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McGraw's Zyprexa case sent to federal court in Brooklyn

by Steve Korris

BROOKLYN, NY--West Virginia Attorney General Darrell McGraw's lawsuit against drug maker Eli Lilly and Company has landed in federal court at Brooklyn.

The federal Judicial Panel on Multidistrict Litigation on Oct. 18 consolidated McGraw's suit into a mass of claims in the Eastern District of New York.

McGraw sued Eli Lilly at Mason County courthouse in Point Pleasant in February, claiming the antidepressant drug Zyprexa harmed West Virginia citizens.

Eli Lilly removed the suit to U. S. District Court in Huntington in April and moved to transfer it to the Eastern District of New York.

At the federal court in Brooklyn, U. S. District Judge Jack Weinstein handles a mass of Zyprexa claims under authority of the multidistrict panel.

McGraw argued that his suit did not belong with the others in Brooklyn because the others sued as individuals and he sued for a state.

He argued that he raised issues of West Virginia law while the others raised issues of product liability.

Multidistrict panel chairman Terrell Hodges, U. S. District Judge in Florida, wrote in a transfer order that, "We are unpersuaded by this argument."

He wrote, "Regardless of the differences in legal theory, the claims in the Southern District of West Virginia action similarly arise from representations about the safety of Zyprexa and its adverse effects, in particular, the incidence of diabetes and related diseases in users."

He wrote that including the West Virginia claim in the multidistrict proceedings "has the salutary effect of placing all related claims in this docket before a single judge who can formulate a pretrial program..."

He wrote, "It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district."

In the same order the panel transferred 39 suits to Brooklyn from Indiana, where Eli Lilly and Company maintains its headquarters.

The panel also transferred seven suits from Alabama, one from New Jersey and one from Wisconsin.

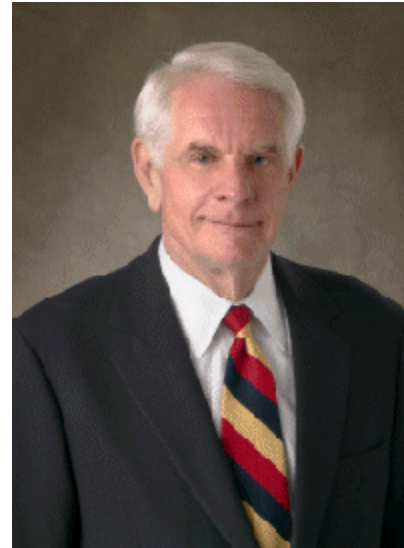
McGraw's suit claimed Zyprexa sales benefited Eli Lilly at the expense of West Virginia's Medicaid program.

McGraw claimed the sales would not have occurred if Eli Lilly had disclosed its risk to medical providers.

He wrote, "The money paid by the State would not have been paid to Eli Lilly except for its fraudulent conduct."

He asked for three times the amount of the overpayments.

He asked for a court order directing Eli Lilly to create a fund for payment of future medical care for injuries Zyprexa caused.



Darrell McGraw

Federal district judges on the multidistrict panel are Hodges, Lowell Jensen of California, Frederick Motz of Maryland, Robert Miller Jr., of Indiana and Kathryn Vratil of Kansas.

Appeals judges David Hansen of the 8th Circuit and Anthony Scirica of the 3rd Circuit also serve on the panel.

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