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Lilly, Plaintiff Group Settle Zyprexa MDL Claims

By Tina Peng

Law360, New York (April 07, 2009) -- A group of plaintiffs has reached a settlement with Eli Lilly & Co. in the continuing multidistrict litigation over the pharmaceutical company's anti-psychotic drug Zyprexa.

In a Thursday motion in the U.S. District Court for the Eastern District of New York, the plaintiffs and Lilly asked the court to establish a qualified fund for the confidential settlement, appoint a settlement administrator and place the court file under seal.

The plaintiffs, who filed suit in the district court in 2007, alleged that Lilly's misrepresentation of Zyprexa and its side effects had caused personal injuries, physical pain and mental anguish, including pancreatitis, hyperglycemia, diabetic coma and loss of earnings, according to the original complaint.

In the Thursday motion, Lilly emphasized that it "denies any and all liability to the plaintiffs" and believes that "it is not liable for any claims, asserted or unasserted, and that it has good defenses thereto."

The company entered the settlement "solely to avoid the future expense, inconvenience and burden of litigation, and the distraction and diversion of its personnel and resources; and has done so without admission of liability or wrongdoing," it said in the motion.

Because the settlement is confidential, both parties requested that the court file be sealed. "The master settlement agreement will be made available to the court upon request in connection with a sealing of the record," they wrote in the motion.

Creating the fund will facilitate claims allocation and distribution to the plaintiffs, the motion said. The plaintiffs and Lilly expect to settle their claims before the exact allocations will be finalized and before the reimbursement amount alleged by Medicare or Medicaid in those

claims is determined, they wrote.

The plaintiffs and Lilly asked the court to appoint a settlement administrator to determine how to break down each plaintiff's damages and share of the settlement.

Representatives for the plaintiffs and Lilly did not immediately return requests for comment.

Thousands of lawsuits – many accusing Lilly of failing to provide adequate warnings that use of the drug may cause excessive weight gain and diabetes – are eating into the company's profits.

Lilly reported \$4.7 billion in Zyprexa sales in 2008. The company said in that year that it had settled approximately 31,000 individual product liability lawsuits alleging adverse events with the use of Zyprexa.

Thousands of plaintiffs agreed to participate in a \$700 million settlement in November 2005, and another 18,000 agreed in January 2007 to share approximately \$495 million. A deal in June 2007 allowed the company to settle 900 lawsuits involving the medication for an undisclosed sum.

Separately in January, Lilly announced a record-breaking \$1.4 billion deal to settle charges that it illegally marketed its anti-psychotic treatment Zyprexa for off-label use.

The agreement with the U.S. Attorney's Office and 30 states is believed to be the largest-ever health care fraud settlement and resolved four qui tam cases that were consolidated in the Eastern District of Pennsylvania by various private parties under the False Claims Act.

And in October, Lilly resolved the allegations of 32 states for \$62 million.

Lilly agreed to not promote Zyprexa for off-label uses and to detail the compensation it gives to health care professionals who receive more than \$100 annually from the company for consulting about Zyprexa.

Under the settlement, the Indianapolis-based company must also disclose information about grants, including continuing medical education, on its Web site for at least two years.

The settling states said the deal was the largest multistate consumer protection-based pharmaceutical settlement ever.

The plaintiffs are represented by Finkelstein & Partners LLP.

Eli Lilly is represented by Pepper Hamilton LP.

The case is Jeanette Dean v Eli Lilly and Co., case number 07-cv-01768, in the United States District Court for the Eastern District of New York.

--Additional reporting by Christine Caulfield, Erin Marie Daly and Samuel Howard

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