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Big Pharma

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Controversial Rendell suit named two other drug companies

BY JOHN O'BRIEN

HARRISBURG, Pa. (Legal Newsline) - The original lawsuit filed by Pennsylvania Gov. Ed Rendell through high-profile plaintiffs attorneys that is being challenged in state Supreme Court named two other prescription drug companies as defendants.

Eli Lilly & Co. and AstraZeneca Pharmaceuticals were also sued by Bailey Perrin Bailey, which was hired to represent Rendell's office, according to a complaint obtained by Legal Newsline. Janssen Pharmaceutica, the third defendant, has challenged the contingency fee agreement on which BPB was hired.

The case has made national news, as some have alleged it is an example of "pay-to-play." BPB donated \$91,000 to Rendell's campaign in 2006.

Rendell set up a meeting between BPB and state Attorney General Tom Corbett, who refused to file BPB's lawsuit because he was unimpressed with the firm's evidence. Rendell then hired BPB to represent the Office of General Counsel.

The original complaint also lists Cohen, Placitella & Roth of Philadelphia and Robert Curran of Media, Pa., as counsel for the State.

[Members of the Cohen firm contributed](#) \$5,000 to Rendell last year, as well as \$7,000 to Corbett. Corbett is running for governor in 2010 and will have the option to keep pursuing the lawsuits should he be elected and they are still open.

An amicus brief submitted by the [Washington Legal Foundation](#) to the state Supreme Court calls the agreement "offensive to Commonwealth contracting policies" and says it "takes pay-to-play to new heights." Bailey contributed \$75,000 directly to Rendell and \$16,000 more in air travel. He also gave \$25,000 to the Democratic Governors Association.

"The contract at issue here, effective in Nov. 2006, was awarded amidst a wave of unprecedented out-of-state political contributions by F. Kenneth Bailey," the brief says.

"In addition to more than \$116,000 in campaign contributions from Mr. Bailey himself, the Governor's campaign committee in 2006 was the beneficiary of largess from Mr. Bailey's prior law firm - Williams & Bailey - which continued to use his name after he left, and from John E. Williams, Jr., the other name partner of that firm."

The brief says Williams contributed \$25,000 to Rendell and provided \$20,000 in air travel. The firm Williams & Bailey contributed \$50,000 to Rendell.

"Should there be a recovery of the 'millions' of dollars that the complaint alleges are at issue, this apparent investment in Pennsylvania's pay-to-play political system would pay off most handsomely," the brief says.

Janssen is not challenging the campaign support but has made a note of them in its filings.

The case involves alleged off-label marketing of the prescription drug Risperdal. The Court will rule on:

-Whether Janssen lacks standing to seek the disqualification of BPB on the basis of alleged violations of constitutional law;

-Whether Rendell's office is allowed to enter into a contingency fee agreement with BPB;

-Whether BPB should be disqualified because the General Assembly did not authorize the contingent fee contract; and



Rendell

-Whether BPB should be disqualified because it has a direct financial interest in the outcome of the litigation.

The original complaint against the three defendants was split. AstraZeneca's case concerns the drug Seroquel, while Eli Lilly's concerns the drug Zyprexa.

BPB is also representing Mississippi, Louisiana and Arkansas in Zyprexa litigation. They are three of the six remaining states with lawsuits that have not reached a settlement with Eli Lilly. Twelve states had held out of a 33-state settlement to pursue their own claims.

The firm recently suffered a setback in the Mississippi case when U.S. District Judge Jack Weinstein granted the company summary judgment on most of the State's claims.

He called the lawsuit "a slash-and-burn style of litigation."

Eli Lilly spokesperson Marni Lemons recently said the Pennsylvania case is in a period of relative inactivity.

Rendell has defended hiring BPB.

"There wasn't the slightest bit of pay-to-play here," Rendell told the Philadelphia Inquirer. "I never put a dime of state money in jeopardy for Ken Bailey."

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