

To Approve a Waiver of Sovereign Immunity for the Limited Purposes of Entering a Settlement Agreement with GlaxoSmithKline LLC ("GSK").

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION
INTRODUCED A COUNCIL BILL

A COUNCIL BILL

TO APPROVE a waiver of sovereign immunity for the limited purpose of entering a settlement agreement with GlaxoSmithKline LLC ("GSK").

WHEREAS, the Choctaw Nation has determined it to be in the best interests of the Nation to enter a settlement agreement with GSK.

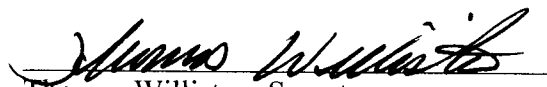
WHEREAS, in order to enter said agreement, a waiver of sovereign immunity for the limited purpose of enforcement of the agreement is necessary.

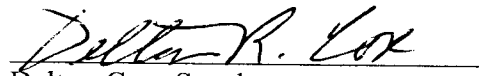
WHEREAS, the Choctaw Nation has determined that the Chief shall be authorized to negotiate and execute a waiver of sovereign immunity, applicable only to a settlement agreement with GSK.


THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, the governing body of the Choctaw Nation that a waiver of sovereign immunity is approved for the limited purpose of executing a settlement agreement with GSK, and that the Chief is hereby authorized to negotiate and execute such a waiver on behalf of the Nation.

CERTIFICATION

I, the undersigned, as Speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that (11) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on March 14, 2015. I further certify that the foregoing Council Bill CB- 68 -15 was adopted at such meeting by the affirmative vote of eleven (11) members, zero (0) negative votes and zero (0) abstaining.


Thomas Williston, Secretary
Choctaw Nation Tribal Council


Delton Cox, Speaker
Choctaw Nation Tribal Council


Chief Gary Batton
Choctaw Nation of Oklahoma

Date 3-19-15

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered by and between The Choctaw Nation of Oklahoma (the “Nation”) and GlaxoSmithKline LLC (“GSK”), hereinafter referred to together as the “Parties” and individually as a “Party”.

I. RECITALS

- A. The Nation is a sovereign Indian nation recognized by the United States of America.
- B. GSK is a Delaware limited liability company and an indirect subsidiary of GlaxoSmithKline plc, a public limited liability company incorporated under English law with headquarters in Brentford, England.
- C. At all relevant times, GSK was responsible for the design, development, manufacture, distribution, marketing, and sale of its pharmaceutical products in the United States, including prescription drugs sold under the trade names Avandia®, Paxil®, Wellbutrin®, Advair®, Lamictal®, Zofran®, Imitrex®, Lotronex®, Flovent®, and Valtrex® and other formulations thereof (collectively, the “GSK Drugs”).
- D. The Nation has asserted various claims against GSK arising from the design, development, manufacture, distribution, marketing, labeling, promotion, reimbursement, and sale of the GSK Drugs, including in the lawsuit styled *The Choctaw Nation of Oklahoma v. GlaxoSmithKline, LLC [sic]*, Case No. CIV-14-001, District Court of the Choctaw Nation (the “OK Choctaw Nation Court Action”).
- E. GSK denies the Nation’s claims and specifically denies that it has violated any applicable law or regulation or breached any legal duty. The Nation denies that its claims are barred as GSK contends in the GSK Action.

F. The Parties mutually desire to reach a full and final resolution of all claims that the Nation brought or could have brought in the OK Choctaw Nation Court Action and/or the GSK Action, under the terms set forth in this Agreement, to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these claims.

II. TERMS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration, intending to be legally bound, the Parties agree as follows:

1. Release and Discharge. In consideration for the payment provided in Paragraph 3, below, the Nation, on behalf of itself, including the Choctaw Nation of Oklahoma Health Services, and any and all tribal offices, agencies, corporations, companies, departments, instrumentalities, healthcare providers, health centers, hospitals, and other tribal economic entities and subordinate tribal entities and their attorneys, hereby releases and forever discharges, to the fullest extent permitted by law, GSK and all of its past and present parents, subsidiaries, divisions, affiliates, predecessors, successors, assigns, and transferees and each and all of their current and former officers, directors, members, shareholders, employees, agents, representatives, insurers, distributors, contractors, consultants, and attorneys of and from all civil, criminal, and administrative claims, causes of action, damages, liens, restitution, disgorgement, reimbursement, overpayment, fines, costs, attorneys' fees, penalties, declaratory, and equitable relief of any nature that the Nation has asserted or could have asserted (including, but not limited to, any claim and/or theory under state or federal law or the law of the Nation, statutory or otherwise) against the Released Parties in connection with the GSK Drugs, which includes GSK Drugs purchased or received by the Nation, by reason of any conduct that that has occurred at any time up to when this

Agreement is fully executed by the Parties, including without limitation in regard to the design, development, manufacture, testing, marketing, labeling, promotion, distribution, reimbursement, or sale of the GSK Drugs. The Nation hereby expressly acknowledges that this release and discharge from liability includes any subrogation claims or claims that GSK has liability for any reimbursement obligation that may be owed by an individual claimant who has asserted or may assert loss or injury from the use of the GSK Drugs.

