

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-3452-DDD-STV

AMGEN INC., et al.,

Plaintiffs,

v.

GAIL MIZNER MD, in her official capacity
as Chair of the Colorado Prescription Drug
Affordability Review Board, et al.,

Defendants.

MOTION FOR LIMITED EXPEDITED DISCOVERY

Defendants Gail Mizner, M.D., Sami Diab, M.D., Amarylis Gutierrez, Pharm.D., Catherine Harshbarger, and James Justin Vandenberg, Pharm.D., in their official capacities as Board members of the Colorado Prescription Drug Affordability Review Board; Michael Conway, in his official capacity as Commissioner of Insurance; and Philip J. Weiser, in his official capacity as Attorney General of the State of Colorado (collectively, “Defendants”), by and through undersigned counsel, the Office of the Attorney General, hereby submit the following Motion for Limited Expedited Discovery (“Motion”), and move, pursuant to Federal Rule of Civil Procedure 26(d)(1), for leave to take limited, expedited discovery regarding Plaintiffs Amgen Inc., Immunex Corporation, and Amgen

Manufacturing Limited LLC's (collectively, "Amgen") Motion for Preliminary Injunction (ECF 18) ("PI Motion").

Certificate of Conferral Pursuant to D.C.COLO.LCivR 7.1

During conferral on Amgen's PI Motion, Defendants agreed to stay enforcement of the upper payment limit ("UPL") on Amgen's drug, Enbrel, during the pendency of this District Court litigation. Amgen declined this offer, indicating that it required an additional stay of enforcement 15 months *after* the end of the District Court litigation. *See* Exhibit 1 - Email Correspondence. Despite Defendants' agreement to stay enforcement of an Enbrel UPL, Amgen sought relief from this Court requesting the same relief that Defendants had already agreed to.

After the filing of Amgen's PI Motion, Defendants' counsel conferred with Amgen's counsel regarding the relief requested by this Motion, including in a conferral email on December 1, 2025. Amgen opposes Defendants' requested relief.

FACTUAL BACKGROUND

1. On October 30, 2025, Amgen served its Complaint on Defendants. ECF 1, 12.
2. On November 19, 2025, Defendants offered to stay enforcement of the UPL on Amgen's drug, Enbrel, during the pendency of this District Court litigation. *See* Ex. 1.
3. On November 21, 2025, Amgen filed its Motion for Preliminary Injunction. ECF 18.

4. Amgen's PI Motion requests that this Court enjoin Defendants from enforcing C.R.S. sections 10-16-1401 to 10-16-1416, with respect to Amgen's drug Enbrel, during the pendency of this action. *See* ECF 18 at 1.

5. C.R.S. sections 10-16-1401 to 10-16-1416 were enacted by the Colorado General Assembly in 2021 and created the Prescription Drug Affordability Board ("Board" or "PDAB").

6. The Board comprises five medical and pharmacy experts and performs two main functions: (1) conducting affordability reviews of eligible drugs to determine whether use of those drugs is unaffordable for Colorado consumers, and (2) for drugs it deems unaffordable, potentially establishing upper payment limits in certain transactions for drugs dispensed in Colorado. C.R.S. §§ 10-16-1402(1), (2)(a); 10-16-1403(1).

7. The Attorney General is authorized to enforce C.R.S. sections 10-16-1401 to 10-16-1416, including UPLs, "on behalf of any state entity or any consumer of prescription drugs." C.R.S. § 10-16-1411(3).

8. On October 3, 2025, the Board adopted a final rule setting a UPL for Enbrel in the amount of \$600.00 per 50 milligram/milliliter per unit. 3 Colo. Code. Regs. § 702-9.4.3 (2025).

9. The Enbrel UPL rule does not go into effect for more than a year, on January 1, 2027. 3 Colo. Code. Regs. § 702-9.4.3 (2025).

10. Based on the January 1, 2027 effective date of the Enbrel UPL rule, Amgen is not under any imminent threat of enforcement of the Enbrel UPL under C.R.S. § 10-16-1411(3).

11. Amgen’s counsel expressed concern during conferrals on the PI Motion that Amgen must “ensure there is sufficient time for Amgen to come into compliance in the event the UPL is upheld” and that it faces “imminent harm to its business that necessitates moving this case forward.” *See* Ex. 1. To allay any such concerns, Defendants offered to stay enforcement of the Enbrel UPL during the pendency of this District Court litigation. Amgen declined Defendants’ offer, then promptly filed the PI Motion requesting the same relief. As such, Amgen cannot claim concerns of enforcement to prevent Defendants from taking necessary discovery prior to entry of a preliminary injunction.

12. The PI Motion and five detailed declarations attached thereto raise numerous factual and expert testimony matters Defendants cannot adequately respond to prior to completing limited, targeted discovery. In particular, the PI Motion, the Declaration of Patrick Costello, dated November 18, 2025 (ECF No. 19) (“Costello Decl.”), the Declaration of Natalie Adams, dated November 19, 2025 (ECF No. 20) (“Adams Decl.”), the Declaration of Christopher Reed, dated November 18, 2025 (ECF No. 21) (“Reed Decl.”), the declaration of Jeanine Singer, dated November 14, 2025 (ECF No. 22) (“Singer Decl.”), and the declaration of Adam Grennan (ECF No. 23) (“Grennan Decl.”), make representations:

