

**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 SECOND SET OF
INTERROGATORIES**

Pursuant to Fed. R. Civ. P. 33 and Wisconsin Rule of Civil Procedure 804.08, defendant SmithKline Beecham Corporation, d/b/a GlaxoSmithKline (“GSK”), by its attorneys, hereby asserts the following responses and objections to Second Set of Interrogatories of Plaintiff, the State of Wisconsin, by its Attorney General (“the State” or “Plaintiff”), as follows:

PRELIMINARY STATEMENT

1. By responding to these Interrogatories, 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 Interrogatories; (b) the right to object on any ground to the use of the documents or information produced in response to the Interrogatories 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 Interrogatories.

2. By responding to a particular Interrogatory, GSK does not assert that it has responsive information or that such information exists, only that it will conduct a reasonable inquiry if such information is not known and provide the information if it is 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 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 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 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 Interrogatories. 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 Interrogatories.

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

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

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

13. GSK objects to each and every Interrogatory 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 Interrogatories. 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 Interrogatories, 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 information and 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 "Average Manufacturer Price" and "AMP" on the ground that it is vague and ambiguous. GSK further objects to this definition to the extent it purports to state an accurate or legally significant definition.

17. GSK objects to the definition of "Defined Period of Time" 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.

SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 6: Do you contend that during the Defined Period of Time the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMPs of the targeted drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid rebate statute, 42 U.S.C. § 1396r-8?

RESPONSE TO INTERROGATORY NO. 6: In addition to the General Objections set forth above, GSK objects to Interrogatory 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 Interrogatory on the grounds that it is vague and ambiguous with respect to the language “you,” “contend” and “targeted drugs.” GSK incorporates by reference its objections to the State’s definition of the term “Defined Period of Time.” GSK objects to this Interrogatory to the extent that it seeks information outside the time period relevant to this litigation, to the extent it seeks information about drugs not named in the Second Amended Complaint and as to which claims have been pled with the required specificity, and to the extent that it seeks information subject to the attorney-client privilege, the work product doctrine, or other applicable privilege or protection from discovery.

Subject to and without waiving these Objections and GSK’s General Objections, GSK responds as follows: GSK states that federal law does not prohibit and did not prohibit during the Defined Period of Time the State of Wisconsin from estimating or determining AMP. In fact, for some drugs, the State can derive and could have derived during the Defined Period of Time the AMP from the Unit Rebate Amount. GSK also is unaware of any federal or other

prohibition during the Defined Period of Time that would have prevented the State from requesting AMP or enacting a state statute that would have required its submission.

INTERROGATORY NO. 7: If the answer to Interrogatory No. 1 [sic] is anything other than an unqualified “no,”;

- a. state all bases for such contention, and
- b. identify all documents that support such contention.

RESPONSE TO INTERROGATORY NO. 7: In addition to the General Objections set forth above, GSK objects to Interrogatory No. 7 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 Interrogatory on the grounds that it is vague and ambiguous with respect to the language “unqualified,” “all bases” and “contention.” GSK objects to this Interrogatory to the extent that it seeks information outside the time period relevant to this litigation, to the extent it seeks information about drugs not named in the Complaint and as to which claims have been pled with the required specificity, and to the extent that 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 Interrogatory 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 responds as follows: GSK incorporates by reference its answer to Interrogatory No. 6 and further states that 42 U.S.C. § 1396r-8 and the state Medicaid statutes and regulations for those states that require manufacturers to submit AMP data provide support for GSK’s answer to

Interrogatory No. 6.

Dated: December 14, 2006

Respectfully submitted,

By:



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d/b/a GlaxoSmithKline*

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STATE OF WISCONSIN,

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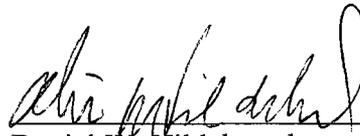
ABBOTT LABORATORIES, INC., et al.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the Responses by SmithKline Beecham Corporation, d/b/a GlaxoSmithKline (“GSK”), to Plaintiff’s Second Set of Interrogatories to be served on counsel of record by transmission to LNFS pursuant to Order dated December 20, 2005.

Dated this 14th day of December, 2006.



Daniel W. Hildebrand