

**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.)	

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

Defendant Immunex Corporation hereby objects and responds to Plaintiff's First Set of Interrogatories to All Defendants (the "Interrogatories") as follows:

I. GENERAL OBJECTIONS AND LIMITATIONS

The following apply to each specific response as if set forth fully therein.

1. By responding to the Interrogatories, Immunex does not waive or intend to waive: (a) any objections as to the competency, relevancy, materiality, confidentiality, privilege, or admissibility as evidence, for any purpose, of any information produced in response to the Interrogatories; (b) the right to object on any ground at any time to a demand for further response to the Interrogatories; or (c) the right at any time to revise, correct, add to, supplement, or clarify any of the responses.

2. The information and documents supplied are for use in this litigation and for no other purpose.

3. By responding that it will produce information responsive to a particular Interrogatory, Immunex does not assert that it has responsive information or that such materials exist, only that it will conduct a reasonable search and produce responsive, non-

objectionable, non-privileged information. No objection made herein, or lack thereof, is an admission by Immunex as to the existence or non-existence of any information.

4. The following responses are based on Immunex's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist.

5. Immunex objects to production of information or documents as to marketing activities and customers outside of the State of Wisconsin [other than those subject to reimbursement by the State of Wisconsin].

6. Immunex objects to Plaintiff's Instructions and to the Interrogatories to the extent they seek to alter or expand upon the obligations imposed by the Rules; or to impose on Immunex any obligation to produce documents in the possession of others.

7. Immunex objects to the temporal scope of the Interrogatories as seeking information or documents prior to January 1, 1997, or after the time it no longer marketed the products in question. Such information and documents are not generally relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence.

8. Immunex objects to the Interrogatories to the extent they seek materials protected by the attorney-client privilege, work-product doctrine, or any other privilege recognized by law. To the extent any such protected information is inadvertently produced in response to the Interrogatories, the disclosure of such information shall not constitute a waiver of Immunex's right to assert the applicable privilege or immunity.

9. Immunex objects to the Interrogatories as none of the Targeted Drugs identified in the May 20, 2005, letter from Plaintiff are identified in the Amended Complaint as the subject of its allegations, and none are currently manufactured or marketed by Immunex.

10. Immunex objects to the Interrogatories to the extent they seek information and documents that are protected by, or whose disclosure or production is governed by, confidentiality or other protective agreements with third-parties, patient confidentiality

protections, or the confidentiality restrictions imposed by the Federal Trade Commission in its Decision and Order dated September 3, 2002, *In the Matter of Amgen Inc. and Immunex Corporation*, Docket No. C-4056 ("the FTC Order").

11. Immunex objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories. Any response by Immunex is not intended to indicate that Immunex agrees with any such implications or characterizations, or that such implications or characterizations are relevant to this litigation.

12. Immunex objects to the Interrogatories to the extent they seek documents no longer in the possession or control of Immunex. In July 2002, shortly after the merger with Amgen, Immunex closed on an agreement to sell all assets relating to Leukine® to Schering AG Germany, whose U.S. subsidiary is Berlex Laboratories. As to Thioplex (thiotepa), Amgen discontinued marketing and sales of this product in approximately November 2002. As to Novantrone®, Immunex entered into a License and Commercialization Agreement with Ares Trading, S.A., on behalf of its subsidiary Serono S.A. (collectively, Serono, S.A. and its subsidiaries are referred to as "Serono") in November 2002, pursuant to which Immunex licensed the rights to market and sell Novantrone® to Serono. Immunex transferred certain documents relating to Novantrone® to Serono, and Immunex retained copies of some of these documents. Immunex is informed that Serono subsequently entered an agreement with OSI Pharmaceuticals, Inc. in March 2003, pursuant to which OSI acquired the rights to market and sell Novantrone® for the approved oncology indications in the United States. Amgen acquired the rights to Enbrel® in 2002. Immunex objects to the Interrogatories to the extent they ask for documents or information concerning any divested product after the date of its sale or concerning any discontinued product after the date of its discontinuation.

13. Immunex is awaiting the Court's ruling on the Defendants' jointly-filed motion to dismiss Plaintiff's 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, Immunex objects to the Interrogatories as being unduly burdensome and as imposing enormous and potentially unnecessary expense on Immunex. Notwithstanding this objection, and without waiving it, Immunex 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.

14. 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.

II. IMMUNEX'S SPECIFIC OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS

Subject to and incorporating the General Objections and Limitations, Immunex responds to Plaintiff's Interrogatories as follows:

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

- (a) the beginning and ending dates of each period applicable to each such determination;
- (b) the applicable class(es) of trade for which each determination was made;
- (c) each average sales price or composite price determined;
- (d) the person(s) most knowledgeable regarding the determinations;

- (e) the methodology used to determine such prices;
- (f) your purpose(s) in making such determinations;
- (g) whether you disclosed any average sales price or composite price so determined to any publisher, customer, or governmental entity. If so, identify each publisher, customer or governmental entity to whom each such price was disclosed and the corresponding date of the disclosure; and
- (h) whether any such average sales price or composite price was treated as confidential or commercially sensitive financial information.

RESPONSE:

This information can best be determined by review of documents that will be produced and through the depositions scheduled for September 8 and 28, 2005, in MDL No. 1456. Because Immunex no longer employs the knowledgeable individuals, and repeated depositions of the same topics and of the same witnesses is inappropriate and burdensome, Plaintiff should attend and participate in the depositions.

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.

RESPONSE:

This information can best be determined by review of documents that will be produced and through the depositions scheduled for September 8 and 28, 2005, in MDL No. 1456. Because Immunex no longer employs the knowledgeable individuals, and repeated depositions of the same topics and of the same witnesses is inappropriate and burdensome, Plaintiff should attend and participate in the depositions.

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.

RESPONSE:

This information can best be determined by review of documents that will be produced and through the depositions scheduled for September 8 and 28, 2005, in MDL No. 1456. Because Immunex no longer employs the knowledgeable individuals, and repeated depositions of the same topics and of the same witnesses is inappropriate and burdensome, Plaintiff should attend and participate in the depositions.

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.

RESPONSE:

This information can best be determined by review of documents that will be produced and through the depositions scheduled for September 8 and 28, 2005, in MDL No. 1456. Because Immunex no longer employs the knowledgeable individuals, and repeated depositions of the same topics and of the same witnesses is inappropriate and burdensome, Plaintiff should attend and participate in the depositions.

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).

RESPONSE:

This information can best be determined by review of documents that will be produced and through the depositions scheduled for September 8 and 28, 2005, in MDL No. 1456. Because Immunex no longer employs the knowledgeable individuals, and

repeated depositions of the same topics and of the same witnesses is inappropriate and burdensome, Plaintiff should attend and participate in the depositions.

DATED: July 15, 2005.



Michael R. Fitzpatrick
Brennan, Steil & Basting, S.C.
A Limited Liability Organization
One E. Milwaukee St.
P. O. Box 1148
Janesville, WI 53547-1148
(608) 756-4141

David J. Burman
Kathleen M. O'Sullivan
Zoe Philippides
PERKINS COIE LLP
1201 Third Avenue, 48th Floor
Seattle, WA 98101-3099
(206) 359-8000

Attorneys for Defendant Immunex
Corporation

149003.DOC