

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STATE OF WISCONSIN,)	
)	Civil Action No.: 05 C 408 C
Plaintiff,)	
)	
)	
ABBOTT LABORATORIES, INC, ET AL.,)	
)	
Defendants.)	

**RESPONSES BY SMITHKLINE BEECHAM CORPORATION, D/B/A
GLAXOSMITHKLINE (“GSK”) TO PLAINTIFF’S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Fed. R. Civ. P. 34 and Wisconsin Rule of Civil Procedure 804.09, defendant SmithKline Beecham Corporation, d/b/a GlaxoSmithKline (“GSK”), by its attorneys, hereby asserts the following responses and objections to the First Set of Requests for Production of Documents by Plaintiff, the State of Wisconsin, by its Attorney General, Peggy Lautenschlager (“the State”), as follows:

PRELIMINARY STATEMENT

1. By responding to these Requests, GSK does not waive or intend to waive: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any documents or information produced in response to the Requests; (b) the right to object on any ground to the use of the documents or information produced in response to the Requests at any hearing, trial, or other point during the litigation; or (c) the right to object on any ground at any time to a demand for further responses to the Requests.

2. By responding to a particular Request, GSK does not assert that it has responsive documents or that such documents exist, only that it will conduct a reasonable inquiry of such documents are available and provide the documents if they are responsive, non-objectionable, and non-privileged. No objection made herein, or lack thereof, is an admission by GSK as to the existence or non-existence of any documents.

3. The Responses made herein are based on GSK's investigation to date of those sources within its control where it reasonably believes responsive documents may exist. GSK reserves the right to amend or supplement these Responses in accordance with the applicable rules and Court orders in this action.

4. GSK reserves the right to modify these objections and responses and to present in any proceeding and at trial any further information and documents obtained during discovery and preparation for trial.

GENERAL OBJECTIONS

GSK expressly incorporates all of the General Objections set forth below into each Response to the Requests. Any Specific Objections provided below are made in addition to these General Objections and failure to reiterate a General Objection below does not constitute a waiver of that or any other objection.

GSK objects generally as follows:

1. GSK objects to Plaintiff's "Definitions" and "Instructions" to the extent that they expand upon or alter GSK's obligations under applicable law and court rules. GSK will comply with the applicable law and rules in providing its Responses and Objections to Plaintiff's Requests.

2. GSK objects to each and every Request as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it

purports to require production of documents or information relating to pharmaceuticals not properly placed at issue in this litigation.

3. GSK objects to each and every Request to the extent that it seeks documents or information protected by the attorney-client privilege, work-product doctrine, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections, and to the extent these instructions or Requests seek trial preparation and expert materials. GSK hereby asserts these privileges to their fullest extent and no statement or answer herein shall constitute waiver thereof. Any information subject to any such privilege that is inadvertently produced by GSK shall not constitute or be deemed a waiver of such privilege or protection, and GSK reserves its rights to demand the return of any inadvertently produced information.

4. GSK objects to each and every Request to the extent that it seeks documents or information that was compiled for and presented during compromise negotiations, including the court-ordered mediation in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.). GSK hereby asserts these privileges and protections to their fullest extent and no statement or answer herein shall constitute waiver thereof. Any information subject to any such privileges and protections that is inadvertently or otherwise produced by GSK shall not constitute or be deemed a waiver of such privileges or protections, and GSK reserves its rights to demand the return of any inadvertently produced information.

5. GSK objects to each and every Request to the extent that it seeks documents or information concerning a trade secret, proprietary or other confidential information that is not otherwise subject to a protective order entered by the Court in this litigation.

6. GSK objects to each and every Request to the extent that it seeks documents or information that GSK licensed from third parties and cannot disclose without prior approval of the third-parties.

7. GSK objects to each and every Request to the extent that it seeks documents or information that does not currently exist at GSK.

8. GSK objects to each and every Request to the extent that it purports to require GSK to create, compile, or develop information or documents not already in existence.

