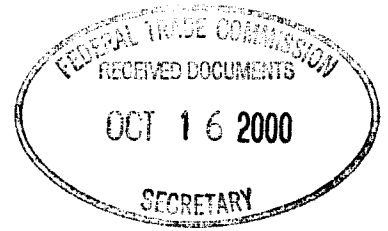


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



In the Matter of

HOECHST MARION ROUSSEL, INC.,  
a corporation

Docket No. 9293

CARDERM CAPITAL L.P.,  
a limited partnership,

and

ANDRX CORPORATION,  
a corporation.

TO: The Honorable D. Michael Chappell  
Administrative Law Judge

**SITRICK AND COMPANY'S ANSWER TO  
AVENTIS PHARMACEUTICALS, INC.'S ("HOECHST'S")  
MOTION TO ENFORCE COMPLIANCE WITH THE SUBPOENA  
SERVED ON SITRICK AND COMPANY**

Pursuant to Rule 3.22(c) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.22(b), non-party Sitrick and Company, Incorporated ("Sitrick") hereby submits its Answer to Respondent Aventis Pharmaceuticals, Inc.'s<sup>1</sup> Motion to Enforce Compliance with the Subpoena Served on Sitrick.

---

<sup>1</sup> Rhône-Poulenc of France and Hoechst Aktiengesellschaft of Germany merged on December 15, 1999, to create Aventis. We will, therefore, be referring to Aventis as Hoechst in this Answer.

## I. SUMMARY OF ARGUMENT

Hoechst's present motion is unnecessary given that all documents responsive to the subpoena at issue have been produced. Moreover, the parties had an opportunity to examine Mr. Sitrick during his deposition on August 30, 2000; Mr. Sitrick testified during his deposition that he had produced all documents responsive to the subpoena. This motion is, therefore, harassing and unnecessary. *See, e.g., Koppers Co.*, 77 F.T.C. 1675 (FTC Dec. 18, 1970) (hearing examiner is "to determine when requests for subpoenas are meant for no other purpose than to harass third parties") (remanding case to hearing examiner for a trial de novo). This motion is particularly abusive because although Sitrick produced the responsive documents, they were not relevant to the issues before the Commission. *See, e.g., Maremont Corp.*, 77 F.T.C. 1654 (FTC Oct. 22, 1970) (respondent made an application for the issuance of subpoenas duces tecum to 13 manufacturers; "vast bulk of the data and documents sought by respondent are either plainly irrelevant, or their relevance has not been adequately demonstrated . . . . [T]he examiner is not disposed to issue the requested subpoenas duces tecum, and await the filing of the usual third-party motions."); *Food Lion, Inc. v. United Food and Commercial Workers Int'l Union, AFL-CIO-CLC*, 103 F.3d 1007, 1012 (D.C. Cir. 1997) (nonparty documents were irrelevant to the underlying litigation; while "discovery in federal civil litigation casts a wide net, nevertheless there are some limits on what may be reasonably discovered"). As public relations counsel, retained after the alleged illegal conduct, Sitrick could not and does not have any relevant information or documents.

## II. FACTUAL BACKGROUND

Sitrick was retained as public relations counsel for Biovail Corporation International ("Biovail") on May 20, 1998. *See* Declaration of Michael Sitrick ("Sitrick Decl."), filed concurrently herewith, at ¶ 2. Sitrick is a public relations firm. The complaint in the above-captioned matter involves alleged violations of antitrust laws by Hoechst and Andrx. There are also proceedings pending before the United States District Court for the Eastern District of Michigan, *In re Cardizem CD Antitrust Litigation*, MDL

No. 1278 (Hon. Nancy G. Edmunds, *J.*), and the United States District Court for the District of New Jersey, *Biovail, Inc. v. Hoechst Aktiengesellschaft*, No. 98-1434 (FSH) (SRC) (Hon. Faith S. Hochberg, *J.*, and Hon. Stanley R. Chesler, *Mag.*). Alexander Decl. at ¶ 2. Those actions all involve alleged antitrust violations by Hoechst and Andrx. As evidenced in Michael Sitrick's declaration, Sitrick has no knowledge of the underlying facts or merits of the above-captioned proceeding and had no involvement in the underlying facts of this proceeding. Sitrick Decl. at ¶ 3.

Sitrick has received five subpoenas to date. In addition to the subpoena to produce documents in connection with the above-captioned proceeding, Sitrick also received three subpoenas from Hoechst's counsel in connection with the *Biovail* proceeding, and a subpoena to produce documents in connection with the *Cardizem* proceeding. Sitrick responded to the New Jersey and Michigan subpoenas with letters dated March 23, 2000; both objected on relevancy grounds and asked the parties to coordinate their discovery in the two cases. Alexander Decl. at ¶ 5 and Exhibits thereto. Without waiving its relevancy objections Sitrick produced all responsive documents to Hoechst counsel in the New Jersey and Michigan actions and those same documents were, by agreement of counsel, made available to counsel for Hoechst in the FTC proceeding. Alexander Decl. at ¶¶ 6, 17-18 and Exhibits thereto.

On August 24, 2000, Judge Casey in the *In re Cardizem CD Antitrust Litigation* ruled that there would only be one deposition of Sitrick, a non-party, in the *Biovail*, *Cardizem* and FTC proceedings. Counsel for all parties were advised that Mr. Sitrick's deposition in response to all subpoenas in all actions would take place on August 30, 2000. Alexander Decl. at ¶¶ 8-9, 11 and Exhibits thereto.

That deposition lasted almost 12 hours and all counsel, including counsel for Hoechst, Andrx and the FTC, had an opportunity to question Sitrick. Andrx and Hoechst questioned Sitrick extensively for the entire day. At that deposition the parties were

advised that Sitrick's files had been reviewed for any documents received or created subsequent to the original production. The parties were advised that there were no additional documents. Alexander Decl. at ¶ 12. Hoechst had the opportunity to and did question Sitrick about its document production in response to all the subpoenas including the FTC subpoena. Alexander Decl. at ¶ 10; Sitrick Decl. at ¶ 4.

### III. ARGUMENT

#### The FTC Subpoena and Hoechst's Current Motion Constitute Continued Harassment.

Sitrick has received five subpoenas in connection with three proceedings. Sitrick objected to these subpoenas, but produced the documents in response to them without waiver of its objections. Alexander Decl. at ¶¶ 4-6, 18 and Exhibits thereto. Thus, the FTC subpoena has been complied with.

Hoechst's current motion is abusive and harassing in that the subpoena called for non-relevant information in light of the fact that Sitrick is not in the pharmaceuticals business. Sitrick is a public relations firm that provided only public relations services for Biovail from May 20, 1998 to present – long after Hoechst engaged in its allegedly wrongful activity. Sitrick's services to Biovail were limited to its role as a public relations consultant. Sitrick Decl. at ¶ 2. Sitrick had no role in the underlying events that are the subject of the above-captioned action. Moreover, Sitrick does not have any knowledge of what the relevant market is for the purposes of antitrust violations. Sitrick does not have knowledge of or provide advice as to how markets are defined or structured, as Hoechst suggests on page 2 of its motion. Sitrick Decl. at ¶ 3. Sitrick is *not*, as Hoechst states (without any support whatsoever) on page 3 of its motion, in the business of advising pharmaceutical manufacturers on the positioning and marketing of cardiovascular pharmaceutical products. Sitrick Decl. at ¶ 3. Hoechst's statement is particularly disingenuous given that Mr. Sitrick testified that Sitrick's role as public

relations counsel was to ensure that Biovail's "position was accurately and fairly reported by the media." Sitrick Decl. at ¶ 2 and Transcript at 251:8-10.<sup>2</sup> (Emphasis added.)

The motion is also harassing and unnecessary since Sitrick has complied with the Subpoenas. Michael Sitrick testified under oath during his deposition that all notes, e-mails and similar documents were produced to counsel. Transcript at 294:6-10; Sitrick Decl. at ¶ 4. Mr. Sitrick also testified that he knew of "no documents that were requested that were not produced" in response to "[a]ny subpoena[,]" including the FTC subpoena. Transcript at 307:3-13; Sitrick Decl. at ¶ 4.

Counsel for Sitrick also stated during Mr. Sitrick's deposition that Sitrick produced all documents responsive to the FTC subpoena and that Sitrick had re-reviewed the files as recently as the Friday before the deposition. Transcript at 308:11-17; Alexander Decl. at ¶ 12.

Hoechst Has Not Complied with 16 C.F.R. § 3.22(f)'s Meet and Confer Requirement.

Counsel for Hoechst in the FTC proceeding, D.E. Wilson, Jr., stated in his Declaration of October 4, 2000 that on June 27, 2000, he "began a series of conversations with Helen B. Kim, Esquire, of the firm of Freid [sic], Frank [sic] Harris, Shriver & Jacobson, Los Angeles, CA. Those conversations ended on or about August 25, 2000, without agreement as to Sitrick's obligation to update materials provided by Sitrick in related litigation and made available to Hoechst in this proceeding in response to the subpoena served on Sitrick." *Id.* at ¶ 3; Alexander Decl. at ¶ 13. Mr. Wilson made this declaration under 16 C.F.R. § 3.22(f), which requires a "signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion [to compel] and has

---

<sup>2</sup> Moreover, as Hoechst notes on page 2 of its motion papers, the subpoena served on Sitrick was only "one of approximately 30 issued by the Commission on behalf of Hoechst and the only one served on a company or federal agency *not directly involved* in either the manufacturing or healthcare provider aspects of the pharmaceutical industry." (Emphasis added). Hoechst is, therefore, speaking out of two sides of its mouth: it recognizes that Sitrick has no direct involvement in the pharmaceuticals industry, yet in the same breath incorrectly states that Sitrick is "in the business of advising a pharmaceutical manufacturer on the positioning and marketing of cardiovascular pharmaceutical products." Hoechst motion at page 3.

been unable to reach such an agreement.” Mr. Wilson’s declaration does not comply 16 C.F.R. § 3.22(f), as he has not only misrepresented the nature of the discussions with Ms. Kim, but failed to advise the Commission that subsequent to the August 25, 2000 conversation, Sitrick updated its review of its files and made Mr. Sitrick available for a full day of deposition. Ms. Kim informed counsel for Hoechst that Sitrick agreed that responsive documents used in either the MDL or New Jersey actions could be used in the FTC proceeding. Alexander Decl. at ¶¶ 14-15 and Exhibits thereto.

Hoechst’s statement, also on page 3 of its motion, that “Sitrick has neither updated the documents it produced in a related case, nor certified that no other documents are responsive” is a patent misrepresentation of the facts. In an August 25, 2000 letter to counsel for Hoechst, counsel for Sitrick stated that any documents responsive to the subpoena since the Company’s April 2000 production would be provided to counsel on or before Michael Sitrick’s August 30, 2000 deposition. Alexander Decl. at ¶¶ 16-17 and Exhibits thereto. In a second letter to Hoechst’s counsel dated August 25, 2000, it was reiterated “that the documents already in your client’s possession in the New Jersey action were, have been and are available to you in response to your subpoena, subject to our continuing relevancy objection.” Alexander Decl. at ¶ 18 and Exhibit thereto. Moreover, as noted above, counsel for all parties were also advised that an update review of Sitrick’s files was conducted just prior to the deposition and no additional responsive documents or e-mails were found.

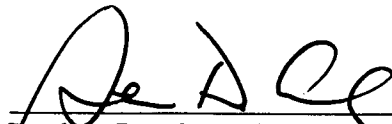
Finally, following the deposition on August 30, 2000, Sitrick’s counsel received no communications from Mr. Wilson or other members of his firm and he certainly did not confer with counsel for Sitrick concerning this motion prior to filing it as required by 16 C.F.R. § 3.22(f). Alexander Decl. at ¶ 20. Indeed, Hoechst questioned Mr. Sitrick under oath about Sitrick’s document production. Alexander Decl. at ¶ 19; Sitrick Decl. at ¶ 4. In sum, Hoechst’s motion is unnecessary, unduly burdensome, harassing and a continued abuse of process.

THEREFORE, pursuant to Commission Rule of Practice 3.38(c), 16 C.F.R.

§ 3.38(c), Sitrick respectfully requests that Hoechst's request that this tribunal certify to the Commission that court enforcement of the subpoena be sought should be denied for two reasons:

1. Sitrick has no relevant information regarding the matters at issue; and
2. Sitrick without waiving its objections has in fact produced its documents and updated its production. Sitrick also requests that it be awarded its attorneys' fees and costs in responding to this unnecessary motion.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

By:   
Stephen D. Alexander  
350 South Grand Avenue, 32nd Floor  
Los Angeles, California 90071  
(213) 473-2000

Attorneys for non-party SITRICK and COMPANY, INC.

Dated: October 16, 2000

66194.03

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of

HOECHST MARION ROUSSEL, INC., ET AL.

Docket No. 9293

**Non-Party Witness.**

**CERTIFICATE OF SERVICE**

I, JULIAN L. STAMPER, hereby certify that on October 16, 2000, a copy of **Sitrick and Company's Answer to Aventis Pharmaceuticals, Inc.'s ("Hoechst's") Motion to Enforce Compliance with the Subpoena Served on Sitrick and Company** was served upon the following persons by hand delivery and/or Federal Express as follows:

Donald S. Clark, Secretary [by hand]  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.,  
Room 172  
Washington, D.C. 20580

Richard Feinstein [by hand]  
Federal Trade Commission  
601 Pennsylvania Ave., N.W., Rm. 3114  
Washington, D.C. 20580

Hon. D. Michael Chappell [by hand]  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room 104  
Washington, D.C. 20580

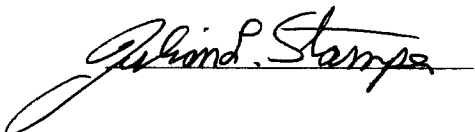
Markus Meier [by hand]  
Federal Trade Commission  
601 Pennsylvania Ave., N.W., Rm. 3017  
Washington, D.C. 20580

Louis M. Solomon [by Fed. Exp.]  
Solomon, Zauderer, Ellenhorn,  
Frischer & Sharp  
45 Rockefeller Plaza  
New York, New York 10111

Peter O. Safir [by hand]  
Kleinfeld, Kaplan & Becker  
1140 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Francis D. Landrey [by Fed. Exp.]  
Proskauer Rose LLP  
1585 Broadway  
New York, New York 10036-8299

James M. Spears [by hand]  
Paul S. Schleifman [by hand]  
D. Edward Wilson, Jr. [by hand]  
Peter D. Bernstein [by hand]  
Shook, Hardy & Bacon, LLP  
600 14<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20005-2004



66194



**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of

HOECHST MARION ROUSSEL, INC.,  
a corporation

Docket No. 9293

CARDERM CAPITAL L.P.,  
a limited partnership,

and

ANDRX CORPORATION,  
a corporation.

COPY

**DECLARATION OF MICHAEL SITRICK IN SUPPORT OF  
SITRICK AND COMPANY'S ANSWER TO  
AVENTIS PHARMACEUTICALS, INC.'S ("HOECHST'S") MOTION TO  
ENFORCE COMPLIANCE WITH THE SUBPOENA  
SERVED ON SITRICK AND COMPANY**

I, MICHAEL SITRICK, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am Chairman and Chief Executive Officer of Sitrick and Company, Incorporated ("Sitrick"), located at 1840 Century Park East, Suite 800, Los Angeles, California 90067-2109. As such, I have personal knowledge of the facts set forth herein. I make this declaration in support of Sitrick's Answer to Hoechst's Motion to Enforce Compliance with the Subpoena Served on Sitrick.

2. Sitrick is not in the pharmaceuticals business. Sitrick is a public relations firm that provided public relations services to Biovail Corporation International ("Biovail") from May 20, 1998 to present – long after Hoechst engaged in its allegedly

wrongful activity. Our work for Biovail dealt with the media with respect to Biovail's claims against Hoechst. Sitrick's services and my services to Biovail were limited to our role as public relations consultants. The objective of media publicity and our retention by clients is "to ensure that our client's position and the facts relative to our client's position are accurately and fairly reported" in the media. August 30, 2000 Deposition Transcript ("Transcript") of Michael Sitrick at 250:2-4; 251:8-10, annexed hereto as Exhibit 1.

