

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 ELI LILLY AND COMPANY,)
)
 Defendant.)
)

Case No. 3AN-06-05630 CI

VOLUME 18

TRANSCRIPT OF PROCEEDINGS

March 26, 2008 - Pages 1 through 16

BEFORE THE HONORABLE MARK RINDNER
Superior Court Judge

1 A-P-P-E-A-R-A-N-C-E-S

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1 PROCEEDINGS
 2 THE COURT: We are on the record in
 3 State versus Eli Lilly and Company. Counsel are
 4 present. We're outside the presence of the jury.
 5 As counsel know, settlement was
 6 reached in this case yesterday. We're missing
 7 one juror; when that juror comes in we'll bring
 8 in the jury and let them know about the
 9 settlement and discharge them.
 10 We need to decide what we're going
 11 to do as far as talking with the jurors, how you
 12 want to work that.
 13 MS. GUSSACK: Your Honor, we're
 14 interested in speaking with the jurors, and I
 15 believe counsel for the State are as well, if we
 16 can do that in the jury room for those -- after
 17 the Court inquires, we'd appreciate the
 18 opportunity.
 19 THE COURT: Are you going to be
 20 there together or how do you want to do it? I
 21 don't care in particular; I'll probably want to
 22 talk to them, too.
 23 MS. GUSSACK: Together is fine.
 24 MR. LEHNER: Together is fine.
 25 THE COURT: What I'll do is just

1 A-P-P-E-A-R-A-N-C-E-S, continued

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1 explain to them the usefulness of that to
 2 everybody, and I'm going to leave it up to them
 3 and if they want to go about their business,
 4 they're going to be free to go about their
 5 business.
 6 But I'll leave it up to the jurors.
 7 Again, I want to compliment
 8 everybody for the way the trial was conducted.
 9 It's a pleasure as a judge to have lawyers of the
 10 competence that I had. I don't want to slight
 11 any of the staff either. I mean, I made a point
 12 about the people that were running the technology
 13 and all those things, and it's just been amazing
 14 to me to see how smooth and seamless that all
 15 was.
 16 The lawyering was first-rate, both
 17 in terms of what people did in trial and briefing
 18 and the interesting issues you presented to me.
 19 If there was an issue that was
 20 missed, I'd be really surprised. And I'm sure
 21 there would have been many more that would have
 22 been coming depending on the jurors' verdict, but
 23 I do just want to compliment everybody involved
 24 in the case and also express my appreciation to
 25 them in the professional way that they dealt with

1 each other and in the Court.

2 It's just really nice to have
3 people as professional and as skilled in front of
4 me in this court.

5 And I'm sure that that added to the
6 resolution of the case --

7 MS. GUSSACK: Thank you,
8 Your Honor.

9 MR. FIBICH: Your Honor, if I can
10 respond briefly to those comments. You know,
11 we've all been in front of a lot of judges and
12 first of all, this is my first time to Alaska,
13 and we've been treated well throughout the entire
14 stay, but particularly here at the courthouse and
15 in your courtroom by the people that work for you
16 and that's really appreciated. You know, not
17 every state or jurisdiction you could go into
18 without feeling like you're likely to get
19 hometowned but we feel like we were treated as
20 well as we could be treated, and I'm sure that I
21 speak for the lawyers for Lilly.

22 I also want to tell you that I
23 don't -- I have never been before a judge that I
24 thought worked as hard as you did, and there were
25 times in which we may have disagreed with your

1 rulings and things that we weren't happy with,
2 but the ultimate compliment that I can pay you is
3 that I wish that I could have the rest of my
4 cases all tried before you.

5 I think I speak for everybody on
6 this side of the table, and they can certainly
7 speak for themselves, but if you felt like it was
8 a privilege to have the lawyers in the courtroom,
9 we certainly felt it was a privilege to have you
10 in the courtroom with us, and we got a very, very
11 fair trial, and that's all we can ask. As long
12 as we have people like you that administer
13 justice, then all those things that we believe in
14 as lawyers will be preserved.

15 THE COURT: Thank you very much,
16 Mr. Fibich.

17 MS. GUSSACK: Your Honor, I think I
18 will just repeat what I said yesterday which is
19 that none of us have had a judge before be
20 willing to meet us at night or at weekends to
21 pick up additional work so that you could be
22 ready for trial the next day, and that level of
23 commitment and attention to the matters before
24 you is really extraordinary. We thank you very
25 much for that.

1 THE COURT: Thank you. And I was
2 saying -- I don't mean to single out the
3 plaintiffs in any particular way over Lilly, but
4 the lawyer that I was before I became a judge
5 enjoys a good cross-examination, and I saw a few
6 of them in this case.

7 We'll then wait. One of the jurors
8 was running a little bit late, but as soon as
9 they're ready, we'll talk to them and get them
10 discharged. I have to give them a juror survey
11 and a few other things, and we'll let people meet
12 with the jury.

