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PROCESSED

Form 7

IN THE FEDERAL COURT OF AUSTRALIA

VICTORIA DISTRICT REGISTRY

GENERAL DIVISION

File No. VID4/2010

IAN WINTERFORD
Applicant

PFIZER AUSTRALIA PTY LIMITED
ACN 008 422 348
Respondent

REVISED FOURTH AMENDED STATEMENT OF CLAIM
UNDER PART IVA OF THE *FEDERAL COURT OF AUSTRALIA ACT, 1976*

(Order 4 rule 6 and Order 11)

PURSUANT TO ORDERS OF THE HONOURABLE JUSTICE BROMBERG MADE ON 1 OCTOBER 2012

APPLICANT

1. The applicant was born on 19 May 1946 and is now aged 66 years.

2. The applicant completed Form 4 in Adelaide and completed a five year apprenticeship in electronics.

3. The applicant has been employed mainly as a salesman selling electrical and sound equipment and servicing it in Australia and New Zealand.

4. In 1998 the applicant suffered a heart attack and has not worked since 1999 being on a disability support pension since.

Filed by the Applicant

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Ref:	**AG:WINT/IAN210019**		

IN THE FEDERAL COURT OF AUSTRALIA (FCA)
VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION **No: VID4/2010**

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/10/2012.

DETAILS OF FILING

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File Title:	Ian Winterford v Pfizer Australia Pty Ltd
District Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

SEAL OF THE FEDERAL COURT OF AUSTRALIA

Dated: 3/10/2012 **Registrar**

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.

THE APPLICANT'S HEALTH

5. At age 22 the applicant was diagnosed with hypertension and since 1990 has been treated with hypertensives including Cordilox.

6. The applicant suffers ischaemic heart disease being a small myocardial infarction and in October 1995 was investigated with angiography and treated with angioplasty on 12 October 1995.

7. Following his heart attack and divorce from his first wife the applicant suffered depression and anxiety.

8. The applicant has been impotent since 1997 and has been treated with Caverject injections.

9. The applicant contracted gonorrhea which was treated in February 2005.

10. The applicant has suffered bowel cancer and was treated with right hemicolectomy on 11 March 2010 and is presently in remission.

MARRIAGE HISTORY

11. The applicant was first married in 1968 to Sandra by whom he had a daughter who is now 40 years of age, married and the mother of three children. The applicant divorced Sandra in 1986.

12. The applicant remarried in 2006 to Made and they have subsequently divorced.

13. On 12 January 2012 the applicant married Christiana who he met on the internet. His wife is currently in Indonesia awaiting the outcome of her Visa application.

PARKINSON'S DISEASE

14. In 1999 the applicant was diagnosed as suffering Parkinson's Disease. In December 2003 Dr Robinson prescribed and the Applicant commenced consuming Cabaser (Cabergoline) tablets (the "tablets") at 1mg per day.

15. The applicant was given no or no adequate warning by his treating doctors, pharmacists or health care workers or in the packaging or in the pamphlet that came with the medication as to the effects the drug might have causing him to undertake altered and for him abnormal behaviour of compulsive gambling.

16. The tablets were effective in controlling the applicant's Parkinson's Disease. In approximately January 2004 the applicant increased the dose to 2mg per day to maintain the effectiveness of the drug and by October 2004 the dose was increased to 4mg daily.

GAMBLING

17. In early 2004 the applicant started to gamble heavily on poker machines in hotels. The applicant was driven by a need to gamble and felt happy when he did so. Whenever the applicant had money he put it through poker machines.

18. The applicant had a fortnightly pension of about $400.00 all of which he put through poker machines.

19. The applicant sold real estate, pawned various possessions, borrowed money from friends and drew money from various bank accounts. On the documentation presently available to him the applicant identifies at least the following losses due to gambling:

24/07/2006 – Sale of 4/2 Middle Road, Salsbury North, South Australia, net to applicant	$45,521.45
11/10/2006 Sale of car	$829.00
Numerous articles pawned for a total of about	$6,135.00
Loan from brother Arthur, approximately	$2,400.00
Loan from James Morcomb	$1,000.00
Loan from Warren Lane	$50.00
Drawings from commercial bank MasterCard	$2,350.00
Drawings from ANZ	$2,621.40
Drawings from St George Bank	$25,749.00
Drawings from Bank of South Australia	$21,003.50
TOTAL	**$107,659.35**

Particulars of further loss will be provided when available.

