALTHCARE CORPORATION

By: _____

Date: _____

Michael Bolton
Senior Counsel
Baxter Healthcare Corporation
One Baxter Parkway
Deerfield, IL 60015

Wire Instructions for incoming Trust Funds

MB&G TRUST ACCOUNT (MADISON)
CLIENT TRUST FUND

Beneficiary Bank M&I Marshall & Ilsley Bank
One West Main Street
Madison, WI 53703

ABA/routing Number: 076000061

Account Name: Miner Barnhill & Galland IOLTA Trust Account

Account Address: 44 East Mifflin Street, Suite 803

Madison, WI 53703

Account No.: 10005 85744

MBG's Tax ID#: 36 317 52 82

Contact Name: Charles Barnhill

(608) 255-5200

Exhibit A

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	Case No. 04 CV 1709
vs.)	
ABBOTT LABORATORIES, <i>et. al.</i> ,)	
)	
Defendants.)	
)	

STIPULATION OF DISMISSAL OF
BAXTER HEALTHCARE CORPORATION WITH PREJUDICE

Plaintiff, the State of Wisconsin, and Defendant Baxter Healthcare Corporation, by and through their respective counsel, hereby stipulate to the dismissal of all claims in this action stated against Defendant Baxter Healthcare Corporation, with prejudice, each party to bear its own costs, including attorneys' fees. All remaining claims against all remaining Defendants in this action remain in full force and effect.

Respectfully submitted,
STATE OF WISCONSIN

One of Plaintiffs Attorneys

BAXTER HEALTHCARE CORPORATION

By: _____

SO ORDERED ___ day of _____, 2009:

Judge

Exhibit B