

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

ABBOTT LABORATORIES, et al.,

Defendants.

KRISTI T. PRINZO'S AFFIDAVIT IN SUPPORT OF
ASTRAZENECA'S MOTIONS FOR PROTECTIVE ORDERS
CONCERNING THE DEPOSITION OF AN ASTRAZENECA DESIGNEE

KRISTI T. PRINZO, being sworn, states:

1. I am an attorney at Davis Polk & Wardwell, counsel for AstraZeneca Pharmaceuticals LP and AstraZeneca LP ("AstraZeneca") in the above-captioned litigation.

2. I submit this Affidavit in support of AstraZeneca's Motions for Protective Orders Concerning the Deposition of an AstraZeneca Designee. I have personal knowledge of the facts stated below.

3. I have made a good faith effort to resolve this dispute without Court involvement by conferring with Plaintiff's counsel, but the dispute could not be resolved.

4. On March 23, 2006, counsel for Plaintiff, the State of Wisconsin (“State”) issued a notice to take the deposition of an AstraZeneca designee on May 17, 2006. A copy of the notice is attached as Exhibit A.

5. On April 3, 2006, the Court issued a Partial Decision and Order (“Partial Decision”), a copy of which is attached as Exhibit B. The Partial Decision required the State to file a Second Amended Complaint to state, with specificity, the basis for its fraud claims (Counts I, II and IV). Partial Decision at 10-14.

6. On April 24, 2006, AstraZeneca, through local counsel Barbara Neider of Stafford Rosenbaum LLP, sent a letter to Mr. Libman, counsel for the State, responding to the deposition notice (and the document request that was made a part of that notice) and stating AstraZeneca’s objections to the request. A copy of the letter is attached as Exhibit C. In that letter, Ms. Neider stated that AstraZeneca reserved the right to postpone the deposition of its designee until after the State filed its Second Amended Complaint in accordance with the Court’s Partial Decision.

7. Requiring AstraZeneca to produce its designee for a deposition before the State files its Second Amended Complaint raises the likelihood that the State will seek a second deposition of the designee after it files its amendment. Preparing for and participating in a second deposition in Wisconsin would be burdensome to AstraZeneca.

8. Based on the foregoing, AstraZeneca will be prejudiced unless it secures a protective order continuing the deposition until a reasonable time after the State has filed its Second Amended Complaint.

9. AstraZeneca has produced a significant volume of discovery in this litigation. To date, AstraZeneca has produced to the State 17 million transactional sales and rebate data and more than 42,000 pages of documents. These documents include text searchable documents from AstraZeneca's Pricing Strategy Group, exemplar provider and pharmacy benefit manager contracts, and 39 deposition transcripts and accompanying exhibits from the depositions taken in connection with the AWP Multi District Litigation ("MDL"). Exhibits D-I.

10. The deposition transcripts AstraZeneca has produced to the State contain testimony on many of the topics covered by the State's deposition notice.

11. On April 25, 2006, I spoke with Mr. Libman regarding the State's notice of deposition. Mr. Libman told me that the State takes the position that it has the right to depose corporate designees before the date by which the State is required to file its Second Amended Complaint.

12. Mr. Libman stated that he would be flexible as to the date for the deposition of the AstraZeneca designee, but that he would not consent to a date in June if that date was after the deadline for the filing of the State's Second Amended Complaint, which is currently required to be filed by June 5, 2006.

13. Mr. Libman and I spoke again on May 4, 2006. During that conversation, I informed him that AstraZeneca may wish to preserve its rights to object to the section 804.05(2)(e) deposition of its representative or representatives on the grounds that the deposition transcripts from the MDL which AstraZeneca has produced to the State

already cover, in large part, the topics which are the subject of the State's deposition notice in this case. I told Mr. Libman that I believed a decision on the motion for a protective order filed by the Johnson & Johnson Defendants would inform AstraZeneca on this issue.

14. By letter dated May 5, 2006, Mr. Libman informed me that the State was willing to continue the deposition of AstraZeneca's representative pending resolution of Merck's motion for a protective order regarding the location of the deposition. *See Exhibit J.*

15. In the same letter, Mr. Libman also informed me that he would agree to continue the deposition provided that AstraZeneca agreed "(1) to be bound by the ruling on Mylan's motion; and (2) to allow the State to advise Judge Eich (and Judge Krueger, if necessary), of this agreement." *See Exhibit J.* I had previously told Mr. Libman that it was possible that AstraZeneca may not agree to be bound by the ruling on Mylan's motion without first seeing that ruling, as there might be circumstances referenced in the decision that distinguish AstraZeneca's situation from that of Mylan.

16. By letter dated May 9, 2006, I suggested to Mr. Libman that Judge Eich's rulings on the Mylan and Johnson & Johnson motions would likely resolve the issues raised in those motions as to AstraZeneca, but that we could not be certain until we actually saw the decisions. I suggested that we wait and see how Judge Eich ruled before making a final decision with respect to AstraZeneca's need to file its own motion for a protective order. *See Exhibit K.*

17. In the same letter, I agreed to continue the deposition pending a resolution of Merck's Exception regarding the deposition location. I also stated that should Merck's Exception be denied, AstraZeneca would agree that its section 804.05(2)(e) deposition occur in Madison, Wisconsin. *See Exhibit K.*

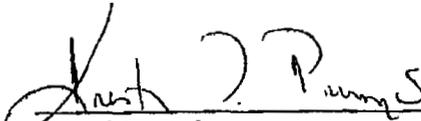
18. By letter of May 10, 2006, Mr. Libman changed his position on whether the State was agreeable to continuing AstraZeneca's section 804.05(2)(e) deposition pending resolution of the exception taken by Merck as to the deposition location. *See Exhibit L.*

19. In the same letter, Mr. Libman also rejected AstraZeneca's suggestion that we continue the deposition until after the Mylan and Johnson & Johnson motions were decided so that the parties could be informed by those decisions. Mr. Libman also indicated that in order for the May 17, 2006 deposition date to be lifted, AstraZeneca had to file its own motion for a protective order. *See Exhibit L.*

20. In a phone call on the same date, Mr. Libman reiterated the positions stated in his May 10, 2006 letter.

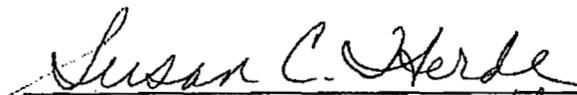
21. By letter dated May 10, 2006, AstraZeneca's local counsel, Barbara Neider, sent a letter to Mr. Libman confirming our agreement that the filing of a motion for a protective order by AstraZeneca removed the May 17, 2006 deposition date from the calendar. *See Exhibit M.*

22. As a result of these circumstances, AstraZeneca is filing its own motions for protective orders based on the grounds stated in the Mylan and Johnson & Johnson motions.



Kristi T. Prinzo

Subscribed and sworn to before
me this 11th day of May, 2006.



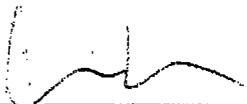
Notary Public, State of New York
My Commission Expires March 30, 2010

SUSAN C. HERDE
Notary Public, State of New York
No. 01HE4808959
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 30, 2010

3. What contacts AstraZeneca, or its subsidiaries, have had with First DataBank or the Red Book about any of the targeted drugs.
4. Whether AstraZeneca, or any of its subsidiaries, ever communicated to First DataBank or the Red Book that the published Average Wholesale Price was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by the retail classes of trade and, if so, when such communications took place and of what they consisted.
5. The Average Manufacturer's Price ("AMP") reported to the federal government of each targeted drug from 1993 to the present.
6. Any evidence which shows that the actual average wholesale price at which any of the targeted drugs sold in any given year was greater than the reported AMP.

The designated deponents shall bring with them: (1) all evidence or information showing that any of the targeted drugs was sold at a price equal to or greater than the published AWP from 1993 to the present; (2) for the same period all evidence or information showing that actual average wholesale prices of AstraZeneca's targeted drugs were less than the published AWP; (3) for the same time period any evidence of communications between AstraZeneca and First DataBank and/or the Red Book about or concerning any of the targeted drugs; (4) for the same time period the reported AMPs of each targeted drug; and (5) for the same time period any evidence AstraZeneca has showing that the actual average wholesale price of any of the targeted drugs was greater than the reported AMP.

Dated this 23 day of March, 2006.



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EXHIBIT A

List of Targeted Drugs

1. Accolate
2. Arimidex
3. Astromorph
4. Atacand
5. Calcitonin
6. Casodex
7. Cefotan
8. Crestor
9. Diprivan
10. EMLA
11. Faslodex
12. Foscavir
13. Iressa
14. Merrem
15. Nexium
16. Nolvadex
17. Plendil
18. Prilosec
19. Pulmicort
20. Rhinocort
21. Sensorcaine
22. Sensorcaine-MPF
23. Seroquel
24. Sular
25. Tenormin
26. Toprol-XL
27. Xylocaine
28. Xylocaine-MPF
29. Zestoretic
30. Zestril
31. Zoladex
32. Zomig

STATE OF WISCONSIN,

Plaintiff,

Case No. 04-CV-1709

v.

AMGEN INC., et. al.,

Defendants.

PARTIAL DECISION AND ORDER

EXPLANATION

The unusual step of issuing different parts of this Decision at different times is being taken for two reasons:

- 1. In recognition that composing and issuing a decision addressing ALL the many aspects of Defendants' motion to dismiss is taking an inordinately long time, and*
- 2. Substantial re-pleading is being Ordered in the first sections of this Decision. That amending process can be undertaken while the balance of the motion is being addressed.*

BACKGROUND¹

Plaintiff, the State of Wisconsin (State), is suing thirty-seven manufacturers of prescription drugs. The claim is that these companies took "advantage of the enormously complicated and non-transparent market for prescription drugs to engage in an unlawful scheme to cause Wisconsin and its

¹ This background section will form the basis for future rulings and will not be repeated.

