

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re WELLBURTIN SR	:	CIVIL ACTION
ANTITRUST LITIGATION	:	
	:	NO. 04-5525
THIS DOCUMENT RELATES TO:	:	
	:	
ALL ACTIONS	:	

SHEET METAL WORKERS LOCAL 441	:	CIVIL ACTION
HEALTH AND WELFARE PLAN, <u>et al.</u>	:	
	:	NO. 04-5898

v.

GLAXOSMITHKLINE, PLC, et al.

MEDICAL MUTUAL OF OHIO, INC.	:	CIVIL ACTION
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v.

GLAXOSMITHKLINE PLC and
SMITHKLINE BEECHAM CORP.

ORDER

AND NOW, this 11th day of May, 2006, upon consideration of Defendants' Motion to Certify (docket no. 38 in 04-Cv-5525, docket no. 23 in 04-Cv-5898, docket no. 31 in 05-Cv-396) and the responses thereto, it is **ORDERED** that the Motion is **DENIED**.¹

¹ Plaintiffs have filed this antitrust action against Defendants Glaxosmithkline and its subsidiary Smithkline Beecham Corporation (together "GSK"). The Court's Order of March 9, 2006 denied GSK's Motion to Dismiss. See In re Wellbutrin SR Antitrust Litig., Nos. 04-5525, 04-5898, 05-396, 2006 WL 616292 (E.D. Pa. Mar. 9, 2006). GSK now seeks interlocutory appeal of two of the Court's legal conclusions: (1) that the Court could not take judicial notice of factual findings in related litigation in order to challenge the allegations in the Complaints; and (2) that the limited success GSK met with in various infringement suits it had filed did not as a matter of law preclude a finding that those suits were "objectively baseless." A district court may certify an order for interlocutory appeal only if "(1) the issue involved is a controlling question of law; (2) as to which there are substantial grounds for difference of opinion; and that (3) an immediate appeal of the order may materially advance the ultimate termination of the litigation."

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.

Simon v. United States, 341 F.3d 193, 199 (3d. Cir. 2003). For the reasons set forth in the Memorandum accompanying the Court’s Order on the Motion to Dismiss, the Court finds that GSK is unable to satisfy the second prong – the issues it has raised are not ones “as to which there are substantial grounds for difference of opinion.”