2. Dismissal of Litigation. Promptly following the full execution of this Agreement, the Nation shall cause the OK Choctaw Nation Court Action to be dismissed with prejudice. Each Party bears full and exclusive responsibility for the costs and attorneys' fees associated with its representation.

3. Consideration and Payment. In consideration for the agreements, promises, and releases provided in this Agreement, GSK agrees to pay Six Hundred Eighty-Seven Thousand, Six Hundred Sixty-Two and 50/100 Dollars (\$687,662.50) (the "Settlement Amount"). GSK shall pay ninety-three percent (93%) of the Settlement Amount to the Nation within fifteen (15) days following the dismissals of the OK Choctaw Nation Court Action in the GSK Action with prejudice. GSK shall reserve the remainder of the Settlement Amount pending determination of the amount of any Common Benefit Fund assessment that may be owed by the Nation or its attorneys pursuant to Pretrial Order No. 70 entered in the Avandia Multidistrict Litigation, *In re: Avandia Marketing, Sales Practices and Product Liability Litigation*, MDL No. 1871; 07-md-01871 ("MDL"). GSK shall pay such remainder upon the expiration of any period of appeal following entry of a final, binding order of the MDL court that either approves an agreement respecting such an assessment entered between the Nation and its attorneys, on the one side, and the Avandia Plaintiffs Fee Committee, on the other, or otherwise sets the amount of the assessment.

GSK shall make payment of such remainder to the Nation and/or to the Avandia Plaintiffs Fee Committee consistent with the order of the MDL court.

4. Indemnification. The Nation shall defend, indemnify, and hold harmless GSK against any claim (i) that is based on any of the facts alleged by the Nation in the OK Choctaw Nation Court Action or otherwise concerns the distribution, marketing, promotion, or sale of any of the GSK Drugs to the Nation or to any member of the Nation, excluding only any personal injury claims that individual users of GSK Drugs may have against GSK for bodily harm and costs of medical care that have not been paid for or reimbursed by the Nation; and/or (ii) that is within the scope of the Release and Discharge provided in Paragraph 1, above; and/or (iii) that may be brought by any third party asserting that it has a right to bring a claim for or to receive some portion of the payment being made hereunder, including without limitation any claim by any federal agency, qui tam relator, relator's attorneys, citizen, or private insurer. In the event the Nation does not fulfill all the obligations to indemnify GSK and hold it harmless provided under this Paragraph 4, or GSK does not otherwise obtain the full benefit of the indemnity and right to be held harmless as provided herein for any reason whatsoever, GSK shall have the right, in its full and absolute discretion, to rescind its agreement herein and receive a refund of the Settlement Amount.

5. No Admission of Liability. The Parties are entering this Agreement solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law or regulation or of any other matter of fact or law or of any liability, fault, or wrongdoing, all of which GSK expressly denies, including any liability for penalties or fines, and no payment made herein has been designated as a payment of a fine or penalty or in lieu thereof. The Nation agrees not to represent publicly that this Agreement (or any

individual aspect or provisions of it) in any way embodies, reflects, implies, or can be used to infer any culpable or harmful act by GSK.

6. Assistance of Counsel. The Parties represent that they have had the assistance of legal counsel in negotiating, reviewing, and executing this Agreement and that they appreciate and understand its legal significance and the legal significance of the dismissals of the Parties' legal actions, all of which have been explained to them by their attorneys. The Parties represent that they are not under duress or pressure from any source, and they have executed this Agreement knowledgeably and freely by and with the advice of their attorneys. This Agreement has resulted from negotiation by the Parties' attorneys, and in the event of ambiguity or otherwise, it shall not be construed against or in favor of any of the Parties on the grounds that its attorneys drafted the Agreement or any particular part of it.

7. Confidentiality. The terms of this Agreement and the amount of payment hereunder are confidential, except as may be required by law and then only to the extent necessary. Agreement to, and maintenance of, confidentiality are material terms of this Agreement. The Parties shall not offer this Agreement into evidence or in any way refer to it in any civil, criminal, administrative, or other related action or proceeding, other than as may be necessary to consummate or enforce this Agreement. If the subject of this Agreement or its terms shall arise in any such legal proceedings, the affected Party shall, to the extent possible, (i) oppose disclosure, (ii) give the other Party notice and an opportunity to intervene and oppose disclosure, (iii) file under seal any documents disclosing this Agreement or its terms, and (iv) take reasonable measures to ensure that this Agreement and its terms are kept confidential and that any disclosure thereof takes place in camera.

8. Joint Messaging. Any public statements by the Parties concerning the fact or terms of this Agreement, except as may be otherwise agreed, shall state only that the Parties have entered into an agreement to settle their claims and that the terms of the agreement are confidential.

9. Governing Law. It is understood and agreed by the Parties that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware, without regard to conflicts of laws principles.

