

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 In re: :
5 ZYPREXA PRODUCT LIABILITY : 04-MD-1596 (JBW)
6 LITIGATION, : December 18, 2006
7 : Brooklyn, New York
8 -----X

9 TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
10 BEFORE THE HONORABLE ROANNE L. MANN
11 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

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14 For Eli Lilly: SEAN FAHEY, ESQ.

15
16 For Lanier Law Firm: EVAN JANUSH, ESQ.

17
18 Local Counsel for Lilly: BREWSTER JAMESON, ESQ.

19
20
21 Court Transcriber: SHARI RIEMER
22 TypeWrite Word Processing Service
23 356 Eltingville Boulevard
24 Staten Island, New York 10312
25

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 Eli Lilly. He could have subpoenaed Elli Lilly directly and
2 they could have litigated his entitlement to Lilly's documents
3 in state court in Alaska. The issue really is the propriety of
4 what was done here which was to obtain documents that had been
5 produced by Lilly pursuant to a protective order. To subpoena
6 them not even from opposing counsel in this litigation but from
7 an expert one step removed who when he received those documents
8 took an undertaking to comply with the protective order under
9 the terms of Case Management Order Number 4, he had to sign a
10 document indicating that he was aware of the conditions which
11 included that those documents would be used solely for purposes
12 of this litigation.

13 To have obtained them under these circumstances with
14 a return date of the 20th and then to have after Lilly was
15 notified and there apparently were communications with Lilly
16 concerning adjourning the return date to almost surreptitiously
17 modify that subpoena so that the documents would be produced
18 without Lilly's knowing at the time, without knowing that the
19 date had in effect been moved up, this is highly suspect. It
20 certainly has the ring of collusion here and I find it very
21 disturbing.

22 There is no doubt in my mind that the Court in the
23 Eastern District of New York has the authority to enforce its
24 orders and my only hesitation is as a Magistrate Judge. I do
25 not have the authority to grant injunctive relief or to hold

1 any individual in contempt of court. That would be a matter
2 that the District Court Judge would have the authority to do.
3 As I assume you're all aware, Judge Weinstein is traveling and
4 is unavailable at this time. So I am not in a position to
5 order -- issue any injunctive relief, but I am prepared to say
6 that I think that what happened here was an intentional
7 violation of Judge Weinstein's orders. I think it was
8 inappropriate. I cannot make -- if you want to litigate your
9 entitlement to these documents in Alaska, Mr. Godstein, then
10 you can subpoena Lilly but as I said, it appears to me that you
11 rather than face Lilly directly you were trying to attempt for
12 the back door what you should have done through the front door.
13 This was improper.

14 I personally am not in a position to order you to
15 return the documents. I can't make you return them but I can
16 make you wish you had because I think this is highly improper
17 not only to have obtained the documents on short notice without
18 Lilly being advised of the amendment but then to disseminate
19 them publicly before it could be litigated. It certainly
20 smacks as bad faith.

21 So this is the extent of what I'm prepared to do is
22 simply state my views on the record and if counsel in the MDL
23 case want to go before a District Court Judge who has more
24 authority -- I understand Judge Cogan is on miscellaneous duty
25 today.

EXHIBIT B

ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

DATE: 12/18/06
START: 1:15 pm
END: 1:35 pm

DOCKET NO: 04 MD 1596

CASE: Late Zyprexa Litigation

INITIAL CONFERENCE
 DISCOVERY CONFERENCE
 SETTLEMENT CONFERENCE

OTHER/ORDER TO SHOW CAUSE
 FINAL/PRETRIAL CONFERENCE
 TELEPHONE CONFERENCE
recorded

FOR PLAINTIFF: Evan Janush (Lawer firm)

FOR DEFENDANT: Eli Lilly
Sean Foley (+ Brewster Jameson & Co. as-house counsel)

Non-party: Jim Gottstein

DISCOVERY TO BE COMPLETED BY _____

NEXT CONFERENCE SCHEDULED FOR _____

JOINT PRE-TRIAL ORDER TO BE FILED VIA ECF BY _____

PL. TO SERVE DEF. BY: _____ DEF. TO SERVE PL. BY: _____

RULINGS: PLEASE TYPE THE FOLLOWING ON DOCKET SHEET

The Court hears argument concerning the production of ^{Lilly's} documents by plaintiff's expert David Egilman to Jim Gottstein, an attorney in an unrelated action in Alaska. For the reasons stated on the record, the Court concludes that the dissemination of the documents to Mr. Gottstein, and his public dissemination of those documents, violated the protective Order entered in this case (Case Management Order No. 3) and that the E.D.N.Y. has jurisdiction to enforce its orders. However,

as a magistrate judge is not authorized to grant injunctive relief or to enter an order of contempt for matters occurring outside her presence, the parties will have to apply to the District Court for relief.

The Court requests that Mr. Gottstein refrain from further disseminating the documents while this issue is being litigated and he agrees to comply with the Court's request.

EXHIBIT C

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -x
IN RE: ZYPREXA :
PRODUCTS LIABILITY LITIGATION, :
: :
: :
- - - - -x

U.S. Courthouse
Brooklyn, New York

December 18, 2006

3:00 p. m.

