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STATE OF WISCONSIN,	)	
	)	
Plaintiff,	)	Case No. 04-CV-1709
	)	
v.	)	
	)	
ABBOTT LABORATORIES, INC., et al.,	)	
	)	
Defendants.	)	
	)	

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**DEFENDANT GLAXOSMITHKLINE'S MEMORANDUM  
IN OPPOSITION TO PLAINTIFF'S MOTION TO BE  
PERMITTED TO PURSUE DISCOVERY OF ITS ENTIRE CASE**

Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK") joins in Defendant Amgen Inc.'s Opposition to Plaintiff's Motion to Be Permitted to Pursue Discovery of Its Entire Case, and submits this additional memorandum to address issues specific to GSK. On its face, Plaintiff's motion seeks permission only to *pursue* discovery beyond the fifteen-drug limit. Plaintiff has informed counsel, however, that the real purpose of its motion is to obtain an order requiring GSK, and all other Defendants, to produce all documents that are responsive to Plaintiff's discovery requests for all the drugs identified in the Second Amended Complaint, including 65 current and former GSK products and a total of nearly 500 NDCs.

As discussed more fully in Amgen's opposition, Plaintiff's motion disregards Defendants' responses and objections to Plaintiff's discovery requests, including those asserted by GSK. Plaintiff has not challenged GSK's specific objections, nor has it filed an appropriate motion to compel under Wis. Stat. 804.12(1). Furthermore, as discussed below, Plaintiff's motion disregards the discovery agreements that it previously reached with GSK, and is unnecessary in light of GSK's most recent offer to produce substantial additional discovery, including certain

pricing data relating to all GSK products identified in the Second Amended Complaint.

Plaintiff's motion should be denied.

**Plaintiff's Motion Disregards Its Previous Agreements with GSK, and Ignores GSK's Offer to Produce Substantial Amounts of Additional Discovery**

On March 21, 2006, GSK wrote to Plaintiff memorializing agreements the two parties had reached regarding Plaintiff's document requests and GSK's objections to that discovery. (A copy of the March 21, 2006 letter is attached hereto as Exhibit A). GSK agreed to produce a substantial amount of information on the fifteen products that Plaintiff had identified: Advair, Amoxil, Augmentin, Avandia, Beconase, Flonase, Flovent, Imitrex, Lanoxin, Paxil, Relafen, Serevent, Wellbutrin, Ventolin and Zantac. GSK agreed to produce (and subsequently did produce), for the 1997 to 2002 period, detailed sales transaction data, including data relating to all discounts, rebates, chargebacks and administrative fees for the fifteen products, and numerous hard copy documents, such as pricing letters, pricing committee documents, contracts with pharmacy benefit managers ("PBMs"), guidelines relating to product discounts, and a spreadsheet comparing the Average Manufacturer Price ("AMP") and Wholesale Acquisition Cost ("WAC") for each of the fifteen drugs. GSK also agreed to produce (and ultimately did produce) additional sales transaction data, pricing letters and pricing committee documents relating to two more products – Zofran and Kytril injectibles – for the 1997 to 2002 period.

In exchange for all of this previously-produced information, Plaintiff agreed that it would review the materials that GSK produced before requesting any additional data or documents. Plaintiff also agreed that if it reviewed those materials and determined that they were somehow insufficient for purposes of its document requests, the parties would either reach a new agreement for additional discovery or submit the matter to the Court.

GSK produced data and documents for Zofran and Kytril injectibles on May 22, 2006, and data and documents for the fifteen additional products on July 5, 2006.<sup>1</sup> Just two weeks later, on July 19, 2006 – before Plaintiff could possibly have reviewed GSK’s extensive original production – Plaintiff’s counsel wrote to all defense counsel, including counsel for GSK, demanding that Defendants produce documents relating to all drugs identified in the Second Amended Complaint. (A copy of the July 19, 2006 letter from Plaintiff’s counsel is attached as Exhibit B to Plaintiff’s Memorandum in Support of Plaintiff’s Motion to Be Permitted to Pursue Discovery of Its Entire Case). The Second Amended Complaint identified 65 current and former GSK products, including nearly 500 GSK NDCs. Plaintiff sought additional discovery from GSK regarding this broad product list despite its earlier agreement to first review the data and documents that GSK had previously produced, and to seek further discovery from GSK only if it determined that those materials were somehow inadequate.

