

S.C., Lilly reach \$45 million settlement - ZYPREXALAW SUIT

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Author: 128 845 256 858 By GINA SMITH gsmith@thestate.com

South Carolina reached a \$45 million settlement Friday with drug maker Eli Lilly over the marketing of an anti-psychotic drug, Zyprexa.

State lawmakers will have the final say on how 84 percent - or nearly \$38 million of the money - is spent. The rest goes to the attorneys who represented the state and to the state attorney general's office.

The settlement is the second largest in state history, behind only the 1998 multibillion-dollar Tobacco Master Settlement Agreement, according to the attorney general's office.

It's also the largest dollar amount any state has won from Eli Lilly. Connecticut is second with its \$30 million settlement. "This is a victory for South Carolina's taxpayers who were forced to bear the financial costs of Eli Lilly's unlawful conduct," Attorney General Henry McMaster said Friday.

Eli Lilly spokeswoman Marni Lemons said Friday it's time to move on.

"We think that putting the issue behind us is not only in the best of interest of Eli Lilly, but also the patients and physicians who count on Zyprexa as a life-saving drug every day," Lemons said.

South Carolina and 44 other states have brought some action against the Indianapolis-based drug maker, claiming it falsely marketed Zyprexa, a drug approved for the treatment of schizophrenia and bipolar disorder only.

In the lawsuit, South Carolina sought to recover the millions of dollars Medicaid and the state health plan paid for the drug and to treat side effects caused by off-label use of the drug. The suit alleges nearly 64,000 S.C. patients were affected from 1996 to 2007.

South Carolina and other states successfully argued Eli Lilly:

Did not properly warn of the drug's side effects, including heart problems, diabetes, hyperglycemia and an increased risk of death in patients with dementia

Pushed doctors to prescribe the drug to treat other illnesses, including depression, attention deficit disorder and dementia

While 84 percent of South Carolina's settlement could go to reimburse the state's Medicaid and state health plan, state lawmakers have the final say.

POLITICAL COMPLICATIONS?

Under a unique retention agreement McMaster's office drafted in 2004, 15 percent, or nearly \$7 million, will go to three attorneys hired by McMaster's office to represent South Carolina in the case. The attorneys' fees are the smallest in the nation, McMaster's office said.

And 1 percent, or about \$647,000, will go to the attorney general's office.

Under the agreement, outside attorneys hired to do work for McMaster's office are paid between 4 percent and 23 percent of a judgment/settlement. The larger the award/settlement, the less the attorneys receive.

Then, attorneys must give 10 percent of their pay back to the attorney general's office.

"Ours is considered a model .æ.æ. agreement," McMaster said, noting bills have been introduced in both the state Senate and House to require future S.C. attorneys general and solicitors to adopt the same agreement.

"We did copious research to come up with the best agreement based on what other states do," McMaster said. "It keeps complete control of the litigation with the (attorney general), who can relieve his (appointed attorneys) for any reason or no reason at all. It protects the interest of the state."

But the arrangement smells fishy to Darren McKinney of the American Tort Reform Association, a Washington D.C.-based nonprofit.

McMaster, who is running for governor, accepted campaign contributions from two of the attorneys he hired to help work on the Zyprexa case.

After being criticized by rival campaigns, McMaster returned the donations.

"If you're signing on with your buddies who agree to give you 10 percent off the top plus campaign contributions, that stinks on its face," McKinney said. "That's not in the public interest."

McMaster's office has said the appointment of the attorneys was based on their expertise with other drug cases - not friendships or promises of campaign contributions.

SEPARATION OF POWER?

Under the agreement, the attorney general's office will receive about \$647,000 of the settlement.

Eli Lilly's attorneys unsuccessfully argued in court papers that only the General Assembly and the state Budget and Control Board can allocate state funds.

Attorney Dick Harpootlian, a key adviser to a rival gubernatorial candidate, said McMaster's agreement is not illegal, but is problematic.

"You want your prosecutors, your attorney general making decisions on what's best for the state of South Carolina, not what's best for their budget," Harpootlian said. "There's, in appearance, a constitutional problem with this. It almost puts a bounty on these cases. It puts him at a conflict of interest."

But McMaster's office points to various state laws that allow the office to keep the funds.

McMaster said he would put the money into his general fund to be used to "prosecute more bad guys."