
STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

AMGEN INC., et al.,

Defendants.

COPY

**IMMUNEX CORPORATION'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S
FIFTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL
DEFENDANTS**

Pursuant to the § 804.08, Wis. Stats., defendant Immunex Corporation ("Immunex"), by its attorneys, objects and responds to Plaintiff's Fifth Set of Requests for Production of Documents ("Plaintiff's Requests") 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 on any grounds that would require the exclusion of any statements contained herein if such Plaintiff's Requests were asked of, or statements contained herein were made by, a witness present and testifying in Court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Immunex's responses 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 Requests is accurate or complete.

3. Immunex's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and Immunex 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 Requests, unless a specific definition or instruction has been provided and/or agreed upon.

4. Immunex's responses to Plaintiff's Requests contain information subject to the Protective Order in this matter and must be treated accordingly.

5. Immunex is responding on its own behalf, and not on behalf of Amgen Inc., the parent company of Immunex, which has been named as a separate defendant in these proceedings and is separately represented by counsel.

6. Immunex's responses to Plaintiff's Requests are submitted without prejudice to Immunex's right to produce evidence of any subsequently discovered fact. Immunex accordingly reserves its right to provide further responses and answers as additional facts are ascertained.

GENERAL OBJECTIONS

Immunex objects generally to Plaintiff's Requests as follows:

1. On July 3, 2007, Immunex produced to Plaintiff all documents produced to plaintiffs in the MDL. The MDL court has directed coordination with related state cases such as this one, and at the very least before pursuing further discovery from Immunex, Plaintiff should review the relevant documents produced in the MDL.

2. Immunex objects to Plaintiff's "Definitions" and "Instructions" to the extent Plaintiff seeks to expand upon or alter Immunex's obligations under the Wisconsin Statutes, in responding to Plaintiff's Requests. Immunex will comply with the Wisconsin Statutes in providing its responses to Plaintiff's Requests.

3. Immunex objects to the definition of the word "Document(s)" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those imposed by the applicable Wisconsin Statutes. Immunex further objects to this definition to the extent that it purports to require Immunex 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 Immunex as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

4. Immunex objects to Plaintiff's Requests to the extent they call for the identification or production of documents or information not relevant to the issues in this action or not reasonably calculated to lead to the discovery of admissible evidence.

5. Immunex objects to Plaintiff's Requests to the extent they seek information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, any common interest or joint defense agreement, or any other applicable privilege or protection.

6. Immunex objects to Plaintiff's Requests to the extent they call for information not within Immunex's possession, custody or control. In responding to Plaintiff's Requests, Immunex has undertaken or will undertake a reasonably diligent and reasonable search of documents and information within Immunex's current possession, custody or control.

7. Immunex objects to Plaintiff's Requests to the extent they call for information that is confidential, proprietary, and/or a trade secret of a third-party or is protected from disclosure by an agreement with a third-party.

8. Immunex objects to Plaintiff's Requests to the extent they seek 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.

9. Immunex expressly incorporates the above General Objections into the specific response set forth below as if set forth in full therein. A response to Plaintiff's Requests shall not operate as a waiver of any applicable specific or general objection.

OBJECTIONS AND RESPONSES TO SPECIFIC REQUESTS

DOCUMENT REQUEST NO. 14: All documents relating to lobbying efforts of you, or any individual or entity action on your behalf (including but not limited to third-party lobbyists or lobbyist organizations such as the Pharmaceutical Research and Manufacturers of America), with regard to:

- (a) the Wisconsin Medicaid program's reimbursement for prescription drugs;
- (b) other state Medicaid programs' reimbursement for prescription drugs; and
- (c) the federal Medicare program's reimbursement for prescription drugs.

Documents sought by this request include, but are not limited to:

- (a) communications with the State of Wisconsin, the Wisconsin Department of Health & Family Services, and the Wisconsin legislature (including any legislative committee or individual state legislator);
- (b) communications with other states, other state Medicaid programs, and other state legislatures (including any legislative committee or individual state legislator);
- (c) internal communications within your company;

- (d) communications between you and external third-party lobbyists or lobbyist organizations such as the Pharmaceutical Research and Manufacturers of America; and
- (e) documents identifying, describing, or relating to the amount of money spent on lobbying efforts regarding these issues.

RESPONSE: Immunex objects to the phrases "lobbying efforts," "third-party lobbyists," "lobbyist organizations," and "external third-party lobbyists" as vague, ambiguous, and undefined. Immunex further 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. Immunex further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege and/or work-product doctrine.

Without waiving these objections or the general objections above, Immunex responds that it has already produced any responsive documents to Plaintiff.

DOCUMENT REQUEST NO. 15: Documents identifying, describing, or relating to your internal code of conduct or other policy relating to the ethical standards applicable to your employees.

