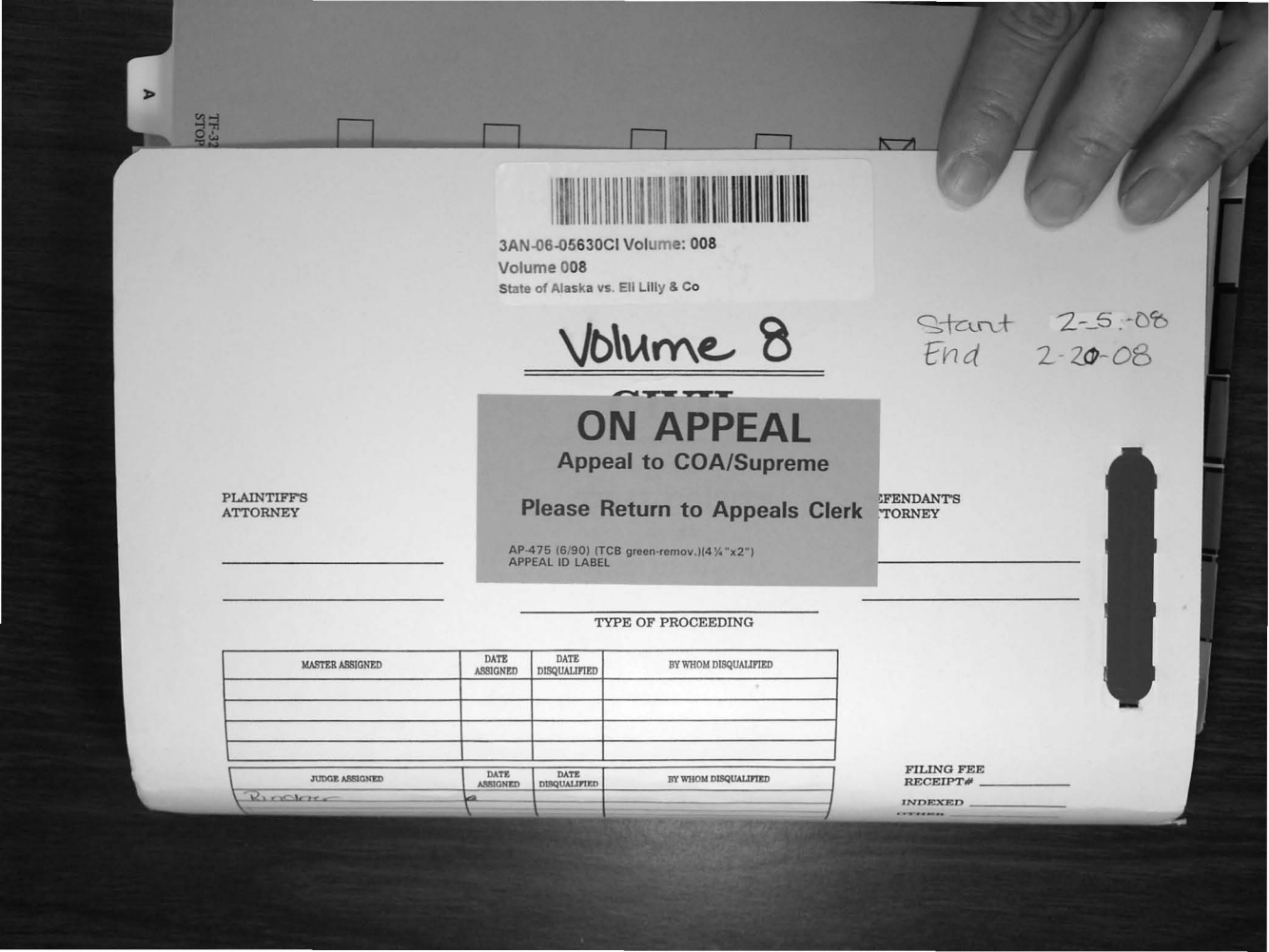
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT ELI LILLY AND COMPANY'S REPLY IN FURTHER SUPPORT OF ITS MOTION IN LIMINE TO EXCLUDE REFERENCES TO FOREIGN REGULATORY ACTION

I. INTRODUCTION

In response to Lilly's Motion in Limine to Exclude References to Foreign Regulatory Action, the State says it intends to introduce evidence relating to foreign regulatory action regarding Zyprexa® to suggest that the Zyprexa label in the United States was inadequate, but does not plan to offer evidence of the contextual foreign laws, regulations, or standards. The State has missed the point. If the State is permitted to present evidence of foreign regulatory action, then examination of the legal, political, and cultural climate of that foreign action *will be necessary* to provide foundation for that evidence, and *will be necessary* to Lilly's defense. The Court *will have to hold a series of time-consuming mini-trials* to educate the jury and determine the basis for the foreign regulatory action and the foreign legal and regulatory standards and policies applied. Such *unavoidable* excursion would be a waste of time, confusing, and misleading. The pointlessness of this detour is

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heightened by the irrelevance of evidence of foreign regulatory action to this Alaska state case.

The State also says it does not seek to have foreign law, regulations, or standards applied to Lilly's conduct in the United States. Again the State has missed the point. Presenting evidence of information contained in a Zyprexa label outside the United States which resulted from foreign regulatory action specific to that country, and suggesting that the Zyprexa label in the United States was inadequate because it lacked this same information, is an attempt to hold Lilly's conduct in the United States to standards devised by foreign regulatory bodies. Not only is this impermissible, but more pointedly, liability in this case exclusively turns upon standards devised by United States regulatory authorities.

II. ARGUMENT

A. Evidence of Foreign Regulatory Action Cannot be Presented Without Also Presenting the Contextual Evidence Surrounding Such Foreign Action.

The State says it does not intend to offer contextual evidence of foreign laws, regulations or standards along with the evidence of foreign regulatory action it plans to present. However, Zyprexa is approved in over eighty countries. Each country's regulatory agency, compelled by diverse factors, applies unique laws and policies regarding the Zyprexa label in effect in that country. Resultantly, Zyprexa, as any product, has diverse labeling throughout the world. To convey why a particular foreign regulatory body took certain action regarding the Zyprexa label for that country would require examination of that

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country's regulatory framework. This crucial context cannot be omitted, as the State suggests.

The State discusses, by way of example, its intent to offer evidence regarding action taken by Japan's regulatory authority in 2002, which required certain information be added to the Zyprexa label there. The State also discusses, by way of example, its intent to offer internal Lilly documents relating to, or derivative of, the 2002 Japanese regulatory action. The State suggests Japan's regulatory action, and related documents, are probative on the point of whether the Zyprexa label in the United States was adequate. The State says there is no need to educate the jury on Japan's unique regulatory framework, which gave rise to this regulatory action.

Offering such evidence without foundation would only be half the story. The State skips over the need for the jury to be educated regarding the context of this foreign action *taken in Japan, by Japan's regulatory authority, under Japanese law and standards, in Japanese political, cultural, and social context*, all differing from that of the United States. Evidence of Japan's regulatory action, without explanation, context, or foundation, would be misleading and prejudicial. The series of mini-trials necessary to suitably educate the jury on these points would be a time-consuming sideshow, and fruitless, as foreign regulatory action is not even relevant here.

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B. Excluding Evidence of Foreign Regulatory Action is Within the Court's Discretion.

The State notes that foreign regulatory evidence is not *per se* inadmissible as a matter of law. But as acknowledged by the State itself, courts have the discretion to exclude otherwise relevant evidence if the probative value is outweighed by other considerations. The case law cited by the State does not demonstrate why the jury in this case should hear the proposed evidence.

The court in *Sherry v. Massey-Ferguson, Inc.*, 1997 WL 480893 (W.D. Mich. 1997), although finding evidence of foreign tractor design admissible in product liability case on issue of alternate design, agreed with the cases cited by Lilly in its Motion in Limine on the point that evidence of European legal standards and requirements (such as the fact that tractor passenger seats were mandatory in Germany but banned in Italy), would needlessly confuse the jury.[1] The opinion indicates that the court would have excluded such evidence should the plaintiff have sought to introduce it.

The court in *Orjias v. Stevenson,* 31 F.3d 995 (10th Cir. 1994), found admissible evidence of "foreign state's" letters to defendant regarding environmental violations, but the "foreign state" in this *Colorado* case is *Wisconsin,* circumstances which hardly parallel the foreign regulatory issues contemplated here. The focal concern in *Orjias* was not whether

[1] *Hurt v. Coyne Cylinder Co.*, 956 F.2d 1319 (6th Cir. 1992), and *Deviner v. Electrolux Motor, AB*, 844 F.2d 769 (11th Cir. 1988), cited by Lilly in its Motion in Limine.

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evidence relating to Wisconsin's regulatory standards was admissible in the Colorado case, but whether evidence of "other crimes, wrongs, or acts" was admissible under 404(b).

The court in *Larue v. National Union Electric Corp.*, 571 F.2d 51 (1st Cir. 1978), found that the trial court did not abuse its discretion by admitting evidence of foreign version of a vacuum cleaner having a certain safety feature in a product liability case, but noted that no evidence was offered to suggest that differing contexts (*e.g.*, time period) gave rise to the different versions of the vacuum, which presumably would have some bearing on admissibility. Also, the focal point of the court's inquiry was not on whether evidence relating to foreign regulatory standards was admissible, but rather whether evidence of alternate design was admissible on the issue of negligence.

The summary judgment ruling in *In re Zyprexa Products Liability Litigation*, 489 F. Supp. 2d 230 (E.D.N.Y. 2007), did not "discuss" evidence of foreign Zyprexa labeling, "implicitly recognizing it as relevant and admissible evidence" as the State suggests, but rather, the ruling merely included two succinct paragraphs in the "Facts" section, neutrally presenting background regarding "International Zyprexa labeling."

C. The State Impermissibly Seeks to Have Lilly's Conduct in the United States Measured by Foreign Regulations.

The State claims it is not seeking to have the jury apply foreign law to Lilly's conduct in the United States, nor is it seeking to have the jury measure Lilly's conduct in the United States by foreign standards. That *is* the State's plan precisely: suggesting to the jury

that the Zyprexa label in the United States should have paralleled the Zyprexa label in certain foreign countries. By introducing evidence of foreign regulatory action, the State essentially seeks to have the jury hold Lilly to the labeling standards set by regulatory bodies outside the United States.

The State tries to make its objective here sound different, *i.e.*, that evidence of foreign regulatory action is probative on the point that Zyprexa had certain risks, and that Lilly had notice of such risks, or that such risks were scientifically knowable. But all of this ultimately goes to whether the Zyprexa label in the United States was adequate or not. Thus, the State ultimately seeks to have the jury hold the United States label to foreign regulatory standards. The State itself asserts that the question of liability in this case turns on whether the Zyprexa label in the United States label was adequate. Not only is it impermissible to adjudicate this case under foreign law, but more important, the adequacy of the Zyprexa label in the United States can only be evaluated under United States labeling standards, as regulated by the FDA under United States law.

In furtherance of this point, the FDA repeatedly has determined that Zyprexa is a safe and effective prescription medication and therefore approved, and continues to approve, the use of Zyprexa in the United States along with the language contained in the United States label.

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III. CONCLUSION

For the foregoing reasons, Lilly requests this Court enter an Order excluding evidence of foreign regulatory action relating to Zyprexa.

DATED this 20th day of February, 2008.

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George A. Lehner, admitted *pro hac vice*
John F. Brenner, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 20, 2008, a copy of the foregoing was served by hand on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L Street, Suite 400
Anchorage, Alaska 99501-5911

009867/0038/163547.1

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT ELI LILLY AND COMPANY'S REPLY IN FURTHER SUPPORT OF ITS MOTION IN LIMINE TO EXCLUDE CERTAIN TESTIMONY OF THE STATE'S EXPERTS

The State's response to Lilly's Motion in Limine to Exclude Certain Testimony of the State's Experts consists entirely of its argument that Lilly "waived its right to attack the foundation or admissibility of the State's experts' opinions" when it did not file motions addressed to the State's expert testimony by the extended January 14, 2008 deadline for such motions.

Although Lilly elected not to file motions to preclude any of the State's experts from testifying at trial, the isolated testimony identified in Lilly's Motion in Limine should not be heard by the jury. It is speculative, it is hearsay, and it completely lacks foundation; as such, it would properly be the subject of contemporaneous objections by Lilly at trial. By framing these objections as a Motion in Limine, Lilly is not making an "end run" around anything, as the State alleges; rather, it is flagging issues for the Court that can be resolved

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before trial, saving the parties, the witnesses, the jury and the Court the time and interruption of dealing with them in the course of testimony.

Accordingly, as set forth in greater detail in Lilly's Motion in Limine, the State's experts, including but not limited to Dr. John Gueriguian, should be precluded from offering opinions as to the knowledge, intent, beliefs, or motives of the FDA, of Lilly, or of physicians. In addition, the State should be precluded from introducing or referring to excerpts of any deposition containing such testimony.

DATED this 20th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
George A. Lehner, admitted *pro hac vice*
John F. Brenner, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
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and
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Attorneys for Defendant

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

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT ELI LILLY AND COMPANY'S NOTICE OF FILING ITS REPLY IN FURTHER SUPPORT OF ITS MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO NEW YORK TIMES ARTICLES UNDER SEAL

COMES NOW Defendant Eli Lilly and Company ("Lilly") and files its Reply in Further Support of Its Motion in Limine to Exclude Evidence Relating to New York Times Articles, under seal, attached to this notice. The subject and contents of the Reply may fall under prior confidentiality rulings.

DATED this 20th day of February, 2008.

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George A. Lehner, admitted *pro hac vice*
John F. Brenner, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 20, 2008, a copy of the foregoing was served by hand on:

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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-06-5630 CI

ORDER

Eli Lilly and Company's Motion in Response to the Court's on-record comments during the January 29, 2008 hearing is treated as a Motion for Reconsideration, both on the discovery issues raised in the motion and on the decision to bifurcate trial. The State is requested to file a response in chambers by February 21, 2008. No reply is allowed.

The State is requested to address why (as represented in Lilly's motion) it has not yet produced a complete database as it previously indicated it would do by January 31, 2008. The State is also requested to again address the advantages of bifurcation in light of the dismissal of the design defect claims, as well as the position taken by the State regarding Lilly's pending motion in limine to exclude evidence relating to plaintiff's damages or economic injury.

DATED at Anchorage, Alaska, this 19th day of February 2008.

Mark Rindner

MARK RINDNER
Superior Court Judge

I certify that on February 19, 2008 a copy was mailed to: and faxed
Sanders Jamieson

Administrative Assistant

002165

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

PLAINTIFF'S FINAL WITNESS LIST

Pursuant to the Court's Standard Pre-trial Scheduling Order entered in this action, Plaintiff hereby advises it may call the following witnesses to testify live or by way of deposition at the trial in this matter.