3. Neither Sitrick nor I had a role in the underlying events that are the subject of the above-captioned action which, to my understanding, involves antitrust issues. I do not have any knowledge of, nor does Sitrick have any knowledge of, what the relevant market is for the purposes of antitrust violations. We do not have knowledge of or provide advice as to how markets are defined. I am not in the business of advising pharmaceutical manufacturers on the positioning and marketing of cardiovascular pharmaceutical products.

4. I believe that Hoechst's present motion is particularly harassing in light of the fact that during my August 30, 2000 deposition, I testified under oath as to the public relations service provided to Biovail and that all emails, notes and similar documents were produced to counsel. Transcript at 22:14-19, 23:1-11, 25:20-25, 26:1-7, 227:12-20 and 294:6-10. I also testified that I knew of "no documents that were requested that were not produced" in response to "[a]ny subpoena[,]" including the FTC subpoena. Transcript at 307:3-13. I further testified that Sitrick's counsel directed my firm on how to respond to the various subpoenas and that "each of the individual executives [at Sitrick] was asked to also check their E-mail and to print out any copies that were still in

the E-mail." Transcript at 299:6-25. Our search for documents was updated as of the Friday before my deposition and counsel for all parties were so advised at my deposition.

Executed in Los Angeles, California, on October 12, 2000.

A handwritten signature in black ink, appearing to read "Michael Sitrick", is written over a horizontal line.

Michael Sitrick

# 66187.3

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of

HOECHST MARION ROUSSEL, INC., ET AL.

Docket No. 9293

Non-Party Witness.

CERTIFICATE OF SERVICE

I, JULIAN L STAMPER, hereby certify that on October 16, 2000, a copy of **Declaration of Michael Sitrick in Support of Sitrick and Company's Answer to Aventis Pharmaceuticals, Inc.'s ("Hoechst's") Motion to Enforce Compliance with the Subpoena Served on Sitrick and Company** was served upon the following persons by hand delivery and/or Federal Express as follows:

Donald S. Clark, Secretary [by hand]  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.,  
Room 172  
Washington, D.C. 20580

Richard Feinstein [by hand]  
Federal Trade Commission  
601 Pennsylvania Ave., N.W., Rm. 3114  
Washington, D.C. 20580

Hon. D. Michael Chappell [by hand]  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave, N.W., Rm 104  
Washington, D.C. 20580

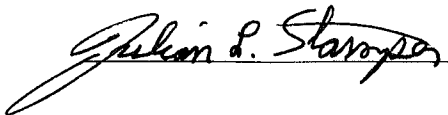
Markus Meier [by hand]  
Federal Trade Commission  
601 Pennsylvania Ave., NW, Rm. 3017  
Washington, D.C. 20580

Louis M. Solomon [by Fed. Exp.]  
Solomon, Zauderer, Ellenhorn,  
Frischer & Sharp  
45 Rockefeller Plaza  
New York, New York 10111

Peter O. Safir [by hand]  
Kleinfeld, Kaplan & Becker  
1140 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Francis D. Landrey [by Fed. Exp.]  
Proskauer Rose LLP  
1585 Broadway  
New York, New York 10036-8299

James M. Spears [by hand]  
Paul S. Schleifman [by hand]  
D. Edward Wilson, Jr. [by hand]  
Peter D. Bernstein [by hand]  
Shook, Hardy & Bacon, LLP  
600 14<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20005-2004



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ORIGINAL

In Re ) MDL DOCKET NO. 1278  
CARDIZEM CD ANTITRUST LITIGATION ) THIS DOCUMENT RELATES  
TO ALL ACTIONS ) TO ALL ACTIONS  
( PAGES 1-312 )

DEPOSITION OF:

MICHAEL S. SITRICK  
WEDNESDAY, AUGUST 30, 2000  
10:18 A.M.

REPORTED BY:

XAVIER MIRELES

SR NO. 5001  
LEGALINK, Manhattan Reporting Tel 212-557-7400  
Advocate Reporting Tel 212-697-6565

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

BIOVAIL CORPORATION	)	
INTERNATIONAL,	)	CASE NO.
Plaintiff,	)	CV-98-1434-FSH
v.	)	(PAGES 1-312)
HOECHST AKTIENGESELLSCHAFT,	)	
HOECHST MARION ROUSSEL, INC.,	)	
HOECHST MARION ROUSSEL NORTH	)	
AMERICA INC., CARDERM CAPITAL	)	
L.P., HORST WAESCHE, DANIEL	)	
CAMUS, RICHARD J. MARKHAM, PETER	)	
W. LADELL, GERALD P. BELL and	)	
JURGEN DORMANN,	)	
Defendants.	)	

---

DEPOSITION OF:

MICHAEL S. SITRICK  
WEDNESDAY, AUGUST 30, 2000  
10:18 A.M.

REPORTED BY:

XAVIER MIRELES  
CSR NO. 5001

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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In Re the Matter of )  
HOECHST MARION ROUSSEL, INC., )  
a corporation, CARDERM CAPITAL ) DOCKET NO. 9293  
L.P., a limited partnership, ) (PAGES 1-312)  
 )  
and )  
 )  
ANDRX CORPORATION, a corporation.)  
\_\_\_\_\_ )

DEPOSITION OF:

MICHAEL S. SITRICK  
WEDNESDAY, AUGUST 30, 2000  
10:18 A.M.

REPORTED BY:

XAVIER MIRELES  
CSR NO. 5001

1                   Deposition of MICHAEL S. SITRICK, the witness,  
2 taken on behalf of the Defendants, on Wednesday,  
3 August 30, 2000, 10:18 a.m., at 350 South Grand Avenue,  
4 32nd Floor, Los Angeles, California 90071, before  
5 XAVIER MIRELES, CSR No. 5001.

6  
7

8 APPEARANCES OF COUNSEL:

9

10 FOR CLASS PLAINTIFFS IN RE CARDIZEM CD MDL-1278:

11                   BERMAN DeVALERIO PEASE & TABACCO  
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17

18 FOR PLAINTIFF BIOVAIL CORPORATION:

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APPEARANCES OF COUNSEL (CONTINUED):

FOR HOECHST DEFENDANTS IN BIOVAIL V. HOECHST, ET AL.:

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BY: BRENDAN JUDGE, ESQ.

-and-

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FOR DEFENDANT ANDRX CORPORATION:

SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP

BY: MICHAEL S. LAZAROFF, ESQ.

45 Rockefeller Plaza  
New York, New York 10111  
(212) 956-3700

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APPEARANCES OF COUNSEL (CONTINUED):

FOR THE WITNESS:

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

BY: STEPHEN D. ALEXANDER, ESQ.

350 South Grand Avenue

32nd Floor

Los Angeles, California 90071

(213) 473-2008

ALSO PRESENT:

ROBIN L. MOORE, ATTORNEY-AT-LAW

FEDERAL TRADE COMMISSION

601 Pennsylvania Avenue, N.W.

Washington, DC 20580

(202) 326-3133

1 going to be first.

2

3

EXAMINATION

4

5

BY MR. LAZAROFF:

6

Q. Good morning, Mr. Sitrick.

7

A. Good morning.

8

Q. My name is Michael Lazaroff, and I'm

9

associated with the law firm of Solomon, Zauderer,

10

Ellenhorn, Frischer and Sharp, and we represent Andrx

11

Pharmaceuticals, Inc., a defendant in the multi-district

12

litigation as well as in the FTC proceeding.

13

To begin with, have you ever been deposed

14

before?

15

A. Yes.

16

Q. Recently?

17

A. Fairly.

18

Q. So you are familiar with the procedure that

19

occurs within a deposition?

20

A. Somewhat.

21

Q. When was the most recent time that you were

22

deposed?

23

A. Within the last six months.

24

Q. Are you feeling well today?

25

A. I am fine. Thank you.

1 Q. Are you currently taking any medications or  
2 any other substance that might impair your memory or  
3 ability to recollect the issues that we will discuss  
4 today?

5 A. No.

6 Q. Is there any other reason that might cause you  
7 to have an impaired memory concerning the issues that we  
8 will discuss today?

9 A. Not to my knowledge.

10 Q. What is your position within Sitrick and  
11 Company?

12 A. I am chairman, president and chief executive  
13 officer.

14 Q. How would you define the scope of Sitrick and  
15 Company's activities?

16 A. We are a public relations firm.

17 Q. Do you have areas in which you specialize?

18 A. Corporate, financial, transactional and crisis  
19 communications.

20 Q. How many employees do you have in your  
21 company?

22 A. Approximately 50.

23 Q. Is your company divided into different  
24 divisions?

25 A. Not really.

1 Q. So any of the employees could work in any of  
2 the areas?

3 A. The people who do investor relations are  
4 pretty much limited to investor relations. The people  
5 who are in the public relations side pretty much can do  
6 and often have done various tasks within the public  
7 relations side, though the restructuring group which  
8 handles bankruptcies and financial restructurings and  
9 in- and out-of-court is primarily limited, because we  
10 are so busily engaged in that area. The rest of the  
11 firm pretty much cross-practices.

12 Q. Do you do much work for law firms?

13 A. We do a lot of work with law firms. We don't  
14 represent law firms except if they would have a crisis  
15 of some kind.

16 Q. What kind of crisis might they have that would  
17 cause you to represent them?

18 A. Sexual harassment charge, partners leaving,  
19 that kind of thing.

20 Q. To the best of your knowledge, have you ever  
21 represented class action plaintiffs unrelated to sexual  
22 harassment charges before? Class action plaintiff  
23 lawyers?

24 A. Yes.

25 Q. Whom have you represented?

1 MR. LAZAROFF: Yeah.

2 (Discussion had off the record.)

3 MR. LAZAROFF: Back on the record.

4 Call it Sitrick One, MS-1 for the record.

5 (Deposition Exhibit No. MS-1 was marked for  
6 identification and is attached hereto.)

7 BY MR. LAZAROFF:

8 Q. Do you recognize this document?

9 A. Sure.

10 Q. Can you tell me what this document is.

11 A. Looks like it's off our web site.

12 Q. Okay. Is this document -- does this page  
13 accurately reflect the type of representation you have  
14 done in lawsuits before?

15 A. It does.

16 Q. You will see there is a line there, the third  
17 line down that says "Justice Departmental, SEC, FTC and  
18 other inquiries and indictments"?

19 A. That's correct.

20 Q. What type of services would Sitrick and  
21 Company have provided or has Sitrick and Company  
22 provided with regards to Justice Department, SEC and FTC  
23 inquiries?

24 A. A whole variety of services if a company is  
25 the subject of a Justice Department, SEC, FTC or other

1 inquiry. For example, National -- International  
2 Enterprises was raided by the FBI and they brought an  
3 action, and we represented them.

4 When an SEC inquiry is launched, we would  
5 represent them to make sure that the company gets the  
6 facts out relative to its situation to its various  
7 constituents.

8 Q. Do you represent or have you represented law  
9 firms in the context of SEC or FTC investigations  
10 before?

11 A. We represent -- we represent law firms with  
12 respect to the work that they are doing for their  
13 clients, yes, if that's what you mean represent law  
14 firms.

15 Q. I would mean represent the law firm as in you  
16 would have an actual agreement with the law firm to  
17 represent them.

18 A. Yes. That's correct. Many times.

19 Q. And to reiterate, when you said earlier that  
20 Lowey, Dannenberg is the only law firm you had -- class  
21 action plaintiff law firm that you had represented, that  
22 would include in the capacity of FTC and SEC  
23 investigations, also?

24 A. To the best of my recollection. We probably  
25 have a thousand cases that we have been involved in over

1 A. Yes.

2 Q. When Biovail retained Sitrick and Company  
3 regarding a dispute with Hoechst -- let me back up and  
4 strike that.

5 You testified earlier that Biovail retained  
6 Sitrick and Company regarding a number of issues?

7 A. Correct.

8 Q. Did there come a time that Biovail retained  
9 Sitrick and Company regarding an issue it had with  
10 Hoechst and/or Andrx?

11 A. No.

12 Q. Did there come a time that Biovail retained  
13 Sitrick and Company with regard to an issue that Biovail  
14 wanted presented to the media that dealt with  
15 Cardizem CD?

16 A. No. We had been retained and were retained --  
17 we weren't retained for that specific purpose. We were  
18 retained as corporate communications counsel for a  
19 variety of purposes and continued working with them. So  
20 we were not retained specifically for any one project.

21 Q. Did there come a time that Sitrick and Company  
22 worked on a project for Biovail relating in any way to  
23 Hoechst?

24 A. Yes.

25 Q. When did that begin?



1 JOURNAL, as I said before, five days before the filing  
2 because it may never be filed; it may change so  
3 dramatically, and then you get questions as to why did  
4 you make this change, why did you take this out, why did  
5 you put this in. So you are raising questions and  
6 creating questions that may not need to exist.

7 There are a lot of things in here which are  
8 not consistent with the policies and practice of our  
9 firm.

10 BY MR. JUDGE:

11 Q. What else besides the ones that you have  
12 identified?

13 A. I would have to go -- you want me to go  
14 through every single one?

15 Q. Please.

16 A. Recruit a substantial number of individuals to  
17 join the class action suit. I don't know how we would  
18 go about doing that.

19 I wouldn't put in a memo "create intense  
20 pressure on Hoechst to proceed and/or settle the Andrx  
21 patent litigation." Even if that were an objective, I  
22 certainly wouldn't commit it to writing.

23 Q. Why wouldn't you commit it to writing?

24 A. Because it isn't something that is a public  
25 relations objective. You have to decide what the

1 objective of your publicity is, and your publicity -- we  
2 are retained to ensure that our client's position and  
3 the facts relative to our client's position are  
4 accurately and fairly reported. And if they do that and  
5 if they achieve the objective, then they may result in  
6 that. But that's not an objective of the public  
7 relations campaign.

8 Q. Was it an objective in this case with Biovail?

9 A. I can't recall whether it was or not, but I  
10 wouldn't put that in a public relations memo as an  
11 objective. I just wouldn't.

12 Q. You would want to hide that objective?

13 A. No, because I don't know that there would be  
14 an objective in a public relations campaign. I would  
15 make sure if there was one, why would you have to commit  
16 it to writing; why would you put it in a memo; what's  
17 the purpose?

18 If the client knows that it's an objective,  
19 why put it in a memo?

20 Q. Can you tell me as you sit here today that it  
21 was not an objective to create immense pressure on  
22 Hoechst to proceed and/or settle the Andrx litigation?

23 MR. SIEGAL: Objective of who?

24 MR. JUDGE: Biovail.

25 MR. SIEGAL: I object; he can't speak for

1 Biovail.

2 THE WITNESS: I can't speak for Biovail and I  
3 can't tell you whether it was or was not an objective at  
4 this point in time two years later.

5 BY MR. JUDGE:

6 Q. Was it an objective of Sitrick and Company in  
7 its representation of Biovail?

8 A. The objective of Sitrick and Company was to  
9 ensure that Biovail's position was accurately and fairly  
10 reported by the media.

11 Q. Can you tell me as you sit here tonight, was  
12 it an objective of Sitrick and Company in its  
13 representation of Biovail to create immense pressure on  
14 Hoechst to proceed and/or settle the Andrx litigation?

15 MR. SIEGAL: Asked and answered.

16 THE WITNESS: I already gave my answer.

17 BY MR. JUDGE:

18 Q. Your answer is not responsive.

19 MR. ALEXANDER: That's your opinion.

20 If you have anything to add to your answer,  
21 you are free to. You are not required to answer any  
22 particular way that counsel asking the questions wants  
23 you to answer.

24 THE WITNESS: I have answered the question.

25 BY MR. JUDGE:

1 MR. LAZAROFF: In my review I didn't see any  
2 retention letter.

3 MR. ALEXANDER: Okay.

4 THE WITNESS: I will check our files, too.

5 BY MR. JUDGE:

6 Q. Mr. Sitrack, you have testified earlier  
7 regarding your notes in this matter. Do you know  
8 whether there is any notes that weren't previously  
9 produced?

