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Lilly Faces Initial Zyprexa Trial

Alaska's Civil Suit Might Set Pattern for Other Actions

By AVERY JOHNSON
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Eli Lilly & Co. is set to square off next week in the first trial over its schizophrenia drug Zyprexa, defending a civil suit by the state of Alaska that will be closely watched by state and federal prosecutors investigating the drug company.

The trial's outcome -- or even evidence introduced along the way -- could influence fragile settlement talks under way with the U.S. Attorney for the Eastern District of Pennsylvania and state attorneys general. An unfavorable verdict for Lilly might also embolden other states to file suit.



Plaintiffs and prosecutors have alleged for years that the Indianapolis drug maker failed to adequately warn that its powerful antipsychotic drug could lead to inordinate weight gain and diabetes. Lilly, which has sold about \$35 billion of Zyprexa since its 1996 launch, has set aside \$1.2 billion to settle with about 31,000 private claimants. But an additional 1,200 private suits are pending, and the company hasn't been able to strike a deal with public-sector plaintiffs.

Alaska accuses the company of failing to warn patients of Zyprexa's side effects, and of making deceptive claims in marketing the drug. Its 2006 complaint, filed by the state's attorney general, also alleges that Lilly improperly marketed Zyprexa "off-label" to the state's Medicaid recipients, costing Alaska more than it should have to reimburse patients. The state's Medicaid program spent about \$40 million on Zyprexa in the past five years, about a third of it for off-label uses.

Lilly assistant general counsel Michael Harrington said the state wants to penalize Lilly for allegedly misleading consumers, while Alaska's own officials have, in other court proceedings, compelled mentally ill patients to use Zyprexa. One of the state's experts conceded in a deposition that some patients respond differently -- and sometimes better -- to antipsychotic drugs including Zyprexa, which could also bolster Lilly's defense.

Zyprexa is approved by the Food and Drug Administration to treat schizophrenia and bipolar disorder, but plaintiffs claim Lilly improperly promoted it for other uses such as dementia and depression. Because Lilly didn't disclose that the drug could lead to diabetes, the state alleges, its Medicaid program is also bearing the cost of treating that disease.

The allegations overlap somewhat with those being investigated by federal prosecutors, who launched a probe in 2004 and served Lilly with a grand jury subpoena late last year. The subpoena, which raises the possibility of a criminal indictment, heightened the urgency around a settlement. The course of the Alaska trial is likely to help both Lilly and the government calibrate their stances. The trial also could influence whether some 30 other states that are investigating the company opt to sue rather than join a settlement.

"A big verdict against Lilly in Alaska will either force a quick resolution in Philadelphia or the feds saying, 'The old offers are no longer on the table because we can get a lot more money,'" says Patrick Burns at Taxpayers Against Fraud, a Washington group that represents workers who allege misbehavior by their employers.

Connecticut Attorney General Richard Blumenthal recently withdrew from negotiations among Lilly and state and federal prosecutors, citing "reservations about the allocation of monies and the roles of individual states" in those talks.

Eight other states have pending Zyprexa litigation, meanwhile, and a victory by Alaska could persuade more to sue.

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