

STATE OF ARIZONA

Joint Legislative Budget Committee

STATE
SENATE

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CHAIRMAN 2010
PAULA ABOUD
AMANDA AGUIRRE
DAVID BRASWELL
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HOUSE OF
REPRESENTATIVES

JOHN KAVANAGH
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JOINT LEGISLATIVE BUDGET COMMITTEE

Tuesday, December 14, 2010

2:30 P.M.

Senate Appropriations, Room 109

MEETING NOTICE

- Call to Order
- [Approval of Minutes of October 6, 2010.](#)
- DIRECTOR'S REPORT (if necessary).
- EXECUTIVE SESSION
 - A. State Department of Corrections - Review of Request for Proposals for 5,000 Private Prison Beds per A.R.S. § 38-431.03A2.
 - B. State Department of Corrections - Report on Proposed Correctional Health Services Per Diem Rates per A.R.S. § 38-431.03A2.
 - C. Arizona Department of Administration, Risk Management Services - Consideration of Proposed Settlements under Rule 14.
 - D. Annual Performance Review per Rule 7.
- 1. [ATTORNEY GENERAL - Review of Allocation of Settlement Monies.](#)

The Chairman reserves the right to set the order of the agenda.

12/6/10

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MINUTES OF THE MEETING

JOINT LEGISLATIVE BUDGET COMMITTEE

October 6, 2010

The Chairman called the meeting to order at 9:45 a.m., Wednesday, October 6, 2010, in Senate Appropriations Room 109. The following were present:

Members:	Senator Pearce, Chairman Senator Braswell Senator Gray Senator Harper	Representative Kavanagh, Vice-Chairman Representative Cajero Bedford Representative Campbell Representative Heinz Representative McComish Representative Murphy
Absent:	Senator Aboud Senator Aguirre Senator Pierce Senator Rios	Representative Biggs Representative Williams

APPROVAL OF MINUTES

Hearing no objections from the members of the Committee to the minutes of August 11, 2010, Chairman Russell Pearce stated that the minutes would stand approved.

AHCCCS/DEPARTMENT OF HEALTH SERVICES - Review of Proposed Capitation Rate Changes.

This item was held.

ARIZONA BOARD OF REGENTS - Review of FY 2011 Tuition Revenues.

Ms. Leatta McLaughlin, JLBC Staff, stated that this item is a review of the Arizona Board of Regents FY 2011 tuition collections, which is required by a footnote in the FY 2011 General Appropriation Act. The JLBC Staff presented options to the Committee.

Ms. Christy Farley, Vice President, Government Affairs, Northern Arizona University, responded to member questions.

(Continued)

Representative McComish moved that the Committee give an unfavorable review to the Arizona Board of Regents FY 2011 tuition revenues. The motion carried.

ATTORNEY GENERAL - Review of Allocation of Settlement Monies.

Ms. Marge Zylla, JLBC Staff, stated that this item is a review of the allocation of settlement monies for a total of \$809,500 from 2 settlements: 1) a \$300,000 allocation resulting from mediation as part of ongoing Average Wholesale Price (AWP) litigation with pharmaceutical companies, of which \$273,000 will be deposited into the Consumer Protection-Consumer Fraud Revolving Fund; and 2) a \$509,500 settlement with several vitamin manufacturers, \$50,900 of which will be deposited into the Antitrust Enforcement Revolving Fund and \$458,500 that will be distributed to the Arizona Association of Food Banks (AAFB). The JLBC Staff recommended a favorable review.

Representative McComish moved that the Committee give a favorable review to the Attorney General's allocation plans of settlement monies totaling \$809,500. The motion carried.

GOVERNMENT INFORMATION TECHNOLOGY AGENCY - Review of Arizona Public Safety Communication Advisory Commission.

Mr. Ted Nelson, JLBC Staff, stated that this item is a review of the Government Information Technology Agency's (GITA's) fourth quarter report of expenditures and progress for the statewide interoperability design project. GITA's Public Safety Interoperable Communications Office also submitted its plan for the use of \$2.2 million in FY 2007-2008 anti-racketeering funds. The JLBC Staff presented options to the Committee.

Mr. Greg Wilkerson, City Administrator for the City of Yuma, responded to member questions.

Representative McComish moved that the Committee give a favorable review to GITA's FY 2010 fourth quarter report as well as their plan for use of the \$2.2 million in anti-racketeering funds. The Committee would like GITA's next project review after the fourth quarter of FY 2011. The fourth quarter report will focus on GITA's accomplishments throughout FY 2011. The motion carried.

ARIZONA DEPARTMENT OF ADMINISTRATION - Review of Risk Management Deductible.