- a. regarding the anticipated effects of an Enbrel UPL on the price Amgen can charge its wholesalers for purchase of the drug (*see* Costello Decl. ¶ 12);
- b. regarding the contracts between Amgen and its wholesalers of Enbrel that dictate “chargeback” practices and other reimbursement mechanisms and payment models (*see* Adams Decl. ¶¶ 4-6) (*see* Costello Decl. ¶ 13) (*see* Reed Decl. ¶ 5) (*see* Singer Decl. ¶ 7);
- c. regarding the inability of wholesalers of Enbrel to absorb discounts associated with their sale of the drug to “indirect customers” (identified as hospitals and pharmacies) (*see* Adams Decl. ¶ 6) (*see* Costello Decl. ¶¶ 7, 13) (*see* Singer Decl. ¶ 7);
- d. regarding the profit margin of Enbrel’s wholesalers (*see* Singer Decl. ¶ 6);
- e. regarding wholesalers’ expectations of Amgen in response to an Enbrel UPL (*see* Adams Decl. ¶ 8) (*see* Reed Decl. ¶ 6) (*see* Singer Decl. ¶ 9);
- f. regarding the “basic economics and common sense” that govern the pharmaceutical industry’s supply chain (*see* Costello Decl. ¶ 13);
- g. regarding Amgen’s anticipated loss of sales and administrative costs because of negotiating with wholesalers regarding an Enbrel UPL (*see* Costello Decl. ¶ 15);

- h. regarding alleged damage to “Amgen’s business relationships, reputation, and goodwill” because of an Enbrel UPL (*see* Costello Decl. ¶ 16);
- i. regarding the anticipated “broader market effects” of an Enbrel UPL (*see* Costello Decl. ¶¶ 16-17); and
- j. regarding anticipated discussions between Amgen and pharmacy benefit managers (“PBMs”) about Enbrel formulary placement, including associated costs of contract negotiations and other anticipated business expenses (*see* Grennan Decl. ¶¶ 9-10).

13. Defendants’ requested discovery is narrowly crafted to address these issues and the allegations raised in Amgen’s PI Motion and declarations, so that Defendants may fully respond to that motion.

14. Defendants seek an order allowing them to take limited discovery consisting of:

- a. The deposition of each declarant identified in the PI Motion (see ECF 19-23) and for each declarant to make himself or herself available to testify, pursuant to Fed. R. Civ. P. 30(b)(6) and/or Fed. R. Civ. P. 45, on or by February 28, 2026, and with regard to the topics identified in paragraph 12 and all information sworn in their respective declarations;

- b. Responses to the nine attached requests for production pursuant to Fed. R. Civ. P. 34 within thirty (30) days of service on Plaintiffs (*see* Exhibit 2 - Defendants' First Set of Requests for Production of Documents);
- c. Responses to the nine attached requests for written interrogatories pursuant to Fed. R. Civ. P. 33 within thirty (30) days of service on Plaintiffs (*see* Exhibit 3 - Defendants' First Set of Interrogatories and Requests for Admission); and
- d. Responses to the six attached requests for admission pursuant to Fed. R. Civ. P. 36 within thirty (30) days of service on Plaintiffs (*see* Ex. 3).

15. As detailed below, good cause exists to permit Defendants' limited expedited discovery requests.

ARGUMENT

Pursuant to Federal Rule of Civil Procedure 26(d)(a), “[t]he court may, in the exercise of its broad discretion, alter the timing, sequence and volume of discovery.” *Qwest Commc’ns Int’l, Inc. v. WorldQuest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003). A court may permit expedited discovery when justified by “good cause.” *Pod-Ners, LLC v. N. Feed & Bean of Lucerne Liab. Co.*, 204 F.R.D. 675, 676 (D. Colo. 2002) (“Rule 26(d), Fed. R. Civ. P., allows me to order expedited discovery upon a showing of good cause.”).

“The good cause standard may be satisfied where a party seeks a preliminary injunction. . . .” *Qwest Commc’ns Int’l*, 213 F.R.D. at 419 (citations omitted); *see also*

Fed. R. Civ. P. 26 Adv. Comm. Notes (1993 amendments to subdivision (d)) (expedited discovery is appropriate “in some cases, such as those involving requests for a preliminary injunction”); *Metal Bldg. Components, L.P. v. Caperton*, No. CIV-04-0256 MV/DJS, 2004 WL 7337726, at *3 (D.N.M. Apr. 2, 2004) (“expedited discovery is frequently necessary and appropriate in cases involving requests for a preliminary injunction.”). Courts in the Tenth Circuit have repeatedly found “good cause” exists for expedited discovery in cases involving requests for preliminary injunctive relief. *See, e.g., Advantage Sales & Mktg. LLC v. Gold*, No. 18-CV-00312-RM, 2018 WL 6252781, at *1 (D. Colo. Feb. 13, 2018) (granting plaintiffs’ limited discovery requests for a deposition and requests for production “in order for all parties to be properly prepared for [the] hearing”); *Icon Health & Fitness, Inc. v. Johnson Health Tech N. Am., Inc.*, No. 10-CV-00209, 2011 WL 13136539, at *3 (D. Utah Mar. 1, 2011) (granting plaintiff’s limited discovery requests for depositions and requests for production limited to the subject matter and allegations in submitted declarations); *Metal Bldg. Components, L.P.*, 2004 WL 7337726 at *3 (granting plaintiff’s request for inspection of defendant’s property on an expedited basis to prevent defendant from disposing of plaintiff’s property while preliminary injunction is in effect).

In assessing whether “good cause” exists, one Court in this District identified the following relevant factors:

the Court should examine the entirety of the record to date and the reasonableness of the request in light of all the surrounding

circumstances, which may include consideration of: (1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made.

