

**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.	)	

**PLAINTIFF AMGEN’S MOTION *IN LIMINE* NO. 23:  
EXCLUDE TESTIMONY OF DANIEL SHOVAL REGARDING ERYTHROPOIETIN-  
PRODUCING CELL LINES AND HIS WORK ON EPO MRNA**

Plaintiff Amgen Inc. ("Amgen") requests that this Court preclude Defendants F. Hoffmann-La Roche Ltd., Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively "Roche") from offering the testimony of Dr. Daniel Shouval on the topics of erythropoietin-producing cell lines and Dr. Shouval’s work on EPO mRNA.

Dr. Shouval, one of Roche’s experts, opined at length in his expert report on the subjects of erythropoietin-producing cell lines and his work on EPO mRNA in the 1980s. During his deposition, however, he refused to answer certain questions regarding erythropoietin-producing cell lines and his work on EPO mRNA on the grounds that he was foreclosed from doing so as a result of being a party to a confidentiality agreement with a third party—the Albert Einstein College of Medicine.

Roche has now re-designated Dr. Shouval as a fact witness at the 11th hour in the belief that, if he were merely a fact witness—and not an expert testifying on Roche’s behalf—his testimony would be less vulnerable to motions to exclude for failure to answer questions at

deposition. Dr. Shouval deliberately foreclosed any discovery into erythropoietin-producing cell lines and his work on EPO mRNA. Roche should now not be permitted to ambush Amgen at trial with such testimony, merely because at the last minute it converted its expert to a fact witness.

Amgen requests that this Court exclude testimony of Daniel Shouval relating to erythropoietin-producing cell lines and his work in connection with EPO mRNA.

In support of this motion, Amgen submits a brief.

Respectfully Submitted,

Date: September 4, 2007

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**CERTIFICATE PURSUANT TO LOCAL RULE 7.1**

I certify that counsel for the parties have conferred in an attempt to resolve or narrow the issues presented by this motion and no agreement was reached.

/s/ Michael R. Gottfried  
Michael R. Gottfried

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the Electronic Case Filing (ECF) system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants, on the above date.

/s/ Michael R. Gottfried  
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