Nevertheless, GSK wrote to Plaintiff on July 28, 2006, stating that it was prepared to discuss Plaintiff’s new discovery demands. (A copy of the July 28, 2006 letter is attached hereto as Exhibit D). Plaintiff failed to respond, but GSK wrote to Plaintiff again on August 17, 2006, with a proposal to address Plaintiff’s request for additional discovery. (A copy of the August 17,

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<sup>1</sup> On April 3, 2006, shortly after GSK and Plaintiff had reached their agreements regarding the production of documents for the fifteen products, the Court entered its Partial Decision and Order on Defendants’ Joint Motion to Dismiss the Amended Complaint. The Court held that 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.” (Emphasis in original). In light of that decision, on April 27, 2006, GSK notified Plaintiff that it would be premature for GSK to produce the data and documents identified in its March 21, 2006 letter until after Plaintiff had complied with the Court’s order by re-pleading the allegations of its complaint. (A copy of the April 27, 2006 letter is attached hereto as Exhibit B). At the same time, GSK offered to produce certain data and documents relating to Zofran and Kytril injectibles – the only current or former GSK products that were specifically identified in Plaintiff’s complaint (GSK produced those materials to Plaintiff on May 22, 2006). On May 12, 2006, the parties agreed that GSK would produce its discovery regarding the fifteen products within one week of Plaintiff filing its amended complaint. (A copy of the May 12, 2006 letter is attached hereto as Exhibit C). Plaintiff filed its Second Amended Complaint on June 28, 2006, and GSK produced the data and documents regarding the fifteen products on July 5, 2006.

2006 letter is attached hereto as Exhibit E). Specifically, GSK stated that it was willing to provide the following information to Plaintiff:

1. Detailed sales transaction data for the period 1997-2002 for the following additional products identified in the Second Amended Complaint (and including five products that were not identified in the complaint) for which GSK had already pulled the data: Agenerase, Alerkeran, Amerge, Avandamet, Bactroban, Ceftin, Combivir, Compazine, Coreg, Cutivate, Daraprim, Dexadrine, Epivir, Eskalith, Flolan, Fortaz, Hycamptin, Lamictal, Leukeran, Mepron, Myleran, Navelbine, Oxistat, Purinethol, Relenza, Requip, Retrovir, Tabloid (thioguanine), Tagamet, Trizivir, Valtrex, Ziagen, Zovirax and Zyban;
2. Additional sales transaction data for Zofran and Kytril injectibles for the period 1991-1996 and 2003;
3. Documents (including a stipulation negotiated in the MDL litigation) which describe the relevant GSK sales transaction databases;
4. A chart which shows and compares the 1997-2002 AMPs and WACs for the following products (which would be in addition to the products covered by the previously-produced AMP vs. WAC comparison charts): Aclovate, Agenerase, Amerge, Avandamet, Bactroban, Ceftin, Combivir, Compazine, Coreg, Cutivate, Dexedrine, Epivir, Eskalith, Flolan, Hycamptin, Lamictal, Mepron, Navelbine, Oxistat, Purinethol, Requip, Retrovir, Stelazine, Tagamet, Temovate, Thorazine, Trizivir, Valtrex, Ziagen, Zovirax and Zyban; and
5. All transcripts and exhibits from the depositions of more than 40 GSK witnesses taken in the MDL litigation.

GSK proposed that, in exchange for this information, Plaintiff agree to review these additional materials before seeking any additional data or documents from GSK. If, after reviewing that information, Plaintiff still believed that it needed further discovery from GSK, GSK proposed that the parties would either reach a new agreement at that time or, if such an agreement could not be reached, submit the matter to the Court. In its August 17, 2006 letter to Plaintiff, GSK reasoned that "[p]roceeding in this fashion will provide the State with a substantial amount of information that is directly relevant to its allegations in this litigation. At the same time, by beginning with a review of the additional data and documents that GSK is

prepared to produce at this time, the State will be better equipped to identify those products, if any, for which it genuinely needs further discovery."<sup>2</sup>

Plaintiff responded to GSK's proposal by demanding that GSK also produce AMP/WAC comparisons for all GSK products identified in the Second Amended Complaint. Plaintiff also stated that while it would accept a rolling production of documents, it would not agree to any limitation on its right to future discovery. Plaintiff said that it would not agree to GSK's proposal unless GSK assented to its motion to enlarge discovery, or agreed up-front to be bound by whatever decision the Court ultimately issued on that motion with respect to the other Defendants.

