



### FACSIMILE COVER PAGE

**Date:** December 14, 2006

**Client No.:** 9867.38

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<b>To:</b> James B. Gottstein, Esq. ....	274-9493
Elizabeth Russo, Esq. ....	258-6872

**From:** Brewster H. Jamieson, Esq.

**Re:** *In the Matter of the Guardianship of B.B*

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### MESSAGE

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December 14, 2006

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David Egilman, MD, MPH  
8 North Main Street  
Attleboro, Massachusetts 02703-2282

Re: *In the Matter of the Guardianship of B.B.*

Dear Dr. Egilman and Mr. Gottstein:

We represent Eli Lilly and Company in connection with the subpoena served on Dr. Egilman in the above-captioned action. Lilly's General Counsel recently received a letter from Dr. Egilman, notifying Lilly that Dr. Egilman had been subpoenaed for a deposition in this matter. Dr. Egilman provided a copy of the subpoena to General Counsel. From the letter, a copy of which is enclosed, we conclude that Dr. Egilman (i) has been retained as a consulting expert in the product liability actions pending against Lilly in various state and federal courts, (ii) has possession of, or access to, confidential discovery materials that have been produced by Lilly in those actions and (iii) understands his obligations under Case Management Order No. 3, *In re Zyprexa Products Liability Litigation*, MDL No. 1596 (E.D.N.Y.), to notify Lilly that he has received a subpoena that seeks production of those confidential discovery materials and to cooperate with Lilly in any proceeding related to maintaining the confidentiality of said materials.

Lilly possesses the materials to which Dr. Egilman refers, but it has made a copy of them available to plaintiffs' counsel in the MDL for use only (i) in connection with those proceedings and (ii) under the strict confidentiality protections contained in CMO-3. Because the subpoena issued by Mr. Gottstein seeks, in essence, materials in possession of Lilly, Lilly objects, pursuant to Rule 45(d)(1) of the Alaska Rules of Civil Procedure, to their disclosure, production or use in the above-captioned matter. As the MDL Court recognized when it issued CMO-3, these materials contain trade secrets and other confidential research, development and commercial information regarding a marketed product in a competitive industry. Thus, we ask Dr. Egilman to refrain from producing them and Mr. Gottstein to refrain from further seeking production of the materials unless and until the Superior Court

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rules that production is required. Because Dr. Egilman is obligated to cooperate with Lilly under CMO-3, we ask that he confirm that he will refrain from producing the materials.

If either of you insists on producing the materials pursuant to the subpoena without resort to the court, Lilly will (i) seek to intervene in the matter and ask the Superior Court to quash the subpoena and (ii) seek relief from the MDL court under CMO-3. We understand that the parties are close to an agreement that would extend the production date (without prejudice to anyone's objections) by a few weeks to accommodate the schedules of all who are involved in this matter. If this does not occur, please advise me immediately.

Thank you for your cooperation.

Very truly yours,

LANE POWELL LLC



Brewster H. Jamieson

nlb

cc: Andrew R. Rogoff, Esq.  
Rachel B. Weil, Esq.  
Elizabeth Russo, Esq.

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