



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**NEW YORK CITY FILES TWO SUITS AGAINST GLAXOSMITHKLINE
FOR ANTITRUST VIOLATIONS AND MEDICAID FRAUD
IN CONNECTION WITH THE ANTIDEPRESSANT PAXIL
AND THE ANTIBIOTIC AUGMENTIN**

***BUILDING ON A MAY 6TH SUIT AGAINST PURDUE PHARMA FOR OVERCHARGES FOR OXYCONTIN,
THESE ADDITIONAL SUITS REPRESENT A CONCERTED EFFORT BY THE CITY TO RECOUP MONEY
FOR TAXPAYERS FROM DRUG OVERCHARGES AND TO PREVENT PHARMACEUTICAL FRAUD***

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New York, May 18, 2004 – The City of New York has filed two complaints – one in Federal court in the Eastern District of Virginia and one in Federal court in the Eastern District of Pennsylvania – against the pharmaceutical company GlaxoSmithKline PLC (GSK) and its affiliate, SmithKline Beecham Corp., alleging that the City was forced to pay unlawfully high Medicaid prices for the two drugs.

One suit alleges overcharges for the antidepressant Paxil, the other alleges the same charges for the antibiotic Augmentin. The suits assert that these overcharges came as a result of GSK's illegal actions in excluding generic competitors through fraud on the U.S. Patent Office and on the Federal Drug Administration, and through frivolous litigation. The City alleges violations of Federal and State antitrust law, Medicaid fraud, unfair and deceptive trade practices, and other state common law causes of action.

These initiatives represent a concerted effort by the City to prevent pharmaceutical fraud. Michael Cardozo, Corporation Counsel of the City of New York, said, "These suits continue the City's efforts commenced earlier this month to protect New York City taxpayers against prescription drug overcharges to the Medicaid program." Cardozo noted that another major lawsuit is expected to be filed in the near future. "These suits demonstrate the City's ongoing plans to attack the rapid increase in the City's prescription drug expenditures resulting from unlawful and fraudulent practices," he said.

In the two new Glaxo cases, the City seeks to recover money that it paid as its 25 percent share of Medicaid payments on behalf of New York City residents. In 2002 alone, the Federal, State and local share of Medicaid payments for Augmentin for City residents totaled \$14.7 million. For Paxil, Medicaid paid \$23.1 million. The City is seeking triple damages for the overcharges. While the exact amount of the overcharges has not yet been calculated, they are also likely to amount to millions of dollars.

Each of the new complaints alleges that GlaxoSmithKline engaged in a pattern of "evergreening" its patents by filing frivolous or obviously duplicative patents, and by filing frivolous patent infringement lawsuits against generic drug manufacturers seeking to enter the market with lower-cost equivalent drugs. In recent decisions in litigation between GSK and companies seeking to bring generic equivalent drugs to market, the Court of Appeals for the Federal Circuit, which hears all patent appeals, has invalidated the patents on which GSK relied.

The City is represented in both Glaxo cases by Goodkind Labaton Rudoff & Sucharow LLP, a law firm with expertise in antitrust and consumer litigation. With offices in New York and Florida, Goodkind (www.glrslaw.com), has over 40 years of experience in complex commercial litigation, including antitrust, securities and consumer class actions.

Bernard Persky is Goodkind Labaton's lead attorney on these cases. "GlaxoSmithKline's unlawful efforts to prevent the introduction of generic alternatives to GSK's Augmentin and Paxil have resulted in New York City substantially overpaying for these critical prescription drugs needed by the City's Medicaid patients," Persky said. "Goodkind is proud to represent the City in these important matters." In addition, John R. Low-Beer and Richard J. Costa, Assistant Corporation Counsels in the Law Department's Affirmative Litigation Division, also represent the City in concert with Goodkind Labaton. The legal complaints were filed yesterday (Mon., May 17, 2004).

On Thurs., May 6, 2004, the City also filed a complaint in Federal court in Manhattan against The Purdue Pharma Co. and its affiliates for improper Medicaid charges. Like the Glaxo cases filed yesterday, this complaint alleged violations of Federal and State antitrust laws, unfair and deceptive trade practices, and other state common law causes of action. These claims emanated from the defendants' allegedly fraudulent, deceptive and inequitable conduct in procuring patents from the U.S. Patent and Trademark Office for the painkiller OxyContin, which is produced by Purdue Pharma. In 2002 alone, the Federal, State and local share of Medicaid payments for OxyContin for City residents totaled \$5.5 million. As in the two Glaxo cases, the City is seeking triple damages for the overcharges. The total amounts are still being calculated on a year-by-year basis but could again amount to millions of dollars.

In the Purdue Pharma case, the City is represented by Kirby McInerney & Squire, LLP (www.kmslaw.com), another law firm with expertise in antitrust and consumer litigation. Joanne M. Cicala is Kirby McInerney's lead attorney. City lawyers John Low-Beer and Richard Costa are also working on this case with Kirby McInerney.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov.

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