20. The applicant continued gambling in this compulsive manner until October 2010. In about October 2010, the applicant ceased taking the tablets as a result of seeing an article on the internet in relation to these proceedings. Within about a fortnight after ceasing consumption of the tablets the applicant no longer had a compulsion to gamble.

21. The applicant's compulsive gambling was caused by the effect of the dopamine agonist contained in the Cabaser (Cabergoline) that caused a chemical reaction in the applicant's brain that affected the D2 and D3 receptors and was designed to stimulate the central dopaminergic pathways that have close links to the brain's reward system.

21A. The effect on the applicant's behaviour referred to in paragraph 21 was:

(a) to cause abnormal behaviour for him which resulted in loss and damage without constituted personal injury; or

(b) alternatively, constituted personal injury which resulted in abnormal behaviour for him and caused him to suffer loss and damage

22. The effect on the applicant of the Cabaser (Cabergoline) tablets was to cause him to compulsively gamble on poker machines.

23. As a result of his compulsive gambling the applicant lost money.

24. Further, as a result of his compulsive gambling due to the consumption of the tablets the applicant has suffered depression and anxiety.

25. Alternatively, it is alleged the applicant suffered a psychiatric injury being pathological gambling as a result of the consumption of the tablets.

THE APPLICANT'S CLAIM

26. The applicant claims that his consumption of the tablets caused him to compulsively gamble and thereby suffer loss and damage.

27. Alternatively, the applicant claims that his consumption of the tablets caused him psychiatric injury being pathological gambling

28. Further, as a consequence of his compulsive gambling and its consequences the applicant suffers depression and anxiety.

29. The applicant suffered loss and damage as a result of the consumption of the tablets manufactured and or supplied by the respondent or its predecessors Pharmacia Australia Pty Ltd from 24 October 1996 to 2010 without any or any adequate warning of the Cabaser or Dostinex (Cabergoline) conditions (as defined in paragraph 30(c) hereafter).

29A. The Respondent's failure to warn or provide any adequate warning to the applicant and his pharmacists, medical professionals and health care workers caused the Applicant to consume and continue to consume the tablets.

29B. Because of the failure to warn or adequately warn the Applicant, his pharmacists, medical professionals and health care workers of the Cabaser or Dostinex (Cabergoline) conditions, the applicant was not made aware that his compulsive gambling was caused by the ingestion of the tablets and so continued to consume the tablets.

THE GROUP MEMBERS

30. The group members to whom this proceeding relates ("the group members") are all persons who:

(a) were diagnosed with Parkinson's Disease or Restless Legs Syndrome or pituitary gland tumours ("the diagnosed illnesses") and who, between 1996 and 2010 obtained prescriptions for Dopamine agonist tablets known under the trade mark or brand "Cabaser" or "Dostinex" (Cabergoline) (both of which are hereafter referred to as "the tablets") from medical practitioners in Australia to treat the diagnosed illnesses; and

(b) used the prescription referred to in (a) supra between 1996 and 2010 to obtain the tablets in Australia and consumed the tablets at any time during that period; and

(c) after commencing to consume and while consuming the tablets referred to in (b) above suffered changed and abnormal behaviour for them being:

i. compulsive gambling;

ii. compulsive spending;

iii. compulsive eating

iv. hyper-sexuality;

v. punding (meaning a compulsive fascination with and performance of repetitive, mechanical tasks);

vi. a combination of the behaviours referred to at (i) – (v) supra ("the Cabaser or Dostinex (Cabergoline) conditions")

(d) suffered loss and/or damage as a result of the Cabaser or Dostinex (Cabergoline) conditions.

31. At the time of commencement of this proceeding there are more than seven group members.

The Group Members Claim

32. The group members claim compensation for losses suffered as a result of changed and abnormal behaviour for them being:

i. compulsive gambling;

ii. compulsive spending;

iii. compulsive eating

iv. hyper-sexuality;

v. punding (meaning a compulsive fascination with and performance of repetitive, mechanical tasks);

vi. a combination of the behaviours referred to at (i) – (v) supra ("the Cabaser or Dostinex (Cabergoline) conditions")

33. (a) Each group member was diagnosed with one of the diagnosed illnesses and between 1996 and 2010 was given prescriptions for the tablets.

