

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA

Plaintiff,

v.

AMGEN INC.

Defendant.

EQUITY EQCE078762

PETITION in EQUITY

The State of Iowa ex rel. Attorney General Thomas J. Miller, through Assistant Attorney General Nathan Blake, states as follows:

1. Plaintiff, State of Iowa, in its sovereign capacity, by and through Thomas J. Miller, Attorney General of the State of Iowa, (“Attorney General” or “State”) brings this action against Defendant AMGEN INC. (“Defendant or Amgen”) for violating the Iowa Consumer Fraud Act, Iowa Code § 714.16.

2. The Attorney General brings this action pursuant to the Iowa Consumer Fraud Act, in the public interest, to protect the public’s health, safety and welfare and pursuant to his general statutory and common law authority powers and duties pursuant to Iowa Code §714.16. The Attorney General has reason to believe that the above-named Defendant has violated and/or is continuing to violate the Iowa Consumer Fraud Act. The Attorney General also has reason to believe that this action is in the public interest.

3. Upon interest and belief, the State of Iowa alleges as follows:

JURISDICTION AND VENUE

4. This Court has jurisdiction over Amgen pursuant to Iowa Code § 714.16 because Amgen has transacted business within the State of Iowa at all times relevant to this Complaint.

5. Venue for this action properly lies in Polk County, Iowa, pursuant to Iowa Code § 714.16(10) because Amgen transacts business in Polk County, Iowa and/or some of the transactions out of which this action arose occurred in Polk County, Iowa.

PARTIES

6. Plaintiff, State of Iowa, ex rel. Thomas J. Miller, Attorney General, is charged with enforcing the Iowa Consumer Fraud Act, which prohibits unfair or deceptive acts or practices. Pursuant to the Iowa Consumer Fraud Act, the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the Iowa Consumer Fraud Act and to secure such equitable and other relief as may be appropriate in each case.

7. Defendant AMGEN INC. is a Delaware corporation with its principal place of business at 1 Amgen Center Drive in Thousand Oaks, California 91320. At all relevant times, Amgen did business in Iowa by marketing, selling, and promoting the biologic medications Aranesp® and Enbrel®.

ALLEGATIONS

ARANESP

8. Aranesp ® (darbepoetin alfa) is a biologic medication used to treat certain types of anemia by stimulating bone marrow to produce red blood cells. It belongs to a class of drugs called erythropoiesis-stimulating agents or ESAs.

9. Aranesp is approved to treat anemia caused by chronic renal failure (CRF) and chemotherapy-induced anemia (CIA) at a specified dose and frequency.

10. Aranesp's main competitor is Procrit, an ESA produced by Johnson & Johnson. Procrit has a shorter half-life and is dosed more frequently than Aranesp.

11. To better compete against Procrit, Amgen promoted Aranesp to treat anemia

caused by CRF and CIA at dosing frequencies longer than the FDA approved label.

12. At the time Amgen promoted extended dosing frequencies, it lacked competent and reliable scientific evidence to substantiate the extended dosing frequencies.

13. Aranesp has never been FDA approved to treat anemia caused by cancer (Anemia of Cancer or AOC), which is distinct from anemia caused by chemotherapy.

14. Patients with AOC have active malignant disease and are not receiving chemotherapy or radiation.

15. Amgen promoted Aranesp to treat AOC even though it lacked competent and reliable scientific evidence to substantiate such use.

16. In 2001, when Amgen came on the market, Procrit was being used to treat AOC.

17. In order to compete with Procrit in the AOC market, Aranesp had to be reimbursable by insurance companies and federal programs.

18. The most common way to obtain reimbursement for an off-label use is to obtain a listing in a CMS recognized drug compendium.

19. A drug compendium is typically a non-profit reference book listing drug strengths, quality, and ingredients.

20. In 2003, there were two main compendia recognized by CMS: American Hospital Formulary Service (AHS) Drug Information and United States Pharmacopeia (USP) Drug Information.

21. AHS did not consider Phase 2 trial data, abstracts, open label studies, or special supplements, but USP did.

22. In October of 2003, after considerable lobbying by Amgen, USP accepted an AOC indication for Aranesp. To promote Aranesp off-label to treat AOC, Amgen distributed the

USP monograph (a document which describes USP's approval of the off-label use), as well as various studies that encouraged off-label use of Aranesp to treat AOC.

23. In August and October of 2003, two large randomized controlled trials found increased death and possible tumor stimulation in cancer patients receiving ESAs that were not approved in the United States.

24. In May of 2004, the FDA's Oncologic Drugs Advisory Committee met to discuss safety concerns of increased thrombotic events, tumor progression, and decreased survival seen in the 2003 studies as they applied to Aranesp and Procrit. The committee recommended large, randomized, controlled clinical trials with primary endpoints, including survival and transfusion rates to address the safety concerns.

