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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)

Plaintiff,)

vs.)

ALPHARMA BRANDED PRODUCTS)
DIVISION INC.; ALPHARMA USPD INC.;)
AMGEN INC.; ASTRAZENECA)
PHARMACEUTICALS LP; ASTRAZENECA)
LP; AVENTIS PHARMACEUTICALS INC.;)
AVENTIS BEHRING, LLC, n/k/a ZLB)
BEHRING; BARR LABORATORIES, INC.;)
BAXTER HEALTHCARE CORP.; BEN)
VENUE LABORATORIES, INC.;)
BOEHRINGER INGELHEIM)
PHARMACEUTICALS, INC.; BRISTOL-)
MYERS SQUIBB CO.; CENTOCOR, INC.;)
DURAMED PHARMACEUTICALS, INC.;)
FOREST LABORATORIES, INC.; IMMUNEX)
CORP.; IVAX CORP.; IVAX)
PHARMACEUTICALS, INC.; JANSSEN)
PHARMACEUTICAL PRODUCTS, LP;)
JOHNSON & JOHNSON; McNEIL-PPC, INC.;)
MERCK & CO., INC.; MYLAN)
LABORATORIES, INC.; MYLAN)
PHARMACEUTICALS, INC.; NOVARTIS)
PHARMACEUTICALS CORP; ORTHO)
BIOTECH PRODUCTS, LP; ORTHO-McNEIL)
PHARMACEUTICAL, INC.; PAR)
PHARMACEUTICAL COS, INC.; PFIZER)
INC.; PHARMACIA CORP; PUREPAC)
PHARMACEUTICAL CO.; ROXANE, INC.;)
n/k/a BOEHRINGER INGELHEIM, ROXANE,)

Case No. 3AN-06-12026 CI

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Clerk of the Trial Courts

INDIVIDUAL REPLY
MEMORANDUM OF LAW OF
DEFENDANTS ASTRAZENECA
PHARMACEUTICALS LP AND
ASTRAZENECA LP IN
FURTHER SUPPORT OF THEIR
MOTION TO DISMISS THE
STATE OF ALASKA'S FIRST
AMENDED COMPLAINT

PATTON BOGGS
LLP
Law Offices
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

INC. SANDOZ, INC. f/k/a GENEVA)
 PHARMACEUTICALS, INC.; SCHERING)
 CORPORATION; SCHERING-PLOUGH)
 CORP.; SICOR, INC., f/k/a SICOR)
 PHARMACEUTICALS, INC., f/k/a GENSIA)
 SICOR; SMITHKLINE BEECHAM CORP.,)
 d/b/a GLAXOSMITHKLINE; TEVA)
 PHARMACEUTICALS USA, INC.;)
 WARRICK PHARMACEUTICALS)
 CORPORATION; WATSON PHARMA, INC.,)
 f/k/a SCHEIN PHARMACEUTICALS, INC.;)
 and WATSON PHARMACEUTICALS, INC.)
)
 Defendants.)
)

Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP (collectively “AstraZeneca”) respectfully submit this reply brief in further support of their motion to dismiss the State of Alaska’s First Amended Complaint. For the reasons set forth in the Defendants’ Memorandum of Law in Support of Joint Motion to Dismiss the First Amended Complaint (the “Joint Memorandum”) and the Defendants’ Reply Brief in Support of Joint Motion to Dismiss the First Amended Complaint (the “Joint Reply Memorandum”)—all of which are incorporated herein by reference—all claims against AstraZeneca should be dismissed. If the State’s Amended Complaint is not dismissed in its entirety as to all Defendants, all Medicaid claims relating to Zoladex® should nevertheless be dismissed as against AstraZeneca because such claims are barred by a 2003 Settlement Agreement, as conceded by the State.

**PATTON BOGGS
 LLP**
 Law Offices
 601 West Fifth Avenue
 Suite 700
 Anchorage, AK 99501
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ARGUMENT

As discussed in AstraZeneca's Individual Memorandum of Law in Support of Its Motion to Dismiss the State of Alaska's First Amended Complaint (the "AstraZeneca Individual Memorandum"), AstraZeneca and the State of Alaska entered into a settlement agreement in 2003 that covered all Medicaid-related claims concerning Zoladex®. See Settlement Agreement at 7 ¶ III.2 (attached as Exhibit A to the Affidavit of Stuart Fullerton, filed January 5, 2007). "The State agrees that its earlier settlement with [AstraZeneca] precludes it from recovering in connection with Zoladex®." Alaska's Opposition to AstraZeneca's Motion to Dismiss (the "Individual Opposition") at 2. Thus, the parties agree that any Medicaid-related claims brought by the State against AstraZeneca relating to Zoladex® are barred by the Settlement Agreement. See, e.g., *Aleyeska Pipeline Serv. Co. v. Shook*, 978 P.2d 86, 89 (Alaska 1999).

