

**MINER, BARNHILL & GALLAND, P.C.**

ATTORNEYS AND COUNSELORS

LISA T. ALEXANDER  
CHARLES BARNHILL, JR. \*  
JEFFREY I. CUMMINGS  
WILLIAM P. DIXON\*\*  
ELIZABETH EBERLE\*\*\*  
GEORGE F. GALLAND, JR.  
ROBERT S. LIBMAN†††  
NANCY L. MALDONADO  
WILLIAM A. MICELI  
JUDSON H. MINER  
REBECCA D. ONIE  
SARAH E. SISKIND††  
PAUL STRAUSS†††  
LAURA E. TILLY

SUITE 803  
44 EAST MIFFLIN STREET  
MADISON, WISCONSIN 53703  
(608) 255-5200  
TELECOPIER (608) 255-5380  
www.lawmbg.com

WRITER'S EMAIL:  
WDixon@lawmbg.com

**CHICAGO OFFICE**  
14 WEST ERIE STREET  
CHICAGO, ILLINOIS 60610  
(312) 751-1170  
TELECOPIER (312) 751-0438

\*ADMITTED IN WISCONSIN AND ILLINOIS  
\*\*ADMITTED IN WISCONSIN AND  
DISTRICT OF COLUMBIA  
\*\*\*ADMITTED IN WISCONSIN AND CALIFORNIA  
†ADMITTED IN ILLINOIS AND NEW YORK  
††ADMITTED IN WISCONSIN AND NEW YORK  
†††ADMITTED IN ILLINOIS AND CALIFORNIA  
DISTRICT OF COLUMBIA and ILLINOIS  
ALL OTHERS ADMITTED IN ILLINOIS ONLY

OF COUNSEL:

THOMAS F. ASCH  
BRADLEY SCOTT WEISS

October 3, 2005

Hon. Moria Krueger  
Circuit Court Judge, Branch 7  
Dane County Circuit Court  
City County Building  
210 Martin Luther King Jr. Blvd., Rm. 330  
Madison WI 53703-3342

*Via Hand Delivery*

Re: *State of Wisconsin v. Amgen Inc., et al.*  
Dane County Case Number: 04-CV-1709

Dear Judge Krueger:

Enclosed please find the following documents submitted in this matter:

1. Motion To Compel Astrazeneca Defendants To Respond To Plaintiff's First Set Of Interrogatories To All Defendants And Plaintiff's First Set Of Requests For Production Of Documents To All Defendants;
2. Memorandum In Support Of Motion To Compel Astrazeneca Defendants To Respond To Plaintiff's First Set Of Interrogatories To All Defendants And Plaintiff's First Set Of Requests For Production Of Documents To All Defendants;
3. Affidavit Of William P. Dixon;
4. Certificate of Service; and
5. (Proposed) Order.

Hon. Moria Krueger  
Circuit Court Judge, Branch 7  
Page Two  
October 3, 2005

The Court is respectfully requested to schedule the Motion at an appropriate time pursuant to the Court's availability.

Very truly yours,

A handwritten signature in black ink that reads "Bill Dixon". The signature is written in a cursive, slightly slanted style.

William P. Dixon

WPD:jlz

Enclosures

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

2005 OCT -3 PM 1:00

BRANCH 7

COPY

STATE OF WISCONSIN )  
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 Plaintiff, )  
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 v. )  
 )  
 AMGEN INC., et al., )  
 )  
 Defendants. )

Case No. 04-CV-1709  
Unclassified – Civil:30703

**MOTION TO COMPEL ASTRAZENECA DEFENDANTS TO RESPOND TO  
 PLAINTIFF’S FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS AND  
 PLAINTIFF’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO  
 ALL DEFENDANTS**

1. Pursuant to Wis. Stat. § 804.12 (1), Plaintiff State of Wisconsin (“the State”) moves this Court to compel Defendant Astrazeneca Pharmaceuticals, LP and Astrazeneca LP (collectively referred to as the “Astrazeneca Defendants”) to respond and provide full answers to Plaintiff’s First Set of Requests for Production of Documents and Plaintiff’s First Set of Interrogatories.

2. The State’s discovery requests are narrowly tailored and highly relevant to the matters at issue in this case. The Astrazeneca Defendants have refused to produce documents or respond substantively to any of the State’s discovery requests, except for a single drug, Zoladex. The State is entitled to responses with respect to each of the drugs identified in the narrowed list of “Targeted Drugs” that the State provided to the Astrazeneca Defendants in May 2005.

3. The State respectfully asks this Court to compel full responses to their discovery

requests and to award the State its costs and fees associated with bringing this motion.

Dated this 3<sup>rd</sup> day of October, 2005.



One of Plaintiff's Attorneys

PEGGY A. LAUTENSCHLAGER  
Attorney General  
State Bar #1002188

MICHAEL R. BAUER  
Assistant Attorney General  
State Bar #1003627

CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870

FRANK D. REMINGTON  
Assistant Attorney General  
State Bar #1001131

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-0332 (MRB)  
(608) 266-3861 (CRH)  
(608) 266-3542 (FDR)

CHARLES BARNHILL  
State Bar #1015932

WILLIAM P. DIXON  
State Bar #1012532

ELIZABETH J. EBERLE  
State Bar #1037016

Miner, Barnhill & Galland, P.C.  
44 East Mifflin Street, Suite 803  
Madison, WI 53703  
(608) 255-5200

Attorneys for Plaintiff,  
State of Wisconsin

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 7

DANE COUNTY

2005 OCT -3 PM 1:00

COPY

STATE OF WISCONSIN )  
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 Plaintiff, )  
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 v. )  
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 AMGEN INC., et al., )  
 )  
 Defendants. )

Case No. 04-CV-1709  
Unclassified – Civil:30703

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ASTRAZENECA  
 DEFENDANTS TO RESPOND TO PLAINTIFF’S FIRST SET OF INTERROGATORIES  
 TO ALL DEFENDANTS AND PLAINTIFF’S FIRST SET OF REQUESTS FOR  
 PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

Pursuant to Wis. Stat. § 804.12 (1), Plaintiff State of Wisconsin (“the State”) moves this Court to compel Defendant Astrazeneca Pharmaceuticals, LP and Astrazeneca LP (collectively referred to as the “Astrazeneca Defendants”) to respond and provide full answers to its First Set of Requests for Production of Documents and Plaintiff’s First Set of Interrogatories.

**Background of the Case**

This lawsuit by the State of Wisconsin was brought on June 3, 2004 on its own behalf and acting in its *parens patriae* capacity on behalf of its citizens and Wisconsin organizations who pay the prescription drug costs of their members, to recover damages and injunctive relief from defendants, who are manufacturers of prescription drugs. Defendants have taken advantage of the enormously complicated and non-transparent market for prescription drugs to engage in an unlawful scheme to cause Wisconsin and its citizens and third-party payers, such as insurers, to pay their fraudulently inflated prices for prescription drugs. The scheme involves the publication by defendants of phony Average Wholesale Prices (“AWP”), which then become the basis for calculating the cost at which “providers” – the physicians, hospitals, and pharmacies that provide

these prescription drugs to patients – are reimbursed by Wisconsin. Defendants reinforce this illegal tactic with other deceptive practices, including the use of secret discounts and rebates to providers and the use of various devices to keep secret the prices of their drugs currently available in the market place to other purchasers. By willfully engaging in this scheme, defendants have succeeded in having Wisconsin and its citizens and third-party payers finance windfall profits to these providers in violation of Wisconsin statutes. Defendants profit from their scheme by using the lure of these windfall profits competitively to encourage providers to buy more of their drugs instead of competing in the market place solely on the basis of legitimate factors such as price and the medicinal value of their drugs.

Currently pending before this Court is Defendants' Joint Motion To Dismiss The Amended Complaint, Plaintiff State of Wisconsin's Motion For An Order Entering Qualified Protective Order, and Plaintiff State Of Wisconsin's Motion To Appoint Referee. This case has been twice removed to federal court by defendants and twice sent back with an award of costs to the State.

### **The Discovery Requests at Issue**

On January 27, 2005, the State served the Astrazeneca Defendants with its First Set of Interrogatories to All Defendants and Plaintiff's First Set of Requests for Production of Documents to All Defendants, Exs. 1 & 2. The State's discovery requests are narrowly tailored and highly relevant to the matters at issue in this case, focusing on two main aspects of the State's claim: the *actual* prices of defendants' drugs and whether defendants use the "spread" between the actual prices and their fraudulently inflated prices to market their drugs. Although the State contends that defendants falsely inflate the prices of and create spreads for all of their

drugs, the discovery requests are restricted to “Targeted Drugs” which have substantial utilization by the State in recent years.

The interrogatories which the Astrazeneca Defendants have refused to answer consist of only five questions, generally characterized to identify and describe: (1) any “average sales price” or similar price they may have calculated for any of the Targeted Drugs; (2) any electronic database that contains pricing data; (3) any type of rebate, chargeback, discount, etc. offered with the purchase of a Targeted Drug; (4) how each price of a Targeted Drug is determined; and (5) any Targeted Drug for which defendants have included a reference to the “spread.”

Similarly, the request for production of documents is limited to only six requests, generally: (1) all national sales data for each Targeted Drug; (2) all documents containing AMPs (Average Manufacturer Price used in federal reimbursements to Medicaid programs) for any Targeted Drug; (3) all documents referring to the spread for any drug; (4) all documents containing an average sales price or similar price for any Targeted Drug; (5) all documents sent to or received from any of the three national publishers of pharmaceutical drug prices for any Targeted Drug; and (6) all documents prepared by IMS Health regarding a Targeted Drug or competitor drug regarding pricing, sales, or market share.

These requests are narrowly tailored and request information highly relevant to the State’s claims.

