

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05 C 0408 C
)	
ABBOTT LABORATORIES, INC., et al.,)	
)	
Defendants.)	

**AMGEN INC.'S RESPONSES AND OBJECTIONS TO
PLAINTIFF'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Western District of Wisconsin, and, to the extent applicable, Wisconsin Rule of Civil Procedure 804.09, defendant Amgen Inc. ("Amgen"), by its attorneys, objects and responds to plaintiff's First Request for Production of Documents to all Defendants as follows:

PRELIMINARY STATEMENT

1. These responses and objections are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections that may be applicable at a trial or other hearing or proceeding, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Amgen's responses and objections shall not be deemed to constitute admissions:

- a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or
- b. that any statement or characterization in Plaintiff's First Set of Requests for Production of Documents is accurate or complete.

3. Amgen's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and Amgen reserves the right to amend its responses and to raise any additional objections it may have in the future. These responses are made based upon the typical or usual interpretation of words contained in Plaintiff's First Request for Production of Documents, unless a specific definition or instruction has been provided and/or agreed upon. Notwithstanding any objection set forth herein, and without waiving any such objection, Amgen has negotiated and will continue to negotiate with Plaintiff in an effort to reach agreement regarding the scope of Plaintiff's First Set of Requests for Production of Documents, and will supplement or amend these objections and responses consistent with those negotiations.

4. Amgen's responses to Plaintiff's First Set of Requests for Production of Documents contain information subject to the stipulated Temporary Qualified Protective Order in this matter and must be treated accordingly. Amgen further agrees to make any production of responsive documents or other information only upon entry and execution of an appropriate protective order in this matter governing dissemination and disclosure of such materials.

5. Amgen is awaiting the Court's ruling on both the defendants' jointly-filed motion to dismiss plaintiff's First Amended Complaint and on Amgen's individual motion to dismiss the First Amended Complaint. In addition, defendants' motion to stay discovery in this matter remains unresolved. Until such time as the Court

has ruled on these motions, Amgen objects to Plaintiff's First Set of Requests for Production of Documents as being unduly burdensome and as imposing enormous and potentially unnecessary expense on Amgen. Notwithstanding this objection, and without waiving it, Amgen has been involved in and will continue to negotiate in good faith with Plaintiff in this matter regarding the scope of its discovery requests, and has agreed to provide limited discovery, as set forth below, despite the pendency of these motions.

6. Amgen is responding on its own behalf, and not on behalf of Immunex Corporation, a wholly-owned subsidiary, which has been named as a separate defendant in these proceedings and is separately represented by counsel.

7. Amgen's responses to Plaintiff's First Set of Requests for Production of Documents are submitted without prejudice to Amgen's right to produce evidence of any subsequently discovered fact. Amgen accordingly reserves its right to provide further responses and to supplement any production of documents hereunder as additional facts are ascertained and/or additional documents are located.

GENERAL OBJECTIONS

Amgen objects generally to Plaintiff's First Set of Requests for Production of Documents as follows:

1. Amgen objects to Plaintiff's "Definitions" to the extent Plaintiff intends to expand upon or alter Amgen's obligations under the Federal Rules of Civil Procedure, the Court's Local Rules, and, to the extent applicable, the Wisconsin Rules of Procedure, in responding to the requests. Amgen will comply with applicable rules of civil procedure in providing its responses and objections to Plaintiff's First Set of Requests for Production of Documents.

2. Amgen objects to each request to the extent that it calls for the identification or production of documents or information not relevant to the issues in this action and is not reasonably calculated to lead to the discovery of admissible evidence.

3. Amgen objects to Plaintiffs' definitions of "Average Manufacturer Price," "AMP," "Chargeback," "Incentive," "National Sales Data," and "Spread" on the grounds that they are vague, ambiguous, overbroad, burdensome, and necessarily encompass information and materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Amgen further objects to the definition of "Average Manufacturer Price" and "AMP" to the extent that it purports to set forth an accurate or legally significant definition of these terms.

4. Amgen objects to the definition of "Defined Period of Time" and to each of the individual interrogatories on the grounds that they are overbroad and burdensome, and are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to further negotiation and agreement, Amgen will conduct a reasonable search for documents generally responsive to the Plaintiff's First Set of Requests for Production of Documents, subject to Amgen's objections and responses set forth below, for a limited time period to be agreed upon. The production of any documents or provision of other information by Amgen that pre-dates or that post-dates the time period ultimately agreed upon shall not be deemed to constitute a waiver of this objection.

5. Amgen objects to the definitions of "Pharmaceutical" and "Targeted Drugs" on the grounds that they are vague, ambiguous, overbroad, burdensome, and necessarily encompass information and materials that are neither

relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Amgen further objects to the definitions of these terms and to each request to the extent that they purport to require the production of information regarding products other than the Amgen products specifically identified in the First Amended Complaint and/or attachments to the First Amended Complaint. Amgen agrees to undertake a search for responsive information and documents only with respect to products manufactured by it and identified in the First Amended Complaint and its attachments. The production of any documents or provision of other information by Amgen regarding products manufactured by Amgen but that are not identified therein shall not be deemed to constitute a waiver of this objection.

