

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

CARPENTERS AND JOINERS  
WELFARE FUND, UNIVERSAL CARE  
INC., NANCY GERDTS individually and  
for minor A.G., CINDY SLAVENS  
individually and for minor J.S., ALAN and  
LAURISSA CHILSON, LEIGH ANN  
ENGH, DARCENE and GREG LENSING,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs

v.

SMITHKLINE BEECHAM  
CORPORATION d.b.a.  
GLAXOSMITHKLINE and  
GLAXOSMITHKLINE plc,  
Defendants

CIVIL ACTION

No. CV 04-3500 MJD/SRN

**ORDER ON JOINT MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

AND NOW, this 30<sup>th</sup> day of September, 2008, upon consideration of the Parties' Joint Motion for Final Approval of Class Action Settlement, the evidence and arguments submitted at the hearing on September 30, 2008, and all matters of record, it hereby is Ordered and Decreed that the Motion is GRANTED.

The Court makes the following findings of fact and conclusions of law:

1. Plaintiffs filed this class action on August 2, 2004, by Nancy Gerdts as the class representative plaintiff. Plaintiffs alleged that although SmithKline Beecham Corp. d/b/a GlaxoSmithKline (hereinafter "GSK" or "Defendant") had

actual knowledge that Paxil® (in tablet and suspended form) and Paxil CR® (as used herein, “Paxil®” includes all forms) was neither safe nor effective for the treatment of depression in persons under the age of 18, Defendant promoted Paxil® for prescription to persons under the age of 18 in violation of various consumer protection statutes. GSK asserted that Paxil® was safe and effective, denied promoting Paxil® for prescription to persons under the age of 18 and concealing negative information, and denied any remaining alleged wrongdoing asserted in this case.

2. This case was heavily litigated. Additionally, the litigants in three other class actions have joined in this settlement proposal, resolving similar class actions pending in other jurisdictions, which were heavily litigated as well:

- *Carpenters and Joiners Welfare Fund, et al. v. SmithKline Beecham*, Minnesota District Court, Hennepin County, No. 04-012879, before Hon. Mel Dickstein;
- *Universal Care, Inc. v. SmithKline Beecham*, California Superior Court, Orange County, No. 04-CC-00590; and
- *Philadelphia Firefighters Local 22 Health and Welfare Fund v. SmithKline Beecham*, United States District Court for the Eastern District of Pennsylvania, No. 2:07-cv-02460-JG, before Hon. James T. Giles.

All these actions sought to recover the costs paid by Third-Party Payors, for Paxil® prescribed to persons under the age of 18, on grounds that GSK should not have promoted or profited from such usage.

3. After extensive discovery and motion practice, the parties entered into settlement discussions. After many months of arm’s length negotiations, the

parties finalized a proposed settlement which called for GSK to pay \$40,000,000, to reimburse all class members who make claims, to pay plaintiffs' counsel fees and costs, and to pay for class notice and administration of the settlement.

4. In summary, the settlement provides that members of the settlement class can recover up to 40% of the actual cost for Paxil® prescribed to persons under the age of 18 with a diagnosis of Major Depressive Disorder and up to 15% of their actual cost for Paxil® prescribed to persons under the age of 18 if that diagnosis is not shown.

5. The settlement serves as the sole source of satisfaction of any claim by Third-Party Payors for economic loss from the purchase of Paxil® for persons under the age of 18. Should the claims exceed the \$40,000,000, net of plaintiffs' counsel fees and costs and the costs of class notice and settlement administration, each class member's benefit will be reduced in proportion to the total claims. On the other hand, should class members' claims total less than the \$40,000,000, net of plaintiffs' counsel fees and costs and the costs of class notice and settlement administration, GSK will not receive a refund; from any remaining balance, up to \$1,000,000 will be donated to one or more charity organizations whose primary purpose includes mental health issues affecting children. Any remainder following the charitable donation will be allocated to increase the amount payable to Class members who have submitted qualifying claims on a *pro rata* basis based upon the total pediatric Paxil expenditures during the class period that remain uncompensated after the initial claims process without regard to diagnoses or the

presence or absence of diagnostic information in any Class Member's claims form. In no event should any class member receive more than that class member's total pediatric Paxil expenditures during the class period.

6. On May 19, 2008, Plaintiffs and GSK jointly presented the proposed settlement for preliminary approval before Magistrate Judge Nelson.