1. David Allison, Ph. D.
   University of Alabama at Birmingham
   1665 University Boulevard, RPHB 327
   Birmingham, AL 35294-0022

Dr. Allison is expected to provide testimony consistent with opinions expressed in his report, declaration and deposition testimony provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

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99501
TEL: 907.272.3538
FAX: 907.274.0819

2. Michael Edwin Bandick
Former employee of Eli Lilly and Company
l/k/a: Carmel, IN

Mr. Bandick may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

3. Charles M. Beasley, M.D.
c/o Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
(317) 276-2000

Dr. Beasley may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

4. Frederick Brancati, M.D., Ph. D.
Welch Center for Prevention, Epidemiology, and Clinical Research
Johns Hopkins Medical Institutions
2024 East Monument Street, Suite 2-619
Baltimore, MD 21205

Dr. Brancati is expected to provide testimony consistent with opinions expressed in his report, declaration and deposition provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

5. Alan Breier, M.D.
c/o Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
(317) 276-2000

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Dr. Breier may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

6. David Campana
c/o State of Alaska's Dept. of Health and Social Services
Division of Health Care Services
4501 Business Park Blvd., Suite 24
Anchorage, AK 99503

Mr. Campana may be asked to testify as to interactions between the State of Alaska and Eli Lilly and Company relating to Alaska's Medicaid program and the drug Zyprexa.

7. John L. Gueriguian, M.D.
14513 Woodcrest Drive
Rockville, MD 20853-2371

Dr. Gueriguian is expected to provide testimony consistent with opinions expressed in his report and deposition provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

8. Jack E. Jordan
Former employee of Eli Lilly and Company
l/k/a Bremen, IN

Mr. Jordan may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

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9. Bruce Kinon, M.D.
c/o Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
(317) 276-2000

Dr. Kinon may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

10. John Clifford Lechleiter, Ph.D.
c/o Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
(317) 276-2000

Dr. Lechleiter may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

11. Gary Tollefson
Former employee of Eli Lilly and Company
l/k/a Lilly Corporate Center
Indianapolis, IN 46285
(317) 276-2000

Mr. Tollefson may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

12. Denise Torres
Former employee of Eli Lilly and Company
l/k/a Lilly Corporate Center
Indianapolis, IN 46285
(317) 276-2000

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Ms. Torres may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

13. William C. Wirshing, M.D.
VA Greater Los Angeles Healthcare System – West Los Angeles
11301 Wilshire Blvd.
Building 210, Room 8 (B-151H)
Los Angeles, CA 90073

Dr. Wirshing is expected to provide testimony consistent with opinions expressed in his report, declaration and deposition provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

14. Sidney Taurel
Former employee of Eli Lilly and Company
l/k/a Lilly Corporate Center
Indianapolis, IN 46285
(317) 276-2000

Mr. Taurel may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

15. David Noesges
Employee of Eli Lilly and Company
l/k/a Lilly Corporate Center
Indianapolis, IN 46285
(317) 276-2000

Mr. Noesges may be asked to testify as to the acts and/or omissions of Eli Lilly and Company as they relate to the matters alleged in Plaintiff's Complaint.

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DATED this 19 day of Feb., 2008.

FELDMAN ORLANSKY & SANDERS
Counsel for Plaintiff

BY _____
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AK Bar No. 7510085

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Certificate of Service
I hereby certify that a true and correct copy of
Plaintiff's Final Witness List was served by messenger on:

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Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

Barry Boise, via email (boiseb@pepperlaw.com)
Pepper Hamilton

By Peggy J. Crowe
Date 2/19/08

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	Case No. 3AN-06-5630 CIV
Defendant.	)	
	)	

ORDER GRANTING PERMISSION FOR NON-RESIDENT ATTORNEY KENNETH T. FIBICH TO APPEAR AND PARTICIPATE

IT IS HEREBY ORDERED that the Motion and Application of Non-Resident Attorney Kenneth T. Fibich for Permission to Appear and Participate as co-counsel for plaintiff State of Alaska in the above-referenced case is GRANTED.

DATED this 19 day of Feb., 2008.

BY THE COURT

Mark Rindner
Superior Court Judge

JAN 30 2008

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I certify that on 2-20-08 a copy of the above was mailed to each of the following at their addresses of record:
Sanders Jamieson

Administrative Assistant

002173

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

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT'S MOTION TO ACCEPT OVERLENGTH TRIAL BRIEF

COMES NOW defendant Eli Lilly and Company, by and through its counsel of record, Lane Powell LLC, and hereby requests that this Court accepts its overlength trial brief, which is being filed concurrently herewith.

Pursuant to the Uniform Pretrial Order at Section D.9, trial briefs are limited to 5 pages. Defendant's trial brief is 19 pages. Due to the complexity of issues in this case as well as the large number of as yet unresolved legal issues (which are currently pending before the Court), the defendant's trial brief necessarily exceeded the standard page limit.

Defendant therefore respectfully requests that the overlength trial brief be accepted as filed.

DATED this 19th day of February, 2008.

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Nina M. Gussack, admitted *pro hac vice*
George A. Lehner, admitted *pro hac vice*
John F. Brenner, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 19, 2008, a copy of The foregoing was served by hand on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L. Street, Suite 400
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[illegible]

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LANE POWELL
ATTORNEYS & COUNSELORS

Brewster H. Jamieson, Esq.
Direct Dial: (907) 277-3375
JamiesonB@LanePowell.com

February 19, 2008

The Honorable Mark Rindner
Superior Court Judge
Alaska Court System
825 West Fourth Avenue, Room 432
Anchorage, Alaska 99501-2004

Re: **Citation of Supplemental Authority**
State of Alaska v. Eli Lilly and Company, Case No. 3AN-06-05630 CI
File No. 9867.38

Dear Judge Rindner:

This firm represents defendant Eli Lilly and Company ("Lilly") in the above-referenced matter. This letter is a citation of supplemental authority made pursuant to Civil Rule 77(l). The supplemental authority referred to herein relates to Lilly's Supplemental Brief Seeking Dismissal of the State's Claims Pursuant to the UTPCPA Exemption and Federal Preemption ("Lilly's Supplemental Brief"), filed February 5, 2008. Oral argument on Lilly's Supplemental Brief has been requested by Lilly, but has not yet been scheduled.

At page 15 of Lilly's Supplemental Brief in footnotes 55 and 56, Lilly cited to *Levine v. Wyeth*, __ A.2d __, 2006 WL 3041078 (Vt. October 27, 2006), *cert. granted, Wyeth v. Levine,* 2008 WL 161474 (U.S. January 18, 2008) (No. 06-1249) for the proposition that the preemption issue is soon to be decided by the United States Supreme Court. Attached hereto is a copy of the Order granting Petition for Writ of Certiorari, which sets forth the briefing schedule in this matter.

With respect to the same proposition of law, another case is fully briefed and set to be argued before the United States Supreme Court on February 25, 2008: *Desiano v. Warner-Lambert & Co.*, 467 F.3d 85 (2d Cir. (N.Y.) 2006); *cert. granted, Warner-Lambert, Co. v. Kent*, 128 S. Ct. 21 (September 25, 2007). Attached hereto are copies

002175

of the Order granting Petition for Writ of Certiorari and the Court Calendar indicating that argument will be held on February 25, 2008.

Thank you for considering the above and the attached.

Very truly yours,

LANE POWELL LLC

Brewster H. Jamieson

AEG/nlb
Enclosures
cc: Eric T. Sanders, Esq. (by email)
009867.0038/163514.1

--- S.Ct. ----

--- S.Ct. ----, 2008 WL 161474 (U.S.Vt.), 75 USLW 3500, 76 USLW 3018, 76 USLW 3388, 76 USLW 3391
(Cite as: --- S.Ct. ----)

H
Wyeth v. Levine
U.S.,2008

Supreme Court of the United States
WYETH, petitioner,
v.
Diana LEVINE.
No. 06-1249.

Jan. 18, 2008.

Case below, --- Vt. ----, --- A.2d ----.

*1 Petition for writ of certiorari to the Supreme Court of Vermont granted. Brief of petitioner to be filed on or before Monday, February 25, 2008. Brief of respondent to be filed on or before Monday, March 24, 2008. Reply brief, if any, to be filed in accordance with Rule 25.3 of the Rules of this Court.

U.S.,2008
Wyeth v. Levine
--- S.Ct. ----, 2008 WL 161474 (U.S.Vt.), 75 USLW 3500, 76 USLW 3018, 76 USLW 3388, 76 USLW 3391

END OF DOCUMENT

Westlaw.

128 S.Ct. 31

128 S.Ct. 31, 168 L.Ed.2d 807, 75 USLW 3623, 76 USLW 3020, 76 USLW 3123, 76 USLW 3154
(Cite as: 128 S.Ct. 31, 128 S.Ct. 31 (Mem))

H

Warner-**Lambert** Co., LLC v. **Kent**
U.S.,2007

Supreme Court of the United States
WARNER-**LAMBERT** CO., LLC, et al.,
petitioners,
v.
Kimberly **KENT**, et al.
No. 06-1498.

Sept. 25, 2007.

Case below, *Desiano v. Warner-Lambert & Co.*, 467 F.3d 85.

Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted. Brief of petitioners to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Monday, November 5, 2007. Brief of respondents to be filed with the Clerk and ***32** served upon opposing counsel on or before 2 p.m., Monday, December 3, 2007. Reply brief, if any, to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, December 28, 2007. Briefs of *amici curiae* to be filed with the Clerk and served upon counsel for the parties on or before 2 p.m., 7 days after the brief for the party supported is filed, or if in support of neither party, within 7 days after the petitioners' brief is filed.

THE CHIEF JUSTICE took no part in the consideration or decision of this petition.
U.S.,2007
Warner-Lambert Co., LLC v. Kent
128 S.Ct. 31, 168 L.Ed.2d 807, 75 USLW 3623, 76 USLW 3020, 76 USLW 3123, 76 USLW 3154

END OF DOCUMENT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	Case No. 3AN-06-5630 CIV
Defendant.	)	
	)	

STATE OF ALASKA'S TRIAL BRIEF FOR THE MARCH 3, 2008 TRIAL CONCERNING LIABILITY

The Uniform Pretrial Order directs each party to file and serve a trial brief, not to exceed five pages, designed "to educate the court and the other parties of the factual and legal issues that will arise at trial." This court is already very well educated on the liability issues in this case because of the voluminous pleadings previously submitted by the parties, as well as the oral presentations of their attorneys. Rather than insult the court by repeating what it already knows, the State uses this opportunity to furnish a status report and to list the matters that are already briefed and need to be resolved for the liability trial.

As a result of discussions during the hearing on January 29, 2008, the State of Alaska has further edited its deposition designations and reduced the number of witnesses

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it will present at trial. As a consequence, it is likely that the State will be able to present its case on liability in six trial days.

All of the trial lawyers for the State of Alaska will be present at the pretrial conference on February 22, 2008. Trial counsel will be available for any hearings the Court may set between February 22 and March 3, 2008, when the trial is scheduled to begin.

The pending motions are:

(a) Lilly's original summary judgment motion, on which the court held oral argument;

(b) Lilly's supplemental summary judgment motion, which the state opposed on February 15, and is now ripe for decision;

(c) the State's four motions in limine;

(d) Lilly's seven motions in limine;[1]

(e) jury instructions;

(f) objections to deposition designations; and

(g) objections to exhibits.

The State respectfully suggests that the priorities are the summary judgment motions, followed by the in limine motions. The in limine rulings will assist in

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[1] The State does not oppose Lilly's Motion to Exclude Evidence Relating to the State's Damages or Economic Injury.

answering broad categories of the issues raised concerning the deposition designations and exhibits. The State has requested oral argument on the in limine motions.

Most of the jury instruction issues can be addressed after the trial begins. The parties worked together to agree on the package of instructions as much as possible; substantive issues remain, but only minor issues involving proposed pretrial instructions need to be resolved before the trial starts.

DATED this 19 day of February, 2008.

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Counsel for Plaintiff

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

PLAINTIFF'S OBJECTIONS TO DEFENDANT'S EXHIBITS

Plaintiff hereby objects to the Defendant's exhibits listed and described below.

I. **EXHIBITS RELATING TO THE ADMINISTRATION OF ALASKA'S MEDICAID PROGRAM AND MEDICAID CLAIMS DATABASE**

These exhibits, copies of some of which accompany these objections in Exhibit A hereto, include:

EL-2080	Alaska Drug Utilization Review Committee Memorandum - DUR Committee Meeting Minutes from 11/19/04 meeting	ZYP-AK-03344 to 03347

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EL-2081	Alaska Drug Utilization Review Committee Memorandum - DUR Committee Meeting Minutes from 10/22/04 meeting	ZYP-AK-03348 to 03353
EL-2082	Email, From: Gloria Black, re: Peer Consultation component of the Behavioral Pharmacy Management System BPMS	ZYP-AK-03526
EL-2083	Email, From: Ann Swink, re: Edits to May BPMS Letter	ZYP-AK-05256 to 05257
EL-2084	Email, From: Ann Swink, re: Final PowerPoint Presentation - CNS Presentation to Alaska BPMS Stakeholder's Committee, 12/07/06	ZYP-AK-05276 to 05294
EL-2085	Email, From: Ann Swink, re: Reminder of Alaska Behavioral Pharmacy Management (BPMS) Steering Committee Meeting scheduled 12/15/06 with meeting minutes	ZYP-AK-05314 to 05324
EL-2086	Alaska Medicaid Preferred Drug List PDL, Revised 05/19/04	ZYP-AK-00008 – 00166
EL-2138	Campana - Deposition Exhibit 10 - 9.18.2007 (Alaska)	
EL-2139	Campana - Deposition Exhibit 11 - 9.18.2007 (Alaska)	

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EL-2140	Campana - Deposition Exhibit 12 - 9.18.2007 (Alaska)	
EL-2141	Campana - Deposition Exhibit 13 - 9.19.2007 (Alaska)	
EL-2142	Campana - Deposition Exhibit 14 - 9.19.2007 (Alaska)	
EL-2145	Campana - Deposition Exhibit 3 - 9.18.2007 (Alaska)	
EL-2147	Campana - Deposition Exhibit 5 - 9.18.2007 (Alaska)	
EL-2148	Campana - Deposition Exhibit 6 - 9.18.2007 (Alaska)	
EL-2149	Campana - Deposition Exhibit 7 - 9.18.2007 (Alaska)	
EL-2150	Campana - Deposition Exhibit 9 - 9.18.2007 (Alaska)	
EL-3807 to 3889	These exhibits are in electronic form and it is not practicable to include them in Exhibit A.	