6. Amgen objects to the definition of "Documents" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those imposed by the Federal Rules of Civil Procedure and/or applicable Wisconsin Rules of Civil Procedure, to the extent applicable. Amgen further objects to this definition to the extent that it purports to require Amgen to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by Amgen as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

7. Amgen objects to the definition of “National Sales Data” to the extent that it purports to require the production of documents or other information not relevant to Plaintiff’s claims, which are limited to Wisconsin. Amgen further objects to this definition to the extent that it seeks information from beyond the time period relevant to this litigation, and/or information about drugs not named in the First Amended Complaint, on the grounds that such information is neither relevant to the subject matter of the litigation nor reasonably calculated to lead to the discovery of admissible evidence. The production of any documents or data or the provision of other information by Amgen as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

8. Amgen objects to the extent that any request seeks information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, by any common interest or joint defense agreement, or by any other applicable privilege or protection. Amgen agrees to prepare and provide Plaintiff with a listing or log of documents withheld on the grounds of privilege at the conclusion of its initial production.

9. Amgen objects to each request to the extent that it calls for production of documents or information not within its possession, custody or control. In responding to these requests, Amgen has undertaken or will undertake a diligent and reasonable search of documents and information within Amgen’s current possession, custody or control.

10. Amgen objects to each request to the extent that it calls for information that is confidential, proprietary, and/or a trade secret of a third party. Amgen

will produce any such materials only upon entry and execution of an appropriate protective order entered in this action and to the extent such production or information is otherwise called for by these requests.

11. Amgen objects to each request to the extent that it seeks disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

12. Amgen expressly incorporates the above General Objections into each specific response to the requests set forth below as if set forth in full therein. The response to a request shall not operate as a waiver of any applicable specific or general objection to a request.

RESPONSE TO SPECIFIC REQUESTS

REQUEST NO. 1:

All National Sales Data for each Targeted Drug during the Defined Period of Time.

RESPONSE: Amgen objects to this request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Amgen further objects to the extent that this request purports to require Amgen to produce documents or other information in a manner or format other than the manner or format in which such data or information may otherwise be maintained by Amgen.

Notwithstanding Amgen's general and specific objections, and without waiving them, Amgen agrees to produce sales and related data generally responsive to this request for those products manufactured by Amgen and identified in Plaintiff's First Amended Complaint.

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.

RESPONSE: Amgen objects to this request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Amgen further objects to the extent that this request purports to require Amgen to produce documents or other information in a manner or format other than the manner or format in which such data or information may otherwise be maintained by Amgen.

Notwithstanding Amgen's general and specific objections, and without waiving them, Amgen agrees to produce sales and related data generally responsive to this request for those products manufactured by Amgen and identified in Plaintiff's First Amended Complaint.

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 requests.

RESPONSE: Amgen objects to this request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Amgen further objects to the extent that this request purports to require Amgen to produce documents or other information in a manner or format other than the manner or format in which such data or information may

otherwise be maintained by Amgen, and on the grounds that the terms “Average Wholesale Price” and “Wholesale Acquisition Cost” are undefined, and that the request is not limited to time frame.

Notwithstanding Amgen’s general and specific objections, and without waiving them, Amgen agrees to undertake a limited search for non-privileged documents potentially responsive to this request in a manner to be negotiated with and agreed upon between the parties.

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.

RESPONSE: Amgen objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request is particularly vague regarding its request for the “average sale price” or “composite price” of any Amgen product. *See also* Amgen’s Objection and Answer to Interrogatory No. 1 contained in Plaintiff’s First Set of Interrogatories, which is specifically incorporated herein by reference.

Notwithstanding Amgen’s general and specific objections, and without waiving them, Amgen agrees to produce sales and related data that may contain information generally responsive to this request. By way of further response, and subject to the entry and execution of an appropriate protective order, Amgen agrees as part of an initial production to make available to Plaintiff a copy of the Rule 30(b)(6) deposition of Peter Feldman, an Amgen employee, taken on May 26, 2004, in connection with *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.).

REQUEST NO. 5:

All documents sent to or received from First DataBank, Redbook and Medi-span regarding the price of any Targeted Drug.

RESPONSE: Amgen objects to this request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Amgen further objects to this request on the grounds that it is not limited in time frame.

Notwithstanding Amgen's general and specific objections, and without waiving them, Amgen agrees to produce non-privileged documents responsive to this request for those products manufactured by Amgen and identified in Plaintiff's First Amended Complaint.

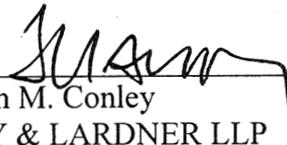
REQUEST NO. 6:

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.

RESPONSE: Amgen objects to this request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Amgen further objects to this request on the grounds that it is not limited in time frame.

Notwithstanding Amgen's general and specific objections, and without waiving them, Amgen agrees to produce non-privileged documents responsive to this

request for those products manufactured by Amgen and identified in Plaintiff's First Amended Complaint.


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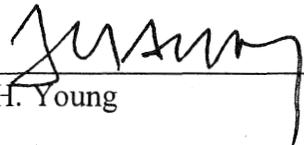
July 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of July, 2005, a true and correct copy of Amgen Inc.'s Responses and Objections to Plaintiff's First Set of Requests for Production of Documents to All Defendants was served upon the Plaintiff's counsel listed below by U.S. Mail and upon Defendants' counsel by electronic mail.

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