RESPONSE: Immunex objects to the phrases "internal code of conduct," "other policy," and "ethical standards applicable to your employees" as vague, ambiguous, and undefined. Immunex further 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. Immunex further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege and/or work-product doctrine.

Without waiving these objections or the general objections above, Immunex responds that, to the extent they exist, Immunex has already produced any responsive documents to Plaintiff.

DOCUMENT REQUEST NO. 16: Documents relating to your compliance policy or other policies designed to ensure adherence to applicable statutes, regulations and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs.

RESPONSE: Immunex objects to the phrases "compliance policy," "other policies," and "applicable statutes, regulations and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs" as vague, ambiguous, and undefined. Immunex further 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. Immunex further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege and/or work-product doctrine.

Without waiving these objections or the general objections above, Immunex responds that, to the extent they exist, Immunex has already produced any responsive documents to Plaintiff.

DOCUMENT REQUEST NO. 17: Documents relating to any policy relating to the use or promotion of, or reference to, the spread of a drug in connection with the sales or marketing of that drug including, but not limited to:

- (a) documents that relate to or describe the policy, including consequences for violation of the policy;
- (b) documents that identify the date that the policy was established and/or became effective;
- (c) documents identifying, describing, or relating to the reason(s) for establishment of the policy;
- (d) documents identifying, describing, or relating to the distribution and dissemination of the policy to your employees;
- (e) documents identifying, describing, or relating to training provided to your employees regarding the policy; and
- (f) documents relating to any actual or potential violations of the policy, including any investigation, determination, and action taken by your company related to any such actual or potential violation.

RESPONSE: Immunex objects to the phrases "policy relating to the use or promotion of, or reference to, the spread of a drug" and "in connection with the sales or marketing of that drug"

as vague, ambiguous, and undefined. Immunex further 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. Immunex further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege and/or work-product doctrine.

Without waiving these objections or the general objections above, Immunex responds that, to the extent they exist, Immunex has already produced any responsive documents to Plaintiff.

DOCUMENT REQUEST NO. 18: Documents identifying or describing the reimbursement formula for prescription drugs used by the Wisconsin Medicaid Program, including but not limited to its formula for estimating acquisition cost or its use of AWP.

RESPONSE: Immunex objects to this Request on the grounds that it is overly broad and unduly burdensome. Immunex further objects to this Request to the extent that the documents requested are either publicly available or already in the possession of the Plaintiff.

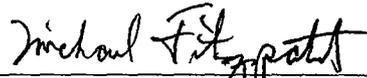
DOCUMENT REQUEST NO. 19: All documents relating to the National Pharmaceutical Council, including but not limited to the following:

- (a) documents relating to your membership in the National Pharmaceutical Council;
- (b) all correspondence between you and the National Pharmaceutical Council;
- (c) all annual publications of the National Pharmaceutical Council entitled "Pharmaceutical Benefits Under State Medical Assistance Programs."

RESPONSE: Immunex objects to this Request on the grounds that it is overly broad, unduly burdensome and to the extent it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Immunex further objects to this Request because Immunex is not currently a member of the National Pharmaceutical Council.

Without waiving these objections or the general objections above, Immunex responds that, to the extent they exist, Immunex has already produced any responsive documents to Plaintiff.

Dated this 27th day of July, 2007.



Michael R. Fitzpatrick
BRENNAN, STEIL & BASTING, S.C.
One East Milwaukee Street
Janesville, WI 53547-1148
Telephone: (608) 756-4141
Facsimile: (608) 756-9000

David J. Burman
Kathleen M. O'Sullivan
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
(206) 359-8000 (phone)
(206) 359-9000 (fax)

Attorneys for Immunex Corporation

00230770.DOC

**BRENNAN,
STEIL &
BASTING, S.C.**

Attorneys At Law

A Limited Liability Organization

One East Milwaukee Street (53545)
P.O. Box 1148
Janesville, Wisconsin 53547-1148
Facsimile (608) 756-9000
Telephone (608) 756-4141

July 27, 2007

VIA FACSIMILE AND U.S. MAIL

COPY

Attorney Cynthia R. Hirsch
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

**Re: State of Wisconsin vs. Abbott Laboratories, Inc., et al.
USDC, Western District of Wisconsin Case No. 05-C-0408-C**

Dear Cynthia:

Enclosed please find Immunex Corporation's Responses and Objections to Plaintiff's Fifth Set of Requests for Production of Documents to All Defendants.

Thank you for your assistance.

Very truly yours,

BRENNAN, STEIL & BASTING, S.C.

By: 
Michael R. Fitzpatrick
mfitzpatrick@brennansteil.com

MRF/ch

Enclosure

cc(w/enc.):

00230775.DOC

All Counsel of Record ✓