(b) used the prescriptions referred to in (a) supra between 1996 and 2010 to obtain the tablets in Australia;

(c) consumed and continued to consume the tablets at any time during that period;

(d) was not given any or any adequate warning of the Cabaser or Dostinex (Cabergoline) conditions;

(e) suffered changed behaviour which was abnormal for them while consuming the tablets and which was one or more of the Cabaser or Dostinex (Cabergoline) conditions;

(f) would have avoided the Cabaser or Dostinex (Cabergoline) conditions or their consequences if he or she or his or her pharmacists, medical professionals and health care workers had been warned or adequately warned of the Cabaser or Dostinex (Cabergoline) conditions

(g) suffered losses as a result of suffering from one or more of the Cabaser or Dostinex (Cabergoline) conditions

33A As a result of the failure of the Respondent, to warn or adequately warn the group members and the group members pharmacists, medical professionals and health care workers, the group members each suffered loss and / or damage and / or psychiatric injury as a result of one or more of the Cabaser or Dostinex (Cabergoline) conditions.

33B As a result of the failure of the Respondent, to warn or adequately warn, the group members and the group members pharmacists, medical professionals and health care workers, the group members were not made aware that their Cabaser or Dostinex (Cabergoline) conditions were caused by the ingestion of the tablets and so continued to consume the tablets

33C. The Cabaser or Dostinex (Cabergoline) conditions suffered by each group member were caused by the effect of the dopamine agonist contained in the Cabaser or Dostinex (Cabergoline) that caused a chemical reaction in the brain that affected the D2 and D3 receptors and was designed to stimulate the central dopaminergic pathways that have close links to the brains reward system

33D. The effect on each group members brain referred to in paragraph 33C was:

(a) to cause abnormal behaviour for them which resulted in loss and damage without constituted personal injury; or

(b) alternatively, constituted personal injury which resulted in abnormal behaviour for him or her and caused him or her to suffer loss and damage; or

(c) alternatively, caused the Cabaser or Dostinex (Cabergoline) conditions which constitute psychiatric injury

THE RESPONDENTS

34. From 24 October 1996 to 23 April 2004 (the "first period") the tablets were manufactured, distributed and supplied by Pharmacia Australia Pty Ltd ("Pharmacia").

35. On 23 April 2004 Pharmacia Australia Pty Ltd entered into a merger agreement with the respondent whereby the respondent assumed all liabilities of Pharmacia Australia Pty Ltd.

36. On 23 April 2004 Pharmacia Australia Pty Ltd ceased trading and has since been deregistered

36A. From 24 April 2004 to 2010 (the "second period") the tablets were manufactured, distributed and supplied by the Respondent

37. At all material times Pharmacia and the respondent are and were companies owned and controlled by Pfizer Inc.

38. In the circumstances the respondent is liable to the applicant and group members as manufacturer, distributor and supplier from 24 October 1996 to 2010.

39. The respondent is and was at all relevant times:

(a) a company incorporated pursuant to the law and capable of being sued.

(b) a trading corporation pursuant to the Trade Practices Act, 1974 (Cth);

(c) liable as the manufacturer, distributor and supplier of the tablets.

(d) engaged in trade and commerce

LIABILITY IN NEGLIGENCE

DUTY OF CARE

40. During the second period ~~At all material times~~ the respondent and during the first period ~~and / or~~ Pharmacia manufactured, marketed and distributed prescription drugs and had a duty to identify the effects of the drugs it marketed and distributed and to give adequate and timely warnings to pharmacists, medical professionals and health care workers and users of the drugs of the risk of side effects from consumption of the drugs.

41. ~~At all relevant times~~ During the second period the respondent and during the first period ~~or~~ Pharmacia:

    (a) manufactured;

    (b) packaged and labelled;

    (c) marketed;

    (d) distributed and / or;

    (e) supplied

    the tablets in Australia.

42. ~~At all relevant times~~ During the second period the respondent and during the first period ~~/ or~~ Pharmacia knew or ought to have known that the consumption of the tablets carried the risk of the consumer suffering one or more of the Cabaser or Dostinex (Cabergoline) conditions.