In a further effort to resolve the discovery dispute and cooperate with Plaintiff, GSK emailed Plaintiff on August 21, 2006, stating that, in addition to the data and documents that GSK had offered to produce in its August 17 letter, GSK was willing to provide AMP/WAC comparisons for all GSK products identified in the Second Amended Complaint for the 1997-2002 period. (A copy of the August 21, 2006 email is attached hereto as Exhibit F). GSK confirmed that, by entering into the proposed agreement, Plaintiff would not be waiving its right to seek further discovery from GSK with respect to the full range of GSK products at issue in the litigation, or the full range of documents sought in its discovery requests. Similarly, GSK would not be waiving its objections to providing Plaintiff with further document discovery at a later date. Again, GSK proposed that, to the extent that Plaintiff believed that it needed additional discovery after actually reviewing the material that GSK produced, the parties would either reach a new agreement at that time or submit the matter to the Court. GSK suggested that, in light of

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<sup>2</sup> In the MDL litigation, GSK produced millions of pages of documents, and substantial amounts of electronic data, in response to discovery requests that generally involved just two products: Zofran and Kytril. Although Plaintiff's discovery requests are not as broad as those served in the MDL, there is little doubt that collecting and producing documents for 65 products, for the period January 1, 1993 to the present, would be a Herculean task that GSK should not have to attempt absent a showing by Plaintiff that it is entitled to such burdensome discovery.

the proposed compromises, Plaintiff withdraw its motion to expand discovery as to GSK, while reserving its right to seek full discovery on all GSK products under its document requests.

Plaintiff inexplicably refused to do so, however, thereby necessitating the filing of this opposition.

Plaintiff claims in its motion papers that while it seeks permission to pursue discovery over the entirety of its case, "[t]hat is not to say that plaintiff will refuse to organize discovery in a reasonable manner, or refuse to discuss individual exceptions to this rule." *See* Plaintiff's Memorandum in Support of Its Motion to Be Permitted to Pursue Discovery of Its Entire Case at p. 4. That assertion is belied by Plaintiff's insistence on pursuing an unnecessary motion against GSK in hopes of obtaining an order that Plaintiff is somehow currently entitled to full discovery from GSK on all 65 products. Plaintiff has failed to acknowledge, much less address, the many objections that GSK and other Defendants asserted in response to its discovery requests. Moreover, Plaintiff has yet to offer a coherent explanation as to why GSK's comprehensive, good faith proposal regarding Plaintiff's discovery requests is not a reasonable or sufficient means of addressing the interests of both parties. In short, Plaintiff's motion is both unreasonable and unsupported as it relates to GSK. The motion should be denied accordingly.

**CONCLUSION**

For the foregoing reasons, GSK respectfully requests that the Court deny Plaintiff's Motion to Be Permitted to Pursue Discovery of Its Entire Case with respect to GSK.

Dated this 25th day of August, 2006.

Respectfully submitted,

DEWITT ROSS & STEVENS S.C.



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March 21, 2006

VIA FAX (608) 661-0067

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Re: *State of Wisconsin v. Amgen, Inc., et al.*

Dear Jeff:

I am writing to confirm our discussions during our "meet-and-confer" conference call of March 13, 2006. Our discussions involved Plaintiff's First Set of Requests for Production of Documents to All Defendants dated January 27, 2005 ("Plaintiff's First Document Requests"), Plaintiff's First Set of Interrogatories to All Defendants dated January 27, 2005 ("Plaintiff's First Set of Interrogatories"), Plaintiff State of Wisconsin's Written Discovery Request No. 3 dated November 8, 2005 (to All Defendants) ("Plaintiff's Second Document Requests"), and Plaintiff's Notice of Deposition of Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK") (the "Deposition Notice").

## **Plaintiff's First Document Requests**

### **Request No. 1**

GSK has agreed to provide Plaintiff with sales transaction data for the 15 drugs that Plaintiff identified, including data relating to all rebates, discounts and chargebacks for transactions during the 1997-2002 period. GSK anticipates producing this information to Plaintiff within approximately one week. Plaintiff has agreed to review the 1997-2002 data before requesting that GSK provide information for any additional years. If Plaintiff reviews that data and determines that the information is insufficient for purposes of this document request, the parties may then revisit whether GSK is willing to provide data for any additional years or whether the matter must be resolved by the court.

