

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05 CV 12237 WGY
)	
F. HOFFMANN-LAROCHE LTD.,)	
a Swiss Company, ROCHE DIAGNOSTICS)	
GMBH, a German Company, and)	
HOFFMANN LAROCHE INC., a New)	
Jersey Corporation,)	
)	
Defendants.)	

**AMGEN INC.’S MOTION FOR A PROTECTIVE ORDER TO LIMIT
ROCHE’S DEPOSITION OF JEFFREY BROWNE TO FOUR HOURS BECAUSE OF
ROCHE’S REFUSAL TO START THE DEPOSITION ON SEPTEMBER 26, 2007**

Despite the Court’s order on September 26, 2007 that Roche immediately take Dr. Jeffrey Browne’s deposition, Roche refused to appear for his deposition set to start on September 26 at 7:00 pm. Roche’s refusal was in direct contradiction of this Court’s order on Roche’s motion. As the Court stated in response to a question by Mr. Gottfried, Amgen’s counsel, regarding the scheduling of Dr. Browne in light of Amgen’s desire to immediately call him:

[I]f you’ll make [Dr. Browne] available, *they’re to take it this evening*, no more than three hours, because I want him fresh, and another four tomorrow, and then you can call him the next day.¹

Immediately after the hearing — and in the courtroom — counsel for Amgen told counsel for Roche that Dr. Browne would be made available on the evening of September 26 for three hours

¹ Sept. 26, 2007 Trial Transcript, p. 1635: 18-23. Referenced page attached hereto as Exhibit A to the Declaration of Daniel A. Curto in Support of Motion for Protective Order (“Curto Dec.”).

of deposition.² Amgen then made arrangements for, and had, a stenographer and videographer present at 7:00 p.m. on September 26 at the offices of Duane Morris LLP.³ Notwithstanding that a court reporter and videographer were present to record the deposition, the witness was set to go forward, and the Court instructed the parties that three hours of deposition was to occur during the evening of September 26 if Dr. Browne was available, Roche's counsel refused to appear.⁴ Roche claims that it had the option of taking Dr. Browne's entire seven hour deposition on September 27. Roche's position is entirely incorrect. Having failed to attend the start of the deposition ordered by this Court, Roche has waived its right to depose Dr. Browne for seven hours.

As this Court recognized when discussing Roche's request, it wanted Dr. Browne to be "fresh" when he testified at trial.⁵ Counsel for Amgen immediately told Roche that it was offering Dr. Browne for three hours on September 26 to ensure that he would be fresh to testify on Friday, September 28. It would be unduly burdensome and prejudicial to require Dr. Browne to sit for a seven hour deposition the day prior to his testimony at trial.⁶ Roche's refusal to proceed with the deposition is an attempt to harass Dr. Browne and tire him prior to his trial testimony.

Based on the actions of Roche, as set forth above, and pursuant to Fed. R. Civ. P. 26(c), Amgen requests that this Court issue a Protective Order limiting Roche's deposition examination of Dr. Browne to no more than four hours.

² Curto Dec., Exh. B.

³ Curto Dec., Exh. C.

⁴ Curto Dec., Exh. D.

⁵ Sept. 26, 2007 Trial Transcript, p. 1635: 18-23, Curto Dec., Exh. A.

⁶ As this Court is aware, a 7 hour deposition, in reality, is far longer than 7 hours when breaks and lunch are factored in.

Dated: September 26, 2007

Respectfully Submitted,

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By its attorneys,

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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 and paper copies will be sent to those indicated as non-registered participants on September 26, 2007.

/s/ Patricia R. Rich
Patricia R. Rich