Denver Homeless Out Loud v. Denver, No. 20-CV-2985-WJM-SKC, 2020 WL

6585795, at *2 (D. Colo. Nov. 10, 2020) (quotations and citations omitted).

Additionally, “good cause may be found where the . . . need for expedited discovery outweighs the possible prejudice or hardship to the [responding party].” *Metal Bldg. Components, L.P.*, 2004 WL 7337726, at *4.

Here, each factor weighs in favor of permitting expedited discovery. First, the pending preliminary injunction is targeted to deprive Defendants of the benefit of discovery. Defendants continue to offer a stay of enforcement of the Enbrel UPL, the relief Amgen ultimately seeks from the Court. Thus, it appears that Amgen is seeking a rushed decision on the merits of the case without proper discovery. Preliminary injunctions are not meant for this purpose, and courts disfavor deciding merits issues at the preliminary injunction stage. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (“The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.”); *Keirnan v. Utah Transit Auth.*, 339 F.3d 1217, 1220 (10th Cir. 2003) (“A preliminary injunction serves to preserve the status quo pending a final determination of the case on the merits. In issuing a preliminary injunction, a court is primarily attempting to preserve the power to render a meaningful decision on

the merits.”) (internal citations omitted). Defendants have already agreed to a stay on enforcement; Amgen nonetheless seeks a preliminary decision which includes an element of likelihood of success on the merits while objecting to any discovery. The Court should reject Amgen’s attempted approach. Amgen’s seeking relief ultimately agreed to by the Parties in this fashion would contradict the principle that injunctive relief must be grounded in traditional equitable principles and cannot be used to preemptively decide the merits of a case. To properly respond to the PI Motion, Defendants must be allowed the opportunity to take limited expedited discovery.

Second, the limited discovery is narrowly fashioned to respond to the PI Motion. Amgen’s PI Motion argues that the prospective imposition of the Enbrel UPL will irreparably harm the drug manufacturer *now* because it must immediately begin renegotiating its contracts with wholesalers, pharmacy benefit managers, and other entities in the drug supply chain, as well as redesign its payment systems. *See* ECF 18 at 35-37. Defendants’ proposed discovery directly addresses these arguments and seeks necessary information for Defendants to respond to Amgen’s alleged claims of injury and irreparable harm.¹ This is particularly important as the PI Motion is devoid of any monetary estimates—in

¹ Defendants reserve all rights related to future discovery requests in this action. This request for limited, expedited discovery concerns only Plaintiffs’ Motion for Preliminary Injunction and is not a reflection of all evidence Defendants will request through discovery to fully litigate Plaintiffs’ Complaint and its claims.

fact, not a single figure—pertaining to Amgen’s anticipated financial losses, further emphasizing its vague and speculative allegations of irreparable harm.

Specifically, Defendants’ requests gather more information about Amgen’s contracts and relationships with wholesalers and other unnamed “indirect purchasers” (*see* Declaration of Patrick Costello, ECF 19, at ¶ 4) who purchase Enbrel for sale and distribution in Colorado. This information will allow Defendants to test Amgen’s alleged injuries in its position as the drug’s manufacturer to determine if they can meet their burden as part of this PI Motion. Specific information about Amgen’s profits related to Enbrel, as well as the profit margins of its wholesalers, will similarly assist the Court with the scope and extent of the alleged injuries to wholesalers and their purchasers. Further, information about potential reactions of the supply chain to an Enbrel UPL will assist Defendants and the Court in understanding how supply chain entities anticipate reacting to an Enbrel UPL.

Similarly, Defendants can only determine the actual burden an Enbrel UPL places on Amgen and its wholesalers, and whether the UPL will result in economic and other alleged losses, by conducting depositions to ask the declarants about their business practices and contracts. And while Defendants understand the Court may afford them the opportunity to cross-examine Amgen and its declarants during the scheduled PI Motion hearing, the requested documents, interrogatories, and admissions are a necessary precursor to proper cross examination. Lastly,

conducting depositions outside of court will very likely condense the amount of questioning needed before the Court during any hearing, thus supporting judicial economy and resources for the Parties and Court.

Additionally, information about Amgen's negotiations with federal government agencies related to an Enbrel Maximum Fair Price for Medicare lend important insight into what Amgen considers a fair price for its drug. Discovery regarding Amgen's patents for Enbrel is also necessary to understand the scope and length of the term of the patents that Amgen has acquired for Enbrel, including its anticipated rate of return and recoupment on investment. Each proposed document request and interrogatory cites the portion of the PI Motion and/or accompanying declaration that substantiates that specific discovery request. *See* Ex. 2-3. The Defendants' requested discovery is therefore "particularized" to the preliminary injunction issues and so satisfies the "good cause" standard. *See Qwest Commc'ns Int'l, Inc.*, 213 F.R.D. at 420.

The fourth factor, regarding the burden posed to Amgen from the discovery, also weighs in favor of permitting expedited discovery. Amgen is represented by a major national law firm and has already filed an extensive Complaint and PI Motion, complete with detailed declarations from Amgen's executive officers and three of its wholesalers of Enbrel. Moreover, Amgen is a sophisticated, multi-national pharmaceutical company with more than 27,000 employees and an

estimated \$33.4 billion in total revenue for 2024.² The limited discovery requests, tailored to the PI Motion, do not unreasonably burden Amgen. Fifth, the timing of the expedited discovery is also appropriate given that the discovery will help resolve evidentiary issues pertaining to the PI Motion, particularly Amgen’s alleged irreparable harm, and the requests are not too far in advance of the normal discovery process. *See Denver Homeless Out Loud*, 2020 WL 6585795, at *7.

