

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

Branch 9

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	Case No. 04-CV-1709
)	Unclassified – Civil: 30703
v.)	
)	
AMGEN INC., et al.,)	
)	
Defendants.)	
)	

PLAINTIFF’S MOTION AND MEMORANDUM TO COMPEL
DEPOSITION TESTIMONY AND THE PAYMENT OF EXPENSES
PURSUANT TO WIS. STAT. ¶ 804.12(1)

Plaintiff has been attempting unsuccessfully to take the deposition of a corporate designee of Amgen since May of this year as the attached correspondence and e-mail train makes clear. Amgen has yet to produce a person for this deposition and will not promise to complete such a deposition by the end of the year. Hence, plaintiff requests an order from this Court requiring Amgen to complete a corporate designee deposition by the end of November. Such an order is well within the Court’s discretion. *See, e.g., Alt v. Cline*, 25 Wis.2d 204, 572 N.W.2d 895 (Ct. App. 1997).

Amgen is a likely target of a summary judgment motion on liability should such a deposition take place (which may explain what is going on). Amgen’s attorney, Joseph Young, despite repeatedly promising to make available the necessary witnesses, has failed to make good on his word. The latest installment of this saga is Mr. Young’s designation of one deposition witness in November and several in December

accompanied by the caveat that if Amgen goes to trial then no depositions will take place that month at all. (See the most recent e-mail attached hereto.)

The irony of all this is that Mr. Young's firm has taken the lead in discovery in Wisconsin and has had ample time to depose one Wisconsin employee after another and time enough to demand that Wisconsin immediately hire an outside agency to comb the e-mails of over 30 past and present employees. Discovery is not meant to be a one-sided contest. Wisconsin needs to take the depositions of Amgen employees to permit it to file a timely motion for summary judgment and prepare for trial. Amgen's latest proposal, which offers one deposition segment in November and only the possibility of other depositions in December, does not meet its discovery obligations.

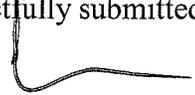
If it is uncertain that the depositions of the persons Mr. Young has designated will go forward in December, then he owes plaintiff these depositions in November when they can be assured. That is the least that defendant can do. Plaintiff also requests an award of expenses.

CONCLUSION

Amgen has not played fair in discovery. Plaintiff, therefore, has no choice but to request that this Court intervene and require Amgen to complete its corporate designee deposition by the end of November.

Dated this 15th day of October, 2007.

Respectfully submitted,



One of Plaintiff's Attorneys

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Attorneys for Plaintiff, State of Wisconsin

Chuck Barnhill

From: Chuck Barnhill
Sent: Friday, May 11, 2007 1:20 PM
To: 'Young, Joseph H. (Hank)'
Subject: RE: Amgen Rule 30(b)(6) Depositions

Today is fine.

From: Young, Joseph H. (Hank) [mailto:JHYoung@HHLAW.com]
Sent: Friday, May 11, 2007 11:14 AM
To: Chuck Barnhill
Cc: Barley, Steven F.; Walker, Jennifer A.
Subject: Amgen Rule 30(b)(6) Depositions

Chuck --

I tried to reach you a couple of days ago, but understood you were out of the office. I'd like to set up a time for a call to discuss the logistics of Wisconsin's Rule 30(b)(6) notices to Amgen, coordination, etc. Can you let me know if you are available, either later today or early next week?

Thanks.

JOSEPH YOUNG, PARTNER
HOGAN & HARTSON LLP
111 South Calvert Street, Suite 1600, Baltimore, MD 21202
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DISTRICT OF COLUMBIA and ILLINOIS
ALL OTHERS ADMITTED IN ILLINOIS ONLY

May 25, 2007

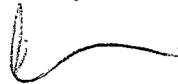
Joseph H. Young
Hogan & Hartson, LLP
111 S. Clavert Street, Suite 1600
Baltimore MD 21202

Re: *AWP Litigation*

Dear Hank:

We need a prompt meet and confer on your response to our deposition notice. Could you give me some dates and times?

Sincerely,



Charles Barnhill

CB:jlz

Chuck Barnhill

From: Chuck Barnhill
Sent: Tuesday, May 29, 2007 4:20 PM
To: 'Young, Joseph H. (Hank)'
Cc: Barley, Steven F.; Walker, Jennifer A.
Subject: RE: Amgen Designees

Hank, we need to talk promptly about document production. Amgen has produced virtually none of the documents we are seeking. We need these documents well in advance of the deposition so I need to know when we will receive these documents. Also we do not expect our deposition to be coordinated with some other state's work product and, in any event, we expect Amgen to produce its representatives here as Judge Eich and Judge Krueger ordered. Chuck

From: Young, Joseph H. (Hank) [mailto:JHYoung@HHLAW.com]
Sent: Tuesday, May 29, 2007 4:14 PM
To: Chuck Barnhill
Cc: Barley, Steven F.; Walker, Jennifer A.
Subject: Amgen Designees

Chuck -

Please see attached.

