

CV 05-0059-10

CHARLES FOTI, ATTORNEY
GENERAL ex rel, STATE OF
LOUISIANA

VERSUS

ELI LILLY AND COMPANY, INC.
ET AL

27TH JUDICIAL DISTRICT COURT
JAN 13 2005

DOCKET NO. 05-3963-21
ROBERT H. SHIMWELL, CLERK
DEPUTY

PARISH OF ST. LANDRY
STATE OF LOUISIANA
JUDGE MELANÇON

PETITION

MAGISTRATE JUDGE HILL

NOW INTO COURT, through undersigned counsel, comes CHARLES FOTI, the Attorney General of the State of Louisiana, who brings this action on behalf of the State of Louisiana and its subdivision, THE DEPARTMENT OF HEALTH AND HOSPITALS, pursuant to the duty of the Attorney General to protect the interests of the State and the general public.

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

JAN 13 2005

ROBERT H. SHIMWELL, CLERK
DEPUTY

Made defendants herein are:

- A. ELI LILLY AND COMPANY, INC., a corporation authorized to do and doing business in the State of Louisiana, who may be served through Long Arm Statute at 1125 Trenton - Harbourton Road, Titusville, New Jersey, 08560; and
- B. BRIE LEBLANC, ROGER, PARIKH and GERALD CAHEE, all residents of the State of Louisiana, who at all times relevant herein were Sales Representatives for Eli Lilly and Company, Inc. in the State of Louisiana;

2. The Defendants, ELI LILLY AND COMPANY, INC.. (hereafter sometimes referred to as "ELI LILLY") did individually or in conjunction with others, research, develop, manufacture, create,

design, test, label, sterilize, package, distribute, supply, market, sell, promote, advertise, warn and otherwise distribute the drug known as Zyprexa®.

3. Upon information and belief, despite the fact that Zyprexa® has not been tested or approved by the Food and Drug Administration (FDA) for pediatric use, ELI LILLY marketed Zyprexa®, a potent anti-psychotic drug, for use with children. As a result thereof, many children residing in the State of Louisiana have suffered from Zyprexa®-related injuries and illnesses such as diabetes, pancreatitis and seizures.

NOTARY, MEMBER
BYRON A. SABATY
OFFICER OF LAW
AND NOTARY
P. O. BOX 1007
OPALUSAS, LA 70070
(504) 835-5100

St. Landry Parish Clerk of Court's Office
Filed September 16 2004
By Clerk

Paul Steg

4.

The drug Zyprexa® is approved by the FDA for schizophrenia and bipolar disorder usage in adults only.

5.

The drug Zyprexa® is not approved for off label usage for treatment of illnesses such as depression, anxiety, ADD, ADHD, sleep disorders, anger management, mood enhancement or mood stabilizers.

6.

The off label marketing and/or promoting of FDA approved drugs by ELI LILLY is illegal according to the Food and Drug Administration rules and regulations.

7.

The Defendant, ELI LILLY is well aware of Food and Drug Administration rules and regulations.

8.

The drug Zyprexa® has been on the market for public consumption since 1997.

9.

The state has suffered harm and has incurred medical expenses associated with providing health care and other necessary assistance under various state programs to eligible citizens suffering from Zyprexa® related illnesses.

10.

Defendant, ELI LILLY, through the Defendant Drug Representatives, has promoted and distributed Zyprexa® for off label usage throughout Louisiana, including in St. Landry Parish. For many years the State has paid out large sums of money for health care for citizens of Louisiana and citizens of St. Landry Parish, Louisiana.

11.

The Defendants have intentionally engaged in these activities knowing that Louisiana citizens who use Zyprexa®, including citizens of St. Landry Parish, for pediatric off label usage were substantially certain to suffer injury and illness.

12.

This action is brought pursuant to La. Rev. Statute 46:446, et seq., which allows the State of Louisiana through the Department of Health and Hospitals to recover the assistance payments and medical expenses it has paid or becomes obligated to pay on behalf of the injured, ill or deceased children in this State who have been harmed by Zyprexa®. The State of Louisiana has expended hundreds of millions of dollars for treatment of Zyprexa®-related illnesses to citizens of the State of Louisiana.

13.

Upon information and belief, ELI LILLY does business throughout the State of Louisiana and specifically does business in the Parish of St. Landry. This business includes but is not limited to the marketing and distribution of the drug, Zyprexa®.

14.

Upon information and belief, Defendants, BRIE LEBLANC, ROGER PARIKH and GERALD CAHER, are representatives of ELI LILLY who, with full knowledge and authority of ELI LILLY, promoted the drug in Louisiana as being suitable for pediatric use.

15.