Finally, good cause exists for expedited discovery because the “need for expedited discovery outweighs the possible prejudice” to Amgen. *Metal Bldg. Components.*, 2004 WL 7337726, at *4. The Enbrel UPL is not effective until January 1, 2027. Amgen’s alleged prospective harm is supported by its own self-serving statements, devoid of any actual estimates of monetary loss, and propped up on statements of the wholesalers with whom it contracts. Amgen’s alleged injuries fail to explain how much of its business is in fact impacted by this UPL on a single drug in a single state as applied to only a portion of that state’s regulated insurance plans. Without those details and information, Defendants are significantly prejudiced in responding not only to Amgen’s claims of irreparable harm in the PI Motion, but also the merits of Amgen’s Complaint. Moreover, Defendants offered to

² *See* AMGEN, *Highlights from Amgen’s 2024 Fourth Quarter and Full Year Earning Report* (Feb. 4, 2025), <https://www.amgen.com/stories/2025/02/highlights-from-amgens-2024-fourth-quarter-and-full-year-earnings-report> (last visited on Dec. 4, 2025).

stay enforcement of the Enbrel UPL, including against Amgen, its wholesalers, or any other actor in the supply chain. Amgen is not prejudiced by this limited, expedited discovery.

CONCLUSION

Defendants respectfully request that the Court grant the motion within and issue an Order authorizing Defendants to conduct limited expedited discovery as set forth herein, and ordering Amgen to comply with the expedited discovery timelines set forth herein.

DATED at Denver, Colorado this 5th day of December, 2025.

PHILIP J. WEISER
Attorney General

s/ Sara Stultz

SARA STULTZ, 54357*
PAWAN NELSON, 49462*
Senior Assistant Attorneys General
NICHOLAS A. DEPETRO, 45287*
REBECCA WALKER, 55290*
Assistant Attorneys General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 8th Floor
Denver, CO 80203
720-508-6419 (Stultz)
720-508-6578 (Nelson)
720-508-6413 (DePetro)
720-508-6394 (Walker)
Sara.Stultz@coag.gov
Pawan.Nelson@coag.gov
Nick.DePetro@coag.gov
Rebecca.Walker@coag.gov

* *Counsel of Record*

I hereby certify that the foregoing paper complies with the length limitation set forth in DDD Civ. P.S. III(A)(1).

From: [Paul Mezzina](#)
To: [Sara Stultz](#); [Abby Chestnut \(she/her\)](#); [Becca Walker](#); [Nick DePetro](#)
Cc: [Ashley Parrish](#); [Alexander Kazam](#); [Nick Mecscas-Faxon](#); [Pawan Nelson](#); [Russell Johnson](#); [Heather Flannery](#); [Jennifer Reynard \(She/Her\)](#); [Janna Fischer \(she/her\)](#)
Subject: RE: Amgen v. Mizner, No. 1:25-cv-3452 (D. Colo.)
Date: Friday, November 21, 2025 8:51:14 AM
Attachments: [image001.png](#)
[image002.png](#)

Hi Sara,

Thanks for your quick response. Amgen has determined that in light of the timing concerns we've discussed, the best way forward at this point is to file the motion for preliminary injunction. We will include the language you sent regarding Defendants' position in the Rule 7.1(a) certificate. We appreciate your willingness to engage with us on this, and we remain open to continuing to discuss ways of advancing the litigation that will work for everyone.

Best,
Paul

From: Sara Stultz <Sara.Stultz@coag.gov>
Sent: Thursday, November 20, 2025 2:00 PM
To: Paul Mezzina <pmezzina@kslaw.com>; Abby Chestnut (she/her) <abby.chestnut@coag.gov>; Becca Walker <Rebecca.Walker@coag.gov>; Nick DePetro <Nick.DePetro@coag.gov>
Cc: Ashley Parrish <AParrish@KSLAW.com>; Alexander Kazam <AKazam@KSLAW.com>; Nick Mecscas-Faxon <NMecscas-Faxon@kslaw.com>; pawan.nelson <pawan.nelson@coag.gov>; russell.johnson <russell.johnson@coag.gov>; Heather Flannery <Heather.Flannery@coag.gov>; Jennifer Reynard (She/Her) <Jennifer.Reynard@coag.gov>; Janna Fischer (she/her) <Janna.Fischer@coag.gov>
Subject: RE: Amgen v. Mizner, No. 1:25-cv-3452 (D. Colo.)

CAUTION: MAIL FROM OUTSIDE THE FIRM

Paul,

Thanks for your patience the past three weeks; we were able to get a quick response for you here. Our clients do not agree to Amgen's proposal to stay enforcement of the UPL for 15 months after a judgment in the district court. The current proposal to stay enforcement of the Enbrel UPL during the district court litigation demonstrates their willingness to be reasonable as the case is litigated. We believe this agreement to a stay negates the need for a preliminary injunction.

If Amgen nonetheless chooses to proceed with filing the motion for PI, please include this language as Defendants' conferral: "Defendants oppose and, given their willingness to stay enforcement of the Enbrel upper payment limit pending an order from this District Court, believe this motion unnecessary and moot."

Please let us know if you have any questions.

Thank you,
Sara

EXHIBIT
1

Sara Stultz
Senior Assistant Attorney General
Insurance | Colorado Department of Law
Pronouns: she/her
P: 720-508-6419 | Sara.Stultz@coag.gov

PRINCIPLED ■ PUBLIC SERVANTS ■     ■ INNOVATIVE ■ BETTER TOGETHER

The statements and opinions in this email do not represent the statements and opinions of the Attorney General.