10 A. Not to my knowledge.

11 Q. In your representation of your clients, do you  
12 feel that it is Sitrack and Company's obligation to  
13 provide to them all information that comes to your  
14 attention that's pertinent to their issue on which you  
15 are representing them?

16 MR. ALEXANDER: Object to the form of the  
17 question.

18 If you understand it, you can answer it.

19 THE WITNESS: I do.

20 BY MR. JUDGE:

21 Q. And did you comply with that obligation to the  
22 best of your ability with regard to your representation  
23 of Biovail?

24 A. I did.

25 Q. Did you comply with that obligation to the

1 Q. Okay. When billing Lowey, were there --

2 MR. ALEXANDER: Asked and answered, but you  
3 can answer it again.

4 THE WITNESS: It was all grouped together.

5 MR. TARASCHI: Thank you.

6 Q. You had mentioned earlier that your secretary  
7 was charged with gathering up all these documents and  
8 going to each of the executives who may have worked on  
9 that. What is that secretary's name?

10 A. Stephanie Pion, P-I-O-N.

11 Though I am not sure it quite worked that  
12 way. She may have directed -- she may have sent an  
13 E-mail to them, directed them to gather their  
14 executive's files and bring them to a central place. I  
15 don't know how she did it. But actually we had counsel  
16 directing her on how to -- what to do and how to do it,  
17 and she followed their direction.

18 Q. Okay. The technician that checked the  
19 E-mails, what was that person's name?

20 A. Well, the most recent one is Sandra Overby,  
21 O-V-E-R-B-Y. And before her was Michael Stewart, who is  
22 no longer with the firm.

23 But each of the individual executives was  
24 asked to also check their E-mail and to print out any  
25 copies that were still in the E-mail.

1 and, God forbid, I should be sleeping at 4:30 in the  
2 morning.

3 So those people technically worked on the  
4 Lowey, Dannenberg matter, because if they would have  
5 taken calls and taken questions but not answered them  
6 and then referred them to us, they technically would  
7 have worked.

8 So if they would have had any notes, if they  
9 would have had any documents, they would have been  
10 queried.

11 But they weren't involved in the day-to-day  
12 interchange with Lowey, Dannenberg. So that's what I  
13 meant by other people.

14 Q. The only person you recall working on a  
15 day-to-day basis was Mr. Seiler?

16 A. And he worked really assisting me in the  
17 matter maybe during the first drafts and so forth.

18 MR. LAZAROFF: A final point with regard to  
19 the FTC proceeding.

20 To the extent that the documents have been  
21 produced in the MDL in the New Jersey action, I don't  
22 believe there has been a formal production in the FTC  
23 proceeding. To the extent that the documents produced  
24 to date were not fully responsive to the subpoena in the  
25 FTC proceedings, the defendants reserve the right to

1 requestion the witness, if necessary, if there is a  
2 further production of further documents.

3 THE WITNESS: I would just like to say I know  
4 of no documents that were requested that were not  
5 produced.

6 MR. LAZAROFF: To the FTC subpoena? It's a  
7 different subpoena.

8 MR. ALEXANDER: You asked the question, and I  
9 will respond to that.

10 THE WITNESS: Go ahead. Any subpoena.

11 MR. ALEXANDER: No.

12 THE WITNESS: There are no documents to my  
13 knowledge to any subpoena that has not been produced.

14 MR. JUDGE: One clarification to our request  
15 for the billing records with regard to your work for  
16 Biovail.

17 We would also like a copy of your billing  
18 records with regard to your work for the Lowey,  
19 Dannenberg firm regarding any dispute regarding  
20 Cardizem CD.

21 MR. ALEXANDER: The -- in response to the FTC  
22 subpoena, we agreed. I don't know that we actually  
23 physically delivered another set of documents to  
24 Hoechst's counsel, the separate counsel that is in  
25 that. We agreed that Hoechst, which already had the

**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

**DECLARATION OF STEPHEN D. ALEXANDER IN SUPPORT OF  
SITRICK AND COMPANY'S ANSWER TO  
AVENTIS PHARMACEUTICALS, INC.'S ("HOECHST'S") MOTION TO  
ENFORCE COMPLIANCE WITH THE SUBPOENA  
SERVED ON SITRICK AND COMPANY**

I, STEPHEN D. ALEXANDER, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a member in good standing of the Bars of California and New York. I am a member of the law firm of Fried, Frank, Harris, Shriver & Jacobson, attorneys for Non-Party Witnesses Michael Sitrick and Sitrick and Company, Incorporated ("Sitrick") in this action. Except as otherwise stated, I have personal knowledge of the facts set forth herein. I make this declaration in support of Sitrick's Answer to Hoechst's Motion to Enforce Compliance with the Subpoena Served on Sitrick.

2. There are three proceedings pending before federal tribunals concerning the legality of the Hoechst-Andrx Agreement under the antitrust laws. At



issue in all three cases is whether name-brand drug manufacturer Hoechst Aktiengesellschaft and its affiliates (collectively, "Hoechst") violated the antitrust laws when it entered into an agreement with generic drug manufacturer Andrx Pharmaceuticals to pay Andrx \$40 million a year not to bring out a generic drug to compete with Hoechst's Cardizem CD, pending resolution of the patent dispute. The three proceedings are:

- A class action multi-district litigation before the United States District Court for the Eastern District of Michigan, *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (Hon. Nancy G. Edmunds, *J.*), various retail drug chains and other plaintiffs have sued Hoechst and Andrx for conspiring to restrain trade, allocate the profits from the sale of Cardizem CD, and prevent entry into the market of generic drugs that would compete with Cardizem CD.
- In an action before the United States District Court for the District of New Jersey, generic drug manufacturer Biovail, Inc. has sued Hoechst alleging similar antitrust violations. *Biovail, Inc. v. Hoechst Aktiengesellschaft*, No. 98-1434 (FSH) (SRC) (D.N.J.) (Hon. Faith S. Hochberg, *J.*, and Hon. Stanley R. Chesler, *Mag.*)
- The Federal Trade Commission has begun its own administrative proceeding against Hoechst and Andrx for violations of the antitrust laws.

3. Sitrick is a public relations firm that has done work for Biovail, a generic drug manufacturer that, along with Andrx, sought to introduce a generic drug to compete with Hoechst's Cardizem CD.

4. Sitrick has received five subpoenas to date (one subpoena included both a subpoena to produce documents and a subpoena *ad testificandum*). Sitrick received a subpoena to produce documents in connection with the above-captioned proceeding; the subpoena was issued by Hoechst and was served on the Sitrick's Los Angeles office. A copy of the subpoena, issued on May 11, 2000, is annexed hereto as Exhibit 1. Sitrick has also received three subpoenas from Hoechst's counsel in connection with the Biovail proceeding, all of which were served on the Sitrick's Los

Angeles office. The first was a subpoena to produce documents, dated March 2, 2000. The second was a subpoena *ad testificandum* served on Michael Sitrick pursuant to Federal Rule of Civil Procedure 30(b)(6), dated May 17, 2000. The third was a subpoena *ad testificandum* served on Sitrick pursuant to Federal Rule of Civil Procedure 30(b)(6), dated May 17, 2000. Sitrick has also received a subpoena to produce documents in connection with the *Cardizem CD Antitrust Litigation* in the Eastern District of Michigan. That subpoena also included a subpoena *ad testificandum*. Counsel for Andrx, a defendant in the *Cardizem* litigation, served the subpoena on Sitrick's New York office; the subpoena is dated March 9, 2000. Hoechst is also a defendant in the *Cardizem* litigation.

5. Sitrick responded to the New Jersey and Michigan subpoenas with letters dated March 23, 2000, which both objected that the information sought was irrelevant and asked the parties to coordinate their discovery in the two cases. Copies of those letters are annexed hereto as Exhibits 2 and 3.

6. Sitrick produced documents responsive to Hoechst's subpoena in the Biovail action on April 10, 2000, as evidenced in a letter annexed hereto as Exhibit 4. This production was "without waiver of its objections to" the subpoena. No "documents responsive to" the subpoena "were withheld from production on the grounds of privilege or any other ground." Sitrick produced a second batch of documents in response to Hoechst's subpoena on April 19, 2000, as evidenced in a letter annexed hereto as Exhibit 5. Sitrick made these same documents available to counsel for Andrx in the *In re Cardizem CD Antitrust Litigation*, as evidenced in a letter dated April 25, 2000, annexed hereto as Exhibit 6. As noted in the April 25, 2000 letter, counsel in the *Cardizem* proceeding "agreed to make copies of these documents to all parties in the" *Cardizem* matter. The same documents were made available to Hoechst's FTC counsel and to the FTC. See ¶¶ 17-18, *infra*, and Exhibits 12-13 thereto; August 30, 2000 Deposition Transcript ("Transcript") of Michael Sitrick at 17:2-19, annexed hereto as Exhibit 7.

7. As evidenced in the Declaration of Michael Sitrick (“Sitrick Decl.”), filed concurrently herewith, Sitrick has no knowledge of the underlying facts or merits of the above-captioned proceeding and had no involvement in the underlying facts of this proceeding. See Sitrick Decl. at ¶ 3. Sitrick’s work for Biovail exclusively dealt with the news media. See Sitrick Decl. at ¶ 2.

8. Judge Casey in the *In re Cardizem CD Antitrust Litigation* ruled on August 24, 2000, that there would only be one deposition of Michael Sitrick in the *Biovail*, *Cardizem* and FTC proceedings.

9. In a letter dated August 25, 2000, all counsel of record were advised that, in light of Judge Casey’s ruling, Michael Sitrick would be “available for his deposition on Wednesday, August 30, 2000, commencing at 10:00 a.m.” at my Firm’s Los Angeles office. I further stated that “I believe it is your [Mr. Lazaroff’s] responsibility to advise all counsel that this will be the one and only deposition of Sitrick & Co. or Michael Sitrick in” the FTC, *Cardizem* and *Biovail* actions. A copy of this letter is annexed hereto as Exhibit 8.

10. I attended the deposition of Mr. Sitrick on August 30, 2000. Counsel for Hoechst in the MDL and *Biovail* proceedings were present. Laurie A. Novion, Esquire, of Shook, Hardy & Bacon, L.L.P. was present on behalf of Hoechst in the MDL proceedings; Ms. Novion’s firm is also involved in the FTC proceedings. Mitchell W. Taraschi, Esquire, of Connell Foley, L.L.P., counsel for Hoechst in the *Biovail* proceeding, was also present. The deposition ran from 10:18 a.m. to 9:47 p.m. Transcript at 13:2 and 310:21. Two lawyers for Hoechst and one lawyer from Andrx questioned Mr. Sitrick the entire day. Counsel for the FTC was also present.

11. I noted at the August 30, 2000 deposition that the deposition was “being conducted in response to all those depositions” in the *Biovail*, FTC and *Cardizem* actions and pursuant to Judge Casey’s order; the deposition is so captioned. Transcript at 14:9-23 and 20:13-16.

12. I also stated at the August 30, 2000 deposition that Sitrick had updated its review of documents, produced all documents responsive to the FTC subpoena and that I did not “anticipate producing any additional documents in response to any of the subpoenas.” Transcript at 307:21-308:17.

13. Counsel for Hoechst in the FTC proceeding, D.E. Wilson, Jr., stated in his Declaration of October 4, 2000 that on June 27, 2000, he “began a series of conversations with Helen B. Kim, Esquire, of the firm of Freid [sic], Frank [sic] Harris, Shriver & Jacobson, Los Angeles, CA. Those conversations ended on or about August 25, 2000, without agreement as to Sitrick’s obligation to update materials provided by Sitrick in related litigation and made available to Aventis in this proceeding in response to the subpoena served on Sitrick.” *Id.* at ¶ 3. Mr. Wilson made this declaration under 16 C.F.R. § 3.22(f), which requires a “signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion [to compel] and has been unable to reach such an agreement.”

14. Mr. Wilson’s declaration does not comply with 16 C.F.R. § 3.22(f), as he has misrepresented the nature of the discussions with Ms. Kim, a partner at my firm. Ms. Kim sent a letter to James Spears, an attorney at Mr. Wilson’s firm, dated June 27, 2000. Ms. Kim wrote in response to the FTC subpoena dated May 11, 2000, which was “not received by [Sitrick] until June 23, 2000.” A copy of that letter is annexed hereto as Exhibit 9. That letter also stated that subject to an “Attorneys Eyes Only” or “Highly Confidential” designation in the FTC proceeding, Sitrick was “willing to agree that the documents produced by Sitrick in the MDL or New Jersey actions, which constitute Sitrick’s documents responsive to [the FTC] subpoena, may be used in the FTC proceeding.”

15. Ms. Kim received a facsimile from Mr. Wilson dated August 7, 2000, annexed hereto as Exhibit 10. The facsimile attached a copy of the Second Amended Protective Order Governing Discovery Material in the above-captioned case.

16. Mr. Wilson sent a letter to Ms. Kim dated August 25, 2000. Mr. Wilson's letter conveyed his misunderstanding that my office did not return telephone calls in response to the FTC subpoena. A copy of that letter is annexed hereto as Exhibit 11. Mr. Wilson's letter also sought to determine whether Ms. Kim took issue with whether documents in the New Jersey action were available for use in the FTC proceeding, whether his firm would receive an update to these documents, and whether there were additional e-mails responsive to the subpoena.

17. Ms. Kim responded to Mr. Wilson's letter in two letters, both dated August 25, 2000. The first, annexed hereto as Exhibit 12, stated that Ms. Kim had "returned every call from [Mr. Wilson] of which" she was aware. She also stated that any documents responsive to the subpoena since Sitrick's April 2000 production would be provided to Mr. Wilson on or before Michael Sitrick's August 30, 2000 deposition.

18. Ms. Kim's second letter, annexed hereto as Exhibit 13, did "take issue" with Mr. Wilson's letter of August 25, 2000. Ms. Kim explained that only one telephone call to Mr. Wilson went unreturned and that was because she was out of town. Second, Ms. Kim reiterated "that the documents already in your client's possession in the New Jersey action were, have been and are available to you in response to your subpoena, subject to our continuing relevancy objection." Ms. Kim also advised Mr. Wilson that there were no additional e-mails responsive to the subpoena and that any additional documents responsive to the subpoena would be provided at Mr. Sitrick's August 30, 2000 deposition. Ms. Kim's letter evidences the fact that the representations in her letter were *already* discussed with Mr. Wilson in a telephone conversation on August 4, 2000.

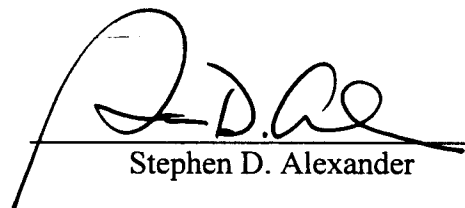
19. In light of the foregoing set forth in paragraphs 13 to 18, *supra*, Hoechst's statement on page 3 of its motion that the "parties agreed to disagree on

August 25, 2000” is disingenuous, as there was nothing to “disagree” about since Hoechst had the documents responsive to the subpoena and any additional update documents would be produced at the deposition of Mr. Sitrick. Moreover, Hoechst’s statement, also on page 3 of its motion, that “Sitrick has neither updated the documents it produced in a related case, nor certified that no other documents are responsive” is a patent misrepresentation of the facts in that counsel was advised that an update review was conducted prior to the deposition as promised and that Mr. Sitrick testified under oath that the subpoena had been complied with. Counsel for Hoechst at the deposition, including a lawyer from Mr. Wilson’s office, did not object to this statement. Lawyers from Hoechst were free to and did question Mr. Sitrick under oath concerning Sitrick’s compliance with the FTC subpoena. Mr. Sitrick testified that the search was updated just prior to his deposition and all responsive documents were produced. Sitrick Decl. at ¶ 4 and Transcript at 308:16-19.

20. At no time following the August 30, 2000 deposition did Mr. Wilson contact my office to discuss this matter. Instead, Hoechst filed its motion without fully disclosing the above facts or conferring with counsel for Sitrick prior to filing a motion as required by 16 C.F.R. § 3.22(f).

21. For all these reasons, Sitrick requests that Hoechst’s motion be denied and attorneys’ fees and costs awarded to Sitrick.