Exh. A

Request No. 2

GSK has agreed to provide Plaintiff with a spreadsheet showing the Average Manufacturer Price ("AMP") and Wholesale Acquisition Cost ("WAC") for each of the 15 identified drugs for the 1997-2002 period. Plaintiff has agreed to review the information contained in that spreadsheet before requesting that GSK provide AMPs for any additional years. If Plaintiff reviews the 1997-2002 information and determines that it is insufficient for purposes of this document request, the parties may then revisit whether GSK is willing to provide AMPs for any additional years or whether the matter must be resolved by the court.

Request No. 3

GSK has agreed to produce pricing committee documents relating to the 15 identified drugs for the 1997-2002 period. These documents relate to the company's consideration of how products are to be priced, whether to increase prices, and related information. We will get back to you shortly with a date by which we anticipate producing these documents, which we are attempting to accomplish as quickly as possible. Plaintiff has agreed to review the pricing committee documents before requesting any additional material in response to this document request. If Plaintiff reviews those documents and determines that they are insufficient for purposes of this request, the parties may then revisit whether GSK is willing to provide any additional documents or whether the matter must be resolved by the court.

Request No. 4

GSK did not calculate an "Average Sales Price" ("ASP") prior to the implementation of the Medicare Prescription Drug Improvement and Modernization Act of 2003 ("MMA"). Although the company now calculates ASPs for certain products under the MMA, we do not believe GSK has done so for most of the 15 identified products since most of those drugs are not physician-administered. GSK has agreed to produce certain sales transaction data (*see* Response to Document Request No. 1) and a spreadsheet of AMPs and WACS (*see* Response to Document Request No. 2) with respect to the 15 drugs. Plaintiff has agreed to review those materials before seeking any additional documents in response to this request. If Plaintiff reviews those materials and determines that they are insufficient for purposes of this document request, the parties may then revisit whether GSK is willing to provide any additional information or whether the matter must be resolved by the court.

Request No. 5

GSK has agreed to provide Plaintiff with copies of the company's "Dear Customer" letters regarding the 15 identified drugs for the 1997-2002 period.

Plaintiff has agreed to review those materials before seeking any additional documents in response to this request. If Plaintiff reviews those materials and determines that they are insufficient for purposes of this document request, the parties may then revisit whether GSK is willing to provide any additional information or whether the matter must be resolved by the court.

Request No. 6

Any documents in GSK's possession that were prepared by IMS Health Incorporated ("IMS") are the subject of a licensing agreement between the two companies. That agreement prohibits GSK from disclosing IMS-licensed data to third parties without IMS's consent. In light of the licensing agreement between GSK and IMS, and given Plaintiff's ability to obtain data directly from IMS, Plaintiff has agreed not to press this document request at this time.

**Plaintiff's Second Document Requests**

Request No. 7

GSK will verify that all documents listed in Appendix A attached to Plaintiff's Second Document Requests relate solely to Kytril or Zofran, which are not on Wisconsin's list of 15 drugs. Assuming that GSK provides such verification to Plaintiff, Plaintiff has agreed that GSK will not be required to produce unredacted copies of the documents.

Request No. 8

GSK has agreed to produce copies of its contracts with pharmacy benefit managers ("PBMs") covering the 15 identified drug for the 1997-2002 period, provided that any contractual confidentiality obligations can be satisfied.

Request No. 9

*See Response to Request No. 8 above.*

Request No. 10

GSK is not aware of any sworn statements or deposition transcripts involving current or former GSK employees or agents that relate to any alleged violations of a federal "best price" law or regulation, or to whether GSK's employees or agents furnished free samples to providers for improper purposes. In addition, since any sworn statements or deposition testimony provided by current or former GSK employees or agents in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (the "MDL") relate solely to Kytril or Zofran, which

are not on Wisconsin's list of 15 drugs, GSK is not willing to produce those materials in the Wisconsin litigation.

