IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

TERI HOORMANN, MARY KOPSIE and BONITA HELFER and MARK HELFER individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	Case No. 04-L-715
vs.	)	
SMITHKLINE BEECHAM CORPORATION d/b/a/ GLAXOSMITHKLINE,	)	CLASS ACTION
Defendant.	)	

ORDER

This case is before the Court on the motions of the parties for final approval of the class action settlement which the Court preliminarily approved on October 6, 2006. Being fully advised in the premises, the Court makes the following findings of fact and conclusions of law:

1. Plaintiffs filed this nationwide consumer class action on July 2, 2004. Plaintiffs alleged that although SmithKline Beecham Corp. d/b/a GlaxoSmithKline (hereinafter "GSK" or "Defendant") had actual knowledge that Paxil® and Paxil CR™ (hereinafter "Paxil®") would not work and would expose children and adolescents to dangerous side effects, it promoted Paxil® for prescription to children and adolescents while withholding and concealing negative information concerning its safety and effectiveness in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq*, and other states' consumer protection statutes. GSK asserted that Paxil® was safe and effective and denied promoting Paxil® for prescription to children and adolescents or withholding and concealing negative information.

2. This case was heavily litigated. In addition to moving to dismiss the action and denying all liability, GSK resisted Plaintiffs' discovery requests. Plaintiffs, for their part, successfully opposed GSK's motion to dismiss. Additionally, despite GSK's resistance, Plaintiffs aggressively pursued discovery. In addition to obtaining and analyzing thousands of pages of discovery from GSK, Plaintiffs used nationwide non-party subpoenas and FOIA requests to obtain thousands of additional pages of documents from non-party witnesses.

3. Eventually settlement discussions ensued and after several months of arm's length negotiations, the parties finalized a proposed settlement on October 6, 2006 which called for GSK to pay up to $63,833,148.00, to reimburse all class members who make claims ***100%*** of their out-of-pocket expenses as well as pay for notice, administration of the settlement, and any attorney fee award.

4. If after a reasonable attempt to locate documentation for their claim Class members are not able to obtain documentation, they can receive up to $100 of reimbursement of out-of-pocket expenses by submitting the claim form under penalty of perjury.

5. The settlement serves as the sole source of satisfaction of any claim by the class for economic loss from the purchase of Paxil® for minors. Should the claims exceed the settlement amount, each class member's benefit will be reduced in proportion to the total claims. By the same token, should class members fail to submit their claims, GSK will not pay any additional amounts, other than attorneys fees, notice and administration as provided herein.

6. The settlement calls for an extensive notice plan to educate and inform the class of their rights under the settlement. That plan includes first-class mail notice to all individuals who request it, an extensive published notice in newspapers, consumer magazines and pediatric

and pediatric psychiatric trade publications, earned media through a press release sent to major national print and electronic outlets, an audio news release distributed to more than 2,000 radio stations, electronic notice through a dedicated website and internet search engine sponsorships, and a staffed toll-free information line to answer questions. The settlement also calls for a supplemental notice to be provided to certain organizations.

7. On October 6, 2006, Plaintiffs and GSK jointly presented the proposed settlement for preliminary approval. In addition to discussing the merits of the proposal, the parties informed the Court about each of the other putative class actions pending with claims that would be affected by the proposed settlement.[1]

8. Following the hearing, the Court granted the joint motion and certified a class of "[a]ll persons in the United States who purchased for their minor child or ward Paxil® or Paxil CR™ prescribed for consumption for that child or ward" and appointed class counsel. The court preliminarily found that the proposed settlement was fair, reasonable and adequate, found the notice plan satisfied Due Process and ordered notice to be sent as soon as practicable and to be completed no later than December 31, 2006. In addition, the Court gave class members more than four months to object or opt-out of the settlement and eleven months in which to file a claim.

9. Even though Plaintiffs enjoyed significant success during this litigation, GSK's defenses were strong and a successful outcome for the plaintiffs was anything but certain.[2] The

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[1] At this time four other pediatric Paxil® class actions were pending: *Smith v. SmithKline Beecham Corp.*, 04-cc-0590 (Orange Cnty., Cal. Sup. Ct. filed June 21, 2004); *Gerdts v. SmithKline Beecham Corp.*, 04-3500 (D.Minn. filed Aug. 2, 2004); *Engh v. SmithKline Beecham Corp.*, 04-12879 (Hennepin Cnty, Minn. Dist. Ct. filed August 30, 2004); *Baldwin v. SmithKline Beecham Corp.*, 04-L-548, (St. Clair Cnty, Ill. filed Sep. 23, 2004).