In its Individual Opposition, the State also argues that the Settlement Agreement should not preclude Alaska "from using materials relating to Zoladex® to show the jury that AstraZeneca knew exactly what it was doing when it was reporting false and inflated wholesale prices to the pricing services upon which Alaska relied." Individual Opposition at 2. As an initial matter, such evidentiary arguments are premature at this early stage of the litigation. Moreover, AstraZeneca disagrees that such information is necessarily admissible at trial and, therefore, reserves its right to move to exclude such information at the appropriate time. For example, materials relating to Zoladex® may

be so tangential to the issues at stake at trial, and at the same time unfairly prejudicial to AstraZeneca, that they should be excluded pursuant to Alaska Rule of Evidence 403. *See, e.g., Marsingill v. O'Malley*, 128 P.3d 151, 160 (Alaska 2006) (“[E]vidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.”); *Alaska N. Dev., Inc. v. Alyeska Pipeline Serv. Co.*, 666 P.2d 33, 42 (Alaska 1983) (affirming exclusion of evidence that, “though tangentially relevant,” would have caused “undue delay [and] waste of time.”).

In addition, Alaska’s unsupported statement that AstraZeneca “report[ed] false and inflated wholesale prices to the pricing services upon which Alaska relied,” Individual Opposition at 2, is simply not true. Indeed, contrary to the State’s bald assertions, AstraZeneca provided to third-party publishers *suggested* Average Wholesale Prices (“AWPs”) for its drugs that were consistent with both industry usage and the State’s knowledge and understanding of the term “AWP.” *See* Am. Compl. ¶ 39 (acknowledging that the State has for years reimbursed providers for Defendants’ drugs at discounts below AWP); Defendants’ Joint Memorandum at 10-13 (demonstrating that, for several decades, the State was aware that AWP’s reported by third-party pricing services represented suggested benchmark prices for drugs that were significantly higher than the prices that pharmacies actually paid for the drugs).

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LLP**
Law Offices
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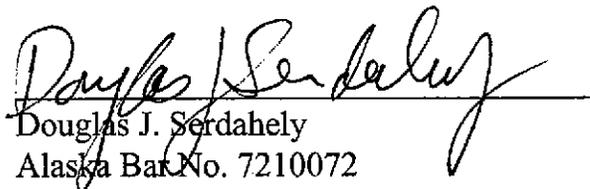
State of Alaska v. AstraZeneca Pharmaceuticals, LP, et al, Case No. 3AN-06-12026 CI

CONCLUSION

For the reasons set forth in Defendants' Joint Memorandum and Joint Reply Memorandum, the State's entire Amended Complaint should be dismissed as to AstraZeneca, with prejudice. If the Amended Complaint is not dismissed in its entirety as to all Defendants, all Medicaid-related claims against AstraZeneca relating to Zoladex® should nevertheless be dismissed for the reasons stated herein and in AstraZeneca's Individual Memorandum.

DATED at Anchorage, Alaska this 20 day of March 2007.

PATTON BOGGS LLP


Douglas J. Serdahely
Alaska Bar No. 7210072

*Attorneys for AstraZeneca Pharmaceuticals
LP and AstraZeneca LP*

Of Counsel:

D. Scott Wise
Michael S. Flynn
James J. Duffy
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 450-3800

PATTON BOGGS
LLP
Law Offices
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March 2007, I caused a true and correct copy of the foregoing document to be served on the below listed parties via:

US Mail Electronic Mail Facsimile

James E. Fosler
FOSLER LAW GROUP, INC.
737 West Fifth Avenue, Suite 205
Anchorage, Alaska 99501

Thomas A. Matthews
MATTHEWS & ZAHARE PC
431 W. 7th Avenue, Suite 207
Anchorage, Alaska 99501

W. Daniel "Dee" Miles III
Clinton Chadwell Carter
BEASLEY ALLEN CROW METHVIN
PORTIS & MILES, PC
PO Box 4160
Montgomery, AL 36103-4160

John B. Thorsness
CLAPP PETERSON VAN FLEIN TIEMESSEN
AND THORSNESS LLC
711 H Street, Suite 620
Anchorage, Alaska 99501

Charles Barnhill, Jr.
Elizabeth J. Eberle
MINER BARNHILL & GALLAND, PC
44 East Mufflin Street, Suite 803
Madison, WI 53703

David W. Oesting
DAVIS WRIGHT TREMAINE LLP
701 W. 8th Avenue, Suite 800
Anchorage, Alaska 99501

Robert S. Libman
MINER BARNHILL & GALLAND, PC
14 West Erie Street
Chicago, IL 60610

Howard A. Lazar
DELANEY WILES, INC.
1007 W. Third Avenue, Suite 400
Anchorage, Alaska 99501

Richard M. Burnham
NEIDER & BOUCHER, S.C.
440 Science Drive, Suite 300
Madison, WI 53711

Patrick B. Gilmore
ATKINSON CONWAY & GAGNON, INC.
420 L Street, Suite 500
Anchorage, Alaska 99501-1989

Daniel T. Quinn
RICHMOND & QUINN
360 K Street, Suite 200
Anchorage, Alaska 99501

John Andrew Leman
Jason M. Gist
KEMPEL HUFFMAN AND ELLIS PC
255 E. Fireweed Lane, Suite 200
Anchorage, Alaska 99803

Timothy J. Petumenos
BIRCH HORTON BITTNER AND CHEROT
1127 W. 7th Avenue
Anchorage, Alaska 99501

By: 

Maribel Webber, Legal Secretary
PATTON BOGGS LLP

**PATTON BOGGS
LLP**
Law Offices

601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

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