**Plaintiff's First Set of Interrogatories**

**Interrogatory No. 1**

Plaintiff has indicated that this interrogatory seeks information about any "dead net" price that GSK may have calculated for its internal purposes reflecting an amount net of any and all "Incentives," such as various forms of rebates, discounts, credits and chargebacks. As previously noted, prior to the MMA, GSK did not calculate an "ASP" for its products. Moreover, to our knowledge, GSK has not calculated a "dead net" price, as we understand it, on a product-by-product basis for the products at issue here. GSK will attempt to identify a person or persons who can verify this for purposes of Interrogatory No. 1.

**Interrogatory No. 2**

GSK has agreed to provide Plaintiff with sales transaction data for the 15 identified drugs, including data relating to rebates, discounts and chargebacks for the 1997-2002 period (*see* Response to Document Request No. 1), as well as documents that describe the relevant databases. Plaintiff has agreed to review that data before requesting that GSK provide additional information in response to this interrogatory. If Plaintiff reviews the data and determines that the information is insufficient for purposes of this interrogatory, the parties may then revisit whether GSK is willing to provide additional information or whether the matter must be resolved by the court.

**Interrogatory No. 3**

GSK has agreed to provide Plaintiff with sales transaction data for the 15 identified drugs, including data relating to rebates, discounts and chargebacks for the 1997-2002 period (*see* Response to Document Request No. 1). Plaintiff has agreed to review that data before requesting that GSK provide additional information in response to this interrogatory. If Plaintiff reviews the data and determines that the information is insufficient for purposes of this interrogatory, the parties may then revisit whether GSK is willing to provide additional information or whether the matter must be resolved by the court.

**Interrogatory No. 4**

GSK has agreed to provide Plaintiff with sales transaction data (*see* Response to Document Request No. 1) and pricing committee documents (*see* Response to Document Request No. 3) relating to the 15 identified drugs for the 1997-2002

period. Plaintiff has agreed to review those materials before requesting that GSK provide additional information in response to this interrogatory. If Plaintiff reviews the sales transaction data and pricing committee documents and determines that the information is insufficient for purposes of this interrogatory, the parties may then revisit whether GSK is willing to provide additional information or whether the matter must be resolved by the court.

Interrogatory No. 5

GSK has agreed to provide Plaintiff with sales transaction data (*see* Response to Document Request No. 1) and pricing committee documents (*see* Response to Document Request No. 3) relating to the 15 identified drugs for the 1997-2002 period. Plaintiff has agreed to review those materials before requesting that GSK provide additional information in response to this interrogatory. If Plaintiff reviews those materials and determines that the information is insufficient for purposes of this interrogatory, the parties may then revisit whether GSK is willing to provide additional information or whether the matter must be resolved by the court.

Deposition Notice

With respect to the 15 identified drugs, GSK has agreed to provide Plaintiff with sales transaction data (*see* Response to Document Request No. 1), a spreadsheet showing the products' AMPs and WACs (*see* Response to Document Request No. 2), pricing committee documents (*see* Response to Document Request No. 3), and copies of the company's "Dear Customer" letters (*see* Response to Document Request No. 5). Plaintiff has agreed to review those materials before requesting that GSK provide any additional information in response to the document requests contained in the Deposition Notice. If Plaintiff reviews those materials and determines that the information is insufficient for purposes of the Deposition Notice, the parties may then revisit whether GSK is willing to provide additional information or whether the matter must be resolved by the court.

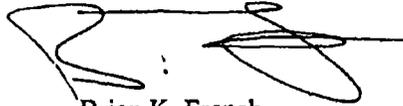
Plaintiff has agreed to remove item 6 from the list of topics contained in the Deposition Notice on which testimony is sought.

Finally, GSK will provide Plaintiff with the name of a corporate designee to provide testimony on the company's behalf in response to the Deposition Notice, along with dates when that designee is available for deposition. That deposition will take place in Philadelphia. Plaintiff has agreed that it will not be using the deposition simply to identify the names of additional witnesses who may have knowledge about the matters identified in the Deposition Notice.

P. Jeffrey Archibald, Esq.  
March 21, 2006  
Page 6

If you have any questions or comments regarding this information, or if you believe that I have misstated any of our agreements in connection with our recent meet-and-confer conference call, please notify me immediately. Thank you for your assistance with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian K. French". The signature is stylized with a large, sweeping initial "B" and a long horizontal stroke extending to the right.