[2] This fact is most clearly shown by the three published decisions denying class certification in other Paxil litigation. *In re Paxil Litig.*, 212 F.R.D. 539, 554 (C.D.Cal., Jan 13, 2003) (denying motion for class certification); *In re Paxil Litig.*, 218 F.R.D. 242, 250 (C.D.Cal., Aug. 29, 2003) (denying second motion for class certification and dismissing

Court therefore finds that the strength of the Plaintiffs' claims weighed against the proposed settlement strongly favors final approval.

10. 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 three years. With all of the pretrial activity that occurred in the case, it simply could not have been inexpensive. This factor therefore weighs in favor of final approval.

11. The Court finds that the amount of opposition to the settlement is *de minimis* and that the Class' reaction is inferentially overwhelmingly favorable. These two factors weigh heavily in favor of final approval.

12. As already noted, this case was contested bitterly. The Court finds that there is absolutely no basis whatsoever to support any allegation, implication or inference of collusion between Class Counsel and Defendant or their attorneys in reaching this settlement.

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

14. 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.

15. 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 to-date approximately $2.4 million disseminating the notice, both by direct mail and by publication in

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non-California based claims); *Blain v. Smithkline Beecham Corp.*, 240 F.R.D. 179 (E.D.Pa. 2007) (denying class certification).

the national media and reached more than 80% of the class. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all constitutional requirements. The Court further authorizes the supplemental notice described to the Court on April 26, 2007.

16. This Court finds that Class counsel took great risk in the prosecution of this case, devoting an enormous amount of time and expense without any guarantee of compensation and that this case presented highly complex questions of law and fact, requiring attorneys with extensive skill and experience in complex litigation. This Court finds that the requested attorneys' fees and expense reimbursement is fair and reasonable under applicable legal standards and in light of the risks incurred, results achieved and effort expended.

17. Objectors to the settlement complain that the total value of the settlement was both too small and too large, that undistributed sums should be awarded in *cy pres*, the notice was insufficient, the attorneys' fees were too large and that the release is overbroad. I find each of these objections to be without merit.

18. First, as noted above, it is clear that the size of the settlement is adequate when weighed against the strengths and weaknesses of Plaintiffs' case. The lack of a *cy pres* distribution does not affect this analysis. If this case would have proceeded to trial, and resulted in a verdict against the defendant on liability and damages, reversion of excess funds would likely result. *See, e.g.*, *Van Gemert v. Boeing Co.*, 739 F.2d 730, 737 (2d Cir. 1984) (reversion of unclaimed funds after liability found at trial proper where defendant acted without malice or bad faith.

19. The notice approved by this Court more than satisfies Due Process. It 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.

20. It is also clear that the amount of attorneys' fees sought in this matter is reasonable. "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." 4 ALBA CONTE AND HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS § 14:6 (4th ed. 2002).

21. Likewise, the proposed release is narrowly tailored, corresponding directly with the economic benefit made available.

22. The Court having reviewed and considered the Settlement, all objections, 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:

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

2. The pending motions to Intervene are denied for the reasons stated in the record.

3. The Court finally determines that the plan for dissemination of notice preliminarily approved and completed pursuant to Order dated October 6, 2006, satisfies the requirements of 735 ILCS 5/2-803 and the Due Process Clauses of the Illinois and United States Constitutions.

4. All Class members who timely exercised their right to opt out as provided in the Court-approved notice are identified in Exhibit A hereto. Pursuant to 735 ILCS 5/2-806, the Court hereby determines that the Settlement is fair, reasonable and adequate and in the best interests of the Class members, that all objections to the Settlement are overruled, and that, accordingly, the Settlement is finally approved.

5. GSK shall allocate $63,833,148.00 (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.

6. Class members who submit a claim form as well as pharmacy records or other sufficient medical records showing: (i) they purchased Paxil® or Paxil CR™ prescribed to a person under the age of 18; and (ii) the total amount of money they paid, out-of-pocket, for that Paxil® or Paxil CR™ , will be entitled to reimbursement of their out-of-pocket expenses for the purchase of that Paxil® or Paxil CR™.