13 What is Lilly going to do about --
14 do you know, just so that I can -- I'm not going
15 to be rushing as much as I would have if the
16 trial was going on for the issue that the
17 Bloomberg news has raised, but I do want to get
18 that issue decided and I think Lilly still owes
19 me a brief and I just wondered whether there's
20 been any discussion with that.

21 MS. GUSSACK: Your Honor, I believe
22 we had filed a response, but I think we would
23 like to file a supplemental response in light of
24 the status of the matter before you have to turn
25 to it.

1 THE COURT: Is there anybody from
2 Bloomberg in the back? I thought you were from
3 the Times; is that Bloomberg. You might talk to
4 your lawyers because I'm -- given that this has
5 settled, that may change the posture of the
6 case -- the posture and a lot of stuff has come
7 out that's already public record, and so I'm
8 just -- just want the lawyers to talk to each
9 other so that they can narrow down what they
10 really want me to decide.

11 We'll be off record.

12 THE CLERK: Please rise.

13 (Off record.)

14 (Jury in.)

15 THE COURT: Please be seated.

16 We're back on the record in State
17 of Alaska versus Eli Lilly and Company,
18 3AN-06-5630. Parties are present. All members
19 of the jury are present.

20 Ladies and gentlemen jury, I'm
21 happy to tell you, and I hope you're happy, too,
22 that this case settled last night. And so it
23 will be not necessary for you to deliberate and
24 to finish the determination of this case.

25 In some ways I know that that may

1 be a disappointment to you, having sat through 15
2 days of trial and not getting to kind of render
3 your verdict in this case.

4 But I want to tell you that the
5 work you've done and your being here and being
6 attentive is an essential component of why this
7 case was able to resolve. And the fact that it
8 was able to resolve in this way saves the parties
9 and another jury that, depending on what your
10 verdict was might have had to hear 20 another
11 days of testimony, as well as appellate courts
12 who would have been reviewing every decision that
13 I made in this case, and there would have been a
14 number of them.

15 All that time, all that money, all
16 that review, the possibility of a retrial is
17 avoided by a settlement in this case. It brings
18 certainty to the parties which is important, as
19 I've indicated. It saves the possibility of a
20 second trial depending on what your verdict might
21 have been in this case.

22 And so by settling this case, it's,
23 in many ways a win-win situation for the parties
24 in this case, and it saves other people as well
25 as yourselves the extra time of -- that finishing

1 up the trial might have been as well as the
2 additional work that might have happened.

3 And so our system of justice really
4 prefers settlements for many ways because it
5 brings certainty, it saves time, it saves money
6 and it lets the parties resolve cases. It
7 certainly would have been nice if the case had
8 settled before you all had to do your work, but I
9 think the fact that you were doing your work is
10 one of the big reasons that this case settled.

11 And so you should see yourselves as
12 having an -- and I certainly do, and I think the
13 parties do, as having played a very significant
14 role in the resolution of this case which is part
15 of what our jury system is about.

16 I would like to thank all of you
17 for the time you've put in. As I think I told
18 you when you were being selected, trial by jury
19 in Alaska is a fundamental right, it's an
20 essential part of our entire legal system, but it
21 can't happen unless there are people like
22 yourselves who are willing to give of your time
23 and perform one of the greatest civic duties that
24 people can perform in this country. You all have
25 done that and I really appreciate the time you've

1 put in and the attention that you've paid to this
2 case.

3 I throughout the trial would
4 periodically look over, and you were as attentive
5 a jury as I think as I've ever had.

6 Let me tell you what's going to
7 happen next. Because I have a couple of
8 questions for you and some -- some requests.

9 Up until now I've given you every
10 day the admonition not to discuss this case with
11 anyone or to let anyone discuss it with you. You
12 are now free from that admonition, you are free
13 to discuss this case with anyone you want to, and
14 you're free not to discuss this case if you don't
15 want to discuss this case with anyone.

16 The attorneys all would like to
17 meet with any of you who want to stay once I
18 discharge you back in the jury room. I don't
19 know if it was ever indicated at any part during
20 this trial, but other states have similar
21 lawsuits and there are other lawsuits that have
22 similar claims in this matter, and some of the
23 attorneys are involved in those lawsuits, and I'm
24 sure they'd like to -- knowing that you didn't
25 hear all of the evidence and we weren't finished

1 with our trial, but that you heard a significant
2 amount and you certainly didn't get the jury
3 instructions, but they'd probably like to know
4 your thoughts as well as how they performed as
5 lawyers, and jurors are really the only
6 real-world feedback that lawyers can get for what
7 happened in this case.

8 They can do mock trials in front of
9 people that pretend to be jurors, but that's
10 really not the same as kind of getting feedback
11 from people that actually listened to them in a
12 case, so it is a frequent request of lawyers that
13 I allow them to do this if they want to and want
14 to talk to jurors about this.