Brian K. French

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April 27, 2006

VIA FAX AND U.S. MAIL

P. Jeffrey Archibald, Esq.  
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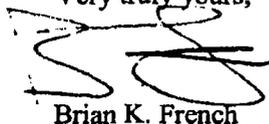
Re: *State of Wisconsin v. Amgen, Inc., et al.*

Dear Jeff:

As you know, in its Partial Decision and Order entered in the above-referenced matter, dated April 3, 2006, the Court stated that 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." (Emphasis in original). With respect to GSK, Zofran and Kytril injectibles are the only products as to which the State makes allegations with anywhere near the level of specificity now required by the Court. In light of the Court's directive that the State re-plead its allegations to provide this specific information for each drug it wishes to place at issue, it would now be premature for GSK to produce the documents and data identified in my letter to you of March 21, 2006, until after the State has properly complied with the Court's order to re-plead the Amended Complaint. Judge Eich's recent decision to postpone, at least temporarily, the deposition of Mylan Pharmaceuticals' corporate designee further supports the view that discovery as to many drugs should not proceed until after the State has properly amended its pleadings.

Without waiving any of its rights, GSK remains willing to produce certain documents and data relating to Zofran and Kytril injectibles – the only current or former GSK products specifically identified in the Amended Complaint. In particular, GSK will provide the State with sales transaction data, pricing committee documents, and "Dear Customer" letters, all of which were described in my March 21 letter, only as to Zofran and Kytril injectibles, and covering the 1997-2002 period. Please advise if you wish to receive these materials, or if you would prefer to revisit the matter after the State has filed its Amended Complaint. I look forward to hearing from you.

Very truly yours,



Brian K. French

*Exh. B*

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May 12, 2006

Brian K. French  
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VIA FAX AND FIRST CLASS MAIL

P. Jeffrey Archibald, Esq.  
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1914 Monroe Street  
Madison, Wisconsin 53711

Re: *State of Wisconsin v. Amgen, Inc.*

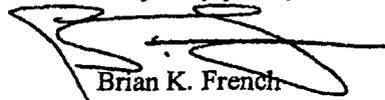
Dear Jeff:

This is to confirm our discussions earlier this week regarding discovery in the above-referenced matter. SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK") has agreed that, after the State of Wisconsin files its amended complaint, the company will produce documents concerning the fifteen (15) identified products in accordance with our earlier agreement, as set forth in my letter to you dated March 21, 2006. GSK also will make David A. Moules, Vice President, Strategic Pricing and Contract Management, available for deposition in Philadelphia as GSK's corporate designee on a date after the State has filed its amended complaint. GSK has agreed to produce the documents relating to the fifteen (15) products one week before the date of Mr. Moules' deposition.

It is my understanding that the State will be filing its amended complaint on or about July 7, 2006. I have therefore requested information about Mr. Moules' availability for deposition beginning the week of July 10, 2006, and will contact you, or Attorney Barnhill in your absence, to select a date once I receive that information. As we agreed, Mr. Moules' deposition will take place in Philadelphia at the offices of Dechert LLP. Your agreement to conduct that deposition in Philadelphia is without prejudice to your position that you may require depositions of out-of-state witnesses to be taken in Wisconsin (and also without prejudice to GSK's position that an out-of-state witness may insist on being deposed at his or her place of residence or work).

As for the documents and data that GSK agreed to produce concerning Zofran and Kytril injection, I anticipate providing you with those materials next week. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Brian K. French

cc: Charles Barnhill, Jr., Esq.

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Exh. C

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July 28, 2006

VIA FAX AND FIRST CLASS MAIL

P. Jeffrey Archibald, Esq.  
Archibald Consumer Law Center  
1914 Monroe Street  
Madison, Wisconsin 53711

Re: *State of Wisconsin v. Amgen, Inc., et al.*

Dear Jeff:

I am writing on behalf of defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK") in response to your recent voicemail message and to Chuck Barnhill's letter of July 19, 2006. We are also in receipt of the State of Wisconsin's Motion to Pursue Discovery of Its Entire Case. GSK reserves its right to file a response to the State's motion at the appropriate time.