7. Class members who cannot locate documentation can submit an affidavit submitting to the jurisdiction of this Court and swearing under penalty of perjury that: (1) the Class member purchased Paxil® or Paxil CR™ prescribed to a person under the age of 18 and

incurred out-of-pocket unreimbursed expenses from such purchase at least once during the Class Period; (2) the class member's name and address; (3) relationship to patient who was prescribed Paxil® (4) the date of birth for the patient who consumed Paxil®; (5) when patient took Paxil® (6) the name and address of the doctor who prescribed Paxil®; (7) Name of insurance company class member you had when the patient was prescribed Paxil® (8) the unreimbursed amount paid out-of-pocket for Paxil® or Paxil CR™ for the class member's child or ward and (9) the class member, after reasonable investigation, cannot locate or obtain pharmacy records or other sufficient medical records showing such purchase and/or the amount of money spent out-of-pocket; then such Class member shall be entitled to receive reimbursement of their actual out-of-pocket expenses up to $100 as and for their full Settlement Benefit in one payment.

8. 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.

9. The amount of $500,000.00 will be reserved by GSK ("Reserve Amount") for the benefit of any qualified Settlement Class member who presents an otherwise valid claim after the expiration of the claims period, August 31, 2007, or on a date otherwise agreed to by the Parties. Said Reserve Amount shall be maintained for the purpose of payment of delinquent Settlement Class members' claims for a period of one (1) year after the expiration of the claiming period. All monies remaining in the Reserve Amount shall revert to the Defendant at the expiration of the one-year period. Taxes due, if any, as a result of income earned by the Reserve Amount will be paid by GSK. In the event that federal or state income tax liability is finally assessed against and paid by GSK as a result of income earned by the Reserve Amount, GSK shall be entitled to

reimbursement of such payment from the Reserve Amount.

10. 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, fees, expenses and costs exceeds the Settlement Amount, the benefits shall be reduced so that in no event is the Settlement Amount exceeded.

11. In accordance with the terms of the Settlement (and with the exception of those persons who opted-out, identified in Exhibit A hereto):

(a) The case is dismissed with prejudice.

(b) GSK and their 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") are hereby released from all claims that Plaintiffs and class members asserted or could have asserted in the case arising out of or relating to economic damages suffered as a result of their purchase of Paxil® or Paxil CR™ for ingestion by someone under the age of 18 ("Released Claims"), subject to the preservation of all claims of personal injury which might or could have been sustained by the ingestion of Paxil® or Paxil CR™.

(c) 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.

(d) This Release and covenant not to sue shall not bar a subrogation claim brought on behalf of an individual Class member by an insurer, benefit plan, third-party payor or other collateral source (collectively, "Subrogees") if the Class member as subrogor has a contractual duty not to release such subrogation claim and if, in addition, subject to restrictions (if any) of any applicable law, (1) the Subrogee requires in a writing addressed to the individual Class member that a subrogation claim be brought on behalf of that specifically identified Class member, and (2) the Subrogee brings such subrogation action in its own name.

(e) The Application of Class Counsel for An Award for Attorneys' Fees and Expenses upon Entry of Judgment is GRANTED in the amount of $ 16,596,618.48 and such amount shall be paid solely out of the Settlement Amount in accordance with the terms of the Settlement. Of the overall fee awarded in this action, Public Citizen Litigation Group is hereby awarded $51,515.00, as compensation for the time of its attorneys in helping to secure the substantial improvements made to the settlement agreement in this action.

(f) The Court approves the payment of a $5,000.00 award to named Plaintiffs, each for their special efforts that benefited the absent Class members, such amount to be paid from the award of attorneys' fees referred to in paragraph 5(e) hereof.

(g) 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.

6. 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. The Court's continuing jurisdiction over the Settlement shall include the parties right to pursue claims of perjury against class members or their counsel and GSK's right to seek a refund if it is established that any individual class member received a payment in excess of 100% of his/her out-of-pocket expenses for Paxil® or Paxil CR™.

7. 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.

SO ORDERED.

DATE: 5-17-07

Honorable Ralph J. Mendelsohn