9. GSK objects to each and every Request to the extent that it seeks production of documents or information not in GSK's custody or control, publicly available documents or information, documents or information equally available to the Plaintiff, or documents or information more appropriately sought from third-parties to whom subpoenas or requests could have been directed.

10. GSK objects to each and every Request as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that they purport to require production of documents or seeks information relating to a period of time prior to June 3, 1998 (which is outside of any applicable statute of limitations) and/or after September 6, 2002 (the date on which Plaintiffs filed the Master Consolidated Class Action Complaint in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.)).

11. GSK objects to each and every Request as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent they seek documents or information concerning Kytril® after December 22, 2000, the date on which GSK's predecessor, SmithKline Beecham, sold Kytril® to Hoffman-La Roche Inc.

12. GSK objects to each and every Request, either individually or collectively, that is overly broad, unduly burdensome, expensive, embarrassing, vexatious, or oppressive to answer on the grounds that such Request exceeds the permissible scope of discovery under applicable law and Court rules.

13. GSK objects to each and every Request to the extent that it seeks information that is not relevant to this litigation or is not reasonably calculated to lead to the discovery of admissible evidence.

14. GSK objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests. Any Response by GSK is not intended to indicate that GSK agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests, or that such implications or characterizations are relevant to this action.

15. GSK reserves the right to withhold the production of responsive documents or information, other than what it agrees to produce through these responses and during the meet and confer process, until the Court has ruled on Defendants' Motion to Dismiss in this case.

16. Subject to and without waiving any objection set forth herein, GSK will produce non-privileged, responsive documents and make them available for review, inspection and copying at a time and place and in a manner agreed upon by the parties.

17. GSK objects to the definition of "Average Manufacturer Price" and "AMP" as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language "the price you ... otherwise disseminate" ... for any Pharmaceutical ..." GSK incorporates by reference its objection to the definition of the term "Pharmaceutical" below.

18. GSK objects to the definition of “Chargeback” as set forth in Definition No. 2 on the grounds that it is vague and ambiguous with respect to the language “payment, credit or other adjustment provided by defendant to a purchaser of a Pharmaceutical to compensate for any difference between the purchaser’s acquisition cost and the price at which the purchaser sold the Pharmaceutical to another purchaser at a contract price.” GSK incorporates by reference its objection to the definition of the term “Pharmaceutical.”

19. GSK objects to the definition of “Defined Period of Time” as set forth in Definition No. 3 to the extent it seeks information prior to June 3, 1998 (which is outside of any applicable statute of limitations) and/or after September 6, 2002 (the date on which Plaintiffs filed the Master Consolidated Class Action Complaint in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.), on the grounds that it is overly broad, unduly burdensome, and seeks documents and information that are irrelevant and not reasonably calculated to lead to admissible evidence. GSK further objects on the grounds the definition is vague and ambiguous, particularly with respect to the language “Documents relating to such period,” and incorporates by reference its objection to the definition of the term “Document.”

20. GSK objects to the definition of “Document” as set forth in Definition No. 4 on the grounds that it is vague and ambiguous with respect to the language “writing,” “recording of any kind,” “agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, electronic mail (e-mails), facsimiles (faxes), film, graphs, letters, memos, maps, minutes,” “Executive Committee meeting minutes,” “notes, notices, photographs, reports, schedules, summaries, tables, telegrams, and videotapes” “medium,” “written, graphic, pictorial, photographic, electronic, phonographic, mechanical, taped,” “hard drives, data tapes” and “copies.” GSK further objects to this definition to the

extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, GSK's obligations under applicable law and Court Rules. GSK further objects to this definition to the extent it requires or seeks to require GSK to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format; (iii) produce data, fields, records, or reports about produced documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement or copyright laws.