Exhibits relating to the administration of Alaska's Medicaid program, the listing of drugs on the program's preferred drug list and Medicaid claims data are simply irrelevant to the issues in this trial which are only whether Defendant is liable for failure to

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adequately warn of the risks of Zyprexa and violating Alaska's UTCPA. In addition, the Plaintiff objects to Defendants' exhibits EL-3807 to 3889 on the grounds that Defendant has not produced a copy of those exhibits to Plaintiff and the Plaintiff is therefore unable to determine whether the electronic files are true and correct copies or whether they have been altered in any way.

II. COURT PLEADINGS AND PAPERS OTHER THAN ANSWERS TO INTERROGATORIES

These exhibits, copies of which accompany these objections in Exhibit B hereto, include:

EL-2144	Campana - Deposition Exhibit 2 - 9.18.2007 (Alaska)	
EL-3055	Stipulation for Partial Dismissal - 2nd Claim - Design Defect	
EL-3057	3-1-07, Plaintiff's Memo Describing its Claims and Proofs	
EL-3058	5-7-07, Defendant's Response to Plaintiff's Motion Concerning Claims and Proofs	
EL-3059	5-25-07, Plaintiff's Reply to Defendant's Response to Plaintiff's Motion Concerning Claims and Proofs	

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EL-3060	10-31-07, Memo in Support of Bifurcation	
EL-3061	11-9-07, Opposition in Response to Plaintiff's Memo in Support of Bifurcation	
EL-3062	1-8-08, Plaintiff's Opposition to Defendant's Motion for Summary Judgment	
EL-3063	12-10-07, Defendant's Motion for Summary Judgment and Memo in Support	
EL-3064	1-17-08, Lilly's Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment with Exhibits	

Defense Exhibit EL-2144 is a copy of the Complaint in this action and EL-3055 is a copy of the stipulation between the parties to dismiss the Second Claim for Relief (Strict Product Liability: Design Defect). Plaintiff submits that the appropriate way to inform the jury about the nature of the legal claims and defenses in this bifurcated trial are through the Court's instructions. Admission of the Complaint and the stipulation dismissing the design defect claim may result in confusion, prejudice or misunderstanding by the jury. Therefore, they should be excluded. Alaska R. Evid. 403;

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Brock v. Rogers & Babler, Inc., 536 P.2d 778, 783 (Alaska 1975) (stating unsworn assertions of fact in pleadings are not admissible evidence).

Defense Exhibits EL-3057 through EL-3064 comprise various motions and briefs by both parties – i.e., the parties' briefing regarding the nature of the claims and proofs, the briefing regarding bifurcation and the briefing regarding Lilly's motion for summary judgment. These exhibits should be excluded because they are not evidence; they are the parties' hearsay statements of what they think the law and facts are and their respective arguments about the facts and the law. Alaska Civil Pattern Jury Instruction 1.05. Introduction of those exhibits would constitute not only inadmissible hearsay but would also invade the province of the Court in instructing the jury as to the applicable law. Moreover, to the extent one party or the other might claim that some statement about the facts in a brief is some judicial admission, admission of the brief could result in the necessity of calling a party's lawyer as a witness to explain what was meant in the brief (thereby raising the specter of disqualification of counsel during the course of trial) or result in unnecessary confusion or prejudice. Alaska R. Evid. 403. What the jury finds as fact regarding the issue of Lilly's liability should be determined by reference to the evidence in contemporaneous documents and sworn testimony, not by the reading the briefs of counsel.

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III. INTERNAL FDA DOCUMENTS

These exhibits, copies of which accompany these objections in Exhibit C hereto, include:

EL-2112	Letter from Katherine Bennett, Pharm,D, Division of Drug Risk Evaluation re: Two-year Post-Marketing Review of Olanzapine	FDACDER001147 - FDACDER001170
EL-2119	Review and Evaluation of Clinical Data re: Antipsychotics association with DM	FDACDER001771 - FDACDER001784
EL-2120	Review and Evaluation of Clinical Data Completed by Gerard Boehm re: Zyprexa and other Antipsychotics association with DM - Relying on two epidemiological studies, re-analysis of blood glucose data	FDACDER002154 - FDACDER002168
EL-2121	Review and Evaluation of Clinical Data Completed by Gerard Boehm re: Zyprexa association with DM	FDACDER002169 - FDACDER002182
EL-2130	Review and Evaluation of Clinical Data re: Antipsychotics association with DM	FDACDER002189 - FDACDER002201
EL-2131	Review of Clinical Data by Gerard Boehm re: Lilly re-analysis of data pertaining to blood glucose	FDACDER002506 - FDACDER002508

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EL-2132	Review of Clinical Data by Gerard Boehm re: review of spontaneous reports glucose dysregulation	FDACDER002509 - FDACDER002517
EL-2133	INDA Review re: Published studies of the relationship between atypical antipsychotics and diabetes/hyperglycemia	FDACDER003158 - FDACDER003170
EL-2731	Paul Andreason Review and Evaluation of clinical data recommending approval of Zyprexa for schizophrenia	FDACDER000247 - FDACDER000449
EL-2732	Gerard Boehm's review of Dr. Mosholder's 06/25/03 Literature Review on the relationship between atypicals and glucose abnormalities	FDACDER002701 - FDACDER002705
EL-2737	Memo, From: Andrew Mosholder, To: Russel Katz, Subject: Consult-Literature review concerning the issue of diabetes mellitus/hyperglycemia associated with the atypical antipsychotic drugs	FDACDER002534 - FDACDER002551
EL-3068	Gerard Boehm, FDA review of Clinical Data regarding antitypical antipsychotics and diabetes/hyperglycemia	FDACDER003158 - FDACDER003170

These documents comprise various internal FDA memos bearing what appear to be FDA bates stamps and were purportedly obtained by Lilly through a Freedom of

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Information Act request. The memos review and evaluate clinical data provided to FDA by Lilly and other drug manufacturers, adverse event reports to the agency by Lilly and other third parties and published medical literature regarding Zyprexa and other atypical antipsychotic drugs. Even assuming that the documents are authentic they are clearly inadmissible as hearsay and since they purport to describe and evaluate other documents, they are riddled with hearsay within hearsay. Alaska R. Evid. 805; *Snyder v. Foote*, 822 P.2d 1353, 1360 (Alaska 1991). Moreover, there is nothing on the face of these documents nor any other evidence the State is aware of demonstrating that these internal FDA documents were provided by the agency to Lilly prior to this litigation and thus they would not be admissible as notice to Lilly or evidence of its state of mind.

IV. FDA CORRESPONDENCE WITH JANSSEN PHARMACEUTICAL

These exhibits, copies of which accompany these objections in Exhibit D hereto, include:

EL-2113	04/19/04 Letter from FDA re: Risperdal 11/10/03 Dear Healthcare Provider (HCP) Letter (letter attached)	ZYMSC000290 - ZYMSC000297
EL-3795	FDA 4/19/04 Warning Letter to Janssen Pharmaceutica, Inc., at http://www.fda.gov/Cder/warn/2004/12195Risperdal.pdf	Publicly available document

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These exhibits are both copies of an April 19, 2004 letter from FDA to Janssen Pharmaceutica asserting that a November 10, 2003 letter from Janssen to Healthcare Providers made false or misleading statements in that it claimed that Risperdal, another atypical antipsychotic drug, was not associated with an increased risk of diabetes when compared to patients treated with conventional antipsychotics and that Risperdal was associated with a lower risk of diabetes than some other atypical antipsychotics. The State submits that evidence purporting to demonstrate that another drug company made false or misleading statements about the safety of its drug is not relevant or admissible on the issues relating to whether Lilly is liable for its conduct regarding Zyprexa.

For the foregoing reasons, the Plaintiff objects to the Defendant's Exhibits listed above.

DATED this 19 day of February, 2008.

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Counsel for Plaintiff

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Certificate of Service
I hereby certify that a true and correct copy of **Plaintiff's Objections to Defendant's Exhibits** was served by messenger on:

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By Peggy S Crowe
Date 2/19/08

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Certificate of Service

I hereby certify that a true and correct copy of **State of Alaska's Trial Brief** was served by messenger on:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	Case No. 3AN-06-5630 CIV
Defendant.	)	
	)	

STATE OF ALASKA'S OBJECTIONS TO JURY INSTRUCTIONS PROPOSED BY ELI LILLY

INTRODUCTION

The parties met and conferred regarding the proposed jury instructions. They agreed, with very minor exceptions, regarding the "boiler plate" instructions, and the State will be submitting a clean set of those instructions, without number or citation, for the court's use.[1] The following paragraphs set forth the State's objections to Lilly's proposed instructions.

Lilly Instruction 14: The State's Instruction 17 and Lilly's Instruction 14 both closely track Alaska Civil Pattern Jury Instruction 2.01, which is intended to be the first instruction read post-trial. The State added a paragraph that states: "I gave you some

[1] The agreed-on instructions accept (as written or with minor modifications) the State's Proposed Instructions 1-4, 7-16, 18-22, and 27-31; these replace Lilly's Proposed Instructions 1-13, 15, 18-20, 26-27, 30, 33, 53-56.

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instructions at the start of the trial, too. I will not repeat them now, but you will have a copy of them when you deliberate." Lilly objects to the State's addition, because Lilly wants the court to repeat all the instructions that Part 2 of the Alaska Civil Pattern Jury Instructions proposes for repetition. The State objects to Lilly's approach because it makes the post-trial instructions unnecessarily long. The State asks the court not to repeat instructions post-trial, and to use the State's Instruction 17, instead of Lilly's Instruction 14, to introduce the post-trial instructions.

Lilly Instruction 16: Lilly has included the pattern instruction regarding the use of pronouns. The State objects to giving this instruction as unnecessary. The instructions are drafted not to include pronouns wherever possible.

Lilly Instruction 17: This instruction is an introduction to the State's claims. The State has the following objections: (1) The substantive instructions, addressing the claims and elements in this case, should consistently use the parties' names ("State" and "Lilly") rather than "plaintiff" and "defendant" or "State" and "defendant," as this proposal does. (2) The instructions should not say "In order to recover," because all parties are agreed that recovery of damages is not in issue in this case. (3) The instruction should not use the phrase "preponderance of the evidence" because the remaining instructions are not drafted using that phrase. (4) Most important, the instructions should not be phrased in terms of the State's requirement to prove Zyprexa is

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a "defective product." In this case, where the issues solely concern deceptive labeling and promotion, and not the quality of the product as such, the use of the lawyers' term "defective product" is unnecessarily confusing. The State does not need to prove Zyprexa is a "defective product" in the way that laypeople will understand that phrase. The State has drafted instructions that accurately describe the elements of the claims, without ever needing to use the term "defective product." The State did not draft a post-trial instruction that specifically introduces the State's two claims, because, with only two claims, no such introduction seems necessary; the State does not object in concept to an introductory instruction and appends "Lilly Instruction 17 – Revised" as an example of an introductory instruction it would accept.

Lilly Instruction 21: Lilly repeats, for an end-of-trial instruction, the pattern instruction on credibility of witnesses, which the court will read, by agreement of the parties, before the testimony. The State prefers to shorten the package of instructions and not to have the court repeat instructions. As discussed above, State's Instruction 17 was drafted to be read after the evidence to remind the jury that the instructions read before the trial still apply.

Lilly Instruction 22: Lilly has included Alaska Civil Pattern Jury Instruction 2.09 telling jurors not to give any extra weight to a witness with a prominent position in the community. The State objects as unnecessary; the instruction package would be

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unwieldy if the court were to instruct jurors on everything they should not consider. There is no reason to single this one out.

Lilly Instruction 23: This proposed instruction tells the jurors that the State and Lilly as a corporation are equal before the law and that jurors should not be influenced by the "status of the parties." The State objects as unnecessary.

Lilly Instruction 24: This is another repeated instruction, similar to Lilly Instruction 21. The State objects to repeating instructions, for the reasons stated in response to Lilly's Instruction 21.

Lilly Instruction 25: This is another repeated instruction. The State prefers that it not be given a second time, for the reasons stated with respect to Lilly Instruction 21.

Lilly Instruction 28: This is another repeated instruction. The State prefers that it not be given a second time, for the reasons stated with respect to Lilly Instruction 21.

Lilly Instruction 29: Lilly has inserted the pattern instruction regarding stipulations and binding admissions. This is obviously an instruction to be reconsidered at the close of evidence, but the State has rarely found such an instruction to be helpful.

Lilly Instruction 31: Lilly proposes the pattern instruction on failure to present evidence. The commentary indicates that this is a disfavored instruction, because, under current discovery practices, most evidence, both documents and witnesses, are equally

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available to both sides. The State objects to this instruction for the grounds stated in the commentary.

Lilly Instruction 32: Lilly proposes the standard instruction regarding unsworn oral admissions of a party. In advance of trial, this instruction appears unnecessary, or at most a comment on an isolated piece of evidence, and the State therefore objects. If unsworn oral admissions made by a party in fact become prominent at the trial, then the State likely would withdraw its objection.

Lilly Instruction 34: The State objects to this lengthy instruction about the FDA approval process. It puts too much focus on one part of the process, and thus is not a complete and impartial statement of the law that applies in this trial. As this court knows from previous briefing, this case is about the information that Lilly did not provide to the FDA, and the warnings that Lilly was free to offer on its own initiative after the FDA approved the first labeling. A full and fair instruction would equally stress a drug company's obligation to provide complete and accurate information to the FDA, and the ability – and obligation – of a company to strengthen warnings even without waiting for FDA approval. The State is willing to participate in attempting to draft a shorter and more neutral instruction, if the court determines that some kind of instruction about the FDA process should be given.

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Lilly Instruction 35: The State objects to this proposal for the same reasons as set forth with respect to Lilly Instruction 34. Moreover, the last paragraph of this proposal is misleading, if not inaccurate. FDA regulations unquestionably permit a drug manufacturer to add new warnings without prior FDA approval – a process Lilly used.

Lilly Instruction 36: The State objects to this proposal for the same reasons as Lilly Instructions 34 and 35: it focuses on only part of the FDA regulatory process – the part that serves Lilly's interests – and ignores the provisions that permit a drug manufacturer to promulgate new warnings without prior approval from the FDA.

Lilly Instruction 37: The State does not object to the substance of this instruction defining "off-label." The State expects that, if this instruction is used, the quotes will be deleted from the text. The State has suggested a definition of "off-label" be given before the evidence, and repeating such an instruction may not be necessary.

Lilly Instruction 38: The State agrees that this proposed instruction accurately states the law, but objects to the combination of Lilly's Proposed Instructions 38-39 because they collectively place too much emphasis on the lawfulness of physicians' off-label prescriptions. Emphasis on the lawfulness of off-label prescribing distorts the points actually in issue in this case. The State attaches one instruction, to which it would not object, as an alternative to Lilly's Proposed Instructions 38-39.