#### **The Astrazeneca Defendants’ Response to the Discovery Requests**

As a result of a series of “meet and confer” discussions between counsel for the parties, the State agreed to narrow further the definition of “Targeted Drug” in the discovery requests for the first round of discovery. On May 20, 2005, the State’s counsel wrote to the Astrazeneca Defendants, and gave them a list of “Targeted Drugs.” Ex. 3 (Pltf. May 20, 2005 letter with

attached list). On June 21, 2005, having received no reply to the May 20, 2005 letter, the State's counsel again wrote to Astrazeneca Defendants' counsel, asking that she respond to the May 20, 2005 letter. Ex. 4 (Pltf. June 21, 2005 e-mail).

On June 22, 2005, Astrazeneca Defendants' counsel wrote to the State's counsel, stating that notwithstanding the narrowed list of Targeted Drugs provided by the State, "we believe that this current request is simply unreasonable and thwarts any meaningful discussion regarding discovery." Astrazeneca Defendants' counsel further stated it was only willing to discuss discovery relating to a single drug, Zoladex. Ex. 5 (Prinzo June 22, 2005 letter).

Plaintiff's counsel responded on June 23, 2005, rejecting the Astrazeneca Defendants' suggestion that discovery should be limited to Zoladex, and further advised the Astrazeneca Defendants that their responses to the discovery requests were overdue as of June 12, 2005, which was 30 days after this Court signed the temporary qualified protective order. Ex. 6 (Pltf. June 23, 2005 letter)

On July 7, 2005, Astrazeneca Defendants' counsel again refused to discuss discovery except with respect to Zoladex. Ex. 7 (Prinzo July 7, 2005 letter).

### **Argument**

The Astrazeneca Defendants have refused to respond to the State's legitimate discovery requests other than agreeing to produce documents and information relating to a single drug, Zoladex. The State, through their correspondence with the Astrazeneca Defendants, has provided them reasonable notice of its intent to compel responses. See e.g., Ex. 6. This Court, pursuant to Wis. Stat. § 804.12 (1), has the power to compel the Astrazeneca Defendants to respond to the State's discovery requests. It should do so forthwith.

The Astrazeneca Defendants' refusal to provide interrogatory answers or produce documents regarding Plaintiff's narrowed list of "Targeted Drugs," with the exception of Zoladex, is improper and unsupported. The Astrazeneca Defendants apparently take the position that Plaintiff is only entitled to discovery as to those drugs that are specifically identified by name in the Complaint. This position has already been rejected by the Court.

In effect, the Astrazeneca Defendants are re-arguing their March 23, 2005 motion for a stay of discovery pending resolution of the defendants' motion to dismiss, which argues, among other things, that the State must identify with specificity each drug at issue. The State opposed that motion. In response to defendants' motion, the Court ordered that discovery was stayed "until May 11, 2005, or until further order of the Court." See Ex. 8 (April 12, 2005 Order). The Court also urged the parties to jointly draft a proposed protective order to be reviewed by the Court on May 11, 2005, and urged the State to further narrow the list of drugs for the first round of discovery. The parties subsequently agreed on a Temporary Qualified Protective Order, which was entered by the Court on May 11, 2005. At the hearing, the defendants informed the Court and the State that discovery responses would begin to flow. The Court was not asked by defendants then, or at any subsequent time, to enter any further order staying discovery.

The State has done precisely what the Court encouraged it to do. The Astrazeneca Defendants, by contrast, are stonewalling and recalcitrant. They should be ordered to respond to the State's discovery requests with regard to all drugs identified in the State's narrowed list of Targeted Drugs.

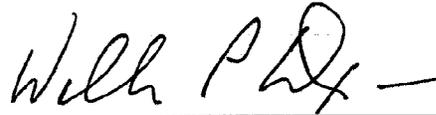
If the State is successful in this Motion, it requests that this Court award it the reasonable expenses incurred in bringing this Motion, including attorneys' fees. Wis. Stat. § 804.12 (1)(c) ("[i]f the motion is granted, the court shall, after opportunity for hearing, require the party ...

whose conduct necessitated the motion ... to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.”).

**Conclusion**

For the foregoing reasons, the State respectfully asks this Court to compel full responses to their discovery requests and to award the State the costs and fees associated with bringing this motion.

Dated this 3<sup>rd</sup> day of October, 2005.



\_\_\_\_\_  
One of Plaintiff's Attorneys

PEGGY A. LAUTENSCHLAGER  
Attorney General  
State Bar #1002188

MICHAEL R. BAUER  
Assistant Attorney General  
State Bar #1003627

CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870

FRANK D. REMINGTON  
Assistant Attorney General  
State Bar #1001131

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-0332 (MRB)  
(608) 266-3861 (CRH)  
(608) 266-3542 (FDR)

CHARLES BARNHILL  
State Bar #1015932

WILLIAM P. DIXON  
State Bar #1012532

ELIZABETH J. EBERLE  
State Bar #1037016

Miner, Barnhill & Galland, P.C.  
44 East Mifflin Street, Suite 803  
Madison, WI 53703  
(608) 255-5200

Attorneys for Plaintiff,  
State of Wisconsin

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

Branch 7

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04CV1709

Unclassified Civil: 30703

ABBOTT LABORATORIES, ET AL.,

Defendants.

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**PLAINTIFF'S FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS**

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**TO:** See Attached Service List

PLEASE TAKE NOTICE that the Plaintiff requires the Defendants to provide an answer within thirty (30) days hereof at the offices of the Wisconsin Attorney General, Wisconsin, Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857 Attn: Cynthia Hirsch and Miner, Barnhill & Galland, P.C., 44 East Mifflin Street, Suite 803, Madison, WI 53703 Attn: Charles Barnhill to this First Set of Interrogatories pursuant to Rule 804.08:

**DEFINITIONS**

As used in these Interrogatories, the following terms shall have the meanings set forth below:

1. The term "Average Manufacturer Price" or "AMP" means the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report for purposes of the Medicaid program, pursuant to 42 U.S.C. § 1396r-8.

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Ex. 1

2. The term "**Chargeback**" means any payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser's acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.

3. The term "**Defined Period of Time**" means from January 1, 1993 to the present and Documents relating to such period even though created before that period.

4. The term "**Document**" means any writing or recording of any kind, including, without limitation, agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, facsimiles (faxes), film, graphs, letters, memos, maps, minutes (particularly Board of Directors and/or Executive Committee meeting minutes), notes, notices, photographs, reports, schedules, summaries, tables, and telegrams, in any medium, whether written, graphic, pictorial, photographic, electronic, emails, phonographic, mechanical, taped, saved on computer disc, hard drives, data tapes, or otherwise, and every non-identical copy. Different versions of the same Document, such as different copies of a written record bearing different handwritten notations, are different Documents within the meaning of the term as used. In case originals or original non-identical copies are not available, "Document" includes copies of originals or copies of non-identical copies as the case may be.

5. The term "**Incentive**" means anything of value provided to a customer which would lower the consideration paid for a drug, regardless of the time it was provided (for example, at the time of invoicing, shipment, or payment; or monthly, quarterly, annually, or at any other time or on any other basis) and regardless of its name. The term "Incentive" therefore includes, but is not limited to, payments or proposed payments in cash or in kind, Chargebacks, credits, discounts such as return to practice discounts, prompt pay discounts, volume discounts, on-invoice discounts, off-invoice discounts, rebates such as market share rebates, access rebates, or bundled drug rebates, free goods or samples, credits, administrative fees or administrative fee reimbursements, marketing fees, stocking fees, conversion fees, patient education fees, off-invoice pricing, educational or other grants, research funding, payments for participation in clinical trials, honoraria, speaker's fees or payments, patient education fees or consulting fees.

6. The term "**National Sales Data**" means data sufficient to identify for each sales transaction involving the Targeted Drugs the following information:

- a. transaction date;
- b. transaction type;

- c. your product number;
- d. product description;
- e. package description;
- f. NDC;
- g. NDC unit quantity;
- h. NDC unit invoice price;
- i. NDC unit WAC (assigned by you);
- j. contract price;
- k. invoice price;
- l. customer name, identification number, address and class of trade;
- m. all paid or distributed Incentives;
- n. all accrued Incentives calculated at any time identifying the amount of the accrual, its nature or type, the date of the accrual, and other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.

7. The term **“Pharmaceutical”** means any drug or other product, whether sold by you, or any other manufacturer, which requires a physician’s or other prescriber’s prescription, including, but not limited to, “biological” products such as hemophilia factors and intravenous solutions.

8. The term **“Spread”** is used to refer to the difference between the actual acquisition cost or purchase price of a Pharmaceutical (paid by purchasers of the Pharmaceuticals) and the reimbursement rate paid by third party payors (to purchasers of the Pharmaceuticals) for the Pharmaceutical. Third party payors include the Medicare program, Medicaid program, and private insurance. Thus, the Spread is the gross profit actually or potentially realized by the purchasers of the Pharmaceuticals for those Pharmaceuticals ultimately paid for by third party payors.

9. The term **“Targeted Drugs”** means those drugs manufactured by you which have total utilization under the Medicaid and Medicare Part B programs exceeding \$10,000 during the Defined Period of Time in the state of Wisconsin.

### INTERROGATORIES

**INTERROGATORY NO. 1:** Have you ever determined an average sales price or other composite price net of any or all Incentives for a Targeted Drug during the Defined Period of Time? If so, for each Targeted Drug for which you have made such a determination, identify:

- (a) the beginning and ending dates of each period applicable to each such determination;

- (b) the applicable class(es) of trade for which each determination was made;
- (c) each average sales price or composite price determined;
- (d) the person(s) most knowledgeable regarding the determinations;
- (e) the methodology used to determine such prices;
- (f) your purpose(s) in making such determinations;
- (g) whether you disclosed any average sales price or composite price so determined to any publisher, customer, or governmental entity. If so, identify each publisher, customer or governmental entity to whom each such price was disclosed and the corresponding date of the disclosure; and
- (h) whether any such average sales price or composite price was treated as confidential or commercially sensitive financial information.

