

In Houston lawyer, Lilly has a colorful foe

Passionate adversary and able phrase-maker has engaged in 14 suits against the company.

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The Indianapolis Star (starnews.com)

Published on April 24, 2000

HOUSTON—He's Eli Lilly and Co.'s legal nightmare: an outspoken, Yale-educated Texas trial lawyer who loves suing big corporations and has his sights set on one in Indianapolis.

"The dark side," Andy Vickery calls his corporate targets, drawing out the words for effect.

He's indulged himself in 14 lawsuits against Lilly. The charge: that Lilly's best-selling antidepressant, Prozac, made some users "go bonkers," as Vickery puts it.

Prozac lawsuits are old hat for Lilly. Fewer than 10 of the nearly 300 Prozac lawsuits Lilly has faced over the years remain on the dockets. And the consensus among most trial lawyers is that new Prozac lawsuits aren't winnable.

"It's not an easy litigation. I gave it up," said Indianapolis lawyer Vernon J. Petri, who handled numerous Prozac cases in the early 1990s.

But in Vickery, Lilly faces a wise-cracking nemesis-at-law who has brought new focus and heightened publicity to Prozac litigation. He's done it despite the limited legal muscle of his small, three-lawyer firm.

At age 52, with more than 50 trials under his belt, Vickery sees himself as an advocate for victims of Prozac and similar antidepressants.

"A public health catastrophe," he calls the alleged tendency of Prozac and related antidepressants to cause some users to turn violent or suicidal.

Vickery, who says he's never used Prozac himself, is outspoken, dogged and prone to outlandish legal tactics.

In one case, he managed to question his rival, Lilly's chief lawyer for Prozac litigation, James T. Burns, on the witness stand -- a scenario another Lilly lawyer termed "very unusual." In another, he sued lawyer Paul Smith of Dallas, who in 1994 tried the first Prozac case against Lilly.

Such tactics have gotten Vickery called "irresponsible" by a Lilly attorney and "a vulture" by Smith's former co-counsel, Chicago attorney Nancy Zettler.

"He belongs to a species that I think represents generally a problem to American society," says Mitchell E. Daniels Jr., Lilly's senior vice president of corporate strategy and policy.

Vickery shrugs off the criticisms, saying, "I am not going to shy away from saying what needs to be said."

Shy is one thing he's not.

Happy to talk to a reporter from Lilly's hometown, he shows up for a noon lunch appointment at his high-rise office near Houston's downtown, tieless and complaining of muscle aches from a recent match of handball.

Lunch, it turns out, will be the daily buffet served up in a wooden-beamed meeting hall of Christ Church Cathedral, a massive stone structure among downtown's glass-and-steel skyscrapers.

Vickery heads there in the leather-upholstered Jaguar he bought his wife for her 40th birthday.

Vickery picked the Episcopal church's buffet to send a message about himself back to Indianapolis, a message he makes sure is understood after he polishes off his plate of Tex-Mex food and strolls outside on smooth stone floors.

"This is my church," he says, pointing out a niche in a stone wall where he plans for his ashes to one day be interred. "I get so tired of Eli Lilly saying it's only Scientologists that oppose them."

PASSIONATE ADVERSARY

The Prozac basher who wants Lilly to know he doesn't spend nights reading science fiction novels by Scientology founder L. Ron Hubbard is a speed-reading, gadget-obsessed, Georgia native who's on his second marriage but still reveling in his first love of trial law.

"He is without question the most passionate person I have ever known," says his law partner, Paul Waldner. "I've snow-skied with Andy and seen him go downhill faster than teen-agers ever would, yodeling the whole time."

A fan of anything high-tech, Vickery embraced computers early for his legal work and employs the latest software to track the complex litigation he handles. "He wouldn't go to the bathroom without his laptop," Waldner says.

Vickery met his wife, Carol, nine years ago. The divorcees got married two years later. At their home in an upscale area of Houston, she says, life with Vickery is "like summer camp." Her husband enjoys spending time with her two children, tending a rose garden, barbecuing for friends and going sea-kayaking at their Gulf Coast beach house, she says.

So it's no surprise that, when Vickery's enthusiasms carry over into the stuffy profession of law, he sometimes skirts the line of what's expected.

"He crowds it, he's right up on it," says Waldner, a past president of Houston Trial Lawyers Association, who remembers Vickery beginning one legal document by quoting lyrics to a B.B. King song.



SETTLED 11 CASES

Because only two Prozac civil lawsuits have ever come to trial, Prozac litigation is an informational black hole where cases tend to be quietly resolved out of court and only Lilly knows the details.

Even so, it's clear that Vickery has fared well in this high-stakes game of suing over one of the world's most well-known drugs.

"I have never dropped or dismissed a case," he boasts.

In the past two years, 11 Prozac suits that Vickery filed or joined as counsel have been settled out of court, he says. Terms remain confidential, but presumably include cash payments by Lilly

in exchange for clients dropping all charges.

Last year, in a Hawaii courtroom, Vickery tried only the second Prozac case to come before a jury. He represented the children of Hawaii retiree William Forsyth Sr. who, 11 days after going on Prozac to treat panic attacks, stabbed his wife, June, to death and impaled himself.

The jury voted 11-0 to absolve Lilly of blame. The verdict "ripped my heart out," says Vickery, who calls the decision a low point in his career.