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Lilly Instruction 39: The State has no objection to the first sentence of this proposed instruction, but prefers the combined revised instruction it prepared as an alternative because it is simpler and clearer. The State objects to the second paragraph. There is no reason to discuss a drug company's First Amendment rights as part of an instruction designed to guide the jury's deliberations in this case. The State might not object to an instruction that included the concept that a company may provide information about off-label uses in response to specific questions seeking that information – although, as a rule, it is not the role of the jury instruction package to advise the jury of everything that a drug company may do legally.

Lilly Instruction 40: The State objects to this instruction. As noted earlier, the State believes it is unnecessarily confusing to instruct the jury on the concept of a "defective product" when the trial will not concern the defects in the product, but only the defects in the labeling, advertising, and promotion of the drug. The State's Instruction 23 offers a more appropriate and simpler introduction to the State's defective warning claims.

Lilly Instruction 41: The State objects to this instruction because of its focus on the "defective product" concept. The State's Instruction 23 offers a simpler, more appropriate way to define adequate warnings for the circumstances in this case.

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Lilly Instruction 42: The State does not object to an instruction on the "scientific unknowability" defense provided (a) the instruction makes clear that the defendant has the burden of proof on this affirmative defense (currently no instruction in the package that Lilly proposes contains this shifting burden of proof) and (b) Lilly presents evidence from which a reasonable juror could find the affirmative defense was established. The State objects to the wording of this instruction because, as with the others to which the State has objected, it relies on the "defective product concept."

Lilly Instruction 43: The State objects to this instruction on a number of grounds. First, the State's claims do not end in 2003. The State specifically contends that Lilly committed common law and UTPA violations with respect to its Zyprexa marketing until 2007, when Lilly finally introduced the new labeling mandated by the FDA. Second, as noted repeatedly, the State objects to instructions that rely on the terminology of a "defective product" rather than focusing on defective labeling and promotions. Third, while the State does not object in principle to an instruction that accurately summarizes its claims, such an instruction may not be necessary – and it may avoid subsequent disputes on the exact wording of an instruction to use a model such as State's Instruction 23. Fourth, the listing of the three lettered principles (a-c at the end of this proposal) contains too much advocacy for the defense position; these points may be made by

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Lilly's attorneys in closing argument but the instructions must be more neutral and not emphasize the defense rather than plaintiff's theories of the case.

Lilly Instruction 44: The State objects to this instruction. It describes only part of the FDA regulatory scheme and therefore is not a balanced statement of the law. Lilly should be permitted to argue its perspective on the significance of FDA-approved labeling – and the State will argue its perspective. The court's instructions should not adopt either perspective.

Lilly Instruction 45: The State objects to this instruction and requests that the court give State Instruction 26 instead. Lilly's version tracks complicated statutory language, not all of which has any application to this case; it is unnecessarily confusing. The State's Instruction 26 edits the statutory language to delete portions that are irrelevant to this case; it also includes language based on AS 45.50.471(b)(48), which Lilly's proposal omits.

Lilly Instruction 46: The State does not object substantively to this instruction, but questions whether it is necessary or helpful to the jury in any way. Lilly advised that it had no objection to the State's Instruction 24 which does not define trade or commerce and simply observes there is no dispute that Lilly is engaged in trade or commerce.

Lilly Instruction 47: The State objects to this instruction as unnecessarily complicated, but does not object to the concept of instructing the jury to consider the

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UTPA claims separately. The State submits a proposed simpler version to which it would not object. The State specifically objects to the part of Lilly's Instruction that refers to "any specific intent, plan or motive" because specific intent, plan, and motive need not be proved for most of the UTPA violations.

Lilly Instruction 48: The State does not object in principle to an instruction that accurately summarizes its UTPA claims. The State reserves the right to object to any subsequent proposal that adds language purporting to describe the State's UTPA claims.

Lilly Instruction 49: The State does not object to this instruction substantively, but this instruction may be redundant and unnecessary if the court adopts the State's Instruction 6 or another pre-trial instruction that explains that damages are not at issue in this trial. The State believes that concept should be conveyed before the trial begins.

Lilly Instruction 50: The State objects to instructing the jury on comparative negligence. The Supreme Court in *State v. Anchorage-Nissan, Inc.,* 941 P.2d 1229, __ (Alaska 1997), held that comparative negligence claims may not be asserted against the State where the effect of the assertion is to challenge the State's discretion in when and how to enforce its consumer protection laws. The starting point for any negligence claim is duty, and the State has no duty to defendants to act non-negligently; consequently, the State cannot have acted negligently.

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Lilly Instruction 51: The State does not object to this instruction, though is may be redundant and unnecessary if the court adopts the State's Instruction 32 as a way to introduce the Special Verdict form at the very end of the instructions. Lilly has advised that it does not object to the State's Instruction 32 with minor revisions agreed-to by the parties.

Lilly Special Verdict Form: During the parties' conference on jury instructions, Lilly's counsel advised that they believed that the Special Verdict form should be drafted during the trial, taking account of the evidence as it is presented. The State's attorneys tend to agree and therefore do not critique Lilly's proposed verdict form at this time. To the extent that objected-to instructions are reflected in the proposed verdict form (such as with respect to comparative negligence), the State incorporates its prior objections.

DATED this 19 day of February, 2008.

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Counsel for Plaintiff

BY_____
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Certificate of Service
I hereby certify that a true and correct copy of **State of Alaska's Objections to Jury Instructions Proposed by Eli Lilly** was served by messenger on:

Brewster H. Jamieson
Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

Barry Boise, via email (boiseb@pepperlaw.com)
Pepper Hamilton

By Peggy S. Crowe
Date 2/19/08

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Lilly Instruction 17 – Revised by the State

In this case, the State's claims against Lilly are based on two separate theories. These theories are:

(1) that Lilly failed to adequately warn of the risks of using Zyprexa; and

(2) that Lilly violated the Alaska Unfair Trade Practices and Consumer Protection Act.

I will instruct you separately on these two theories, and you must decide each theory separately.

Lilly Instruction 38-39 Combined – Revised by the State

It is legal for doctors to prescribe FDA-approved drugs for off-label uses. However, it is illegal for a drug manufacturer to market or promote a drug for any off-label uses.

Lilly Instruction 47 – Revised by the State

The State alleges that Lilly violated the Unfair Trade Practices and Consumer Protection Act in a number of different ways. You are to decide separately whether Lilly committed each alleged violation.

For each alleged violation, you must determine whether it is more likely true than not true

(1) that the facts claimed by the State actually happened; and

(2) that those facts constitute an unfair or deceptive act.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S EXHIBITS

Defendant Eli Lilly and Company ("Lilly") hereby objects to Plaintiff's exhibits for use in Phase I of the trial in the above-captioned matter on the grounds set forth in Exhibit A, attached hereto. Some exhibits included herein are also subject to outstanding Motions in Limine before this Court.[1]

[1] Those exhibits are noted as follows:

M.I.L. regarding Foreign Regulatory Actions = Defendant Eli Lilly and Company's Motion in Limine to Exclude References to Foreign Regulatory Action

M.I.L. regarding Profits and Price = Defendant Eli Lilly and Company's Motion in Limine to Exclude Evidence Relating to Defendant's Profits, Net Worth and the Price of Zyprexa

M.I.L. regarding Alleged Damages = Defendant Eli Lilly and Company's Motion in Limine to Exclude Evidence Relating to the State of Alaska's Alleged Damages or Economic Injury

M.I.L. regarding Recent Regulatory Events = Defendant Eli Lilly and Company's Motion in Limine to Exclude References to Recent Regulatory Communications and Developments

M.I.L. regarding Other Lilly Litigation = Defendant Eli Lilly and Company's Motion in Limine to Exclude Evidence Relating to Other Litigation Involving the Defendant

M.I.L. regarding Call Notes = Defendant Eli Lilly and Company's Motion in Limine to Exclude Testimony and Call Notes of Non-Alaska Based Sales Representatives

M.I.L. regarding NY Times Articles = Defendant Eli Lilly and Company's Motion in Limine to Exclude Evidence Relating to New York Times Articles

M.I.L. regarding State's Expert Testimony = Defendant Eli Lilly and Company's Motion in Limine to Exclude Certain Testimony of the State's Experts

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Lilly reserves the right to object to these exhibits, and any others that may be introduced by Plaintiff, under the Alaska Rules of Evidence or any other applicable rule of law, based on this Court's rulings or the purposes for which Plaintiff seeks to use the exhibits at trial.

DATED this 19th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
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John F. Brenner, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 19, 2008, a copy of The foregoing was served by hand on:

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EXHIBIT A
DEFENDANT'S OBJECTIONS TO PLAINTIFF'S EXHIBITS

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 00018	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 00019	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 00195	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 00212	
Zyprexa MDL Plaintiffs' Exhibit No 00229	Relevance (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid 602, 901)
Zyprexa MDL Plaintiffs' Exhibit No 00274	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 00284	Relevance (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid 602, 901) Authentication (Alaska R. Evid 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 00320	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 00439	Not relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid 602, 901)
Zyprexa MDL Plaintiffs' Exhibit No 00509	Foundation (Alaska R. Evid. 602, 901)
Zyprexa MDL Plaintiffs' Exhibit No 00775	
Zyprexa MDL Plaintiffs' Exhibit No 00778	
Zyprexa MDL Plaintiffs' Exhibit No 00778	

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 00858	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 00918	Hearsay (Alaska R. Evid. 801, 802) Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 00918	Hearsay (Alaska R. Evid. 801, 802) Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 00925	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Best Evidence Rule (Alaska R. Evid. 1000-1003)
Zyprexa MDL Plaintiffs' Exhibit No 00927	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 00929	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 00942	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa MDL Plaintiffs' Exhibit No 00946	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 00985	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Trade Secret (Alaska R. Evid. 508)
Zyprexa MDL Plaintiffs' Exhibit No 00987	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 00988	Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 00990	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 00991	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 00995	Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 00998	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01061	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01063	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 01067	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01068	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01074	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01077	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01079	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01081	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01110	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 01111	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 01145	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01164	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Character Evidence (Alaska R. Evid. 404) Subsequent Remedial Measures (Alaska R. Evid. 407) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 01169	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Character Evidence (Alaska R. Evid. 404)
Zyprexa MDL Plaintiffs' Exhibit No 01213	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 01215	Not Relevant (Alaska R. Evid. 401, 402) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01217	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 01291	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 01301	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01345	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 01349	Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 01408	M.I.L. regarding Foreign Regulatory Actions Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 01419	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 01440	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01449	Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01451	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01452	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01453	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 01456	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Best Evidence Rule (Alaska R. Evid. 1000-1003)
Zyprexa MDL Plaintiffs' Exhibit No 01476	Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01480	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 01586	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 01602	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01603	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01604	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not a Complete Document Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 01605	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 01855	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Lay Witness Opinion (Alaska R. Evid. 701) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 01857	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01858	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01892	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 01925	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 01926	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa MDL Plaintiffs' Exhibit No 01960	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01961	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 01962	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 02001	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 02011	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Lay Witness Opinion (Alaska R. Evid. 701) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 02133	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa MDL Plaintiffs' Exhibit No 02197	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 02227	Lay Witness Opinion (Alaska R. Evid. 701) Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 02244	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 02368	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 02441	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 02476	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Lay Witness Opinion (Alaska R. Evid. 701) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 02547	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 02588	M.I.L. regarding Alleged Damages Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 03109	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa MDL Plaintiffs' Exhibit No 03167	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 03184	Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 03211	
Zyprexa MDL Plaintiffs' Exhibit No 03223	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Character Evidence (Alaska R. Evid. 404) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa MDL Plaintiffs' Exhibit No 03235	
Zyprexa MDL Plaintiffs' Exhibit No 03238	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 03278	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa MDL Plaintiffs' Exhibit No 03388	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 03414	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 03567	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 03680	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Trade Secret (Alaska R. Evid. 508) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 03816	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 03872	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 03906	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 03909	M.I.L. regarding Other Lilly Litigation Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 03916	

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 03918	Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 03924	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 03927	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Lay Witness Opinion (Alaska R. Evid. 701) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 04007	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 04024	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 04046	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 04051	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 04104	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 04119	Lay Witness Opinion (Alaska R. Evid. 701) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 04121	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 04122	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 04127	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 04130	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 04176	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 04263	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 04365	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 04436	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 04509	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 04517	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 04532	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 04592	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 04784	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Not a Complete Document

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 04801	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Trade Secret (Alaska R. Evid. 508) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 04805	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 04815	Subsequent Remedial Measures (Alaska R. Evid. 407) Hearsay (Alaska R. Evid. 801, 802) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 04858	Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa MDL Plaintiffs' Exhibit No 04864	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 04871	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 04923	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 04951	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 04968	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 05073	Hearsay (Alaska R. Evid. 801, 802)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 05078	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 05432	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 05522	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 05565	M.I.L. regarding Foreign Regulatory Actions
Zyprexa MDL Plaintiffs' Exhibit No 05796	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 05843	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 05846	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 05850	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 05869	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 05913	M.I.L. regarding Profits and Price M.I.L. regarding Other Lilly Litigation Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 06009	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 06100	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 06116	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 06128	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 06215	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 06360	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 06420	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 06890	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Lay Witness Opinion (Alaska R. Evid. 701)
Zyprexa MDL Plaintiffs' Exhibit No 06998	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 06999	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 07012	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Not a Complete Document

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 07028	
Zyprexa MDL Plaintiffs' Exhibit No 07032	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 07033	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 07213	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Lay Witness Opinion (Alaska R. Evid. 701) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 07668	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa MDL Plaintiffs' Exhibit No 07731	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Not a Complete Document Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 07732	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 07802	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 07804	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 07822	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 07971	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 07990	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 07997	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 08042	M.I.L. regarding Foreign Regulatory Actions Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 08141	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 08159	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 08262	
Zyprexa MDL Plaintiffs' Exhibit No 08313	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 08329	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 08479	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 08494	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa MDL Plaintiffs' Exhibit No 08562	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa MDL Plaintiffs' Exhibit No 08564	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 08584	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 08632	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 08639	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 08666	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 08700	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 08905	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa MDL Plaintiffs' Exhibit No 08911	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Character Evidence (Alaska R. Evid. 404) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 08960	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Best Evidence Rule (Alaska R. Evid. 1000-1003)
Zyprexa MDL Plaintiffs' Exhibit No 08997	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Not a Complete Document
Zyprexa MDL Plaintiffs' Exhibit No 09054	M.I.L. regarding Profits and Price M.I.L. regarding Foreign Regulatory Actions Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 09070	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Lay Witness Opinion (Alaska R. Evid. 701) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 09073	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 09078	Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa MDL Plaintiffs' Exhibit No 09143	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 09165	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 09179	M.I.L. regarding Recent Regulatory Events Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa MDL Plaintiffs' Exhibit No 09201	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 09221	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 09281	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 09543	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Compound Exhibit
Zyprexa MDL Plaintiffs' Exhibit No 09578	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 09604	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 09624	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa MDL Plaintiffs' Exhibit No 09722	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 09739	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa MDL Plaintiffs' Exhibit No 09746	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 09747	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa MDL Plaintiffs' Exhibit No 09754	
Zyprexa MDL Plaintiffs' Exhibit No 09807	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Not a Complete Document