**INTERROGATORY NO. 2** Identify each electronic database, data table or data file that you now maintain or have maintained during the Defined Period of Time in the ordinary course of business which contains a price for a Targeted Drug. For each such electronic data entity, identify, describe or produce the following:

- (a) the name or title of each such database, data table, or data file;
- (b) the software necessary to access and utilize such data entities;
- (c) describe the structure of each database, data table or data file identified in response to Request No. 2(a) above and identify all files or tables in each such database, data table or data file. For each such file or table, identify all fields and for each field describe its contents, format and location within each file or table record or row.
- (d) the current or former employee(s) with the most knowledge of the operation or use of each data entity identified above; and
- (e) the custodian(s) of such data entity.

**INTERROGATORY NO. 3** Describe each type of Incentive you have offered in conjunction with the purchase of any Targeted Drug. For each such Incentive, identify:

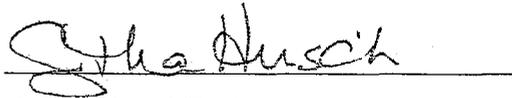
- (a) the type(s) of Incentive(s) offered for each Targeted Drug;
- (b) the class(es) of trade eligible for each Incentive;
- (c) the general terms and conditions of each Incentive; and
- (d) the beginning and ending dates of each period during which the Incentive was offered.

**INTERROGATORY NO. 4** Describe in detail how you determined each price you used in the ordinary course of business of each Targeted Drug for each year during the Defined Period of Time and identify the person(s) most knowledgeable in making such determinations for each Targeted Drug for each year.

**INTERROGATORY NO. 5** Have you ever included in your marketing of a Targeted Drug to any customer reference to the difference (or spread) between an AWP or WAC published by First DataBank, Redbook or Medi-span and the list or actual price (to any customer) of any Targeted Drug? If so, provide the following information for each Targeted Drug:

- a. the drug name and NDC;
- b. the beginning and ending dates during which such marketing occurred;
- c. the name, address and telephone number of each customer to whom you marketed a Targeted Drug in whole or in part by making a reference to such difference(s) or spread(s); and
- d. identify any document published or provided to a customer which referred to such difference(s) or spread(s).

Dated this 27 day of January, 2005.

  
One of Plaintiff's Attorneys

PEGGY A. LAUTENSCHLAGER  
Attorney General  
State Bar #1002188

MICHAEL R. BAUER  
Assistant Attorney General  
State Bar #1003627

CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870

FRANK D. REMINGTON  
Assistant Attorney General  
State Bar #1001131

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-0332 (MRB)  
(608) 266-3861 (CRH)  
(608) 266-3542 (FDR)

CHARLES BARNHILL  
State Bar #1015932

WILLIAM P. DIXON  
State Bar #1012532

ELIZABETH J. EBERLE  
State Bar #1037016

Miner, Barnhill & Galland, P.C.  
44 East Mifflin Street, Suite 803  
Madison, WI 53703  
(608) 255-5200

Attorneys for Plaintiff,  
State of Wisconsin

## SERVICE LIST

### Defendants

#### Local Counsel for Abbott Laboratories

Allen C. Schlinsog, Jr.  
Mark A. Cameli  
Reinhart Boerner Van Deuren, SC  
1000 North Water Street  
PO Box 2965  
Milwaukee WI 53201-2965  
(414) 298-1000  
(414) 298-8097 fax

#### Local Counsel for Abbott Laboratories

Lynn M. Stathas  
Anthony J. Lucchesi  
Reinhart Boerner Van Deuren, SC  
22 East Mifflin Street  
PO Box 2018  
Madison WI 53701-2018  
(608) 229-2200  
(608) 229-2100 fax

James R. Daly  
Jeremy P. Cole  
Jones Day  
77 West Wacker  
Chicago IL 60601-1692  
(312) 782-3939  
(312) 782-8585 fax

R. Christopher Cook  
Jesse A. Witten  
Jones Day  
51 Louisiana Avenue, NW  
Washington DC 20001-2113  
(202) 879-3939  
(202) 626-1700 fax

#### Local Counsel for Amgen Inc.

William M. Conley  
Jeffrey A. Simmons  
Foley & Lardner, LLP  
150 East Gilman Street

PO Box 1497  
Madison WI 53701  
(608) 258-4209  
(608) 258-4258

**Local Counsel for Amgen Inc.**

David W. Simon  
Foley & Lardner, LLP  
777 East Wisconsin Avenue  
Milwaukee WI 53202  
(414) 271-2400  
(414) 297-4900 fax

**Counsel for Amgen Inc.**

Steven F. Barley  
Joseph H. Young  
Hogan & Hartson, LLP  
111 South Calvert Street  
Baltimore MD 21202  
(410) 659-2700  
(410) 539-6981 fax

**Local Counsel for Astrazeneca Pharmaceuticals LP**

**Local Counsel for Astrazeneca LP**

Brian E. Butler  
Stafford Rosenbaum, LLP  
PO Box 1784  
Madison WI 53701-1784  
(608) 256-0226  
(608) 259-2600 fax

**Counsel for Astrazeneca Pharmaceuticals LP**

**Counsel for Astrazeneca LP**

D. Scott Wise  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York NY 10017  
(212) 450-4000  
(212) 450-3800 fax

**Local Counsel for Aventis Pharmaceuticals, Inc.**

Stephen P. Hurley  
Marie Stanton  
Andrew Erlandson  
Hurley Burish & Milliken, SC  
301 North Broom Street

Madison WI 53703  
(608) 257-0945  
(608) 257-5764 fax

**Counsel for Aventis Pharmaceuticals, Inc.**

Paul Schlieffman  
Carlos Provencio  
Shook Hardy & Bacon  
South Hamilton Square  
600 14<sup>th</sup> Street, NW, Suite 800  
Washington DC 20005-2004  
(202) 783-8400  
(202) 783-4211 fax

**Counsel for Aventis Pharmaceuticals, Inc.**

Michael L. Koon  
Tiffany W. Killoren  
Shook Hardy & Bacon  
2555 Grand Blvd.  
Kansas City MO 64108  
(816) 474-6550  
(816) 421-5547 fax

**Local Counsel for Aventis Behring, LLC**

Stephen P. Hurley  
Marie Stanton  
Andrew Erlandson  
Hurley Burish & Milliken, SC  
301 North Broom Street  
Madison WI 53703  
(608) 257-0945  
(608) 257-5764 fax

**Counsel for Aventis Behring, LLC**

William D. Nussbaum  
Jonathan T. Rees  
Martha L. Russo  
Hogan & Hartson, LLP  
555 13<sup>th</sup> Street, NW  
Washington DC 20004-1109  
(202) 637-5600  
(202) 637-5910 fax

**Local Counsel for Baxter International, Inc.**

Bruce A. Schultz  
Coyne, Niess, Schultz, Becker & Bauer, SC

150 E. Gilman Street  
Madison WI 53703  
(608) 255-1388  
(608) 255-8592 fax

**Counsel for Baxter International, Inc.**

Merle M. DeLancey  
Andres Colon  
Dickstein, Shapiro, Morin & Oshinsky, LLP  
2101 L. Street, NW  
Washington DC 20037  
(202) 785-9700  
(202) 887-0689 fax

**Local Counsel for Bayer Corporation**

Kevin J. O'Connor  
Todd G. Smith  
LaFollette, Godfrey & Kahn, LLP  
Suite 500  
One East Main Street, PO Box 2719  
Madison WI 53701-2719  
(608) 257-3911  
(608) 257-0609 fax

**Counsel for Bayer Corporation**

Richard Raskin  
Michael Doss  
Sidley Austin Brown & Wood, LLP  
Bank One Plaza  
10 S. Dearborn Street  
Chicago IL 60603  
(312) 853-7000  
(312) 853-7036 fax

**Local Counsel for Boehringer Ingelheim Corporation**

**Counsel for Boehringer Ingelheim Corporation**

Paul J. Coval  
Douglas L. Rogers  
Allen S. Kinzer  
Darrell A.H. Miller  
Vorys, Sater, Seymour and Pease, LLP  
52 East Gay Street  
PO Box 1008  
Columbus OH 43216-1008

(614) 464-6400  
(614) 464-6350 fax

**Local Counsel for Bristol-Myers Squibb Co.**

James R. Clark  
Foley & Lardner, LLP  
777 East Wisconsin Avenue  
Milwaukee WI 53202  
(414) 271-2400  
(414) 297-4900 fax

**Local Counsel for Bristol-Myers Squibb Co.**

Roberta F. Howell  
Michael D. Leffel  
Foley & Lardner, LLP  
150 East Gilman Street  
PO Box 1497  
Madison - WI 53701  
(608) 258-4209  
(608) 258-4258 fax

**Counsel for Bristol-Myers Squibb Co.**

Steven M. Edwards  
Lyndon M. Tretter  
James S. Zucker  
Hogan & Hartson, LLP  
875 Third Avenue  
New York NY 10022  
(212) 918-3000  
(212) 918-3100 fax

**Local Counsel for Dey, Inc.**

John W. Markson  
John M. Moore  
Bell, Gierhart & Moore, S.C.  
44 East Mifflin Street  
PO Box 1807  
Madison WI 53701  
(608) 257-3764  
(608) 257-3757 fax

**Counsel for Dey, Inc.**

Christopher C. Palermo  
Philip D. Robben  
Kelley Drye & Warren LLP  
101 Park Avenue

New York NY 10178  
(212) 808-7800  
(212) 808-7897 fax

**Local Counsel for Fujisawa Healthcare, Inc.**

Bruce A. Schultz  
Coyne, Niess, Schultz, Becker & Bauer, SC  
150 E. Gilman Street  
Madison WI 53703  
(608) 255-1388  
(608) 255-8592 fax

