

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 ELI LILLY AND COMPANY,)
)
 Defendant.)
)
 _____)
 Case No. 3AN-06-05630 CI

VOLUME II

EXCERPT OF PROCEEDINGS

March 4, 2008 - Pages 1 through 30

BEFORE THE HONORABLE MARK RINDNER
Superior Court Judge

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

2 For the Plaintiff:

3 STATE OF ALASKA
 4 Department of Law, Civil Division
 Commercial/Fair Business Section
 5 1031 West 4th Avenue, Suite 200
 Anchorage, Alaska 99501-1994
 6 BY: CLYDE "ED" SNIFFEN, JR.
 Assistant Attorney General
 (907) 269-5200
 7 FIBICH, HAMPTON & LEEBRON LLP
 Five Houston Center
 8 1401 McKinney, Suite 1800
 Houston, Texas 77010
 9 BY: TOMMY FIBICH
 (713) 751-0025
 10
 11 CRUSE, SCOTT, HENDERSON & ALLEN, LLP
 2777 Allen Parkway, 7th Floor
 12 Houston, Texas 77019-2133
 13 BY: SCOTT ALLEN
 (713) 650-6600
 14
 15 RICHARDSON, PATRICK,
 WESTBROOK & BRICKMAN
 1037 Chuck Dawley Boulevard, Building A
 16 Mount Pleasant, South Carolina 29464
 BY: DAVID L. SUGGS, Of Counsel
 (843) 727-6522
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 PROCEEDINGS

2 THE COURT: We're on the record in
3 State of Alaska versus Eli Lilly and Company,
4 3AN-06-5630. No panel members are present. My
5 understanding was there was one issue that needed
6 to be taken up before we bring the panel back in.

7 Mr. Allen.

8 MR. ALLEN: Your Honor, I didn't
9 know if you want for me to bring it up before the
10 panel came in but I did have for you the
11 Lechleiter, Torres cuts because you said you
12 wanted something to work on.

13 THE COURT: Are these the
14 deposition issues that you want me to work on
15 first?

16 MR. ALLEN: Yes, sir.

17 THE COURT: Okay. That was on my
18 list of asking where they were.

19 MR. ALLEN: Yes, sir. And I have
20 that. In addition to that and I gave that to
21 counsel this morning, in the proposed exhibits I
22 gave you yesterday, we have the Eli Lilly annual
23 report. I saw that my team attached the whole
24 annual report, which we clearly are not going to
25 use in opening. I wanted to give the Court the

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

2 For Defendant:

3 PEPPER HAMILTON LLP
 4 301 Carnegie Center, Suite 400
 Princeton, New Jersey 08543
 5 BY: JOHN F. BRENNER
 GEORGE LEHNER
 NINA GUSSACK
 6 (609) 452-0808
 7 LANE POWELL, LLC
 301 West Northern Lights Boulevard
 Suite 301
 8 Anchorage, Alaska 99503-2648
 9 BY: BREWSTER H. JAMIESON
 (907) 277-9511
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 actual portions of the annual report that we
2 intend to offer. Plus the call notes, which we
3 actually intend to offer are highlighted, and
4 they're highlighted for the other side. And the
5 call notes -- another set -- and they're all
6 highlighted, and I just wanted to make sure the
7 Court understood what we were intending to offer
8 as opposed to the entire report.

9 Plus, Your Honor, we had Jordan
10 Exhibits 9 and 10, and you didn't -- said you
11 hadn't seen -- you were going to have a hard time
12 seeing the video. We have 38 seconds that I
13 thought if you wanted, I have my guy here, he can
14 show it so he can leave as opposed to staying the
15 whole day, so you can see what you're ruling on
16 later.

17 THE COURT: Yeah, let's get it out
18 of the way so I can do that. But before we do
19 that, just a couple of rulings to help along.
20 I've reviewed the documents that Eli Lilly wishes
21 to preadmit, and all of them are preadmitted.
22 There's -- well, I'd better say them for the
23 record; Eli Lilly 2119, 2109, 2112, 2133, 2120,
24 2121, 2130, 2131, 2132, 2731, 3068, 2732, 2737,
25 3795, 2113.