Plaintiff's Exhibit	Objection(s)
Zyprexa MDL Plaintiffs' Exhibit No 09808	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901)
Zyprexa MDL Plaintiffs' Exhibit No 09876	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10000	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) No Personal Knowledge (Alaska R. Evid. 602) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10001	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) No Personal Knowledge (Alaska R. Evid. 602) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10002	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10003	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10004	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10006	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10007	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10008	
Zyprexa Plaintiff's Exhibit 10009	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10010	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10011	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10012	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa Plaintiff's Exhibit 10013	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10014	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10015	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa Plaintiff's Exhibit 10016	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10017	M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10019	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10020	Not Relevant (Alaska R. Evid. 401, 402) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10021	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10022	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10024	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Trade Secret (Alaska R. Evid. 508)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10025	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10026	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10027	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10028	Not a Complete Document
Zyprexa Plaintiff's Exhibit 10029	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10030	Not a Complete Document
Zyprexa Plaintiff's Exhibit 10031	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10032	Relevance (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10033	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Compound Exhibit
Zyprexa Plaintiff's Exhibit 10034	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10035	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10036	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10037	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10038	M.I.L. regarding Profits and Price M.I.L. regarding Other Lilly Litigation Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Compromise or Offer to Compromise (Alaska R. Evid. 408) Insurance (Alaska R. Evid. 411)
Zyprexa Plaintiff's Exhibit 10039	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10041	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10042	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10043	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10044	Lilly objects to the introduction of any call note not identified in the State's Supplemental Responses to Lilly's 4th Set of Interrogatories, and objects on the additional grounds identified below. M.I.L. regarding Call Notes Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10045	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10046	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10047	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Lay Witness Opinion (Alaska R. Evid. 701) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10048	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10049	M.I.L. regarding NY Times Articles Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10050	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10051	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10052	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10054	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Character Evidence (Alaska R. Evid. 404) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10057	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10058	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10059	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10060	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10061	M.I.L. regarding Profits and Price Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10063	Foundation (Alaska R. Evid. 901) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10064	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10065	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10066	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10068	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10069	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10070	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10071	M.I.L. regarding Alleged Damages M.I.L. regarding Profits and Price M.I.L. regarding Foreign Regulatory Actions Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10072	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10073	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10074	M.I.L. regarding Alleged Damages Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10075	M.I.L. regarding Alleged Damages Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10076	Relevance (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10077	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10078	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10079	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa Plaintiff's Exhibit 10080	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10081	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10082	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10083	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10084	M.I.L. regarding Profits and Price M.I.L. regarding Foreign Regulatory Actions Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10085	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10086	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10087	M.I.L. regarding Alleged Damages Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10088	M.I.L. regarding Alleged Damages Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802).
Zyprexa Plaintiff's Exhibit 10089	Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10090	Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10091	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10092	
Zyprexa Plaintiff's Exhibit 10093	
Zyprexa Plaintiff's Exhibit 10094	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa Plaintiff's Exhibit 10095	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10096	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10097	Not Relevant (Alaska R. Evid. 401, 402).
Zyprexa Plaintiff's Exhibit 10098	Lilly objects to the introduction of any call note not identified in the State's Supplemental Responses to Lilly's 4th Set of Interrogatories, and objects on the additional grounds identified below. Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10099	Lilly objects to the introduction of any call note not identified in the State's Supplemental Responses to Lilly's 4th Set of Interrogatories, and objects on the additional grounds identified below. Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10100	Lilly objects to the introduction of any call note not identified in the State's Supplemental Responses to Lilly's 4th Set of Interrogatories, and objects on the additional grounds identified below. Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10101	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10103	M.I.L. regarding NY Times Articles Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10104	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa Plaintiff's Exhibit 10105	M.I.L. regarding Foreign Regulatory Actions M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10106	M.I.L. regarding NY Times Articles M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10107	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Trade Secret (Alaska R. Evid. 508)
Zyprexa Plaintiff's Exhibit 10108	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa Plaintiff's Exhibit 10109	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa Plaintiff's Exhibit 10110	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa Plaintiff's Exhibit 10111	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10113	Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902) Compound Exhibit

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10114	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10115	Relevance (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10116	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10117	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10118	Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10119	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Character Evidence (Alaska R. Evid. 404) Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10120	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10121	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10122	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10123	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10124	Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Foundation (Alaska R. Evid. 901) Not Authenticated (Alaska R. Evid. 901, 902)
Zyprexa Plaintiff's Exhibit 10125	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10126	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10127	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10128	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10129	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10130	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10131	M.I.L. regarding State's Expert Testimony Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10132	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10133	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10134	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10135	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10136	Not Relevant (Alaska R. Evid. 401, 402) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa Plaintiff's Exhibit 10137	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10138	Hearsay (Alaska R. Evid. 801, 802)
Zyprexa Plaintiff's Exhibit 10139	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10140	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10141	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10142	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10143	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa Plaintiff's Exhibit 10144	Lilly objects to the introduction of any call note not identified in the State's Supplemental Responses to Lilly's Fourth Set of Interrogatories, and objects on the additional grounds identified below. Not Relevant (Alaska R. Evid. 401, 402) Hearsay (Alaska R. Evid. 801, 802) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403)
Zyprexa Plaintiff's Exhibit 10145	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10146	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10147	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10148	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10149	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)

Plaintiff's Exhibit	Objection(s)
Zyprexa Plaintiff's Exhibit 10150	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10151	Hearsay (Alaska R. Evid. 801, 802) Foundation (Alaska R. Evid. 901)
Zyprexa Plaintiff's Exhibit 10152	Not Relevant (Alaska R. Evid. 401, 402)
Zyprexa Plaintiff's Exhibit 10153	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)
Zyprexa Plaintiff's Exhibit 10154	M.I.L. regarding Recent Regulatory Events Not Relevant (Alaska R. Evid. 401, 402) Prejudicial, Confusing, Waste of Time (Alaska R. Evid. 403) Subsequent Remedial Measures (Alaska R. Evid. 407)

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

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ELI LILLY AND COMPANY'S TRIAL BRIEF

I. INTRODUCTION

In the first phase of this bifurcated proceeding, the State of Alaska ("the State") seeks to have a jury hold Eli Lilly and Company ("Lilly") liable for selling a medication in Alaska that was, and remains, approved by the federal Food and Drug Administration for treatment of severe mental illnesses, which was, and is, used regularly in Alaska to treat mentally ill patients, and was, and is, reimbursed without restriction by the State of Alaska. The State will ask the jury to render these verdicts without presenting any evidence that any Alaska prescriber was misled by Lilly, or that Zyprexa® harmed any individual patient in Alaska, or patients collectively. Indeed, the State brought this case, and now proposes to begin the liability phase of the trial, without knowing whether such evidence even exists, or can ever be developed and presented for this litigation.

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With undisputed evidence that Zyprexa is a useful, even essential, medication, and no evidence that Zyprexa caused harm to Alaska patients, or to the State, there is no reasoned basis for finding Lilly liable for its sale and marketing of Zyprexa in Alaska.

II. FACTS

A. The State's Lawsuit.

On March 1, 2006, the State filed this lawsuit, alleging that Zyprexa's design and labeling are defective and that improper marketing by Lilly caused Alaska physicians to prescribe Zyprexa to Medicaid recipients, resulting in injuries to patients and damage to the State.[1] The State has placed at issue the adequacy of Lilly's labeling of Zyprexa, and the issues of weight gain and type 2 diabetes mellitus. The State seeks to recover the costs incurred to treat the patients who were allegedly injured by Zyprexa, some portion of the cost of Zyprexa, and penalties against Lilly under the Alaska Unfair Trade Practices and Consumer Protection Act ("UTPCPA").

Throughout the litigation, the State has maintained two irreconcilable positions: (1) Zyprexa has caused harm to the Alaska Medicaid population and to the State; and (2) the State has taken no actions to discourage the use of Zyprexa or restrict the circumstances in which it will reimburse for Zyprexa prescriptions. Such conflicts infect every aspect of this case:

[1] The State has recently dismissed its design defect and fraud and negligent misrepresentation claims.

The State's Position Inside of the Courtroom	The State's Actions Outside of the Courtroom
The State argues that Zyprexa's labeling fails to adequately disclose side effects relating to weight gain and diabetes, and that Alaska citizens have been injured as a result.	The State has sought court orders to forcibly medicate certain of its wards with Zyprexa. The State has not advised physicians about Lilly's alleged ongoing inadequate warnings concerning weight gain and diabetes. The State has not advised physicians to monitor patients who are taking Zyprexa for weight gain and diabetes. The State has not advised patients to stop Zyprexa treatment.
The State claims that Lilly improperly marketed Zyprexa in Alaska, causing Alaska physicians to prescribe Zyprexa to Medicaid recipients for off-label uses, and resulting in injuries to additional Alaska citizens.	The State Department of Health and Social Services ("DHSS"), which administers Medicaid in Alaska and which works closely with Lilly, was not the source of the State's allegations against Lilly. DHSS was not aware, and the State has still not informed DHSS, of Lilly's alleged improper marketing or Zyprexa's alleged defects. The State has not advised physicians about Lilly's alleged improper marketing. The State has not imposed use-restrictions on Zyprexa prescriptions that it will reimburse.
The State claims that, as a result of the Zyprexa-related injuries to Alaska citizens, it is entitled to the costs incurred to treat these injured citizens, a portion of the cost of Zyprexa, and penalties against Lilly under the Alaska UTPCPA.	The State continues to reimburse Zyprexa prescriptions without a single restriction despite having several kinds of restrictions available to it, and despite having imposed these restrictions on other medications when it became concerned about the medications' safety profiles.

Today, more than three years after the State claims that it became aware of Lilly's alleged misconduct, Alaska physicians continue to prescribe Zyprexa, Alaska Medicaid patients continue their treatment with Zyprexa, and the State continues to reimburse the

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prescriptions without restriction, as it has since the FDA approved the medication for sale in 1996.

B. Nature of The Proceeding.

On November 27, 2007, the Court ordered that the trial of this matter would be bifurcated, with a first phase trial addressing liability, and a second phase trial addressing causation and damages. Lilly opposed this trial plan from the outset because, among other things, severing causation from liability is unworkable under the legal tests that Alaska courts have applied to the causes of action pleaded by the State, and the bifurcated proceeding violates Lilly's right to due process under the U.S. and Alaska Constitutions.

Developments since the order have raised additional questions about the utility of bifurcation. In the face of Lilly's motion for summary judgment, the State voluntarily dismissed its design defect claims, which were to have been a primary focus of the first phase. It has asserted that the first jury should be instructed to decide only whether Lilly committed "one or more UTPCPA violations," but not each particular violation for which the State seeks penalties, meaning that proof of the multiple violations allegedly committed by Lilly will have to be resubmitted in a second proceeding. The State also proposed that the first jury should be instructed to decide whether Lilly marketed Zyprexa "without adequate warnings of the risks of using Zyprexa," but not specifically when any labeling was inadequate in light of FDA action and what was scientifically knowable at the time, requiring the second jury to retread the same scientific evidence to decipher causation and damages.

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As the case takes shape for trial, it has become clear that the boundary lines between the phases have become blurred and–if the State's approach is accepted–will result in a Phase 1 proceeding in which the proofs will be skewed heavily in its favor. In motion practice (*see* Section IV.4), the State has argued that the jury should be told nothing about the benefits that Zyprexa confers on patients, even though the State will be arguing how much harm it inflicts. The State has also argued that it should be permitted to explain to the jury how it potentially has been harmed by Lilly (what would seem to be a "damages" issue), but the jury should not be permitted to hear about the State's policies regarding Zyprexa, which demonstrate how important the medication is for treatment of its mentally ill citizens. It wants the jury to hear evidence from other countries, and other states, but little or nothing about how Zyprexa is actually being prescribed, used, and reimbursed in Alaska.

Finally, this first phase trial will begin without anyone knowing–including the State–whether Zyprexa or any Lilly conduct actually harmed Alaska patients or the State. The State claims that proof of causation and damages resides in its Medicaid database, but it has once again failed to timely produce that evidence. Only yesterday, more than two weeks after the Court's January 31, 2008 deadline, the State finally produced pharmacy data to Lilly, which Lilly will now have to analyze for completeness. Substantial additional data, including medical claims and eligibility files, remain missing, meaning that Lilly, and presumably the State, have had no opportunity to analyze whether the data support the State's claim that Zyprexa use increased the State's health care costs. If it turns out to be the case

that the State has suffered no harm–perhaps even benefited–from Zyprexa use, the liability trial has no purpose.

C. **Zyprexa and Severe Mental Illnesses.**

The FDA first approved Zyprexa for sale on September 30, 1996, for use in the "management of manifestations of psychotic disorders." The FDA later approved Zyprexa for maintenance treatment of schizophrenia (November 2000), as treatment for bipolar disorder as monotherapy (March 2000) and in combination with lithium or valproate (July 2003), and as maintenance treatment of manic episodes and mixed manic and depressive episodes associated with bipolar I disorder (January 2004). Zyprexa continues to be approved by the FDA for the treatment of schizophrenia and bipolar disorder, and it is a well-established treatment for both conditions.

Schizophrenia is a severe, debilitating, and life-threatening mental illness that afflicts over 66.5 million people worldwide. The diagnostic features of this disabling condition include overt psychotic or "positive" symptoms, such as auditory hallucinations and delusions, as well as "negative," symptoms, such as depression, emotional flatness, impoverishment of thoughts and speech, and social withdrawal.

Bipolar disorder is a serious, lifelong, and life-threatening mental illness marked by dramatic shifts in mood from abnormally elevated, expansive, or irritable moods to states of extreme depression and hopelessness, often with periods of normal mood in between. Bipolar disorder affects about 171.6 million people worldwide. It is often misdiagnosed, and

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more than half of bipolar patients suffer with the disorder for five years or more before they are properly treated. Without treatment, periodic cycling from mania to depression to normal mood can increase in frequency, length, and severity to include symptoms of psychosis and auditory and visual hallucinations. Bipolar patients have the highest suicide rates amongst individuals with severe mental illnesses.

Zyprexa is among the class of second generation, or atypical, antipsychotic medications that also includes Clozapine, Risperdal, Seroquel, Geodon, and Abilify. Before the launch of atypical antipsychotics in the 1990s, patients with schizophrenia were treated with older (or typical) antipsychotic medications, such as Haldol, which frequently caused serious side effects, such as extra pyramidal symptoms ("EPS"), which include dystonic reactions, drug-induced parkinsonism, akathisia, and tardive dyskinesia, all debilitating conditions that affect patients' compliance with their medication regimens. Second-generation antipsychotics, and Zyprexa in particular, marked an advance in the treatment of schizophrenia, and later bipolar disorder, because of the reduced risk of EPS. Zyprexa and other atypical antipsychotics have also proven to be desirable alternatives to older antipsychotic medications because they heal the negative symptoms of schizophrenia, as well as positive symptoms.