10. Dispute Resolution. Any dispute arising out of or relating to this Agreement, or the breach, termination, or validity thereof (a "Dispute") shall be finally resolved pursuant to the following provisions:

The Parties agree that they shall try in good faith to resolve the Dispute by referring it for confidential mediation under the Mediation Procedure of International Institute for Conflict Prevention & Resolution ("CPR Institute") in effect at the start of mediation, before resorting to arbitration. If the Parties cannot agree on a mediator within fourteen (14) days after the Dispute is referred to mediation, a mediator shall, upon request by either Party, be appointed by the CPR Institute pursuant to the CPR Mediation Procedure. The cost of a mediator shall be borne equally by the Parties.

Any Dispute not resolved within forty-five (45) days (or within such other period as may be agreed to by Parties in writing) after appointment of a mediator shall be referred to the CPR Institute for binding arbitration, with all costs to be borne equally. The Parties shall work together to agree on a binding neutral arbitrator to resolve any and all disputes, and if an agreed-upon arbitrator cannot be selected within forty-five (45) days after the initiation of arbitration, CPR Institute procedures shall control the selection of a neutral arbitrator. The

arbitration shall be conducted under the CPR Rules for Non-Administered Arbitration in effect at the time of the arbitration, except as those rules may be modified herein or by agreement of the Parties.

The seat of the arbitration shall be Wilmington, Delaware, and it shall be conducted in English. The Parties hereby submit to the exclusive jurisdiction of the United States District Court for the District of Delaware, or in the absence of jurisdiction in such court, the Delaware Court of Chancery or the New Castle County Delaware Superior Court, as appropriate, for the limited purpose of enforcing this agreement to arbitrate. Either of the Parties has the right to apply to United States District Court for the District of Delaware, or in the absence of jurisdiction in such court, the Court of Chancery of the State of Delaware or the Superior Court of the State of Delaware in and for New Castle County, as appropriate for interim relief necessary to preserve the Party's rights until the arbitrator is appointed. After appointment, the arbitrator shall have the exclusive jurisdiction to consider applications for interim relief. The arbitration award shall be final and binding, shall be accorded full faith and credit, including by the District Court of the Choctaw Nation of Oklahoma, and judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Party and its assets, including the District Court of the Choctaw Nation of Oklahoma.

The Parties agree that the mediation and/or arbitration shall be kept confidential and that the existence of and any aspect of the proceedings shall not be disclosed beyond the mediator, the CPR Institute, the Parties and their affiliates, their counsel, insurers and re-insurers, accountants and auditors, and any person necessary to the conduct of the proceeding. The confidentiality obligations shall not apply if disclosure is required by law or to the extent necessary to enforce the rights arising out of the award.

The Nation hereby expressly and irrevocably consents to the jurisdiction of the CPR Institute and the aforementioned courts and hereby expressly and unequivocally waives the exhaustion of tribal court remedies, and it also stipulates and agrees that it shall not assert the defenses of sovereign immunity and/or the exhaustion of tribal court remedies in response to any claim by GSK under this Agreement.

11. Entire Agreement. This Agreement represents the full and complete terms of the settlement entered between the Parties with regard to the matters set forth, shall be binding upon and inure to the benefit of their successors and assigns, and shall not be amended except by further written agreement of the Parties.

12. Notices. Unless otherwise stated in writing subsequent to the Effective Date of this Agreement, all notifications and communications made pursuant to this Agreement shall be submitted to the persons/entities listed below:

a. For the Nation:

Gary Batton, Chief
Choctaw Nation of Oklahoma
302 Church Street
Talihina, OK 74571

b. For GSK:

Christina L. Diaz, Esq.
GlaxoSmithKline, LLC
Legal Department
Mailstop: NY0300
5 Crescent Drive
Philadelphia, PA 19112
Phone: (215) 751-6485
Email: christina.l.diaz@gsk.com

Nina M. Gussack, Esq.
George A. Lehner, Esq.
Kenneth H. Zucker, Esq.

Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
Phone: (215) 981-4000
Fax: (215) 981-4750
Email: gussackn@pepperlaw.com
lehnerg@pepperlaw.com
zuckerk@pepperlaw.com

13. Warranty of Capacity to Execute Agreement. The undersigned signatory on behalf of the Nation represents and warrants that s/he has carefully read this Agreement, s/he is the duly authorized and appointed representative of the Nation, and s/he has the full right, power, and authority to execute this Agreement on behalf of and to bind the Nation and its offices and agencies and to expressly and unequivocally waive sovereign immunity and the exhaustion of tribal court remedies, as set forth in Paragraph 10 above. The undersigned GSK signatory represents and warrants that s/he is authorized as a result of appropriate company action to execute this Agreement.

14. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. The Parties agree that facsimile or electronic signatures shall be deemed as effective as original signatures.

CHOCTAW NATION OF OKLAHOMA

BY: _____
Gary Batton, Chief

DATED this _____ day of _____, 2015