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citizens and payers to pay inflated prices for prescription drugs.” First Amended Complaint, ¶ 1.

According to the Amended Complaint, the prescription drug market is quite complex, difficult to understand, and somewhat unusual. First, the market itself is composed of a large number of products. The market is allegedly made up of over 65,000 National Drug Codes - a separate code for each quantity of each drug manufactured by each manufacturer. Second, in the prescription drug market the entity that decides to purchase the product and the entity that pays for the product are often separate. Allegedly, “providers” such as physicians, hospitals and pharmacies initially purchase drugs from manufacturers for resale to patients. “Payers,” private insurance companies, self-insured entities and government entities, pay the “providers” for the drugs. The “providers,” however, in the prescription drug case function not only as middlemen or resellers, but also as the decision-makers regarding which particular drugs should be purchased by the patient. This dual role played by “providers” creates, Plaintiff alleges, the opportunity for a “spread.” A “spread” is created when the “provider” is able to sell a drug to a “payer” for a price higher than the “provider” paid to the manufacturer. Third, Plaintiff alleges that the entire system, including pricing information, is in a shrouded in secrecy enforced by contractual agreement and supported by mutual self-interest.

Therefore, the State claims, it is difficult to gather accurate pricing information for the prescription drug market. For this reason, in determining

reimbursement, the State allegedly relies heavily on information from Defendants themselves. Among the pricing information available from Defendants are prices known as Average Wholesale Price (AWP) and Wholesale Acquisition Cost (WAC), both of which are prices disseminated by the Defendants to the public via publication in certain medical compendia. Far from representing the actual price paid by an average provider, however, virtually every reported AWP is an inflated – some grossly – number which Defendants have used simply as a starting point from which to negotiate “spreads.” They have continued to report such AWP’s, Plaintiff alleges, even though they are well aware that Wisconsin’s drug reimbursement programs rely almost entirely on the reported AWP’s. Similarly, Defendants have allegedly represented that WACs were wholesaler “break even” prices, but have used WACs as prediscount prices.

Furthermore, Defendants have allegedly effectively concealed the existence and extent of the price misreporting via various schemes. First, drug manufacturers allegedly purport to sell drugs to “providers” at a stated price, e.g. WAC, but then make use of “charge backs,” free drugs and/or phony grants to arrive at a lower actual acquisition cost. Second, agreements between Defendants and “providers” allegedly often contain contractual provisions requiring secrecy. Finally, Defendants allegedly charge different prices to different sorts of “providers,” allegedly further concealing the actual prices.

The inaccuracy of the published prices and Defendants' efforts to keep the fact and extent of the misreporting secret have, Plaintiff alleges, resulted in injury to the State and its citizens. The State in funding its portion of the Medicaid program expects to spend approximately \$610 million on pharmaceuticals in fiscal year 2004-2005. Wisconsin citizens eligible for and participating in Medicare Part B make co-payments and premium payments to secure certain pharmaceuticals. Each has allegedly relied on Defendants' reported prices, particularly AWP's, and has, thus, overpaid as a result of Defendants' overstated reported prices.

In addition, private "payer" organizations in Wisconsin have allegedly been harmed by Defendants' dealings with Pharmacy Benefit Managers (PBMs). PBMs are organizations which allegedly gather together information regarding cost, availability and comparability of many drugs, and offer to "payers" their services in negotiating lower drug prices. By the late 1990's, four PBMs allegedly controlled approximately 70% of what Plaintiff terms the "reimbursement market." Defendants have allegedly paid fees and rebates to these four major PBMs, some of which fees and rebates have been kept secret from "payer" clients and some of which rebates are based on AWP's. These fees and rebates, Plaintiff alleges, have created an incentive for PBMs to list pharmaceuticals with inflated AWP's on their formularies contrary to their "payer" clients' interests. Thus, Plaintiff claims the State, its citizens and private "payers" doing business in Wisconsin have been harmed by Defendants.

Plaintiff lists five Counts in the Amended Complaint. It alleges that Defendants have violated Wis. Stat. §§ 100.18(1), 100.18(10)(b), 133.05, 49.49(4m)(a)(2) and have been unjustly enriched. The State specifically requests injunctive relief, compensatory damages, restitution to the State and various private entities, treble damages for violations of Wis. Stat. § 133.05, forfeitures under several statutes, disgorgement of unlawful profits and its costs in bringing this action.

Defendants have moved to dismiss the Amended Complaint on several grounds. Collectively, the Defendants argue that this Complaint:

1. is insufficient, both under notice pleading and in particular under Wis. Stat. § 802.03(2),
2. does not establish a causal link between the alleged misconduct and the alleged injuries,
3. alleges certain claims which the Attorney General is not empowered to pursue,
4. fails to allege certain required elements for several claims,
5. is barred by the “filed rate” doctrine, and
6. contains claims that are barred by the applicable statutes of limitations.

Additionally, several Defendants have alleged grounds for dismissal that are specific to their situations.²

² There are, additionally, several outstanding motions. The motions for leave to file additional authority (Plaintiff’s motions filed November 3 and 8, 2005 and Defendants’ motion filed February 3, 2005) are granted. The other outstanding motions are considered, as appropriate, below.

STANDARD OF REVIEW

The recent case (July 2005), Doe v. Archdiocese of Milwaukee, 2005 WI 123,

294 Wis. 2d 307, 700 N.W. 2d 180, ¶¶ 19 & 29, offers a good summary of how to analyze

a motion to dismiss:

... [a] motion to dismiss for failure to state a claim "tests the legal sufficiency of the complaint." BBB Doe, 211 Wis. 2d 331, 565 N.W. 2d 94.. A reviewing court "accept[s] the facts pled as true for purposes of [its] review, [but is] not required to assume as true legal conclusions pled by the Plaintiffs." *Id.* Although the court must accept the facts pleaded as true, it cannot add facts in the process of liberally construing the complaint. 3 Jay E. Grenig, *Wisconsin Practice: Civil Procedure* § 206.11 at 304 (West, 3d ed.2003) (hereinafter Grenig, *Civil Procedure*). Rather, "[i]t is the sufficiency of the facts *alleged* that control[s] the determination of whether a claim for relief" is properly pled. Strid v. Converse, 111 Wis.2d 418, 422-423, 331 N.W.2d 350 (1983) (emphasis added).

The court should not draw unreasonable inferences from the pleadings. Morgan v. Pa. Gen. Ins. Co., 87 Wis.2d 723, 731, 275 N.W.2d 660 (1979). After liberally construing the complaint, a court should dismiss a Plaintiff's claims if it is "quite clear" that there are no conditions under which that Plaintiff could recover. *Id.*; see also Prah v. Maretti, 108 Wis.2d 223, 229, 321 N.W.2d 182 (1982) (both citing Charles D. Clausen & David P. Lowe, *The New Wisconsin Rules of Civil Procedure, Chapters 801-803*, 59 Marq. L.Rev. 1, 54 (1976) (hereinafter Clausen, *The New Wisconsin Rules of Civil Procedure*)). In other words, "A claim should not be dismissed ... unless it appears to a certainty that no relief can be granted under any set of facts that Plaintiff can prove in support of his allegations." Morgan, 87 Wis.2d at 732, 275 N.W.2d 660.

DECISION ³

First, these parties must be made aware that the reams of extra material submitted and any beyond-the-Complaint "facts" inserted into the briefs will not be factored into this decision. The facts being examined are solely those set forth in the First Amended Complaint. Defendants, especially, have attempted to set forth hundreds of pages of additional facts to be considered in making this

³ At least part of the reason this decision has been so delayed is that the case was removed this past summer, for the second time, to Federal Court. On-going work toward on this decision the motion had to be abandoned, and then started up anew, when time permitted, after the file was returned in November and other decisions issued on cases that had become ready while this case was in Federal Court.

ruling. But neither side has provided adequate justification for going beyond the four corners of this Complaint. This boundary is black letter law for addressing a motion to dismiss. *See, e.g. Wolnak v. Cardiovascular & Thoracic Surgeons of Central Wisconsin*, 706 N.W. 2d 667, ¶ 48 (Ct. App. 2005), which cites with approval *Heinritz v. Lawrence University*, 194 Wis. 2d 606, 614, 535 N.W. 2d 81 (Ct. App. 1995).

While it is true that pursuant to Wis. Stat. § 902.01, a Court may take judicial notice of certain facts, including legislative history, if appropriate, what is being offered here goes far beyond what is generally so noticed. For example, the contents of hefty reports to Congressional committees and sub-committees, testimony before such bodies, news articles, reports to agencies are not proper subjects for judicial notice.⁴

These submissions also go beyond what is helpful to the decision maker. Having to factor in lengthy agency reports and stacks of other information in deciding the sufficiency of the Amended Complaint creates more confusion than it resolves. As a practical matter, for the uninitiated such as this writer, the world described in the Complaint is foreign, complicated, and confusing. Adding more information at this stage of the proceedings only magnifies that reaction, rather than aiding in this decision. It is understandable that the Defendants, especially,

⁴ See, footnote 6 on p. 16 of Plaintiff's brief.

want this lawsuit resolved in their favor as soon as possible, but human and legal limitations must still be recognized.⁵

Equally problematic is that the submissions do not appear to establish any clear factual conclusions. If they did, both sides would not be trying to present contrary information.⁶ It is not even a given that all the facts the parties wish the Court to consider are relevant. This motion is to test the sufficiency of the pleadings in the Complaint; it is not a motion for summary judgment or an exercise to determine which of two competing views of the eventual evidence is more convincing or logical. Such an exercise should not and will not be undertaken at this juncture.