Physicians make treatment decisions for patients with schizophrenia and bipolar disorder based on many sources of information and on the unique circumstances of each patient. Different treatments are differentially and unpredictably successful with individual

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patients, and no medication regimen is consistently successful. Successful treatment of these debilitating and dangerous disorders require physicians to be resourceful, to adjust medication dosages, and to experiment with different medication regimens. Treatment is further complicated by a high rate of medication discontinuation and the fact that medications often become less effective for patients over time.

III. SUMMARY OF ISSUES AND ANTICIPATED EVIDENCE

As currently constituted, Lilly believes that in the Phase 1 trial the State intends to raise the following issues:

1. **Does Zyprexa cause type 2 diabetes mellitus?**
2. **Did any of Zyprexa's FDA-approved labeling inadequately inform physicians of a scientifically knowable association between Zyprexa and type 2 diabetes mellitus?**
3. **Did Lilly improperly promote Zyprexa in Alaska?**

A. Evidence Concerning Issues 1 and 2.

1. The State's anticipated evidence.

The State is expected to submit evidence and expert testimony to support its allegation that Zyprexa causes type 2 diabetes mellitus, although this is inconsistent with the Court's order postponing causation to the second phase. The State must also submit evidence and expert testimony to support its allegation that, in light of what was scientifically knowable at the time, Lilly knew or should have known that Zyprexa causes diabetes and that Lilly failed to adequately warn physicians about this risk.

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2. Lilly's anticipated evidence.

To rebut the State's assertions of inadequate warning, and, if submitted, diabetes causation, Lilly anticipates that it will introduce testimony from State employees, Karleen Jackson, the Commissioner of the Department of Health and Social Services, David Campana, the Department's pharmacy director, and Dr. Duane Hopson, the head of the Alaska Psychiatric Institute and a practicing psychiatrist; Alaska Community Mental Health psychiatrist Dr. Lucy Curtiss; Lilly witnesses, Dr. Patrizia Cavazzoni, Dr. Timothy Franson, Dr. Robert Baker, and Dr. Gary Tollefson; and expert testimony from Dr. Silvio Inzucchi, Dr. David Kahn, and Dr. Mark Olfson. Lilly will present evidence that, before Zyprexa was approved for sale, Lilly designed Zyprexa's developmental process to uncover the range of risks that may be associated with Zyprexa because all medications–including all competing atypical antipsychotic medications–can result in side effects in some patients. Since September 1996, when the FDA first approved Zyprexa for sale, the medication's FDA-approved labeling listed diabetes mellitus in the bolded **ADVERSE REACTIONS** section as an adverse reaction observed in patients during clinical trials. Zyprexa's labeling has always listed weight gain as a commonly observed adverse event in clinical trials, and obesity is well-known by the medical community as a risk factor for diabetes.

Pursuant to FDA regulations, Lilly, as well as doctors and patients throughout the country have continually submitted reports to the FDA concerning all Zyprexa post-marketing adverse events, including elevated blood-glucose levels. Lilly has also regularly

provided the FDA with periodic safety update reports. In addition, in the eleven years since Zyprexa has been approved for sale, scientific knowledge regarding Zyprexa and other atypical antipsychotics has evolved, and medical journals have published over 3000 articles during this time concerning side effects associated with these medications. None of these articles concludes that Zyprexa causes type 2 diabetes mellitus.

Throughout this eleven-year period, the FDA has been closely involved with every step of monitoring Zyprexa's side effects. All of Lilly's revisions to the Zyprexa labeling were approved by the FDA, timely reflected the most accurate and current scientific information available, and resulted from Lilly working closely with the FDA to review this data. The FDA has never concluded that Zyprexa causes type 2 diabetes mellitus, and the State's failure-to-warn and negligence claims are preempted by federal law. Additionally, the State's actions are inconsistent with its allegations: The State has not advised physicians of Zyprexa's alleged side effects, it has not advised patients to stop Zyprexa treatment, it has not imposed use-restrictions on Zyprexa, and it has not advised DHSS about Lilly's alleged wrongdoing.

Outside of the product labeling, Alaska physicians had many sources available to them concerning Zyprexa's side effects, its potential side effects, and treatment alternatives. The medical and scientific communities produce and share research and other information about medications, including Zyprexa and other atypical antipsychotics, through medical literature, continuing medical education programs, professional meetings, guidelines and

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algorithms, and exchanges between colleagues. Competitor pharmaceutical companies also provide physicians with information about their competitor-medications' efficacy and safety, and physicians' experiences with a medication may inform their use of the medication in the future. Physicians make treatment decisions after weighing both the risks and benefits of medications. Zyprexa has been, and remains, a valuable treatment option for severely mentally ill patients.

B. Evidence Concerning Issue 3.

1. The State's anticipated evidence.

The State is expected to submit evidence from Lilly's marketing department and sales representatives in support of its allegations that the sales representatives misled the physicians concerning the risks of the medication and that Lilly's marketing of Zyprexa in Alaska was not limited to the medication's FDA-approved uses. The State is also expected to submit Zyprexa's FDA-approved labeling as evidence of UTPCPA violations. For each alleged violation of the UTPCPA, the State must demonstrate how specific Lilly actions that occurred in Alaska violated the statute.

2. Lilly's anticipated evidence.

Lilly anticipates that it will offer testimony from State witness David Campana; Lilly witnesses, David Noesges, Eric Schultz, and Joey Eski; the expert testimony of Dr. David Kahn and Dr. Thomas Schwenk; and testimony from two Alaska physicians who prescribed Zyprexa, Dr. Duane Hopson, the medical director of the State-run Alaska

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Psychiatric Institute, and Dr. Lucy Curtiss, a psychiatrist practicing at Alaska Community Mental Health. Lilly will present evidence showing that all medical information that Lilly shared with physicians regarding weight gain, hyperglycemia, and diabetes was the product of state-of-the-art scientific research. Lilly's Zyprexa-related promotional practices encompassed schizophrenia and bipolar disorder only. All of Lilly's promotional materials go through medical review to ensure that they are on-label, that they comport with FDA regulations, and that they provide physicians with clinically meaningful data to assist physicians in their practices. The patient profiles and mood-disorder questionnaires concerning Zyprexa that may have been presented to Alaska physicians were all related to schizophrenia and/or bipolar disorder. These promotional pieces were designed to be tools to assist physicians in identifying patients who were potentially suffering from schizophrenia and/or bipolar disorder. The only evidence that the State has identified relating to alleged improper promotional practices are call notes–quickly jotted notes of often thirty-second exchanges between sales representatives and physicians–that contain words like "weight gain," "diabetes," "glucose," "no differences," "comparable," "cause," or "causal." The State proposes to make the case for marketing misconduct to Alaska prescribers without testimony from Alaska physicians. Neither physician deposed in the case testified that Lilly or its sales representatives misled them or promoted Zyprexa for off-label uses.

Although Lilly's marketing materials for Zyprexa were all tied to schizophrenia and bipolar disorder, physicians may, in their medical judgment, prescribe Zyprexa for other

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off-label uses. Prescribing medications off-label is a regular and necessary component of clinical practice, particularly in psychiatry, where indicated treatment options are either not available or not successful for many patients. The fact of off-label use by physicians does not establish that Lilly promoted Zyprexa for off-label uses. Moreover, the fact that off-label uses of Zyprexa may have been discussed between sales representatives and physicians, does not mean there was improper promotion. Certain discussions of off-label uses are considered non-promotional and legal.[2]

Lilly will rely on the evidence described in Section III.A.2 to defend against the State's claim that Zyprexa's FDA-approved labeling was improper.

C. Elements of The State's Causes of Action That Will Be Resolved in Phase 1.

1. Strict products liability failure to warn and negligence.

Findings of liability for strict liability failure to warn and negligence under Alaska law require that the State first prove its allegation that Zyprexa causes type 2 diabetes mellitus,[3] a conclusion that the FDA has never made and that the medical literature has never reported. Second, the State must prove its allegation that one or more of Zyprexa's labels

[2] *See Washington Legal Foundation v. Friedman*, 13 F. Supp. 2d 51 (D.D.C. 1998).

[3] *See Shanks v. The Upjohn Co.*, 835 P.2d 1189, 1199 (Alaska 1992).

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inadequately conveyed Zyprexa's risks. The risks must have been scientifically knowable to Lilly at the relevant times.[4]

To decide whether risks were scientifically knowable to Lilly, the jury must consider what information about Zyprexa's side effects were available to Lilly through the medical literature, clinical trials, and adverse-event reporting–all of which Lilly submitted to the FDA, which determined only in September 2003 to implement a class-wide label change for all atypical antipsychotic medications. If the jury finds that Zyprexa's labeling was inadequate and that Lilly knew, or should have known, that the labeling was defective, any verdict for the State must be specific enough about when the warning was inadequate regarding scientifically knowable risks so that the second jury can apply the finding to the context of specific Alaska physicians who prescribed Zyprexa on specific dates.

2. Violations of the UTPCPA.

A finding of liability against Lilly on the State's UTPCPA claims is not possible in the first phase of trial. The UTPCPA requires the State to demonstrate each of Lilly's alleged Alaska-specific acts or practices, and the jury must make two determinations as to each: (1) Was each of Lilly's Alaska-specific acts or practices unfair or deceptive? and (2) Did each of Lilly's Alaska-specific acts or practices occur in the conduct of trade or commerce? The Alaska Supreme Court has required the State to make detailed showings of defendants'

[4] *See id.* at 1200.

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specific actions when the State brings UTPCPA claims,[5] not just a showing that the UTPCPA was violated "in one or more ways," as suggested by the State's proposed jury instructions.

To meet this burden, the State has mustered only a handful of call notes that often contain only a few isolated phrases, but the State has not deposed the prescribing physicians to determine what the sales representatives actually said during the calls and what promotional or medical material was shown to the physicians. The State has noticed only one Lilly sales representative for deposition, which is scheduled to occur on the eve of trial. Without testimony from each sales representative and prescribing physician, the jury will not be able to determine whether each sales representative appropriately presented marketing material and the risks of Zyprexa; whether the physician listened to information that the sales representative presented; whether the physician relied on the conversation with the sales representative or other sources when deciding to prescribe Zyprexa; and whether the patient for whom the physician prescribed Zyprexa was a Medicaid recipient.

The State also makes the extraordinary claim that Zyprexa's FDA-approved labeling violated the UTPCPA each time a prescription was written. Lilly's use of a legally-approved, legally-required medication label cannot give rise to UTPCPA violations.

[5] *See Lee v. State*, 141 P.3d 342, 345-46, 351 (Alaska 2006); *State v. Anchorage-Nissan, Inc.*, 941 P.2d 1229, 1231-32 (Alaska 1997).

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IV. ISSUES OF LAW

The State has dismissed its Strict Liability–Design Defect, and Fraud and Negligent Misrepresentation claims. There are several outstanding issues of law that have been briefed for the Court:

1. **Motion for Summary Judgment.** Lilly filed its motion for summary judgment on December 10, 2007, seeking dismissal of the State's failure to warn claim and UTPCPA claim for actual damages based on *In re Rezulin Products Liability Litigation*, a recent decision published by the United States District Court for the Southern District of New York, where Judge Kaplan rejected the State of Louisiana's claims of failure to warn and UTPCPA-like claims because of the state's "fraud-on-the-market" theory of causation–the same type of theory that the State of Alaska relies on in this case by claiming that it can demonstrate causation, not by proving that any particular physician relied on any particular misrepresentation or claimed inadequate warning, but rather by examining "the aggregate effect upon the State's Medicaid program." Lilly also moved for summary judgment on the State's UTPCPA claims because the State presents no evidence of what misconduct occurred in Alaska, as required by the statute.

2. **Supplemental Brief Seeking Dismissal of the State's Claims Pursuant to the UTPCPA Exemption and Federal Preemption.** Lilly filed its supplemental briefing on February 5, 2008, seeking dismissal of the State's UTPCPA claim based on (1) the UTPCPA exemption for activities regulated by other agencies, such as the FDA's regulation of

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prescription medications, including their warnings; and (2) federal preemption. The UTPCPA exempts claims against Lilly's labeling and promotion of Zyprexa because the misconduct alleged is already regulated and prohibited by the FDA. Under the Supremacy Clause of the U.S. Constitution, claims under state consumer protection statutes that frustrate the regulation of prescription drugs are preempted. Additionally, all warning-based claims, statutory or common law, are preempted according to the FDA. This policy is particularly salient when applied to the State's case because the FDA has scrutinized the safety issues raised by the State for years and has reached an opposing conclusion.

3. **Motion in Response to the Court's On-Record Comments During the January 29, 2008 Hearing.** On February 12, 2008, Lilly filed its motion in response to the Court's comments, seeking the Court's permission for discovery of individual prescriber decisions, including medical records and prescriber depositions so that the parties can identify which Zyprexa prescriptions would have been written regardless of any alleged improper labeling or promotions. Lilly also requested that the Court reconsider its bifurcated trial plan in light of Lilly's past arguments, recent case developments, and Lilly's request for prescription-specific discovery.

4. **Motions in Limine**. The following motions have been filed with the Court and briefed by the parties:

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a. Plaintiff:

1. Motion in Limine to Exclude Testimony or Argument Regarding Efficacy or Benefits of Zyprexa for Non-Indicated or "Off-Label" Uses;

2. Motion in Limine to Exclude Testimony or Argument Regarding the Lack of Restrictions on the Availability of Zyprexa or Lack of an Injunction Against Certain Conduct by Defendant;

3. Motion in Limine to Exclude Testimony or Argument Regarding Other Drugs Manufactured by Defendant Eli Lilly and Company; and

4. Motion in Limine to Exclude Testimony or Argument Regarding Efficacy or Benefits of Zyprexa for Indicated Uses.

b. Defendant:

1. Motion in Limine to Exclude Evidence Relating to the State of Alaska's Alleged Damages or Economic Injury;

2. Motion in Limine to Exclude Certain Testimony of the State's Experts Under Seal;

3. Motion in Limine to Exclude References to Foreign Regulatory Action;

4. Motion in Limine to Exclude Evidence Relating to New York Times Articles Under Seal;

5. Motion in Limine to Exclude Evidence Relating to Other Litigation Involving the Defendant;

6. Motion in Limine to Exclude Evidence Relating to Defendant's Profits, Net Worth and the Price of Zyprexa;

7. Motion in Limine to Exclude References to Recent Regulatory Communications and Developments; and

8. Motion in Limine to Exclude Testimony and Call Notes of Non-Alaska Based Sales Representatives.

DATED this 19th day of February, 2008.

