

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 7

DANE COUNTY

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

AMGEN, INC., et al.,

Defendants.

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**INDIVIDUAL REPLY MEMORANDUM OF LAW OF DEFENDANTS ASTRAZENECA  
PHARMACEUTICALS LP AND ASTRAZENECA LP IN FURTHER SUPPORT OF  
THEIR MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

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**INTRODUCTION**

AstraZeneca Pharmaceuticals LP and AstraZeneca LP (collectively “AstraZeneca”) respectfully submit this supplemental reply brief in support of their motion to dismiss the Amended Complaint. For all the reasons set forth in the Defendants’ joint brief in support of Defendants’ motions to dismiss, as well the Defendants’ joint reply brief, which are incorporated herein by reference, the Complaint should be dismissed. Set forth below are additional arguments warranting dismissal of claims against AstraZeneca.

**ARGUMENT**

**Zoladex-Related Claims**

The State of Wisconsin argues in its opposition papers that it is asserting three types of claims against AstraZeneca with respect to Zoladex®: (1) claims with respect to payments for Zoladex® (goserelin acetate) made by the State in its capacity as a Medicaid payer (“Medicaid Claims”); (2) claims for damages that are not “Medicaid-related” (“Other Claims”); and (3)

*parens patriae* claims brought on behalf of individuals or third party payors who paid any part of the Medicare Part B twenty percent co-payment for Zoladex® (“*Parens Patriae* Claims”). See The State of Wisconsin’s Mem. in Response to the Individual Motions to Dismiss of Certain Defendants, at 4-5.

With respect to the Medicaid Claims, the State concedes that its claims are barred by a 2003 settlement agreement between the State and AstraZeneca. See *id.* Accordingly, there is no dispute that such claims must be dismissed.

With respect to the Other Claims, the State’s opposition brief misconstrues the Amended Complaint and ignores the operative language of the settlement agreement. The Complaint alleges that all relief sought on the State’s behalf is “Medicaid-related.” See Amended Complaint ¶ 75 (alleging that defendants’ activities have significantly impacted the State of Wisconsin because “Wisconsin has had to pay more for the drugs it purchases through its Medicaid program”). The settlement agreement discharges AstraZeneca from the obligation to pay any “restitution, damages, and/or any fine or penalty to the state of Wisconsin” for the covered conduct (which is covered by the allegations of the present complaint) to the extent such restitution, damages, fine or penalty is related to Medicaid. See Settlement Agreement and Release by and among AstraZeneca Pharmaceuticals LP, AstraZeneca LP and the Office of the Attorney General of the State of Wisconsin (Medicaid Fraud Control Unit), effective date September 4, 2003, at 7-8 ¶ III.2 (Attached as Exhibit A to AstraZeneca’s Individual Mem. of Law in Support of Motion to Dismiss the First Amended Complaint).

In sum, with the sole exception the *Parens Patriae* Claims (not involving co-payments made by the State’s Medicaid program for residents who are eligible for coverage under both

Medicare and Medicaid), all claims relating to Zoladex® are barred by the 2003 settlement agreement.

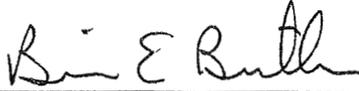
**Non-Zoladex Claims**

No AstraZeneca drug other than Zoladex® is mentioned in the Amended Complaint. There is not a single specific allegation in the Amended Complaint as to any other AstraZeneca drug. Thus, the State has not even attempted to satisfy its obligation to meet any pleading standard with respect to any other product other than Zoladex®. Accordingly, to the extent claims related to any other AstraZeneca products are being asserted, they should be dismissed. *See, e.g., Friends of Kenwood v. Green*, 239 Wis. 2d 78, 87 (Wis. Ct. App. 2000) (holding that Wis. Stat. § 802.03(2) requires plaintiff to plead the “who, what, when, where, and how” of the alleged fraud with specificity).

CONCLUSION

For the foregoing reasons, and for the reasons stated in AstraZeneca's Individual Memorandum of Law in Support of its Motion to Dismiss, Defendants' Joint Memorandum of Law in Support of Their Motion to Dismiss, and Defendants' Joint Reply Memorandum of Law in Further Support of Their Motion to Dismiss, the Amended Complaint should be dismissed as to AstraZeneca, with prejudice.

Dated: April 19, 2005

By:                                         

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