43. ~~At all relevant times~~ During the second period the respondent and during the first period ~~/ or~~ Pharmacia had a duty to warn pharmacists, medical professionals, health care workers and consumers of the tablets of the risk of suffering one or more of the Cabaser or Dostinex (Cabergoline) conditions as a result of consuming the tablets.

PARTICULARS OF KNOWLEDGE

44. The Respondent and / or Pharmacia knew or ought to have known that consumption of the tablets would cause some consumers to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions as a result of:

(a) Research and investigation undertaken by it, or of which it was aware, into the side effects from consumption of the tablets at various dosages.

Particulars

(i) The applicant cannot provide particulars under this heading until completion of discovery by the respondent and will provide them following discovery

(b) Results of clinical and other trials undertaken by it, or of which it was aware, into the side effects from consumption of the tablets at various dosages.

Particulars

(i) The applicant cannot provide particulars under this heading until completion of discovery by the respondent and will provide them following discovery

(c) Research and scientific papers showing that dopamine agonists were a cause of conditions such as the Cabaser or Dostinex (Cabergoline) conditions and/or psychiatric injury

Particulars

Research and general scientific papers currently known to the applicant are listed in Schedule 1 annexed hereto. Further particulars will be provided when information is available following discovery.

(d) Participation in and general knowledge of various court cases

Particulars

Schick v Boehringer Ingelheim (Canada) Ltd., Boehringer Ingelheim Pharaceuticals Inc and Pfizer Inc 2011 ONSC Court File: 05-CV-288851CP

Lepine v Boehringer Ingelheim (Canada) Ltd, Quebec Superior Court Number 500-06-000463-097

Banerjee v Shire Biochem, Draxis Health, Eli Lilly Canada Inc and Eli Lilly & Company, Ontario Superior Court of Justice Court Number 05-CV-293457

Mirapex Products Liability Litigation United State District Court - District of Minnesota MDL 07 - 1836 "All actions" and related actions including:

Gazal v Boehringer Ingelheim Pharmaceuticals, Pfizer Inc, Pharmacia Corporation and Pharmacia & Upjohn LLC

Hudson v Boehringer Ingelheim Pharmaceuticals, Pfizer Inc, Pharmacia Corporation and Pharmacia & Upjohn LLC

Charbonneau v Boehringer Ingelheim Pharmaceuticals, Pfizer Inc, Pharmacia Corporation and Pharmacia & Upjohn LLC

Breach of duty

45. Negligently and in breach of its duty to warn in the second period the ~~their duty to warn the~~ respondent and in the first period ~~/ or~~ Pharmacia failed to give any or any adequate warnings to medical professionals, pharmacists, health care workers, the applicant and group members of risk of the Cabaser or Dostinex (Cabergoline) conditions.

46. As a result of the absence of any or any adequate warning the consumers continued to consume the tablets and continued to suffer the Cabaser or Dostinex (Cabergoline) conditions.

PARTICULARS OF NEGLIGENCE

47. During the second period the respondent and during the first period ~~/ or~~ Pharmacia were negligent in that they:

(a) failed to undertake or cause to be undertaken any or any adequate research or investigation to obtain knowledge into possible side effects from consumption of dopamine agonists and the tablets at various dosages;

(b) failed to undertake or cause to be undertaken any or any adequate trials or clinical trials to obtain knowledge into possible side effects from the consumption of dopamine agonists and the tablets at various dosages;

(c) failed to have regard or sufficient regard to research, investigation or clinical trials undertaken by others to obtain knowledge into the side effects of the consumption of dopamine agonists and the tablets at various dosages;

(d) failed to include any or any adequate information, advice or warning on packets or in the packaging of the tablets to inform consumers that the consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions;

(e) failed to include any or any adequate information, advice or warning in the packaging of or product information or consumer medicine information relating to the tablets, to inform consumers that consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions;

(f) failed to provide pharmacists, medical practitioners and other health professionals with any or any adequate information, advice or warning that consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions;

(g) failed to include any or any adequate information, advice or warning on packets of the tablets informing consumers that consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions after it became so aware;

(h) failed to include any or any adequate information, advice or warning in the packaging of the tablets informing consumers that consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions after it became so aware;

(i) failed to provide pharmacists, medical practitioners and other health professionals with any or any adequate information, advice or warning that consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions after it became so aware.