1 MR. ALLEN: Could I have
2 Mr. Maynard turn on the 38 seconds?
3 THE COURT: Just a couple of more
4 things.
5 THE CLERK: The mics ought to be
6 turned facing the attorneys on all the tables.
7 THE COURT: Could you all turn your
8 mics so that they're facing by you instead of the
9 way you've got them?
10 Thanks.
11 There were some documents that I
12 hadn't yet -- additional submissions of the State
13 for possible use in opening statement. I hadn't
14 gotten Lilly's response until this morning, but
15 now I have. The annual report I want to look and
16 see what the excerpts are. I had some -- my note
17 says what is being used. 1014 wasn't in the
18 book, but Lilly appears to agree to admit that,
19 simply to a kind of an advance notice objection,
20 as I understand it, that -- asserts that it's
21 hearsay, but says they had notice of it and
22 stuff. I haven't seen 1014 and Lilly notes that
23 it didn't get a copy of 1014, so I can't -- I
24 want to see it before that.
25 1037 and 1039, which are graphs

1 showing stock exchange kinds of things are not
2 admitted; it goes farther over into the line of
3 profits and income and that stuff than it does to
4 motive, in my view. 1092 is admitted. 1093 is
5 admitted. 1098, I want to think about some more.
6 10147 --
7 MR. ALLEN: We've agreed on that
8 last night, Your Honor.
9 THE COURT: That it's admitted?
10 MR. ALLEN: Yes, sir.
11 THE COURT: Okay. That's admitted.
12 10156 is admitted; 10157 is admitted; 10158 is
13 admitted; 10159 --
14 MR. ALLEN: We agreed on that last
15 night.
16 THE COURT: -- is admitted as well.
17 One of the things I note is that
18 there are -- there's at least one New England
19 Journal of Medicine article in there that I think
20 was probably agreed on and stuff.
21 MR. ALLEN: It was.
22 THE COURT: I assume this comes in
23 as kind of a learned treatise or something like
24 that, but the rule on learned treatises generally
25 is you read them; you don't admit them. On the

1 other hand, my sort of rule is probably going to
2 be if we're admitting learned treatises, we'll
3 admit them for everybody who wants learned
4 treatises in as exhibits.
5 But if we're -- but otherwise, I'd
6 prefer to stick to the -- but if that's not going
7 to happen, in other words, if the parties would
8 rather not have -- agree not to admit learned
9 treatises, follow the rule and you can read the
10 information. You just can't -- it just won't
11 become an exhibit.
12 MR. ALLEN: Yes, sir. We agreed to
13 admit last night. And let me -- I can explain
14 the difference between the admission of them and
15 the -- you're citing the learned treatise rule
16 correctly. If they're used with an expert,
17 you're right, they can be admitted for
18 discussion, but not admitted into evidence. But
19 if we're talking about an issue with a
20 pharmaceutical company, for example, the
21 ConSensus statement and the CATIE study weren't
22 just published, they were read by the
23 pharmaceutical companies and maintained in their
24 files -- issues that they would consider in
25 making decisions.

1 So, it's not really the learned
2 treatise rule that we're admitting these
3 documents under, although we could. It's also
4 substantive evidence because the article was
5 published and put them on notice. I would say
6 last night, also, Your Honor, that we agreed to
7 the admission in a phone call I had with Andy
8 Rogoff and Mr., I think Matt Brown, who I don't
9 think I met before. Is that your right name? We
10 agreed to admit those last night.
11 THE COURT: Again, what I'm just
12 saying is that if I'm going to admit them for the
13 State, if Lilly's got learned treatises that they
14 read and would have contrary conclusions, Lilly's
15 going to get them in too.
16 MR. ALLEN: No problem.
17 THE COURT: That's the question
18 that I'm raising here because --
19 MR. BRENNER: Your Honor, I think
20 that the discussion -- I wasn't part of it last
21 night -- but I think what you indicated initially
22 was correct.
23 THE COURT: Well, that's what the
24 rule says. I'm sure of that.
25 MR. BRENNER: Right. They would

1 not be admitted into evidence as such. They
2 would be admitted for the purpose of, you know,
3 reading the learned treatise and I don't at all
4 agree with the characterization that because they
5 were in Lilly's file they become admitted and --
6 the learned treatise rule.