I. THE SUFFICIENCY OF THE PLEADINGS:

A. Notice Pleading:

Despite its length and complexity, this Amended Complaint is indisputably lacking detail as to the specific actions of individual Defendants.⁷ Under Wisconsin's "notice pleading" rules, such outline pleading is not necessarily fatally defective, provided that the parties being sued can figure out the basis of the claims against them. Again, reference is made to the Archdiocese of Milwaukee case, 284 Wis. 2d at 328-329:

¶ 35 In 1975 this court adopted new rules of Wisconsin civil procedure. 67 Wis.2d 585 (1975). One of the " keystones of the new procedural system" was Wis. Stat. § 802.02 (1977-78), which signaled Wisconsin's adoption of "notice pleading."Wilson v. Cont'l Ins. Cos., 87 Wis.

⁵ Since it seems almost a certainty that for whatever causes survive this motion to dismiss, summary judgment motions will be filed, I want to be clear that resubmission of materials is not necessary or wanted. All that need be added are whatever affidavits required under summary judgment procedure.

⁶ See i.e., pp. 3-18 of Plaintiff's brief.

⁷ Eleven pages are devoted to the caption and listing of parties.

2d 310, 316, 274 N.W. 2d 679 (1979); Clausen, *The New Wisconsin Rules of Civil Procedure* at 37. Under § 802.02(1)(a), a complaint must simply contain "[a] short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief." These claims are to be liberally "construed [so] as to do substantial justice." Wis. Stat. § 802.02(6); Prah, 108 Wis.2d at 229, 321 N.W.2d 182.

¶ 36 However, a complaint cannot be completely devoid of factual allegations. The notice pleading rule, while "intended to eliminate many technical requirements of pleading," nevertheless requires the Plaintiff to set forth "a statement of circumstances, occurrences and events in support of the claim presented." Clausen, *The New Wisconsin Rules of Civil Procedure* at 38-39. For example, "a claim in negligence must state general facts setting forth that the [defendant] had knowledge or should have had knowledge of a potential and unreasonable risk...." Wilson, 87 Wis.2d at 318, 274 N.W.2d 679. "[A] bare conclusion [does] not fulfill [] a Plaintiff's duty of stating the elements of a claim in general terms." Id. at 319, 274 N.W.2d 679. In short, we will dismiss a complaint if, "[u]nder the guise of notice pleading, the complaint before us requires the court to indulge in too much speculation leaving too much to the imagination of the court." Id. at 326-27, 274 N.W.2d 679. It is not enough for the Plaintiff to contend that the requisite facts will be "supplied by the discovery process." Id. at 327, 274 N.W.2d 679.

Not surprisingly, the instant challenge does claim that this Amended Complaint requires speculation to be understood. It is true that these pleadings lack the usual contentions that a named-defendant did a discrete act forming the cause of action on a given date. This pleading does a very thorough job of describing the key points of what is repeatedly referred to as "a scheme" which Plaintiff claims was shared by all the Defendants.⁸ As far as can be determined, the contention appears to be that "virtually all" of Defendants' drugs had misleading AWP's released for publication by every single defendant since 1992.⁹ Given the figure cited in this Complaint of "over 65,000 separate National Drug Codes (NDC)" plus 37 Defendants and a time period of either 3 or 6 years

⁸ "Notably, the State does not allege any form of conspiracy, collusion, or unlawful agreement among the Defendant manufacturers . . ." Defendants' initial brief, p. 2.

⁹ Amended complaint, ¶37.

(depending on the applicable statute of limitations), the potential permutations are astronomical.

If indeed the actions for which the Defendants are being sued are as global as described, then the notice being given is that each defendant listed false AWP's for each of its drugs during the times within the statute of limitations.¹⁰ Even though the date of 1992 is given, it appears to be more for background than as an effort to hold these Defendants accountable going back that far. The story being told in this Complaint is that of an on-going practice, repeating itself for many years as to "virtually all" the AWP's listed by these manufacturers. The notice to those who must respond to this Complaint is that they are accused of misstating the actual AWP for each and every one of their drugs during a three or six year period.

These drug manufacturers are also alleged to have taken measures to conceal their misrepresentations. The State of Wisconsin claims that it and other entities relied upon these misrepresented prices when paying for drugs manufactured by Defendants. Under the most liberal reading of this Complaint, each of the allegations applies to each of the Defendants. The role of each defendant appears to have been uniform, varying only as to the specific drug and the magnitude of the misrepresentation. The basic claim as to each defendant is

¹⁰ Obviously, Plaintiff will be restricted to whatever period is permitted under the applicable statute of limitations.

the same. For general pleading purposes, these vast allegations are adequate to put Defendants on notice of the claims against them.

B. Allegations of fraud:

Citing Wis. Stat. § 802.03(2.), Defendants argue that the Complaint does not adequately identify which drugs are at issue, does not describe what each of them did, does not adequately detail what fraud each has committed, and improperly relies on “group pleading.” Plaintiff counters that none of its claims are subject to the requirements of Wis. Stat. § 802.03(2), and that, even if any were, the Complaint is sufficiently particular.

Wis. Stat. § 802.03(2) provides:

Fraud, mistake and condition of mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

No Wisconsin state appellate case could be found which directly addresses whether § 802.03(2) governs pleadings under Wis. Stat. § 100.18. State v. American T.V. of Madison, 146 Wis. 2d 292, 312-313, 430 N.W.2d 709 (1988) contains dicta in Justice Steinmetz’s dissent. He declared that only notice pleading is required under § 100.18(9), but that is hardly conclusive.

The State relies heavily on legislative history, pointing to a Judicial Council Committee Note to a 1978 change in the notice pleading statute, § 802.02(1)(a) that states, *inter alia*:

This modification will allow a pleader in a **consumer protection or anti-trust case**, for example, to plead a pattern of business transactions, occurrences or events leading to a claim of relief rather than having to specifically plead each and every transaction, occurrence or event when the complaint is based on a pattern or course of business conduct involving either a substantial and continuous transactions and events. (Plaintiff's brief, pp. 38-39.)

Again, this language is not determinative of whether § 100.18 claims must be plead with particularity. All consumer protection cases do not involve claims of fraud. The note does not say that the modification it discusses also changes the requirements of § 802.03(2) when fraud is involved.

The purpose of the rule requiring such detail when fraud is claimed is often repeated:

“... because the particularity requirement affords notice to a defendant for the purpose of a response. As additional rationale, we agree that our statute is designed to protect Defendants whose reputation could be harmed by lightly made charges of wrongdoing involving moral turpitude, to minimize ‘strike suits’ and to discourage the filing of suits in the hope of turning up relevant information during discovery.”

Quoted in Friends of Kenwood v Green, 239 Wis.2d 78, 87, 619 N.W.2d 271 (Ct. App. 2000), [citations omitted]

There is no logical reason for repudiating this rationale just because the charges of fraud being leveled against these Defendants involve consumer protection. Indeed, because the object of such a claim in a consumer protection case may likely be a business or a company dependent for its success on a positive public perception, the need for particularity in pleading seems at least as compelling as in any other fraud case. Here, Defendants are not overstating the matter when they characterize the causes of action in this complaint as

“grounded in fraud.” Language synonymous with or highly suggestive of fraud permeates the document. Variations on the word “fraud” appear throughout the complaint; “false” and “phony” are used often, as is “deceptive.” The word “scheme” when presented in this context certainly has a nefarious connotation. Even the title of § 100.18, one of the provisions under which Plaintiff is suing, is entitled “Fraudulent representations,” while Plaintiff’s claim in Court IV comes under § 49.49(4m)(2)(a) “Medical Assistance Fraud.” There is every reason to find that Wis. Stat. § 802. 03(2) applies to these allegations.

As quoted on p. 87 of Kenwood, *supra*, “Particularity means the ‘who, what, when, and how.’ [citation omitted.] . . . the rule ‘requires specification of the time, place, and content of an alleged false misrepresentation.’” While Plaintiff has done a masterful job of describing a “dauntingly complex” drug sale and reimbursement system, it has failed (other than in a few examples) to set forth the activities of each defendant and to put everyone on notice for what activities, occurring when and how it wishes to hold each defendant responsible. ¹¹ Probably for good reason,¹² Plaintiff seems as though it wants to put the burden on each company to come forward with an explanation for each and every AWP listing since 1992. This is not permissible.

Under this complaint, it is not known what Plaintiff considers the threshold for fraud. Would a few cents difference from the AWP and the actual

¹¹ ¶ 51 of the complaint takes the vagueness of this pleading to dangerous level by alleging wrong-doing by “some Defendants” without naming any.

¹² See, ¶¶ 46 & 55 of the complaint.

sales price meet that definition? A few dollars? Is the State limiting this case to the drugs mentioned in Exhibits A & B attached to the Complaint or is it including the 65,000 different drugs referenced several times in that pleading?