48. As a result of the respondent's ~~and Pharmacia's~~ negligence during the second period and Pharmacia's negligence in the first period, the applicant:

(a) was prescribed the tablets by medical practitioners in Australia;

(b) obtained the tablets from a pharmacist in Australia;

(c) consumed the tablets pursuant to the instructions on the relevant prescription;

(d) suffered one or more of the Cabaser or Dostinex (Cabergoline) conditions being compulsive gambling; and

(e) experienced pain and suffering and suffered loss and damage and / or injury as pleaded in paragraphs 17 to 25.

49. As a result of the respondent's negligence in the second period and Pharmacia's negligence in the first period, the group members ~~from~~ between 1996 to 2010:

(a) were prescribed the tablets by medical practitioners in Australia;

(b) obtained the tablets from a pharmacist in Australia;

(c) consumed and continued to consume the tablets pursuant to the instructions on the relevant prescription;

(d) suffered one or more of the Cabaser or Dostinex (Cabergoline) conditions; and

(e) experienced pain and suffering and suffered loss and damage and / or injury, particulars of which will be provided prior to consideration of their individual claims.

SECTION 52 OF THE TRADE PRACTICES ACT (CTH)

50. Further and in the alternative, during the second period the respondent and in first period Pharmacia in trade and commence engaged in conduct that was misleading or deceptive or likely to mislead or deceive in that it:

(a) packaged and distributed the tablets to pharmacists, medical professionals and health care workers without any or any adequate warning as to the Cabaser or Dostinex (Cabergoline) conditions; and

(b) distributed Cabaser or Dostinex (Cabergoline) "product information" without any or any adequate warning as to the Cabaser or Dostinex (Cabergoline) conditions.

(c) failed to include any or any adequate information, advice or warning on packets or in the packaging of the tablets to inform consumers that the consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions;

(d) failed to include any or any adequate information, advice or warning in the packaging of or product information or consumer medicine information relating to the tablets, to inform consumers that consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions;

50A. During second period the respondent's and during the first period Pharmacia's failure to warn or provide any adequate warning of the Cabaser or Dostinex (Cabergoline) conditions, constituted a representation that the tablets were safe to use without causing the Cabaser or Dostinex (Cabergoline) conditions.

51. The respondent's in the second period and Pharmacia's in the first period failure to warn or provide any adequate warning as alleged of the Cabaser or Dostinex (Cabergoline) conditions misled and deceived:

(a) pharmacists, medical professionals and healthcare workers responsible for the supply, prescribing and administering the tablets;

(b) the applicant and group members who consumed the tablets.

52. The Applicant and group members relied on the respondent in the second period and Pharmacia in the first period to warn or adequately warn of the Cabaser or Dostinex (Cabergoline) conditions and so consumed and continued consuming the tablets, due to the absence of warning or adequate warnings.

53. The Applicant and the group members suffered loss and damage as a result of the

Cabaser or Dostinex (Cabergoline) conditions

SECTION 74B TRADE PRACTICES ACT

54. Further and in the alternative, ~~at all relevant times~~ during the second period the respondent and during the first period ~~/or~~ Pharmacia:

(a) Marketed;

(b) distributed,;

(c) supplied;

(d) packaged and labelled and provided product information and / or consumer medicine information for;

the tablets in Australia and for the purposes of section 74B of the Act the respondent or Pharmacia is deemed, pursuant to section 74A of the Act, to have manufactured the tablets.

55. During the second period the respondent ~~or~~ and during the first period Pharmacia supplied the tablets to pharmacists and medical practitioners in Australia ("the intermediate suppliers") in trade and commerce.

56. Each intermediate supplier acquired the tablets from the respondent or Pharmacia for re-supply.

57. One or more of the intermediate suppliers supplied the applicant and each group member with the tablets which they consumed.

58. The applicant and the group members were consumers and acquired the tablets consumed by them to treat the diagnosed illnesses ("the purpose of acquisition").

59. The applicant and each group member ~~directly or~~ indirectly and by implication made known to the respondent in the second period and Pharmacia in the first period through the intermediate supplier or suppliers the purpose for which each had acquired the tablets for them, being treatment of one of the diagnosed illnesses without suffering ~~the~~ avoidable side effects and in particular the Cabaser and Dostinex (Cabergoline) conditions.

