

# McDermott Will & Emery

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Strategic alliance with MWE China Law Offices (Shanghai)

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May 31, 2007

## VIA FACSIMILE AND E-MAIL

Nicole A. Rizzo  
Bromberg Sunstein LLP  
125 Summer Street  
Boston, MA 02110

**Re: *Amgen Inc. v. F. Hoffmann-La Roche Ltd., et al.*  
Case No. 05 Civ. 12237 WGY**

Dear Nicole:

I am in receipt of your letter of Friday, May 25, that addresses my letter of May 16 complying with the Court's Order of April 17 on Roche's Motion to Compel. Your letter agrees that the Court largely denied Roche's Motion to Compel at the April 17 hearing, but contends that the Court ordered a continued deposition of Mr. Borun. We do not agree on several grounds that I raised in my letter of May 16 that your letter fails to address.

First, your letter does not point us to any statement on the record where the Court expressly ordered Mr. Borun's deposition to be reopened and testimony pursued.

Second, your letter does not dispute that Roche only sought the relief of a deposition if the Court ordered the production of further documents. The Court did not order Amgen to produce a single document. As Roche well understood, it would require further deposition only if the substance of privileged communications were at issue through privileged documents being ordered produced. Roche did not request the Court to order a further deposition if Amgen was required to provide information analogous to that of a privilege log, namely, the date and source of the communication.

Third, your letter did not dispute that the Court was clear that Roche is entitled to know "not the substance of the communications, just from whom and when" Mr. Borun obtained the information.

Nicole A. Rizzo

May 31, 2007

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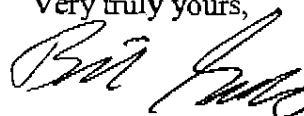
Your letter attempts to paint a picture of noncompliance, but this is not true. Amgen forthrightly answered in my letter of May 16 the question the Court posed to the extent possible given that these are events from many years ago. As clearly stated in my letter, Mr. Borun has been unable to ascertain any more precisely when he learned of the information in question other than as stated in his testimony, namely, around the time of the interference proceeding. This is not surprising because the events in question occurred more than 15 years ago.

Further, Mr. Borun and Amgen have been unable to ascertain whether Mr. Borun learned of the information in question from an Amgen attorney, or from a non-attorney, as my letter plainly states. We employed a procedure similar to that of preparing a witness under Rule 30(b)(6) to assure Roche that we had looked into the issue and cannot provide more information in this area. Our letter complied with the Court's directive.

Moreover, it bears emphasis that given this written record, and the very limited question that the Court posed, any deposition would be remarkably short unless you were intending to question Mr. Borun beyond the simple scope of when and from whom he learned the information. You have the information the Court ordered us to produce, and you have not articulated how this information does not satisfy the Court's Order.

We remain willing to discuss a mutual resolution to this issue, but do not see any legitimate basis for Roche's claim of entitlement to continue Mr. Borun's deposition, particularly when Amgen has already provided to you the information in compliance with the Court's Order.

Very truly yours,



William G. Gaede, III

cc: Deborah E. Fishman, Esq.  
Thomas F. Fleming, Esq.  
Patricia A. Carson, Esq.  
Krista M. Rycroft, Esq.  
Lee C. Bromberg, Esq.

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**DATE:** May 31, 2007

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**FROM:** William G. Gaede, III      **PHONE:** (650) 813-5035      **REPLY FAX:** (650) 813-5100

**RE:** *Amgen Inc. v. F. Hoffman-LaRoche LTD, et al.*  
Case No. 05 CIV 12237 WGY

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