In order to maintain these causes of action premised on fraud, Plaintiff must re-plead them, giving as many specifics as it can. Each Defendant is entitled to know, with as much detail as Plaintiff can provide, **which** of its drugs are involved and **what** (name, date) publication of AWP is false, and the **actual** price that should have been published. Discovery has been on-going in this case and in national cases, so much of this information should be available. It is difficult to know how long it will take Plaintiff to redraft those claims involving fraud. Subject to the right to obtain an extension, the State is given 60 (sixty days) to re-plead. Failure to do so within the specified or extended time will result in dismissal of those counts grounded in fraud (I, II, and IV).¹³

II. CAUSATION

Contending that Plaintiff cannot establish belief and reliance on Defendants' AWP's and that the Complaint fails to "affirmatively" allege that anyone "actually" relied on the AWP's as the true price, all Defendants argue that the entire complaint should be dismissed. Since there is no such reliance, Defendants assert, "there is no cognizable link between the alleged misconduct ... and any claimed injury." Joint Memorandum, p. 18.

¹³ Counts I and II allege violation of Wis. Stat. § 100.18., and Count IV alleges violation of Wis. Stat. § 49.49(4m)(a)(2).

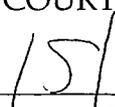
First, the argument relies on the substantial documentary submissions of Defendants. As explained earlier in this decision, Defendants have not provided a sufficient basis supporting consideration of such materials at this stage of the proceedings. Second, Defendants have provided no substantial argument or any authority for their broad assertion that the Court can dismiss all of Plaintiff's claims based simply on an arguable lack of facts showing this level of reliance. Finally, it is far from clear that the documents selected by Defendants indisputably establish that Plaintiff in no way relied upon Defendants' AWP's. However, the basis for any claim of reliance included in Counts I, II, and IV should, for the same reasons articulated in the previous section, be part of the more specific pleadings.

CONCLUSION and ORDER

For the reasons stated above, Plaintiff is to amend its Amended Complaint by **June 5, 2006** to comply with the directive contained in this Partial Decision. In the interim, work will continue on the balance of the contentions in Defendants' motion to dismiss.

Dated this 3rd day of April 2006 at Madison, Wisconsin.

BY THE COURT:



Moria Krueger, Judge. *
Case No. 04 CV 1709

Barbara A. Neider

bneider@staffordlaw.com
608.259.2615

April 24, 2006

Robert S. Libman, Esq.
Miner Barnhill & Galland, PC
14 West Erie Street
Chicago, Illinois 60610

Re: State of Wisconsin v. Amgen Inc., et al., Case No. 04-CV-1709

Dear Bob:

This letter is in response to the deposition notice and accompanying request for documents that the State served on AstraZeneca on March 23, 2006. In response to this notice and request, AstraZeneca incorporates by reference the general objections that it has previously made in writing to discovery requests served upon it by the plaintiff.

AstraZeneca also objects to the deposition notice on the grounds that it is premature, because the State has not yet amended its Complaint pursuant to the Court's Order dated April 3, 2006. AstraZeneca reserves the right to postpone the deposition until after the State's filing of its Second Amended Complaint. Significantly, Judge Eich is addressing this precise issue in the motion for a protective order filed by Mylan.

In addition, as mentioned in our April 6, 2006 phone call, AstraZeneca objects to the State's instruction that AstraZeneca produce a deponent at the office of the Attorney General of the State of Wisconsin in Madison, Wisconsin, on the grounds that the instruction violates Wisconsin law. See Wis. Stats. § 804.05(3)(b)6. Rather, it is appropriate for the deposition to occur at AstraZeneca's place of business in Wilmington, Delaware.

As we also discussed in our April 6, 2006 phone call, it is our view that the list of "targeted" drugs attached as Exhibit A to the deposition notice is overly broad in that the list of 32 drugs is contrary to Judge Eich's January 31, 2006 Order which limits the drugs in this matter to the 15 AstraZeneca drugs at issue in the Multi District Litigation.

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April 24, 2006

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Furthermore, AstraZeneca objects to topics one and two in the deposition notice on the grounds that they call for information that is not necessarily within AstraZeneca's custody and control. After selling its products to a wholesaler, with few exceptions, AstraZeneca generally is not involved in the subsequent transactions in the distribution chain between the wholesaler and the retailer and the retailer and the ultimate consumer, and accordingly does not know the price at which its drugs are sold in the marketplace after AstraZeneca's sale to a wholesaler. Any information that AstraZeneca does have in this regard is in its transactional sales data which has already been provided to the State.

In addition, AstraZeneca objects to the term "may tend to show" in topic two, as that term is vague and ambiguous and seeks to require AstraZeneca to speculate or to interpret data to support a conclusion sought by the State. AstraZeneca further objects that the terms "actually an average of wholesale prices," "actual average wholesale price" and "retail classes of trade" as used in topics four and six are vague and ambiguous.

AstraZeneca also objects to the time period suggested in topics one, two, and five (1993 to the present) on the grounds that it is in contravention of both the governing statute of limitations and Judge Krueger's April 3, 2006 Order which notes that the relevant time period is either 3 or 6 years. See April 3, 2006 Order at 9-10.

The notice of deposition also asks for five categories of documents. As a preliminary matter, AstraZeneca generally objects to producing at the deposition documents and data that have previously been provided. Requiring a corporate designee to appear at a deposition with extra copies of what has already been produced is unduly burdensome and unreasonable. AstraZeneca also objects generally to the requests to the extent that they are duplicative of prior discovery requests made by the State or seek documents from time periods outside the applicable statute of limitations.

Listed below are the requests and our corresponding specific objections.

1. All evidence or information showing that any of the targeted drugs was sold at a price equal to or greater than the published AWP from 1993 to the present.

As stated previously, after selling its products to a wholesaler, with few exceptions, AstraZeneca generally is not involved in the subsequent transactions in the distribution chain between the wholesaler and the retailer and the retailer and the ultimate consumer, and accordingly does not know the price at which its drugs are sold in the marketplace after AstraZeneca's sale to a wholesaler. Further, any information that AstraZeneca does have in this regard is in its transactional sales data which was already provided to the State, Bates stamped AZ_WI0031296 and AZ_WI0042972.

April 24, 2006

Page 3

2. For the same period, all evidence or information showing that actual average wholesale prices of AstraZeneca's targeted drugs were less than the published AWP.

AstraZeneca objects to the term "actual average wholesale price" as vague and ambiguous. AstraZeneca notes, however, that pricing data was previously produced in this litigation, Bates stamped AZ_WI0031296 and AZ_WI0042972.

3. For the same period, any evidence of communications between AstraZeneca and First DataBank and/or the Red Book about or concerning any of the targeted drugs.

AstraZeneca has already provided the State with documents responsive to this request in documents from its Pricing Strategy Group, Bates stamped AZ_WI0000103 to AZ_WI0031295 and AZ_WI0042975 to AZ_WI0042996.

4. For the same period, the reported AMPs of each targeted drug.

AstraZeneca has already provided to the State the AMP data responsive to this request, Bates stamped AZ_WI0042972.

5. For the same period, any evidence AstraZeneca has showing that the actual average wholesale price of any of the targeted drugs was greater than the reported AMP.

AstraZeneca objects to the term "actual average wholesale price" as vague and ambiguous. AstraZeneca notes, however, that AMP data was previously produced in this litigation, Bates stamped AZ_WI0042972.

Please do not hesitate to contact me should you have any questions.

Very truly yours,



Barbara A. Neider

BAN:rm

cc: Ms. Kristi Prinzo
Mr. Brian E. Butler

Barbara A. Neider

bneider@staffordlaw.com
608.259.2615

January 26, 2006

BY EMAIL AND U.S. MAIL

Robert S. Libman, Esq.
Miner Barnhill & Galland, PC
14 West Erie Street
Chicago, Illinois 60610

Re: State of Wisconsin v. Amgen Inc., et al., Case No. 04-CV-1709

Dear Bob:

I am writing in response to your letter dated January 18, 2006.

Enclosed is a CD containing the documents responsive to Document Request 7, as well as the transcript of the hearing on June 23, 2003 before the Honorable Joseph J. Farnan, Jr., U.S. District Judge for the District of Delaware, reflecting the statement of Glenn Engelmann, in Response to Document Request 10. These documents are Bates stamped AZ_WI0000001 to AZ_WI00000102. Please note that the documents have been stamped at the bottom. You may need to change your printer settings to ensure that the stamped information appears on any pages you print.

As to your first point in your January 18th letter, we will determine whether AstraZeneca has any internal guidelines regarding the disclosure of drug price information, and produce any such documents if they exist. We believe, however, that representative contracts between AstraZeneca and pharmacy benefit managers, and representative contracts between AstraZeneca and physicians and physician groups, which include provisions relating to the disclosures such entities may make of the drug price information they receive from AstraZeneca, are sufficiently responsive to Document Requests 8 and 9.

Robert S. Libman
January 26, 2006

Second, in reference to Document Requests 8 and 9, you note that AstraZeneca should produce documents relating to retail pharmacies. It is our understanding that AstraZeneca does not have a significant number of contracts with retail pharmacies. However, we will produce any exemplar contracts with retail pharmacies should they exist.

Third, AstraZeneca is willing to produce the transcripts from the depositions of its current and former employees taken in the MDL action as long as this is not in contravention to any court reporting licensing restrictions. In addition, pursuant to the protective order entered in the MDL action, AstraZeneca is precluded from producing a third party's highly confidential or confidential information. See Protective Order dated December 13, 2002; Order Amending the Protective Order dated March 24, 2005 ¶¶ 1-2 (enclosed). As such, to comply with that protective order, AstraZeneca intends to redact any such information contained in the MDL transcripts or exhibits attached thereto. It is expected that such third party information is relatively minimal.

Fourth, in reference to your inquiry as to a date certain for the production of documents, AstraZeneca will produce any other responsive information to the State's Third Request for Documents by February 27, 2006.