From: Paul Mezzina <pmezzina@kslaw.com>
Sent: Wednesday, November 19, 2025 5:58 PM
To: Sara Stultz <Sara.Stultz@coag.gov>; Abby Chestnut (she/her) <Abby.Chestnut@coag.gov>; Becca Walker <Rebecca.Walker@coag.gov>; Nick DePetro <Nick.DePetro@coag.gov>
Cc: Ashley Parrish <AParrish@KSLAW.com>; Alexander Kazam <AKazam@KSLAW.com>; Nick Mecsas-Faxon <NMecsas-Faxon@kslaw.com>; Pawan Nelson <Pawan.Nelson@coag.gov>; Russell Johnson <Russell.Johnson@coag.gov>; Heather Flannery <Heather.Flannery@coag.gov>
Subject: RE: Amgen v. Mizner, No. 1:25-cv-3452 (D. Colo.)

Thanks, Sara. While we appreciate defendants' consideration of this issue, we remain concerned about timing. Our complaint was filed three weeks ago, and we notified defendants of our intent to file a motion for preliminary injunction the same day, yet we did not receive defendants' proposal regarding a stay until earlier today. As we have discussed, Amgen is facing imminent harm to its business that necessitates moving this case forward. With that in mind, we respectfully ask that you let us know defendants' position by Friday so that we can determine whether to file the motion.

From: Sara Stultz <Sara.Stultz@coag.gov>
Sent: Wednesday, November 19, 2025 6:26 PM
To: Paul Mezzina <pmezzina@kslaw.com>; Abby Chestnut (she/her) <abby.chestnut@coag.gov>; Becca Walker <Rebecca.Walker@coag.gov>; Nick DePetro <Nick.DePetro@coag.gov>
Cc: Ashley Parrish <AParrish@KSLAW.com>; Alexander Kazam <AKazam@KSLAW.com>; Nick Mecsas-Faxon <NMecsas-Faxon@kslaw.com>; pawan.nelson <pawan.nelson@coag.gov>; russell.johnson <russell.johnson@coag.gov>; Heather Flannery <Heather.Flannery@coag.gov>
Subject: RE: Amgen v. Mizner, No. 1:25-cv-3452 (D. Colo.)

CAUTION: MAIL FROM OUTSIDE THE FIRM

Hi Paul,

We will take that proposal back to our clients and let you know as soon as we receive a response.

Thank you,
Sara

Sara Stultz
Senior Assistant Attorney General
Insurance | Colorado Department of Law
Pronouns: she/her
P: 720-508-6419 | Sara.Stultz@coag.gov

PRINCIPLED ■ PUBLIC SERVANTS ■ ■ ■ ■ ■ INNOVATIVE ■ BETTER TOGETHER

The statements and opinions in this email do not represent the statements and opinions of the Attorney General.

From: Paul Mezzina <pmezzina@kslaw.com>
Sent: Wednesday, November 19, 2025 1:24 PM
To: Sara Stultz <Sara.Stultz@coag.gov>; Abby Chestnut (she/her) <Abby.Chestnut@coag.gov>; Becca Walker <Rebecca.Walker@coag.gov>; Nick DePetro <Nick.DePetro@coag.gov>
Cc: Ashley Parrish <AParrish@KSLAW.com>; Alexander Kazam <AKazam@KSLAW.com>; Nick Mecsas-Faxon <NMecsas-Faxon@kslaw.com>; Pawan Nelson <Pawan.Nelson@coag.gov>; Russell Johnson <Russell.Johnson@coag.gov>; Heather Flannery <Heather.Flannery@coag.gov>
Subject: RE: Amgen v. Mizner, No. 1:25-cv-3452 (D. Colo.)

Hi Sara,

Thank you for getting back to us. We appreciate defendants' offer to stay enforcement of the UPL pending judgment in the district court. The difficulty is that, as defendants know, a long runway is necessary for Amgen and others to prepare to comply with the UPL. We understand this is why, when the Board adopted the UPL in October 2025, it set the effective date in January 2027. Would defendants be willing to stay enforcement of the UPL for 15 months after a judgment in the district court, to ensure that Amgen is not prejudiced by any delay and there is sufficient time for Amgen to come into compliance in the event the UPL is upheld? Please let us know if defendants would consider that acceptable, and we will discuss with our client.

Best,
Paul

From: Sara Stultz <Sara.Stultz@coag.gov>
Sent: Wednesday, November 19, 2025 1:20 PM
To: Paul Mezzina <pmezzina@kslaw.com>; Abby Chestnut (she/her) <abby.chestnut@coag.gov>; Becca Walker <Rebecca.Walker@coag.gov>; Nick DePetro <Nick.DePetro@coag.gov>
Cc: Ashley Parrish <AParrish@KSLAW.com>; Alexander Kazam <AKazam@KSLAW.com>; Nick Mecsas-Faxon <NMecsas-Faxon@kslaw.com>; pawan.nelson <pawan.nelson@coag.gov>; russell.johnson <russell.johnson@coag.gov>; Heather Flannery <Heather.Flannery@coag.gov>
Subject: RE: Amgen v. Mizner, No. 1:25-cv-3452 (D. Colo.)

CAUTION: MAIL FROM OUTSIDE THE FIRM

Paul,

Our clients have agreed to stay enforcement of the Enbrel Upper Payment Limit pending a judgment before the US District Court for the District of Colorado in case no. 25-cv-3452. This offer is contingent on Amgen not filing a motion for preliminary injunction. Please let us know how you would like to proceed.