Mr. Juan Beltran, JLBC Staff, stated that this item is a review of the Arizona Department of Administration's (ADOA) continuation of the current \$10,000 risk management deductible.

Representative McComish moved that the Committee give a favorable review to ADOA continuing the risk management deductible at its current \$10,000 statutory cap, and recommended that the Legislature consider raising the cap. The motion carried.

EXECUTIVE SESSION

Representative McComish moved that the Committee go into Executive Session. The motion carried.

At 11:04 am. the Joint Legislative Budget Committee went into Executive Session.

Representative Kavanagh moved that the Committee reconvene into open session. The motion carried.
At 11:28 a.m. the Committee reconvened into open session.

A. Arizona Department of Administration - Risk Management Services - Consideration of Proposed Settlements under Rule 14.

Representative Kavanagh moved that the Committee approve the recommended settlement proposal by the Attorney General's Office in the case of Corbett v. State of Arizona. The motion carried.

B. Arizona Department of Administration - Risk Management Annual Report.

This item was for information only and no Committee action was required.

Without objection, the meeting adjourned at 11:30 a.m.

Respectfully submitted:

Sandy Schumacher, Secretary

Richard Stavneak, Director

Senator Russell Pearce, Chairman

NOTE: A full audio recording of this meeting is available at the JLBC Staff Office, 1716 W. Adams.
A full video recording of this meeting is available at <http://www.azleg.gov/jlbc/meeting.htm>.

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DATE: December 7, 2010

TO: Senator Russell Pearce, Chairman
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Marge Zylla, Fiscal Analyst

SUBJECT: Attorney General - Review of Allocation of Settlement Monies

Request

The FY 2011 General Appropriation Act (Laws 2010, Chapter 1) contains a footnote that requires Joint Legislative Budget Committee (JLBC) review of the expenditure plan for settlement monies over \$100,000 received by the Office of the Attorney General (AG), or any other person on behalf of the State of Arizona, prior to expenditure of the monies. Settlements that are deposited in the General Fund pursuant to statute do not require JLBC review.

This request is for review of the expenditure plan for a total of \$1,431,400 from 2 settlements: 1) a \$250,000 settlement resulting from mediation as part of ongoing Average Wholesale Price (AWP) litigation with pharmaceutical companies, of which \$227,500 will be deposited into the Consumer Protection-Consumer Fraud Revolving Fund and \$22,500 will go toward outside counsel compensation; and 2) a \$1,181,400 settlement from a consent judgment with Pulte Homes, of which \$281,400 is designated to compensate Arizona consumers, \$500,000 will be deposited into the Consumer Protection-Consumer Fraud Revolving Fund, \$100,000 will fund the publication of new educational materials, and \$300,000 will go toward AG costs and investigative expenses.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review of the allocation plans from the \$250,000 AWP settlement agreement with the Schering-Plough Group and the \$1,181,400 consent judgment with Pulte Homes. The allocation plans are consistent with A.R.S. § 44-1531.01, which relates to the distribution of monies recovered as a result of enforcing consumer protection or consumer fraud statutes.

(Continued)

Analysis

Average Wholesale Price (AWP) Litigation – Schering-Plough Group

In September 2009, February 2010, August 2010, and October 2010, the Committee favorably reviewed allocations totaling \$2,380,000 from AWP litigation, \$2,155,900 of which was deposited into the Consumer Fraud Revolving Fund.

The AWP of prescription drugs was a widely used benchmark for pricing prescription drugs, determining reimbursement levels for healthcare providers under Medicare and Medicaid programs, and establishing payment amounts due from insurers and consumers under Medicare and private insurance. In December 2005, the AG filed suit against several pharmaceutical manufacturers alleging that the companies reported inaccurate prices to trade publications, which led to inflated reimbursement rates.

The State of Arizona and some additional pharmaceutical companies (Merck and Co., Inc; Schering-Plough Corp.; Schering Corp.; Warrick Pharmaceuticals), have reached an agreement that requires the defendants to pay \$250,000 to Arizona. Of the total, \$22,500 will go toward outside counsel attorney fees. The remaining \$227,500 will be deposited into the Consumer Protection-Consumer Fraud Revolving Fund to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act. The settlement does not acknowledge any wrongdoing on the part of the pharmaceutical companies.

The lawsuit involving the remaining pharmaceutical companies is still ongoing, as are other AWP cases from different states, and a nationwide class action suit that includes Arizona consumers. When the settlements receive final court approval, Arizona consumers will have the opportunity to submit claims for reimbursement.