I received your 5/25 correspondence this morning and will try to get back to you tomorrow with some dates. It likely will be at the end of this week or early next week.

JOSEPH YOUNG, PARTNER
HOGAN & HARTSON LLP
111 South Calvert Street, Suite 1600, Baltimore, MD 21202
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Chuck Barnhill

From: Chuck Barnhill
Sent: Wednesday, July 11, 2007 12:02 PM
To: 'Young, Joseph H. (Hank)'
Subject: deposition and discovery responses.

Hank please give me a call so we can get deposition dates set up, find out when you are going to finish your additional searches and get some resolution on our third and fourth interrogatory responses and our fourth document request.

Chuck Barnhill

From: Chuck Barnhill
Sent: Tuesday, July 24, 2007 3:45 PM
To: 'Young, Joseph H. (Hank)'
Subject: dates for depts.

Hank I am leaving town on Friday for two weeks. I would like to get dates set for our depositions before I go.

Chuck Barnhill

From: Chuck Barnhill
Sent: Friday, July 27, 2007 9:35 AM
To: 'Young, Joseph H. (Hank)'
Subject: Amgen.

Hank, I have heard nothing from you on deposition dates so I will go ahead and set them. Also I have reviewed the discovery you have sent me and it is far from sufficient. First, there are a lot of redactions on the basis of privilege but no privilege log which would allow me to determine whether any privilege is available. Second, I saw no communications between the home office and the sales people in connection with marketing Amgen's products. It seems obvious that no extensive search of Amgen's sales communications was conducted. I also believe that it would be an easy matter for you to issue a blast to your sales people asking them to search their records, including e-mails, for documents relevant to our requests, particularly discussions among themselves or with customers about the profitability of using Amgen's products.

STATE OF WISCONSIN

CIRCUIT COURT
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DANE COUNTY

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 04-CV-1709
)	Unclassified – Civil: 30703
AMGEN INC., et al.,)	
)	
Defendants.)	
)	

AMENDED NOTICE OF DEPOSITION OF DEFENDANT AMGEN

To: Joseph Young
Hogan & Hartson, LLP
111 South Calvert Street
Baltimore MD 21202
(410) 659-2724

William Martin Conley
Foley & Lardner, LLP
150 East Gilman Street
Verex Plaza
Madison WI 53703
(608) 258-4209

Pursuant to Wis. Stats. §§ 804.05(2)(e), 885.44 and 885.46 plaintiff will take the videotaped deposition of defendant Amgen on September 6-7, 2007, at 9:00 a.m. (CT) at the offices of the Wisconsin Department of Justice, 17 West Main St., Madison, WI 53703. The deposition may be visually recorded and preserved pursuant to the provisions of Wis. Stats. §§ 885.44 and 885.46.

The party deponent(s) to whom this notice is addressed shall designate one or more officers, directors, managing agents or other persons to testify on behalf of each of Amgen's divisions or other companies that Amgen either merged with or acquired. Amgen shall identify for each designated person which of the matters set forth below that person will testify on.

Plaintiff requests that Defendant identify the subject matter by topic of each corporate designee's

testimony in writing at least 10 business days prior to the deposition and identify which corporate entity he or she is authorized to give sworn testimony for.

The oral examination will continue from day to day until completed and you are invited to attend if you desire.

Definitions

“Defendant” means each Defendant and its divisions as listed above.

“Targeted Drugs” means the drugs listed in the attached Appendix A which were manufactured, marketed or sold by the defendant, or one of its subsidiaries or divisions, which the designee is authorized to speak on behalf of and for which Amgen has liability for.

Scope of Time Period

Each subject listed below is intended to cover the time period beginning January 1, 1993 and ending December 31, 2006.