Fifth, as with this production, as you requested, AstraZeneca will produce documents responsive to Document Requests 7 through 10 in electronic format as TIFF files, 300 dpi, group IV compression, with the Bates number from the first page of each document as the file title and a Concordance load file. Our technology group informs us, however, that we are capable of producing these documents as single page TIFF files, rather than multi-page TIFF files. For ease of reference, each page will be numbered with a Bates number containing the prefix "AZ_WI."

Very truly yours,


Barbara A. Neider

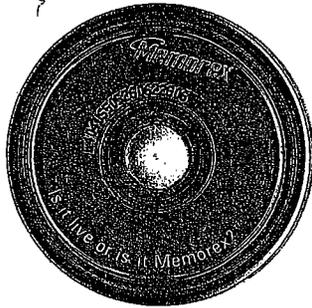
BAN:pcl

Enclosures

State of Wisconsin v.
Amgen, Inc., et al.

(04 CV-1709)

Highly
Confidential



Subject to
Protective Order

AZ_WI0000001 - AZ_WI0000102



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN THE MATTER OF: Case: 1:01-cv-12257

Judge Patti B. Saris - pre

Citizens for Consume - plaintiff

v.

Abbott Laboratories, - defendant

NOTICE OF ACTION BY THE COURT

Notice To:

Edward Notargiacomo, Esq.
Hagens Berman
225 Franklin St.
26th Floor
Boston, MA 02110

**

The following ruling was made on 12/13/02 and entered on the docket:

Judge Patti B. Saris. Endorsed Order entered granting
[275-1] joint motion for protective order. Allowed, subject
to the courts modification. cc/cl [EOD Date 12/16/02]



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION)	MDL NO. 1456
)	CIVIL ACTION: 01-CV-12257-PBS
THIS DOCUMENT RELATES TO ALL ACTIONS)	Judge Patti B. Saris
)	

PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, it is hereby stipulated and agreed, by and between the parties, through their respective counsel, as follows:

IT IS HEREBY STIPULATED AND ORDERED AS FOLLOWS:

1. This Protective Order shall apply to the actions that have been consolidated for pretrial proceedings as *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil Action No. 01-12257-PBS and all future actions that are transferred to MDL No. 1456 for coordinated or consolidated pretrial proceedings (collectively referred to herein as "the AWP Litigation").

2. The terms and conditions of this Order shall govern initial disclosures, the production and handling of documents, answers to interrogatories, responses to requests for admissions, depositions, pleadings, exhibits, other discovery taken pursuant to the Federal Rules of Civil Procedure, and all other information exchanged by the parties or by any third party in response to discovery requests or subpoenas.

3. The designation "CONFIDENTIAL" shall be limited to information that any producing party, including any third party, in good faith, believes to contain (a) proprietary or commercially sensitive information; (b) personal financial information; or (c) information that should otherwise be subject to confidential treatment under Rule 26(c)(7) of the Federal Rules of Civil Procedure.

DOCKETED



4. Information designated "CONFIDENTIAL" may be disclosed only to the following persons:

- (a) a named "Individual Patient Plaintiff" (e.g., persons identified in Paragraphs 13 through 21 of the September 6, 2002, Master Consolidated Class Action Complaint in the AWP Litigation ("Complaint")) who have executed a Certification attached hereto as Exhibit A;
- (b) in-house counsel of a named party or, for a "Third-Party Payor" or "Non-Profit Association," as those terms are used in the Complaint, that does not have in-house counsel, one officer or employee of that party who is responsible for the AWP Litigation for that party and who has executed a Certification attached hereto as Exhibit A;
- (c) outside counsel representing a named party in the AWP Litigation, including all paralegal assistants, and stenographic and clerical employees working under the supervision of such counsel;
- (d) court reporters, interpreters, translators, copy services, graphic support services, document imaging services, and database/coding services retained by counsel, provided these individuals or an appropriate company official with authority to do so on behalf of the company executes a Certification attached hereto as Exhibit A;
- (e) an expert or consultant who (i) is retained by any attorney described in Paragraphs 4(b) and (c) to assist with the AWP Litigation, (ii) is not a current employee of a party or subsidiary or affiliate of a party, and (iii) such expert or consultant executes a Certification attached hereto as Exhibit A;
- (f) a person who prepared, received, or reviewed the "CONFIDENTIAL" information prior to its production in the AWP Litigation;
- (g) during depositions and preparation for depositions, a deposition witness who is a current employee of the party that produced the applicable document(s) or who appears, based upon the document itself or testimony in a deposition, to have knowledge of the contents of the document designated "CONFIDENTIAL" or the specific events, transactions, discussions, or date reflected in the document, provided such witness executes a Certification attached hereto as Exhibit A;
- (h) any private mediators utilized in the AWP Litigation, provided such person executes a Certification attached hereto as Exhibit A; and
- (i) the Court, and any Special Masters and/or Mediators appointed by the Court, under seal.



5. The designation "HIGHLY CONFIDENTIAL" or "ATTORNEY EYES ONLY" (collectively referred to herein as "HIGHLY CONFIDENTIAL") shall be limited to information that any producing party, including third parties, in good faith, believes to contain (a) current and past (to the extent they reflect on current) methods, procedures, and processes relating to the pricing of pharmaceuticals; (b) current and past (to the extent they reflect on current) marketing plans and methods; (c) current and past (to the extent they reflect on current) business planning and financial information; (d) trade secrets; (e) past or current company personnel or employee information; and (f) other "CONFIDENTIAL" information (as defined in Paragraph 3) the disclosure of which is likely to cause competitive or commercial injury to the producing party.

6. Information designated "HIGHLY CONFIDENTIAL" may be disclosed only to the following persons:

- (a) (i) in-house counsel of a named party who have executed a Certification attached hereto as Exhibit B may have access to all "HIGHLY CONFIDENTIAL" information; or (ii) in-house counsel of a named party who cannot satisfy the requirements of Exhibit B may have access only to "HIGHLY CONFIDENTIAL" information that identifies the company, employees, or drugs of the named party of the in-house counsel;
- (b) outside counsel representing a named party in the AWP Litigation, including all paralegal assistants, and stenographic and clerical employees working under the supervision of such counsel;
- (c) court reporters, interpreters, translators, copy services, graphic support services, document imaging services, and database/coding services retained by counsel, provided these individuals or an appropriate company official with authority to do so on behalf of the company executes a Certification attached hereto as Exhibit A;
- (d) an expert or consultant who (i) is retained by any attorney described in Paragraphs 6(a) and (b) to assist with of the AWP Litigation, (ii) is not a current employee of a party or subsidiary or affiliate of a party; and (iii) such expert or consultant executes a Certification attached hereto as Exhibit A;
- (e) a person who prepared, received, or reviewed the "HIGHLY CONFIDENTIAL" information prior to its production in the AWP Litigation;



- (f) during depositions and preparation for depositions, a deposition witness who is a current employee of the party that produced the applicable document(s) or who appears, based upon the document itself or testimony in a deposition, to have knowledge of the contents of the document designated "HIGHLY CONFIDENTIAL" or the specific events, transactions, discussions, or date reflected in the document, provided such witness executes a Certification attached hereto as Exhibit A;
- (g) any private mediators utilized in the AWP Litigation, provided such person executes a Certification attached hereto as Exhibit A; and
- (h) the Court, and any Special Masters and/or Mediators appointed by the Court, under seal.

7. This Order does not apply to any information or documents:

- (a) already in the possession of a receiving party and not subject to any obligation of confidentiality; and
- (b) acquired by a receiving party from a third party without being designated confidential or similar material unless the third party received the information or documents subject to any form of confidentiality protection.

8. All information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with the terms of this Order and produced or exchanged in the course of the AWP Litigation shall be used or disclosed solely for the purpose of the AWP Litigation and in accordance with the provisions of this Order. Such "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL" information shall not be used for any business purpose, or in any other litigation or other proceeding, or for any other purpose, except by Court Order or otherwise required by law.

9. Any person or party receiving "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information that receives a request or subpoena for production or disclosure of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information shall promptly give notice by facsimile to the producing party identifying the information sought and enclosing a copy of the subpoena or request. Provided that the producing party makes a timely motion or other application for relief from the subpoena or other request in the appropriate forum, the person or party subject to the subpoena or other request shall not produce or disclose the requested



information without consent of the producing party or until ordered by a court of competent jurisdiction.

10. Counsel shall inform each person to whom they disclose or give access to "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information the terms of this Order, as well as the obligation to comply with those terms. Persons receiving "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information are prohibited from disclosing it to any person except in conformance with this Order. The recipient of any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information agrees to subject himself/herself to the jurisdiction of the Court for the purpose of any proceedings relating to the performance under, compliance with, or violation of this Order. The parties agree, and agree to inform each person to whom they disclose or give access to "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information, that damages for violation of this Order are not an adequate remedy and that the appropriate remedy is injunctive relief. Counsel agrees to maintain a file of all Certifications (Exhibits A and B) required by this Order.

11. The recipient of any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information shall maintain such information in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such information as is exercised by the recipient with respect to his or her own confidential or proprietary information.

12. "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL" information may include or be included in any document, physical object, tangible thing, transcript or oral testimony or recorded statement of counsel, such as by way of example and not limitation, transcripts, answers to interrogatories and other responses to discovery requests, pleadings, briefs, summaries, notes, abstracts, motions, drawings, illustrations, diagrams, blueprints, journal entries, logbooks, compositions, devices, test reports, programs, code, commands, electronic media, databases, and any other records and reports which comprise, embody or summarize information about the producing party's business, products, practices and procedures.



