

**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 ANSWERS AND OBJECTIONS TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS**

Pursuant to Rules 26 and 33 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 804.08, defendant Amgen Inc. ("Amgen"), by its attorneys, objects and responds to Plaintiff's First Set of Interrogatories as follows:

**PRELIMINARY STATEMENT**

1. These answers and objections are made solely for the purposes of this action. Each response and answer 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 document requests or Interrogatories 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. Amgen's responses and answers 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 Interrogatories 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 Set of Interrogatories, 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 will continue to negotiate with Plaintiff in an effort to reach agreement regarding the scope of Plaintiff's First Set of Interrogatories, and will supplement or amend these objections and responses consistent with those negotiations.

4. Amgen's responses to Plaintiff's First Set of Interrogatories 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 Interrogatories 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 be involved in negotiations 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 of Amgen, 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 Interrogatories 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 answers as additional facts are ascertained.

### **GENERAL OBJECTIONS**

Amgen objects generally to Plaintiff's First Set of Interrogatories 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 Interrogatories. Amgen will comply with applicable rules of civil procedure in providing its answers to Plaintiff's First Set of Interrogatories.

2. Amgen objects to each interrogatory 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 Interrogatories, subject to Amgen's objections and responses set forth herein, 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 interrogatory 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 or interrogatory 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 or interrogatory to the extent that it calls for production of documents or information not within its possession, custody or control. In responding to these interrogatories, 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 or interrogatory 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 or interrogatory 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.

## **RESPONSES TO 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 government entity. If so, identify each publisher, customer or government 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.

**ANSWER:** Amgen objects to Interrogatory No. 1 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The interrogatory is particularly vague regarding its request for the “average sale price” or “composite price” of any Amgen product.

Notwithstanding Amgen’s general and specific objections, and without waiving them, Amgen agrees to produce business records and data from which the answer to this interrogatory may be obtained. 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.).

**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.

**ANSWER:** Amgen objects to Interrogatory No. 2 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding Amgen's general and specific objections, and without waiving them, Amgen agrees to produce business records and related data from which the answer to this interrogatory may be obtained. 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 Ole Mikkelsen, an Amgen employee, taken on May 26, 2004, in connection with *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.).

**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.

**ANSWER:** Amgen objects to Interrogatory No. 3 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Amgen further objects to this interrogatory on the grounds that it is not limited in scope or by time frame.

Notwithstanding its general and specific objections, and without waiving them, Amgen agrees to produce business records and data from which the answer to this interrogatory may be obtained.

**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.

**ANSWER:** Amgen objects to Interrogatory No. 4 on the grounds that it is unlimited in scope, and is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding its general and specific objections, and without waiving them, Amgen agrees to produce business records and data from which the answer to this interrogatory may be obtained. 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.).

**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).

**ANSWER:** Amgen objects to Interrogatory No. 5 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Amgen further objects to this interrogatory on the grounds that it is unlimited in scope and time frame.

Notwithstanding its general and specific objections, and without waiving them, Amgen responds further that, based upon diligent review and investigation to date,

it is not aware of any marketing program or policy sanctioning marketing practices as defined in this interrogatory.

AS TO OBJECTIONS:



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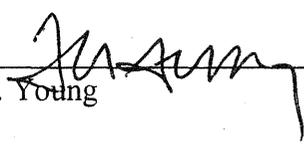
July 15, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15 day of July, 2005, a true and correct copy of Amgen Inc.'s Answers and Objections to Plaintiff's First Set of Interrogatories 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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