**Counsel for Fujisawa Healthcare, Inc.**

Kathleen H. McGuan  
Andrew L. Hurst  
Reed Smith, LLP  
1301 K. Street, NW  
East Tower, Suite 1100  
Washington DC 20005  
(202) 414-9200  
(202) 414-9299 fax

**Local Counsel for Genzia Sicor Pharmaceuticals, Inc.**

Lester A. Pines  
Cullen, Weston, Pines & Bach  
122 W. Washington Avenue, #900  
Madison WI 53703-2718  
(608) 251-0101  
(608) 251-2883 fax

**Counsel for Genzia Sicor Pharmaceuticals, Inc.**

Elizabeth I. Hack  
T. Reed Stephens  
Sonnenschein, Nath & Rosenthal, LLP  
1301 K. Street NW  
Suite 600, East Tower  
Washington DC 20005  
(202) 408-6400  
(202) 408-6399 fax

**Local Counsel for Smithkline Beecham Corp., d/b/a Glaxosmithkline**

Daniel W. Hildebrand  
Dewitt Ross & Stevens, SC  
2 East Mifflin Street, Suite 600  
Madison WI 53703  
(608) 255-8891

(608) 252-9243 fax

**Counsel for Smithkline Beecham Corp., d/b/a Glaxosmithkline**

Frederick G. Herold  
Dechert, LLP  
975 Page Mill Road  
Palo Alto CA 94022  
(650) 813-4800  
(650) 813-4848 fax

**Counsel for Smithkline Beecham Corp., d/b/a Glaxosmithkline**

Mark H. Lynch  
Covington & Burlin  
1201 Pennsylvania Avenue, NW  
PO Box 7566  
Washington DC 20044-7566  
(202) 662-6000  
(202) 662-6291 fax

**Local Counsel for Johnson & Johnson**

Donald Schott  
Waltraud A. Arts  
Quarles & Brady, LLP  
One South Pickney Street, Suite 600  
Madison WI 53703-2808  
(608) 251-5000  
(608) 251-9166

**Counsel for Johnson & Johnson**

William F. Cavanaugh, Jr.  
Andrew Schau  
Patterson, Belknap, Webb & Tyler, LLP  
1133 Avenue of the Americas  
New York NY 10036-6710  
(212) 336-2000  
(212) 336-2500 fax

**Local Counsel for Pfizer Inc.**

**Local Counsel for Pharmacia Corporation**

Beth Kushner  
Timothy Feeley  
Von Briesen & Roper, SC  
411 East Wisconsin Avenue, Suite 700  
Milwaukee WI 53202  
(414) 287-1373  
(414) 276-6281

**Counsel for Pfizer Inc.  
Counsel for Pharmacia Corporation**

John C. Dodds  
Erica Smith-Klocek  
Kimberly K. Heuer  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia PA 19103  
(215) 963-5000  
(215) 963-5001 fax

**Local Counsel for Schering-Plough Corporation**

Earl H. Munson  
Baordman, Suhr, Curry & Field, LLP  
One South Pickney Street  
Fourth Floor, PO Box 927  
Madison WI 53701-0927  
(608) 283-1796  
(608) 283-1709 fax

**Counsel for Schering-Plough Corporation**

Brien T. O'Connor  
Ropes & Gray, LLP  
One International Place  
Boston MA 02110  
(617) 951-7385  
(617) 951-7050 fax

**Local Counsel for Tap Pharmaceutical Products, Inc.**

Allen C. Schlinsog, Jr.  
Mark A. Cameli  
Reinhart Boerner Van Deuren, SC  
1000 North Water Street  
PO Box 2965  
Milwaukee WI 53201-2965  
(414) 298-1000  
(414) 298-8097 fax

**Local Counsel for Tap Pharmaceutical Products, Inc.**

Lynn M. Stathas  
Anthony J. Lucchesi  
Reinhart Boerner Van Deuren, SC  
22 East Mifflin Street  
PO Box 2018  
Madison WI 53701-2018  
(608) 229-2200

(608) 229-2100 fax

**Counsel for Tap Pharmaceutical Products, Inc.**

Daniel E. Reidy  
Lee Ann Russo  
Tina M. Tabacchi  
Jones Day  
77 West Wacker  
Chicago IL 60601-1692  
(312) 782-3939  
(312) 782-8585 fax

**Local Counsel for Watson Pharmaceuticals, Inc.**

Ralph Weber  
Gass Weber Mullins, LLC  
309 North Water Street  
Milwaukee WI 53202  
(414) 223-3300  
(414) 224-6116 fax

**Counsel for Watson Pharmaceuticals, Inc.**

Douglas B. Farquhar  
Hyman, Phelps & McNamara, PC  
700 13<sup>th</sup> Street, NW; Suite 1200  
Washington DC 20005  
(202) 737-5600  
(202) 737-9329 fax

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No.: 04CV1709

Unclassified Civil: 30703

ABBOTT LABORATORIES, ET AL.,

Defendants.

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**PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS TO ALL DEFENDANTS**

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To: See Attached Service List

PLEASE TAKE NOTICE that the Plaintiff requires the Defendants to produce within thirty (30) days hereof at the offices of the Wisconsin Attorney General, Wisconsin, Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857 Attn: Cynthia Hirsch and Miner, Barnhill & Galland, P.C., 44 East Mifflin Street, Suite 803, Madison, WI 53703 Attn: Charles Barnhill a copy of each of the following described Documents pursuant to Rule 804.09:

**DEFINITIONS**

As used in these Document Requests, the following terms shall have the meanings set forth below:

1. The term "Average Manufacturer Price" or "AMP" means the price you report or otherwise disseminate as the average manufacturer price for any Pharmaceutical that you report for purposes of the Medicaid program, pursuant to 42 U.S.C. § 1396r-8.
2. The term "Chargeback" means any payment, credit or other adjustment you have provided to a purchaser of a drug to compensate for any difference between the purchaser's acquisition cost and the price at which the Pharmaceutical was sold to another purchaser at a contract price.
3. The term "Defined Period of Time" means from January 1, 1993 to the present and Documents relating to such period even though created before that period.

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Ex. 2

4. The term "Document" means any writing or recording of any kind, including, without limitation, agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, facsimiles (faxes), film, graphs, letters, memos, maps, minutes (particularly Board of Directors and/or Executive Committee meeting minutes), notes, notices, photographs, reports, schedules, summaries, tables, and telegrams, in any medium, whether written, graphic, pictorial, photographic, electronic, emails, phonographic, mechanical, taped, saved on computer disc, hard drives, data tapes, or otherwise, and every non-identical copy. Different versions of the same Document, such as different copies of a written record bearing different handwritten notations, are different Documents within the meaning of the term as used. In case originals or original non-identical copies are not available, "Document" includes copies of originals or copies of non-identical copies as the case may be.

5. The term "Incentive" means anything of value provided to a customer which would lower the consideration paid for a drug, regardless of the time it was provided (for example, at the time of invoicing, shipment, or payment, or monthly, quarterly, annually, or at any other time or on any other basis) and regardless of its name. The term "Incentive" therefore includes, but is not limited to, payments or proposed payments in cash or in kind, Chargebacks, credits, discounts such as return to practice discounts, prompt pay discounts, volume discounts, on-invoice discounts, off-invoice discounts, rebates such as market share rebates, access rebates, or bundled drug rebates, free goods or samples, credits, administrative fees or administrative fee reimbursements, marketing fees, stocking fees, conversion fees, patient education fees, off-invoice pricing, educational or other grants, research funding, payments for participation in clinical trials, honoraria, speaker's fees or payments, patient education fees or consulting fees.

6. The term "National Sales Data" means data sufficient to identify for each sales transaction involving the Targeted Drugs the following information:

- a. transaction date;
- b. transaction type;
- c. your product number;
- d. product description;
- e. package description;
- f. NDC;
- g. NDC unit quantity;

- h. NDC unit invoice price;
- i. NDC unit WAC (assigned by you);
- j. contract price;
- k. invoice price;
- l. customer name, identification number, address and class of trade;
- m. all paid or distributed Incentives;
- n. all accrued Incentives calculated at any time identifying the amount of the accrual, its nature or type, the date of the accrual, and other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.

7. The term "Pharmaceutical" means any drug or other product, whether sold by you, or any other manufacturer, which requires a physician's or other prescriber's prescription, including, but not limited to, "biological" products such as hemophilia factors and intravenous solutions.

8. The term "Spread" is used to refer to the difference between the actual acquisition cost or purchase price of a Pharmaceutical (paid by purchasers of the Pharmaceuticals) and the reimbursement rate paid by third party payors (to purchasers of the Pharmaceuticals) for the Pharmaceutical. Third party payors include the Medicare program, Medicaid program, and private insurance. Thus, the Spread is the gross profit actually or potentially realized by the purchasers of the Pharmaceuticals for those Pharmaceuticals ultimately paid for by third party payors.

9. The term "Targeted Drugs" means those drugs manufactured by you which have total utilization under the Medicaid and Medicare Part B programs exceeding \$10,000 during the Defined Period of Time in the state of Wisconsin.

#### **REQUEST FOR PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1:** All National Sales Data for each Targeted Drug during the Defined Period of Time. \*

**REQUEST NO. 2:** All Documents containing AMPs as reported or calculated by you for the Targeted Drugs OR a spread sheet or database showing all reported and calculated AMPs for each Targeted Drug over the Defined Period of Time which lists when such AMPs were reported or calculated, and the quarter to which each AMP applies.\*

**REQUEST NO. 3:** All Documents created by you, or in your possession, that discuss or comment on the difference (or Spread) between any Average Wholesale Price or Wholesale Acquisition Cost and the list or actual sales price (to any purchaser) of any of defendants' Pharmaceuticals or any Pharmaceuticals sold by other manufacturers. Documents which merely list the AWP or WAC price and

the list or actual sales price without further calculation of the difference, or without other comment or discussion of or about the spread between such prices are not sought by this request.