21. GSK objects to the definition of "Incentive" as set forth in Definition No. 5 on the grounds that it is overly broad, unduly burdensome, ambiguous and vague, particularly with respect to the language "anything of value," "provided," "customer," "reward a customer or other party for promoting, prescribing, dispensing or administering a Pharmaceutical or course of treatment," "lowering the cost of a Pharmaceutical to the customer in any way, regardless of the time the 'incentive' was provided," "credits," "discounts," "return to practice discounts," "prompt pay discounts," "volume discounts," "on-invoice discounts," "off-invoice discounts," "rebates," "market-share rebates," "access rebates," "bundled-drug rebates," "free goods or samples," "administrative fees or administrative fee reimbursements," "marketing fees," "stocking fees," "conversion fees," "patient education fees," "off-invoice pricing," "educational or other grants," "research funding," "clinical trials," "honoraria," "speaker's fees or payments," "patient education fees" and "consulting fees." GSK incorporates by reference its objections to the definitions of the terms "Chargeback" and "Pharmaceutical." GSK further objects to this definition to the extent it seeks information from beyond the time period relevant to this litigation.

22. GSK objects to the definition of “National Sales Data” in Definition No. 6 on the grounds that it is overly broad and unduly burdensome. GSK further objects on the grounds that this definition is vague and ambiguous with respect to the language “data sufficient to identify for each sales transaction,” “transaction type,” “product number,” “product description,” “NDC,” “NDC unit quantity,” “NDC unit invoice price,” “package description,” “WAC,” “you,” “contract price,” “invoice price,” “identification number,” “paid or distributed Incentives,” “accrued Incentives,” “calculated at any time” and “other information sufficient to identify as particularly as possible each sales transaction giving rise to the accrual.” GSK incorporates by reference its objections to the definitions of the terms “Targeted Drugs” and “Incentives.” GSK objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. GSK further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Complaint and as to which claims have been pled with the required specificity on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

23. GSK objects to the definition of “Pharmaceutical” in Definition No. 7 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language “any drug,” “other product,” “you,” “any other manufacturer,” “prescription,” “biological products” “hemophilia factors,” and “intravenous solutions.” GSK objects to this Definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. GSK further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Complaint and as to which claims have been pled with the required

specificity on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

24. GSK objects to the definition of “Spread” as set forth in Definition No. 8 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly with respect to the language “actual acquisition cost,” “purchase price,” “third party payors,” “gross profit actually or potentially realized,” and “purchasers.” GSK incorporates by reference its objection to the definition of the term “Pharmaceutical.”

25. GSK objects to the definition of “Targeted Drugs” in Definition No. 9 on the grounds that it is overly broad and unduly burdensome. GSK further objects to this definition on the grounds that it is vague and ambiguous, particularly with respect to the language “you” and “total utilization.” GSK incorporates by reference its objections to the definitions of the terms “Defined Period of Time” and “Pharmaceutical.” GSK objects to this definition to the extent that it refers to information not relevant to the State’s claims, which are limited to Wisconsin. GSK further objects to this definition to the extent it seeks information from beyond the time period relevant in this litigation, or information about drugs not named in the Complaint and as to which claims have been pled with the required specificity, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

26. GSK objects to the State’s demand, noted by an asterisk after Requests Nos. 1, 2 and 4 to the extent that it imposes discovery obligations that are broader than, or inconsistent with, GSK’s obligations under applicable law and court rules. GSK incorporates by reference its objections to the definition of the term “Document.”

**SPECIFIC RESPONSES AND OBJECTIONS TO
REQUESTS FOR PRODUCTION OF DOCUMENTS**

REQUEST NO. 1: All National Sales Data for each Targeted Drug during the Defined Period of Time.*

RESPONSE TO REQUEST NO. 1: In addition to the General Objections set forth above, GSK objects to Request No. 1 on the grounds that it is overly broad and unduly burdensome, vague as to its reference to the asterisk footnote, and not reasonably calculated to lead to the discovery of admissible evidence. GSK objects to this Request on the grounds that it is overly broad, unduly burdensome, vague and ambiguous with respect to the request for “all” data. GSK incorporates by reference its objections to the State’s definitions of the terms “National Sales Data,” “Targeted Drug” and “Defined Period of Time.” GSK objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. GSK objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. GSK objects to this Request to the extent that it seeks information that was compiled for and presented during compromise negotiations. GSK further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information that is not otherwise subject to a protective order entered by the Court in this litigation.

