

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

Kesi Azikiwe Falls, Sr.,

Plaintiff,

v.

Eli Lilly and Company,

Defendant.

Case No. 3:14-CV-746 JVB

OPINION AND ORDER

A. Introduction

On April 4, 2014, *pro se* Plaintiff Kesi Azikiwe Falls filed a product liability action against Defendant Eli Lilly and Company. Before the Court are Defendant's motions to dismiss for failure to state a claim (DE 10 and 18).

B. Background

Before the present action, Plaintiff had filed another case in 2007 alleging identical injuries. That case was transferred to the Eastern District of New York by the Judicial Panel on Multidistrict Litigation. The case was then dismissed without ruling on merits. *See Falls v. Eli Lilly and Co.*, 3:07-cv-166 (N.D. Ind. Mar. 7, 2008).

Seven years later, Plaintiff filed the present action using the court's standard template for Section 1983 claims. The complaint states that he started using Zyprexa, a drug produced by

Defendant, in 1999, when he was an incompetent minor. Later, he discovered that he was permanently injured from using this drug. He alleges that the defendant's negligence caused such injuries.

After receiving the defendant's motion to dismiss (DE 10), plaintiff filed an amended complaint titled "Product Liability Complaint," which substantively states the same allegations as the initial complaint. Defendant subsequently filed another motion to dismiss (DE 18).

C. Discussion

(1) 42 U.S.C. § 1983 Claim

Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers. Accordingly, *pro se* complaints are liberally construed. *Alvarado v. Litscher*, 267 F.3d 648, 651 (7th Cir. 2001). Although Plaintiff filed his action using the template for § 1983 claims, both the original complaint and the amended complaint show that he is asserting a product liability claim. As a result, the Court's ruling will not be based on § 1983.

(2) Statute of Limitation

Under Indiana law, a product liability action based on the theory of negligence or strict liability must be commenced within two years after the cause of action accrues. Ind. Code. 34-20-3-1(b)(1). A cause of action accrues "when resultant damage of a negligent act is ascertainable or by due diligence could be ascertained." *Burks v. Rushmore*, 534 N.E.2d 1101, 1104 (Ind. 1989). This statute of limitation applies to all persons regardless of minority or legal disability. Ind. Code. 34-20-3-1(a).

Although the amended complaint does not provide enough information about the date on which the cause of action accrued, Plaintiff already knew of his alleged injury when he filed his first action against Defendant asserting identical claims in 2007. Therefore, the cause of action accrued, at the latest, in 2007. Because the present case was filed nearly seven years later, the statute of limitation has run. Accordingly, Plaintiff's claim is time-barred.

D. Conclusion

For these reasons, Defendant's motion to dismiss (DE 18) is granted. Other related motions (DE 10, 12, 13, 19, 25, 39, and 30) are denied as moot.

SO ORDERED on February 9, 2015.

s/ Joseph S. Van Bokkelen
JOSEPH S. VAN BOKKELEN
UNITED STATES DISTRICT JUDGE