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I certify that on February 19, 2008, a copy of the foregoing was served by hand on:

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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-06-5630 CIV

STATE OF ALASKA'S REQUEST FOR ORAL ARGUMENT ON ALL MOTIONS IN LIMINE

The State of Alaska, by and through its attorneys, pursuant to Civil Rule 77(e), hereby requests oral argument on all motions in limine filed by the State and all motions in limine filed by Eli Lilly.

DATED this 15 day of February, 2008.

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I hereby certify that a true and correct copy of **Request for Oral Argument On All Motions in Limine** was served by messenger facsimile on:

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Barry Boise, via email (boiseb@pepperlaw.com)
Pepper Hamilton

By Peggy S Crowe
Date 2/19/08

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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-06-5630 CIV

STATE OF ALASKA'S SUPPLEMENTAL RESPONSE/NON-OPPOSITION TO DEFENDANT LILLY'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO THE STATE'S DAMAGES OR ECONOMIC INJURY

Defendant Eli Lilly and Company moved to exclude at the liability trial any evidence related to the State's damages or economic injury. The State filed a response on February 14, 2008 which indicated such evidence may be relevant. This response did not correctly describe the State's position with respect to the liability trial. At the trial scheduled to begin on March 3, 2008, the State does not intend to present any evidence related to its damages or economic injury.

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The State's proposed jury instructions, which were furnished to Lilly on February 4, 2008, included a proposed instruction that explained in clear terms what the liability trial would concern. Specifically, the State's Proposed Instruction 6 provided in part:

> In this trial, you will be asked to decide if the defendant marketed Zyprexa without adequate warnings and whether, in promoting Zyprexa, Lilly violated the Alaska Unfair Trade Practices and Consumer Protection Act. You will not be asked to decide whether Lilly must pay any compensation to the State, or, if so, how much. Those matters will be addressed later, and you are not to concern yourselves with those questions in any way. You must answer the questions that I direct you to answer at the end of the trial based on the evidence presented, and not speculate or be influenced in any way about what might happen later based on your answers. (See Exhibit 1) Emphasis added.

Simply put, it has not been the State's plan to present evidence of damages during the March 3 trial. Accordingly, the State does not oppose Lilly's motion in limine to exclude evidence relating to the State's damages or economic injury.

DATED this 19 day of February, 2008.

FELDMAN ORLANSKY & SANDERS
Counsel for Plaintiff

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I hereby certify that a true and correct copy of the State of Alaska's Supplemental Response/Non-Opposition to Defendant Lilly's Motion in Limine to Exclude Evidence Relating to the State's Damages or Economic Injury was served by messenger on:

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Barry Boise, via email (boiseb@pepperlaw.com)
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By _____
Date February 19, 2008

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	Case No. 3AN-06-5630 CIV
Defendant.	)	
	)	

STATE'S (PROPOSED) JURY INSTRUCTIONS AND VERDICT FORM

Certificate of Service
I hereby certify that a true and correct copy of **State's (proposed) Jury Instructions and Verdict Form** was served on:

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Barry Boise, via email (boiseb@pepperlaw.com)
Pepper Hamilton

By Peggy S. Crowl
Date 2/4/08

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002270

Exhibit 1
Page 1 of 2

State's Instruction 6

Now I will introduce the parties' claims to you. These are simple summaries of complex claims, provided purely to help you listen to the evidence. When I describe the claims, I am not telling you facts that you must accept. As to these claims, you must listen to the evidence and decide the questions I ask you at the end of the trial based solely on the evidence that you hear.

In this trial, you will be asked to decide if the defendant marketed Zyprexa without adequate warnings and whether, in promoting Zyprexa, Lilly violated the Alaska Unfair Trade Practices and Consumer Protection Act. You will not be asked to decide whether Lilly must pay any compensation to the State, or, if so, how much. Those matters will be addressed later, and you are not to concern yourselves with those questions in any way. You must answer the questions that I direct you to answer at the end of the trial based on the evidence presented, and not speculate or be influenced in any way about what might happen later based on your answers.

The State claims that, when prescribed and used for FDA-approved purposes, Zyprexa causes serious side-effects in many patients, including in particular diabetes, hyperglycemia, and dislipidemia. The State contends that Lilly knew that Zyprexa contributes to causing these serious side-effects, but that Lilly failed to disclose the risks adequately to the FDA, physicians, or to the State.

The State also claims that Lilly actively promoted Zyprexa for a variety of off-label uses, although, the State claims, Lilly knew it had no evidence that Zyprexa was effective to treat these off-label conditions.

The State claims that Lilly's promotions of Zyprexa concealed important facts and included misrepresentations and false statements.

Lilly denies that it acted wrongfully in any way.

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-06-5630 CIV

STATE OF ALASKA'S RESPONSE TO LILLY'S SUPPLEMENTAL BRIEF SEEKING DISMISSAL OF THE STATE'S CLAIMS PURSUANT TO THE UTPCPA EXEMPTION AND FEDERAL PREEMPTION

INTRODUCTION

After the deadline for filing its summary judgment motions, Lilly filed a supplemental brief urging summary judgment on a new basis: that all the State's claims are barred because the federal Food and Drug Administration preempts any state regulation of the labeling or marketing of a prescription drug. This court has already rejected parts of Lilly's claim, and, for the reasons set forth below, should reject the newly-raised arguments as well. Lilly's newest argument asserts in essence that Lilly had no choice to use any label other than what was pre-approved by the FDA. That is simply untrue. The FDA's regulations allow and encourage drug manufacturers to add or

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strengthen warnings without waiting for FDA approval. Indeed, at one time Lilly took advantage of these regulations to adopt new warnings on its own initiative, though it was then rebuked by the FDA for doing so in a misleading manner. Because federal regulation does not in any way preclude drug manufacturers from promulgating the warnings that physicians and consumers should know about, there is no merit to Lilly's preemption argument.

THE COURT'S PRIOR RULING

In briefing presented to this court last summer, Lilly contended that the State could not assert claims under the Alaska Unfair Trade Practices and Consumer Protection Act ("UTP") because such claims are preempted by the federal Food and Drug Administration's comprehensive regulation of prescription drugs. This court specifically rejected Lilly's claim that AS 45.50.481 precludes the State's claims:

> The UTP is accorded a liberal construction. . . . The act is not limited to consumer transactions. . . . Any interpretation of the UTP or claim of exemption must be afforded the liberal construction designed to promote the purposes of the Act.
>
> While the federal government under the FTC may have ceded its jurisdiction over certain pharmaceutical related matters of the Federal Drug Administration, the plain language of Alaska's UTP makes clear that Alaska has not done so. The plain language of the Alaska UTP specifically applies to prescription drug transactions by making a violation of AS 17.20 (the Alaska Food, Drug, Cosmetic Act) an unfair or deceptive practice. See AS 45.50.471(b)(48).

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> Nor is it clear that the acts or practices complained of by the State are specifically prohibited by the FDA. Mere regulation of Zyprexa by the FDA is insufficient to exempt the conduct complain[ed of] by the State from coverage under the UTP where that conduct is not specifically prohibited by the FDA. See Smallwood v. Central Peninsulat Ge. Hosp., 151 P.3d 319, 328-29 (Alaska 2006). The plain language of the UTP applies to pharmaceutical transactions and Lilly's conduct is not exempted from the Act's coverage by AS 45.50.481.[1]

Lilly barely acknowledges that this court has already rejected its blanket preemption arguments. Since Lilly has not demonstrated that this court was wrong in its initial ruling on this subject, the State assumes that this court sees no basis for reconsidering its earlier ruling. The State therefore does not rebrief the issues decided in July, and limits this response to addressing Lilly's new, specific preemption claim: that claims based on Zyprexa labeling may not be the basis for state law claims, since the Zyprexa labeling was approved by the FDA.

FDA APPROVAL OF A DRUG'S LABELING DOES NOT PREEMPT STATE LAW CLAIMS BASED ON THE MISLEADING NATURE OF THE LABELING

The arguably new claim asserted by Lilly is that the State may not base its UTP claims or its common law claims on alleged defects in Zyprexa's labeling, since the labeling was approved by the FDA. This court should reject that argument.

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[1] Order re: Plaintiffs's Claim of Proof at 10-11 (July 31, 2007) (some citations omitted).

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Lilly's argument does its best to obscure the clear regulatory authority that allowed -- and encouraged it -- to add warnings of the risks of Zyprexa. Although the FDA must approve initial drug labeling, the manufacturer remains free on its own to change the label to add or strengthen any warning, contraindication, or precaution.[2] Lilly itself took advantage of this provision in 2000, when it changed the Zyprexa labeling; Lilly was later directed by the FDA to remove the new warnings because they were false and misleading[3] -- but Lilly's action proved that it knew that it was not precluded from adding honest warnings to its labeling if it had decided to be candid with the public about the risks of using Zyprexa as compared to other drugs in its class. Finding that FDA approval of a label preempts a lawsuit based on an improper label completely ignores the independent power -- and responsibility -- that drug companies have to amend labels to add warnings to protect consumers.

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[2] *See* 21 C.F.R. § 314.70(c)(6)(iii)(A), *discussed in In re Vioxx Products Liability Litigation,* 501 F. Supp. 2d 776, 783 (E.D. La. 2007); *In re Zyprexa Products Liability Litigation,* 489 F. Supp. 2d 230, 271-72 (E.D.N.Y. 2007); *see also* 21 C.F.R. § 201.57(c)(6) ("In accordance with 314.70 and 601.12 of this chapter, the labeling must be revised to include a warning about a clinically significant hazard as soon as there is reasonable evidence of a causal association with a drug; a causal relationship need not have been definitely established.").

[3] The history of Lilly's actions and the FDA reaction in 2000 is described in greater detail in Plaintiff's Zyprexa Backgrounder at 8-9 (filed with this court May 25, 2007, with supporting documents).

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Recognition of the independent role of manufacturers in preparing labels that adequately protect the public comports not just with the structure of the regulatory scheme but with the reality that the FDA is not sufficiently funded and staffed to study all the possible side-effects of all prescription drugs on the market.[4] Furthermore, to allow FDA approval of a label to immunize a drug company from suits based on inadequate warnings improperly rewards companies, such as Lilly, who fail to provide complete and accurate information to the FDA.

As Lilly acknowledges, courts around the country have split in resolving the issue presented by Lilly's motion. The clear majority of cases -- and those that are factually more like the current case -- find no preemption and allow plaintiffs to proceed with

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[4] *See generally In re Vioxx*, 501 F. Supp. 2d at 783; Report of the Committee on Science and Technology, FDA SCIENCE AND MISSION AT RISK at 2, 3 (Nov. 2007) ("The Subcommittee concluded that science at the FDA is in a precarious position; the Agency suffers from serious scientific deficiencies and is not positioned to met current or emerging regulatory responsibilities."; "The FDA cannot fulfill its mission because its scientific bases has eroded and its scientific organizational structure is weak."); Committee on the Assessment of the U.S. Drug Safety System, THE FUTURE OF DRUG SAFETY: PROMOTING AND PROTECTING THE HEALTH OF THE PUBLIC, PREFACE (Sept. 2006) ("The Committee believes the staff of the Food and Drug Administration, and of the Center for Drug Evaluation and Research in particular, to be a dedicated and talented group of public servants who currently lack the organization and resources to address all of the challenges before them and perform their crucial role of advancing and protecting public health in an increasing[ly] complex environment." (available at http://www.nap.edu/catalog/11750.html). The House of Representatives Subcommittee on Oversight and Investigations held a hearing just two weeks ago (January 29, 2008) on the topic "Science and Mission at Risk: FDA's Self-Assessment."

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statutory consumer protection and common law claims based on a drug manufacturer's failure to provide adequate warnings of defects in a prescription drug labeling, even when the labeling was approved by the FDA.

Two of the leading cases rejecting Lilly's position are *In re Vioxx Products Liability Litigation*[5] and *In re Zyprexa Products Liability Litigation.*[6] These decisions survey other cases.[7] Still other recent decisions that reject preemption claims include *Laisure-Radke v. Par Phamaceutical, Inc.*,[8] *Coutu v. Tracy*,[9] *McNellis v. Pfizer*,[10] and *Levine v. Wyeth*.[11] The cases holding that deceptive labeling claims are not preempted rely on the structure of the regulations governing drug labeling, as discussed above; on the policy implications of immunizing a company from lawsuit when the FDA approves a label with inadequate warnings because the company failed to provide adequate

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5 501 F. Supp. 2d 776 (E.D. La. 2007).

6 489 F. Supp. 2d 230 (E.D.N.Y. 2007).

7 *See In re Vioxx,* 501 F. Supp. 2d at 786; *In re Zyprexa,* 489 F. Supp. 2d at 274 ("A majority of courts have held that the FDA's labeling requirements represent only minimum safety standards and do not absolve prescription drug manufacturers of liability." (citing cases)).

8 2006 WL 901657 at *2-6 (W.D. Wash. Mar. 29, 2006).

9 2006 WL 1314261 at *2-4 (R.I. Super. May 11, 2006).

10 2006 WL 2819046 at *4-13 (D.N.J. Sept. 29, 2006).

11 __ A.2d __, 2006 WL 3041078 (Vt. Oct. 27, 2006), *cert. granted,* 2008 WL 161474 (Jan. 18, 2008).

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information to the FDA; and on the long-established law that respects the role of the states in matters related to public health and safety.[12]

Lilly observes that the FDA in January 2006 issued a statement asserting the FDA's view that its approval of a label should preempt state court litigation over the adequacy of the labeling.[13] Many of the cases just cited discuss and reject the FDA's position. The court in *In re Vioxx* observed that the question of federal preemption is ultimately a question of congressional intent, and the FDA's statement remains simply a statement by the agency, not a statement made or endorsed by Congress.[14] Congress has explicitly provided for federal preemption in some related areas, such as with respect to

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[12] A very recent California decision, also addressing safety labeling under the Food, Drug, and Cosmetic Act ("FDCA"), though dealing with a food product not a drug, rejected a preemption claim. In the view of the California Supreme Court, even though a state may not require labeling more stringent than the FDCA requires, this does not mean that state consumer protection laws cannot be used to enforce compliance with federal laws. *See In re Farm Raised Salmon Cases,* __ Cal. Rptr. 3d __, 2008 WL 351637 at *3-12 (Cal. Feb. 11, 2008). While the regulatory schemes at issue are not identical, the California court's opinion offers a thoughtful overview of preemption principles and the important roles of the state courts in enforcing consumer safety. *See generally Medtronic v. Lohr,* 518 U.S. 470, 475 (1996) ("Throughout our history, the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily and historically . . . matter[s] of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.") (internal quotes omitted).

[13] *See* Lilly Supp. Memo. at 14, *citing* 71 Fed. Reg. 3922 (Jan. 24, 2006).

[14] *See* 501 F. Supp. 2d at 784.