15 I will tell you that it's probably
16 going to be helpful in many respects if you want
17 to talk. But that's entirely up to you, if you
18 say I'm done, I'm going back to work, and I'm
19 going back to my kids and my family, you should
20 feel free to leave. It's entirely up to you. If
21 any of you would like to stay -- I'd like to talk
22 to you just to see what you were thinking as this
23 case progressed and also to give me feedback if
24 anyone wants to as to what I did as a judge and
25 whether there are things I can do better, that

1 would be helpful to me in trying to be a better
2 judge which is something that I always want to
3 be.

4 I'm going to give you all a juror
5 survey. The judicial council requires us to give
6 surveys to jurors to answer a bunch of questions
7 on this postcard. It's got a no postage
8 necessary stamp and it doesn't go back to me; it
9 goes back to the Alaska judicial council. I'll
10 hand that out before you leave and if you want to
11 fill that out, the judicial council would
12 appreciate it, so would I.

13 The other thing you should know is
14 I will be sending each of you a personal letter
15 of thanks for being on the jury along with a
16 survey of questions that I sort of have, both as
17 to what we can do as a court system to make lives
18 better for jurors. It will give you an
19 opportunity to comment on parking or on the seats
20 and a few other things.

21 And we try to use -- I use that and
22 to the extent we get continued feedback from
23 jurors on certain problems, I try to get the
24 powers that be to do something about it.
25 Sometimes we're able to improve things and

1 sometimes we're not. Again, that will go to you
2 with a self-addressed stamped envelope coming
3 back to me.

4 You're entirely free to ignore that
5 just as you can ignore lawyers and other things.
6 If you want to answer that out just as you talk
7 to the lawyers, that would be great. It is a
8 helpful part of the process.

9 The other thing which I'm going to
10 ask you about is during the trial I have --
11 there's been a lot of press coverage. You don't
12 know about that, I hope, because I asked you not
13 to read anything, but there's been a lot of press
14 coverage, and my chambers has gotten requests
15 from newspaper organizations or other media as to
16 whether or not they could have the names of the
17 jurors so that they could contact you when the
18 trial was over.

19 It's my general practice not to
20 give that out freely, although I suspect that any
21 competent news reporter, given that this has not
22 been a closed trial and we didn't just refer to
23 you by numbers and stuff can probably figure
24 things out, so you may be hearing from the media.

25 My question to you is it's not my

1 intention to give out your names or anything,
2 unless you tell me that it's okay. If there's
3 anyone who doesn't mind that, maybe you could
4 just let me know or let my chambers know that it
5 would be okay and you won't have any objections.
6 And if that's the case, then I'll feel that I
7 don't have a problem with it, but if you -- my
8 feeling is your job was to be jurors here not be
9 interviewed when the case was over in what -- and
10 what goes on is entirely up to you.

11 I do expect, though, that you will
12 be interviewed by people, will be contacted by
13 people regardless. Again, it's entirely up to
14 you whether you want to talk to them or don't
15 want to talk to them, so I leave that up to you.

16 The one thing I will say about that
17 is while it's entirely up to you what you want to
18 do, if you tell somebody politely I'm sorry that
19 I don't want to talk about this anymore, I don't
20 want to discuss this, whether it's a lawyer,
21 whether it's a reporter, whether it's anybody,
22 and they were to persist in badgering you about
23 that and won't take no for an answer, I would
24 appreciate knowing about that. I would consider
25 that a serious violation of what I think is

1 appropriate in jurors and I will try to do
2 something about it. So if that happens, please
3 let me know.

4 We'll hand out the blue cards, then
5 to everybody, and is there any reason why this
6 jury should not be discharged at this time?

7 MS. GUSSACK: No, Your Honor.

8 MR. FIBICH: No, Your Honor.

9 THE COURT: Then ladies and
10 gentlemen of the jury, once again, I really
11 appreciate the work you do. I'll probably be a
12 minute or two more with the lawyers, but if any
13 of you want to stick around and talk to both me
14 and to the lawyers, I would appreciate that and
15 again, thank you very, very much for your service
16 in this case.

17 And this -- you may have remembered
18 one of the first questions you were asked was
19 anyone on a jury previously within the past year,
20 so you guys are off jury duty for a year.

21 (Chuckles.)

22 THE COURT: Thank you very much and
23 you're discharged at this time.

24 THE CLERK: Off record.

25 (Trial adjourned at 9:05 a.m.)

1 REPORTER'S CERTIFICATE

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I, SANDRA M. MIEROP, Certified Realtime Reporter and Notary Public in and for the State of Alaska do hereby certify:

That the proceedings were taken before me at the time and place herein set forth; that the proceedings were reported stenographically by me and later transcribed under my direction by computer transcription; that the foregoing is a true record of the proceedings taken at that time; and that I am not a party to, nor do I have any interest in, the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal this 26th day of March, 2008.

SANDRA M. MIEROP, CRR, CCP
Notary Public for Alaska
My commission expires: 9/18/11