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April 28, 2009

Ms. Marcia M. Waldron, Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: *Joseph C. Colacicco v. Apotex Inc.*, No. 06-3107 (3d Cir.)

Dear Ms. Waldron:

The United States has previously participated in the above-captioned case as amicus curiae in support of defendants-appellees. This Court entered judgment for defendants-appellees on Apr. 8, 2008. The plaintiffs filed a petition for certiorari, which the Supreme Court granted on Mar. 17, 2009. The Supreme Court vacated the judgment of this Court, and remanded the case for further consideration in light of *Wyeth v. Levine*, 555 U.S. ____ (2009).

The purpose of this letter is to notify the Court that the United States does not take a position on whether plaintiffs-appellants' claims in this case are preempted. The Food and Drug Administration has not yet conducted the sort of reexamination of various preemption issues following the Supreme Court's decision in *Wyeth* that would be necessary to inform a position of the United States in this case. Accordingly, the United States hereby withdraws the amicus brief previously filed in this Court.

Thank you very much for your attention to this matter.

Very truly yours,

/s/ Sharon Swingle

Sharon Swingle

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