



News Release

OFFICE OF ATTORNEY GENERAL HENRY MCMASTER
STATE OF SOUTH CAROLINA

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\$45 Million Eli Lilly Settlement Nation's Largest *Second Largest Settlement in State History*

Columbia, S.C. – Attorney General Henry McMaster announced today South Carolina has reached a record-breaking \$45 million dollar settlement agreement with pharmaceutical giant Eli Lilly over the company's marketing of the anti-psychotic drug Zyprexa. It is the largest monetary settlement any individual state in the nation has won from Eli Lilly and the second largest state settlement in South Carolina history.

“This is a victory for South Carolina's taxpayers who were forced to bear the financial costs of Eli Lilly's unlawful conduct,” said McMaster. “Our case was sound. The evidence we presented was overwhelming. And I am pleased to say justice has been served.”

The State of South Carolina sued Eli Lilly over fraudulent prescription marketing and sought to recover the tens of millions of dollars Medicaid and the State Health Plan paid for the drug and spent treating side effects from illegal, unapproved, off-label use of Zyprexa, involving 63,740 South Carolina patients from 1996-2007.

The largest individual state settlements to date are Connecticut, \$30 million; West Virginia, \$22.5 million; Alaska, \$15 million; and Idaho, \$13 million. A total of forty-five (45) state attorneys general have brought some form of action against Eli Lilly over Zyprexa.

In January, Eli Lilly pleaded guilty and agreed to pay the federal government \$1.41 billion dollars in criminal and civil fines and damages for their unlawful conduct.

This settlement is second only in South Carolina history to the massive multi-billion dollar settlement the State received from the 1998 Tobacco Master Settlement Agreement.

Eli Lilly settlement online at: http://www.scattorneygeneral.com/newsroom/pdf/2009/elililly_settlement.pdf

Zyprexa is approved by the FDA for the treatment of schizophrenia and certain types of bipolar disorder. McMaster's legal team argued that Lilly failed to properly warn of the dangerous side effects of the drug, including heart problems, hyperglycemia, weight gain, diabetes, and an increased risk of death in dementia patients.

Furthermore, attorneys for the state said Eli Lilly has marketed the drug since the 1990's for non-FDA approved, off-label uses such as pediatric applications, use at high dosage levels, treatment of symptoms rather than diagnosed conditions, and for a wide variety of psychiatric illnesses including depression, attention deficit disorder, and dementia. Pharmaceutical manufacturers are strictly prohibited by law from marketing their products for off-label uses.

Stipulations in the settlement agreement require Eli Lilly to:

- Refrain from making any false, misleading or deceptive claims regarding Zyprexa.
- Require its medical staff, rather than its marketing staff, to have ultimate responsibility for developing and approving content for all medical letters and references regarding Zyprexa.
- Require its medical staff to be responsible for the identification, selection, approval and dissemination of article reprints containing more than an incidental reference to off-label information regarding Zyprexa.
- Provide specific, accurate, objective and scientifically balanced responses to unsolicited requests for off-label information from a healthcare provider regarding Zyprexa.
- Contractually require continuing medical education providers to disclose Eli Lilly's financial support of their programs and any financial relationship with faculty and speakers.
- Provide a list of healthcare provider promotional speakers and consultants who were paid more than \$100 for promotional speaking and/or consulting by Eli Lilly.
- Only provide product samples of Zyprexa to healthcare providers whose clinical practice is consistent with the product's current labeling.

South Carolina Settlement Structure

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| Medicaid - State Health Plan – and Consumer Protection | \$37,803,895.77 | 84.01% |
| Special Counsel Fees | \$5,823,129.98 | 12.94% |
| Reimburse Special Counsel Costs | \$725,959.81 | 1.61% |
| Attorney General's Office | \$647,014.44 | 1.44% |
| | | |
| TOTAL | \$45,000,000.00 | 100% |

The Eli Lilly case was handled on a contingent basis by special counsel appointed by the attorney general. Special counsel paid and incurred all up front costs associated with bringing the case, and their expertise in similar pharmaceutical litigation was instrumental in its successful resolution. Appointed in this case were John Belton White, Jr. of Spartanburg, John S. Simmons of Columbia and Kenneth Bailey, Jr. of Houston Texas.

Because of the attorney general's special counsel retention agreement, attorney's fees paid by Eli Lilly to South Carolina special counsel (12.94%) are the smallest in the nation, with West Virginia outside counsel receiving 30%, Alaska 20%, Idaho 19% and Connecticut 16.3%.

As allowed by state law, the Attorney General's office will also receive a small portion of the settlement for statewide criminal prosecution efforts.

Attorney General McMaster's special counsel retention agreement has been heralded across the country as the taxpayer friendly pro-business model by tort reform groups and is currently being considered by the S.C. General Assembly to be enacted in state law (S 350, H 3489).

The special counsel retention agreement online at: http://www.scattorneygeneral.com/newsroom/pdf/2009/elililly_counselagreement.pdf

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