

## **Judge Approves \$40 Million Settlement in Second Phase of National Pediatric Paxil Class Action - Insurance Companies to be Reimbursed**

*Compiled from News Sources*

Minneapolis, Minnesota, October 1, 2008 – U.S. Judge Michael J. Davis of the District of Minnesota has approved the final settlement of \$40M to reimburse insurance companies, as third-party payers, for their costs in insuring Paxil purchases paid for by the parents of minors prescribed Paxil or Paxil CR.

Baum, Hedlund, Aristei & Goldman originated the class actions and litigated the heart of the case based on internal GSK (GlaxoSmithKline) documents showing that GSK promoted Paxil as an effective medication for children and adolescents despite internal communications acknowledging that Paxil's pediatric depression clinical trials failed to out-perform sugar pills, yet had higher suicidality rates than sugar pills. Notwithstanding, GSK promoted Paxil as being "remarkably safe and effective" for depressed children.

Paxil was never approved for children, so there were no explicit warnings for pediatric use on Paxil's warning label. Thus, the prescription and sale of Paxil to children was all "off label", which is permitted, but with severe restrictions on such "off-label" promotion and marketing.

"Off-label marketing of drugs is prohibited, with limited exceptions that allow scientific trial results to be presented as long as they are truthful and accurate," stated [Michael Baum](#), senior partner at Baum, Hedlund, Aristei & Goldman. "Here GSK should not have promoted Paxil for kids' use when GSK's own pediatric clinical trials showed Paxil was no more effective than sugar pills and, in fact, caused pediatric Paxil patients to experience increased suicidality. Litigation like this helps remove the incentive for drug companies to take advantage of the off-label marketing loophole."

Similar class actions were filed in several courts seeking restitution of money paid by insurance companies that paid for minors' Paxil, which were ultimately consolidated as a national class action before Judge Davis in Minneapolis. The first phase of these cases, the class action for the individual Paxil payments, were resolved in April, 2007 when GSK agreed to reimburse parents for the money they paid out-of-pocket for their children's Paxil prescriptions.

The class representatives in the insurance company phase are Universal Care Inc., the Carpenters and Joiners Welfare Fund, and Philadelphia Firefighters Local 22 Health and Welfare Fund (Carpenters and Joiners Welfare Fund, et al. v. SmithKline Beecham Corp., doing business as GlaxoSmithKline, No. CV 04-3500, D. Minn.). Each were class representatives of four individual class actions in California, Minnesota and Pennsylvania that sought a refund of monies paid by third-party payers who purchased Paxil for patients under 18 from Jan. 1, 1998, to Dec. 31, 2004.

In addition to Baum Hedlund, the team of law firms representing the insurance company class representatives are Brian Strange of Strange & Carpenter in Los Angeles; J.D. Horton of Quinn, Emanuel in Los Angeles; Christopher Coffin of Pendley, Baudin & Coffin in Plaquemine, LA; Shawn Raiter of Larson King in St. Paul; Stephen Swedlow of Swedlow & Associates in Chicago; Paul Dahlberg of Meshbeshier & Spence in Rochester, MN; Michael Perrin of Bailey Perrin Bailey in Houston; and William Marvin of Cohen, Placitella & Roth in Philadelphia. GSK is represented by Dwight Davis and Meghan Magruder of King & Spalding.

Through the team's skillful negotiating, especially Steve Swedlow's, all objections to the class were handled and withdrawn. The settlement team also handled, with King & Spalding's assistance, nearly all of the companies that had considered opting out of the class, addressing their concerns and shepherding them back into the settlement, as well.

These lawyers coordinated a unique settlement that has the entire proceeds being paid out by GSK, not just the amount claimed.

Judge Davis pointed out that the case was "heavily litigated" and noted that the amount of opposition to the settlement was de minimis. Davis ruled that if the aggregate amount of claimed benefits does not exceed the \$40 million settlement amount, up to \$1 million will be donated to one or more charitable organizations whose primary purpose includes mental health affecting children and the rest will be distributed pro rata among the claimants.

Under the settlement terms, class members would be refunded up to 40 percent of their actual cost for Paxil if they provide proof that a patient under 18 with diagnosis of a major depressive disorder was prescribed Paxil or Paxil CR. Class members would receive 15 percent of their actual cost if the diagnosis is not included.

Each of the insurance companies were class representatives of four class actions in California, Minnesota and Pennsylvania. The class consists of "[a]ll third-party payors in the United States and its territories, including administrators and benefits managers, who reimbursed, purchased, or paid for Paxil or Paxil CR prescribed for consumption by any person under the age of 18, between Jan. 1, 1998, and Dec. 31, 2004."