7 THE COURT: As I understand it,
8 they're being used for the purpose of saying that
9 Lilly was on notice of literature in the area
10 and --

11 MR. LEHNER: That's exactly what
12 they would be.

13 THE COURT: For that purpose, it
14 may be being used for different purposes than
15 hearsay would be that would take it out of
16 hearsay, but --

17 MR. ALLEN: Yes, Your Honor.

18 THE COURT: I probably should think
19 about that a little bit more. But for now I'm
20 admitting it, but if Lilly's got New England
21 Journal of Medicine articles or similar sorts of
22 things that it feels the jury should see as to
23 what it was also being told -- kind of indicate
24 that what the scientific evidence may or may not
25 have been, I'll let Lilly bring it in too.

1 MR. LEHNER: So as I understand it,
2 you're going to allow them to --

3 THE COURT: What I don't want is a
4 library coming in. The implications, Mr. Allen,
5 of your argument is that the library could come
6 in, and I've got some problems with that.

7 MR. ALLEN: Your Honor, I would not
8 ever attempt to put the library in but I can --

9 THE COURT: But that's the
10 implication of what your argument is -- leads to
11 and that's why I want to think a little bit more
12 about it.

13 MR. ALLEN: Yes, Your Honor. And I
14 just want to say, for what it's worth, I need to
15 make a record. I made an agreement with counsel
16 last night on this matter and if they want to
17 change the agreement, I just want it on the
18 record we agreed. Your Honor, I want to help the
19 Court on one matter before we --

20 MR. LEHNER: Just so I understand
21 what the scope of what we're talking about here
22 is, they're going to be able to use these
23 documents in opening. If they have some of
24 these, they're going to be able to describe the
25 titles of them. We're not now agreeing that

1 they're necessarily going to be admitted in
2 evidence as sort of for the truth of the matter
3 asserted in them and that sort of thing.

4 THE COURT: All of the things I've
5 preadmitted, I preadmitted. I mean, if down the
6 road somebody comes up with something else that's
7 used or it's used in a different way than it was
8 suggested, for example, with all of these
9 documents if there's no indication -- if
10 there's not some test- -- I suppose there'd need
11 to be some testimony down the road that Lilly saw
12 this article or keeps these articles or that the
13 people who work for Lilly recognize the New
14 England Journal as something they subscribe to
15 and they read it, I feel that that won't be hard
16 to prove. But -- but, I mean, there's some
17 predicates to -- to many of these things, and
18 they're being offered in certain ways, at least,
19 and if they're used in different ways, then I'll
20 change my mind.

21 That may particularly go to the
22 stuff dealing with profits and motives if -- if I
23 feel the line's being crossed and that we're
24 talking less about motive and more about we've
25 got a rich company here; we'll do something about

1 that.

2 MR. ALLEN: Okay. Your Honor, I
3 can also help the Court. You noted that 10098
4 you wanted to think about. That was actually
5 the -- I handed you this morning as part of my
6 submission the actual call notes I intended to
7 use. I highlighted the sections which is
8 different than 10098. I can explain it to you,
9 but you probably just want to look at them and we
10 can talk.

11 THE COURT: I'll look at them and
12 try to get something for you.

13 MR. ALLEN: And we'd agreed on the
14 deposition testimony last night, although I don't
15 know what the agreement is -- but we agreed I can
16 use the deposition testimony that we submitted to
17 you. And so that was agreed to and I wanted the
18 Court to know that. And now we have the 38
19 seconds.

