

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of

HOECHST MARION ROUSSEL, INC.,
a corporation,

CARDERM CAPITAL L.P.,
a limited partnership,

and

ANDRX CORPORATION,
a corporation.

Docket No. 9293

TO: The Honorable D. Michael Chappell
Administrative Law Judge

**AVENTIS PHARMACEUTICALS, INC.'S REPORT ON SETTLEMENT
NEGOTIATIONS AND COMPLIANCE WITH DISCOVERY**

In accordance with the April 26, 2000 Scheduling Order, Aventis Pharmaceuticals, Inc., formerly known as Hoechst Marion Roussel, Inc. ("Aventis") provides this report on settlement negotiation and compliance with discovery.

I. STATUS OF SETTLEMENT NEGOTIATIONS

Counsel for Aventis has had several telephone discussions and one face-to-face meeting with Complaint Counsel concerning the potential settlement of this matter. An outline of the parameters for a settlement has been discussed.

II. COMPLIANCE WITH DISCOVERY

The parties are endeavoring to complete discovery by the date set forth in the Court's Scheduling Order. Aventis believes that the parties have attempted to meet their scheduling obligations and have entered into discussions regarding discovery disputes in good faith and with minimal participation by the Court. It is Aventis' hope that such professional interactions will continue. Generally, a substantial amount of written discovery has taken place and the parties are now moving toward the deposition stage of the case.

A. DISCOVERY REQUESTS TO AVENTIS ISSUED FROM THE FEDERAL TRADE COMMISSION.

To date, Complaint Counsel has served three sets of requests for production on Aventis and one set of interrogatories. Responsive documents have been provided on a rolling basis for a majority of the first set of request for production. The remaining requests are subject to "meet and confer" discussions with Complaint Counsel and/or continuing investigation by Aventis to determine whether any responsive documents exist. It is anticipated that the remaining requests from the first request for production will be resolved within a week of this filing and any outstanding issues will be presented to the Court.

Aventis has provided Complaint Counsel with documents responsive to the second and third requests for production and will continue to update those responses in a reasonable manner.

The response to Complaint Counsel's first set of interrogatories is due on September 28, 2000.

B. DISCOVERY REQUESTS TO THE FEDERAL TRADE COMMISSION

Aventis has served three sets of requests for production and one set of requests for admission on Complaint Counsel. Complaint Counsel's response to the first set of requests for production was the subject of a previous motion to compel. Complaint Counsel has responded to the second request for production and the request for admissions.

Aventis is currently in discussions with Complaint Counsel regarding the third request for production. These requests center around an FTC investigation into the litigation practices of the predecessors of Aventis. That investigation was closed without action. Complaint Counsel has objected to the production of responsive materials on privilege grounds and has yet to produce a log of withheld documents. Aventis has requested a log of withheld documents and has expressed interest in seeking a stipulation from Complaint Counsel as to the reasons for the investigation as well as the fact that the investigation was closed without action. Aventis awaits a reply from Complaint Counsel. This matter will likely be the subject of a motion to compel if the parties are unable to resolve their differences.

C. AVENTIS' WRITTEN DISCOVERY TO THIRD PARTIES.

1. Food and Drug Administration

On August 8, 2000, the Court authorized issuance of a subpoena *duces tecum* to the FDA based upon Aventis' motion under Rule 3.36 of the FTC's Rules of Practice. On August 25, 2000, following a unilateral termination of meet and confer discussions, the FDA filed a motion to quash Aventis' subpoena. Aventis filed its opposition to the motion on September 11, 2000. This matter is currently pending before the Court.

2. Department of Defense and Veterans Administration

Both the Department of Defense (“DOD”) and the Veterans Administration (“VA”) were identified by Complaint Counsel as potential witnesses in this matter. Aventis is preparing to file motions with the Court under Rule 3.36 of the FTC’s Rules of Practice for authorization to issue subpoenae *duces tecum* to both DOD and the VA.

3. Biovail Corporation

Aventis served a subpoena *duces tecum* on Biovail with a return receipt date of June 9, 2000. In response, Biovail made available the documents produced by it in the New Jersey litigation but failed to produce other documents responsive to the Aventis subpoena or to update its responses to filed document requests. Biovail has been reminded of its obligations as recently as September 11, 2000. The meet and confer obligations are concluded from Aventis’ point of view and will likely be the subject of a motion to compel.

4. Third-Party Payors and Suppliers

To date Aventis has served 35 subpoenae *duces tecum* on corporations or government agencies. Aetna, Alparma, Humana Inc., Kaiser, and United Healthcare, all on Complaint Counsel’s preliminary witness list, have not supplied documents responsive to Aventis’ subpoenae.

Others who have yet to provide documents responsive to Aventis’ subpoenae are Abbott, Advance Paradigm, Blue Cross & Blue Shield of Michigan, Empire Blue Cross & Blue Shield, Food & Drug Administration, G.D. Searle, HealthSource (CIGNA), Mylan Pharmaceuticals Inc., Pacificare Health Systems, Sitrick & Company, Watson Labs, and Zenith Goldline. Several of these companies have promised documents by the end of this week. We are preparing motions to compel as to these and others in the event that the documents are either not responsive or not forthcoming.

D. DEPOSITIONS

To date, Complaint Counsel has taken the depositions of Lawrence Meyer, Gilles Cote and the Wilkerson Group. Numerous other depositions are scheduled and the parties are working this week to schedule as many of the remaining depositions as is reasonably possible. A motion for a protective order will be filed by Aventis in the immediate future concerning Complaint Counsel's intention to redepose Edward Stratemeier, Aventis' Vice President, North America Legal, Government Affairs, and Policy, and James Spears, Aventis' trial counsel.

Dated: September 13, 2000

Respectfully Submitted,



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UNITED STATES OF AMERICA
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Hoechst Marion Roussel, Inc., et al.,

Respondents.

Docket No. 9293

CERTIFICATE OF SERVICE

I, Peter D. Bernstein, hereby certify that on September 13, 2000, a copy of Aventis Pharmaceuticals, Inc. Report on Settlement Negotiations and Compliance with Discovery was served upon the following persons by hand delivery and/or Federal Express as follows:

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