13. In designating information "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," the producing or testifying party or person, including third parties, will make such designation only as to that information that it in good faith believes is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." All or any part of a document, tangible item, discovery response or pleading disclosed, produced, or filed by any party or person in the AWP Litigation may be designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by the producing or disclosing party or person by marking the appropriate legend on the face of the document and each page so designated. With respect to tangible items, the appropriate legend shall be marked on the face of the tangible item, if practicable, or by delivering at the time of disclosure, production or filing to the party to which disclosure is made, written notice that such tangible item is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

14. The parties may designate the deposition testimony and exhibits (or portions thereof) of any witness in the AWP Litigation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at the time of the deposition by advising the reporter and all parties of such fact during the deposition. If any portion of a videotaped deposition is designated pursuant to this Paragraph, the videocassette or other videotape or CD-ROM container shall be labeled with the appropriate legend. Unless a shortened time period is requested as set forth below, within thirty (30) days of receipt of a transcript, the deponent, his/her counsel, or any other party may redesignate all or portions of the transcript "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." The deponent, his/her counsel or any other party shall list on a separate piece of paper the numbers of the pages of the deposition transcript containing "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information and serve the same on opposing counsel. Pending such designation, the entire deposition transcript, including exhibits, shall be deemed "HIGHLY CONFIDENTIAL" information. If no designation is made within thirty (30) days after receipt of the transcript, the transcript shall be considered not to contain any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information.

(a) a party may reasonably request a shortening of the time period within which a confidentiality designation for a deposition transcript must be made for the purpose of conducting effective discovery, and consent to such a request shall not be unreasonably withheld.



In the event of a dispute as to a request for a shortened time period, the parties shall first try to dispose of such dispute in good faith on an informal basis. If the dispute cannot be resolved within five (5) business days, the party requesting the shortened time period may request appropriate relief from the Court. The parties agree, subject to Court approval, that such relief sought can be in the form of a telephone conference to be scheduled at the Court's earliest convenience with the objective of obtaining an immediate resolution of the dispute;

15. Any documents or pleadings to be filed with the Court that contain "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information, shall be filed under seal in an envelope marked "CONFIDENTIAL -- Filed Under Seal Pursuant to Court Order" or "HIGHLY CONFIDENTIAL -- Filed Under Seal Pursuant to Court Order" and bear the caption of the AWP Litigation and pleading or document title and such other description as will allow the Court to readily identify the documents or information or portions thereof so designated.

16. At the request of a producing party, the Court may limit or restrict person(s) not permitted access to "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information from attending any hearing or deposition at which such information is revealed.

17. Nothing in this Order shall be construed in any way as a finding that information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" actually is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information. Any party may object, in writing, to the designation by another party by specifying the information in issue and its grounds for questioning the designation. A party shall not be obligated to challenge the propriety of a designation at the time made, and a failure to do so shall not preclude any subsequent challenge. In the event that any party to the AWP Litigation disagrees at any point in these proceedings with the designation by the producing party, the parties shall try first to dispose of such dispute in good faith on an informal basis. If the parties' cannot resolve the dispute within twenty-one (21) days of service of a written objection, the party challenging the designation may file a motion to compel within twenty-one (21) days after the parties' informal attempts at resolution have concluded. The information, documents or materials shall continue to receive the protection of their designation until the Court rules on the motion. The party that designated the information



"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall have the burden of demonstrating the propriety of its designation.

18. Nothing herein shall be construed to be an admission of relevance or to affect, in any way, the admissibility of any documents, testimony or other evidence in the AWP Litigation. This Order is without prejudice to the right of any party to bring before the Court at any time the question of whether any particular information is or is not discoverable or admissible.

19. Nothing in this Order shall bar or otherwise restrict any attorney herein from rendering advice to clients with respect to the AWP Litigation and in the course thereof, referring to or relying upon the attorney's examination of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information so long as the attorney does not disclose "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information.

20. The inadvertent or mistaken disclosure by a producing party of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information shall not constitute a waiver of any claim of confidentiality except where: (a) the producing party notifies a receiving party in writing of such inadvertent or mistaken disclosure within ten (10) business days of becoming aware of such disclosure and, (b) within thirty (30) days of such notice, the producing party fails to provide properly redesignated documents to the receiving party. During the thirty (30) day period after notice, the materials shall be treated as designated in the producing party's notice. Upon receipt of properly redesignated documents, the receiving party shall return all unmarked or incorrectly designated documents and other materials to the producing party within five (5) business days. The receiving party shall not retain copies thereof and shall treat information contained in said documents and materials and any summaries or notes thereof as appropriately marked pursuant to the producing party's notice.

21. Should any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information be disclosed, through inadvertence or otherwise, by a receiving party to any person or party not authorized under this Order, then the receiving party shall: (a) use its best efforts to obtain the return of any such "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information and to



bind such person or party to the terms of this Order; (b) within seven (7) business days of the discovery of such disclosure, inform such person of all provisions of this Order and identify such person or party to the producing party; and (c) request such person or party to sign the Certification attached hereto as Exhibit A or B. The executed Certification shall be served upon counsel for the producing party within ten (10) business days of its execution by the party to whom the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information was inadvertently disclosed. Nothing in this Paragraph is intended to limit the remedies that the producing party may pursue for breach of this Order.

22. A producing person or entity who is not a party in the AWP Litigation shall be entitled to the protections afforded herein by signing a copy of this Order and serving same on all counsel of record. Thereafter, a producing person or entity may designate as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" only testimony, information, documents or things that such producing person or entity has produced or provided in the action.

23. This Order shall survive the termination of this litigation and the transferred actions and shall continue in full force and effect thereafter.

24. After final termination of this action, the outside counsel for a named party may each retain one copy of deposition transcripts and exhibits, Court transcripts and exhibits, and documents and other materials submitted to the Court. Nothing herein shall require the return or destruction of attorney work product. Such material shall continue to be treated as designated under this Order. Within sixty (60) days after final termination of the AWP Litigation, at the request of the producing party, counsel for the receiving party either shall (a) return all additional "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information in his/her possession, custody or control or in the custody of any authorized agents, outside experts and consultants retained or utilized by counsel for the receiving party to counsel for the party who has provided such "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information in discovery or (b) certify destruction thereof to the producing party's counsel. As to "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information reflected in computer databases or backup tapes or



any other electronic form, the receiving party shall erase all such "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information.

25. Pursuant to Local Rule 7.2, within thirty (30) days after final termination of the AWP Litigation, outside counsel for a named party shall retrieve from the Court all "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL" information that it filed with the Court during the AWP Litigation and return or dispose of such information in accordance with Paragraph 24.

26. If information subject to a claim of attorney-client privilege or work product immunity is inadvertently or mistakenly produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work-product immunity for such information. If a party has inadvertently or mistakenly produced information subject to a claim of immunity or privilege, upon written request made by the producing party within twenty-one (21) days of discovery of such inadvertent or mistaken production, the information for which a claim of inadvertent production is made, including all copies, shall be returned within seven (7) business days of such request unless the receiving party intends to challenge the producing party's assertion of privilege or immunity. All copies of inadvertently or mistakenly produced documents shall be destroyed, and any document or material information reflecting the contents of the inadvertently produced information shall be expunged. If a receiving party objects to the return of such information within the seven (7) business day period described above, the producing party may move the Court for an order compelling the return of such information. Pending the Court's ruling, a receiving party may retain the inadvertently or mistakenly produced documents in a sealed envelope and shall not make any use of such information.

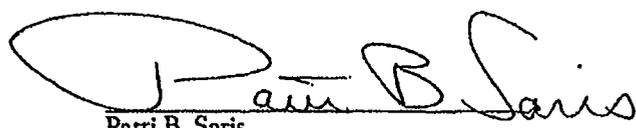
27. Provided a party has followed the procedures set forth herein, the Court deems that the party has complied with the requirements of Local Rule 7.2, Impounded and Confidential Materials.



28. Nothing in this Order shall prevent any party from applying to the Court for relief therefrom, or from applying to the Court for further or additional protective orders or modification of this Order.

29. It is further ordered that all pleadings, memoranda or other documents filed in court shall be treated as public regardless of the terms of this order unless the counsel for the party seeking protection certifies and explains why the material is confidential. To the extent that a brief or other document contains some confidential information, it shall be redacted in a public version.

Dated: 12/13, 2002


Patti B. Saris
United States District Judge



CERTIFICATION - EXHIBIT A

I hereby certify that I have read the attached Protective Order in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil Action No. 01-12257-PBS, dated _____, 2002 (the "Order"), and I agree that I will not reveal "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information to, or discuss such with, any person who is not entitled to receive "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information in accordance with the Order, I will use "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information only for the purposes of facilitating the prosecution or defense of the action and not for any business or other purpose. I will otherwise keep all "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL" information confidential in accordance with this Order. I agree that the United States District Court for the District of Massachusetts has jurisdiction to enforce the terms of the Order, and I consent to jurisdiction of that Court over my person for that purpose. I will otherwise be bound by the strictures of the Order.

Dated: _____

[Print Name]

[Company]

[Address]



IN-HOUSE COUNSEL CERTIFICATION -- EXHIBIT B

I hereby certify that I have read the attached Protective Order in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil Action No. 01-12257-PBS, dated _____, 2002 (the "Order"), and I agree that I will not reveal "HIGHLY CONFIDENTIAL" information to, or discuss such with, any person who is not entitled to receive "HIGHLY CONFIDENTIAL" information in accordance with the Order. I will use "HIGHLY CONFIDENTIAL" information only for the purposes of facilitating the prosecution or defense of the action and not for any business or other purpose. I will otherwise keep all "HIGHLY CONFIDENTIAL" information confidential in accordance with this Order.