Executed in Los Angeles, California, on October 16, 2000.

  
Stephen D. Alexander

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of

HOECHST MARION ROUSSEL, INC., ET AL.

Docket No. 9293

Non-Party Witness.

CERTIFICATE OF SERVICE

I, JULIAN L. STAMPER hereby certify that on October 16, 2000, a copy of Declaration of Stephen D. Alexander in Support of Sitrick and Company's Answer to Aventis Pharmaceuticals, Inc.'s ("Hoechst's") Motion to Enforce Compliance with the Subpoena Served on Sitrick and Company was served upon the following persons by hand delivery and/or Federal Express as follows:

Donald S. Clark, Secretary [by hand]  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.,  
Room 172  
Washington, D.C. 20580

Richard Feinstein [by hand]  
Federal Trade Commission  
601 Pennsylvania Ave., N.W., Rm. 3114  
Washington, D.C. 20580

Hon. D. Michael Chappell [by hand]  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave, N.W., Rm 104  
Washington, D.C. 20580

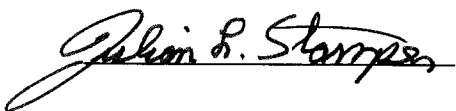
Markus Meier [by hand]  
Federal Trade Commission  
601 Pennsylvania Ave., NW, Rm. 3017  
Washington, D.C. 20580

Louis M. Solomon [by Fed. Exp.]  
Solomon, Zauderer, Ellenhorn,  
Frischer & Sharp  
45 Rockefeller Plaza  
New York, New York 10111

Peter O. Safir [by hand]  
Kleinfeld, Kaplan & Becker  
1140 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Francis D. Landrey [by Fed. Exp.]  
Proskauer Rose LLP  
1585 Broadway  
New York, New York 10036-8299

James M. Spears [by hand]  
Paul S. Schleifman [by hand]  
D. Edward Wilson, Jr. [by hand]  
Peter D. Bernstein [by hand]  
Shook, Hardy & Bacon, LLP  
600 14<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20005-2004



66189



# SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO

Custodian of Records for:  
Sirmick & Company.  
1840 Century Park East, Suite 800  
Los Angeles, CA 90067

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, or the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

Shook, Hardy & Bacon L.L.P.  
600 14th Street, N.W., Suite 800  
Washington, DC 20005-2004

4. MATERIAL WILL BE PRODUCED TO

Shook, Hardy & Bacon L.L.P.  
Attn: D. Edward Wilson, Counsel for Hoechst Marion Roussel, Inc.

5. DATE AND TIME OF PRODUCTION OR INSPECTION

July 10, 2000 at 10:00 a.m.

6. SUBJECT OF PROCEEDING

In the matter of Hoechst Marion Roussel, Inc., et al.

7. MATERIAL TO BE PRODUCED

Sec Exhibit "A" attached hereto

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Shook, Hardy & Bacon L.L.P.  
James M. Spears  
D. Edward Wilson  
Peter D. Bernstein  
Counsel for Hoechst Marion Roussel

DATE ISSUED

MAY 11 2000

SECRETARY'S SIGNATURE

## GENERAL INSTRUCTIONS

### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

**Exhibit A to Subpoena Duces Tecum**

_____	)	
In the Matter of	)	
	)	Docket No. 9293
Hocchst Marion Roussel, Inc., et al.,	)	
	)	
Respondents	)	
_____	)	

**HMRI'S FIRST DOCUMENT PRODUCTION REQUEST  
TO SITRICK & COMPANY**

Respondent Hoechst Marion Roussel, Inc. ("HMRI"), pursuant to the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.34(b), requests that Sitrick & Company (hereinafter referred to as "Sitrick") produce documents and other things for inspection and copying, within 20 days, in response to the Document Requests set forth below, and in accordance with the Definitions and Instructions following thereafter, at the offices of Shook, Hardy & Bacon, L.L.P., 600 14th Street, N.W., Washington, D.C. 20005, or such location as may be mutually agreed upon.

## DOCUMENT REQUESTS

**REQUEST NO. 1:** All documents that were produced to any party in the action captioned *Biovail Corporation International v. Hoechst A.G. et al.*, Civil Action No. 98-1434 (MTB)(SRC)(D.N.J.).

**REQUEST NO. 2:** All documents that were produced to any party in the action captioned *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (NGE)(E.D. Mich.).

**REQUEST NO. 3:** All documents which relate to any agreements, including but not limited to proposed agreements, between or among Sitrick and Biovail concerning Probucol or diltiazem products existing, entered into or negotiated on or after January 1, 1993.

**REQUEST NO. 4:** All documents which relate to payments or other consideration, directly or indirectly, provided, or to be provided to Sitrick by Biovail which relate to Probucol or diltiazem products on or after January 1, 1993.

**REQUEST NO. 5:** All communications, and all documents concerning communications, between Sitrick and Biovail which relate to Probucol or diltiazem products.

**REQUEST NO. 6:** All documents which relate to any contact with any news organization, including but not limited to the Miami Herald, ABC News or CBS News, concerning Biovail, Probucol, diltiazem products, Andrx, Faulding, HMR, or Cardizem® CD.

**REQUEST NO. 7:** All documents exchanged between Sitrick and any news organization, including but not limited to the Miami Herald, ABC News or CBS News, concerning Biovail, Probuco, diltiazem products, Andrx, Faulding, HMR, or Cardizem® CD.

**REQUEST NO. 8:** All documents which relate to Sitrick's participation in the development and pursuit of a story with any news organization, including but not limited to the Miami Herald, ABC News or CBS News, concerning Biovail, Probuco, diltiazem products, Andrx, HMR, or Cardizem® CD.

**REQUEST NO. 9:** All documents exchanged between Sitrick and Biovail which relate to the Miami Herald, ABC News, CBS News, Probuco or diltiazem products.

**REQUEST NO. 10:** All documents which relate to Andrx, Biovail, Faulding, HMR, or Cardizem® CD.

**REQUEST NO. 11:** All documents which relate to Sitrick's participation in the development and pursuit of a strategy for advertising and marketing Probuco or Biovail Hypertension Products.

**REQUEST NO. 12:** All documents dated on or after January 1, 1995 reflecting, concerning, mentioning, or relating to Biovail, Biovail Hypertension Products, or Probuco, including but not limited to press releases, new clippings, correspondence, internal documents, internal memoranda, drafts, outlines, e-mails, projections, technical analyses, studies, forecasts, strategic plans or business plans.

**REQUEST NO. 13:** All press releases or similar documents issued by or on behalf of Biovail between January 1, 1993 and the present.

**REQUEST NO. 14:** All documents relied on in the issuance of press releases by or on behalf of Biovail between January 1, 1993 and the present.

**REQUEST NO. 15:** All draft press releases or similar documents issued by or on behalf of Biovail between January 1, 1993 and the present.

**REQUEST NO. 16:** All documents which relate to Biovail, Biovail Hypertension Products or Probucol.

**REQUEST NO. 17:** All documents which relate to any contact with any governmental organization, including but not limited to the FTC or the FDA, concerning Biovail, Probucol, diltiazem products, Andrx, Faulding, HMR, or Cardizem® CD.

**REQUEST NO. 18:** All documents which relate to communications between Sitrick and the class action attorneys related to Biovail, Probucol, diltiazem products, Andrx, Faulding, HMR, or Cardizem® CD.

**REQUEST NO. 19:** All documents exchanged between Sitrick and the class action attorneys related to Biovail, Probucol, diltiazem products, Andrx, Faulding, HMR, or Cardizem® CD.

**REQUEST NO. 20:** All documents which relate to communications between Sitrick and any manufacturer known to be seeking or who has sought approval for a generic version of Cardizem® CD, including but not limited to Andrx, Faulding and Biovail.

**REQUEST NO. 21:** All documents exchanged between Sitrick and any manufacturer known to be seeking or who has sought approval for a generic version of Cardizem® CD, including but not limited to Andrx, Faulding and Biovail.

**DEFINITIONS AND INSTRUCTIONS**

1. As used herein, "agreement" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with modifications or amendments thereto.

2. As used herein, "ABC News" means ABC News and its news program "20/20," and its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys or any person acting or purporting to act on its behalf.

3. As used herein, "Andrx" means Andrx Pharmaceuticals, Inc., and its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys or any person acting or purporting to act on its behalf.

4. As used herein, "Biovail" shall refer to Biovail Corporation with its principal place of business in Mississauga, Ontario, Canada, and its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys, representatives, economic consultants, lobbyists, public relations consultants or any person acting or purporting to act on its behalf.

5. As used herein, "Biovail Hypertension Products" shall refer to all drug products containing diltiazem as an active ingredient, whether or not approved by the FDA, that are or were, developed, licensed, manufactured or owned, in whole or in part, by Biovail and include without limitation, Tiazac and all drug products that are described by Biovail as generic versions of Cardizem® CD.

6. As used herein, "Cardizem® CD" means the sustained release diltiazem formulation sold under that trademark.

7. As used herein, "CBS News" means CBS News and its news programs "60 Minutes" and "60 Minutes II" and its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys or any person acting or purporting to act on its behalf.

8. As used herein, "class action attorneys" shall refer to Lowey Dannenberg Bemporad & Sellinger, P.C.; Berman, DeValerio, Pease & Tabacco, P.C.; Beasley, Wilson, Allen, Crow & Methvin; Zwierling, Schachter & Zwierling, L.L.P.; Miller Faucher Cafferty & Wexler, L.L.P.; Goodkind, Labaton, Rudolf & Sucharow, L.L.P.; Law Offices of Gordon Ball, Esq.; Millberg Weiss Bershad Hynes & Lerach; Cohen, Milstein, Hausfield & Toll, P.L.L.C.; Boies & Schiller, LLP; Berger & Montague, P.C.; Garwin, Bronzaft, Gerstein & Fisher, L.L.P.; Elwood S. Simon & Associates, P.C.; Lockridge, Grimdal, Nauen & Holstein, P.L.L.P.; Calvin, Richardson & Verner, and any other attorney representing plaintiffs in *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (NGE)(E.D. Mich.) individually or collectively, and any of their predecessors, successors,

assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys or any person acting or purporting to act on its behalf.

9. As used herein, "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether or not in written form.

10. As used herein, "concerns" means relates to, refers to, describes, forms the basis for, evidences or constitutes, and the term "concerning" means relating to, referring to, describing, evidencing or constituting.

11. As used herein, "diltiazem" means diltiazem and its salts including diltiazem hydrochloride.

12. As used herein, "diltiazem product" means any pharmaceutical product containing diltiazem and/or its salts including diltiazem hydrochloride as an active pharmaceutical ingredients.

13. As used herein, "document" or "documents" shall include, without limitation, originals, masters and every copy of writings and printed, typed and other graphic or photographic matter, including microfilm of any kind or nature, recordings (tape, diskette or other) of oral communications, other data compilations and every other tangible thing from which information can be obtained, including, without limitation, magnetic or electronic media, in the possession, custody or control of Sitrick or any present or former officer, employees or agents thereof, or known by Sitrick to exist. The term "document" or "documents" shall include, without limiting the generality of the foregoing, all computer files, electronic mail, letters, telegrams, teletypes, correspondence,

contracts, agreements, notes to the files, notebooks, reports, memoranda, mechanical and electronic sound recordings or transcripts thereof, blueprints, flow sheets, formal or information drawings or diagrams, calendar or diary entries, memoranda of telephone or personal conversations of meetings or conferences, studies, reports, interoffice communications, price lists, bulletins, circulars, statements, manuals, summaries of compilations, minutes of meetings, maps, charts, graphs, order papers, articles, announcements, books, catalogs, records, tables, books of account, ledgers, vouchers, canceled checks, invoices or bills. A draft or nonidentical copy is a separate document within the meaning of this term.

14. As used herein, "Faulding" means Faulding Inc. and its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys or any person acting or purporting to act on its behalf.

15. As used herein, "FDA" means the United States Food and Drug Administration, including without limitation its employees, scientists, technicians, agents, examiners, laboratories, consultants and special governmental employees.

16. As used herein, "FTC" means the United States Federal Trade Commission, including without limitations its employees, investigators, agents, consultants and special governmental employees.



17. As used herein, "HMR" means Hoechst Marion Roussel, Inc., its successors, predecessors, and the officers, directors, employees, partners, subsidiaries, corporate parents, affiliates and divisions of each of the foregoing.

18. As used herein, "Miami Herald" means The Miami Herald and its predecessors, successors, assigns and present and/or former affiliates and subsidiaries and any of its respective officers, directors, employees, agents, attorneys or any person acting or purporting to act on its behalf.

19. As used herein, "Probucol" shall refer to the drug formulation or product known as Probucol.

20. As used herein, "person" includes any natural person, corporate entity, sole proprietorship, partnership, association, governmental entity, or trust.

21. As used herein, "relate" means concerns, refers to, describes, forms the basis for, evidences or constitutes, and the term "relating" means concerning, referring to, describing, evidencing or constituting.

22. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

23. The term "all" shall be construed as all and each, and the term "each" shall be construed as all and each.

24. The use of the singular form of any word includes the plural, and vice versa.

25. Except for privileged materials, Sitrick will produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Sitrick should submit any appendix, table, or other attachment by either physically attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, Sitrick will not mask, cut expunge, edit, or delete any responsive document or portion thereof in any manner.

26. Unless otherwise stated, the scope of this request is from January 1, 1993 through the present and is continuing in. If, after producing documents, Sitrick obtains or becomes aware of any further documents, or information responsive to this request for production of documents, Sitrick is required to produce to HMR such additional documents and/or to provide HMR with such additional information.

27. Compliance with this subpoena requires a search of all documents in the possession, custody, or control of Sitrick's officers, directors, employees, agents, or representatives, whether or not such documents are on the premises of Sitrick. If any person is unwilling to have his or her files searched, or is unwilling to produce responsive documents, Sitrick must provide counsel

servicing this request with the following information as to each such person: his or her name, address, telephone number, and relationship to Sitrick.

28. If any requested documents cannot be produced in full, produce the remainder and state whatever information, knowledge, or belief Sitrick has concerning the unproduced portion.

29. In addition to hard-copy documents, the search will include all Sitrick's electronically stored data. Sources of such data include, but are not limited to, the following:

- (a) Desktop personal computers ("PCs") and workstations; PCs, workstations, minicomputers and mainframes used as file servers, application servers, or mail servers; laptops, notebooks, hand-held devices and other portable computers available for shared use; and home computers used for work related purposes;
- (b) Backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by a third-party, such as in a disaster recovery center; and
- (c) Computers and related offline storage used by agents, consultants, and other persons as defined herein, which may include persons who are not employees of Sitrick or who do not work on company premises.

30. Sitrick will submit all documents, including electronically-stored documents, in hard copy. In addition to the hard copies, Sitrick will submit the electronically-stored documents.

31. The source and location of each responsive document shall be designated, including the corporate entity and/or person from which it was obtained. Responsive documents from each entity and or person's files shall be produced together, in file folders or with other enclosures that segregate the files by request number. If a document is responsive to more than one request, it shall be produced in response to the request to which it is primarily responsive. An index

of responsive documents is requested in hard copy and machine-readable form identifying for each document produced: (1) the corporate identification and consecutive control number; (2) the numbered requested to which it is responsive; (3) the person from whom the document was obtained; and (4) for documents generated by the recipient, the person and/or file name or number from which it was obtained.

32. In the event that Sitrick withholds any document on the basis that it is privileged, subject to work-product immunity, or is otherwise excludable from discovery, Sitrick is requested to list such documents by request number and to provide the following information:

- (a) the identity of the authors;
- (b) the identity of all recipients;
- (c) the date of the document;
- (d) the subject matter or purpose of the document or report;
- (e) the nature of the relationship between the authors and counsel with sufficient particularity to sustain the asserted privilege;
- (f) whether direct quotes or paraphrases of advice from counsel were identified;
- (g) whether such quotes could be redacted, leaving non-privileged information; and,
- (h) any other information necessary to reveal the basis upon which the document is withheld to provide HMR with sufficient information to determine whether the stated basis for withholding the document is proper.