**REQUEST NO. 4:** All Documents containing an average sales price or composite price identified by you in response to Interrogatory No. 1 of Plaintiff's First Set of Interrogatories to All Defendants.\*

**REQUEST NO. 5:** All Documents sent to or received from First DataBank, Redbook and Medi-span regarding the price of any Targeted Drug.

**REQUEST NO. 6:** All Documents in your possession prepared by IMS Health regarding a Targeted Drug or the competitor of a Targeted Drug regarding pricing, sales or market share.

\*Documents are to be produced in electronic format with all documentation required to identify files and fields by name, content, and format, and explanations for all coded data. Acceptable electronic format for documents which in their native form are organized as word processing documents, or printed documents other than tabular reports, (documents comprised principally of text, or of a combination of text and graphics) is searchable Adobe Acrobat portable document format (.pdf). Acceptable electronic format for documents which in their native form are organized as spreadsheets is Microsoft Excel format (.xls). Acceptable electronic format for documents which in their native form are comprised principally of tabular data, or tabular reports with fixed column widths or field lengths is fixed-field ASCII text (.txt). Acceptable electronic format for documents which in their native form are comprised principally of electronic data in one or more data tables, files, or other data entities, is delimited ASCII text (.csv).

Dated this 27 day of January, 2005.

  
\_\_\_\_\_  
One of Plaintiff's Attorneys

PEGGY A. LAUTENSCHLAGER  
Attorney General  
State Bar #1002188

MICHAEL R. BAUER  
Assistant Attorney General  
State Bar #1003627

CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870

FRANK D. REMINGTON  
Assistant Attorney General  
State Bar #1001131

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-0332 (MRB)  
(608) 266-3861 (CRH)  
(608) 266-3542 (FDR)

CHARLES BARNHILL  
State Bar #1015932

WILLIAM P. DIXON  
State Bar #1012532

ELIZABETH J. EBERLE  
State Bar #1037016

Miner, Barnhill & Galland, P.C.  
44 East Mifflin Street, Suite 803  
Madison, WI 53703  
(608) 255-5200

Attorneys for Plaintiff,  
State of Wisconsin

## SERVICE LIST

### Defendants

#### Local Counsel for Abbott Laboratories

Allen C. Schlinsog, Jr.  
Mark A. Cameli  
Reinhart Boerner Van Deuren, SC  
1000 North Water Street  
PO Box 2965  
Milwaukee WI 53201-2965  
(414) 298-1000  
(414) 298-8097 fax

#### Local Counsel for Abbott Laboratories

Lynn M. Stathas  
Anthony J. Lucchesi  
Reinhart Boerner Van Deuren, SC  
22 East Mifflin Street  
PO Box 2018  
Madison WI 53701-2018  
(608) 229-2200  
(608) 229-2100 fax

James R. Daly  
Jeremy P. Cole  
Jones Day  
77 West Wacker  
Chicago IL 60601-1692  
(312) 782-3939  
(312) 782-8585 fax

R. Christopher Cook  
Jesse A. Witten  
Jones Day  
51 Louisiana Avenue, NW  
Washington DC 20001-2113  
(202) 879-3939  
(202) 626-1700 fax

#### Local Counsel for Amgen Inc.

William M. Conley  
Jeffrey A. Simmons  
Foley & Lardner, LLP  
150 East Gilman Street

PO Box 1497  
Madison WI 53701  
(608) 258-4209  
(608) 258-4258

**Local Counsel for Amgen Inc.**

David W. Simon  
Foley & Lardner, LLP  
777 East Wisconsin Avenue  
Milwaukee WI 53202  
(414) 271-2400  
(414) 297-4900 fax

**Counsel for Amgen Inc.**

Steven F. Barley  
Joseph H. Young  
Hogan & Hartson, LLP  
111 South Calvert Street  
Baltimore MD 21202  
(410) 659-2700  
(410) 539-6981 fax

**Local Counsel for Astrazeneca Pharmaceuticals LP**

**Local Counsel for Astrazeneca LP**

Brian E. Butler  
Stafford Rosenbaum, LLP  
PO Box 1784  
Madison WI 53701-1784  
(608) 256-0226  
(608) 259-2600 fax

**Counsel for Astrazeneca Pharmaceuticals LP**

**Counsel for Astrazeneca LP**

D. Scott Wise  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York NY 10017  
(212) 450-4000  
(212) 450-3800 fax

**Local Counsel for Aventis Pharmaceuticals, Inc.**

Stephen P. Hurley  
Marie Stanton  
Andrew Erlandson  
Hurley Burish & Milliken, SC  
301 North Broom Street

Madison WI 53703  
(608) 257-0945  
(608) 257-5764 fax

**Counsel for Aventis Pharmaceuticals, Inc.**

Paul Schlieffman  
Carlos Provencio  
Shook Hardy & Bacon  
South Hamilton Square  
600 14<sup>th</sup> Street, NW, Suite 800  
Washington DC 20005-2004  
(202) 783-8400  
(202) 783-4211 fax

**Counsel for Aventis Pharmaceuticals, Inc.**

Michael L. Koon  
Tiffany W. Killoren  
Shook Hardy & Bacon  
2555 Grand Blvd.  
Kansas City MO 64108  
(816) 474-6550  
(816) 421-5547 fax

**Local Counsel for Aventis Behring, LLC**

Stephen P. Hurley  
Marie Stanton  
Andrew Erlandson  
Hurley Burish & Milliken, SC  
301 North Broom Street  
Madison WI 53703  
(608) 257-0945  
(608) 257-5764 fax

**Counsel for Aventis Behring, LLC**

William D. Nussbaum  
Jonathan T. Rees  
Martha L. Russo  
Hogan & Hartson, LLP  
555 13<sup>th</sup> Street, NW  
Washington DC 20004-1109  
(202) 637-5600  
(202) 637-5910 fax

**Local Counsel for Baxter International, Inc.**

Bruce A. Schultz  
Coyne, Niess, Schultz, Becker & Bauer, SC

150 E. Gilman Street  
Madison WI 53703  
(608) 255-1388  
(608) 255-8592 fax

**Counsel for Baxter International, Inc.**

Merle M. DeLancey  
Andres Colon  
Dickstein, Shapiro, Morin & Oshinsky, LLP  
2101 L. Street, NW  
Washington DC 20037  
(202) 785-9700  
(202) 887-0689 fax

**Local Counsel for Bayer Corporation**

Kevin J. O'Connor  
Todd G. Smith  
LaFollette, Godfrey & Kahn, LLP  
Suite 500  
One East Main Street, PO Box 2719  
Madison WI 53701-2719  
(608) 257-3911  
(608) 257-0609 fax

**Counsel for Bayer Corporation**

Richard Raskin  
Michael Doss  
Sidley Austin Brown & Wood, LLP  
Bank One Plaza  
10 S. Dearborn Street  
Chicago IL 60603  
(312) 853-7000  
(312) 853-7036 fax

**Local Counsel for Boehringer Ingelheim Corporation**

**Counsel for Boehringer Ingelheim Corporation**

Paul J. Coval  
Douglas L. Rogers  
Allen S. Kinzer  
Darrell A.H. Miller  
Vorys, Sater, Seymour and Pease, LLP  
52 East Gay Street  
PO Box 1008  
Columbus OH 43216-1008

(614) 464-6400  
(614) 464-6350 fax

**Local Counsel for Bristol-Myers Squibb Co.**

James R. Clark  
Foley & Lardner, LLP  
777 East Wisconsin Avenue  
Milwaukee WI 53202  
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Roberta F. Howell  
Michael D. Leffel  
Foley & Lardner, LLP  
150 East Gilman Street  
PO Box 1497  
Madison WI 53701  
(608) 258-4209  
(608) 258-4258 fax

**Counsel for Bristol-Myers Squibb Co.**

Steven M. Edwards  
Lyndon M. Tretter  
James S. Zucker  
Hogan & Hartson, LLP  
875 Third Avenue  
New York NY 10022  
(212) 918-3000  
(212) 918-3100 fax

**Local Counsel for Dey, Inc.**

John W. Markson  
John M. Moore  
Bell, Gierhart & Moore, S.C.  
44 East Mifflin Street  
PO Box 1807  
Madison WI 53701  
(608) 257-3764  
(608) 257-3757 fax

**Counsel for Dey, Inc.**

Christopher C. Palermo  
Philip D. Robben  
Kelley Drye & Warren LLP  
101 Park Avenue

New York NY 10178  
(212) 808-7800  
(212) 808-7897 fax

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Bruce A. Schultz  
Coyne, Niess, Schultz, Becker & Bauer, SC  
150 E. Gilman Street  
Madison WI 53703  
(608) 255-1388  
(608) 255-8592 fax

**Counsel for Fujisawa Healthcare, Inc.**

Kathleen H. McGuan  
Andrew L. Hurst  
Reed Smith, LLP  
1301 K. Street, NW  
East Tower, Suite 1100  
Washington DC 20005  
(202) 414-9200  
(202) 414-9299 fax

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Lester A. Pines  
Cullen, Weston, Pines & Bach  
122 W. Washington Avenue, #900  
Madison WI 53703-2718  
(608) 251-0101  
(608) 251-2883 fax

**Counsel for Gensia Sicor Pharmaceuticals, Inc.**

Elizabeth I. Hack  
T. Reed Stephens  
Somnenschein, Nath & Rosenthal, LLP  
1301 K. Street NW  
Suite 600, East Tower  
Washington DC 20005  
(202) 408-6400  
(202) 408-6399 fax