25. Despite the growing concerns, Amgen promoted Aranesp to treat AOC.

26. In January of 2007, Amgen notified the FDA and health care professionals of the results of its pivotal 103 study in which patients receiving Aranesp for the treatment of AOC had a 28.5% increase in death and no significant reductions in transfusions or improvement in quality of life.

27. Shortly thereafter, the FDA required a black box warning on all ESAs that includes the warning "ESAs shortened overall survival and/or increased the risk of tumor progression or recurrence in clinical studies of patients with breast, non-small cell lung, head and neck, lymphoid, and cervical cancers." It also explicitly states to "Discontinue following the completion of a chemotherapy course."

28. Aranesp's label also states, "Aranesp has not been shown to improve quality of life, fatigue, or patient well-being."

ENBREL

29. Enbrel® is Amgen's trade name for etanercept, a tumor necrosis factor (TNF) blocker for treatment of a number of conditions, including plaque psoriasis.

30. On November 2, 1998, the FDA approved Enbrel for its first indication, the treatment of moderately to severely active rheumatoid arthritis.

31. On April 30, 2004, the FDA approved Enbrel for the treatment of adult patients (18 years or older) with chronic moderate to severe plaque psoriasis who are candidates for systemic therapy or phototherapy.

32. On February 18, 2005, the FDA sent a Warning Letter to Amgen stating that Amgen's direct-to-consumer television advertisement entitled "Freedom" overstated the effectiveness of Enbrel, failed to communicate the limitations of Enbrel's indication, thereby broadening the indication, and minimized the risks associated with Enbrel.

33. In March 2008, the FDA required a black box warning to be added to Enbrel's labeling. This warning informed prescribers and patients that infections, including serious infections that led to hospitalization or death, were observed in patients treated with Enbrel. These infections included cases of bacterial sepsis and tuberculosis.

34. In August 2009, the FDA required that Enbrel's black box warning be expanded to inform prescribers and patients that invasive fungal infections, as well as bacterial, viral, and other infections due to opportunistic pathogens were reported with the use of Enbrel. Additionally, the black box now warns that lymphoma and other malignancies, some fatal, have been observed in children and adolescent patients taking Enbrel.

35. Despite the black box warnings, the 2005 FDA Warning Letter, and Enbrel's limited approval for use in chronic moderate to severe plaque psoriasis, Amgen promoted Enbrel

off-label for patients with mild plaque psoriasis from 2004 to 2011 and overstated Enbrel's efficacy in the treatment of plaque psoriasis.

36. This Petition for injunctive relief has not been presented to, or denied by, any other judge of the district court.

37. Pursuant to Iowa R. Civ. P. 1.207, no security is required of the State.

VIOLATIONS OF LAW: IOWA CONSUMER FRAUD ACT

38. Plaintiff realleges and incorporates by reference herein each and every allegation contained in the preceding Paragraphs 1 through 37.

39. Defendant, in the course of engaging in the marketing, promotion, selling, and distributing the biologic medications Aranesp® and Enbrel®, has engaged in a course of trade or commerce which constitutes unfair, deceptive, or misleading practices, and is therefore unlawful under the Iowa Consumer Fraud Act, Iowa Code § 714.16(2) by making misrepresentations about Aranesp® and Enbrel®.

40. Defendant, in the course of marketing, promoting, selling, and distributing the biologic medications Aranesp® and Enbrel®, has engaged in a course of trade or commerce which constitutes unfair, deceptive, or misleading practices, and is therefore unlawful under Iowa Consumer Fraud Act, Iowa Code § 714.16(2), by representing that Aranesp® and Enbrel® have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities, or qualities that they do not have.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of Iowa, respectfully request that this Court:

A. Permanently enjoin and restrain Defendant, its agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them,

from engaging in unfair, deceptive or misleading conduct, acts, or practices which violate the Iowa Consumer Fraud Act in the promotion and marketing of its biologic medications Aranesp® and Enbrel®, pursuant to Iowa Code § 714.16(7);

B. Order Defendant to pay civil penalties of up to \$40,000 for each and every violation of the Iowa Consumer Fraud Act, pursuant to Iowa Code § 714.16(7);

C. Order Defendant to pay all costs for the prosecution and investigation of this action, pursuant to Iowa Code § 714.16(11); and

D. Grant Plaintiff such other and further relief as the Court deems equitable and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

By: /s/ Nathan Blake
NATHAN BLAKE
Assistant Attorney General
Hoover State Office Building, 2nd Floor
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: 515-281-4325
Email: nathan.blake@iowa.gov

ATTORNEY FOR STATE OF IOWA EX REL.
THOMAS J. MILLER, ATTORNEY GENERAL
OF IOWA