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EMERGENCY

THE SUPREME COURT FOR THE STATE OF ALASKA

ELI LILLY AND COMPANY,
Appellant,

v.

BLOOMBERG, LLC d/b/a BLOOMBERG
NEWS, Intervenor,
Appellee.

Supreme Court Case No. S- 13152
Superior Court Case No. 3AN-06-05630 CI

**EMERGENCY MOTION FOR STAY AND FOR ORDER PROHIBITING
PUBLICATION OR DISSEMINATION OF DOCUMENTS PENDING APPEAL**
THIS MOTION CONCERNS AN ORDER EFFECTIVE TODAY, JUNE 18, 2008

The Superior Court has ordered that documents which contain proprietary and highly confidential trade secrets of Appellant Eli Lilly and Company ("Lilly"), which were filed under seal in the case below, are public documents, and effective today are to be unsealed and made available to be inspected and copied by the public. To avoid irreparable harm and to preserve federal-state comity, Lilly requests that this Court prevent the unsealing and dissemination of the documents filed under seal below during the pendency of this appeal.

Lilly has filed a Notice of Appeal from the Superior Court's June 13, 2008, Order Granting Bloomberg's Motion to Unseal Records ("Order"), and also from the Superior Court's June 18, 2008, order denying Lilly's motion for a stay on unsealing the documents. These orders are attached hereto as Exhibits A and B, respectively. Lilly hereby moves the

Opp due by 4:30 PM 6/23, Reply due by 10:00 AM 6/23
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Court to stay the implementation of the Order—that is, to stay the unsealing of any records which were there subject of the Order—until such time as this appeal can be heard. In addition, should the documents be unsealed and made available to the public before this Court issues a stay, Lilly also moves for an order from this Court requiring the return of such documents and prohibiting the publication or dissemination of the documents by any member of the public in possession of any copy of the records, pending this appeal.

Briefly, the facts are as follows: Lilly and the State of Alaska settled the underlying case. During the pendency of that case, both Lilly and the State filed confidential Lilly documents with the Superior Court under seal pursuant to a confidentiality order entered by the Superior Court. Exhibit C. Virtually all of these documents are subject to a protective order in federal court in *In re Zyprexa Products Liability Litigation*, MDL No. 04-MDL-1596. Exhibit D. However, on March 7, 2008, Appellee Bloomberg, LLC d/b/a Bloomberg News (“Bloomberg”) moved to intervene in this case in order to obtain confidential Lilly documents which had been filed under seal. Bloomberg’s motion is at Exhibit E. Lilly’s opposition to that motion and Bloomberg’s reply are at Exhibits F and G, respectively. On June 13, 2008, the Superior Court entered the Order, thereby granting Bloomberg’s motion to unseal the records. Exhibit A. On June 16, 2008, Lilly then filed, on an expedited basis, a motion to stay the Order, so that Lilly could have the time to file a motion for reconsideration of the Order. Exhibit H. Today, June 18, 2008, the Superior Court issued an order denying Lilly’s motion to stay; this order states in part: “This Court

will not stay unsealing the records. The records now are available for public access.”

Exhibit B.

Lilly will not argue in this motion the substance of why it believes that the Superior Court erred in unsealing the documents filed under seal by Lilly below. The point for this motion is the immediate and irreparable harm to Lilly which will occur should the documents be accessed by the public, if those documents should never have been unsealed in the first instance. A bell cannot be unrung. Once the documents are made available and accessed by Bloomberg or any other member of the public, the dispute over whether they should remain under seal will be moot, and Lilly will have lost its right to further contest the unsealing of the documents both in the Superior Court (by motion for reconsideration of the Order), and on appeal to this Court. The purpose for filing the documents under seal will be destroyed by public disclosure before Lilly can exhaust the procedures available to it to prevent such disclosure.

Further, this Court can see from Lilly’s motion for stay (Exhibit H) that Lilly asked for a stay below so that it could prepare and file with the Superior Court a motion for reconsideration of the Order. Under Alaska Rule of Civil Procedure 77(k), Lilly had ten days to file its motion for reconsideration. However, in its order denying the motion for stay (Exhibit B), the Superior Court stated: “The Court has delayed unsealing the records for five days. Lilly has not moved to reconsider.” The Superior Court was obviously of a mind to refrain from unsealing the records to allow Lilly the time to file its motion for

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reconsideration, but for some inexplicable reason imposed a five-day deadline on Lilly for the motion for reconsideration. The Superior Court had not previously advised Lilly that it had only five days to move for reconsideration, and there was no reason for the Superior Court to deviate from the ten-day deadline imposed by Rule 77(k).¹ To the extent that the Superior Court thought that Lilly had not filed a timely motion for reconsideration, the Superior Court clearly erred in that regard.

