

STATE OF WISCONSIN,)
)
 Plaintiff,)
)
 v.)
)
 ABBOTT LABORATORIES, ET AL.,)
)
 Defendants.)

Case No.: 04 CV 1709

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

Pursuant to 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 (“Responses” and “Objections”) to Plaintiff State of Wisconsin’s (“Plaintiff’s” or the “State’s”) Sixth Set of Requests for Production of Documents to All Defendants (“Requests”) 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; (b) the right to object on any ground to the use of the documents or information produced in response 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 information or that such documents or information exist, only that it will conduct a reasonable inquiry if such documents or information are not known and provide the documents or information 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 document or information.

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 or information may exist. GSK reserves the right to amend or supplement these Responses in accordance with applicable law 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 documents and information 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.

2. GSK objects to each and every Request to the extent that it is 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, critical self-analysis privilege and/or self-evaluative privilege, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections, and to the extent these 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 document or 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 document or information.

4. GSK objects to each and every Request to the extent that it seeks documents or information protected by the rights of free speech and/or association under the First Amendment to the U.S. Constitution, any provisions of the Wisconsin constitution, or any applicable constitution, statute or law of any jurisdiction protecting such rights.

5. GSK objects to each and every Request to the extent that it seeks documents or information which were 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 document or 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 document or information.

6. 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, and are not otherwise subject to a protective order entered by the Court in this litigation.

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

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

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

10. 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.

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 that they purport to require production of documents or seek information relating to a period of time prior to June 3, 1998 (which is outside of any applicable statute of limitations) and/or after June 3, 2004, the date Plaintiff filed its original Complaint in this case.

12. 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 it seeks 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.

13. GSK objects to each and every Request to the extent that it seeks documents or information that are not relevant to this litigation or are 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. Subject to and without waiving any objection set forth herein, GSK will produce non-privileged, responsive documents as set forth below at a time and place and in a manner to be agreed upon by the parties.

16. GSK objects to the definition of “you,” “your” and “your company” as set forth in Definition No. 1 on the grounds that it is vague, ambiguous and overbroad.

17. GSK objects to the definition of “Document” as set forth in Definition No. 2 on the grounds that it is vague, ambiguous and overbroad and to the extent that it seeks to impose obligations beyond those imposed by the applicable Wisconsin Rules of Civil Procedure. GSK further objects to this definition to the extent that it purports to require GSK to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by GSK as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

18. GSK objects to the definition of “Together Rx programs” as set forth in Definition No. 3 in that Plaintiff defines the program as being “formed in or around 2001 or 2002” and that is vague, ambiguous, and overbroad.

RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

DOCUMENT REQUEST NO. 20: The following documents relating to the Together RX programs:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient cost of covered prescription drugs, including but not limited to, any formula for reimbursement based on the average wholesale price (“AWP”) of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;
- (d) documents identifying or relating to the eligibility requirements for participation in the Together RX programs; and
- (e) documents identifying your prescription drugs covered by the Together Rx programs.

RESPONSE TO REQUEST NO. 20: In addition to its General Objections, which are incorporated herein by reference, GSK objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence, including in particular with respect to the requests for documents not related to the Wisconsin Medicaid program. GSK also objects to Document Request No. 20 on the grounds that the following terms or phrases are vague, ambiguous and undefined: “contracts or written agreements” and “documents identifying or relating to.” GSK further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege, the work-product doctrine, privileges

relating to the right to lobby, the joint defense privilege, and/or any other applicable privilege or protection.

Subject to and without waiving the Preliminary Statement, General Objections, and Specific Objections, GSK will meet and confer with Plaintiff regarding the production of certain responsive, non-privileged documents which GSK has previously produced in other AWP litigation.

DOCUMENT REQUEST NO. 21: All documents relating to any program of yours that provides, or is marketed as providing, a discount or savings to consumers for any of your prescription drugs. Examples of such programs are the Novartis Savings Program a/k/a the Novartis Care Plan (Novartis Care Card), Pfizer for Living Program (Pfizer Share Card), Pfizer U Share Prescription Drug Discount Card, and the GlaxoSmithKline Orange Card. This request includes, but is not limited to, the following documents:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient cost of covered prescription drugs, including but not limited to, any formula for reimbursement based on the AWP of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;
- (d) documents identifying or relating to the eligibility requirements for participation in the program; and
- (e) documents identifying your prescription drugs covered by the program.

RESPONSE TO REQUEST NO. 21: In addition to its General Objections, which are incorporated herein by reference, GSK objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence, including in particular with respect to the requests for documents

not related to the Wisconsin Medicaid program. GSK also objects to Document Request No. 21 on the grounds that the following terms or phrases are vague, ambiguous and undefined: “any program of yours that provides, or is marketed as providing,” “a discount or savings,” and “consumers.” GSK further objects to this Request to the extent it seeks documents relating to programs that “provide, or [are] marketed as providing, a discount or savings to” consumers of GSK’s products because such documents are neither relevant to the subject matter involved in the pending action, nor likely to lead to the discovery of admissible evidence. GSK further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege, the work-product doctrine, privileges relating to the right to lobby, the joint defense privilege, and/or any other applicable privilege or protection.

Subject to and without waiving the Preliminary Statement, General Objections, and Specific Objections, GSK will meet and confer with Plaintiff regarding the production of certain responsive, non-privileged documents which GSK has previously produced in other AWP litigation.

Dated: February 13, 2008

Respectfully submitted,

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***Counsel for Defendant SmithKline Beecham
Corporation, d/b/a GlaxoSmithKline***

CERTIFICATE OF SERVICE

I, Frederick G. Herold, hereby certify that on this 13th day of February, 2008, a true and correct copy of the foregoing RESPONSES AND OBJECTIONS BY SMITHKLINE BEECHAM CORPORATION, D/B/A GLAXOSMITHKLINE ("GSK") TO PLAINTIFF'S SIXTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS was served on all counsel of record via Lexis Nexis File & Serve®.

/s/ Frederick G. Herold

Frederick G. Herold