Pulte Home Corporation

The Attorney General entered into a settlement with Pulte Homes and Pulte Mortgage, LLC in August 2010. The settlement resolves a lawsuit alleging misrepresentations in home and mortgage product sales. The lawsuit included allegations that Pulte Homes 1) led consumers to believe they had qualified for certain financing when they had not, 2) misrepresented conditions under which consumers could obtain earnest money deposit refunds, and 3) provided sales disclosure information in their English language materials that was different than in their Spanish language materials.

The settlement does not acknowledge any wrongdoing on the part of Pulte Homes. It requires Pulte Homes to ensure home sales representatives do not represent or imply that they are able to pre-qualify buyers for home loans, to have equivalent information on their English language and Spanish language publications, and to disclose that certain buyer incentives only apply to buyers using Pulte Mortgage, LLC or other affiliated businesses. The settlement also requires Pulte Homes to refund \$81,400 in earnest money deposits to consumers who have already been identified, place \$200,000 in an escrow account to fund additional claims for earnest money deposit refunds, and pay \$100,000 to publish and disseminate Spanish language educational home-buying materials. Additionally, the settlement requires that Pulte Homes pay \$500,000 to the AG to be deposited into the Consumer Protection-Consumer Fraud Revolving Fund to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act, as well as pay \$300,000 to the AG for reimbursement for AG costs and investigative expenses.

RS/MZ:mt



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Dena Rosen Epstein
Consumer Protection &
Advocacy Section
Direct: (602) 542-7717
Dena.Epstein@azag.gov

November 18, 2010

The Honorable Robert L. Burns
President of the Senate
1700 West Washington Street
Phoenix, AZ 85007

The Honorable Kirk Adams
Speaker of the House
1700 West Washington Street
Phoenix, AZ 85007

The Honorable Russell K. Pearce
Chairman, Joint Legislative Budget Committee
1700 West Washington Street
Phoenix, AZ 85007



Re: *State ex rel Goddard v. Abbot Laboratories, et al.*, CV 2005-018711 (Ariz. Sup. Ct.), removed and transferred to *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456

Gentlemen:

The State of Arizona recently settled a case against Merck & Co., Inc. (formerly known as Schering-Plough Corp.), Schering Corporation, and Warrick Pharmaceuticals Corporation (collectively known as the "Schering-Plough Group") resolving claims asserted in the Average Wholesale Price Litigation described below.

In December 2005, our Office, through outside counsel, filed suit in Maricopa County Superior Court against several pharmaceutical manufacturers for manipulating the Average Wholesale Price ("AWP") of prescription drugs in connection with the marketing and sale of certain prescription drugs sold in Arizona. AWP has been a widely utilized benchmark for pricing prescription drugs and for reimbursing physicians and other healthcare providers for the administration of certain drugs under the Medicare and Medicaid programs. It has also been used to determine amounts paid by insurers and co-pays by consumers under the Medicare program or through private insurance.

The State's Complaint alleges that the defendants violated the Arizona Consumer Fraud Act (A.R.S. § 44-1521 et seq.) by, among other things, providing false information

about their reported prices to trade publications, which in turn led to inflated reimbursement rates. The lawsuit seeks various forms of relief, including injunctive relief, civil penalties, restitution for Arizona consumers, costs, and attorneys' fees.¹

After the lawsuit was filed, the defendant pharmaceutical manufacturers successfully removed the case to federal district court in Massachusetts. Several other AWP cases are also pending in Massachusetts district court, including a nationwide consumer class action that includes Arizona consumers. Settlements on behalf of the consumer class have been reached with many of the defendants. Arizona consumers will have the opportunity to submit claims for reimbursement once the settlements receive final court approval.

This case is the fourth settlement resulting from court ordered mediation in the Average Wholesale Price litigation. The Joint Legislative Budget Committee favorably reviewed the State's settlement with Abbot Laboratories and others at its September 22, 2009 meeting, the settlement with Bristol Myers Squibb and others at its February 2, 2010 meeting, the settlement with Dey, Inc. and others at its August 11, 2010 meeting and the settlement with Johnson and Johnson at its October 6, 2010 meeting.

This settlement agreement requires the Schering-Plough Group to pay \$250,000 in exchange for a release of the claims asserted in the lawsuit. As provided in our agreement with outside counsel and as approved by the court, outside counsel received approximately \$22,500 of the settlement amount for their attorneys' fees. Pursuant to A.R.S. § 44-1531.01(B), ninety-one percent, or \$227,500, of the settlement funds were deposited into the Consumer Fraud Revolving Fund to be used for the purposes specified in the statute.

This settlement does not constitute an admission of liability.

Our notification of this settlement is made without prejudice to our Office's long-standing position that it is not under any legal obligation to provide notices of settlements to the Joint Legislative Budget Committee. We are providing this notification to you as a courtesy so that you will be aware of this important settlement.