TRANSCRIPT OF PHONE CONFERENCE
BEFORE THE HONORABLE BRIAN M. COGAN, DISTRICT COURT
JUDGE.

Lisa S. Cox, CCR, RMR
Official Court Reporter

1 been sent, which was not copied to any of the
2 parties in the Alaska case or us, which called
3 for the immediate production of documents. So
4 there is no question that we acted as quickly
5 as we possible with the information we had.

6 And the second issue is, let me
7 be clear, you know. There is no kind of
8 wondering what our position for relief is.
9 It's Rule 37B, it's the All Writs Act. It's
10 also Section 18 USC 401 and 402, which is
11 criminal contempt proceedings, as well as the
12 inherent power of this Court to enforce its
13 own orders.

14 THE COURT: All right. Having
15 reviewed the papers -- and I should point out
16 the reason, Mr. McKay, you don't have the
17 petition, as you call it, is because this is
18 an oral application based on the emergency
19 nature of the relief sought. Having reviewed
20 the papers, I'm going to grant the
21 application. I think it's clear not only that
22 the facts are as stated in the Magistrate's
23 report and recommendation, but I can tell from
24 the December 17th draft letter from
25 Mr. Gottstein that he was aware that these

Lisa S. Cox, CCR, RMR
Official Court Reporter

1 documents were restricted, and that he
2 undertook procedures to help the experts,
3 Mr. Egilman, try to circumvent the
4 restrictions that were on him. He
5 deliberately aided and abetted Dr. Egilman in
6 getting these documents released from the
7 restriction that they were under, under the
8 protective order. He knew what he was doing,
9 and he did it deliberately. Those are my
10 findings, and it's on that basis that I grant
11 the relief.

12 I'd like the defendant, Eli
13 Lilly, to immediately fax to me a form of
14 written injunction that I will look over,
15 modify, and enter as I deem appropriate.

16 But I think, Mr. McKay, your
17 client should be on notice that as of this
18 moment, he is under a mandatory injunction to
19 return those documents to Mr. Woodin, to take
20 them down from any websites that he may have
21 posted them on, and to take any reasonable
22 effort to recover them from any sites or
23 persons to which he has delivered them.
24 Mr. McKay, is that clear?

25 MR. MCKAY: Your Honor, I could hear

1 THE COURT: I think it's better if
2 you speak slower, and even this slow, okay?

3 MR. MCKAY: On behalf of AT&T or
4 whoever may be culpable, we apologize for the
5 faulty connection here.

6 Your Honor, particularly, I
7 would like to note for the record our
8 objection to your findings, for the injunction
9 granting, which suggests deliberate
10 wrongdoing, or don't believe are necessarily
11 warranted and we were certainly not given any
12 adequate opportunity, notice or opportunity to
13 respond to those kinds of allegations, and I
14 have not been given notice of a hearing.
15 These are serious allegations.

16 THE COURT: Mr. McKay, I have to
17 interrupt you. I don't want to stop you from
18 making your record, but you're not making it
19 anyway, because you're fading out so badly.

20 I will say any findings I have
21 made have been made exclusively on the basis
22 of the letter signed by your client. That's
23 the only evidence I have in front of me.

24 MR. MCKAY: It wasn't signed by my
25 client.

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	:	MDL No. 1596
In re: ZYPREXA PRODUCTS LIABILITY	:	
LITIGATION	:	
-----X	:	
THIS DOCUMENT RELATES TO:	:	ORDER FOR MANDATORY
	:	INJUNCTION
ALL ACTIONS	:	
	:	
-----X	:	

Upon receipt of the (i) Emergency Oral Joint Motion of members of the In Re Zyprexa Product Liability Litigation Plaintiffs' Steering Committee ("PSC") and Eli Lilly and Company to enforce compliance with Special Discovery Master Peter H. Woodin's Order dated December 15, 2006, Case Management Order No. 3 (CMO-3), and a joint request for mandatory injunction; (ii) the Report and Recommendation of Magistrate Mann dated December 18, 2006; and (iii) Mr. Gottstein's submission dated December 17, 2006; and upon having heard oral argument by counsel for the PSC, Eli Lilly and Company, and Mr. Gottstein (by his attorney, Mr. McKay), and relying on Mr. Gottstein's statements in his December 17, 2006 submission to Special Master Woodin, specifically that Mr. Gottstein has deliberately and knowingly aided and abetted Dr. David Egilman's breach of CMO-3, it is therefore

ORDERED that the Joint Motion for a Mandatory Injunction is hereby GRANTED, and Mr. Gottstein is enjoined from further dissemination of any of documents produced, pursuant to CMO-3, by Eli Lilly and Company (including all copies of any electronic documents, hard copy documents and CDs/DVDs);

It is hereby further ORDERED that:

(1) Special Master Woodin's Order dated December 15, 2006 is enforced, and Mr. Gottstein shall immediately return all documents produced, pursuant to CMO-3, by Eli Lilly and Company (including all copies of any electronic documents, hard copy documents and CDs/DVDs), and which were provided by David Egilman, M.D., M.P.H., or any other source, to the following address where they shall be maintained, under seal, until further Order:

Special Master Peter H. Woodin
JAMS
280 Park Avenue, 28th Floor
New York, New York 10017;

(2) Mr. Gottstein shall immediately, upon receipt of this Order, provide to Special Master Woodin and the parties a listing of all persons, organizations or entities to which any documents covered by this Order, or any subset thereof, were provided;

(3) Mr. Gottstein shall, within 24 hours of this Order, identify to Special Master Woodin and the parties, by specific bates stamp, the particular documents given to any person, organization or entity noted above, which shall also include the date and location such documents were disseminated;

(4) Mr. Gottstein shall immediately take steps to retrieve any documents subject to this Order, regardless of their current location, and return all such documents to Special Master Woodin. This shall include the removal of any such documents posted on any website; and

(5) Mr. Gottstein shall take immediate steps to preserve, until further Order of the Court, all documents, voice mails, emails, materials, and information,

including, but not limited to all communications, that refer to, relate to or concern Dr. Egilman or any other efforts to obtain documents produced by Eli Lilly and Company.

SO ORDERED.

Dated: Brooklyn, New York
December 18, 2006



U.S.D.J.

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
In re: ZYPREXA
PRODUCTS LIABILITY LITIGATION

MDL No. 1596

-----x
THIS DOCUMENT RELATES TO:
ALL ACTIONS

-----x
ORDER

Upon consideration of the joint request by members of the Plaintiffs' Steering Committee and counsel for Eli Lilly and Company, and based on the facts described below as reported by them, and in the exercise of my authority as Special Discovery Master appointed by Judge Jack B. Weinstein to oversee the implementation of the orders of the United States District Court for the Eastern District of New York relating to discovery, including Case Management Order No. 3 ("CMO-3"), which sets forth the protective order entered in the above captioned multi-district litigation to protect and ensure the confidentiality of discovery materials produced by the parties, it is hereby ordered that:

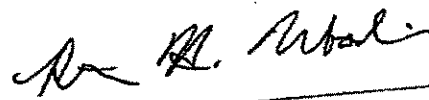
1. James Gottstein, Esquire, is in possession of documents produced by Eli Lilly and Company in the above-captioned action in violation of CMO-3, and has been so notified by counsel for Eli Lilly and Company without response by Mr. Gottstein.
2. Mr. Gottstein has further disseminated these documents to additional third parties in violation of CMO-3.
3. Mr. Gottstein shall immediately return any and all such documents (including all copies of any electronic documents, hard copy documents and CDs/DVDs)

provided by David Egilman, M.D., M.P.H., or any other source, to the Special Discovery Master at the following address, where they shall be maintained, under seal, until further order:

Special Master Peter H. Woodin
JAMS
280 Park Avenue, 28th Floor
New York, New York 10017

4. David Egilman, M.D., M.P.H., shall immediately return any documents in his possession produced by Eli Lilly and Company in the above-captioned action, or otherwise provided to him by the Lanier Law Firm or any other source (including all copies of any electronic documents, hard copy documents and CDs/DVDs), to Richard D. Meadow, Esquire of the Lanier Law Firm. I understand Mr. Meadow has already made such a request to Dr. Egilman today.

SO ORDERED this 15th day of December, 2006



Peter Woodin, Special Master

EXHIBIT F

Fahey, Sean P.

From: John McKay [mckay@alaska.net]
Sent: Friday, December 22, 2006 7:16 PM
To: Peter Woodin
Cc: Fahey, Sean P.; Brewster Jamieson; Richard D. Meadow; Evan Janush; Jim Gottstein
Subject: Supplemental Information Re: Gottstein Compliance

Attachments: Addresses.pdf



Addresses.pdf (41 KB)

Master Woodin,

In the filing submitted to you yesterday regarding Mr. Gottstein's compliance with Judge Cogan's Order, we omitted two items, and I appreciate Mr. Fahey drawing this to my attention.

First, I inadvertently failed to include addresses for those listed in section 7 of the response, although Mr. Gottstein had timely compiled and forwarded them to me.

Second, with regard to when the documents were provided to the listed recipients, as Mr. Gottstein indicates in his certificate, he cannot be completely certain as to every individual. However, he informed me before leaving today on a long-scheduled trip with his family that to the best of his knowledge and recollection, all copies of the "DVD 1" that he mailed or gave to those listed were sent or given on December 12, 2006, and most of the copies of "DVD 2" that he mailed or gave to those listed were sent or given on December 13, 2006.

At this point, Mr. Gottstein has taken the steps that he can to retrieve any copies of the Egilman documents he made available to others. Thank you for updating us on the responses of those he has contacted and directed to return documents to you. Before he left, I was able to confirm with Mr. Gottstein that no one on the list has informed him that they are refusing to return the Egilman documents.

I believe that addresses all pertinent matters, and I don't anticipate being in the office for the remainder of the afternoon.
Happy holidays to all.

John McKay