**Local Counsel for Smithkline Beecham Corp., d/b/a Glaxosmithkline**

Daniel W. Hildebrand  
Dewitt Ross & Stevens, SC  
2 East Mifflin Street, Suite 600  
Madison WI 53703  
(608) 255-8891

(608) 252-9243 fax

**Counsel for Smithkline Beecham Corp., d/b/a Glaxosmithkline**

Frederick G. Herold  
Dechert, LLP  
975 Page Mill Road  
Palo Alto CA 94022  
(650) 813-4800  
(650) 813-4848 fax

**Counsel for Smithkline Beecham Corp., d/b/a Glaxosmithkline**

Mark H. Lynch  
Covington & Burlin  
1201 Pennsylvania Avenue, NW  
PO Box 7566  
Washington DC 20044-7566  
(202) 662-6000  
(202) 662-6291 fax

**Local Counsel for Johnson & Johnson**

Donald Schott  
Waltraud A. Arts  
Quarles & Brady, LLP  
One South Pickney Street, Suite 600  
Madison WI 53703-2808  
(608) 251-5000  
(608) 251-9166

**Counsel for Johnson & Johnson**

William F. Cavanaugh, Jr.  
Andrew Schau  
Patterson, Belknap, Webb & Tyler, LLP  
1133 Avenue of the Americas  
New York NY 10036-6710  
(212) 336-2000  
(212) 336-2500 fax

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Timothy Feeley  
Von Briesen & Roper, SC  
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Milwaukee WI 53202  
(414) 287-1373  
(414) 276-6281

**Counsel for Pfizer Inc.  
Counsel for Pharmacia Corporation**

John C. Dodds  
Erica Smith-Klocek  
Kimberly K. Heuer  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia PA 19103  
(215) 963-5000  
(215) 963-5001 fax

**Local Counsel for Schering-Plough Corporation**

Earl H. Munson  
Baordman, Suhr, Curry & Field, LLP  
One South Pickney Street  
Fourth Floor, PO Box 927  
Madison WI 53701-0927  
(608) 283-1796  
(608) 283-1709 fax

**Counsel for Schering-Plough Corporation**

Brien T. O'Connor  
Ropes & Gray, LLP  
One International Place  
Boston MA 02110  
(617) 951-7385  
(617) 951-7050 fax

**Local Counsel for Tap Pharmaceutical Products, Inc.**

Allen C. Schlinsog, Jr.  
Mark A. Cameli  
Reinhart Boerner Van Deuren, SC  
1000 North Water Street  
PO Box 2965  
Milwaukee WI 53201-2965  
(414) 298-1000  
(414) 298-8097 fax

**Local Counsel for Tap Pharmaceutical Products, Inc.**

Lynn M. Stathas  
Anthony J. Lucchesi  
Reinhart Boerner Van Deuren, SC  
22 East Mifflin Street  
PO Box 2018  
Madison WI 53701-2018  
(608) 229-2200

(608) 229-2100 fax

**Counsel for Tap Pharmaceutical Products, Inc.**

Daniel E. Reidy  
Lee Ann Russo  
Tina M. Tabacchi  
Jones Day  
77 West Wacker  
Chicago IL 60601-1692  
(312) 782-3939  
(312) 782-8585 fax

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Ralph Weber  
Gass Weber Mullins, LLC  
309 North Water Street  
Milwaukee WI 53202  
(414) 223-3300  
(414) 224-6116 fax

**Counsel for Watson Pharmaceuticals, Inc.**

Douglas B. Farquhar  
Hyman, Phelps & McNamara, PC  
700 13<sup>th</sup> Street, NW; Suite 1200  
Washington DC 20005  
(202) 737-5600  
(202) 737-9329 fax

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

LISA T. ALEXANDER  
CHARLES BARNHILL, JR.  
JEFFREY I. CUMMINGS  
WILLIAM P. DIXON\*  
ELIZABETH J. EBERLE††  
GEORGE F. GALLAND, JR.  
ROBERT S. LIBMAN  
NANCY L. MALDONADO  
WILLIAM A. MICELI  
JUDSON H. MINER  
REBECCA D. ONIE  
SARAH E. SISKIND†  
PAUL STRAUSS  
LAURA E. TILLY

14 WEST ERIE STREET  
CHICAGO, ILLINOIS 60610  
(312) 751-1170  
TELECOPIER (312) 751-0438

44 EAST MIFFLIN STREET  
STE. 803  
MADISON, WISCONSIN 53703  
(608) 255-5200  
TELECOPIER (608) 255-5380

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

May 20, 2005

Of Counsel:  
BRADLEY SCOTT WEISS

BY TELEFAX TO (212) 450-3741

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

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

Dear Ms. Prinzo:

I will be handling all discovery matters on behalf of Wisconsin relating to your clients, AstraZeneca Pharmaceuticals, LP and AstraZeneca, LP ("AstraZeneca"). I understand that you will be doing the same on behalf of AstraZeneca.

As a result of the Court's May 11, 2005 entry of the temporary protective order requested by defendants, I understand that AstraZeneca will now respond to plaintiff's first set of interrogatories and first set of requests for production of documents.

In response to a recent series of "meet and confer" discussions with various counsel for the majority of defendants, it was almost universally requested by defendants that plaintiff narrow the definition of "targeted drug" currently found in the document requests and interrogatories. While plaintiff does not alter the positions expressed in the first amended complaint, and intends to prove at trial that the average wholesale prices submitted by defendants on all pharmaceuticals were inflated, plaintiff agrees to narrow the definition of "targeted drug" in this first round of discovery to drugs which had significant utilization in Wisconsin in recent years.

This narrowing of the "targeted drug" definition at defendants' request does not affect request no. 3 which requests marketing-related documents relating to any of a defendant's pharmaceuticals or pharmaceuticals sold by other manufacturers, and is not limited to pharmaceuticals defined as

Ex. 3

Kristi Prinzo, Esq.  
Page Two  
May 20, 2005

targeted drugs. Such documents are relevant to plaintiff's allegations that each defendant published inflated average wholesale prices and such publication was related to marketing the spread of defendants' pharmaceuticals.

Consequently, for your assistance in responding to the outstanding interrogatories and discovery requests, plaintiff amends its definition of "targeted drugs" in the first interrogatories and request for documents to those pharmaceuticals listed in Exh. A to this letter.

If this raises any questions, or if you wish to further discuss your response to the outstanding discovery, please contact me at (312) 751-1170.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Libman", with a stylized flourish at the end.

Robert S. Libman

lmd

Enclosure

EXHIBIT A

<u>Drug</u>	<u>NDC</u>
ACCOLATE	00310-0401-60
ACCOLATE	00310-0402-39
ACCOLATE	00310-0402-60
ARIMIDEX	00310-0201-30
ASTRAMORPH	00186-1150-02
ASTRAMORPH	00186-1151-02
ASTRAMORPH	00186-1152-12
ASTRAMORPH	00186-1153-12
ASTRAMORPH	00186-1159-03
ASTRAMORPH	00186-1160-03
ATACAND	00186-0004-31
ATACAND	00186-0008-31
ATACAND	00186-0016-31
ATACAND	00186-0016-54
ATACAND	00186-0032-31
ATACAND	00186-0032-54
ATACAND	00186-0162-54
ATACAND	00186-0322-54
ATACAND	61113-0016-31
CALCITONIN	00186-1608-13
CASODEX	00310-0705-10
CASODEX	00310-0705-30
CASODEX	00310-0705-39
CEFOTAN	00310-0375-10
CEFOTAN	00310-0375-61
CEFOTAN	00310-0376-10
CEFOTAN	00310-0376-11
CEFOTAN	00310-0376-31
CEFOTAN	00310-0376-60
CEFOTAN	00310-0376-61
CEFOTAN	00310-0377-20
CEFOTAN	00310-0377-21
CEFOTAN	00310-0377-32
CEFOTAN	00310-0377-61
CEFOTAN	00310-0377-62
CEFOTAN	00310-0378-51
CEFOTAN	00310-0379-51
CRESTOR	00310-0751-90
CRESTOR	00310-0752-90
CRESTOR	00310-0754-30
DIPRIVAN	00310-0300-11

<u>Drug</u>	<u>NDC</u>
DIPRIVAN	00310-0300-22
DIPRIVAN	00310-0300-50
DIPRIVAN	00310-0300-54
DIPRIVAN	00310-0300-61
DIPRIVAN	00310-0300-64
DIPRIVAN	00310-0300-65
EMLA	00186-1515-01
EMLA	00186-1515-03
EMLA	00186-1516-01
FASLODEX	00310-0720-25
FASLODEX	00310-0720-50
FOSCAVIR	00186-1905-01
FOSCAVIR	00186-1906-01
IRESSA	00310-0482-30
MERREM	00310-0321-11
MERREM	00310-0321-15
MERREM	00310-0321-30
MERREM	00310-0325-11
MERREM	00310-0325-15
MERREM	00310-0325-20
NEXIUM	00186-5020-31
NEXIUM	00186-5020-54
NEXIUM	00186-5040-31
NEXIUM	00186-5040-54
NEXIUM	00186-5040-82
NEXIUM	00186-5042-28
NOLVADEX	00310-0600-18
NOLVADEX	00310-0600-25
NOLVADEX	00310-0600-60
NOLVADEX	00310-0604-30
NOLVADEX	00310-0604-90
PLENDIL	00186-0450-31
PLENDIL	00186-0450-58
PLENDIL	00186-0451-28
PLENDIL	00186-0451-31
PLENDIL	00186-0451-58
PLENDIL	00186-0452-31
PLENDIL	00186-0452-58
PLENDIL	61113-0450-31
PLENDIL	61113-0450-58
PLENDIL	61113-0451-28
PLENDIL	61113-0451-31
PLENDIL	61113-0451-58
PLENDIL	61113-0452-31
PLENDIL	61113-0452-58

