

ORIGINAL

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 to: Supplement the Record and Take Judicial Notice

In re Zyprexa Litigation

Set forth below precise, complete statement of relief sought:

Appellant James Gottstein seeks to supplement the record and to take judicial notice of the documents in the Respondent-Appellant's Appendix



MOVING PARTY: Appellant James Gottstein

OPPOSING PARTY: Appellee Eli Lilly & Co.

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Steven 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 516.780.0325 s.brock@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? Yes No B. been obtained? Yes No

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

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

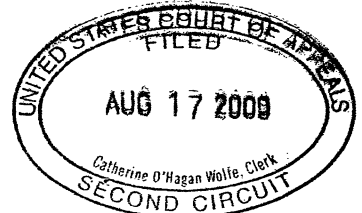
Is oral argument requested? (requests for oral argument will not necessarily be granted) Yes No

Requested return date and explanation of emergency:

ORDER

Before: Peter W. Hall, Circuit Judge

The Appellant's motion seeking to include certain materials in a Supplemental Appendix is GRANTED only to the extent that materials already in the record before the district court may be presented in that Supplemental Appendix; to the extent that Appellant seeks permission to include materials in the Supplemental Appendix that were not in the record before the district court, that request is DENIED without prejudice to Appellant further moving to have the panel assigned to hear the merits of the appeal take judicial notice of matters not presented in the record before the district court; any such motion and any opposition thereto shall be referred to the merits panel when it is assigned to the appeal.



FOR THE COURT: Catherine O'Hagan Wolfe, Clerk by Joy Fallek, Administrative Attorney

08.17.09 Date