60. The tablets consumed by the applicant and each group member were not reasonably fit for the purpose of acquisition in that they did not provide warning or any adequate warning of the Cabaser or Dostinex (Cabergoline) conditions on the labelling, packing and product information and / or consumer medicine information pursuant to section 74B of the Act .

PARTICULARS

(a) The consumption of the tablets caused the applicant and each group member to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions.

61. As a result of the tablets consumed by the applicant and each of the group members not being reasonably fit for the purpose of acquisition the applicant and each group member suffered one or more of the Cabaser or Dostinex (Cabergoline) conditions and thereby suffered loss and damage.

62. Pursuant to section 74B of the Act, the respondent is liable to compensate the applicant and each group member for the amount of the loss and damage suffered by them as a result of having suffered one of more of the Cabaser or Dostinex (Cabergoline) conditions.

SECTION 74D TRADE PRACTICES ACT

63. Further and in the alternative, ~~at all relevant times~~ the respondent in the second period and ~~/ or~~ Pharmacia in the first period:

(a) Marketed;

(b) distributed,;

(c) supplied;

(d) packaged and labelled and provided product information and / or consumer medicine information for;

the tablets in Australia and for the purposes of section 74D of the Act the respondent or Pharmacia is deemed, pursuant to section 74A of the Act, to have manufactured the tablets.

64. During the second period the respondent and during the first period Pharmacia supplied the tablets consumed by the applicant and group members to the intermediate suppliers, in trade and commerce.

65. Each intermediate supplier acquired the tablets consumed by the applicant and group members from the respondent or Pharmacia for re-supply.

66. One or more of the intermediate suppliers supplied the applicant and each group member as a consumer with the tablets which they consumed.

67. The tablets consumed by the applicant and each group member were not of merchantable quality in that they did not provide warning or any adequate warning on the labelling, packaging and product information and / or consumer medicine information relating to the tablets of the Cabaser or Dostinex (Cabergoline) conditions within the meaning of section 74D of the Act.

PARTICULARS

(a) Consumption of the tablets caused the applicant and each group member to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions and the tablets were not thereby fit for the purpose for which they were bought as it is reasonable to expect in all the relevant circumstances.

(b) during the second period the respondent and during the first period Pharmacia failed to include any or any adequate information, advice or warning on packets or in the packaging of the tablets to inform consumers that the consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions;

(c) during the second period the respondent and during the first period Pharmacia failed to include any or any adequate information, advice or warning in the packaging of or product information or consumer medicine information relating to the tablets, to inform consumers that consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions;

68. As a result of the tablets consumed by the applicant and each group member not being of merchantable quality, the applicant and each group member suffered one or more

of the Cabaser or Dostinex (Cabergoline) conditions and thereby suffered loss and damage.

69. Pursuant to section 74D of the Act, the respondent is liable to compensate the applicant and each group member for the amount of loss and damage suffered by them as a result of having suffered one or more of the Cabaser or Dostinex (Cabergoline) conditions and each group member is entitled to recover compensation by this action against the respondent.

SECTION 75AD TRADE PRACTICES ACT

70. Further and in the alternative ~~at all relevant times~~ during the second period the respondent and ~~/ or~~ during the first period Pharmacia supplied goods being the tablets manufactured by it that had a defect because of which the applicant and group members suffered injuries, loss and damage.

71. The tablets had a "defect" as defined by section 75AC of the Trade Practices Act in that:

(a) They caused consumers one or more of the Cabaser or Dostinex (Cabergoline) conditions;

(b) They did not carry a warning that they caused the Cabaser or Dostinex (Cabergoline) conditions

(c) during the second period the respondent and during the first period Pharmacia failed to include any or any adequate information, advice or warning on packets or in the packaging of the tablets to inform consumers that the consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions;

(d) during the second period the respondent and during the first period Pharmacia failed to include any or any adequate information, advice or warning in the packaging of or product information or consumer medicine information relating to the tablets, to inform consumers that consumption of the tablets may cause the consumer to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions;

PARTICULARS

(i) The tablets were defective in that their safety was not such as persons generally were entitled to expect (section 75AC(1).