<u>Drug</u>	<u>NDC</u>
PRILOPEC	00186-0742-28
PRILOSEC	00186-0606-31
PRILOSEC	00186-0606-68
PRILOSEC	00186-0742-31
PRILOSEC	00186-0742-82
PRILOSEC	00186-0743-31
PRILOSEC	00186-0743-68
PRILOSEC	61113-0606-28
PRILOSEC	61113-0606-31
PRILOSEC	61113-0606-68
PRILOSEC	61113-0742-28
PRILOSEC	61113-0742-31
PRILOSEC	61113-0742-82
PRILOSEC	61113-0743-31
PRILOSEC	61113-0743-68
PULMICORT	00186-0915-42
PULMICORT	00186-1988-04
PULMICORT	00186-1989-04
RHINOCORT	00186-1070-06
RHINOCORT	00186-1070-08
RHINOCORT	00186-1075-09
SENSORCAINE	00186-1031-01
SENSORCAINE	00186-1035-01
SENSORCAINE-MPF	00186-1026-03
SENSORCAINE-MPF	00186-1030-01
SENSORCAINE-MPF	00186-1030-02
SENSORCAINE-MPF	00186-1030-12
SENSORCAINE-MPF	00186-1030-91
SENSORCAINE-MPF	00186-1033-01
SENSORCAINE-MPF	00186-1033-02
SENSORCAINE-MPF	00186-1033-12
SENSORCAINE-MPF	00186-1033-91
SENSORCAINE-MPF	00186-1037-01
SENSORCAINE-MPF	00186-1037-02
SENSORCAINE-MPF	00186-1037-12
SEROQUEL	00310-0271-10
SEROQUEL	00310-0271-39
SEROQUEL	00310-0272-10
SEROQUEL	00310-0272-39
SEROQUEL	00310-0274-39
SEROQUEL	00310-0274-60
SEROQUEL	00310-0275-10
SEROQUEL	00310-0275-34
SEROQUEL	00310-0275-39
SULAR	00310-0891-10

<u>Drug</u>	<u>NDC</u>
SULAR	00310-0892-10
SULAR	00310-0893-10
SULAR	00310-0894-10
TENORMIN	00310-0101-10
TENORMIN	00310-0105-10
TENORMIN	00310-0107-10
TOPROL-XL	00186-1088-05
TOPROL-XL	00186-1088-39
TOPROL-XL	00186-1090-05
TOPROL-XL	00186-1090-39
TOPROL-XL	00186-1092-05
TOPROL-XL	00186-1092-39
TOPROL-XL	00186-1094-05
XYLOCAINE	00186-0110-01
XYLOCAINE	00186-0120-01
XYLOCAINE	00186-0135-01
XYLOCAINE	00186-0145-01
XYLOCAINE	00186-0155-01
XYLOCAINE	00186-0170-14
XYLOCAINE	00186-0232-03
XYLOCAINE	00186-0243-12
XYLOCAINE	00186-0275-12
XYLOCAINE	00186-0330-01
XYLOCAINE-MPF	00186-0112-01
XYLOCAINE-MPF	00186-0112-91
XYLOCAINE-MPF	00186-0137-01
XYLOCAINE-MPF	00186-0210-03
XYLOCAINE-MPF	00186-0215-03
XYLOCAINE-MPF	00186-0230-03
XYLOCAINE-MPF	00186-0235-03
XYLOCAINE-MPF	00186-0240-44
XYLOCAINE-MPF	00186-0241-13
XYLOCAINE-MPF	00186-0242-13
XYLOCAINE-MPF	00186-0244-44
XYLOCAINE-MPF	00186-0245-54
XYLOCAINE-MPF	00186-0255-02
XYLOCAINE-MPF	00186-0276-13
XYLOCAINE-MPF	00186-0277-13
XYLOCAINE-MPF	00186-0278-44
XYLOCAINE-MPF	00186-0278-54
ZESTORETIC	00310-0141-10
ZESTORETIC	00310-0142-10
ZESTORETIC	00310-0145-10
ZESTRIL	00310-0130-10
ZESTRIL	00310-0130-34

<u>Drug</u>	<u>NDC</u>
ZESTRIL	00310-0130-39
ZESTRIL	00310-0131-10
ZESTRIL	00310-0131-34
ZESTRIL	00310-0131-39
ZESTRIL	00310-0131-73
ZESTRIL	00310-0132-10
ZESTRIL	00310-0132-34
ZESTRIL	00310-0132-39
ZESTRIL	00310-0132-73
ZESTRIL	00310-0133-10
ZESTRIL	00310-0134-10
ZESTRIL	00310-0135-10
ZOLADEX	00310-0950-36
ZOLADEX	00310-0951-30
ZOLADEX	00310-0960-36
ZOLADEX	00310-0961-30
ZOMIG	00310-0208-60
ZOMIG	00310-0210-20
ZOMIG	00310-0211-25

**Robert Libman**

---

**From:** Robert Libman  
**Sent:** Tuesday, June 21, 2005 6:01 PM  
**To:** 'kristi.prinzo@dpw.com'  
**Subject:** Wisconsin AWP litigation

Kristi -- I am writing to follow up on my letter to you of May 20, 2005 regarding *State of Wisconsin v. Amgen Inc., et al.*, to which I have not yet received a response. I would like to set up a time to talk with you by telephone about plaintiff's first set of interrogatories and requests for production of documents on your clients, AstraZeneca Pharmaceuticals, LP and AstraZeneca, LP. When would be a convenient time for you?

Thanks very much.

Bob.

Robert S. Libman  
Miner, Barnhill & Galland, P.C.  
14 West Erie  
Chicago, IL 60610  
312-751-1170 ext. 26  
312-751-0438 fax  
e-mail: rlibman@lawmbg.com  
www.lawmbg.com

**DAVIS POLK & WARDWELL**

1300 I STREET, N.W.  
WASHINGTON, D.C. 20005

1800 EL CAMINO REAL  
MENLO PARK, CA 94025

88 GRESHAM STREET  
LONDON EC2V 7NQ

15, AVENUE MATIONON  
75008 PARIS

450 LEXINGTON AVENUE  
NEW YORK, N.Y. 10017

212 450 4000  
FAX 212 450 3800

WRITER'S DIRECT

212 450-4741

MESSEURM  
60308 FRANKFURT AM MAIN

MARQUÉS DE LA ENSENADA, 2  
28004 MADRID

1-6-1 ROPPONGI  
MINATO-KU, TOKYO 106-6023

3A CHATER ROAD  
HONG KONG

June 22, 2005

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

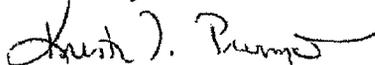
Dear Mr. Libman:

I am writing in response to your letter dated May 20th and your e-mail dated June 21st, and in particular to your list of "narrowed" drugs for AstraZeneca LP and AstraZeneca Pharmaceuticals LP ("AstraZeneca"). The five page, single space list attached as Exhibit A to your letter, consists of 195 NDC codes, and encompasses 32 different drugs.

While we appreciate your attempt to limit the drugs at issue in this case, we believe that this current request is simply unreasonable and thwarts any meaningful discussion regarding discovery. While the motions to dismiss are pending, we believe it would be more productive to discuss discovery relating to the only AstraZeneca drug specifically mentioned in the State's complaint, namely Zoladex.

If you would like to discuss this issue further, please do not hesitate to contact me.

Sincerely,



Kristi T. Prinzo

By Facsimile & Mail

Ex. 5

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

LISA T. ALEXANDER  
CHARLES BARNHILL, JR.  
JEFFREY I. CUMMINGS  
WILLIAM F. DIXON\*  
ELIZABETH J. EBERLE††  
GEORGE F. GALLAND, JR.  
ROBERT S. LIBMAN  
NANCY L. MALDONADO  
WILLIAM A. MICELI  
JUDSON H. MINER  
REBECCA D. ONIE  
SARAH E. SISKIND†  
PAUL STRAUSS  
LAURA E. TILLY

Of Counsel:  
BRADLEY SCOTT WEISS

14 WEST ERIE STREET  
CHICAGO, ILLINOIS 60610  
(312) 751-1170  
TELECOPIER (312) 751-0438

June 23, 2005

44 EAST MIFFLIN STREET  
STE. 303  
MADISON, WISCONSIN 53703  
(608) 255-5200  
TELECOPIER (608) 255-5380

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

BY TELEFAX TO (212) 450-3741

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

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

Dear Ms. Prinzo:

I am writing in response to your letter of June 22, 2005 regarding plaintiff's first set of interrogatories and requests for production of documents to your clients, AstraZeneca LP and AstraZeneca Pharmaceuticals LP ("AstraZeneca").

I am disappointed in your refusal to answer any of the state's five interrogatories or produce any documents in response to the state's six requests for production of documents with respect to any drugs other than Zoladex. As you acknowledge, the state has agreed to limit these discovery requests to 32 drugs manufactured by your clients. Your conclusory assertion, without explanation, that this limit is "unreasonable and thwarts any meaningful discussion regarding discovery" rings hollow. We believe that the Court will find your response and refusal to engage in a meaningful dialogue, rather than the state's discovery requests, to be unreasonable.

We consider your responses to these discovery requests to be overdue as of June 12, 2005, which is 30 days after Judge Krueger signed the temporary qualified protective order.