Subject Matters

1. The reason(s) for Defendant’s signing of Medicaid rebate agreements pursuant to 42 U.S.C. §1396r(a)(1).
2. Defendant’s knowledge of the federal Medicaid program’s laws, regulations, and rules, including 42 C.F.R. § 447.331 and 42 C.F.R. § 447.301.
3. Defendant’s knowledge of the Wisconsin Medicaid Agency’s laws, regulations, and rules, including Defendant’s knowledge of the Wisconsin Medicaid Agency’s reimbursement formula and methodology for prescription drugs.
4. Defendant’s knowledge of the Medicare Part B program’s laws, regulations, and rules relating to the reimbursement formula for covered drugs, including Defendant’s knowledge that prior to January 1, 2005, the reimbursement formula for a covered drug (including the Medicare Part B beneficiary’s 20% co-payment to be paid by Wisconsin Medicaid for dual eligibles) was based on the Average Wholesale Price (AWP) of the drug.
5. The reasons defendant sets or has set an AWP, WAC, Direct Price or any other price which it has circulated to wholesalers or pricing compendiums.

6. How defendant initially set its AWP, WAC, Direct Price or other price identified in response to the preceding paragraph in connection with each targeted drug, how often the defendant changed any such prices and the reasons for each change.
7. Whether there is a formulaic relationship between defendant's AWP's and WAC's; if so, what that relationship is and why it exists.
8. The information or documents which show that the actual net price paid by wholesalers to Defendant for the Targeted Drugs was equal to or greater than the then current Wholesale Acquisition Cost ("WAC") or Net Wholesale Price ("NWP") published by First DataBank, Red Book, or Medispan for the Targeted Drugs.
9. The information or documents which show that the then current Wholesale Acquisition Cost ("WAC") or Net Wholesale Price ("NWP") published by First DataBank, Red Book, or Medispan (the "pricing compendiums") was higher than the actual net price paid by wholesalers to Defendant for the Targeted Drugs.
10. The information or documents, if any, about which Defendant is aware, which show, or which Defendant believes may tend to show, that the net price paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors for the Targeted Drugs was equal to or greater than the then current Average Wholesale Price ("AWP") published by First DataBank, Red Book, or Medispan for the Targeted Drugs.
11. Defendant's knowledge that the net price paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, and doctors for the Targeted Drugs pursuant to direct sales from Defendant to these entities was less than the then current AWP's for these drugs published by any of the pricing compendiums.
12. Defendant's knowledge that the net price paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors for the Targeted Drugs when purchased through wholesalers was less than the current AWP's for these drugs published by any of the pricing compendiums.
13. Defendant's knowledge or belief of the markup or margin above a wholesaler's actual net acquisition cost applied by a wholesaler when selling or re-selling the Targeted Drugs to retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors.
14. The discounts, rebates, chargebacks, free goods, incentives, or other things of value offered by Defendant to wholesalers, retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors that would reduce the net price paid by these entities for the Targeted Drugs.

15. Communications between Defendant and First DataBank, Red Book, and Medispan about the Targeted Drugs, including the pricing information (such as AWP, WAC, SWP, DP) provided by Defendant to these entities and Defendant's definitions of these terms.
16. Defendant's reason(s) for supplying pricing information (such as AWP, WAC, SWP, DP) to First Databank, Red Book, or Medispan for the Targeted Drugs.
17. Defendant's knowledge of the relationship between the pricing information (such as AWP, WAC, SWP, DP) Defendant supplied to First DataBank, Red Book, or Medispan and the pricing information published by First DataBank, Red Book, or Medispan for the Targeted Drugs.
18. Defendant's knowledge or understanding of the use of Defendant's reported pricing information (such as AWP, WAC, SWP, DP) by First DataBank, Red Book, or Medispan, including but not limited to the transmission of that information to the Wisconsin Medicaid Agency.
19. The action(s), if any, taken by Defendant to stop, object to, or otherwise oppose the publication of the Wholesale Acquisition Cost ("WAC") or Average Wholesale Price ("AWP") by First DataBank, Red Book, or Medispan for any of the Targeted Drugs and the reason(s) for any such action(s).
20. To the extent Defendant stopped reporting any pricing information (such as AWP, WAC, SWP, DP) to First DataBank, Red Book, or Medispan, for the Targeted Drugs, the reason(s) for doing so.
21. Defendant's confirmation or acquiescence that the pricing information published by First DataBank, Red Book or Medispan for the Targeted Drugs was true and accurate.
22. The information and/or data that Defendant has purchased, obtained, or reviewed from First DataBank, Red Book, Medispan, or IMS relating to the Targeted Drugs, including but not limited to, pricing and market share data.
23. Whether Defendant ever communicated to First DataBank, Red Book, or Medispan that the Average Wholesale Prices ("AWPs") that Defendant reported to these entities was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or doctors for the Targeted Drugs and, if so, when such communications took place and of what they consisted.
24. Whether Defendant ever communicated to anyone in the Wisconsin Medicaid Agency that the Average Wholesale Prices ("AWPs") that Defendant reported to First DataBank, Red Book, or Medispan was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health care entities, or

doctors for the Targeted Drugs and, if so, when such communications took place and of what they consisted.