20 This will be -- this came from
21 their files and may be used on opening. It
22 should be on your monitor.

23 This information is for internal
24 educational purposes only and is for not use in
25 detailing --

1 THE COURT: My thing isn't --
 2 MR. ALLEN: Mine isn't either.
 3 Hold on, I apologize.
 4 THE COURT: Mine says video mode
 5 not supported. I don't know what that --
 6 A SPEAKER: Did somebody hit the
 7 switch over there?
 8 MR. ALLEN: I don't know, Eric.
 9 I'm not a video person.
 10 (Video played.)
 11 THE COURT: It still says video
 12 mode not recommended. Recommended, recommended,
 13 something, something, don't -- these things
 14 happen.
 15 A SPEAKER: This information is for
 16 internal educational purposes only and is not for
 17 use in detailing.
 18 (Music playing.)
 19 MR. ALLEN: Your Honor, that's all
 20 we have, and I can explain it to you later, but
 21 that's the Viva Zyp- --
 22 THE COURT: You're going to have to
 23 explain to me the relevance of that, because it's
 24 not inherently apparent to me.
 25 MR. ALLEN: Yes, sir. I'll be glad

1 to. You want me to do it now?
 2 THE COURT: No, I really want to
 3 get the panel and get started here.
 4 Before we do that, the one thing
 5 for the panel, cameras and stuff were set up last
 6 night and I just want to make crystal clear no
 7 members of the jury or jury panel are to be
 8 filmed, shown. The administrative rules that
 9 deal with media make very clear about the
 10 limitations of media with the jury.
 11 We're going to be asking them some
 12 questions, and they're going to be offered an
 13 opportunity to go back into chambers where this
 14 won't be filmed and recorded if we go back into
 15 chambers, because I don't want matters that the
 16 jurors consider personal spread over the Internet
 17 or other places. But I want to make very clear
 18 to those who are operating camera equipment or
 19 whatever we've got set up -- oh, they're not
 20 here?
 21 THE CLERK: I did adjust that
 22 camera, Judge.
 23 THE COURT: Okay. I'm not sure
 24 what that one's going to do either. That may be
 25 intended to get me but I just want to make sure

1 that it doesn't get the jurors. So maybe when
 2 they're here we'll find a time, but I just want
 3 everybody -- I just want to make very clear that
 4 I'm going to be protective of at least pictures
 5 of the jurors or prospective jurors and I don't
 6 think it's appropriate that that happen. So --
 7 and the administrative rules I think make that
 8 very clear.
 9 MR. LEHNER: Your Honor, could I
 10 clarify one thing with Mr. Allen's stuff? He
 11 indicated that there was some deposition
 12 testimony that we'd agreed to admit. And this is
 13 my oversight insofar as it relates to Ms. Eski.
 14 I think you had deposition testimony of Jordan,
 15 Torres and others that you wanted to use in
 16 opening, and on that list and I had not paid
 17 attention carefully enough to note it that the
 18 Eski deposition testimony was there.
 19 We would maintain, and I think the
 20 Court has indicated, we've already filed a motion
 21 with respect to that. We don't mind the other
 22 deposition testimony, but if you're going to look
 23 at the Eski in context of what we talked about,
 24 we will maintain our objection to the Eski
 25 testimony.

1 THE COURT: Does this agreement go
 2 to Eski?
 3 MR. ALLEN: Yes, sir. I thought it
 4 did, but, of course, I'm learning quickly what
 5 our agreements are worth.
 6 MR. LEHNER: Your Honor, that was
 7 my oversight. I'm sorry. I looked at the first
 8 ones there. I apologize, Mr. Allen. I think it
 9 would have been pretty clear in light of all the
 10 discussion --
 11 THE COURT: My understanding is
 12 everything but Eski is agreed to, and I
 13 understand --
 14 MR. ALLEN: Yes, sir.
 15 THE COURT: -- that there may have
 16 been some agreement as to Eski but that perhaps
 17 didn't go far enough up the chain, and --
 18 MR. LEHNER: I apologize to
 19 Mr. Allen. I apologize to the Court. But in
 20 light of the conversation we've had about that, I
 21 think it would be clear.
 22 MR. ALLEN: I'm going to hand a
 23 copy to the Court. I didn't have a copy for you
 24 all. It's page 210, Line 20 through 212, Line
 25 19; 270, Line 3 through 270, Line 16; and 272

1 Line 15 through 24. By the way, Im not going to
2 use all of that, but I may not -- may use some of
3 this. And this is the only copy I have.

