

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
AMGEN INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	CIVIL ACTION No.: 05-CV-12237WGY
F. HOFFMANN-LA ROCHE, LTD;	)	
ROCHE DIAGNOSTICS GmbH; and	)	
HOFFMANN-LA ROCHE INC.	)	
	)	
Defendants.	)	
_____	)	

**MOTION IN LIMINE TO PRECLUDE PLAINTIFF FROM ARGUING TO THE JURY THAT EPOGEN IMPROVES QUALITY OF LIFE WHERE THE FDA DOES NOT SUPPORT THE INCLUSION OF SUCH CLAIMS ON THE PRODUCT LABEL**

I, Keith E. Toms, declare under penalty of perjury that:

1. I am an attorney admitted to the Bar of the Commonwealth of Massachusetts and this Court. I am an associate at the law firm of Bromberg & Sunstein, LLP, counsel for Defendants in the above-referenced case.

2. I make this declaration in support of Roche’s Motion *In Limine* to Exclude Deposition Testimony of Dr. Leroy Hood, whom Amgen Did Not Identify as an Expert or Disclose as a Knowledgeable Witness Under Rule 26(A)(1).

4. Exhibit A is a true and correct copy of the webpage titled FDA Alert, March 9, 2007, which is available at <http://www.fda.gov/cder/drug/InfoSheets/HCP/RHE2007HCP.htm>.

5. Exhibit B is a true and correct copy of a document titled FDA Advisory Committee Briefing Document Joint Meeting of the Cardiovascular and Renal Drugs Advisory Committee and the Drug Safety and Risk Management Committee, dated September 9, 2007.

6. Exhibit C. is a true and correct copy of an article from the New York Times entitled F.D.A. Advisory Panel Opposes Curb on Anemia Drugs, dated September 12, 2007, which is available at [http://www.nytimes.com/2007/09/12/business/12anemia.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/09/12/business/12anemia.html?_r=1&oref=slogin).

Dated: September 24, 2007  
Boston, Massachusetts

/s/ Keith E. Toms  
Keith E. Toms

### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). Pursuant to agreement of counsel dated September 9, 2007, paper copies will not be sent to those indicated as non registered participants.

/s/ Keith E. Toms  
Keith E. Toms

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