25. Whether Defendant ever communicated to First DataBank, Red Book, or Medispan that the Wholesale Acquisition Cost (“WAC”) that Defendant reported to these entities was not the net price actually paid by wholesalers to Defendant for any of the Targeted Drugs and, if so, when such communications took place and of what they consisted.
26. Whether Defendant ever communicated to anyone in the Wisconsin Medicaid Agency that the Wholesale Acquisition Cost (“WAC”) that Defendant reported to First DataBank, Red Book, or Medispan was not the net price actually paid by wholesalers to Defendant for any of the Targeted Drugs and, if so, when such communications took place and of what they consisted.
27. Whether the defendant has ever publicly stated, in writing or orally, that any of its AWP’s on any of its drugs were higher than retailers were generally paying for defendant’s drugs. If such a statement was made for any of defendant’s drugs, who made the statement, when was it made and what was written or said.
28. Whether the defendant has every publicly stated, in writing or orally, that any of its WACs on any of its drugs were higher than the price generally being paid by wholesalers for defendant’s drugs. If such a statement was made for any of defendants’ drugs, who made the statement, when was it made and what was written or said.
29. The methodology used by Defendant to calculate the Average Manufacturer’s Price (“AMP”) (as defined by 42 U.S.C. §1396r-8(k)(1)) for the Targeted Drugs and Defendant’s understanding of the use of AMP by CMS, including but not limited to its use in connection with rebates under the Medicaid rebate statute.
30. Whether Defendant has ever provided AMPs or any other pricing information (such as ASP, AWP, WAC) to the State of Wisconsin (apart from providing them pursuant to the State’s discovery requests in this case).
31. Defendant’s understanding and belief regarding the confidentiality provisions of the Medicaid Rebate statute, 42 U.S.C. 1396r, as it pertains to AMPs and Best Prices.
32. Whether Defendant contends that the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMPs of the Targeted Drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid rebate statute, 42 U.S.C. 1396r, and if so, all bases for such contention.
33. Defendant’s policies and practices concerning the disclosures that providers (retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home

health care entities, doctors, hospitals, clinics), wholesalers, and pharmacy benefit managers may make of the drug pricing information they receive from Defendant for the Targeted Drugs.

34. Defendant's knowledge of whether First DataBank increased the AWP's for the Targeted Drugs from WAC+20% to WAC+25% in or around 2001-2002 and the action(s), if any, taken by Defendant in response including, but not limited to, any studies, analyses or white papers regarding this issue.
35. The corporate history and organizational structure of Defendant and any predecessor entities.
36. Direct communications between Defendant (or Defendant's counsel or representatives) and the State of Wisconsin Attorney General's Office and/or the State of Wisconsin Medicaid Agency.
37. The nature and type of customers who purchase or distribute Defendant's drugs.
38. Defendant's use in its marketing or sales of the Targeted Drugs of the difference between a provider's acquisition cost and third-party reimbursement, including but not limited to "return to practice."
39. How and why defendant set its prices for Aranesp at launch time.
40. The marketing and sales strategy for Aranesp.
41. Whether any employee or agent of defendant described to purchasers the spread between the published AWP of Aranesp and the actual acquisition cost (or any other price such as WAC).
42. Whether defendant received any information from any source that members of its sales force were marketing the spread and, if so, what it did about it.
43. The competition from Procrit and how defendant responded to it.
44. The reasons why Aranesp was able to compete so effectively against Procrit.
45. The deponent shall bring with him or her the documents described in Appendix B.

Dated this 27th day of July, 2007.

/s/

One of Plaintiff's Attorneys

CHARLES BARNHILL
State Bar #1015932

ELIZABETH J. EBERLE
State Bar #1037016

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44 East Mifflin Street, Suite 803
Madison, WI 53703
(608) 255-5200

Attorneys for Plaintiff,
State of Wisconsin

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 27th of July, 2007, electronically served a true and correct copy of the foregoing pleading on all counsel of record by transmission to LexisNexis File & Serve.

APPENDIX A

Epogen

Neupogen

Aranesp

Enbrel (also marketed by Immunex)

Kineret

Neulasta

Sensipar

APPENDIX B

DEFINITIONS

1. The terms “you,” “your,” or “your company” shall mean the defendants, and their subsidiaries, divisions, predecessors, officers, agents and all other persons acting or purporting to act on behalf of defendants or their subsidiaries or predecessors.