4 THE COURT: We'll get a copy. I
5 just want to read this -- I just want to tell
6 everybody. It's helpful to me -- I realize you
7 guys are working your butts off and I appreciate
8 that.

9 On the other hand, I'm trying to
10 keep up with you and there's a lot more of you
11 than there is me, and there are some nights I'm
12 more willing to devote the evenings to than
13 others. And Tuesday nights and Thursday nights,
14 because I really need to work out in order to
15 keep myself healthy are nights that I really
16 would like to keep for myself, so if things can
17 be gotten to me with that in mind. I mean, it
18 doesn't mean that I won't take stuff home on
19 Tuesday nights when I'm done working out. It
20 means there will be less time on Tuesday night.
21 I'll get this stuff done tonight at some point,
22 just I'd ask you to recognize that I'm trying to
23 keep up, too.

24 MR. ALLEN: Thank you very much,
25 Your Honor. We'll try to reach some agreements

1 tonight on other matters.

2 THE COURT: Mr. Jamieson.

3 MR. JAMIESON: Your Honor, I think
4 I'll stay at the counsel table. There is one
5 issue with regard -- we mentioned yesterday with
6 regard to prospective juror Denise Schmidt who is
7 a critical care nurse who blurted out things
8 about Zyprexa. We think that that was
9 prejudicial to Eli Lilly. We recognize that the
10 curative instruction might be offered to us,
11 which we would decline just because it just makes
12 matters worse, but we're concerned if this
13 happens again that there will be a cumulative
14 effect and that we may end up losing our panel.
15 And we want to make a record that we would
16 reserve the right to move for that.

17 Your Honor did admonish the parties
18 yesterday in that respect, but I wanted to make
19 clear Lilly's position that we're very concerned
20 about that one comment and if it happens again,
21 it's going to be -- it could be very prejudicial.
22 Irretrievably so for this panel.

23 THE COURT: Okay. I think you've
24 made your record, Mr. Jamieson.

25 MR. JAMIESON: Thank you, Your

1 Honor.

2 THE COURT: I don't perceive that
3 as requesting that I do something with
4 Ms. Schmidt or doing anything now. Again to the
5 extent that you're wanting instruction, I'm happy
6 to give one if you have one that's appropriate.

7 MR. JAMIESON: With respect to
8 Ms. Schmidt, I would request that we question her
9 automatically. She had some responses to her
10 questionnaire -- I don't know if Your Honor had a
11 chance to peruse it.

12 THE COURT: I have not had a chance
13 to read any of the jurors' questionnaires. Part
14 of the purpose of getting questionnaires was to
15 identify witnesses who at least -- at least as to
16 some of the questioning, I'm not going to take up
17 everything with Ms. Schmidt. If there are areas
18 that you are worried about that you want to make
19 inquiry about, that you feel that that's going to
20 happen, you've got that information. You can
21 indicate that to me if she becomes one of the
22 people in the jury box.

23 MR. JAMIESON: Thank you,
24 Your Honor. Certainly we do feel that way about
25 Ms. Schmidt and we would just urge caution in

1 respect to questioning in open court of her,
2 given her --

3 THE COURT: Everybody, I think,
4 we've already discussed the problem and ways to
5 avoid it, and you've made your record. And I'm
6 sure the Plaintiffs can figure out that they need
7 to tread carefully because there will be motions
8 coming if they don't. And we'll take it from
9 there.