33. If any document responsive to these requests once existed but has been destroyed, lost, discarded or is otherwise not available for production, the recipient shall identify in

writing each such document, including the date of the document's creation, a description of the document's subject matter, the name and address of each person who prepared, received, viewed, or had possession, custody or control of the document or otherwise had knowledge of its subject matter, and a statement of the circumstances under which the document was destroyed, lost, discarded or why such document is otherwise not available for production.

SHOOK, HARDY & BACON L.L.P.

By: \_\_\_\_\_

James M. Spears  
D. Edward Wilson, Jr.  
Peter D. Bernstein  
60014th Street, N.W.  
Washington, D.C. 20005-2004  
202-783-8400

Attorneys for Respondent Hoechst Marion Roussel, Inc.

Dated: June \_\_, 2000

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

350 SOUTH GRAND AVENUE, 32ND FLOOR  
LOS ANGELES, CALIFORNIA 90071-3408  
213 - 473 - 2000  
FACSIMILE - 213 - 473 - 2222

WRITER'S DIRECT LINE  
213-473-2008

March 23, 2000

**VIA TELECOPIER and U.S. MAIL**

Karl Thurmond, Esq.  
Fenigstein & Kaufman  
1900 Avenue of the Stars  
Suite 2300  
Los Angeles, CA 90067

**RE: Biovail Corporation International v. Hoechst Aktiengesellschaft, et al.**

Dear Mr. Thurmond:

As we discussed, my firm has been retained to represent Sitrick & Company in connection with the subpoena you served Sitrick & Company in the above matter.

As I discussed with you on the phone, I have very limited knowledge regarding the underlying matter. Therefore, I request that you supply me with the most current complaint and any other related pleadings which will set forth the issues in the case as well as be prepared to advise me why you believe that Sitrick & Company has information that would be relevant to those issues that cannot more easily be obtained from the parties in this litigation. See F.R.Civ.P. 45 (c)(1). Once I obtain that information and have a chance to discuss the same with my client, I will be in a better position to respond to your subpoena.

In addition, you have advised me that your client's matter is related to and discovery is being "coordinated with" the In re Cardizem CD Antitrust Litigation. I, at your request, faxed to you today a copy of that subpoena. Sitrick & Company also objects to being served with two subpoenae calling for three depositions in two cities in litigation where the discovery is supposedly being "coordinated." I am particularly troubled by your inability to articulate to me how Sitrick & Company could have any information relevant to the issues in what you said was patent and antitrust litigation.

Given the shortness of time afforded my client to respond to the Subpoena, this letter should also serve as our initial objection thereto.

Kark Thurmond, Esq.

- 2 -

March 23, 2000

In the event that the information you supply me establishes that Sitrick & Company has relevant information that cannot easily be obtained from the parties to the litigation, we will work with you and other counsel to arrange for a mutually convenient time and place for a single deposition.

Very truly yours,



Stephen D. Alexander

cc: Michael S. Lazaroff, Esq.  
Stephen Lowey, Esq.

# 60215

**FRIED, FRANK, HARRIS, SHRIVER & JACOBSON**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

350 SOUTH GRAND AVENUE, 32ND FLOOR  
LOS ANGELES, CALIFORNIA 90071-3408  
213 - 473 - 2000  
FACSIMILE - 213 - 473 - 2222

WRITER'S DIRECT LINE  
213-473-2008

March 23, 2000

**VIA TELECOPIER and U.S. MAIL**

Michael S. Lazaroff, Esq.  
Solomon, Zauderer, Ellenhorn, Frischer & Sharp  
45 Rockefeller Plaza, Suite 730  
New York, N.Y. 10111

RE: **In re Cardizem CD Antitrust Litigation**

Dear Mr. Lazaroff:

My firm has been retained to represent Sitrick & Company in connection with the subpoena you served Sitrick & Company in the above mentioned matter.

I have very limited knowledge regarding the underlying matter. Therefore, I request that you supply me with the most current complaint and any other related pleadings which will set forth the issues in the case as well as be prepared to advise me why you believe that Sitrick & Company has information that will be relevant to those issues that cannot more easily be obtained from the other parties in this litigation. See F.R.Civ.P. 45 (c)(1). Once I obtain that information and have a chance to discuss the same with my client, I will be in a better position to respond to the subpoena. I also enclose a copy of my letter to Mr. Thurmond relating to a subpoena served on my client in what I am led to believe is a related litigation.

Given the shortness of time afforded my client to respond to the subpoena, this letter will also serve as our initial objection thereto.

As I have also advised Mr. Thurmond, in the event that the information you supply me establishes that Sitrick & Company has relevant information that cannot easily be obtained from the parties, we will work with all counsel to arrange for a single deposition at a mutually convenient time and place.

Very truly yours,

  
Stephen D. Alexander

Encl.

# 60219



**FRIED, FRANK, HARRIS, SHRIVER & JACOBSON**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

350 SOUTH GRAND AVENUE, 32ND FLOOR  
LOS ANGELES, CALIFORNIA 90071-3408  
213 - 473 - 2000  
FACSIMILE - 213 - 473 - 2222

WRITER'S DIRECT LINE  
213-473-2008

April 10, 2000

**VIA HAND DELIVERY**

Karl Thurmond, Esq.  
Fenigstein & Kaufman  
1900 Avenue of the Stars  
Suite 2300  
Los Angeles, CA 90067

RE: **Biovail Corporation International v. Hoechst Aktiengesellschaft, et al.**

Dear Mr. Thurmond:

As discussed, enclosed are the documents (SIT 00001-557) from Sitrick and Company's files responsive to Hoechst's subpoena in the above-mentioned matter. You have agreed to make copies of these documents available to Biovail's counsel in the above action. As I advised you, I will copy and send to you the pleadings, news clippings and public documents files when I receive them from my client. As set forth in my prior letter, Sitrick's production of these documents is without waiver of its objections to your subpoena. The cost for copying 557 pages is \$94.69.

I do not know whether counsel in the other action will pursue a deposition, or if they do, whether we will agree to one. However, if there is to be a deposition we will request that there only be one.

Finally, this will confirm that no documents responsive to your subpoena were withheld from production on the grounds of privilege or any other ground. I trust that this satisfies your concerns.

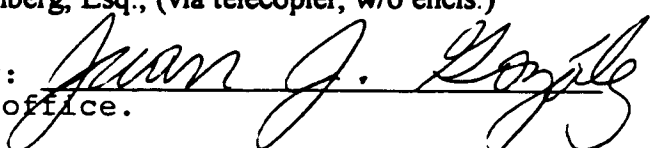
Very truly yours,

  
Stephen D. Alexander

Encls.

cc: Ronald Rauschberg, Esq., (via telecopier, w/o encls.)

# 60693

Received by:   
Thurmond's office.

**FRIED, FRANK, HARRIS, SHRIVER & JACOBSON**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

350 SOUTH GRAND AVENUE, 32ND FLOOR

LOS ANGELES, CALIFORNIA 90071-3408

213 - 473 - 2000

FACSIMILE - 213 - 473 - 2222

WRITER'S DIRECT LINE  
213-473-2008

April 19, 2000

**VIA TELECOPIER**

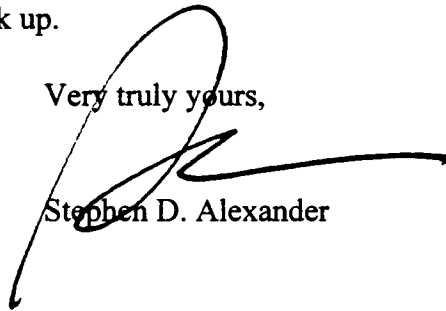
Karl Thurmond, Esq.  
Fenigstein & Kaufman  
1900 Avenue of the Stars  
Suite 2300  
Los Angeles, CA 90067

RE: **Biovail Corporation International v. Hoechst Aktiengesellschaft, et al.**

Dear Mr. Thurmond:

The second batch of documents (SIT 0000558-0002394) from Sitrick and Company's files responsive to Hoechst's subpoena in the above-mentioned matter are available. You have agreed to make copies of these documents available to Biovail's counsel in the above action. The cost for copying 1,837 pages is \$312.29. The cost for the prior set of documents was \$94.09. Please make your check payable to Fried, Frank, Harris, Shriver & Jacobson for the copies, and send your messenger with the check and we will have the documents ready for pick up.

Very truly yours,



Stephen D. Alexander

cc: Ronald Rauschberg, Esq., (via telecopier)

# 60975

Documents Received By: Scot Nelson

Date: 4-19-00

Time: 12:45

**FRIED, FRANK, HARRIS, SHRIVER & JACOBSON**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

350 SOUTH GRAND AVENUE, 32ND FLOOR

LOS ANGELES, CALIFORNIA 90071-3406

213 · 473 · 2000

FACSIMILE · 213 · 473 · 2222

WRITER'S DIRECT LINE

213-473-2008

April 25, 2000

**VIA Federal Express**

Michael S. Lazaroff  
Solomon, Zauderer, Ellenhorn, Frischer & Sharp  
45 Rockefeller Plaza, Suite 730  
New York, N.Y. 10111

RE: **In re Cardizem CD Antitrust Litigation**

Dear Mr. Lazaroff:

I am enclosing Sitrick's document production SIT 00001-SIT 0002394 which are responsive to the subpoena in the above mentioned action. In producing these documents Sitrick does not waive its objections to the subpoena.

The total cost for producing these documents as well as the Federal Express charge is \$ 445.78. Please send us your check payable to Fried, Frank, Harris, Shriver and Jacobson.

You have agreed to make copies of these documents to all parties in the above matter.

Very truly yours,

  
Stephen D. Alexander

Encl.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ORIGINAL

In Re ) MDL DOCKET NO. 1278  
CARDIZEM CD ANTITRUST LITIGATION ) THIS DOCUMENT RELATES  
TO ALL ACTIONS )  
( PAGES 1-312 )

DEPOSITION OF:

MICHAEL S. SITRICK  
WEDNESDAY, AUGUST 30, 2000  
10:18 A.M.

REPORTED BY:

XAVIER MIRELES



SR NO. 5001  
Manhattan Reporting Tel 212-557-7400  
Advocate Reporting Tel 212-697-6565

worldwide court reporting • legal videography • litigation support services

420 Lexington Avenue, Suite 2108 New York NY 10170  
Tel 212-557-7400 Fax 212-692-9171 1-888-325-3376(DEPO)

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

BIOVAIL CORPORATION	)	
INTERNATIONAL,	)	CASE NO.
Plaintiff,	)	CV-98-1434-FSH
v.	)	(PAGES 1-312)
HOECHST AKTIENGESELLSCHAFT,	)	
HOECHST MARION ROUSSEL, INC.,	)	
HOECHST MARION ROUSSEL NORTH	)	
AMERICA INC., CARDERM CAPITAL	)	
L.P., HORST WAESCHE, DANIEL	)	
CAMUS, RICHARD J. MARKHAM, PETER	)	
W. LADELL, GERALD P. BELL and	)	
JURGEN DORMANN,	)	
Defendants.	)	
	)	

---

DEPOSITION OF:

MICHAEL S. SITRICK  
WEDNESDAY, AUGUST 30, 2000  
10:18 A.M.

REPORTED BY:

XAVIER MIRELES  
CSR NO. 5001

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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In Re the Matter of )  
HOECHST MARION ROUSSEL, INC., )  
a corporation, CARDERM CAPITAL ) DOCKET NO. 9293  
L.P., a limited partnership, ) (PAGES 1-312)  
 )  
and )  
 )  
ANDRX CORPORATION, a corporation.)  
\_\_\_\_\_ )

DEPOSITION OF:

MICHAEL S. SITRICK  
WEDNESDAY, AUGUST 30, 2000  
10:18 A.M.

REPORTED BY:

XAVIER MIRELES  
CSR NO. 5001

1                   Deposition of MICHAEL S. SITRICK, the witness,  
2 taken on behalf of the Defendants, on Wednesday,  
3 August 30, 2000, 10:18 a.m., at 350 South Grand Avenue,  
4 32nd Floor, Los Angeles, California 90071, before  
5 XAVIER MIRELES, CSR No. 5001.

6  
7  
8 APPEARANCES OF COUNSEL:

9  
10 FOR CLASS PLAINTIFFS IN RE CARDIZEM CD MDL-1278:

11                   BERMAN DeVALERIO PEASE & TABACCO

12                   BY: NICOLE C. LAVALLEE, ATTORNEY-AT-LAW

13                   425 California Street

14                   Suite 2025

15                   San Francisco, California 94104-2205

16                   (415) 433-3200

17  
18 FOR PLAINTIFF BIOVAIL CORPORATION:

19                   PROSKAUER ROSE, LLP

20                   BY: JOHN SIEGAL, ESQ.

21                   1585 Broadway

22                   New York, New York 10036-8299

23                   (212) 969-2900  
24  
25

1 APPEARANCES OF COUNSEL (CONTINUED):

2

3 FOR HOECHST DEFENDANTS IN BIOVAIL V. HOECHST, ET AL.:

4 CONNELL FOLEY, LLP

5 BY: BRENDAN JUDGE, ESQ.

6 -and-

7 MITCHELL W. TARASCHI, ESQ.

8 85 Livingston Avenue

9 Roseland, New Jersey 07068

10 (973) 535-0500

11

12 FOR HOECHST DEFENDANTS IN RE CARDIZEM CD MDL-1278:

13 SHOOK, HARDY & BACON LLP

14 BY: LAURIE A. NOVION, ATTORNEY-AT-LAW

15 One Kansas City Place

16 Kansas City, Missouri 64105

17 (816) 474-6550

18

19 FOR DEFENDANT ANDRX CORPORATION:

20 SOLOMON, ZAUDERER, ELLENHORN, FRISCHER & SHARP

21 BY: MICHAEL S. LAZAROFF, ESQ.

22 45 Rockefeller Plaza

23 New York, New York 10111

24 (212) 956-3700

25



1 APPEARANCES OF COUNSEL (CONTINUED):

2

3 FOR THE WITNESS:

4 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

5 BY: STEPHEN D. ALEXANDER, ESQ.

6 350 South Grand Avenue

7 32nd Floor

8 Los Angeles, California 90071

9 (213) 473-2008

10

11 ALSO PRESENT:

12 ROBIN L. MOORE, ATTORNEY-AT-LAW

13 FEDERAL TRADE COMMISSION

14 601 Pennsylvania Avenue, N.W.

15 Washington, DC 20580

16 (202) 326-3133

17

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, AUGUST 30, 2000

2 10:18 A.M.

3  
4 DEPOSITION OFFICER: Good morning.

5 My name is Xavier Mireles, Certified Shorthand  
6 Reporter No. 5001.

7 My business address is Wishnow, Tearney,  
8 Killion, a LegaLink Company, 16830 Ventura Boulevard,  
9 Suite 315, Encino, California 91436.

10 Today's date is August 30, 2000. The time is  
11 10:18 a.m. This is the deposition of Michael S.  
12 Sitrick.

13 Would you please raise your right hand to be  
14 sworn.

15  
16  
17 MICHAEL S. SITRICK,

18 having been first duly sworn, was

19 examined and testified as follows:

20  
21 DEPOSITION OFFICER: Would counsel and all  
22 present please identify themselves for the record.

23 MR. ALEXANDER: Steve Alexander of the firm of  
24 Fried, Frank, Harris, Shriver and Jacobson, representing  
25 the witness Michael Sitrick and Sitrick and Company.

1           And I just want to note for the record that  
2 Mr. Sitrack is appearing both as an individual and on  
3 behalf of Sitrack and Company.

4           There are, I believe, five subpoenas that were  
5 served on either Sitrack or Sitrack and Company, only  
6 two of which called for depositions pursuant to the  
7 order of the court in the Southern District of New  
8 York.

9           This deposition is being conducted in response  
10 to all those depositions that -- in the three actions  
11 which we will give you the captions for at a break for  
12 which subpoenas have been issued to Sitrack and Company  
13 for matters arising out of the various lawsuits which I  
14 will just describe generally, and then I will give you  
15 the captions as to the lawsuits.