2. The words “document” and “documents” are used in the broadest possible sense and refer, without limitation, to all written, printed, typed, photostatic, photographed, recorded or otherwise reproduced communications or representations of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, as well as audio or video recordings of communications, oral statement, conversations or events. This definition includes, but it not limited to, any and all of the following: day-timers, journals, logs, calendars, handwritten notes, correspondence, minutes, records, messages, e-mails, memoranda, telephone memoranda, diaries, contracts, agreements, invoices, orders, acknowledgements, receipts, bills, statements, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables tabulations, financial statements, working papers, tallies, maps, drawings, diagrams, sketches, x-rays, charts labels, packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. Any preliminary versions, drafts, or revisions of any of the foregoing, any document which has or contains any attachment, enclosure, comment, notation, addition, insertion, or marking of any

kind which is not a part of another document, or any document which does not contain a comment, notation, addition, insertion, or marking of any kind which is part of another document, is to be considered a separate document.

INSTRUCTIONS

1. In responding to these requests, Defendants are required to produce all responsive documents that are in the possession, custody, or control of any of them or any of their agents.

2. All documents that respond, in whole or in part, to any portion of the production requests below shall be produced in their entirety, including all attachments and enclosures.

3. If you withhold any document requested on the basis of a claim that it is protected from disclosure by privilege, work product, or otherwise, provide the following information separately for each such document:

- (a) The name and title of every author, sender, addressee, and recipient by category;
- (b) The date of the document;
- (c) The name and title of each person (other than stenographic or clerical assistants) participating in preparation of the document;
- (d) The name and title of each person to whom the contents of the document have been communicated by copy, exhibition, reading, or summary;
- (e) A description of the nature and subject matter of the document;
- (f) A statement of the basis on which it is claimed that the document is protected from disclosure; and
- (g) The name and title of the person supplying the information requested in subparagraphs (a) through (f) above.

4. Notwithstanding a claim that a document is protected from disclosure, any document so withheld must be produced with the portion claimed to be protected excised.

DOCUMENT REQUESTS

For the period 1993 to the present.

1. Any documents which show that the actual net price paid by wholesalers to defendant for the targeted drugs was equal to or greater than the then current Wholesale Acquisition Cost (WAC) or Net Wholesale Price (NWP) published by First DataBank, Red Book or Medispan (“the pricing compendiums”) and any documents which show what percentage these sales were to the total sales of a particular drug.
2. Documents which show, or together with other documents tend to show, that the net price paid by retail and chain pharmacies, long-term care pharmacies, mail order pharmacies, home health care entities, or doctors (providers) for the Targeted Drugs was equal to or greater than the then current Average Wholesale Price (AWP) published by the pricing compendiums.
3. Documents which show, or tend to show, the net price paid by providers for the targeted drugs.
4. Documents which show, or tend to show, that defendant was aware or believed that the published AWP for any of its drugs exceeded the net price providers were paying for drugs (including, but not limited to, defendant’s drugs.)
5. Documents which show defendant’s knowledge or belief of the markup or margin above a wholesaler’s actual net acquisition cost applied by a wholesaler when selling or re-selling drugs (including but not limited to defendant’s drugs) to providers.
6. Exemplar documents illustrating the entire range of discounts, rebates, chargebacks, free goods, incentives or other things of value offered by defendant to providers.
7. Any planning document, or document used in planning, referring to the AWP of a drug of the defendant.
8. Documents which describe how the defendant handles returns from pharmacists.
9. All documents reflecting communications between defendant and First DataBank, Red Book or Medispan.
10. Documents which discuss, concern or explain defendant’s reasons for supplying AWP, WACs or other prices to the pricing compendiums.