I agree that I will only review "HIGHLY CONFIDENTIAL" information in the offices of outside counsel or other location designated by outside counsel. I will not remove such information from outside counsel's office or other location designated by outside counsel, nor make copies of or maintain any "HIGHLY CONFIDENTIAL" information at the offices at which I work.

My professional relationship with the party I represent and its personnel is strictly one of legal counsel. Although I may attend meetings where others discuss competitive decision-making, I am not involved in competitive decision-making (as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984) and *Matsushita Elec. Indus. Co. v. United States*, 929 F.2d 1577 (Fed. Cir. 1991)), for or on behalf of the party I represent or any other party that might gain a competitive advantage from access to the material disclosed under the Order. Other than legal advice, I do not provide advice or participate in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means that I do not, other than providing legal advice, for example, provide advice concerning decisions about, pricing, marketing or advertising strategies, product research and development, product design or



competitive structuring and compositions of bids, offers, or proposals, with respect to which the use of "HIGHLY CONFIDENTIAL" information could provide a competitive advantage.

I have attached a detailed narrative providing the following information: (a) my position and responsibilities as in-house counsel; and (b) the person(s) to whom I report, and their position(s) and responsibilities.

I further agree that the United States District Court for the District of Massachusetts has jurisdiction to enforce the terms of the Order, and I consent to jurisdiction of that Court over my person for that purpose. I will otherwise be bound by the strictures of the Order.

Dated: _____

[Print Name]

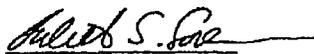
[Company]

[Address]



CERTIFICATE OF SERVICE

I certify that on December 13, 2002, I caused a true and correct copy of the foregoing JOINT MOTION FOR ENTRY OF PROTECTIVE ORDER and proposed PROTECTIVE ORDER to be served on all counsel of record by electronic service in accordance with Case Management Order No. 2.


Juliet S. Sorensen

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for defendants conferred with counsel for plaintiff on this motion, and that counsel for plaintiff joined in the motion.


Juliet S. Sorensen



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

) MDL No. 1456

) Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO:
ALL CASES

) Judge Patti B. Saris

) Chief Magistrate Judge
) Marianne B. Bowler

[PROPOSED] ORDER AMENDING THE PROTECTIVE ORDER

IT IS HEREBY ORDERED that the Protective Order issued by the Court on December 13, 2002 (the "Protective Order") be amended by addition of the following provisions:

1. Producing entities that are not parties to the AWP Litigation are afforded all protections provided by the Protective Order simply by marking produced documents as "Confidential" or "Highly Confidential." Such entities are not required to sign the Protective Order. To the extent that Paragraph 22 of the Protective Order required non-parties to sign a copy of the Protective Order in order to receive its protections, Paragraph 22 is hereby superseded.

2. The foregoing shall apply retrospectively. Entities that are not parties to the AWP Litigation and that have previously made productions that were marked "Confidential" or "Highly Confidential" are afforded all protections of the Protective Order notwithstanding whether such entities signed a copy of the Protective Order.

Dated: 3/24, 2005


PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

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3A CHATER ROAD
HONG KONG

February 9, 2006

Re: **State of Wisconsin v. Amgen Inc., et al., No. 04-CV-1709,
AstraZeneca Production**

Robert S. Libman, Esq.
Miner Barnhill & Galland, PC
14 West Erie Street
Chicago, Illinois 60610

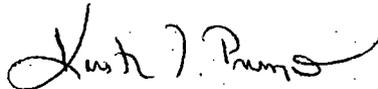
Dear Bob:

As per Judge Eich's Decision and Report dated January 31, 2006, enclosed is a CD containing text-searchable documents from the Pricing Strategy Group produced in In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456 (D. Mass.) relating to 15 drugs on your targeted list. These documents, which contain approximately 31,000 pages, are Bates stamped AZ_WI0000103 to AZ_WI0031295.

Also enclosed please find a CD containing the transactional sales and rebate data for the same 15 drugs, amounting to approximately 17 million transactional records. This CD is Bates stamped AZ_WI0031296.

These documents and data should be treated in compliance with the Protective Order entered by Judge Krueger on May 11, 2005, and in compliance with the Court's Decision and Order dated November 29, 2005.

Sincerely,



Kristi T. Prinzo

Enclosures

By Overnight Courier

cc: Barbara A. Neider

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HONG KONG

February 16, 2006

Re: **State of Wisconsin v. Amgen Inc., et al., No. 04-CV-1709,
AstraZeneca Production**

Robert S. Libman, Esq.
Miner Barnhill & Galland, PC
14 West Erie Street
Chicago, Illinois 60610

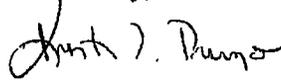
Dear Bob:

Enclosed please find a CD containing the transcripts and accompanying exhibits from the depositions of AstraZeneca Pharmaceuticals LP's ("AstraZeneca's") current and former employees in In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456 (D. Mass.) ("MDL") bearing Bates numbers AZ_WI0031297 through AZ_WI0042677. These documents are in response to Request No. 10 of Plaintiff's Written Discovery Request No. 3.

As previously mentioned in Barbara Neider's letter to you dated January 26, 2006, in order to comply with the MDL Protective Order, we have redacted third party confidential and highly confidential information.

These documents should be treated in compliance with the Protective Order entered by Judge Krueger on May 11, 2005, and in compliance with the Court's Decision and Order dated November 29, 2005.

Sincerely,



Kristi T. Prinzo

Enclosure

By Overnight Courier

cc: Barbara A. Neider

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HONG KONG

February 23, 2006

Re: **State of Wisconsin v. Amgen Inc., et al., No. 04-CV-1709,
AstraZeneca Production**

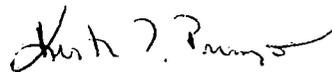
Robert S. Libman, Esq.
Miner Barnhill & Galland, PC
14 West Erie Street
Chicago, Illinois 60610

Dear Bob:

Enclosed please find a CD containing exemplar provider and pharmacy benefit manager contracts in response to Plaintiff's Written Discovery Requests 8 and 9, bearing Bates numbers AZ_WI0042678 to AZ_WI0042971. These documents have been marked highly confidential, and as such, should be treated in compliance with the Protective Order entered by Judge Krueger on May 11, 2005, and in compliance with the Court's Decision and Order dated November 29, 2005.

Please note that other than the confidentiality clauses contained in the exemplar contracts described above, AstraZeneca does not have separate written guidelines or policies regarding the disclosure of drug price information.

Sincerely,



Kristi T. Prinzo

Enclosure

cc w/ enc: Barbara A. Neider

By Overnight Courier

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HONG KONG

March 9, 2006

**Re: State of Wisconsin v. Amgen Inc., et al., No. 04-CV-1709,
AstraZeneca Production**

Robert S. Libman, Esq.
Miner Barnhill & Galland, PC
14 West Erie Street
Chicago, Illinois 60610

Dear Bob:

Enclosed please find a CD containing AMP data in response to Document Request No. 2, bearing Bates number AZ_WI0042972.

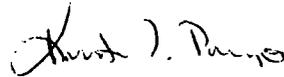
In addition, as per your request in your March 9th letter, enclosed is a CD bearing Bates number AZ_WI0042973 containing the transcripts which have not been redacted in ASCII form (since we do not have the capacity to redact ASCII files, we are unable to produce the redacted transcripts in this format). As such, this CD includes the following transcripts:

1. Jeff Alverson, 6/29/2004 and 8/18/2004
2. Robert Black, 8/30/2005
3. Christopher Bowman, 10/13/2005
4. Steve Buckanavage, 6/8/2005
5. Soheil Chavoshi, 5/25/2005
6. Thomas Chen, 12/14/2005
7. Michael Diggin, 8/4/2005
8. Paula Flynn, 5/12/2005
9. John Richard Freeberry, 5/20/2004 and 10/4/2005
10. Sarah Harrison, 7/18/2005
11. Nick Harsh, 2/8/2005
12. Todd Henkel, 8/29/2005
13. Chris Iacono, 6/9/2005 and 7/21/2005
14. Jennifer Judy, 10/11/2005
15. Susan Klein-Zignoli, 8/26/2005
16. Kaylor Kowash, 5/25/2005
17. James F. Liebman, 2/11/2005

18. Greg Looney, 5/12/2005
19. Randall Mastrangelo, 6/29/2005
20. Dean McAlister, 6/27/2005
21. Matt Metcalf, 8/31/2005
22. Alan Milbauer, 10/27/2004
23. Keith Patterson, 6/28/2005 and 8/3/2005
24. Scott Robbins, 10/11/2005
25. Carol Ryan, 8/25/2005
26. Erik Schultz, 9/13/2005
27. William Simpson, 10/18/2005
28. Steve Strand, 6/17/2005
29. Jack Wawrzonek, 7/14/2005
30. Deborah Wilson, 10/11/2005
31. Kathleen Zemanek, 6/1/2005

The data and transcripts have been marked highly confidential, and accordingly, should be treated in compliance with the Protective Order entered by Judge Krueger on May 11, 2005, and in compliance with the Court's Decision and Order dated November 29, 2005.