16           Biovail versus Hoechst in the federal court in  
17 New Jersey; a whole series of lawsuits referred to as  
18 the In Re Cardizem Litigation, MDL-2349, Michigan  
19 Eastern District; and a proceeding before the Federal  
20 Trade Commission. Those being the three actions which  
21 have generated, I believe -- someone will correct me if  
22 I am wrong -- I think it's five subpoenas to Sitrack and  
23 Sitrack and Company.

24           MR. SIEGAL: John Siegal, Proskauer Rose,  
25 representing Biovail Corporation.

1 MS. LAVALLEE: Nicole Lavallee of Berman,  
2 DeValerio, Pease and Tabacco, representing the class  
3 plaintiffs in the In Re Cardizem litigation in Michigan.

4 MS. MOORE: Robin Moore representing the  
5 Federal Trade Commission.

6 MS. NOVION: Laurie Novion representing the  
7 Hoechst defendants in the In Re Cardizem CD and Andrx  
8 litigation.

9 MR. TARASCHI: Mitchell Taraschi representing  
10 the Hoechst defendants in the Biovail versus Hoechst  
11 action in New Jersey.

12 MR. JUDGE: Brendan Judge of Connell, Foley  
13 representing the Hoechst defendants in the Biovail  
14 versus Hoechst action pending in the District Court in  
15 New Jersey.

16 MR. LAZAROFF: Michael Lazaroff representing  
17 Andrx Pharmaceuticals, defendant in the multi-district  
18 litigation in the Eastern District of Michigan as well  
19 as in the FTC proceeding.

20 MR. JUDGE: There is a couple of stipulations  
21 before we begin.

22 As we discussed off the record, Steve, it's my  
23 understanding -- and correct me if I am wrong -- that  
24 Sitrick and Company is willing to stipulate to the  
25 authenticity of any document produced by Sitrick and

1 Company in response to the subpoenas at issue that was  
2 created by Sitrick and Company.

3 Sitrick and Company is also willing to  
4 stipulate that with regard to the documents produced by  
5 Sitrick and Company that were not created by Sitrick and  
6 Company, that such documents are authentic copies of the  
7 documents in Sitrick and Company's files.

8 Did I state that correctly?

9 MR. ALEXANDER: Yes. Let me just elaborate on  
10 that.

11 Sitrick and Company produced, I believe, it's  
12 about six Redwelds with over 2,000 pages of documents in  
13 two separate productions originally to counsel for  
14 Hoechst, I believe --

15 MR. JUDGE: In the Biovail action.

16 MR. ALEXANDER: -- in the Biovail action, who  
17 had represented that he would make copies then available  
18 to all other counsel. I assume that that's been done.

19 There was a request from, I guess -- I believe  
20 it's one of the counsel for Hoechst, that we update that  
21 production.

22 And so we have reviewed the files, and there  
23 are no documents responsive to the subpoena -- subpoenas  
24 that is subsequent to production being made, which I  
25 believe was in late March, and then the other one was in

1 mid-April.

2 MR. JUDGE: One point of clarification.  
3 Hoechst local counsel, to whom you produced the  
4 documents in the Biovail action, did undertake to  
5 provide copies to the other counsel in the Biovail  
6 action.

7 And I don't know what was done in the other  
8 actions.

9 MR. LAZAROFF: And the clarification is that  
10 Sitrick and Company through Mr. Alexander produced the  
11 same set of documents to Andrx Pharmaceuticals -- I  
12 don't know the precise time frame, but I think sometime  
13 in April.

14 MR. ALEXANDER: So I am led to believe that  
15 everybody has either gotten them or had the opportunity  
16 to get them.

17 MR. LAZAROFF: And over the weekend, I had had  
18 a copy set of those sent to the government, to the FTC.

19 MS. MOORE: We reviewed them.

20 MR. ALEXANDER: Now going back to the specific  
21 stipulation, Sitrick will stipulate -- and the other  
22 people I guess would have to join into this, because we  
23 are not party to the actions -- that the documents  
24 produced -- at some point, if you want, we can identify  
25 Bates stamp ranges for the record; they are all in

1 correspondence -- are copies of documents that are found  
2 in the files of Sitrack and Company.

3 To the extent that Sitrack actually prepared  
4 them, they are copies of documents prepared by Sitrack.

5 Others, you know, would have been prepared by  
6 others.

7 I am not so sure that all the documents on the  
8 face is going to be clear who prepared them. Some of  
9 them, they have letterheads.

10 MR. JUDGE: That's one of the reasons why we  
11 are here today.

12 MR. ALEXANDER: There may be a few documents  
13 where it may not be clear on the faces as to who  
14 actually prepared it.

15 MR. JUDGE: John, on behalf of Biovail, I  
16 believe Francis Landrey went on record with  
17 Judge Chesler in New Jersey indicating that Biovail had  
18 no objection to any stipulation as to authenticity that  
19 Sitrack and Company was willing to enter into.

20 So is that your understanding, as well?

21 MR. SIEGAL: We will concur in any stipulation  
22 that Mr. Alexander enters into on behalf of Sitrack that  
23 documents produced from the files of Sitrack and Company  
24 are authentic.

25 And we will look to Mr. Alexander to be the

1 arbiter of that if there are any disputes about the  
2 particular documents.

3 MR. JUDGE: All right. I am not sure what  
4 that last phrase means, but I understand your  
5 stipulation, and we will go forward.

6 MR. SIEGAL: It means that he is stipulating  
7 and if there is any question, we will look to him and he  
8 will confirm whether or not that's a document that's  
9 within the scope of the stipulation that was entered  
10 into.

11 MR. JUDGE: I understand.

12 Thank you.

13 MR. LAZAROFF: Let's go off the record for a  
14 moment.

15 (Discussion had off the record.)

16 MR. LAZAROFF: Let's go on the record.

17 Do you want to repeat what you said about the  
18 Federal Rules of New York?

19 MR. ALEXANDER: Sure. What are you going to  
20 do about the copy?

21 You probably don't have copies enough for  
22 everybody to see.

23 MR. LAZAROFF: One of the reasons I was -- I  
24 had had copies made of the documents I might use.

25 I have, I think, hopefully five copy sets



1 there, which is not quite enough.

2 MR. JUDGE: I have copies for the witness and  
3 for his counsel. We have Bates stamp numbers we are  
4 trying to work off of.

5 MR. ALEXANDER: Well, what we can also do is  
6 we would be happy to at a break -- except for if there  
7 is voluminous ones, if everybody wants to leave here  
8 with a marked copy, I will just have my copy service run  
9 off a set so that everybody can have one.

10 If there are big, thick documents, I will just  
11 give you the first page that has the Bates number on it,  
12 and we will do it that way. Okay.

13 I will just say that again, as I said before,  
14 this is taken pursuant to an order of the judge in the  
15 Southern -- Judge Casey, I believe, in the Southern  
16 District of New York.

17 Apparently all counsel for all parties wishing  
18 to have a deposition of Mr. Sitrack and Sitrack and  
19 Company are here.

20 I think that the deposition is governed by the  
21 Federal Rules of Civil Procedure as applied in the  
22 Southern District of New York, although I don't think  
23 there is any difference with respect to any of the other  
24 jurisdictions that might be applicable.

25 And I guess Mr. Lazaroff on behalf of Andrx is

1 MR. LAZAROFF: In my review I didn't see any  
2 retention letter.

3 MR. ALEXANDER: Okay.

4 THE WITNESS: I will check our files, too.

5 BY MR. JUDGE:

6 Q. Mr. Sitrack, you have testified earlier  
7 regarding your notes in this matter. Do you know  
8 whether there is any notes that weren't previously  
9 produced?

10 A. Not to my knowledge.

11 Q. In your representation of your clients, do you  
12 feel that it is Sitrack and Company's obligation to  
13 provide to them all information that comes to your  
14 attention that's pertinent to their issue on which you  
15 are representing them?

16 MR. ALEXANDER: Object to the form of the  
17 question.

18 If you understand it, you can answer it.

19 THE WITNESS: I do.

20 BY MR. JUDGE:

21 Q. And did you comply with that obligation to the  
22 best of your ability with regard to your representation  
23 of Biovail?

24 A. I did.

25 Q. Did you comply with that obligation to the

1 Q. Okay. When billing Lowey, were there --

2 MR. ALEXANDER: Asked and answered, but you  
3 can answer it again.

4 THE WITNESS: It was all grouped together.

5 MR. TARASCHI: Thank you.

6 Q. You had mentioned earlier that your secretary  
7 was charged with gathering up all these documents and  
8 going to each of the executives who may have worked on  
9 that. What is that secretary's name?

10 A. Stephanie Pion, P-I-O-N.

11 Though I am not sure it quite worked that  
12 way. She may have directed -- she may have sent an  
13 E-mail to them, directed them to gather their  
14 executive's files and bring them to a central place. I  
15 don't know how she did it. But actually we had counsel  
16 directing her on how to -- what to do and how to do it,  
17 and she followed their direction.

18 Q. Okay. The technician that checked the  
19 E-mails, what was that person's name?

20 A. Well, the most recent one is Sandra Overby,  
21 O-V-E-R-B-Y. And before her was Michael Stewart, who is  
22 no longer with the firm.

23 But each of the individual executives was  
24 asked to also check their E-mail and to print out any  
25 copies that were still in the E-mail.

1 and, God forbid, I should be sleeping at 4:30 in the  
2 morning.

3 So those people technically worked on the  
4 Lowey, Dannenberg matter, because if they would have  
5 taken calls and taken questions but not answered them  
6 and then referred them to us, they technically would  
7 have worked.

8 So if they would have had any notes, if they  
9 would have had any documents, they would have been  
10 queried.

11 But they weren't involved in the day-to-day  
12 interchange with Lowey, Dannenberg. So that's what I  
13 meant by other people.

14 Q. The only person you recall working on a  
15 day-to-day basis was Mr. Seiler?

16 A. And he worked really assisting me in the  
17 matter maybe during the first drafts and so forth.

18 MR. LAZAROFF: A final point with regard to  
19 the FTC proceeding.

20 To the extent that the documents have been  
21 produced in the MDL in the New Jersey action, I don't  
22 believe there has been a formal production in the FTC  
23 proceeding. To the extent that the documents produced  
24 to date were not fully responsive to the subpoena in the  
25 FTC proceedings, the defendants reserve the right to

1 requestion the witness, if necessary, if there is a  
2 further production of further documents.

3 THE WITNESS: I would just like to say I know  
4 of no documents that were requested that were not  
5 produced.

6 MR. LAZAROFF: To the FTC subpoena? It's a  
7 different subpoena.

8 MR. ALEXANDER: You asked the question, and I  
9 will respond to that.

10 THE WITNESS: Go ahead. Any subpoena.

11 MR. ALEXANDER: No.

12 THE WITNESS: There are no documents to my  
13 knowledge to any subpoena that has not been produced.

14 MR. JUDGE: One clarification to our request  
15 for the billing records with regard to your work for  
16 Biovail.

17 We would also like a copy of your billing  
18 records with regard to your work for the Lowey,  
19 Dannenberg firm regarding any dispute regarding  
20 Cardizem CD.

21 MR. ALEXANDER: The -- in response to the FTC  
22 subpoena, we agreed. I don't know that we actually  
23 physically delivered another set of documents to  
24 Hoechst's counsel, the separate counsel that is in  
25 that. We agreed that Hoechst, which already had the

1 documents that have been produced, could have -- could  
2 use these documents in the FTC proceeding.

3           So we complied with that subpoena in that fax  
4 and in response to a request from Hoechst's counsel,  
5 since that subpoena was served subsequent to the  
6 subpoenas served by Hoechst in the New Jersey action and  
7 Andrx in the MDL, we reviewed to see if there were any  
8 documents but because of the timing difference hadn't  
9 been produced.

10           And as I said at the beginning of this, after  
11 reviewing it, there were none. So I don't anticipate  
12 producing any additional documents in response to any of  
13 the subpoenas, unless for some reason have stumbled  
14 across a document that should have been, and I will give  
15 it to you, Counsel.

16           But there is nothing that I am aware of now,  
17 and we did review the subject as recently as Friday.

18           THE WITNESS: Last week.

19           MR. ALEXANDER: Friday.

20           MR. LAZAROFF: That's all.

21           DEPOSITION OFFICER: This examination is  
22 complete.

23           MR. ALEXANDER: For the record, I assume you  
24 guys are going to have -- we have three different  
25 proceedings in which this transcript is being prepared.

1 MR. ALEXANDER: And if the court reporter, if  
2 you could take the originals of those and separately  
3 bind them in a volume, I will return the originals to  
4 you with the rest of the transcript, the originals of  
5 the exhibit.

6 MR. LAZAROFF: Actually, I want to order with  
7 a copy of the transcript, a copy of the exhibits.

8 MR. ALEXANDER: The original is marked. He  
9 will separately bind it, and I will send it back to  
10 you. So you get the originals of everything, the  
11 transcript. And the weighty responsibility there.

12 MR. JUDGE: And I request a copy of the  
13 transcript and the exhibits, as well.

14 MR. LAZAROFF: So stipulated.

15 MR. JUDGE: So stipulated.

16 MR. TARASCHI: So stipulated.

17 MS. NOVION: So stipulated.

18 MS. LAVALLEE: So stipulated.

19 MR. SIEGAL: So stipulated.

20 MR. ALEXANDER: So stipulated.

21 (Deposition session concluded at 9:47 p.m.)  
22  
23  
24  
25

**FRIED, FRANK, HARRIS, SHRIVER & JACOBSON**  
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WRITER'S DIRECT LINE  
213-473-2008

August 25, 2000

**VIA TELECOPIER and U.S. MAIL**

Michael S. Lazaroff, Esq.  
Solomon, Zauderer, Ellenhorn, Frischer & Sharp  
45 Rockefeller Plaza, Suite 730  
New York, N.Y. 10111

RE: **In re Cardizem CD Antitrust Litigation, MDL Docket No. 1278; Biovail Corporation International v. Hoechst AG et al., No. 98-1434 (FSH); and In the Matter of Hoechst Marion Roussel, Inc., et. al. FTC Docket No. 9293**

Dear Michael:

In light of Judge Casey's ruling, we are making Mr. Michael Sitrick available for his deposition on Wednesday, August 30, 2000, commencing at 10:00 a.m., at our Los Angeles offices. By copy of this letter I am notifying the attorneys for the parties that I am aware of in the above related litigations.

However, I believe it is your responsibility to advise all counsel that this will be the one and only deposition of Sitrick & Co. or Michael Sitrick in these actions. In any event, if I have excluded anyone, please either notify them in writing or let me know who they are and we will notify them. I assume you will arrange for a court reporter. In addition, please let me know how many attorneys will be attending.

Very truly yours,



Stephen D. Alexander

**Via Telecopier to All Counsel:**

cc: Stephen Lowey, Esq.  
James M. Spears, Esq.  
Lindsey H. Taylor, Esq.  
D.E. Wilson, Jr., Esq.  
Peter Sherwin, Esq.  
Peter O. Safir, Esq.  
Norman C. Ankers, Esq.  
Joseph Tabacco, Esq.  
Douglas Patton

Michael L. Koon, Esq.  
Brendan Judge, Esq.  
Francis Landrey, Esq.  
Karl S. Thurmond, Esq.  
Markus Meier  
Elwood S. Simon, Esq.  
Craig L. John, Esq.  
Stuart Des Rouches

# 64912



**FRIED, FRANK, HARRIS, SHRIVER & JACOBSON**

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WRITER'S DIRECT LINE

June 27, 2000

213-473-2070

**VIA TELECOPIER**

James M. Spears  
Shook Hardy & Bacon LLP  
600 14<sup>th</sup> Street, N.W., Suite 800  
Washington, DC 20005

RE: **In re Hoechst Marion Roussel, Inc., et al.**

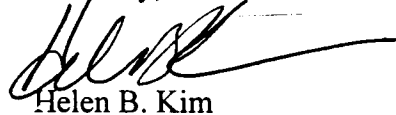
Dear Mr. Spears:

On behalf of Sitrick & Company ("Sitrick"), I write in response to your subpoena, which is dated May 11, 2000, but which was not received by Sitrick until June 23, 2000.