11. Documents reflecting communications between the defendant and any Wisconsin state employee.
12. Documents discussing, concerning or about how the defendant initially set its AWP, WAC, Direct Price or any other price it sent to the pricing compendiums in connection with each targeted drug.
13. Documents showing each instance in which defendant changed its AWP, its WAC or Direct Price on any of its targeted drugs and any documents discussing, concerning or about the reasons for any such change.
14. Documents discussing, concerning or about the formulaic relationship, if any between, defendant's AWP of a particular drug and its WAC.
15. Any document reflecting a public disclosure by the defendant of the fact that the AWP's published by the pricing compendiums do not accurately reflect the price providers are paying for defendant's drugs.
16. Documents describing the methodology, or methodologies (if they have changed over time) used by defendant for calculating its AMPs for the targeted drugs.
17. Documents describing defendant's policy and/or practice of requiring purchasers of its drugs to keep the actual prices such purchasers pay for defendant's drugs confidential
18. Documents discussing, concerning or about any actions taken by First DataBank in connection with the publication of the AWP's of defendant's drugs.
19. Documents defining AWP or WAC.
20. Documents discussing how AWP is used by providers.
21. Any and all sales or marketing materials that discuss the money to be made by a provider from purchasing a drug of the defendant.
22. All marketing plans and sales strategies prepared by defendant in connection with the launch of Aranesp.
23. All documents discussing the competition between Procrit and Aranesp.
24. All documents discussing, concerning or about marketing the spread of Aranesp or any other of defendant's drugs.

Chuck Barnhill

From: Chuck Barnhill
Sent: Monday, August 13, 2007 10:16 AM
To: 'Young, Joseph H. (Hank)'
Subject: RE: Amgen.

I have reviewed your production and it is clear that there is virtually nothing in the way of communications with sales people or memorandums or e-mails from sales people themselves. We obviously want you to produce any such material relevant to our requests. I am ready to start taking some depositions and the sooner we start the less distracting it will be to your trial preparation.

From: Young, Joseph H. (Hank) [mailto:JHYoung@HHLAW.com]
Sent: Friday, July 27, 2007 11:18 AM
To: Chuck Barnhill
Cc: Barley, Steven F.; Walker, Jennifer A.
Subject: RE: Amgen.

Chuck –

I am working on dates, and certainly intend to get back to you, although I may not be able to meet your deadline of today. Bear in mind that when we had our last meet/confer, the intention was that you would get through the initial production, and we would undertake agreed upon follow up as necessary before the depositions were to be taken. I gather this is no longer your intention.

Second, with respect to the production, I will check on the redaction issue (and privilege log), but based on my recollection of the MDL production, there was relatively little withheld on the basis of privilege. In any event, I will follow up and make sure that we get our privilege log over to you.

With regard to the communications between home office/sales, as I recall, these weren't within the scope of what we had discussed and agreed to produce in the initial set. I know we are still in the process of following up on some of the categories we discussed during our most recent call.

Lastly, as you may know, Amgen learned in the last few weeks that it is currently scheduled for an MDL trial in Boston, possibly as early as October. Scheduling is to be taken up at an August 9 hearing, and hopefully we will have clarification at that time. If we are faced with a multi-week trial this fall, it will have an impact on the scheduling of discovery in the state cases, in which we are not faced with imminent deadlines.

Do you want to try to set something up to talk about what you see as the necessary follow-up on the documents? Is there anyone with whom we can/should deal while you are out?

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From: Chuck Barnhill [mailto:CBarnhill@LAWMBG.com]
Sent: Friday, July 27, 2007 10:42 AM
To: Young, Joseph H. (Hank)
Subject: Amgen.

Hank, I have heard nothing from you on deposition dates so I will go ahead and set them. Also I have reviewed the discovery you have sent me and it is far from sufficient. First, there are a lot of redactions on the basis of privilege but no privilege log which would allow me to determine whether any privilege is available. Second, I saw no communications between the home office and the sales people in connection with marketing Amgen's products. It seems obvious that no extensive search of Amgen's sales communications was conducted. I also believe that it would be an easy matter for you to issue a blast to your sales people asking them to search their records, including e-mails, for documents relevant to our requests, particularly discussions among themselves or with customers about the profitability of using Amgen's products.

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Chuck Barnhill

From: Young, Joseph H. (Hank) [JHYoung@HHLAW.com]
Sent: Monday, August 13, 2007 5:48 PM
To: Chuck Barnhill
Subject: RE: Amgen/AWP

Sure, if that leaves you with time to get to the airport. Thanks.

From: Chuck Barnhill [mailto:CBarnhill@LAWMBG.com]
Sent: Monday, August 13, 2007 6:48 PM
To: Young, Joseph H. (Hank)
Subject: RE: Amgen/AWP

Wednesday at 9:30 my time?

From: Young, Joseph H. (Hank) [mailto:JHYoung@HHLAW.com]
Sent: Monday, August 13, 2007 5:35 PM
To: Chuck Barnhill
Subject: RE: Amgen/AWP

I have a medical "procedure" I have to deal with in the afternoon that's likely to screw things up until late in the day. Is early Wednesday out? Alternatively, once you are in DC? Wednesday is pretty open. Thursday is out.