7. Following the hearing, the Court granted the joint motion and certified a class of All Third-Party Payors of prescription medicine benefits in the United States and its territories, including administrators and benefit managers, who reimbursed, purchased, or paid for Paxil® prescribed for consumption by any person under the age of 18, between January 1, 1998 and December 31, 2004 (the "Class"). The Court also appointed class counsel.

8. The Court preliminarily found that the proposed settlement was fair, reasonable and adequate, found that the notice plan satisfied Rule 23, the requirements of Due Process, and all other applicable law, and ordered notice to be completed no later than July 1, 2008. In addition, the Court allowed potential Class members to file objections or opt-out of the settlement by August 1, 2008, and allowed until December 12, 2008, to file a claim.

9. In accordance with the Order, the parties carried out an extensive notice plan to educate and inform the potential Class members of their rights under the settlement, which was completed by July 1, 2008. That plan included first-class mail notice to over 42,000 Third-Party Payors, based on a database maintained by an experienced claims administrator, a published notice in two

national periodicals which are directed to the benefits administrators and human resources professionals, electronic notice through a dedicated website, and a staffed toll-free information line to answer questions. The Court finds that the actual direct notice and published notice was the best notice practicable and met the requirements of Rule 23, Due Process, and all other applicable law.

10. Based on feedback from the Class, the parties negotiated certain modifications to the terms of the settlement agreement. These modifications were previously submitted for consideration to Magistrate Judge Nelson on September 5, 2008, and given preliminary approval.

11. Even though Plaintiffs developed some factual support for their claims during this litigation, GSK's defenses were strong. Indeed, a successful outcome for the plaintiffs was anything but certain. The Court therefore finds that the possible risks to the Plaintiffs' claims, if the claims were not settled, strongly favors final approval of the proposed settlement.

12. This litigation has been complex, lengthy and expensive. GSK has raised a number of complex legal issues and the case has been on file for more than four years. Given the scope of the pretrial activity in the case, further litigation through certification, merits discovery, and trial would have been a significant burden on all parties. This factor therefore weighs in favor of final approval.

13. The Court finds that the amount of opposition to the settlement is *de minimis* and that the overall reaction to the settlement is overwhelmingly

favorable. Further, the Court notes that the Class consists of entities that are sophisticated and almost certainly received direct notice of the settlement. Thus, to the extent Class members have not made objections, it can be presumed that they support the settlement. These two factors weigh heavily in favor of final approval.

14. The settlement is fair, reasonable and adequate in the opinion of Counsel in this matter. This factor weighs in favor of final approval.

15. The parties engaged in extensive and thorough discovery in the matter and were thus well informed as to the strengths and weaknesses of their positions. This factor weighs in favor of final approval.

16. The Court further finds that the notice of the proposed settlement was sufficient and furnished Class members with the information they needed to evaluate whether to participate in or opt-out of the proposed settlement. The Court finds that the parties have spent approximately \$50,000 to date disseminating the notice, both by direct mail and by publication in the national media. Specifically, the notice states in plain language: (1) a description of the Class; (2) a description of the claims asserted in the lawsuit; (3) a description of the settlement; (4) the deadline for filing a claim form; (5) the names of Class counsel; (6) a description of the fairness hearing; (7) a statement of the maximum amount of attorneys' fees that may be sought by class counsel; (8) the deadline for filing objections to the settlement; (9) a description of how to receive further information about the settlement; and (10) a description of how to opt-out of the settlement. The Court

therefore concludes that the notice of the proposed settlement met all requirements required by law, including all constitutional requirements.

17. The Court finds that both of the modifications made to the settlement, in its final version, will benefit participating Class members; accordingly, Class members who have not opted out of the settlement, based on the initial notice, shall remain as Class members and are bound by the terms of the settlement.

18. Only one objection to the settlement was filed, on behalf of three Class members, by an advocacy group. This objection raised a variety of substantive and procedural issues. This objection has been withdrawn.

19. The Court having reviewed and considered the settlement and all documents, evidence and arguments of all counsel; the Court being fully advised in the premises and good cause appearing therefore, the Court finds that the settlement reached is the result of arm's length negotiations, the settlement is fair, reasonable, adequate and in the best interests of the Class, and the Motion for Final Approval should be GRANTED.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

20. The Court has personal jurisdiction over the parties and has subject matter jurisdiction over the Action.

21. All Class members who timely exercised their right to opt out as provided in the Court approved notice have been identified and provided to the Court.