10 MR. JAMIESON: Thank you,
11 Your Honor.

12 MR. FIBICH: Your Honor, along
13 those lines, we identified by virtue of the
14 questionnaire a couple of jurors that we think
15 may be problematic as well. If they are selected
16 in the first 22, we approach the bench before the
17 questioning -- one in particular has an issue
18 that I would not want to engage her with.

19 THE COURT: Well, again, what I'd
20 like to do with some of those witnesses -- and we
21 can do it either way is we can take some of the
22 questions -- the areas that are problematic, we
23 can take the witness first on those areas back in
24 chambers, or you can ask the more milk and honey
25 questions first but I'm a little worried. I

1 suppose that if we do that, they still may get
2 into some things. Maybe you take the stuff that
3 may be more controversial first and then -- if
4 you -- yes, approach the bench and we'll identify
5 those people and -- once I get the panel, I may
6 indicate to the jurors that -- for some of them,
7 it may be that they'll have privacy concerns and
8 want to take things up.

9 But it also may be that based on
10 their questionnaires the lawyers have identified
11 areas that they -- that they don't want to
12 discuss in front of the rest of the panel so that
13 certain information that may not be appropriate
14 for the rest of the panel to know about doesn't
15 get conveyed to them. And they shouldn't
16 consider it one way or another if the parties
17 request I take them into chambers and we'll do
18 our questioning there. That may happen just as
19 it may happen if they want to be questioned
20 privately, I'm certain.

21 MS. GUSSACK: We'd appreciate that,
22 your Honor, given the substance of the issues.

23 THE COURT: I'll do that. Why
24 don't we get the panel back. We'll go off
25 record. We'll get the panel back in and we'll

1 start picking our jurors. We'll be off record.
2 (Voir dire.)

3 THE CLERK: Off record?

4 THE COURT: We're still on record.
5 Just let me just confirm by asking: There are no
6 panel or prospective panel members in the
7 courtroom?

8 Okay. I'm going to excuse everyone
9 for the night. As I understand it, the one
10 ruling you'll need from me, as soon as I can get
11 it, deals with the Noesges deposition and the
12 particular portions that want to be used in
13 opening statement?

14 MR. ALLEN: Yes, sir. That's one
15 issue. Also, you have the small portion of the
16 2000 annual report. You also have the call
17 notes. I gave them this morning. I can
18 highlight it again for you if you don't mind.

19 THE COURT: Tell me what the
20 exhibit is.

21 MR. ALLEN: It's Noesges Exhibit 12
22 but I'm not going to use the whole exhibit. I'm
23 using the call notes dated June 27, 2002. It's
24 the bottom of page 1, continuing to the middle --

25 THE COURT: What's the exhibit

1 number --

2 MR. ALLEN: Noesges 12.

3 THE COURT: I can't tell what that
4 is. I need to know the formal exhibit number.

5 MR. ALLEN: I don't know if we have
6 a formal exhibit number.

7 THE COURT: Is it in the binder
8 that you gave me?

9 MR. SUGGS: I can find it --

10 MR. ALLEN: I have it. I can give
11 it to you.

12 THE COURT: I see what it is.

13 MR. ALLEN: It's Noesges 12.

14 THE COURT: Okay. Has this been --
15 have we had formal objections so they can
16 understand what the objection is from Eli Lilly
17 to that document?

18 MR. LEHNER: It was in the pleading
19 I think we filed this morning. There was -- our
20 objections were there, Your Honor.

21 MS. GUSSACK: Your Honor, and the
22 other objection that Lilly has not yet been heard
23 on is the response to that video clip that you
24 were shown this morning, that you can appreciate
25 Lilly has a strong view is highly prejudicial and

1 not probative of any issue or relevant.

2 THE COURT: Well, I still -- that's
3 right. I guess --

4 MR. ALLEN: I haven't finished --
5 and then everybody --

6 MS. GUSSACK: Oh, I'm sorry, Mr.
7 Allen.

8 THE COURT: The 2000 annual report,
9 Noesges 12.

10 MR. ALLEN: Noesges 12, and I
11 handed it to you -- the testimony of Ms. Eski,
12 and then I handed it to you this morning, it's
13 call notes used in Ms. Eski's deposition, and I
14 highlighted the portion about, quote, comparable
15 rates, closed quotes, and the issue of the video
16 are the things that are on my list. And the
17 video I can discuss now if the Court would like.