In addition, it is important that the Court note that the underlying issues in this case, which dealt with claims relating to the drug Zyprexa manufactured by Lilly, are also being addressed in the Zyprexa Multidistrict Litigation pending before Judge Jack B. Weinstein, U.S. District Court, Eastern District of New York. The documents which Lilly seeks to remain under seal are protected by a case management order in the Zyprexa MDL. Exhibit D. In addition, Judge Weinstein has deferred dealing with motions to de-designate the confidentiality of the documents until complaints about Alaskan James Gottstein's access to confidential Lilly material have been resolved by the Second Circuit Court of Appeals. Exhibits I, J, and K. The impact of the Zyprexa MDL on the confidentiality of the sealed documents needs to be addressed in the proper forum; again, unsealing and disclosure of the documents to the public at this time will destroy Lilly's opportunity to make this argument.

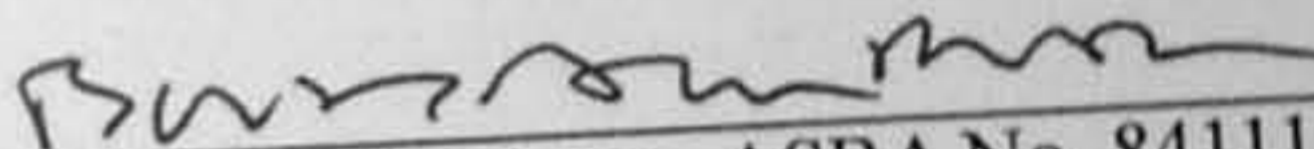
¹ Moreover, expecting Lilly to file a motion for reconsideration within five days was unreasonable. The Order was released by the Superior Court on a Friday afternoon, and two of the next five days were over the weekend.

CONCLUSION

For the reasons stated above, Lilly asks that this Court stay access to and dissemination of any of the documents which are the subject of the Order, pending the outcome of this appeal. Lilly is not asking this Court to relax any deadlines to access the procedures available to it to contest the unsealing of the documents. All that Lilly is asking is for a stay in the unsealing and public disclosure of these documents so that the merits of whether they should be unsealed in the first instance may proceed in the natural course of this appeal.

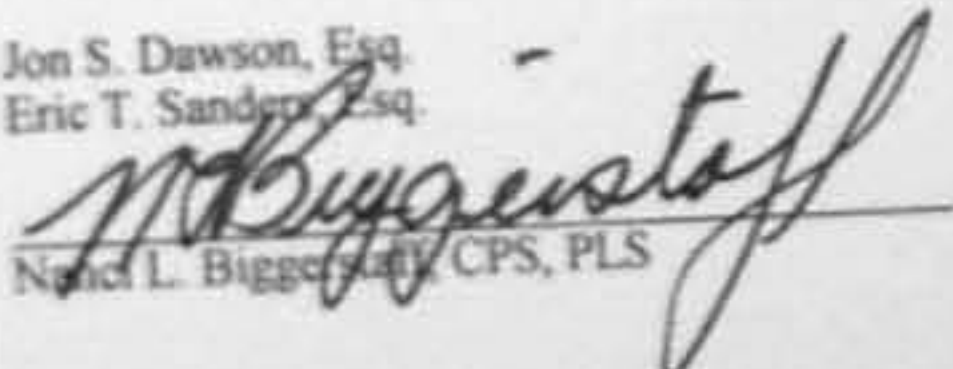
RESPECTFULLY SUBMITTED this 18th day of June, 2008.

LANE POWELL LLC
Attorneys for Eli Lilly and Company

By 
for Brewster H. Jamieson, ASBA No. 8411122
Andrea E. Girolamo-Welp, ASBA No. 0211044

I certify that on June 18, 2008, a copy of the foregoing was served by hand on:

Jon S. Dawson, Esq.
Eric T. Sanders, Esq.


Heidi L. Biggerstaff, CPS, PLS

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**Eli Lilly and Company's Emergency Motion to Stay
the Alaska Supreme Court
Supreme Court Case No. S-13152
Trial Court Case No. 3AN-06-05630 CI**

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Protective Order, dated July 30, 2007	C
Letter with Case Management Order No. 3 (Protective Order), dated August 3, 2004, issued by the E.D.N.Y., <i>In re: Zyprexa Products Liability Litigation</i>	D
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