Sincerely,



Kristi T. Prinzo

Enclosures

cc w/ encs: Barbara A. Neider

By Overnight Courier

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HONG KONG

March 22, 2006

Re: **State of Wisconsin v. Amgen Inc., et al., No. 04-CV-1709,
AstraZeneca Production**

Robert S. Libman, Esq.
Miner Barnhill & Galland, PC
14 West Erie Street
Chicago, Illinois 60610

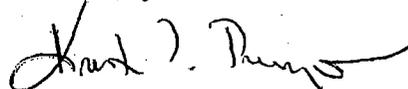
Dear Bob:

As per your request in our phone call the other day, enclosed please find a CD containing the MDL transcripts which have not been redacted in ASCII form without the attached exhibits in LEF format. This CD has been Bates stamped AZ_WI0042974.

Also enclosed is a CD bearing Bates numbers AZ_WI0042975 – AZ_WI0042996 which contains additional documents responsive to Document Request No. 5 (documents from the Pricing Strategy Group responsive to this request have been previously produced).

These documents should be treated in compliance with the Protective Order entered by Judge Krueger on May 11, 2005, and in compliance with the Court's Decision and Order dated November 29, 2005.

Sincerely,



Kristi T. Prinzo

Enclosures

cc w/ encs: Barbara A. Neider

By Overnight Courier

MINER, BARNHILL & GALLAND, P.C.
ATTORNEYS AND COUNSELORS

LISA T. ALEXANDER
CHARLES BARNHILL, JR.
JEFFREY I. CUMMINGS
ELIZABETH J. EBERLETT
GEORGE F. GALLAND, JR.
ROBERT S. LIBMAN
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WILLIAM A. MICELI
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May 5, 2006

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*ONLY ADMITTED IN WISCONSIN
†ONLY ADMITTED IN WISCONSIN
AND NEW YORK
‡ONLY ADMITTED IN WISCONSIN
AND CALIFORNIA

BY E-MAIL

Kristi Prinzo, Esq.
Davis, Polk & Wardwell
450 Lexington Ave.
New York, NY 10017

Barbara A. Neider, Esq.
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784

Re: *State of Wisconsin v. Amgen Inc., et al.*
Dane County Case No. 04-CV-1709

Dear Counsel:

As you know, in my letter of yesterday, May 4, 2006, I advised you that if AstraZeneca did not intend to appear in Madison, Wisconsin on May 17, 2006 for the deposition noticed by the state, it should file its own motion for a protective order prior to that date.

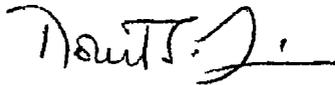
This morning, I learned that Merck intends to appeal Judge Eich's denial of its motion for protective order regarding the location of the state's deposition. As I understand from our previous discussions, resolution of this appeal will inform our positions regarding the location for the state's deposition of AstraZeneca. Accordingly, we are willing to continue the deposition of AstraZeneca until resolution of this appeal. I still do not know, however, whether AstraZeneca agrees to appear for deposition in Madison, Wisconsin if Merck's appeal is denied. Would you please advise me of your position.

Kristi Prinzo, Esq.
Barbara A. Neider, Esq.
Page Two
May 5, 2006

In addition, we are also willing to continue the deposition of AstraZeneca pending resolution of Mylan's motion for protective order, which raises issues different from those raised by Merck. We are willing to do so provided that AstraZeneca agrees: (1) to be bound by the ruling on Mylan's motion; and (2) to allow the state to advise Judge Eich (and Judge Krueger, if necessary), of this agreement.

I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert S. Libman". The signature is written in a cursive style with a horizontal line extending from the end.

Robert S. Libman

lmd

cc: Charles Barnhill, Jr., Esq.
Cynthia Hirsch, Esq.

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3A CHATER ROAD
HONG KONG

May 9, 2006

Re: State of Wisconsin v. Amgen Inc., et al., No. 04-CV-1709

Robert S. Libman, Esq.
Miner Barnhill & Galland, PC
14 West Erie Street
Chicago, Illinois 60610

Dear Bob:

I am writing in response to your letters dated May 4th and May 5th, and as a follow up to our May 4th meet and confer.

This will confirm that you are willing to continue AstraZeneca's deposition until after the resolution of Merck's appeal regarding the deposition location. If Merck's appeal is denied in its entirety, AstraZeneca will agree for its Wis. Stat. § 805.05(2)(e) designee to appear in Madison, Wisconsin for the deposition. This agreement is specifically limited to this § 805.05(2)(e) deposition, and not to individual depositions which, pursuant to statute, must occur at AstraZeneca's place of business in Wilmington, Delaware. See Wis. Stat. § 804.05(3)(b)1.

With regard to the pending Mylan and Johnson & Johnson motions, as we discussed in our May 4th call, there is a possibility that these decisions could turn on circumstances unique to each defendant. Accordingly, we must await Judge Eich's decisions on these motions in order to determine their applicability to AstraZeneca. We agree that Judge Eich's rulings will likely resolve the issue as to AstraZeneca, but suggest that we wait and see.

In your May 4th letter you also note that when the deposition eventually proceeds you intend to inquire about the "background and history of AstraZeneca, organizational structure, and corporate policies and practices." These topics are not included in your Wis. Stat. § 805.05(2)(e) notice. Nonetheless, we will likely be amenable to limited inquiry on these topics as a courtesy.

Finally, in our meet and confer on May 4th, you also agreed that when the deposition eventually proceeds, you are amenable to having AstraZeneca produce

Robert S. Libman

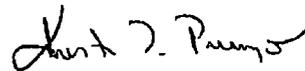
2

May 9, 2006

a witness who is knowledgeable on the subject matter topics for the past few years, acknowledging that it may be difficult to locate a witness who could adequately testify on the various topics back to 1993 (the time period alleged in the First Amended Complaint).

I look forward to speaking to you on our call scheduled for Wednesday, May 10th at 2:30 EDT/1:30 CST.

Sincerely,

A handwritten signature in cursive script that reads "Kristi T. Prinzo".

Kristi T. Prinzo

Enclosures

cc : Barbara A. Neider

By Email and Facsimile

MINER, BARNHILL & GALLAND, P.C.
ATTORNEYS AND COUNSELORS

LISA T. ALEXANDER
CHARLES BARNHILL, JR.
JEFFREY I. CUMMINGS
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May 10, 2006

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AND NEW YORK
††ONLY ADMITTED IN WISCONSIN
AND CALIFORNIA

BY E-MAIL

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Davis, Polk & Wardwell
450 Lexington Ave.
New York, NY 10017

Barbara A. Neider, Esq.
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784

Re: State of Wisconsin v. Amgen Inc., et al.
Dane County Case No. 04-CV-1709

Dear Counsel:

I am in receipt of your letter dated May 9, 2006.

I had previously offered to continue the deposition of AstraZeneca pending resolution of Mylan's motion for a protective order provided that AstraZeneca agrees: (1) to be bound by the ruling on Mylan's motion; and (2) to allow the State to advise Judge Eich (and Judge Krueger, if necessary), of this agreement. You have not agreed to this proposal. Indeed, you note that Mylan's motion, as well as Johnson & Johnson's motion for protective order, could turn on circumstances unique to each defendant. Accordingly, it is our position that AstraZeneca must file its own motion for a protective order. To the extent AstraZeneca joins in the arguments made by Mylan and Johnson & Johnson, it should simply state so in its motion. To the extent that AstraZeneca has other arguments, it should present those to Judge Eich as well.

Kristi Prinzo, Esq.
Barbara A. Neider, Esq.
Page Two
May 10, 2006

With regard to Merck's appeal regarding the deposition location, you state that if Merck's appeal is "denied in its entirety," AstraZeneca will agree to appear for deposition in Madison. In light of this, and other considerations, we are not willing to continue AstraZeneca's deposition until resolution of Merck's appeal. First, Judge Eich's order is controlling and enforceable during Merck's appeal. Second, the appeal is without merit. Third, resolution of the appeal could take weeks or months. Fourth, if each defendant had the right to stay Judge Eich's discovery orders by simply filing an appeal and waiting for a decision from Judge Krueger, discovery would grind to a halt. Accordingly, it is our position that AstraZeneca must appear in Madison for deposition unless AstraZeneca has obtained a protective order or stay of discovery pending Merck's appeal. If AstraZeneca believes that Judge Eich's order does not apply to AstraZeneca, it should also present this argument to Judge Eich.

Finally, your letter misstates our discussion regarding the time period covered by the deposition notice. I did not agree that AstraZeneca need only produce a witness with knowledge of the subject matters during the past few years. Rather, I stated that we expect testimony regarding the time period from 1993 to the present, but understand that AstraZeneca may need to produce more than one witness. To the extent this is the case, we do not object to AstraZeneca first producing a witness with knowledge of the more recent time period.

Sincerely,



Robert S. Libman

lmd

cc: Charles Barnhill, Jr., Esq.
Cynthia Hirsch, Esq.

Barbara A. Neider

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608.259.2615

May 10, 2006

Robert S. Libman, Esq.
Miner Barnhill & Galland, PC
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BY E-MAIL
AND U.S. MAIL

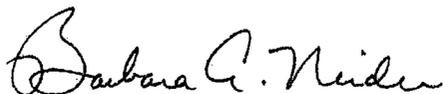
Re: State of Wisconsin v. Amgen Inc., et al., Case No. 04-CV-1709

Dear Mr. Libman:

This confirms that you have agreed, on behalf of the State, to remove from the calendar the deposition of AstraZeneca's designee, which the State had noticed for May 17, 2006, provided that AstraZeneca files a motion for a protective order concerning the deposition prior to that date. We will plan to do so.

Thank you.

Very truly yours,



Barbara A. Neider

BAN:rm

cc: Ms. Kristi Prinzo
Mr. Brian E. Butler

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