

Federal Court



Cour fédérale

Date: 20110314

Docket: T-1687-09

Citation: 2011 FC 306

Toronto, Ontario, March 14, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**GLAXOSMITHKLINE INC. and
BEECHAM GROUP p.l.c.**

Applicants

and

**PHARMASCIENCE INC. and
THE MINISTER OF HEALTH**

Respondents

REASONS FOR ORDER AND ORDER AS TO COSTS

[1] In my Reasons and Judgment dated March 1, 2011 (2011 FC 239) I set out my disposition as to costs subject to any further comments from Counsel. I have now received these comments.

[2] Counsel for Pharmascience writes that an offer was made not to proceed with the cross-examination of Dr. Jurs if his affidavit was withdrawn. That affidavit was not withdrawn and the cross-examination proceeded. GlaxoSmithKline's Counsel writes that the offer was not a real offer,

that the effort in preparing the affidavit had already been made, and that the subsequent cross-examination was in reality a fishing expedition.

[3] Pharmascience's Counsel wants costs and disbursements of the Jurs cross-examination on an increased scale plus a credit for two hours of time at the hearing before me. GlaxoSmithKline's Counsel opposes all of that.

[4] The time spent at the hearing on Dr. Jurs and his evidence, which was directed to what was termed the Log P issue, was trivial. GlaxoSmithKline did have to expend the effort and cost in preparing the affidavit. However, GlaxoSmithKline should have considered more seriously Pharmascience's offer and later, in dealing with costs, asked for costs of the withdrawn affidavit. This did not happen. The cross-examination was conducted.

[5] I will award Pharmascience the costs of conducting the cross-examination of Dr. Jurs, and related disbursements, assessed at the same scale as GlaxoSmithKline's costs. These costs are to be set-off against costs otherwise taxed by GlaxoSmithKline.

ORDER

THIS COURT ORDERS that

1. Costs of the cross-examination of Dr. Jurs, and related disbursements, are awarded to Pharmascience On the same scale as costs awarded to the Applicants and are to be set-off against costs taxed by the Applicants pursuant to my Judgment of March 1, 2011.

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1687-09

STYLE OF CAUSE: GLAXOSMITHKLINE INC. and
BEECHAM GROUP p.l.c. v. PHARMASCIENCE
and THE MINISTER OF HEALTH

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: February 15, 2011 to February 17, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** HUGHES J.

DATED: March 1, 2011

APPEARANCES:

Peter Wilcox FOR THE APPLICANTS

Carol Hitchman FOR THE RESPONDENT
PHARMASCIENCE INC.

No One FOR THE FOR THE RESPONDENT
MINISTER OF HEALTH

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