In the case that Amgen decides to file the motion for preliminary injunction today, the Defendants oppose the motion. Regarding any motion for Amgen to exceed the 5,500-word limit, Defendants are also opposed. Defendants do not oppose Amgen's motion to restrict public access to the unredacted versions of the declarations attached to the PI motion.

Best,
Sara

Sara Stultz
Senior Assistant Attorney General
Insurance | Colorado Department of Law
Pronouns: she/her
P: 720-508-6419 | Sara.Stultz@coag.gov

PRINCIPLED ■ PUBLIC SERVANTS ■     ■ INNOVATIVE ■ BETTER TOGETHER

The statements and opinions in this email do not represent the statements and opinions of the Attorney General.

From: Paul Mezzina <pmezzina@kslaw.com>
Sent: Monday, November 17, 2025 1:14 PM
To: Sara Stultz <Sara.Stultz@coag.gov>; Abby Chestnut (she/her) <Abby.Chestnut@coag.gov>; Becca Walker <Rebecca.Walker@coag.gov>; Nick DePetro <Nick.DePetro@coag.gov>
Cc: Ashley Parrish <AParrish@KSLAW.com>; Alexander Kazam <AKazam@KSLAW.com>; Nick Mecsas-Faxon <NMecsas-Faxon@kslaw.com>; Pawan Nelson <Pawan.Nelson@coag.gov>; Russell Johnson <Russell.Johnson@coag.gov>
Subject: RE: Amgen v. Mizner, No. 1:25-cv-3452 (D. Colo.)

Hi Sara,

I hope you had a great weekend. I wanted to let you know that we plan on filing a motion for preliminary injunction this week, most likely on Wednesday. I understand from our last conversation that defendants oppose the motion, but please let me know if there's anything else we should discuss. I also have a couple of related questions:

1. As discussed, we intend to seek leave to exceed the default word limitation of 5,500 words. The exact number of words in our motion is TBD, but we expect it to be under 10,000. Do defendants object to our filing a motion of up to 10,000 words? We would not oppose a reciprocal expansion of the word limit for defendants' response.
2. We anticipate filing some declarations along with our motion, at least one of which may contain sensitive information regarding Amgen's contract negotiations. We intend to file a redacted version of the declaration on the public docket and a motion to restrict public access to the unredacted version. Will defendants object to the motion to restrict access?

Many thanks,
Paul

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-3452-DDD-STV

AMGEN INC, et al.,

Plaintiffs,

v.

GAIL MIZNER, MD, in her official
capacity as Chair of the Colorado
Prescription Drug Affordability Review
Board, et al.,

Defendants.

**DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS**

Defendants Gail Mizner, M.D., Sami Diab, M.D., Amarylis Gutierrez, Pharm.D., Catherine Harshbarger, and James Justin Vandenberg, Pharm.D., in their official capacities as Board members of the Colorado Prescription Drug Affordability Review Board; Michael Conway, in his official capacity as Commissioner of Insurance; and Philip J. Weiser, in his official capacity as Attorney General of the State of Colorado (collectively, "Defendants"), hereby serve this First Set of Requests for Production of Documents, pursuant to Fed. R. Civ. P. 34.

Within thirty (30) days from the service of this document, Plaintiffs' full and complete responses to these Requests must be served upon Defendant's counsel via email to Sara.Stultz@coag.gov; Pawan.Nelson@coag.gov; Nick.DePetro@coag.gov;

and Rebecca.Walker@coag.gov, or via U.S. mail to the offices of the Colorado Attorney General, 1300 Broadway, 8th Floor, Denver, Colorado, 80203.

DEFINITIONS

- a. “Communication(s)” means any interaction of any form (e.g., verbal, graphic, numeric, etc.) made in any way (e.g., letter, memorandum, note, email, text message, voice message, etc.) by which data or information is transmitted to, by or between any Person or Persons.
- b. “Document” means any material within the meaning of Fed. R. Civ. P. 34(a)(1)(A).
- c. “You” or “your” refers to Plaintiff Amgen Inc., Immunex Corporation, or Amgen Manufacturing Limited LLC, and each of their employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any of these capacities.
- d. “Upper payment limit” or “UPL” means, consistent with section 10-16-1401(23), C.R.S., the maximum amount that may be paid or billed for a prescription drug that is dispensed or distributed in Colorado in any financial transaction concerning the purchase or reimbursement for the prescription drug.

INSTRUCTIONS

- a. Produce all documents in your possession, custody or control or in the possession, custody or control of your representatives or agents.
- b. Produce the entirety of any requested document, including all attachments, enclosures, cover letters or emails, memorandum, exhibits, or appendices. Copies that differ in any respect from an original should be treated as separate documents and produced separately. Each draft of a document should be treated as a separate document and produced separately.
- c. If, following a reasonable search, you conclude that no responsive documents exist for a particular request, please expressly indicate in your response.
- d. Unless otherwise stated, these Requests cover the time period from the first year following the United States' Patent and Trademark Office's grant of the patent for Enbrel to the present.

REQUESTS FOR PRODUCTION

1. Please produce a copy of every wholesale contract or other agreement, including amendments, between Plaintiffs and each wholesaler who completed a Declaration attached to Plaintiffs' Motion for Preliminary Injunction in this case pertaining to a wholesaler's purchase of Enbrel from Plaintiffs, including all chargeback and discount provisions (*see* Motion for Preliminary Injunction, ECF 18 at 10, 20-21; Declaration of Patrick Costello, ECF 19 at ¶¶ 5-7; Declaration of Natalie Adams, ECF 20 at ¶¶ 4-6;

Declaration of Christopher Reed, ECF 21 at ¶¶ 4-6; Declaration of Jeanine Singer, ECF 22 at ¶¶ 6-7).

