

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 07-1107-CV \_\_\_\_\_

Caption [use short title]

Motion for: Extension of time to file Appellant's Brief and the Appendix

In re Zyprexa Litigation

Set forth below precise, complete statement of relief sought:

Appellant James Gottstein seeks an extension of time to file the brief and the appendix from June 17, 2009 to and including July 2, 2009. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MOVING PARTY:** Appellant James Gottstein

Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

**OPPOSING PARTY:** Appellee Eli Lilly & Co.

**MOVING ATTORNEY:** Steven A. Brock, Esq.  
[name of attorney, with firm, address, phone number and e-mail]  
Berkman, Henoch Peterson & Peddy, P.C. \_\_\_\_\_  
100 Garden City Plaza \_\_\_\_\_  
Garden City, NY 11530 \_\_\_\_\_  
516.780.0271 \_\_\_\_\_  
l.bennett@bhpp.com \_\_\_\_\_

**OPPOSING ATTORNEY [Name]:** Sean P. Fahey, Esq.  
[name of attorney, with firm, address, phone number and e-mail]  
Pepper Hamilton, LLP \_\_\_\_\_  
3000 Two Logan Square \_\_\_\_\_  
Philadelphia, Pa 19103 \_\_\_\_\_  
215.981.4296 \_\_\_\_\_  
Faheys@pepperlaw.com \_\_\_\_\_

Court-Judge/Agency appealed from: United States District Court, EDNY, Honorable Jack B. Weinstein \_\_\_\_\_

**Please check appropriate boxes:**

Has consent of opposing counsel:

A. been sought?  Yes  No

B. been obtained?  Yes  No

Has service been effected?  Yes  No  
[Attach proof of service]

Is oral argument requested?  Yes  No  
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?  Yes  No  
If yes, enter date: \_\_\_\_\_

Signature of Moving Attorney: \_\_\_\_\_

Date: June 15, 2009 \_\_\_\_\_

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

Has request for relief been made below?  Yes  No

Has this relief been previously sought in this Court?  Yes  No

Requested return date and explanation of emergency: \_\_\_\_\_  
\_\_\_\_\_

**ORDER**

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

**FOR THE COURT:**  
CATHERINE O'HAGAN WOLFE, Clerk of Court

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

In re: Zyprexa Litigation

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**AFFIDAVIT IN SUPPORT  
OF MOTION FOR  
EXTENSION OF TIME  
TO FILE BRIEF AND  
APPENDIX**

**Dkt. No. 07-1107-CV**

STATE OF NEW YORK        )  
  :ss.:  
COUNTY OF NASSAU        )

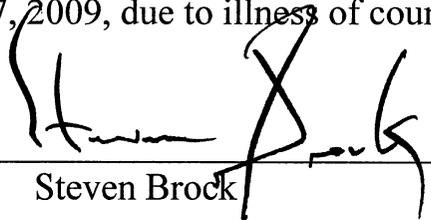
STEVEN BROCK, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice law in this State and before this Court, and a partner in the firm of Berkman, Henoch, Peterson & Peddy, P.C. I represent the Respondent-Appellant, James Gottstein on this appeal. I make this motion because on Friday, June 12, 2009, a large number of nominally confidential documents at the center of this appeal appear to have been declassified by the district court and posted on the internet by the party requesting declassification. Evaluating the nature of the documents declassified and their import for this appeal will require substantial effort and revision of appellant's brief and appendix. The within motion seeks an extension of time to file the brief and appendix on appeal from June 17 to and including July 2, 2009, or such other time as the Court may deem just and proper.

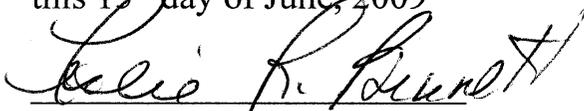
2. I have contacted opposing counsel, Sean P. Fahey, Esq., who has advised that he consents to an extension to July 2, 2009.

3. The district court appreciated that difficulties might arise, but concluded that the declassification review referenced above should be allowed to proceed “despite the potential for interference” with the present appeal. *In re Zyprexa Products Liability Litigation*, 242 F.R.D. 29, 33 (E.D.N.Y. 2007). Opposing counsel has courteously informed me that additional declassified documents will be posted on the internet and suggested that I might require more time. As no date is set for completion of the declassifications and internet postings, I have decided not to ask for additional time beyond July 2 at this juncture and will make every effort to minimize interference with the court’s calendar and the briefing schedule going forward.

3. This appeal was reactivated on or about February 13, 2009. Staff Counsel granted one prior request to extend the time for filing of the brief and appendix on appeal, which was extended *sua sponte* to May 27, 2009. The court recently granted a second extension until June 17, 2009, due to illness of counsel.

  
\_\_\_\_\_  
Steven Brock

Sworn to before me  
this 15<sup>th</sup> day of June, 2009

  
\_\_\_\_\_  
Notary Public

LESLIE R. BENNETT  
Notary Public, State of New York  
No. 02BE5052100  
Qualified in Nassau County  
Commission Expires 11/20/09

**CERTIFICATE OF SERVICE**

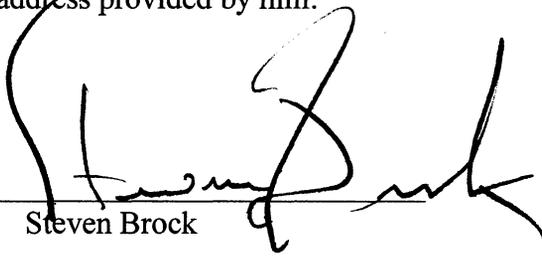
I hereby certify that:

(1) a true and correct copy of the Form T-1080 and Affidavit in Support of Motion for Extension of Time to File Brief and Appendix was served this 15<sup>th</sup> day of June, 2009 upon Sean P. Fahey, Esq., Pepper Hamilton, LLP, 3000 Two Logan Square, Philadelphia, PA 19103, by depositing a copy of same, enclosed in a postpaid properly addressed wrapper, in a depository box under the exclusive custody and care of the United States Postal Service, within the State of New York, for mailing to the foregoing address, and

(2) an additional copy of the foregoing form and affidavit were emailed to Mr. Fahey on this 15<sup>th</sup> day of June, 2009, at the following email address provided by him:

*Faheys@pepperlaw.com.*

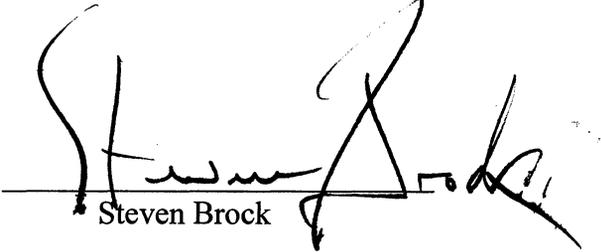
Dated: June 15, 2009

  
\_\_\_\_\_  
Steven Brock

**VIRUS PROTECTION CERTIFICATE**

Steve Brock certifies that the PDF version of the attached document that has been submitted via email to the Court of Appeals at [civilcases@ca2.uscourts.gov](mailto:civilcases@ca2.uscourts.gov) has been scanned for viruses and no virus has been detected.

Dated: June 15, 2009

  
Steven Brock