It is my understanding that you are in the process of working out a stipulation with Biovail's counsel that would create an "Attorneys Eyes Only" or "Highly Confidential" designation in the FTC proceeding. Subject to such a stipulation, Sitrick is willing to agree that the documents produced by Sitrick in the MDL or New Jersey actions, which constitute Sitrick's documents responsive to your subpoena, may be used in the FTC proceeding.

I trust that, until such a stipulation has been agreed to, no further action is necessary on Sitrick's part.

Sincerely,



Helen B. Kim

63295



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

\_\_\_\_\_  
In the Matter of )  
)

HOECHST MARION ROUSSEL, INC., )  
a corporation, )

CARDERM CAPITAL L.P., )  
a limited partnership, )

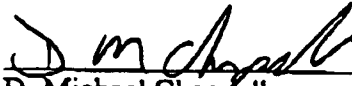
and )

ANDRX CORPORATION, )  
a corporation. )  
\_\_\_\_\_

Docket No. 9293

**ORDER GRANTING CONSENT MOTION  
TO AMEND AND REISSUE PROTECTIVE ORDER**

IT IS HEREBY ORDERED that the Consent Motion to Amend and Reissue Protective Order Governing Discovery Material, filed July 24, 2000, is hereby GRANTED.

  
\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date: August 7, 2000

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

**SECOND AMENDED PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL**

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter (the "Matter") against improper use and disclosure of confidential information submitted or produced in connection with this Matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

**DEFINITIONS**

1. "Matter" means the matter captioned *In the Matter of Hoechst Marion Roussel, Inc., Carderm Capital L.P., and Andrx Corporation*, Docket Number 9293, pending before the Federal Trade Commission, and all subsequent appellate or other review proceedings related thereto.
2. "Commission" or "FTC" means the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting or purporting to act on its behalf,

excluding persons retained as consultants or experts for purposes of this Matter.

3. "HMR" means Aventis Pharmaceuticals Inc., formerly known as Hoechst Marion Roussel, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Parsippany, New Jersey.

4. "Carderm" means Carderm Capital L.P., a limited partnership organized, existing, and doing business under and by virtue of the laws of the Delaware, with its office and principal place of business located at Hamilton, Bermuda.

5. "Andrx" means Andrx Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Fort Lauderdale, Florida.

6. "Party" means either the FTC, HMR, Carderm or Andrx.

7. "Respondents" means HMR, Carderm and Andrx.

8. "Outside Counsel" means the law firm(s) that is/are counsel of record for Respondents in this Matter and its/their associated attorneys; persons regularly employed by such law firm(s) (including legal assistants, clerical staff, and information management personnel) and temporary personnel retained by such law firm(s) to perform legal or clerical duties, or to provide logistical litigation support with regard to this Matter; provided that any attorney associated with Outside Counsel shall not be a director, officer or employee of Respondents. The term Outside Counsel does not include persons retained as consultants or experts for the purposes of this Matter.

9. "Producing Party" means a Party or Third Party that produced or intends to

produce Confidential Discovery Material to any of the Parties. For purposes of Confidential Discovery Material of a Third Party that either is in the possession, custody or control of the FTC or has been produced by the FTC in this Matter, the Producing Party shall mean the Third Party that originally provided the Confidential Discovery Material to the FTC. The Producing Party shall also mean the FTC for purposes of any document or material prepared by, or on behalf of the FTC.

10. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a party to this Matter -- including without limitation Biovail Corporation ("Biovail") and Faulding Inc. ("Faulding") -- and their employees, directors, officers, attorneys and agents.

11. "Expert/Consultant" means experts or other persons who are retained to assist complaint counsel or Respondents' counsel in preparation for trial or to give testimony at trial.

12. "Document" means the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, envelope, telegraph meeting minute, memorandum statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication or any other data compilation, including all drafts of all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono

record, tape and other data compilations from which information can be obtained, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original.

13. "Discovery Material" includes without limitation deposition testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, documents produced pursuant to compulsory process or voluntarily in lieu thereof, and any other documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter.

14. "Confidential Discovery Material" means all Discovery Material that is designated by a Producing Party as confidential and that is covered by Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), and Commission Rule of Practice § 4.10(a)(2), 16 C.F.R. § 4.10(a)(2); submitted to the FTC pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, or formal interpretations or rules promulgated thereunder, 16 C.F.R. Part 800; or Section 26(c)(7) of the Federal Rules of Civil Procedure and precedents thereunder. Confidential Discovery Material shall include non-public commercial information, the disclosure of which to Respondent or Third Parties would cause substantial commercial harm or personal embarrassment to the disclosing party. The following is a non-exhaustive list of examples of information that likely will qualify for treatment as Confidential Discovery Material: strategic plans (involving pricing, marketing, research and development, product roadmaps, corporate alliances, or mergers and acquisitions) that have not been fully implemented or revealed to the public; trade secrets; customer-specific evaluations or data (e.g., prices, volumes, or revenues); personnel files and evaluations; information subject to

confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections; and proprietary consumer, customer or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Discovery Material.

#### TERMS AND CONDITIONS OF PROTECTIVE ORDER

1. Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose. The Parties, in conducting discovery from Third Parties, shall attach to such discovery requests a copy of this Protective Order and a cover letter that will apprise such Third Parties of their rights hereunder.

2. This paragraph concerns the designation of material as "Confidential" and "Restricted Confidential, Attorney Eyes Only."

(a) Designation of Documents as CONFIDENTIAL - FTC Docket No. 9293.

Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No. 9293" (or other similar notation containing a reference to this Matter) to the first page of a document containing such Confidential Discovery Material, or, by Parties by instructing the court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen (14) days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the



designations that the document constitutes or contains "Confidential Discovery Material."

(b) Designation of Documents as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY"

In order to permit Producing Parties to provide additional protection for a limited number of documents which contain highly sensitive commercial information, Producing Parties may designate documents as "Restricted Confidential, Attorney Eyes Only" by placing on or affixing such legend on each page of the document. It is anticipated that documents to be designated Restricted Confidential, Attorney Eyes Only may include certain marketing plans, sales forecasts, business plans, the financial terms of contracts, operating plans, pricing and cost data, price terms, analyses of pricing or competition information, and personnel information, and that this particularly restrictive designation is to be utilized for a limited number of documents. Documents designated Restricted Confidential, Attorney Eyes Only shall not be disclosed to the individuals designated under paragraph 5, hereof, and shall not be disclosed to Experts/Consultants (paragraph 4(c), hereof) and to witnesses or deponents at trial or deposition (paragraph 4(d) hereof), in each instance who are officers, directors, or employees of pharmaceutical companies except in accordance with subsection (c) of this paragraph 2. In all other respects, Restricted Confidential, Attorney Eyes Only material shall be treated as Confidential Discovery Material and all references in this Protective Order and in the exhibit hereto to Confidential Discovery Material shall include documents designated Restricted Confidential, Attorney Eyes Only.

(c) Disclosure to Experts/Consultants, Deponents or Witnesses in Each Instance Who Are Officers, Directors, or Employees of Pharmaceutical Companies

If any Party desires to disclose Restricted Confidential, Attorney Eyes Only material to any Expert/Consultant, deponent or witness in each instance who is an officer, director, or employee of a pharmaceutical company ("the individual"), the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific individual to whom the Restricted Confidential, Attorney Eyes Only material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the proposed individual. The Producing Party may object to the disclosure of the Restricted Confidential, Attorney Eyes Only material within five (5) business days of receiving notice of an intent to disclose the Restricted Confidential, Attorney Eyes Only material to an individual by providing the disclosing Party with a written statement of the reasons for the objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual, absent a written agreement with the Producing Party, order of the Administrative Law Judge or ruling on appeal. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified individual. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not object to the disclosure of Restricted Confidential, Attorney Eyes Only material to the Expert/Consultant within five (5) business days,

the disclosing Party may disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual.

**(d) Disputes Concerning Designation or Disclosure of Restricted Confidential, Attorney Eyes Only Material**

Disputes concerning the designation or disclosure of Restricted Confidential, Attorney Eyes Only material shall be resolved in accordance with the provisions of paragraph 7.

**(e) No Presumption or Inference**

No presumption or other inference shall be drawn that material designated Restricted Confidential, Attorney Eyes Only is entitled to the protections of this paragraph.

**(f) Due Process Savings Clause**

Nothing herein shall be used to argue that a Party's right to attend the trial of, or other proceedings in, this matter is affected in any way by the designation of material as Restricted Confidential, Attorney Eyes Only.

3. To the extent any such material is made part of this proceeding, all documents heretofore obtained by compulsory process or voluntarily from any Party or Third Party, regardless of whether designated confidential by the Party or Third Party, and transcripts of any investigational hearings, interviews and depositions, which were obtained during the pre-complaint stage of this Matter shall be treated as Confidential Discovery Material. Material previously produced by Respondents or a Third Party, and designated as "Confidential," regardless of whether such materials have been marked in accordance with paragraph 2 above, shall be treated as Confidential Discovery Material as provided herein. The material referred to in this paragraph shall only be available for use in this proceeding once an independent basis has

been demonstrated for such use.

4. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to anyone except, in accordance with paragraphs 5 and 6, to:

(a) complaint counsel and the Commission, as permitted by the Commission's Rules of Practice;

(b) Outside Counsel;

(c) Experts/Consultants;

(d) witnesses or deponents at trial or deposition;

(e) the Administrative Law Judge and personnel assisting him;

(f) court reporters and deposition transcript reporters;

(g) judges and other court personnel of any court having jurisdiction over any appeal proceedings involving this Matter; and

(h) any author or recipient of Confidential Discovery Material (as indicated on the face of the document, record or material), and any individual who was in the direct chain of supervision of the author at the time the Confidential Discovery Material was created or received.

5. In addition to the above-designated persons, certain named designated individuals and in-house counsel not to exceed two attorneys per corporate party who do not have day to day business responsibilities shall be provided with access on the condition that each such in-house counsel or designated executive signs a declaration in the form attached hereto as Exhibit "A," which is incorporated herein by reference. For Respondent Carderm, the designated individual is Stephan Petri. For Respondent HMR, the designated individual is Edward Stratemeier, Vice President and General Counsel. For Respondent Andrx, the designated

individual is Scott Lodin, Vice President and General Counsel.

6. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to an Expert/Consultant unless such Expert/Consultant agrees in writing:

(a) to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

(b) to return such Confidential Discovery Material to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of the Expert/Consultant's assignment or retention or the conclusion of this Matter;

(c) to not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

(d) to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

7. This paragraph governs the procedures for the following specified disclosures and challenges to designations of confidentiality.

(a) Disclosure to Experts

If any Party desires to disclose Confidential Discovery Material to any expert who may testify, who is not an FTC employee, and who may have interests in the pharmaceutical industry beyond their employment as an expert in this Matter, the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific expert who may testify to whom the Confidential Discovery Material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional

address and/or affiliation of the proposed expert who may testify, and a current curriculum vitae of such expert identifying all other present and prior employers and/or firms in the pharmaceutical industry for which or on behalf of which the identified expert has been employed or done consulting work in the preceding four (4) years. The Producing Party may object to the disclosure of the Confidential Discovery Material within five (5) business days of receiving notice of an intent to disclose the Confidential Discovery Material to the identified expert by providing the disclosing Party with a written statement of the reasons for the objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Confidential Discovery Material to the identified expert, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified expert. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not object to the disclosure of Confidential Discovery Material to the identified expert within five (5) business days, the disclosing Party may disclose the Confidential Discovery Material to the identified expert.

(b) Challenges to Confidentiality Designations

If any Party seeks to challenge a Producing Party's designation of material as Confidential Discovery Material or any other restriction contained within this Protective Order, the challenging Party shall notify the Producing Party and all Parties of the challenge to such designation. Such notice shall identify with specificity (i.e., by document control numbers,

deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation within five (5) business days of receiving notice of the confidentiality challenge by providing the challenging Party and all Parties with a written statement of the reasons for the designation. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Discovery Material, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party preserving its rights and the challenging Party shall meet and confer in good faith in an attempt to negotiate changes to any challenged designation. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge as provided by paragraph 7(c) of this Protective Order. If the Producing Party does not preserve its rights within five (5) business days, the challenging Party may alter the designation as contained in the notice. The challenging Party shall notify the Producing Party and the other Party of any changes in confidentiality designations.

Regardless of confidential designation, copies of published magazine or newspaper articles, and excerpts from published books and public documents filed with the Securities and Exchange Commission may be used by any Party without reference to the procedures of this subparagraph.

(c) Resolution of Disclosure or Confidentiality Disputes

If negotiations under subparagraphs 7(a)-(b) of this Protective Order have failed to resolve the issues, a Party seeking to disclose Confidential Discovery Material or challenging a confidentiality designation or any other restriction contained within this Protective Order may make written application to the Administrative Law Judge for relief. Such application shall be served on the Producing Party and the other Party, and be accompanied by a certification that the meet and confer obligations of this paragraph have been met, but that good faith negotiations have failed to resolve outstanding issues. The Producing Party and any other Party shall have five (5) business days to respond to the application, which time may be extended by the Administrative Law Judge. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Discovery Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the Administrative Law Judge of the propriety of a requested disclosure or change in designation.

8. Confidential Discovery Material shall not be disclosed to any person described in subparagraphs 4(b), 4(c) and 4(d) and paragraph 5 of this Protective Order until such person has executed and transmitted to Respondent's counsel or complaint counsel, as the case may be, a declaration or declarations, as applicable, in the form attached hereto as Exhibit "A," which is incorporated herein by reference. Respondents' counsel and complaint counsel shall maintain a file of all such declarations for the duration of the litigation. Confidential Discovery Material shall not be copied or reproduced for use in this Matter except to the extent such copying or reproduction is reasonably necessary to the conduct of this Matter, and all such copies or reproductions shall be subject to the terms of this Protective Order. If the duplication process



by which copies or reproductions of Confidential Discovery Material are made does not preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be stamped "CONFIDENTIAL - FTC Docket No. 9293."

9. The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to persons not referred to in paragraphs 4 and 5 above. If Confidential Discovery Material is produced without the legend attached, such document shall be treated as Confidential from the time the Producing Party advises complaint counsel and Respondents' counsel in writing that such material should be so designated and provides all the Parties with an appropriately labeled replacement. The Parties shall return promptly or destroy the unmarked documents.

10. If the FTC: (a) receives a discovery request that may require the disclosure by it of a Third Party's Confidential Discovery Material; or (b) intends to or is required to disclose, voluntarily or involuntarily, a Third Party's Confidential Discovery Material (whether or not such disclosure is in response to a discovery request), the FTC promptly shall notify the Third Party of either receipt of such request or its intention to disclose such material. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Third Party at least five (5) business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Third Party of its rights hereunder.

11. If anyone receives a discovery request in another proceeding that may require the disclosure of a Producing Party's Confidential Discovery Material, the subpoena

recipient promptly shall notify the Producing Party of receipt of such request. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Producing Party at least five (5) business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Producing Party of its rights hereunder. The Producing Party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the subpoena recipient or anyone else covered by this Order to challenge or appeal any such order requiring production of Confidential Discovery Material, or to subject itself to any penalties for noncompliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission.

12. This Order governs the disclosure of information during the course of discovery and does not constitute an *in camera* order as provided in Section 3.45 of the Commission's Rules of Practice ("Rule"), 16 C.F.R. § 3.45.

13. *In camera* provisions

(a) The Commission's Rules of Practice require that material may not be withheld from the public record unless it falls within the scope of an order by the Administrative Law Judge that such material, or portions thereof, be placed *in camera*. 16 C.F.R. § 3.45(b) and (d). To comply with this rule, the Party seeking to introduce into evidence by filing a pleading, an exhibit thereto, or otherwise placing on the record Confidential Discovery Material ("filing Party") must first obtain an order by the Administrative Law Judge that such information has been granted *in camera* status.

An application for *in camera* treatment must: (1) specifically identify or describe the materials for which *in camera* treatment is sought; (2) provide reasons for granting such

materials *in camera* status; (3) specify the time period for which *in camera* treatment is sought for each document; and (4) attach as exhibits to the application the documents containing the specific information for which *in camera* treatment is sought.