22. The Court hereby determines that the settlement is fair, reasonable and adequate and in the best interests of the Class members, that there are no valid objections to the settlement, and that, accordingly, the settlement is finally approved.

23. Within ten days from the date of this Order, the parties shall cause a letter to be furnished by mail to all class members to advise them of the Court's final approval of the settlement as modified.

24. GSK shall allocate \$40,000,000.00 (the "Settlement Amount") in full, complete and final settlement of the case, all released claims and any obligations GSK might otherwise have to pay for notice to Class members, the claims of Class members ("Settlement Benefit"), interest, the costs of administration of the Settlement, and the cost of suit, including attorneys' fees.

25. Class members who submit a claim form by December 12, 2008, with the supporting data as required in the form, will be entitled to payment for their claim according to the percentage formula and criteria set forth therein.

26. The claims administrator shall determine which Class members have submitted the requisite proof and shall distribute the Settlement Benefit to those Class members. Each Class member will receive their full Settlement Benefit in one payment.

27. All settlement expenses of whatever kind relating to administration and notice, and all attorneys' fees and costs and incentive awards to be borne by GSK shall be paid out of the Settlement Amount and not additionally by GSK. If

the aggregate amount of claimed benefits, exceeds the balance of the Settlement Amount after payment of fees, expenses and costs, the benefits shall be reduced on a *pro rata* basis, so that in no event is the Settlement Amount exceeded.

28. If the aggregate amount of claimed benefits, fees, expenses, and costs does not exceed the Settlement Amount, up to \$1,000,000 will be donated to one or more charity organizations whose primary purpose includes mental health issues affecting children. Any remainder following the charitable donation will be allocated to increase the amount payable to Class members who have submitted qualifying claims on a *pro rata* basis based upon the total pediatric Paxil expenditures during the class period that remain uncompensated after the initial claims process without regard to diagnoses or the presence or absence of diagnostic information in any Class Member's claims form. In no event should any class member receive more than that class member's total pediatric Paxil expenditures during the class period.

29. The Settlement Amount shall be paid on December 15, 2008 or twenty days after Final Approval of the settlement (as defined in paragraph 14 of the parties' settlement agreement), whichever is later.

30. In accordance with the terms of the parties' settlement agreement:

- a. The case is dismissed with prejudice.
- b. Upon this settlement receiving Final Approval, the Plaintiffs, on behalf of themselves and all Class members, and their successors, heirs and assigns, and anyone acting on their behalf, including in a representative

or derivative capacity, shall, and shall be deemed as of the date of Final Approval of this settlement to: (i) release GSK and its present and former parents, subsidiaries, divisions, affiliates, stockholders, benefit plans, officers, directors, employees, agents and any of their legal representatives, and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing (collectively, the “Released Parties”) from all claims that the Plaintiffs and Class members asserted or could have asserted arising out of or relating to their payment, purchase, or reimbursement for Paxil® prescriptions for ingestion by persons under 18 years of age, including without limitation any claim for attorneys fees or expenses of any type (“Released Claims”), and (ii) covenant not to sue the Released Parties based on any Released Claims.

c. The foregoing release does not cover, and GSK will not assert this Release or the settlement of claims pursuant to the settlement agreement as a defense to any claim for personal injury by any person which might or could have been sustained by the ingestion of Paxil®. Nevertheless, a Class member may not claim or recover economic damages released by the settlement for itself or on behalf of any of its members or insureds, either through subrogation or any other theory that would allow the Class member to recover such damages on behalf of its members or insureds.

d. Members of the Class are permanently enjoined from filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, or other proceeding based on, relating to, or arising out of the Released Claims in this case.

31. Nothing in this Final Order and Judgment or the Settlement is or shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by GSK or of the truth of any of the claims or allegations in the case. The Court has made, and herein makes, no determination as to the merits of the claims.

32. Without affecting the finality of this Final Order and Judgment, the Court retains continuing jurisdiction over this case and the parties, including all members of the Class, concerning the administration and enforcement of the Settlement, and the benefits to the Class thereunder.

33. The Settlement Agreement between the parties and all negotiations, proceedings, documents prepared and statements made in connection herewith shall not be admissible in any proceeding for any purpose, except to enforce or interpret the terms herein in any dispute between the parties.

BY THE COURT:

s/Michael J. Davis  
Chief District Judge Michael J. Davis