18 THE COURT: Well, for me to rule on
19 the video, Lilly hasn't been heard, but I
20 haven't -- having viewed that portion that you
21 wanted to play, I don't understand the relevance.

22 MR. ALLEN: That's why I have to
23 discuss it for Your Honor. And what I would
24 note, though, the video's made more relevant by
25 the statement by counsel today before this jury

1 that we don't advertise. And the issue -- this
2 was -- the video would be used to demonstrate in
3 2000 at the October 2000 Primary Care Launch
4 following a lot of evidence concerning dangers
5 with Zyprexa, following the loss of Prozac's
6 patent, that they engaged in the promotion on the
7 primary care market to expand their failure to
8 warn.

9 We will hear from the Defendants
10 and we heard it today on voir dire that we're a
11 company of science and it's science that we're
12 concerned with, and we're very careful and over
13 time. And I think the video demonstrates that
14 the company position on that matter. They called
15 it a educational video. That's what they called
16 it on the very front end, if you recall.

17 THE COURT: I don't need to hear
18 argument.

19 I'm not going to let it come in in
20 opening or in direct. They can open the door to
21 it. Right now I don't find it to be sufficiently
22 relevant and to be confusing and prejudicial and
23 under 403, I would exclude it. If the door gets
24 opened where arguments are made, in Lilly's case
25 on rebuttal, you can renew --

1 MR. ALLEN: I --

2 THE COURT: -- your request and
3 then I'll decide what I'm going to do.

4 MR. SUGGS: With respect to
5 Noesges --

6 MS. GUSSACK: Can I point out that,
7 mindful of your time constraints, I would just
8 like the record to reflect that there is an
9 educational component to that video and all that
10 Mr. Allen played was an internal sales meeting
11 motivational snippet --

12 THE COURT: Again, because of the
13 time things, I'm not going to allow it to be
14 played in opening and I'm not going to allow it
15 to be introduced as part of the case in chief of
16 the State. If you can -- everybody can educate
17 me further if they feel they need to if somebody
18 feels they need to use it on rebuttal.

19 MS. GUSSACK: Thank you, Your
20 Honor.

21 MR. ALLEN: You made a ruling and I
22 accept it, Your Honor.

23 THE COURT: And did somebody say --
24 did you want to say something about Noesges 12?

25 MR. ALLEN: Yes, Your Honor.

1 Everybody is worried about the numbering system.
2 It's Noesges 12. We don't know the Alaska
3 number -- we have it --

4 THE COURT: I have it here with the
5 highlighted portions.

6 MR. ALLEN: Yes, sir, that's it.

7 THE COURT: I'll look at Noesges
8 12. I'll look at the 2000 Annual Report and the
9 June 27, 2002 call number and then the --

10 MR. ALLEN: Eski depo.

11 THE COURT: -- Eski depo and I'll
12 try to give you rulings tomorrow, although -- was
13 there one or two of them that I need a response
14 from Lilly on?

15 MS. GUSSACK: I believe there are
16 two additional --

17 THE COURT: Noesges 12 may be one
18 of them.

19 MR. LEHNER: No. I think, Your
20 Honor, let me make sure, but the pleading we
21 filed today deals with Noesges 12. We handed it
22 to you this morning. You tucked it in your
23 pocket.

24 MR. ALLEN: I did?

25 MR. LEHNER: Yes.

1 MS. GUSSACK: Thank you, sir.

2 MR. LEHNER: There you go. We
3 filed it, Your Honor.

4 MR. ALLEN: It's filed to my right.

5 THE COURT: I'll see everybody in
6 the morning then.

7 MR. ALLEN: Thank you, Your Honor.
8 (Proceedings concluded.)
9

1 REPORTER'S CERTIFICATE

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 testimony and 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 3rd day of March, 2008.

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