The drug, Zyprexa® was unaccompanied by proper warnings regarding the injuries associated with the use of the drug and the comparative severity and duration of such injuries. The warnings given did not accurately reflect the symptoms, scope, frequency, or severity of such injuries. ELI LILLY failed to perform adequate testing in that adequate testing would have shown that Zyprexa® possessed undisclosed risks of potentially serious injuries.

Therefore, full and proper warnings, which accurately and fully reflect the symptoms, scope, frequency, and severity of the harm, should have been given with respect to the use of this drug.

16.

ELI LILLY knew or should have known, that Zyprexa® was a dangerously defective drug that posed an unacceptable risk of serious injury that were unknown by the State and by children who were administered Zyprexa®.

MORROW, HANCOCK
BY: J. BARNETT
ATTORNEYS AT LAW
154 WEST LAMAR
P. O. BOX 1307
BIRMINGHAM, LA 70006
(504) 382-1000

17.

Zyprexa® was defective due to inadequate warnings or instruction due to defendant, ELI LILLY'S failure to provide adequate warnings to the minor children in the STATE OF LOUISIANA and their physicians, even after said Defendant knew or should have known of the risk of serious injury associated with the use of Zyprexa®. As late as March, 2004, ELI LILLY published a "Dear Doctor Letter" acknowledging their lack of proper warning. Further, ELI LILLY continues to aggressively promote the dangerously defective product. Defendants failed to give warnings (1) that could reasonably be expected to alert a reasonably prudent person under the circumstances that the product was used; (2) that were comprehensive to the average user; and (3) that conveyed a fair indication of the nature and extent of the danger. The failure to give these warnings rendered Zyprexa® dangerous to an extent beyond that which would be contemplated by the ordinary users of the product with ordinary knowledge common to the community.

18.

The drug Zyprexa® was defective in design or formulation in that, when it left the hands of the manufacturer and/or distributor, the foreseeable risks exceeded the benefits associated with the design or formulation. Alternatively, the drug Zyprexa® was defective in design or formulation, in that, when it left the hands of the manufacturer and/or supplier, it was more dangerous than other drugs of the same class as Zyprexa®. All of the above stated conduct is a statutory violation of the Louisiana Products Liability Act., La.R.S. 9:2800.51, et seq.

19.

In the alternative, Plaintiff asserts that under La. Civil Code Article 2520, et seq., Redhibition, defendant, ELI LILLY has an obligation to Plaintiff to declare to Plaintiff the product has a defect if the seller is aware of said defect.

20.

ELI LILLY through advertising, labeling, promotion, and other communications, made intentional misrepresentation to physicians and the public, about the safety and efficacy of Zyprexa®. Until September 18, 2003, ELI LILLY failed to notify the public about potential side effects, including the risk of being diagnosed with diabetes mellitus.

21.

ELI LILLY AND COMPANY, INC., as manufacturer of the drug Zyprexa®, is deemed to know that the drug they sell has a redhibitory defect. (See La. Civil Code Art. 2545.)

22.

Physicians and minor children throughout the State of Louisiana relied on ELI LILLY AND COMPANY, INC.'s fraudulent misrepresentations and were harmed as a result. Under the Redhibition Doctrine, more specifically La. Civ. Code Art. 2545, defendant is liable to the plaintiff for the return of the price of the drug Zyprexa® with interest, for the reimbursement of reasonable expenses occasioned by the sale of the drug Zyprexa®, and also for damages and reasonable attorneys fees.

23.

Defendants, BRIE LEBLANC, ROGER PARIKH AND GERALD CAHEE, sold and/or marketed Zyprexa® to the plaintiff's physicians. Plaintiff alleges that in the course of detailing Zyprexa® to physicians, Defendants BRIE LEBLANC, ROGER PARIKH AND GERALD CAHEE engaged in tortious conduct for which they are individually liable to plaintiff under Louisiana law.

24.

Specifically, Defendants BRIE LEBLANC, ROGER PARIKH AND GERALD CAHEE and other Sales Representatives, inter alia:

- A. knew, and failed to disclose known, relevant information to the physicians regarding the safety of Zyprexa®, specifically as it related to the risk of contracting severe seizures; and
- B. misrepresented the presence of adequate testing of Zyprexa®.

25.

Alternatively, Defendants BRIE LEBLANC, ROGER PARIKH AND GERALD CAHEE, exceeded the scope of their authority from ELI LILLY in detailing doctors about Zyprexa®. Moreover, as sales representative, Defendants BRIE LEBLANC, ROGER PARIKH AND GERALD CAHEE, are liable for exceeding the scope of ELI LILLY's authority by supplying non-FDA approved materials to physicians.

MORROW, MORROW
RYAN & BARNETT
ATTORNEYS AT LAW
175 WEST LAMAR
P. O. DRAWING 1907
MONROE, LA 70001
(225) 840-1444

26.