As you know, by prior agreement with you, GSK produced to the State a substantial amount of information regarding the fifteen products that you identified in February 2006: Advair, Amoxil, Augmentin, Avandia, Beconase, Flonase, Flovent, Imitrex, Lanoxin, Paxil, Relafen, Serevent, Wellbutrin, Ventolin and Zantac. With respect to those fifteen products, GSK produced a hard drive containing sales transaction data, as well as hard copy documents, such as pricing letters, pricing committee documents, contracts with pharmacy benefit managers, AMP/WAC comparisons and spreadsheets, and various guidelines relating to product discounts. GSK also produced sales transaction data and additional hard copy documents for Zofran and Kytril injectibles.

As confirmed by my letter to you dated March 21, 2006, the State agreed to review the data and documents that GSK committed to produce at that time before seeking any additional documents from the company. The State further agreed that, if it reviewed those materials and determined that they were insufficient for purposes of the document requests, the parties would then revisit whether GSK is willing to provide any additional documents or if the matter must be resolved by the court. Mr. Barnhill's letter of July 19, and the State's motion, ignore the State's agreements with GSK, fail to explain why GSK's previous document productions were insufficient, or justify why the State is entitled to additional documents at this time.

Exh. D

P. Jeffrey Archibald, Esq.  
July 28, 2006  
Page 2

Nevertheless, GSK is prepared to discuss these issues with you, including the additional concerns that Mr. Barnhill raised in his letter regarding confidentiality designations, to the extent that doing so may still be productive in light of the State's motion. If you would like to discuss this matter further, please contact me at your earliest convenience to schedule a mutually agreeable date and time.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian K. French". The signature is stylized with a large, sweeping initial "B" and a long horizontal stroke extending to the right.

Brian K. French

# 3933815\_v1

cc: Charles Barnhill

# Holland+Knight

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August 17, 2006

## VIA FAX AND EMAIL

P. Jeffrey Archibald, Esq.  
Archibald Law Center  
1914 Monroe Street  
Madison, Wisconsin 53711

Re: *State of Wisconsin v. Amgen, Inc., et al.*

Dear Jeff:

I am writing to follow-up on my letter to you dated July 28, 2006, regarding the State of Wisconsin's request, and subsequent motion, for expanded discovery involving all of the products identified in the Second Amended Complaint. As stated in my letter, defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK") remains prepared to discuss the State's request, despite the numerous objections contained in GSK's previous discovery responses and communications. Although you have not yet responded to my July 28 letter, in order to address this matter as expeditiously as possible, GSK is willing to produce additional data and documents as outlined below.

As you know, GSK previously provided the State with a substantial amount of information regarding the fifteen products that you identified in February 2006: Advair, Amoxil, Augmentin, Avandia, Beconase, Flonase, Flovent, Imitrex, Lanoxin, Paxil, Relafen, Serevent, Wellbutrin, Ventolin and Zantac. With respect to those products, GSK produced a hard drive containing detailed sales transaction data, including data relating to discounts, rebates, chargebacks and administrative fees, as well as hard copy documents, such as pricing letters, pricing committee documents, contracts with pharmacy benefit managers, AMP/WAC comparison spreadsheets, and various guidelines relating to product discounts. GSK also produced sales transaction data and additional hard copy documents for Zofran and Kytril injectibles.

In response to the State's request for expanded document discovery, GSK is willing to provide the following information:

1. Detailed sales transaction data for the period 1997-2002 for the following additional products identified in the Second Amended Complaint (and including five products that are not identified in the complaint) for which GSK has already pulled the data: Agenerase, Alkeran, Amerge, Avandamet, Bactroban, Cefdin, Combivir, Compazine,

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P. Jeffrey Archibald  
August 17, 2006  
Page 2

Coreg, Cutivate, Daraprim, Dexedrine, Epivir, Eskalith, Flolan, Fortaz, Hycamptin, Lamictal, Leukeran, Mepron, Myleran, Navelbine, Oxistat, Purinethol, Relenza, Requip, Retrovir, Tabloid (thioguanine), Tagamet, Trizivir, Valtrex, Ziagen, Zovirax and Zyban;

