

Honorable Jack B. Weinstein
March 23, 2007
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At every juncture, purchase claim plaintiffs (and their counsel) have abided by the provisions of CMO-3 and afforded Eli Lilly more than ample opportunity to respond. Although we believe Eli Lilly failed to comply with its obligations under the Order and therefore believe these documents are no longer “confidential,” we have not released any documents.

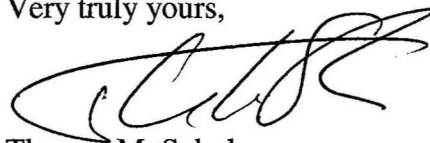
As this Court has noted time and again, “[a] presumption of public access applies to judicial proceedings and documents.” Memorandum, Final Judgment, Order & Injunction, dated February 13, 2007, in *In re Injunction*, 07-cv-0504, related to MDL No. 1596. This is especially the case where, as here, documents for which the confidentiality designations are challenged are part of a public filing in litigation that is of crucial importance to the health care community and the public at large.

We are in receipt of this Court’s Orders of February 12, 2007, directing the deferment of an argument on any motions to declassify challenged documents until the conclusion of the then-pending injunction proceedings and any contempt actions. The injunction proceedings have come to a conclusion and we are not aware of any contempt actions that have been filed. It was our understanding during the teleconference with Special Master Woodin that he did not believe our challenge, which has been pending since November 2005, would be placed on the back burner if it were coordinated with other pending challenges to the designations of the documents. Accordingly, we respectfully request a hearing on the purchase claim cases’ challenge to the confidentiality designations of those Eli Lilly documents cited in the first amended complaint.

In summary, Plaintiffs’ position is threefold. First, we have complied with the provisions of CMO-3 and will continue keep Lilly’s “confidential” documents sealed even though there is a strong basis to conclude that the documents are no longer “confidential” by operation of CMO-3. Second, our understanding is that Lilly has not moved for contempt proceedings.¹ Regardless, our challenge is independent of the Gottstein matter. Finally, we have repeatedly extended courtesies to Eli Lilly and approached this issue in a manner designed to protect the alleged confidentiality of the documents. However, we should not be penalized for our good faith efforts by continued delay in a hearing and ruling on the matter.

This matter has been fully brief since April 10, 2006 and we request a hearing date, at the convenience of this Court, on the matter. If Your Honor would like to hear the issue at the Summary Judgment hearing currently set for March 30, we would be happy to oblige.

Very truly yours,



Thomas M. Sobol

cc: Counsel of record (via email)

¹ We have recently been informed that a contempt proceeding may have been filed but have been unable to confirm this report.