



"Baxley, Linda"
<lbaxley@daycasebeer.com>

07/11/2006 03:12 PM

To <HSuh@kayescholer.com>

cc "Fishman, Deborah" <dfishman@daycasebeer.com>; "Platt, Rachelle L." <rplatt@daycasebeer.com>

bcc

Subject RE: Motion to file under seal

History: This message has been replied to and forwarded.

Howard,

Per your email below, my email was not intended to limit Roche's ability to respond or oppose Amgen's response to Roche's filing yesterday or today. It simply was asking whether Roche will also agree to any motion to file under seal Roche confidential business information with the District Court.

Regarding your request re Roche's motion to file under seal, I first note that Judge Luckern's order includes excerpts from Dr. Veng-Pedersen's deposition. I understand that you took the position at that deposition that Dr. Veng-Pedersen may consider some of the information confidential to him, although Dr. Veng-Pedersen's counsel did not, and also requested that the deposition transcript be maintained in confidence pursuant to Judge Luckern's protective order because it contained Roche confidential business information in it. By your request, we are assuming that you are either withdrawing your assertion that the deposition transcript contains information confidential to Dr. Veng-Pedersen, or that you have consulted with him and have his agreement that his deposition transcript does not contain information confidential to him. Otherwise, we cannot agree to your request since it would run afoul Judge Luckern's Protective Order regarding the treatment of third-party confidential information.

Assuming that the Veng-Pedersen transcript and related exhibits are not confidential to Dr. Veng-Pedersen, per our telephone conversation, it is our understanding that Roche will not oppose any Amgen motion to file under seal Roche confidential business information or any pleading containing such information with the District Court. Based on this understanding, Amgen asserts a limited objection to Roche's motion. This objection is limited insofar as Amgen will not object provided: (1) Amgen is allowed to supplement the record to the District Court to provide the Court with a full and complete record of what has transpired at the ITC to date (also by filing such information under seal with the District Court this week) and that Roche will not oppose such motion to file under seal; (2) Amgen's in-house counsel be allowed access to whatever documents you or we may seek to file under seal; and (3) Amgen's Massachusetts counsel, Duane Morris, be allowed access to these documents in order to facilitate our filing of the documents. Please contact me should you want to discuss this further.

Linda

From: HSuh@kayescholer.com [mailto:HSuh@kayescholer.com]
Sent: Tuesday, July 11, 2006 11:09 AM
To: Baxley, Linda
Cc: Fishman, Deborah; Platt, Rachelle L.
Subject: RE: Motion to file under seal

Linda, I just left you a voice mail message. Can you please give me a call? (212.836.8562) I need clarification on your e-mail. Obviously, considering that most if not all of the CBI will be Roche's, we will in fact insist that Amgen move for leave to file any proposed submissions of those materials under seal with the district court. However, if you are asking Roche at this point to be unopposed to any future Amgen submission, then I think that may be going to far.

"Baxley, Linda" <lbaxley@daycasebeer.com>

07/11/2006 01:38 PM

To <HSuh@kayescholer.com>; "Fishman, Deborah"
<dfishman@daycasebeer.com>

CC "Platt, Rachelle L." <rplatt@daycasebeer.com>

Subject RE: Motion to file under seal

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Howard,

Barring reaching a quick resolution on the protective order, will you agree not to oppose any motion by us to file a response to your communication with Judge Young, assuming one is needed, where we would also ask that the information be filed under seal?

Linda

From: HSuh@kayescholer.com [mailto:HSuh@kayescholer.com]
Sent: Tuesday, July 11, 2006 10:01 AM
To: Baxley, Linda; Fishman, Deborah
Cc: Platt, Rachelle L.
Subject: Re: Motion to file under seal

That's fine Linda, we'll take a look at this. In the mean time, do you object to our proposed motion to file the ALJ decision under seal? We want to file that today.

----- Original Message -----

From: "Baxley, Linda" [lbaxley@daycasebeer.com]
Sent: 07/11/2006 12:53 PM
To: Fishman, Deborah" <dfishman@daycasebeer.com>
Cc: Platt, Rachelle L." <rplatt@daycasebeer.com>
Subject: RE: Motion to file under seal

Howard,

As follow-up to Deborah's email of yesterday, we propose that we agree to a protective order for the

Boston action so that both parties have an equal ability to file materials and information from the ITC action in the Boston litigation. Thus, per my previous emails to Pat Carson (sent on May 24 and June 5), I attach the protective order we had initially proposed on May 24 for your consideration.

Linda

From: Fishman, Deborah
Sent: Monday, July 10, 2006 9:55 PM
To: HSuh@kayescholer.com
Subject: FW: Motion to file under seal
Importance: High

Dear Howard,

I am out of the office and will be in transit tomorrow and the day after. Someone from my office will be in contact with you tomorrow to let you know whether we will oppose your motion to file under seal (most likely, Linda Baxley). Please wait to hear from us before filing.

Thank you,
Deborah

P.S. Howard, in the future, if you need to get hold of me in a relatively short time frame, you should always cc my secretary Rachelle Platt on email correspondence to me as I do not use a PDA. Voicemail is somewhat more reliable. Thanks.

Deborah Fishman
Day Casebeer Madrid Batchelder, LLP
fishmand@daycasebeer.com

From: HSuh@kayescholer.com [mailto:HSuh@kayescholer.com]
Sent: Monday, July 10, 2006 3:00 PM
To: Fishman, Deborah
Cc: jhuston@bromsun.com
Subject: Motion to file under seal

Dear Deborah,

Roche plans on filing a motion to file under seal the recent ALJ decision with the Massachusetts district court. Can you let us know by tomorrow 2:00 pm (EST) whether Amgen will oppose the motion

Thanks,

Howard

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