2. Please produce a copy of every wholesale contract or other agreement between Plaintiffs and any other wholesaler not identified in Requests for Production #1 pertaining to a wholesaler's purchase of Enbrel from Plaintiffs, including all chargeback and discount provisions (*see* Motion for Preliminary Injunction, ECF 18 at 10, 20-21; Declaration of Patrick Costello, ECF 19 at ¶¶ 5-7).
3. Please produce a copy of every contract or other agreement between Plaintiffs and any Colorado hospital, pharmacy, provider, facility, associated group purchasing organization, or other distributor for the sale of Enbrel (*see* Declaration of Patrick Costello, ECF 19 at ¶ 4).
4. Please produce all documentation substantiating Plaintiffs' claim that its wholesalers selling Enbrel in Colorado "operate on extremely thin margins and generally do not have the capacity to absorb uncompensated discounts" (*see* Motion for Preliminary Injunction, ECF 18 at 21; Declaration of Patrick Costello, ECF 19 at ¶ 7).
5. Please produce all documentation substantiating Plaintiffs' claim that "standard industry practice require[s] Amgen" to reimburse its wholesalers in the form of chargebacks (*see* Motion for Preliminary Injunction, ECF 18 at 21; Declaration of Patrick Costello, ECF 19 at ¶¶ 6-7).

6. Please produce all correspondence with Amgen's wholesalers and pharmacy benefit managers or associated group purchasing organizations regarding contract negotiations in response to an Enbrel UPL (*see* Motion for Preliminary Injunction, ECF 18 at 35-36; Declaration of Patrick Costello, ECF 19 at ¶ 15; Declaration of Adam Grennan ¶¶ 12-13).
7. Please produce all documents exchanged with the United States Department of Health and Human Services and/or the Centers for Medicare and Medicaid Services regarding the price negotiations for Enbrel effective on January 1, 2026, as part of the Inflation Reduction Act's Medicare Drug Price Negotiation Program (*see* Motion for Preliminary Injunction, ECF 18 at 15-16, 23-24, 33).
8. Please produce a copy of all non-expired patents held by Amgen for Enbrel, including all patent applications filed in the process of prosecuting the granted patents and patent term extension requests (*see* Motion for Preliminary Injunction, ECF 18 at 34).
9. Please produce Plaintiffs' profit/loss reports for its development and sale of Enbrel from the first year following the United States' Patent and Trademark Office's grant of the patent for Enbrel to the present (*see* Motion for Preliminary Injunction, ECF 18 at 34).

DATED at Denver, Colorado this _____ day of _____, 2025.

PHILIP J. WEISER
Attorney General

/s/

SARA STULTZ, 54357*

PAWAN NELSON, 49462*

Senior Assistant Attorney General

NICHOLAS A. DEPETRO, 45287*

REBECCA WALKER, 55290*

Assistant Attorney General

Ralph L. Carr Colorado Judicial Center

1300 Broadway, 8th Floor

Denver, CO 80203

720-508-6419 (Stultz)

720-508-6578 (Nelson)

720-508-6413 (DePetro)

Sara.Stultz@coag.gov

Pawan.Nelson@coag.gov

Nick.DePetro@coag.gov

Rebecca.Walker@coag.gov

* *Counsel of Record*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-3452-DDD-STV

AMGEN INC, et al.,

Plaintiffs,

v.

GAIL MIZNER, MD, in her official
capacity as Chair of the Colorado
Prescription Drug Affordability Review
Board, et al.,

Defendants.

**DEFENDANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR
ADMISSION**

Defendants Gail Mizner, M.D., Sami Diab, M.D., Amarylis Gutierrez, Pharm.D., Catherine Harshbarger, and James Justin Vandenberg, Pharm.D., in their official capacities as Board members of the Colorado Prescription Drug Affordability Review Board; Michael Conway, in his official capacity as Commissioner of Insurance; and Philip J. Weiser, in his official capacity as Attorney General of the State of Colorado (collectively, "Defendants"), hereby serve their First Set of Interrogatories and Requests for Admission on Plaintiffs, pursuant to Fed. R. Civ. P. 33 and 36.

Within thirty (30) days from the service of this document, Plaintiffs' full and complete responses to these Requests must be served upon Defendant's counsel via

email to Sara.Stultz@coag.gov; Pawan.Nelson@coag.gov; Nick.DePetro@coag.gov; and Rebecca.Walker@coag.gov, or via U.S. mail to the offices of the Colorado Attorney General, 1300 Broadway, 8th Floor, Denver, Colorado, 80203.

DEFINITIONS

- a. “Communication(s)” means any interaction of any form (e.g., verbal, graphic, numeric, etc.) made in any way (e.g., letter, memorandum, note, email, text message, voice message, etc.) by which data or information is transmitted to, by or between any Person or Persons.
- b. “Document” means any material within the meaning of Fed. R. Civ. P. 34(a)(1)(A).
- c. “You” or “your” refers to Plaintiff Amgen Inc., Immunex Corporation, or Amgen Manufacturing Limited LLC, and each of their employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any of these capacities.
- d. “Upper Payment Limit” or “UPL” means, consistent with section 10-16-1401(23), C.R.S., the maximum amount that may be paid or billed for a prescription drug that is dispensed or distributed in Colorado in any financial transaction concerning the purchase or reimbursement for the prescription drug.