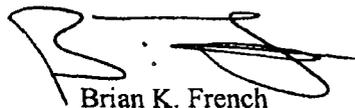
2. Additional sales transaction data for Zofran and Kytril injectibles for the time period 1991-1996 and 2003;
3. Documents (including a stipulation negotiated in the MDL litigation) which describe the relevant GSK sales transaction databases;
4. A chart which shows and compares the 1997-2002 AMPs and WACs for the following products (which are in addition to the products covered by the previously-produced AMP vs. WAC comparison chart): Aclovate, Agenerase, Amerge, Avandamet, Bactroban, Cefitin, Combivir, Compazine, Coreg, Cutivate, Dexedrine, Epivir, Eskalith, Flolan, Hycamptin, Lamictal, Mepron, Navelbine, Oxistat, Purinethol, Requip, Retrovir, Stelazine, Tagamet, Temovate, Thorazine, Trizivir, Valtrex, Ziagen, Zovirax and Zyban; and
5. The depositions of GSK witnesses taken in the MDL litigation.

In exchange for this information, the State would agree to review those materials before seeking any additional data or documents from GSK. If, after reviewing the additional information that GSK proposes to provide, the State still believes that it needs further discovery from GSK, the parties may either reach a new agreement at that time regarding additional discovery or, if such an agreement cannot be reached, submit the matter for the Court's determination.

Proceeding in this fashion will provide the State with a substantial amount of information that is directly relevant to its allegations in this litigation. At the same time, by beginning with a review of the additional data and documents that GSK is prepared to produce at this time, the State will be better equipped to identify those products, if any, for which it genuinely needs further discovery.

Please notify me as soon as possible whether the foregoing proposal is acceptable to the State, or if there are any additional questions or issues that you would like to discuss. I look forward to hearing from you.

Very truly yours,



Brian K. French

**French, Brian K (BOS - X72018)**

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**From:** French, Brian K (BOS - X72018)  
**Sent:** Monday, August 21, 2006 3:16 PM  
**To:** 'archibaldlaw@tds.net'  
**Subject:** WI AWP

Jeff:

I am writing to follow-up on the proposal outlined in my letter to you dated August 17, 2006, and our discussions last Friday regarding the same. GSK remains prepared to provide the State with the sales transaction data, AMP/WAC comparisons, and additional discovery identified in my August 17th letter. Based on our discussions, GSK also is prepared to provide AMP/WAC comparisons for all of the products identified by the State for the 1997-2002 period. In exchange, the State would agree to review the information that GSK proposes to provide before seeking any additional document discovery from GSK.

As we discussed, by entering into this proposed agreement, the State would not be waiving its right to seek further discovery from GSK with respect to the full range of GSK products at issue in the Second Amended Complaint, or the full range of documents sought in its discovery requests. Similarly, GSK would not be waiving its objections to providing the State with further document discovery. If, after reviewing the data and documents that GSK proposes to produce at this time, the State believes that it needs additional discovery, the parties would either reach a new agreement at that time, or would submit the matter to the General Master or the Court if they are unable to reach such an agreement.

Assuming that this proposal is acceptable to the State, I suggest that the State withdraw its motion for expanded discovery as to GSK (while, again, reserving its right to seek full discovery on all the GSK products at issue, and with GSK reserving its objections). Since you have indicated that the State views its motion to expand discovery as tantamount to a motion to compel production of all documents the State seeks, and on all products, GSK cannot assent to that motion, even if the State is agreeable to the production of documents on a rolling or step-by-step basis. GSK is willing to produce the data and documents discussed above as an accommodation to the State, and as a good faith effort to cooperate in the discovery process. In light of GSK's need to preserve its objections, however, GSK will have no choice but to file an opposition to the State's motion for expanded discovery if the State insists on GSK's assent to that motion as a condition to our agreement.

I look forward to your response.

Brian K. French  
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STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH: 7

DANE COUNTY

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STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN, INC., et al.,

Defendants.

Case No: 04 CV 1709

Unclassified - Civil: 30703

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**CERTIFICATE OF SERVICE**

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I hereby certify that I caused a true and correct copy of Defendant GlaxoSmithKline's Memorandum in Opposition to Plaintiff's Motion to be Permitted to Pursue Discovery of Its Entire Case to be served on counsel of record by transmission to LNFS pursuant to Order dated December 20, 2005.

I also certify that I caused a true and correct copy of these documents to be mailed via first-class mail to the Honorable William F. Eich, 840 Farwell Drive, Madison, WI 53704.

Dated this 25th day of August, 2006.

  
Diane K. Sullivan