At all times material hereto, Defendants BRIE LEBLANC, ROGER PARIKH AND GERALD CAHEE had a duty to know the dangers of promoting the use of Zyprexa® off label to children and breached that duty. The breach of that duty caused children to suffer Zyprexa®-related illnesses, which in turn caused the State of Louisiana to incur expenses, not only for the purchase of Zyprexa®, but also for the treatment of Zyprexa®-related illnesses.

27.

The plaintiff and undersigned counsel have incurred and will continue to incur expenses in obtaining medical reports and hospital records regarding injuries to the children.

28.

Plaintiff alleges that it will be necessary to call expert witnesses to testify herein, and that the fees of said expert witnesses shall be taxed as costs of these proceedings in accordance with the provisions of R.S. 13:3666.

29.

As a result of taking Zyprexa, minor children have suffered a variety of illnesses, including but not limited to diabetes mellitus, seizures and pancreatitis.

30.

As a result of these Zyprexa related illnesses to children, the STATE OF LOUISIANA spends millions of dollars each year to treat Zyprexa-related illnesses.

31.

ELI LILLY knew or should have known that the drug was not safe for pediatric use and, despite mounting evidence of Zyprexa-related illnesses to children, and despite the fact that Zyprexa was and is not approved for pediatric use, ELI LILLY has continued to promote the drug for use in children residing in the State of Louisiana.

32.

The full impact of the cost of prescribing Zyprexa and treating Zyprexa-related illnesses in the State of Louisiana is not known and will require a period of time for the State to itemize the damages. A detailed itemized statement will be produced when that information is compiled.

WHEREFORE, Plaintiff CHARLES FOTI, the Attorney General of the State of Louisiana, and its subdivision, THE DEPARTMENT OF HEALTH AND HOSPITALS, prays that:

- A. ELI LILLY AND COMPANY, INC. and Defendants BRIE LEBLANC, ROGER PARIKH AND GERALD CAHEE, be served with a copy of this Petition and cited to appear and answer same; and
- B. After due proceedings and legal delays had, there be judgment in favor of Plaintiff and against Defendants, ELI LILLY AND COMPANY, INC. and Defendants BRIE LEBLANC, ROGER PARIKH AND GERALD CAHEE, in solido, granting plaintiff an award that will reasonably and adequately compensate it for the damages it has sustained and will continue to sustain, including but not limited to the cost to Plaintiff in treating Zyprexa® related illnesses, plus legal interests thereon from the date of judicial demand until paid; and
- C. ELI LILLY AND COMPANY, INC. and Defendants BRIE LEBLANC, ROGER PARIKH AND GERALD CAHEE, be cast with all costs of these proceedings, attorneys' fees and expert witness fees; and
- D. All other such relief, as law, equity and the nature of the case may permit.

Respectfully submitted:

MORROW, MORROW, RYAN & BASSETT
P. O. Drawer 1787
Opelousas, LA 70571-1787
337-948-4483

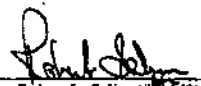
By: *Patrick C. Morrow*
Patrick C. Morrow, #09748
James P. Ryan, #11560
Jeffrey M. Bassett #02840

Kenneth W. DeJong
Kenneth W. DeJong (#04817)
417 West University Avenue
P. O. Box 4325
Lafayette, LA 70502
337-235-5294
337-235-1095 (fax)

St. Landry Parish Clerk of Court's Office
Page 7 of 8 September 16, 2004
Paul Steff
Clerk

MORROW, MORROW
RYAN & BASSETT
ATTORNEYS AT LAW
124 WEST LANDRY
P. O. DRAWER 1787
OPELOUSAS, LA 70571
(877) 800-6688

Paul Steff



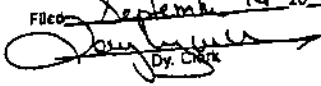
Robert L. Salim (#11663)
1762 Texas Street
Natchitoches, LA 71467
(318)352-5999

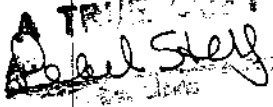
Kenneth T. Fibich (#06952600)
W. Michael Leebron (#12149000)
1401 McKinney, Ste. 1800
Houston, TX 77010
(713)751-0025

ATTORNEYS FOR CHARLES FOTI,
ATTORNEY GENERAL OF THE STATE OF
LOUISIANA THROUGH THE DEPARTMENT
OF HEALTH AND HOSPITALS

SERVICE INFORMATION:

PLEASE WITHHOLD SERVICE
UNTIL FURTHER NOTICE

St. Landry Parish Clerk of Court's Office
Filed September 16, 2004

Dy. Clerk

A TRUE COPY

Paul Stelf

HOBBS, HOBBS
PUGH & GABRETT
ATTORNEYS AT LAW
814 WEST LAMAR
P. O. BOX 1187
MONROE, LA 70002
(504) 336-4462