

DAY CASEBEER
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October 13, 2006

VIA FACSIMILE & U.S. MAIL

Thomas F. Fleming
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022-3598

Re: *Amgen Inc. v. F. Hoffmann LaRoche Ltd., et al.* (05-CV-12237WGY)

Dear Tom:

In hopes of reaching some accord on a protective order in this case, we have made numerous attempts over the past several months to elicit your comments on a proposed form of order. As I am sure you are aware, Linda Baxley sent Pat Carson a proposed protective order six months ago (in May) and heard nothing back. Again, in June and July, Linda Baxley sent Howard Suh a proposed protective order, to which we were promised comments shortly. That was five months ago and Howard has yet to respond with any comments to the protective order we proposed.

On September 28—nearly two weeks ago—I sent another proposed protective order to Leora Ben-Ami. On October 4, you specifically requested that I forward a copy of the draft to you, which I did the same day. During our meet and confer of October 5, you committed to provide me with comments on the draft protective order by Monday, October 9.

Today, a week later, at the close of business on the Friday before our submission to the Court is due, you sent me a one paragraph letter reiterating Roche's position on discovery in the ITC proceeding, and offering nothing substantive regarding the proposed order sent to you two weeks ago other than two general observations: (1) you would like to limit access of in-house counsel to confidential information; and (2) you would prefer a two-tier level of confidentiality. While your letter promises you will “get the ball rolling” by preparing a redline, you do not commit to provide comments by any date certain, leading me to question what is delaying your ability to make specific proposals and precisely when do you commit to provide a proposed form of protective order on behalf of your clients?

Needless to say, I am very disappointed that your letter of today did not include a mark-up to our proposed protective order or any specific proposals on behalf of your clients. As we mentioned to you during our October 5 telephone conference, we plan to raise the issue of an appropriate protective order with Judge Young during the scheduling conference of October 23.

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Since our efforts to meet and confer with you on an agreed form of order over the past several months are obviously leading nowhere, we will request the Court to enter our proposed form of order.

Very truly yours,

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Deborah E. Fishman

DEF/sr

cc: Howard Suh, Esq. (by email)