From: Chuck Barnhill [mailto:CBarnhill@LAWMBG.com]
Sent: Monday, August 13, 2007 6:26 PM
To: Young, Joseph H. (Hank)
Subject: RE: Amgen/AWP

Sure—I should be available after 2:30 my time. Tomorrow is better than Wednesday because I have to go to DC that day.

From: Young, Joseph H. (Hank) [mailto:JHYoung@HHLAW.com]
Sent: Monday, August 13, 2007 5:19 PM
To: Chuck Barnhill
Cc: Barley, Steven F.; Walker, Jennifer A.
Subject: Amgen/AWP

Chuck –

I am responding to your email correspondence earlier today, and to plaintiffs' notice of depositions of Amgen corporate representatives, which noted depositions to begin on September 6-7. Apart from issues noted below, the date proposed in the amended notice is not workable in any event.

First, as you know, Amgen is one of three companies scheduled for trial this fall before Judge Patti Saris in the MDL proceedings pending in U.S. District Court in Boston. The precise schedule is somewhat unclear (a hearing that had been scheduled for last week was postponed due to a death in Judge Saris's family and has been rescheduled for August 27), and until the schedule has been resolved, we do not know whether a fall date will be problematic.

Second, it is my recollection and understanding, following our several meet and confers this summer, that the State wanted to complete its review of Amgen's production in advance of taking depositions. I agree with that approach. As you will recall, we had agreed to a preliminary production of certain key materials, with the expectation that the State could come back with more specific requests after its initial review. I gather by your email that you are prepared to do that now, and I would be more than happy to do what I can to move that process along.

Finally, with regard to your concern that Amgen's initial production did not contain communications, memoranda, emails, etc. to Amgen sales representatives, this was one of the specific categories that I indicated would be handled by a subsequent production, once we had agreed to some way of limiting your requests.

I would like to see if we can get issues relating to the documents resolved so that we can get the production behind us. Can you give me a couple of times tomorrow or Wednesday when you might be free to talk?

Thanks.

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Chuck Barnhill

From: Young, Joseph H. (Hank) [JHYoung@HHLAW.com]
Sent: Thursday, August 23, 2007 9:39 AM
To: Chuck Barnhill
Subject: RE: AWP

Wednesday is wide open right now. Let me know the time that works best for you.

Hank

From: Chuck Barnhill [mailto:CBarnhill@LAWMBG.com]
Sent: Thursday, August 23, 2007 10:37 AM
To: Young, Joseph H. (Hank)
Subject: RE: AWP

I may be in Tampa that day. How about Wednesday morning or afternoon?

From: Young, Joseph H. (Hank) [mailto:JHYoung@HHLAW.com]
Sent: Thursday, August 23, 2007 9:31 AM
To: Chuck Barnhill
Subject: AWP

Chuck --

We need to get our meet/confer scheduled regarding Amgen's production and your noticed Rule 30(b)(6) depositions. Today is a mess, tomorrow is bad but possible, Monday afternoon is best.

Thanks.

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Chuck Barnhill

From: Young, Joseph H. (Hank) [JHYoung@HHLAW.com]
Sent: Tuesday, September 04, 2007 8:22 AM
To: Chuck Barnhill
Subject: AWP

Chuck --

I apologize for not getting back with you on Friday regarding a proposal to crack the sales rep nut in the WI litigation, but we are still in the process of gathering information about number/identification of reps, accounts, etc. That should be done today or tomorrow at the latest. In addition, I have a call scheduled with the client later today to discuss scheduling/availability of the 30B6 deponents.

Thanks for your continued patience. I should be back to you shortly on both scores.

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Chuck Barnhill

From: Young, Joseph H. (Hank) [JHYoung@HHLAW.com]
Sent: Sunday, September 09, 2007 12:07 PM
To: Chuck Barnhill
Subject: Document Stip -- WI, IL, KY, MS, AL, AK
Attachments: 231090_1.DOC

Chuck --

I am attached a proposed stipulation, modeled after the stips you have reached with a number of other defendants. Please let me know if you have any comments. I wanted to get your OK before I circulate to the non-Miner Barnhill states.

I am still trying to work through a couple of alternatives regarding discovery of sales reps document/communications, per our last meet and confer, and expect to have some suggestions by the early part of the week.

Thanks.

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Chuck Barnhill

From: Young, Joseph H. (Hank) [JHYoung@HHLAW.com]
Sent: Friday, September 21, 2007 3:29 PM
To: Chuck Barnhill
Subject: Re: response

Chuck -

No need. I will have responses on the outstanding issues we discussed - proposed dates for at least some of the 30b6 depts and suggested ways of dealing with PSR inquiries - by Monday afternoon.