INSTRUCTIONS

- a. Please respond to each request fully and separately, setting forth the text of each immediately prior to your response.
- b. These Requests are of a continuing nature so as to require supplemental responses as additional or different responsive information is discovered or becomes available.
- c. If you cannot answer any Request in full, answer to the extent possible and explain why you cannot answer the remainder of the request. In case of doubt as to the scope of a clause including “and,” “or,” “any,” “all,” “each,” or “every,” the intended meaning is inclusive rather than exclusive.
- d. If you find the meaning of any term in these Requests to be unclear, then you should assume a reasonable meaning, identify that assumed meaning, and respond to the Interrogatories on the basis of that assumed meaning.
- e. When these Requests ask you to “explain in detail,” you shall state all facts known to you that are discoverable under the Federal Rules of Civil Procedure and that are responsive to the Interrogatory.
- f. Unless otherwise stated, these Requests cover the time period from the first year following the United States’ Patent and Trademark Office’s grant of the patent for Enbrel to the present.

INTERROGATORIES

1. Please provide the exact dollar amount, with explanation and supporting calculation, of Plaintiffs' anticipated lost revenue for the first fiscal year following implementation of Enbrel's Upper Payment Limit (*see* Motion for Preliminary Injunction, ECF 18 at 35; Declaration of Patrick Costello, ECF 19 at ¶ 17). Please account for differing fiscal years among Plaintiffs in your response.
2. Please describe in detail Plaintiffs' contracting cycles with wholesalers of Enbrel, including timelines or deadlines (*see* Motion for Preliminary Injunction, ECF 18 at 35-36; Declaration of Patrick Costello, ECF 19 at 14-15; Declaration of Natalie Adams, ECF 20 at ¶¶ 5-6; Declaration of Christopher Reed, ECF 21 at ¶ 5).
3. Please describe in detail any claimed administrative and legal costs associated with these contracting cycles with wholesalers by Plaintiffs in this case, including any alleged renegotiations. (*see* Motion for Preliminary Injunction, ECF 18 at 35-36; Declaration of Patrick Costello, ECF 19 at 14-15; Declaration of Natalie Adams, ECF 20 at ¶¶ 5-6; Declaration of Christopher Reed, ECF 21 at ¶ 5).
4. Please describe in detail Plaintiffs' contracting cycles with pharmacy benefit managers and associated group purchasing organizations of Enbrel, including timelines or deadlines (*see* Motion for Preliminary Injunction, ECF 18 at 36-37; Declaration of Adam Grennan, ECF 23 at ¶¶ 7-13).

5. Please describe in detail any claimed administrative and legal costs associated with these contracting cycles with pharmacy benefit managers by Plaintiffs in this case, including any alleged renegotiations. (*see* Motion for Preliminary Injunction, ECF 18 at 36-37; Declaration of Adam Grennan, ECF 23 at ¶¶ 7-13).
6. Please describe in detail how Plaintiffs must modify their payment systems in response to an Enbrel UPL, including a detailed breakdown of the timeline and cost associated with each modification (*see* Motion for Preliminary Injunction, ECF 18 at 36; Declaration of Patrick Costello ¶ 18).
7. Please explain in detail how Amgen’s practices of discounts and chargebacks to their wholesalers of Enbrel is “a matter of basic economics and common sense” (*see* Motion for Preliminary Injunction, ECF 18 at 19-20; Declaration of Patrick Costello, ECF 19 at ¶ 13).
8. Please explain in detail why Amgen is the entity in the prescription drug supply chain that must absorb the cost of an Enbrel UPL (*see* Motion for Preliminary Injunction, ECF 18 at 20-21; Declaration of Patrick Costello, ECF 19 at ¶¶ 13-14).
9. Please identify the exact investment cost in United States dollars to Plaintiffs in the development of Enbrel (*see* Motion for Preliminary Injunction, ECF 18 at 6, 16, 26).

REQUESTS FOR ADMISSION

1. Admit that Plaintiffs have to date recouped their investment in the development and production of Enbrel.
2. Admit that Plaintiffs have applied for and obtained several extensions to their patents for Enbrel.
3. Admit that Plaintiffs' Complaint and Motion for Preliminary Injunction do not list any dollar amount of actual or anticipated profit loss should the Enbrel UPL be implemented.
4. Admit that Plaintiffs can amend contracts in cooperation with each of its wholesalers of Enbrel to reflect a manufacturer's list price or other negotiated amount.
5. Admit that Plaintiffs can amend contracts in cooperation with each of its wholesalers of Enbrel to reflect new chargebacks and/or discounts.
6. Admit that Plaintiffs will continue to profit from the sale of Enbrel even after Enbrel's UPL is implemented and enforced, holding all other factors related to Enbrel's sale and distribution constant.

DATED at Denver, Colorado this _____ day of _____, 2025.

PHILIP J. WEISER
Attorney General

/s/

SARA STULTZ, 54357*

PAWAN NELSON, 49462*
Senior Assistant Attorney General
NICHOLAS A. DEPETRO, 45287*
REBECCA WALKER, 55290*
Assistant Attorneys General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 8th Floor
Denver, CO 80203
720-508-6419 (Stultz)
720-508-6578 (Nelson)
720-508-6413 (DePetro)
Sara.Stultz@coag.gov
Pawan.Nelson@coag.gov
Nick.DePetro@coag.gov
Rebecca.Walker@coag.gov
* *Counsel of Record*