

Reprinted with permission from *Louisiana Bar Journal* (Vol. 59, No. 6, April/May 2012), published by the Louisiana State Bar Association.

GLAXOSMITHKLINE'S AVANDIA MEDIATION

GlaxoSmithKline PLC (GSK) is a pharmaceutical company headquartered in the United Kingdom. GSK manufactured a drug called Avandia, which is a diabetes medication that improves glycemic control in patients with Type 2 diabetes. In 2009, Avandia was the best-selling drug in the world producing revenue exceeding \$1.2 billion. The drug was distributed worldwide until 2010 when studies showed a potential link between the drug and an increased risk of heart attacks and strokes in patients.¹ Since that time, GSK has ceased promotion of the drug and has faced many lawsuits in state courts throughout the United States as well as the United States District Courts.

Probes into GSK and Avandia began in 2004 by federal prosecutors in Colorado. The investigation covered the marketing practices during the time period from 1997 to 2004. The United States Attorney for the Eastern District of Massachusetts soon took over the investigation. At the same time, the United States Department of Justice investigated possible violations tied to Medicaid's rebate program and into the marketing of Avandia. These investigations ceased when GSK announced its intention to settle the claims against them.

There have been multiple civil and criminal probes as to whether GSK illegally marketed Avandia and other medications. Claims alleging that GSK concealed information that linked Avandia's potential to cause heart attack and stroke in some patients were filed and have received media attention due to the usage and popularity of the medication. Last November, GSK announced its intention to settle these claims for \$3 Billion. News companies have reported the GSK paid \$700 Million in settling more than 10,000 claims last year.

The distribution of cases covers state courts across the United States while another 2,500 have been brought at the United States District Court for the Eastern District of Pennsylvania. In the Eastern District of Pennsylvania, U.S. District Judge Cynthia Rufe assigned a mediator to settle the claims. When the claims were referred to mediation, GSK expressed enthusiasm for alternative dispute resolution in hopes of avoiding litigation.

Judge Rufe provided deadlines for mediation in this case. In November 2011, she directed that 85 percent of the claims must be settled within a 75-day period. If this deadline was not met, Judge Rufe stated that she would immediately put the first 100 of the oldest suits on the calendar to begin after 60 days.² As the deadline approached, it was unclear as to whether the attorneys would be able to settle these claims.

While the settlement of claims against GSK and Avandia spans the United States and the Atlantic Ocean, it also has strong ties to Louisiana. Lafayette's own Patrick Juneau, of the law firm Juneau David, was chosen as the mediator for mediation by Judge

¹ Sophia Pearson, "Glaxo Uses Mediation to Settle Almost 25,000 Avandia Diabetes-Drug Claims", February 14, 2012, Bloomberg. <http://www.bloomberg.com/news/2012-02-14/glaxo-uses-mediation-to-settle-almost-25-000-cases-on-avandia-drug-claims.html>

² Jef Feely, "Glaxo Facing Mediation Push to Resolve Remaining Lawsuits Over Avandia" November 8, 2011. <http://www.bloomberg.com/news/2011-11-08/glaxo-facing-mediation-push-to-resolve-avandia-lawsuits-1-.html>

Rufe. A graduate of the Louisiana State University Law Center, Class of '65, Mr. Juneau has served as a mediator in over 3,000 cases at both the state and federal level. He has also served as a court appointed special master in many multi-party matters ranging from 2,500 claimants to 11,800 claimants. His role as mediator in the Avandia claims helped to reach agreements between GSK and plaintiff attorneys for over 20,000 cases.³

In a Bloomberg News article published on February 14, 2012, Judge Rufe expressed admiration for both the plaintiffs' and the defenses' effort during the mediation period. Judge Rufe said, "[m]ediation will no longer be the focus of this court's effort ... [w]e will resolve the remaining cases through litigation." As of the publication date of this article, the start date of any trials in the United States District Court for the Eastern District of Pennsylvania is unknown.

Submitted by Brian W. Amy, Jr., 3rd Year Law Student, LSU Paul M. Hebert Law Center, Civil Mediation Clinic, under the Supervision of Paul W. Breaux, Adjunct Clinical Professor, and Chair, LSBA Alternative Dispute Resolution Section, 16643 S. Fulwar Skipwith Road, Baton Rouge, LA 70810

³ Jef Feely, "Glaxo Settles 20,000 Lawsuits Over Avandia, Lawyer Says", February 1, 2012, Bloomberg, <http://www.bloomberg.com/news/2012-02-01/glaxosmithkline-agrees-to-settle-20-000-more-avandia-cases-lawyer-says.html>