If you have any questions, please feel free to contact me at (602) 542-7717 or by e-mail at dena.epstein@azag.gov.

Sincerely,



Dena Rosen Epstein
Section Chief Counsel
Consumer Protection and Advocacy Section

cc: The Honorable Russell K. Pearce
The Honorable David Schapira
The Honorable David Lujan
Mr. Richard S. Stavneak
Ms. Marge Zylla (Settlement Agreement enclosed)

¹ The industry has moved away from its heavy reliance on AWP as a pricing benchmark in the years since Arizona filed this lawsuit.

November 18, 2010

Page 3

Mr. Joe Kanefield
Mr. Greg Stanton
Ms. Jennifer Boucek
Mr. John T. Stevens, Jr.

#1325656



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Nancy M. Bonnell
Antitrust Unit Chief

December 2, 2010

The Honorable Robert Burns
President of the Senate
1700 West Washington
Phoenix, Arizona 85007

The Honorable Kirk Adams
Speaker of the House
House of Representatives
1700 West Washington
Phoenix, Arizona 85007

The Honorable John Kavanaugh
Chairman, Joint Legislative Budget Committee
1700 West Washington
Phoenix, Arizona 85007



Re: *State of Arizona et al. v. Pulte Home Corporation, et al.*

Dear Gentlemen:

The State of Arizona recently settled a case against Pulte Home Corporation and Pulte Mortgage, LLC (collectively "Pulte") resolving allegations that Pulte had engaged in deceptive business practices.

The settlement, in the form of a Consent Judgment, resolves the State's investigation of alleged deceptive practices employed by Pulte in the sales of their homes and mortgage products. According to the Complaint filed in Maricopa County Superior Court, Pulte Home sales representatives made representations to consumers that led them to believe they had qualified for financing at certain interest rates or monthly payments when they had not. The Complaint also alleged that Pulte misrepresented the conditions under which consumers could obtain earnest money deposit refunds or, in some instances, failed to refund earnest money deposits when consumers had met the conditions for refunds. Finally, the Complaint alleged that Pulte provided different disclosure information in their English language sales materials than their Spanish language sales materials.

The Consent Judgment does not constitute an admission of wrongdoing by Pulte. Under this settlement, which has been approved by the court, Pulte has agreed to comply with the Arizona Consumer Fraud Act and do the following:

- Ensure that Pulte Home's Arizona sales representatives do not represent or imply that they are able to "pre-qualify" Arizona consumers for home loans;
- Disclose orally and in writing that communications between a prospective buyer and Pulte sales staff regarding how much home the consumer can afford do not constitute an offer of financing;
- In one document clearly disclose that:
 - Pulte offers buyers incentives, such as free upgrades or money toward closing costs, in exchange for the buyers' use of Pulte Mortgage or other affiliated businesses and consumers who do decide to use a lender other than Pulte Mortgage will not receive such incentives or discounts;
 - There are other providers of such services and that fees, charges, loan terms and interest rates may differ among providers;
- Ensure that the representations made in its English language and Spanish language marketing materials are equivalent;
- Refund \$81,400 to ten Arizona consumers who wrongly forfeited their earnest money deposits after canceling their purchase agreements;
- Pay \$200,000 into an escrow account which will fund any new, legitimate claims for earnest money deposit refunds that are filed with the Attorney General's Office within 12 months of the settlement;
- Pay \$500,000 to the Consumer Fraud Revolving Fund to fund the Attorney General's consumer protection, education and outreach programs;
- Pay \$100,000 to fund the publication and dissemination of Spanish language educational materials, including a glossary of home buying terms;
- Pay \$300,000 as reimbursement of the Attorney General's costs and investigative expenses.

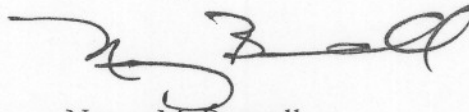
Our notification to you of this settlement is made without prejudice to our Office's long standing position that it is not under any legal obligation to provide notices of settlements to the

Hon. Robert Burns
Hon. Kirk Adams
Hon. John Kavanaugh
December 2, 2010
Page 3

Joint Legislative Budget Committee. We are providing this notification to you as a courtesy so that you will be aware of this important settlement.

Please call me at (602) 542-7728 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy M. Bonnell', with a stylized flourish at the end.

Nancy M. Bonnell
Consumer Protection and Advocacy Section

Enclosures

cc: The Honorable David Schapira
The Honorable David Lujan
Mr. Richard S. Stavneak
Ms. Marge Zylla (Consent Judgment enclosed)
Mr. Joe Kanefield
Ms. Jennifer Boucek
Mr. John T. Stevens, Jr.