Sincerely,

Robert S. Libman

lmd

Ex. 6

**DAVIS POLK & WARDWELL**

1300 J STREET, N.W.  
WASHINGTON, D.C. 20005

1600 EL CAMINO REAL  
MENLO PARK, CA 94025

99 GRESHAM STREET  
LONDON EC2V 7NG

15, AVENUE MATHIGNON  
75008 PARIS

450 LEXINGTON AVENUE  
NEW YORK, N.Y. 10017

212 450 4000  
FAX 212 450 3800

WRITER'S DIRECT

212 450-4741

MESSEURM  
60308 FRANKFURT AM MAIN

MARQUÉS DE LA ENSENADA, 2  
28004 MADRID

1-8-1 ROFFONGI  
MINATO-KU, TOKYO 106-8033

3A CHATER ROAD  
HONG KONG

July 7, 2005

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

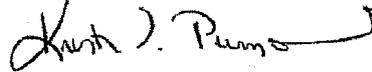
Dear Mr. Libman:

I am writing in response to your letter dated June 23rd. As indicated in Andrew Schau's June 30th letter to Charles Barnhill, AstraZeneca LP and AstraZeneca Pharmaceuticals LP ("AstraZeneca") expect to serve written responses to the State's discovery requests by July 15th.

We continue to believe that while the motions to dismiss are pending, it is appropriate to discuss discovery relating solely to Zoladex, the only AstraZeneca drug referenced in the State's complaint.

We suggest that we discuss this issue further after you have had an opportunity to review our discovery responses.

Sincerely,



Kristi T. Prinzo

By Facsimile & Mail

Ex. 7

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH: 7

DANE COUNTY

---

STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN, INC., et al.,

Defendants.

---

Case No: 04 CV 1709

Unclassified - Civil: 30703

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**ORDER**

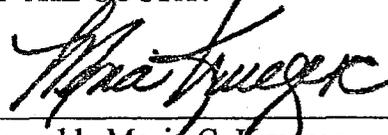
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Defendants' Motion for a Protective Order dated March 23, 2005, having  
~~been briefed and argued at a hearing on April 8, 2005;~~

**IT IS ORDERED** that discovery directed at the defendants, or any  
defendant, is STAYED until May 11, 2005, or until further order of the Court.

Dated this 12<sup>th</sup> day of April, 2005.

BY THE COURT:



---

Honorable Morja G. Krueger  
Circuit Court Judge, Branch 7

Ex. 8



STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

2005 OCT -3 PM 1:00

Branch 7

COPY

STATE OF WISCONSIN )  
 )  
 )  
 Plaintiff, )  
 )  
 )  
 v. )  
 )  
 AMGEN INC., et al., )  
 )  
 Defendants. )

Case No. 04-CV-1709  
Unclassified – Civil: 30703

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of Motion To Compel Astrazeneca Defendants To Respond To Plaintiff's First Set Of Interrogatories To All Defendants and Plaintiff's First Set Of Requests For Production Of Documents To All Defendants, Memorandum In Support Of Motion To Compel Astrazeneca Defendants To Respond To Plaintiff's First Set Of Interrogatories To All Defendants and Plaintiff's First Set Of Requests For Production Of Documents To All Defendants, and Affidavit of William P. Dixon to be served by U.S. mail upon the attorneys listed on the attached document on October 3, 2005.

I also certify that I caused a true and correct copy of this document to be electronically served upon Daniel W. Hildebrand, [dwh@dewittross.com](mailto:dwh@dewittross.com) for circulation to other interested counsel.

Dated this 3<sup>rd</sup> day of October, 2005.



William P. Dixon

**Local Counsel for Abbott Laboratories, and  
Tap Pharmaceutical Products, Inc.**

Lynn M. Stathas  
Anthony J. Lucchesi  
Reinhart Boerner Van Deuren, SC  
22 East Mifflin Street  
PO Box 2018  
Madison WI 53701-2018  
(608) 229-2200  
(608) 229-2100 fax

**Local Counsel for Amgen Inc.**

William M. Conley  
Jeffrey A. Simmons  
Foley & Lardner, LLP  
150 East Gilman Street  
PO Box 1497  
Madison WI 53701  
(608) 258-4209  
(608) 258-4258 fax

**Local Counsel for  
Astrazeneca Pharmaceuticals LLP  
Local Counsel for Astrazeneca LP**

Brian E. Butler  
Joseph P. Wright  
Barbara A. Neider  
Stafford Rosenbaum, LLP  
3 South Pinckney Street; Suite 1000  
PO Box 1784  
Madison WI 53701-1784  
(608) 256-0226  
(608) 259-2600 fax

**Local Counsel for Aventis Pharmaceuticals,  
Inc., and ZLB Behring, LLC f/k/a Aventis  
Behring, LLC**

Stephen P. Hurley  
Marie A. Stanton  
Andrew Erlandson  
Hurley Burish & Milliken, SC  
10 East Doty Street, Suite 320  
PO Box 1528  
Madison WI 53703  
(608) 257-0945  
(608) 257-5764 fax

**Local Counsel for Baxter International, Inc.**

Bruce A. Schultz  
Coyne, Niess, Schultz, Becker & Bauer, SC  
150 E. Gilman Street  
Madison WI 53703  
(608) 255-1388  
(608) 255-8592 fax

**Local Counsel for Ben Venue Laboratories, Inc.  
Boehringer Ingelheim Pharmaceuticals, Inc.,  
and Roxane Laboratories, Inc.**

Patrick J. Knight  
Gimbel, Reilly, Guerin & Brown  
Two Plaza East, Suite 1170  
330 East Kilbourn Avenue  
Milwaukee WI 53202  
(414) 271-1440  
(414) 271-7690 fax

Paul J. Coval  
Matthew J. Richardson  
Vorys Sater Seymour & Pease LLP  
52 East Gay Street  
PO Box 1008  
Columbus OH 43216-1008  
(614) 464-6400  
(614) 464-6350

**Local Counsel for Dey, Inc.**

John W. Markson  
John M. Moore  
Bell, Gierhart & Moore, S.C.  
44 East Mifflin Street  
PO Box 1807  
Madison WI 53701  
(608) 257-3764  
(608) 257-3757 fax

**Local Counsel for Immunex Corporation**

Michael R. Fitzpatrick  
Brennan, Steil & Basting SC  
One East Milwaukee Street  
PO Box 1148  
Janesville WI 53547-1148  
(608) 756-4141  
(608) 756-9000 fax

**Local Counsel for Ivax Corporation,  
Ivax Pharmaceuticals, Inc.**

Steven P. Means  
Michael Best & Friedrich LLP  
One South Pinckney Street, Suite 700  
Madison WI 53703  
(608) 257-3501  
(608) 283-2275 fax

**Local Counsel for Johnson & Johnson,  
Janssen Pharmaceutica Products, L.P.,  
McNeil-PPC, Inc., Ortho Biotech Products,  
L.P., and Ortho-McNeil Pharmaceuticals, Inc.**

Donald Schott  
Waltraud (Wally)A. Arts  
Quarles & Brady, LLP  
One South Pinckney Street, Suite 600  
Madison WI 53703-2808  
(608) 251-5000  
(608) 251-9166 fax

**Local Counsel for Merck & Company, Inc.**

Michael P. Crooks  
Peterson, Johnson & Murray, S.C.  
131 West Wilson Street, Suite 200  
Madison WI 53703  
(608) 256-5220  
(608) 256-5270 fax

**Local Counsel for Mylan Laboratories, Inc.  
And Mylan Pharmaceuticals, Inc.**

David J. Harth  
David E. Jones  
Heller, Ehrman, White & McAuliffe, LLP  
One East Main Street, Suite 201  
Madison WI 53703  
(608) 663-7460  
(608) 663-7499 fax

**Local Counsel for Novartis Pharmaceuticals  
Corp.**

Kim Grimmer  
Solheim, Billing & Grimmer, S.C.  
U.S. Bank Plaza, Suite 301  
One South Pinckney Street  
PO Box 1644  
Madison WI 53701-1644  
(608) 282-1200  
(608) 282-1218 fax

**Local Counsel for Pfizer Inc.**

**Local Counsel for Pharmacia Corporation**

Beth Kushner  
Timothy Feeley  
Von Briesen & Roper, SC  
411 East Wisconsin Avenue, Suite 700  
Milwaukee WI 53202  
(414) 287-1373  
(414) 276-6281 fax

**Local Counsel for Sandoz, Inc.**

Shannon A. Allen  
Friebert, Finerty & St. John, SC  
Two Plaza East – Suite 1250  
330 East Kilbourn Avenue  
Milwaukee WI 53202  
(414) 271-0130  
(414) 272-8191 fax

**Local Counsel for Schering-Plough  
Corporation,**

**And Warrick Pharmaceuticals Corporation**

Earl H. Munson  
Boardman, Suhr, Curry & Field, LLP  
One South Pinckney Street  
Fourth Floor, PO Box 927  
Madison WI 53701-0927  
(608) 283-1796  
(608) 283-1709 fax

**Local Counsel for Sicor, Inc.**

**f/k/a Gensia Sicor Pharmaceuticals, Inc.  
and Teva Pharmaceuticals USA, Inc.**

Lester A. Pines  
Cullen, Weston, Pines & Bach  
122 W. Washington Avenue, #900  
Madison WI 53703-2718  
(608) 251-0101  
(608) 251-2883 fax

**Local Counsel for Smithkline Beecham Corp.,  
d/b/a Glaxosmithkline**

Daniel W. Hildebrand  
Dewitt Ross & Stevens, SC  
2 East Mifflin Street, Suite 600  
Madison WI 53703  
(608) 255-8891  
(608) 252-9243 fax

**Local Counsel for Watson Pharma Inc.**

**f/k/a Schein Pharmaceuticals, Inc., Watson  
Pharmaceuticals, Inc.**

Ralph Weber  
Gass Weber Mullins, LLC  
309 North Water Street  
Milwaukee WI 53202  
(414) 223-3300  
(414) 224-6116 fax

**Local Counsel for Bristol-Myers Squibb Co.**

Roberta F. Howell

Michael D. Leffel

Foley & Lardner, LLP

150 East Gilman Street

PO Box 1497

Madison WI 53701

(608) 258-4209

(608) 258-4258 fax