Undeterred, Vickery has appealed that decision, continues to pursue two other Prozac cases, and hints at filing more, possibly in Indianapolis.

Vickery won't discuss fees from the confidential Prozac settlements, trying to suggest they leave something to be desired.

"I'm not counting on Eli Lilly for my retirement, I can tell you that," he says.

Vickery admits to feeling Quixote-like as he duels Lilly's lawyers over its No. 1 drug.

"It takes a kind of idiot to do it," he says. "You are fighting one of the richest pharmaceutical companies in the world over the thing most dear to them."

PROZAC IS FIRM'S FOCUS

Vickery has waged his fight over Lilly's dearest drug from the 29th floor of an office high-rise just west of Houston's downtown.

The heart of Vickery & Waldner is an oversized storage closet dubbed "the Prozac room." It overflows with boxes, files and tapes from Prozac litigation. Newspaper clippings and snapshots of plaintiffs cover part of one wall.

Lately, Vickery & Waldner has expanded its focus to sue other antidepressant makers, including Pfizer over its popular drug Zoloft.

Vickery & Waldner drums up business, in part, by soliciting on its Internet Web site, www.justiceseekers.com.

The site contains a Prozac room of the virtual sort, packed with screenfuls of documents and articles about the drug. The firm also handles medical malpractice cases and has represented hemophiliacs who received AIDS virus-tainted blood.

Vickery took on his first Prozac case at the request of Richard W. Ewing, a long-time friend who's the third lawyer at the firm.

Ewing in 1991 sued on behalf of the family of Texas rancher Bernie A. Winkler, who shot himself in his driveway after taking Prozac for six weeks. Later, Ewing turned the case over to Vickery, who found Prozac litigation much to his liking.

He's spent much of the past four years filling the Prozac Room with subpoenaed documents.

Vickery & Waldner plans to leave its crowded rented quarters and build its own office building in a residential area of the city.

For now, Vickery taunts the "dark side" from a worn wooden desk looking out floor-to-ceiling

windows to a grand view of the Houston skyline.

More than 20 photos, most of family, are hung and propped about. On his computer screen floats a screen-saver of actress Michelle Pfeiffer in a red dress. Opposite sits an ornate Bible opened to a highlighted verse from Isaiah with the admonishment "Learn to do well, seek judgment, relieve the oppressed."

"To keep my focus," Vickery says, of the Bible.

The focus of Vickery's Prozac suits is another book: the Physicians' Desk Reference. U.S. doctors rely on the 3,000-plus-page volume to inform them of a drug's side effects.

Lilly's refusal to expressly list violent behavior, including suicide, as a possible side effect of Prozac, forms the basis of Vickery's lawsuits. Lilly contends putting such a dire warning on Prozac's package label is unwarranted.

"Any label change (about suicide and violence) for Prozac was never on the table, never negotiable from our standpoint," says Lilly's Daniels.

Vickery hauls the weighty red book from a shelf and opens to Prozac and its long list of side effects.

"They warn about rashes, by god, but nothing about suicide," he says. "To satisfy me, and that sounds very egocentric, all Lilly would have to do is put in a bold-faced, boxed warning. This isn't lawyer nitpickery. This is very important how it appears and where."

GIFT OF GAB

Vickery grew up in middle-class, Southern Baptist family in Atlanta, the middle son of a homemaker mother and a father who ran an insurance agency. His father told him at age 11 that the boy's gift of gab marked him for lawyering.

Gifted with academic smarts as well, Vickery graduated high school as class valedictorian and became the first Ivy Leaguer in his family. He enrolled at Yale University as an American studies major, going on to earn a law degree at the University of Georgia School of Law.

To pay for Yale, Vickery had enrolled in ROTC. He fulfilled his military obligation as an Army attorney, serving in one of the Army's most notorious cases: the trials of Lt. William Calley Jr. and others who took part in the massacre of Vietnamese civilians at My Lai.

As a young lawyer, Vickery also clerked for U.S. Appeals Court Judge John R. Brown in Houston, a man known for his colorfully argued opinions.

It was Brown who impressed on Vickery the value of the trenchantly put phrase.

"The judge told me, 'An idea poorly expressed dies aborning,'" Vickery says, displaying a book of quotations given him by the man he calls "my judge."

Vickery has taken the advice to heart. In his latest lawsuit, filed in Hawaii in January by the parents of teen-ager Hugh Blowers, who hanged himself at home after taking Prozac, Vickery opined that the boy's life "was sacrificed on the altar of Lilly's profits."

His legal writing, complete with exclamation marks and sarcastic footnotes, once provoked U.S. District Court Judge S. Hugh Dillin to call a Vickery Prozac brief "inflammatory" and "scurrilous."

The brief in question came in a Vickery lawsuit that was the last of 75 federal Prozac cases consolidated in Dillin's court in Indianapolis. In March, the judge remanded the case back to Texas courts.

Those on the receiving end of a Vickery legal blast may cringe on hearing he has no plans to rein in his colorful self-expression.

He does admit, though, that there's a limit to the time he'll invest dueling Lilly and other antidepressant makers in court.

"They whip my a- three times and I'm outa there. I just can't take any more than that," he says, swiveling in his office seat.

But until Vickery's third lost verdict, Lilly will remain in his sights, he vows. "They know damn well I'm not going to quit."