Subject to and without waiving these Objections and GSK’s General Objections, GSK will meet and confer with Plaintiff regarding the production of certain data, databases and documents describing those databases which GSK has previously produced in other AWP litigation as they pertain to drugs as to which specific factual allegations are pled, namely Kytril® and Zofran®.

REQUEST NO. 2: All Documents containing AMPs as reported or calculated by you for the Targeted Drugs or a spread sheet or database showing all reported and calculated AMPs for each

Targeted Drug over the Defined Period of Time which lists when such AMPs were reported or calculated, and the quarter to which each AMP applies.*

RESPONSE TO REQUEST NO. 2: In addition to the General Objections set forth above, GSK objects to Request No. 2 on the grounds that it is overly broad and unduly burdensome, vague as to its reference to the asterisk footnote, and not reasonably calculated to lead to the discovery of admissible evidence. GSK objects to this request on the grounds that it is overly broad, unduly burdensome, vague and ambiguous with respect to the request for “all” documents, and is vague and ambiguous with respect to the language “reported or calculated,” “you,” “spreadsheet” and “database.” GSK incorporates by reference its objections to the definitions of the terms “Documents,” “AMPs,” “Targeted Drug” and “Defined Period of Time.” GSK objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. GSK objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. GSK objects to this Request to the extent that it seeks information that was compiled for and presented during compromise negotiations. GSK further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information that is not otherwise subject to a protective order entered by the Court in this litigation.

GSK will meet and confer with Plaintiff regarding the production of certain data and documents, including the “Average Manufacturer Prices” (“AMPs”) that GSK has calculated and reported to the Centers for Medicare & Medicaid Services and its predecessor, for the drugs named in the Complaint and as to which specific factual allegations are pled, namely Kytril® and Zofran®.

REQUEST NO. 3: All Documents created by you, or in your possession, that discuss or comment on the difference (or Spread) between any Average Wholesale Price or Wholesale Acquisition Cost and the list or actual sales price (to any purchaser) of any of defendants’ Pharmaceuticals or any Pharmaceuticals sold by other manufacturers. Documents which merely

list the AWP or WAC price and the list or actual sales price without further calculation of the difference, or without other comment or discussion of or about the spread between such prices are not sought by this request.

RESPONSE TO REQUEST NO. 3: In addition to the General Objections set forth above, GSK objects to Request No. 3 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. GSK objects to this request on the grounds that it is overly broad, unduly burdensome, vague and ambiguous with respect to the request for “all” documents, and is vague and ambiguous with respect to the language, “created,” “you,” “in your possession,” “discuss or comment,” “difference,” “actual sales price,” “purchaser,” “defendants’ Pharmaceuticals,” “Pharmaceuticals sold by other manufacturers,” “discussion,” and “prices.” GSK incorporates by reference its objections to the State’s definitions of the terms “Documents,” “Spread,” and “Pharmaceuticals.” GSK objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. GSK objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. GSK objects to this Request to the extent it seeks confidential business, trade secret or proprietary information that is not otherwise subject to a protective order entered by the Court in this litigation. GSK further objects to this Request to the extent it seeks documents that are more appropriately sought from third parties, including other defendants, to whom requests may be directed.

Subject to and without waiving these Objections and GSK’s General Objections, GSK will meet and confer with Plaintiff regarding the production of certain responsive documents which GSK has previously produced in other AWP litigation as they pertain to drugs as to which specific factual allegations are pled, namely Kytril® and Zofran®.

REQUEST NO. 4: All Documents containing an average sales price or composite price identified by you in response to Interrogatory No. 1 of Plaintiff's First Set of Interrogatories to All Defendants.*

RESPONSE TO REQUEST NO. 4: In addition to the General Objections set forth above, GSK objects to Request No. 4 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. GSK objects to this Request on the grounds that it overly broad, unduly burdensome, vague and ambiguous with respect to the request for "all" documents," and is vague and ambiguous with respect to the language "average sales price," "composite price," and "you," and as to its reference to the asterisk footnote. GSK incorporates by reference its objections to the State's definitions of the term "Documents." GSK objects to this Request to the extent it seeks information not relevant to the State's claims, which are limited to Wisconsin. GSK objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. GSK objects to this Request to the extent that it seeks information that was compiled for and presented during compromise negotiations. GSK further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information that is not otherwise subject to a protective order entered by the Court in this litigation.