A blanket *in camera* order for an entire pleading is contrary to public policy and will not be granted. The parties must specifically identify the portions of a pleading, document, deposition transcript, or exhibit for which *in camera* treatment is sought. Entire documents or exhibits will rarely, if ever, be eligible for *in camera* treatment. The parties are reminded that Rule 3.45 places the burden of showing that public disclosure will likely result in a clearly defined, serious injury upon the person requesting *in camera* treatment. In addition, to sustain the burden of proof, an application must be supported by proper evidence, such as affidavits, to support all factual issues. See 16 C.F.R. § 3.43.

(b) The Scheduling Order requires the parties to file motions to request *in camera* treatment of materials marked confidential pursuant to a protective order no later than September 1, 2000.

A Party that has produced materials or information that it reasonably expects to include in a pleading, motion, exhibit or other paper to be filed with the Secretary ("pleading") and that it believes meets the standards for *in camera* treatment must file a motion with the Administrative Law Judge to request *in camera* treatment of such materials no later than September 1, 2000.

A Party that has received materials or information from another Party or a Third Party that it reasonably expects to include in a pleading must provide the opposing Party or Third Party with a list of such materials no later than August 18, 2000. A Third Party shall be provided

with a copy of this Order along with such list. This list will not be filed with the Secretary's Office, but must be served on the Administrative Law Judge.

(c) If any Party seeks to file a pleading or attachment thereto which includes its own Confidential Discovery Material which has not previously been granted *in camera* status, and the Party seeks to prevent its own materials or information from being placed on the public record, at least 10 days prior to filing such pleading, -- unless it is impracticable (e.g., when filing a response or reply brief) in which case at least 5 days prior to filing such pleading -- the Party shall make an application to the Administrative Law Judge to request that such materials or information be treated as *in camera* information.

If any Party seeks to file a pleading or attachment thereto which includes another Party's or Third Party's Confidential Discovery Material which has not previously been granted *in camera* status, the filing Party must notify the Producing Party at least 14 days prior to such proposed filing -- unless it is impracticable (e.g., when filing a response or reply brief). If 14 days advance notice cannot be provided, the Producing Party must be notified as soon as possible and prior to the time of introduction of such documents or information. The Producing Party shall have 7 days from the date of notice to make an application to the Administrative Law Judge to request that such materials be treated as *in camera* information. The parties shall not file pleadings or attachments thereto that contain another Party's or Third Party's Confidential Discovery Material unless the Party seeking to introduce such material has first obtained an *in camera* order or certifies that the Producing Party has been given notice prior to the introduction of such material, and, in the case of Third Parties, has also been given a copy of this Order.

(d) The parties are cautioned that compliance with this Order will require them

to submit applications for *in camera* treatment in advance of filing motions which include confidential materials and that deadlines for filing motions attaching confidential materials will not be extended for failure to file applications for *in camera* treatment in a timely manner. The parties are further cautioned that it is rarely necessary to attach confidential information in support of pleadings. Absent strict adherence to these procedures, pleadings should be composed in a manner which sufficiently apprises the Court of the matter at issue and which does not identify or disclose any confidential information. Failure to comply with these procedures may result in pleadings or portions thereof being stricken from the record.

(e) Should any party seek to introduce into evidence at the trial of this case or any pretrial hearing Confidential Discovery Material which has not previously been granted *in camera* status, the evidence will not be disclosed or admitted into evidence until the Producing Party has had the opportunity to seek *in camera* treatment. The party seeking to introduce such evidence must demonstrate good cause for not previously obtaining an *in camera* order. If the Producing Party is a Third Party, the Party seeking to introduce or disclose such evidence must provide notice to the Third Party within 3 days of the date on which the evidence was sought to be introduced or disclosed. The Producing Third Party shall have 7 days from the date of notice to make an application to the Administrative Law Judge to request that such materials be treated as *in camera* information.

14. Nothing in this Protective Order shall be construed to conflict with the provisions of Sections 6, 10, and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 50,

57b-2, or with Rules 3.22, 3.45 or 4.11(b)-(e), 16 C.F.R. §§ 3.22, 3.45 and 4.11(b)-(e).<sup>1</sup> Any Party or Producing Party may move at any time for, treatment *in camera* of any Confidential Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper disposition of the Matter.

15. At the conclusion of this Matter, Respondent's counsel shall return to the Producing Party, or destroy, all originals and copies of documents and all notes, memoranda, or other papers containing Confidential Discovery Material which have not been made part of the public record in this Matter. Complaint counsel shall dispose of all documents in accordance with Rule 4.12, 16 C.F.R. § 4.12.

16. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material shall, without written permission of the Producing Party or further order of the Administrative Law Judge hearing this Matter, continue to be binding after the conclusion of this Matter.

17. This Protective Order shall not apply to the disclosure by a Producing Party or its Counsel of such Producing Party's Confidential Discovery Material to such Producing Party's employees, agents, former employees, board members, directors, and officers.

18. The production or disclosure of any Discovery Material made after entry of this Protective Order which a Producing Party claims was inadvertent and should not have been produced or disclosed because of a privilege will not automatically be deemed to be a waiver of

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<sup>1</sup> The right of the Administrative Law Judge, the Commission, and reviewing courts to disclose information afforded *in camera* treatment or Confidential Discovery Material, to the extent necessary for proper disposition of the proceeding, is specifically reserved pursuant to Rule 3.45, 16 C.F.R. § 3.45.

any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed. In the event of such claimed inadvertent production or disclosure, the following procedures shall be followed:


(a) The Producing Party may request the return of any such Discovery Material within twenty (20) days of discovering that it was inadvertently produced or disclosed (or inadvertently produced or disclosed without redacting the privileged content). A request for the return of any Discovery Material shall identify the specific Discovery Material and the basis for asserting that the specific Discovery Material (or portions thereof) is subject to the attorney-client privilege or the work product doctrine and the date of discovery that there had been an inadvertent production or disclosure.

(b) If a Producing Party requests the return, pursuant to this paragraph, of any such Discovery Material from another Party, the Party to whom the request is made shall return immediately to the Producing Party all copies of the Discovery Material within its possession, custody, or control – including all copies in the possession of experts, consultants, or others to whom the Discovery Material was provided – unless the Party asked to return the Discovery Material in good faith reasonably believes that the Discovery Material is not privileged. Such good faith belief shall be based on either (i) a facial review of the Discovery Material, or (ii) the inadequacy of any explanations provided by the Producing Party, and shall not be based on an argument that production or disclosure of the Discovery Material waived any privilege. In the event that only portions of the Discovery Material contain privileged subject matter, the Producing Party shall substitute a redacted version of the Discovery Material at the time of making the request for the return of the requested Discovery Material.

(c) Should the Party contesting the request to return the Discovery Material pursuant to this paragraph decline to return the Discovery Material, the Producing Party seeking return of the Discovery Material may thereafter move for an order compelling the return of the Discovery Material. In any such motion, the Producing Party shall have the burden of showing that the Discovery Material is privileged and that the production was inadvertent.

19. Entry of the foregoing Protective Order is without prejudice to the right of the Parties or Third Parties to apply for further protective orders or for modification of any provision of this Protective Order.

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Dated: August 7, 2000



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

EXHIBIT A

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

DECLARATION CONCERNING PROTECTIVE ORDER  
GOVERNING DISCOVERY MATERIAL

I, [NAME], hereby declare and certify the following to be true:

1. [Statement of employment]
2. I have read the "Protective Order Governing Discovery Material" ("Protective Order") issued by Administrative Law Judge D. Michael Chappell on April 28, 2000, in connection with the above captioned matter. I understand the restrictions on my use of any Confidential Discovery Material (as this term is used in the Protective Order) in this action and I agree to abide by the Protective Order.
3. I understand that the restrictions on my use of such Confidential Discovery Material include:
  - a. that I will use such Confidential Discovery Material only for the purposes of preparing for this proceedings, and hearing(s) and any appeal of this proceeding and for no other purpose;
  - b. that I will not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

- c. that upon the termination of my participation in this proceeding I will promptly return all Confidential Discovery Material, and all notes, memoranda, or other papers containing Confidential Discovery Material, to complaint counsel or respondent's counsel, as appropriate.

[4. I understand that if I am receiving Confidential Discovery Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential Discovery Material also include the duty and obligation:

- a. to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;
- b. to return such Confidential Discovery Material to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of my assignment or retention; and
- c. to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.]

5. I am fully aware that, pursuant to Section 3.42(h) of the Commission's Rules of Practice, 16 C.F.R. § 3.42(h), my failure to comply with the terms of the Protective Order may constitute contempt of the Commission and may subject me to sanctions imposed by the Commission.

\_\_\_\_\_  
Full Name [Typed or Printed]

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

LAW OFFICES

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HOUSTON  
SAN FRANCISCO  
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LONDON  
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BUENOS AIRES

**FACSIMILE TRANSMISSION FROM (202) 783-4211**

TO: **HELEN B. KIM**

FAX NO: **213/473-2222**

FROM: **D. E. WILSON, JR.**

#: **1056**

DATE: **AUGUST 25, 2000**

TIME:

SHB Client Matter No.:

**HMRI.64169**

Pages transmitted including cover sheet:

**2**

**ORIGINAL DOCUMENT WILL NOT FOLLOW.**

If you experience any problems, please call extension \_\_\_\_\_.

OPERATOR:

**COMMENTS/MESSAGE:**

Please deliver to Ms. Kim.

Thank you.

**CONFIDENTIALITY NOTICE:** The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.

LAW OFFICES

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D. E. Wilson, Jr.  
202-662-4881  
dwilson@shb.com

August 25, 2000

By Facsimile

Helen B. Kim, Esquire  
Fried, Frank, Harris, Shriver & Jacobson  
32nd Floor  
350 South Grand Avenue  
Los Angeles, CA 90071

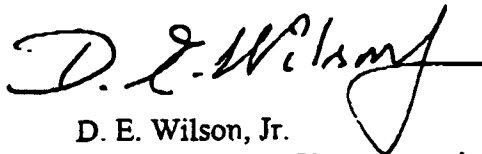
**Re: *In Re Hoechst Marion Roussel, Inc., et al.*, FTC Docket No. 9293,  
Subpoena Duces Tecum Served on Sitrick & Company.**

Dear Ms. Kim:

This letter records the substance of our telephone conversation of today as I understand it. Please let me know if you take issue with any of the following:

1. You objected to my statement that your office did not return telephone calls concerning the subpoena. I am only able to state that your office called late during the week of August 7-11 to inform me that you would call either on the 11th or 14th of August. I have not heard from you since until I received a voice mail at 8:00 p.m. (EDT) on 24 August.
2. The documents in the New Jersey action are available for use in the FTC proceeding.
3. We will get any documents updating these documents on the day of the deposition of Mr. Sitrick, which you informed me is scheduled for August 30.
4. You informed me that there are no additional e-mails responsive to the subpoena.

Sincerely,



D. E. Wilson, Jr.  
Counsel for Aventis Pharmaceuticals, Inc.

**FRIED, FRANK, HARRIS, SHRIVER & JACOBSON**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

350 SOUTH GRAND AVENUE, 32ND FLOOR

LOS ANGELES, CALIFORNIA 90071-3406

213 - 473 - 2000

FACSIMILE - 213 - 473 - 2222

WRITER'S DIRECT LINE  
213-473-2070

August 25, 2000

**Via Facsimile**

D.E. Wilson, Jr., Esq.  
Shook, Hardy & Bacon LLP  
Hamilton Square  
600 14th Street, NW, Suite 800  
Washington, D.C. 20005-2004

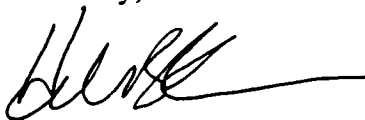
RE: In re Hoechst Marion Roussel, Inc., et al., FTC Docket No. 9293

Dear Mr. Wilson:

In response to your letter of yesterday, I have in fact returned every call from you of which I was aware. Apparently, while I was out of town on business during the week of August 14, you called my office once and left a message; that message never reached me. That hardly warrants an accusation that I "have not responded to [your] calls concerning [your] subpoena."

In any event, as I advised you in our conversation, if there are any documents responsive to your subpoena since Sitrick & Company's April 2000 production, we will provide them to you on or before August 30, 2000, the date scheduled for Mr. Sitrick's deposition.

Sincerely,



Helen B. Kim

64947

D.E. Wilson, Jr., Esq.

- 2 -

August 25, 2000

bcc: Michael Sitrick  
Stephen D. Alexander

**FRIED, FRANK, HARRIS, SHRIVER & JACOBSON**

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August 25, 2000

**Via Facsimile**

D.E. Wilson, Jr., Esq.  
Shook, Hardy & Bacon LLP  
Hamilton Square  
600 14th Street, NW, Suite 800  
Washington, D.C. 20005-2004

RE: In re Hoechst Marion Roussel, Inc., et al., FTC Docket No. 9293

Dear Mr. Wilson:

I do, indeed, take issue with your letter of today.

First, you and I spoke on Friday, August 4<sup>th</sup>. The next time you called was during the week of August 14, when I was out of town, not the week of August 7; and, as I said in my earlier letter of today, I did not receive that message. I understand that, after taking a message from you, my secretary called you back to advise you that I was out of town most of that week and would not return until Friday, August 18, but, apparently, that original message was lost. That is the only call of which I'm now aware that was not returned.

Second, I told you on August 4<sup>th</sup> that the documents already in your client's possession in the New Jersey action were, have been and are available to you in response to your subpoena, subject to our continuing relevancy objection. If you have not obtained those documents from your client already, that is your inaction, not mine.

Third, as I advised you in my prior letter of today, if there are any additional documents responsive to your subpoena, you will get them on or before August 30<sup>th</sup>, which is the date scheduled for Mr. Sitrick's court-ordered deposition in Los Angeles.

Finally, I informed you that we were not aware of any additional emails responsive to the subpoena. Obviously, if we learn of any before Mr. Sitrick's deposition, they will be produced on or before August 30<sup>th</sup>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helen B. Kim', with a long horizontal flourish extending to the right.

Helen B. Kim



D.E. Wilson, Jr., Esq.

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August 25, 2000

bcc: Michael Sitrick  
Stephen D. Alexander

**FRIED, FRANK, HARRIS, SHRIVER & JACOBSON**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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213 - 473 - 2000  
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October 16, 2000

WRITER'S DIRECT LINE  
(213) 473-2008

**Via Hand Delivery**

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room 172  
Washington, D.C. 20580

**Re: In the Matter of Hoechst Marion Roussel, Inc., et al., Non-Party  
Witness, Docket Number 9293**

Dear Mr. Clark:

Enclosed for filing are the originals and eleven copies of: (1) Sitrick and Company's Answer to Aventis Pharmaceuticals, Inc.'s ("Hoechst's") Motion to Enforce Compliance with the Subpoena Served on Sitrick and Company, (2) Declaration of Stephen D. Alexander in Support of Aventis Pharmaceuticals, Inc.'s ("Hoechst's") Motion to Enforce Compliance with the Subpoena Served on Sitrick and Company and (3) Declaration of Michael Sitrick in Support of Aventis Pharmaceuticals, Inc.'s ("Hoechst's") Motion to Enforce Compliance with the Subpoena Served on Sitrick and Company. Please conform one copy of each of the above documents and return them to me in the enclosed self-addressed stamped envelope.

Respectfully submitted,

  
Stephen D. Alexander

SDA/djw

Enclosures

cc: Mr. Michael Sitrick (w/encls) Peter O. Safir, Esq. (w/encls)  
Donald S. Clark, Sec. (w/encls) Francis D. Landrey, Esq. (w/encls)  
Richard Feinstein, Esq. (w/encls) James M. Spears, Esq. (w/encls)  
Honorable D. Michael Chappell (w/encls) Louis M. Solomon, Esq. (w/encls)  
Markus Meier, Esq. (w/encls) Paul S. Schleifman, Esq. (w/encls)  
D. Edward Wilson, Jr., Esq. (w/encls) Peter D. Bernstein, Esq. (w/encls)

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