

FOR IMMEDIATE RELEASE:

SUIT ALLEGES SECOND PROZAC VERDICT ALSO TAINTED

Eli Lilly has tried two cases that claim that Prozac triggers violence/suicide to jury verdict. It has claimed victory with respect to both. However, those claims may be entirely illusory.

The first "win" was its December 1994, 9:3 verdict in *Fentress v. Eli Lilly*. After the verdict the trial judge learned that Lilly had secretly settled the case during the trial and highly damaging evidence regarding Eli Lilly had been withheld from the jury. The American Lawyer branded it as "Lilly's Phantom Verdict,"¹ and a recent article in VOIR DIRE magazine as a "sham."² Lilly's efforts to prevent the trial judge from correcting the public record were rebuffed by the Kentucky Supreme Court, which observed that "there was a serious lack of candor with the trial court and there may have been deception, bad faith conduct, abuse of the judicial process or perhaps even fraud."³

Lilly's second "win" was its April 1999 seemingly⁴ unanimous verdict in *Forsyth v. Eli Lilly*. However, on June 7, 2000, the Forsyths filed a new suit to set aside the verdict/judgment on the grounds that it also had been obtained via a fraud on the court. That suit alleges that, as in the *Fentress* case, critical information was withheld from the judge and jury. Specifically it claims that, despite the fact that Eli Lilly paid \$ 20 million for a patented new Prozac molecule which claims to reduce certain side effects of the original Prozac, including "nervousness, anxiety, insomnia, inner restlessness (akathisia), suicidal thoughts, self mutilation [and] manic behavior,"⁵ a Lilly in-house patent lawyer sat mutely in the courtroom while Lilly's trial counsel told the judge and jury that suicide is not a side effect of Prozac and that "akathisia" requires proof of both "inner feeling of restlessness" and "some physical action, rocking back and forth."

The new case relies on recent precedent from the same US Court of Appeals, which is currently entertaining the Forsyths' appeal. In that case, the courts held that a company's in-house lawyers are "officers of the court" and that they may not sit in silence while their trial counsel creates erroneous impressions and withholds critical evidence. Because such action "undermines the integrity of the judicial process" and makes the "court itself" a "victim," a judgment obtained by these means may not stand.⁶

The Forsyths are represented by Vickery & Waldner of Houston, Texas; Baum, Hedlund, Aristei, Guilford & Downey of Los Angeles, and Shim & Chang of Honolulu. It is expected that the new case will be heard by US District Judge Alan C. Kay, the original trial judge. Some information is available on our firm's website, www.justiceseekers.com. A copy of the complaint itself is available via hyperlink to our co-counsel's website, www.bhagd.com.

Vickery & Waldner
www.justiceseekers.com

June 8, 2000
Houston, Texas

Endnotes

-
- ¹ Varchaver, *Lilly's Phantom Verdict*, (American Lawyer, 1995).
- ² Zitrin and Langford, *It Is Time to Question How our Legal System can Afford to Allow Secret Settlements*, VOIR DIRE, Spring 2000, pp. 12-17.
- ³ *Potter v. Eli Lilly & Co.*, 926 S.W.2d 449, 454 (Ky. 1996). Lilly's hard ball litigation tactics were detailed at length in an April 23, 2000, article by Jeff Swiatek of the Indianapolis Star, available on-line at www.starnews.com.
- ⁴ Within minutes of the verdict, one juror contacted plaintiffs counsel to advise that she disagreed with the verdict. Ultimately, she and two other jurors signed affidavits indicating that they thought that Prozac had caused the deaths of Bill and June Forsyth. That case is currently on appeal.
- ⁵ U.S. Patent 5,708,035. The substance and claims of this patent came to public light as a result of a May 7, 2000, article by Leah Garnett in the Boston Globe, available on-line at www.boston.com
- ⁶ *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3rd 1128, 1132-33 (9th Cir. 1995).