

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 July 2, 2009 to and including July 13, 2009.

MOVING PARTY: Appellant James Gottstein

OPPOSING PARTY: Appellee Eli Lilly & Co.

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Leslie R. Bennett, 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:

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Has consent of opposing counsel:

Has request for relief been made below? Yes No

A. been sought? B. been obtained? Unable to reach opposing counsel prior to the holiday.

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

Has service been effected? [Attach proof of service]

Is oral argument requested? (requests for oral argument will not necessarily be granted)

Requested return date and explanation of emergency:

Has argument date of appeal been set? If yes, enter date:

Signature of Moving Attorney:

Leslie R. Bennett Date: July 2, 2009

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

-----X

**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)

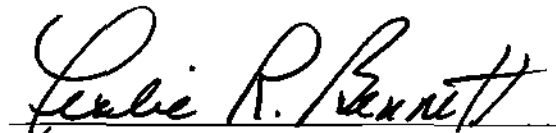
LESLIE R. BENNETT, being duly sworn, deposes and says:

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 to permit adequate time for our client and co-counsel to review and provide input to the draft appellate brief and appendices forwarded to them by my partner Steven Brock today. In light of the July 4 holiday and the amount of new material involved, I am requesting an extension to Monday, July 13, 2009, or such other time as the Court may deem just and proper.

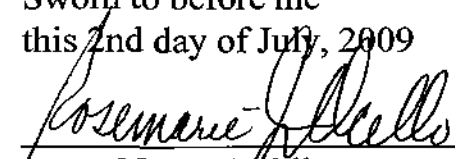
2. Opposing counsel has graciously consented to our prior requests for an extension. We called earlier today to request his consent to this extension, but have not heard back from him as of the time this affidavit was finalized this afternoon. In light of the impending holiday, it is unlikely that we will reach him before serving

this motion.

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 an extension until June 17, 2009, due to illness of counsel, and a further extension until July 2, 2009, after a collection of confidential documents which overlaps with the nominally confidential documents at the center of the present appeal was declassified in related litigation and posted on the internet. As indicated above, additional time is required to permit our client and co-counsel adequate time to assimilate the new material that was recently declassified and to review and comment upon the revised brief and appendices.


Leslie R. Bennett

Sworn to before me
this 2nd day of July, 2009

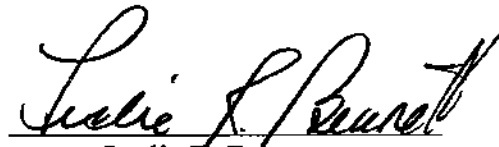

Notary Public

ROSEMARIE J. OCELLO
Notary Public, State of New York
No. 010C8482610
Qualified in Nassau County
Commission Expires February 28, 20 11

VIRUS PROTECTION CERTIFICATE

Leslie R. Bennett 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 has been scanned for viruses and no virus has been detected.

Dated: July 2, 2009



Leslie R. Bennett

CERTIFICATE OF SERVICE

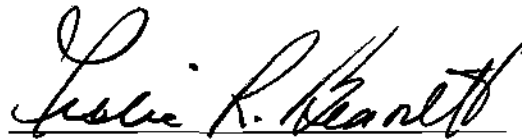
I hereby certify that:

(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 were served this 2nd^h day of July, 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 2nd^h day of July, 2009, at the following email address provided by him:

Faheys@pepperlaw.com.

Dated: July 2, 2009

A handwritten signature in black ink, reading "Leslie R. Bennett". The signature is written in a cursive style with a large initial "L".

Leslie R. Bennett