~~(ii) The relevant circumstances under section 75AC(2) include:~~

~~(a) The manner in which, and the purposes for which, the tablets have been marketed; and~~

~~(b) Their packaging; and~~

~~(c) Any instructions for, or warnings with respect to, doing, or refraining from doing, anything with or in relation to them; and~~

~~(d) What might reasonably be expected to be done with or in relation to them.~~

72. As a result of the defect:

(a) Consumption of the tablets caused the applicant and group members to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions.

(b) There was no or no adequate warning on the packaging that consumption of the tablets would cause one or more of the Cabaser or Dostinex (Cabergoline) conditions

73. Pursuant to section 75AD of the Act, the respondents ~~is~~ are liable to compensate the applicant and each group member for the amount of loss and damage suffered by them as a result of having suffered one or more of the Cabaser or Dostinex (Cabergoline) conditions and the applicant and each group member is entitled to recover compensation by this action from the respondent.

COMMON QUESTIONS OF LAW AND FACT

74. The questions of fact or law common to the claims of the applicant and group members are as follows:

(a) ~~Between 1996 and 2010 ("all relevant times") did the respondent and / or Pharmacia:~~

I. During the first period did Pharmacia;

II. During the second period did the respondent;

III. Between 1996 and 2010 did the respondent and / or Pharmacia;

i. Manufacture the tablets?

ii. Package and label the tablets?

iii. Market the tablets in Australia?

iv. Distribute or supply the tablets for sale in Australia?

(b) ~~At all relevant times~~

I. During the second period;

II. During the first period:

III. Between 1996 and 2010;

did the consumption of the tablets cause some consumers to suffer from one or more of the Cabaser or Dostinex (Cabergoline) conditions?

(c) ~~Did the respondent or Pharmacia~~

I. During second period did the respondent;

II. During first period did Pharmacia;

know or ought they have known that the consumption of the tablets could cause consumers to suffer one or more of the Cabaser or Dostinex (Cabergoline) conditions?

(d) Is suffering one or more of the Cabaser or Dostinex (Cabergoline) conditions non economic loss?

(e) Is suffering one or more of the Cabaser or Dostinex (Cabergoline) conditions personal injury or the result of personal injury?

(f) Are the economic losses from behaviour being one or more of the Cabaser or Dostinex (Cabergoline) conditions recoverable?

(g) ~~At all relevant times did the respondent and Pharmacia~~

I. During the second period did the respondent;

II. During the first period did Pharmacia

owe each group member a duty in:

(i) manufacturing,

(ii) packaging and labelling,

(iii) marketing,

(iv) distributing,

(v) or supplying for sale

the tablets, to take reasonable care to warn adequately each of them and their medical practitioners, pharmacists and health care workers of the risk of suffering one or more of the Cabaser or Dostinex (Cabergoline) conditions, as a result of consuming the tablets?

(h) ~~Was the respondent or Pharmacia~~

I. During the second period was the respondent;

II. During the first period was Pharmacia;

in breach of their duty to warn that the consumption of the tablets could cause the Cabaser or Dostinex (Cabergoline) conditions, or any of them?

(i) ~~Was the respondent or Pharmacia~~

I. During the second period was the respondent;

II. During the first period was Pharmacia;

in breach of sections 52, 74B, 74D or 75AD of the Trades Practices Act in the manufacture, packaging, labelling, marketing, distribution and / or supply for sale of the tablets??

(j) ~~Did the respondent~~

I. During the second period did the respondent;

II. During the first period did Pharmacia;

cause or permit its name or brand or mark to be applied to the packets of the tablets acquired by each of the group members?

(k) ~~Did the respondent~~

I. During the second period was the respondent;

II. During the first period was Pharmacia;

supply the packets of tablets obtained by the applicant and each of the group members to pharmacists or medical practitioners?

THE APPLICANT AND GROUP MEMBERS CLAIM

1. Non economic loss.
2. Economic loss
3. Damages to be assessed.
4. Interest.
5. Costs.
6. The applicant claims the relief specified in the application.

Date: ~~25 September 2012~~ 3 October 2012

IN THE FEDERAL COURT OF AUSTRALIA

DISTRICT REGISTRY: VICTORIA

DIVISION: GENERAL

VID004/2010

IAN WINTERFORD
Applicant

and
PFIZER AUSTRALIA PTY LTD
Respondent

Schedule 1

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