Hank Young

----- Original Message -----

From: Chuck Barnhill <CBarnhill@LAWMBG.com>
To: Young, Joseph H. (Hank)
Sent: Fri Sep 21 16:25:07 2007
Subject: response

Unless I get a positive response from you concerning our outstanding discovery requests early next week I will make a motion to compel.

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Chuck Barnhill

From: Young, Joseph H. (Hank) [JHYoung@HHLAW.com]
Sent: Monday, September 24, 2007 5:35 PM
To: Chuck Barnhill
Subject: WI AWP

Chuck --

1. With regard to the communications with PSRs, we can do the broadcast email/transmittal to all current professional sales reps, as you suggested. We need to agree on language for the transmittal. You had mentioned other defendants had proceeded in this manner. Do you have an example of the language that was used? If not, I will draft a template.
2. As for corporate rep depositions, as I mentioned on our last call, I don't have any objection to getting them started at the end of the month. Please give me dates you are available during the week of October 22 (with the exception of October 25-26) and October 29, and I will start clearing the dates with witnesses.

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Chuck Barnhill

From: Young, Joseph H. (Hank) [JHYoung@HHLAW.com]
Sent: Tuesday, October 02, 2007 5:41 AM
To: Chuck Barnhill
Subject: RE: depositions

Chuck -

I had to go back to the well because of dates, and have so far only been assured of one individual's availability. I should know shortly. I've also drafted a proposed email along lines we've suggested, and am awaiting comments on my side. It should be over to you shortly, as well.

From: Chuck Barnhill [mailto:CBarnhill@LAWMBG.com]
Sent: Monday, October 01, 2007 6:01 PM
To: Young, Joseph H. (Hank)
Subject: depositions

Are we on for the first and second of November?

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Chuck Barnhill

From: Young, Joseph H. (Hank) [JHYoung@HHLAW.com]
Sent: Thursday, October 11, 2007 5:53 PM
To: Chuck Barnhill
Subject: RE: Depositions.

Chuck --

While I don't accept your characterizations, I will forward firm dates by COB tomorrow.

I would still like to revisit the stipulation regarding documents that you and I discussed some time ago. I'm not sure what you were referring to when you indicated other defendants had somehow abused the process under the stipulation, but that hasn't been the case with Amgen. The stipulation would, I would think, simplify the process on both sides.

Thanks.

Hank Young

From: Chuck Barnhill [mailto:CBarnhill@LAWMBG.com]
Sent: Wednesday, October 10, 2007 2:40 PM
To: Young, Joseph H. (Hank)
Subject: Depositions.

Hank, I have to say I think you are just stringing me along. While your cohorts are busily taking depositions of every Wisconsin employee in sight you keep delaying Amagen's depositions. If I do not have firm dates by the end of the week I will make a motion to compel.

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Chuck Barnhill

From: Young, Joseph H. (Hank) [JHYoung@HHLAW.com]
Sent: Friday, October 12, 2007 5:39 PM
To: Chuck Barnhill
Cc: Barley, Steven F.; Walker, Jennifer A.
Subject: Wisconsin AWP

Chuck --

Here are the dates for the Amgen designees. A couple of notes: First, as I indicated in my prior emails, as a result of scheduling conflicts, I have been able to confirm only one deposition for November -- Chris Mancill. The remaining designees are for the most part available in December. However, this assumes that the MDL trial in Boston does not proceed on December 3. If that trial does in fact go begin per Judge Saris' order, the December dates necessarily will need to be rescheduled. In addition, one of the designees (Anne McKnickle) was not available until early January. However, I suspect that you will be able to cover areas for which she was designated with other witnesses (Chris Mancill, most likely), so Ms. McKnickle's deposition ultimately may prove unnecessary. I am also still waiting on confirmation of a firm date for Peter Feldman, but we obviously will push for the week of December 10-14, given the other witnesses' availability. Finally, If your schedule permits and you want to push Chris Mancill into December and do all of the depositions back-to-back, let me know and I will check on his availability.

Chris Mancill -- November 7, 2007
Jim Daly -- December 13-14
Shannon Kilbane -- December 11-14
Helen Streck (if needed) -- December 10-11
Kosta Tzavaras (if needed) -- December 3-4
Peter Feldman -- pending.

Thanks. If I get an update on Peter Feldman's availability this afternoon or evening (he is on the west coast), I will let you know.

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