Subject to and without waiving these Objections and GSK's General Objections, GSK will meet and confer with Plaintiff regarding the production of certain data and documents, including sales transaction databases and AMPs, which GSK has previously produced in other AWP litigation concerning the net sales prices -- including discounts, rebates to purchasers and chargebacks -- of the drugs named in the Complaint and as to which specific factual allegations are pled, namely Kytril® and Zofran®.

REQUEST NO. 5: All Documents sent to or received from First DataBank, Redbook or Medi-Span regarding any price of any Targeted Drug.

RESPONSE TO REQUEST NO. 5: In addition to the General Objections set forth above, GSK objects to Request No. 5 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. GSK objects to this request on the grounds that it is overly broad, unduly burdensome, vague and ambiguous with respect to the request for “all” documents,” and is vague and ambiguous with respect to the language “received,” “regarding” and “price.” GSK incorporates by reference its objections to the State’s definitions of the terms “Documents” and “Targeted Drug.” GSK objects to this Request to the extent it seeks information not relevant to the State’s claims, which are limited to Wisconsin. GSK objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. GSK further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information that is not otherwise subject to a protective order entered by the Court in this litigation.

Subject to and without waiving these Objections and GSK’s General Objections, GSK will meet and confer with Plaintiff regarding the production of certain responsive documents which GSK has previously produced in other AWP litigation as they pertain to drugs as to which specific factual allegations are pled, namely Kytril® and Zofran®.

REQUEST NO. 6: All Documents in your possession prepared by IMS Health regarding a Targeted Drug or the competitor of a Targeted Drug regarding pricing, sales or market share.

RESPONSE TO REQUEST NO. 6: In addition to the General Objections set forth above, GSK objects to Request No. 6 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. GSK objects to this Request on the grounds that it is overly broad, unduly burdensome, vague and

ambiguous with respect to the request for "all" documents," and is vague and ambiguous with respect to the language "in your possession," "prepared," "IMS Health," "regarding," "competitor," "pricing, sales or market share." GSK incorporates by reference its objections to the State's definitions of the terms "Documents" and "Targeted Drug." GSK objects to this Request to the extent it seeks information not relevant to the State's claims, which are limited to Wisconsin. GSK objects to this Request to the extent it seeks documents that are not within GSK's possession, custody, or control or are more appropriately sought from third parties. GSK objects to this Request to the extent it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery. GSK further objects to this Request to the extent it seeks confidential business, trade secret or proprietary information that is not otherwise subject to a protective order entered by the Court in this litigation. GSK also objects to this Request on the grounds that it seeks commercial and proprietary information of a third party, which GSK cannot disclose without prior approval of the third party, and which the State must obtain directly from that third party.

Subject to and without waiving these Objections and GSK's General Objections, GSK will meet and confer with Plaintiff concerning the proprietary and license issues raised by this request for commercial third-party data.

Dated: July 15, 2005

Respectfully submitted,

By: 

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*Counsel for Defendant SmithKline Beecham Corporation,
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2005, true and correct copies of the foregoing Responses By Smithkline Beecham Corporation, d/b/a/ Glaxosmithkline ("GSK") to Plaintiff's First Set of Requests for Production of Documents were served on all parties as set forth below.

STATE OF WISCONSIN

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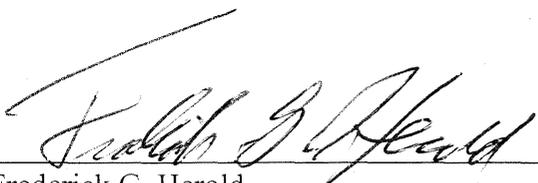
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