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Medical Devices.[15] In contrast, when Congress amended the Food, Drug, and Cosmetic Act (in 1962), it specifically stated that nothing in the amendments was to be construed to invalidate any provision of state law absent a direct and positive conflict between the federal and state law.[16]

The FDA's 2006 position represented a reversal of longstanding policy.[17] Further, the recent position is simply a policy statement, not promulgated in the way that federal regulations are promulgated; hence, it is not the kind of regulatory position to which courts must defer.[18] Thus, the question of preemption remains a pure question of law for the court to determine without deference to the agency.[19]

Most of the cases that Lilly cites that accepted a drug company's argument that the FDA position on preemption should prevail involve significantly different facts than in the current case -- and thus the cases are not so much precedent for different legal reasoning but for a different result based on a different fact pattern. Two of the cases involve claims brought against drug manufacturers because patients committed suicide

---

15 *See id.*

16 *See id.* (discussing Drug Amendments of 1962, Pub. L. No. 87-781, § 202, 76 Stat. 780, 793).

17 *See id.* at 786; *In re Zyprexa,* 489 F. Supp. 2d at 273.

18 *See In re Zyprexa,* 489 F. Supp. 2d at 274.

19 *See In re Vioxx,* 501 F. Supp. 2d. at 786-88; *In re Zyprexa,* 489 F. Supp. 2d at 274-78.

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after being prescribed an anti-depressant (such as Paxil and Effexor).[20] Plaintiffs claimed that the drug labeling should have warned of the risk of suicide. In those cases, the defendant drug companies showed that the FDA had specifically rejected proposals to add suicide warnings to the drug labeling, so the drug companies were able to demonstrate that, had they amended their labels to include that warning, they would have acted in direct contradiction to an FDA determination that such warnings were not appropriate. The other two cases, involving different categories of drugs, likewise involved allegations of risks that should have been included in labeling, although the FDA previously had determined explicitly that there was no scientific basis for warning of the risks in question.[21] Preemption is required where there is a direct conflict between the state and federal law, such that the defendant could not possibly comply with both. No such factual showing can be made in this case. To the contrary, the FDA continually questioned Lilly and demanded more information, and, over time, as it finally obtained

[20] *See* Lilly Supp. Memo. at 15 n.55, citing *Dobbs v. Wyeth Pharmaceuticals,* 2008 WL 169021 (W.D. Okla. Jan. 17, 2008) (Effexor); *Colacicco v. Apotex, Inc.,* 432 F. Supp. 2d 514 (E.D. Pa. 2006) (Paxil).

[21] *See Sykes v. Glaxo-SmithKline,* 484 F. Supp. 2d 289 (E.D. Pa. 2007); *In re Bextra & Celebrex Marketing Sales Practices & Product Liability Litigation,* 2006 WL 2374742 (N.D. Cal. Aug. 16, 2006).

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information, demanded increasingly more complete warnings.[22] Lilly cannot and does not claim that it would have acted contrary to any FDA determination if it had added warnings that Zyprexa caused a risk of weight gain, diabetes, or other related diseases, and did so at a rate greater than other drugs in its class.

The FDA recently proposed eliminating the rule that permits drug companies to add or strengthen a contraindication, warning, or precaution without waiting for FDA approval. A number of Senators and Congressmen have advised the FDA in strong terms of their opposition to that suggestion, noting the value of the regulation as it currently exists. In these Senators' and Representatives' view, eliminating the regulation would not reflect Congress' intent "to preserve the fundamental premises of the CBE ["changes being effected"] regulations: that drug companies are much better positioned to know the risks associated with their own products, that the public should be promptly warned about those risks, and that we cannot rely upon a very over-burdened and under-funded FDA to promptly review and approve such warnings before they are added to product labels."[23]

Granting a drug company's preemption motion would have the effect of nullifying the regulation while it is still in effect.

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[22] *See generally* Plaintiff's Zyprexa Backgrounder at 21 (describing label changes required in 2003); State's Opposition to Lilly's Motion for Summary Judgment at 5-6 (describing label changes required in 2007).

[23] Exhibit 1.

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CONCLUSION

This court should deny Lilly's supplemental summary judgment motion.

DATED this 15 day of February, 2008.

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I hereby certify that a true and correct copy of **State of Alaska's Response to Lilly's Supplemental Brief Seeking Dismissal of the State's Claims Pursuant to the UTPCPA Exemption and Federal Preemption** was served by messenger on:

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Congress of the United States
Washington, DC 20515

January 23, 2008

The Honorable Andrew C. von Eschenbach, M.D.
Commissioner
U.S. Food and Drug Administration
5600 Fishers Lane, Room 15-47
Rockville, MD 20857

Dear Dr. von Eschenbach:

We are writing to express our profound regret about FDA's proposed rule to amend the regulations that permit companies to promptly update their drug and device labels with new safety information.[1] FDA has failed to provide any justification for expending its very limited resources on issuing this 26 page proposal that will serve only to deprive American consumers of critically important and timely information about the safety of their drugs and medical devices. We are concerned that the intent of this proposal is to protect companies in the pharmaceutical and device industry from being held liable for marketing products they know are unsafe. Such a policy change comes at the expense of consumers and violates the mission of the FDA. The issuance of the proposed CBE rule is not an isolated case, but part of a pattern of actions in the Bush Administration's final months to permanently insulate the drug and device industry from liability.[2]

FDA's current regulations permit manufacturers to change their labels to add or strengthen a contraindication, warning, precaution, or adverse reaction without waiting for approval by the agency of such a change.[3] These regulations, also known as the "changes being effected (CBE) supplements" regulations, serve the vitally important public health function of ensuring that patients and healthcare providers are made aware of safety risks associated with their medical products at the earliest possible moment.

Prior to the implementation of these regulations over 20 years ago, manufacturers were forced to seek FDA approval before making virtually all changes to FDA-approved products.[4]

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[1] Food and Drug Administration, *Supplemental Applications Proposing Labeling Changes for Approved Drugs, Biologics, and Medical Devices*, 73 Fed. Reg. 2848 (Jan. 16, 2008) (proposed rule) (hereinafter "Proposed Rule").

[2] It was recently revealed that the Bush Administration is similarly diverting FDA resources to developing and issuing a document whose apparent purpose is to protect drug and device manufacturers from prosecution for illegal marketing. Letter from Chairman Henry A. Waxman to FDA Commissioner Andrew C. von Eschenbach, M.D. (Jan. 22, 2008) (online at www.oversight.house.gov/story.asp?ID=1696).

[3] 21 CFR 314.70, 21 CFR 601.12, and 21 CFR 814.39.

[4] Food and Drug Administration, *New Drug and Antibiotic Regulations*, 47 Fed. Reg. 46622, 46634 (Oct. 19, 1982) (proposed rule).

Industry found this policy burdensome and requested that the agency change it — they contended that "this requirement is unnecessary, takes FDA reviewers away from more important work, and causes costly delays for applicants who must defer making changes in approved products until the supplement is approved." [5]

FDA itself also recognized that a policy that would permit companies to make certain changes without first seeking FDA approval "would help concentrate the agency's limited resources more on applications for marketing, and would also permit pharmaceutical manufacturers to institute certain postmarketing changes sooner."[6] Thus, in 1982, the agency and industry agreed that: (1) FDA, with its very limited resources, could not be expected to approve every possible change to the ever-increasing number of regulated medical products; and (2) permitting manufacturers to add certain safety information to labels before FDA approval would assure that the American public was warned about risks associated with their products in a timely way.

Since 1982, FDA's funding situation has taken a dramatic turn for the worse. Today, FDA is an agency that is all but starved of resources. Experts from every affected sector agree that this desperate funding situation has rendered FDA unable to protect the American public from even the most basic threats, including contaminated food, tainted and dangerous drugs, and faulty medical devices. According to FDA's own Science Board, FDA's ability to carry out its mission is so compromised by loss of resources that American lives are now at risk.[7]

In the face of this public health crisis, the Bush Administration has turned its back on American consumers. At a time when the FDA lacks the resources to adequately protect Americans from unsafe drugs and devices, it is astonishing that the Bush Administration has opted to dedicate FDA's strained resources to protecting the drug and device industry from liability for marketing dangerous products. The 26 page CBE proposal has no purpose other than to shore up the industry's legal arguments for avoiding liability. Indeed, the proposed rule fails to identify a single problem associated with these regulations that would warrant a modification, much less a public health threat of such magnitude as to put issuing the proposal at the top of FDA's priority list. We note, however, that the proposal was immediately cited by the Solicitor General in a letter to the United States Supreme Court in support of the industry's argument that FDA approval preempts individual product liability cases.[8]

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[5] *Id.*

[6] *Id.* at 46635.

[7] *FDA Science and Mission at Risk, Report of the Subcommittee on Science and Technology*, 3 (Nov. 2007) (online at www.fda.gov/ohrms/dockets/ac/07/briefing/ 2007-4329b_02_01_FDA%20Report%20on%20Science%20and%20Technology.pdf).

[8] Letter from Solicitor General Paul D. Clement to Honorable William K. Suter, Clerk, Supreme Court of the United States (Jan. 16, 2008).

We are further concerned about FDA's characterization of the proposed rule as an effort to merely "codify the agency's longstanding view on when a change to the labeling of an approved drug, biologic, or medical device may be made in advance of the agency's review of such change."[9] To the contrary, the proposed changes would instead drastically limit the situations in which a manufacturer is permitted to make add or strengthen a contraindication, warning, precaution, or adverse reaction without waiting for FDA to approve such a change. Under FDA's proposal, a manufacturer would now be prohibited from adding or strengthening a contraindication, warning, precaution, or adverse reaction in the absence of FDA approval unless there is "evidence of a causal association."[10]

This proposed rule sets forth a much higher standard than was previously applied in FDA's regulations and will inevitably result in fewer company-initiated warnings. Further, it is apparently designed to bolster the argument by companies defending against lawsuits that the regulations precluded them from adding contraindications, warnings, precautions, and adverse reactions in the absence of FDA approval, whereas under FDA's current regulations, it is clear they would have been free to do so.

Because Section 314.70 currently permits manufacturers to warn consumers of potential risks at the earliest moment, FDA's proposal will also result in a delay in getting consumers important information about the safety of their drugs and medical devices, while FDA takes the time it needs to review and approve those warnings.

The preamble to FDA's January 16 proposed rule refers to the new labeling change authority set forth in the recently enacted Food and Drug Administration Amendments Act of 2007 (FDAAA) and asserts that this legislation "confirm[s] that Congress intends FDA to carefully regulate the content of labeling for approved products."[11] It is indeed true that, in FDAAA, Congress intended to give FDA, for the first time, the clear authority to require certain changes in drug labeling. Vioxx is a painful illustration of what had previously been a serious gap in FDA's authority. In that instance, FDA haggled with the company about the content of the labeling change for over 14 months while consumers continued to take the drug, completely unaware of the serious health risks associated with it. Thus, FDAAA provides FDA with the ability to avoid this kind of protracted negotiation so that the agency can ensure that the important safety information it believes should be in the label is promptly added.

The preamble, however, makes a glaring omission in its description of congressional intent with respect to FDAAA's labeling change authority. FDA failed to cite the "Rule of Construction" which clearly demonstrates Congress' equally important goal: to preserve the

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[9] Proposed Rule, *supra* note 1, 2848.

[10] Proposed Rule, *supra* note 1, 2853.

[11] Proposed Rule, *supra* note 1, 2850.

responsibility of drug companies to promptly update their own product labels to reflect the most current safety information available. That section states:

> (I) Rule of Construction.—This paragraph shall not be construed to affect the responsibility of the responsible person or the holder of the approved application under section 505(j) to maintain its label in accordance with existing requirements, including subpart B of part 201 and sections 314.70 and 601.12 of title 21, Code of Federal Regulations (or any successor regulations).[12]

Congress was well aware of FDA's CBE supplement regulations. The rule of construction was intended to clarify Congress' intent to preserve the fundamental premises of the CBE regulations: that drug companies are much better positioned to know the risks associated with their own products, that the public should be promptly warned about those risks, and that we cannot rely upon a very over-burdened and under-funded FDA to promptly review and approve such warnings before they are added to product labels.

Given that FDA has failed to provide any evidence or rationale for its proposal, we would like to request the following information:

1. Please provide data on the number of CBE supplements the agency has received each year from 1982 to the present;

2. Please describe any cases in which a manufacturer used the CBE procedure to add or strengthen a contraindication, warning, precaution, or adverse reactions in a manner that harmed the public health, including the dates of such cases, and explain why the agency believes that modifying the regulations has become a high public health priority at this time;

3. Please provide any documents demonstrating concern on the part of the Center for Drug Evaluation and Research or the Center for Devices and Radiological Health about misuse of the CBE regulations, or about public health risks arising from its current language; and

4. Please provide the number of FTEs used to issue this proposed rule and a timeline for when work began on this effort.

Please provide a response to this request by no later than February 13, 2008.

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[12] 21 U.S.C. 355(o)(4)(I).

FDA is one of the nation's preeminent public health agencies. Every day, Americans count on the FDA to protect them from unsafe foods, drugs, and medical devices. In stark contrast to this vitally important public health mission, the agency's proposed rule protects the profits of the pharmaceutical and medical device companies rather than the health and safety of American consumers. We urge you to reconsider this action.

Sincerely,

Henry A. Waxman
Chairman
House Committee on Oversight and Government Reform

Edward M. Kennedy
Chairman
Senate Committee on Health, Education, Labor, and Pensions

John D. Dingell
Chairman
House Committee on Energy and Commerce

Patrick J. Leahy
Chairman
Senate Committee on the Judiciary

Edward J. Markey
Chairman
Subcommittee on Telecommunications and the Internet
House Committee on Energy and Commerce

Christopher J. Dodd
Chairman
Senate Committee on Banking, Housing, and Urban Affairs

Frank Pallone, Jr.
Chairman
Subcommittee on Health
House Committee on Energy and Commerce

Rosa L. DeLauro
Chairwoman
Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies
House Committee on Appropriations

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Presiding Superior Court Judge

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ANCHORAGE, ALASKA 99501-2004

(907) 264-0667

February 15, 2008

Judge Mark Rindner
825 West Fourth Avenue
Anchorage, Alaska 99501

Dear Judge Rindner:

I met with the parties and their counsel in State v. Eli Lilly, 3AN-06-5630 CI today to discuss settlement. The parties were unable to reach resolution.

I can be available to reconvene the parties for a settlement discussion prior to their March 3, 2008 trial date, but they will need resolution of an issue first.

A question was raised at the January 29, 2008 oral argument regarding whether the case will proceed in a bifurcated fashion. I call this to your attention because I do not believe that it appears on the docket as a pending motion. Briefing on the issue has been filed by defendant. I am uncertain whether the State intends to file responsive brief.

Morgan Christen
Superior Court Judge

cc Brewster Jamieson
Eric Sanders

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT ELI LILLY AND COMPANY'S QUALIFIED OPPOSITION AND CROSS-MOTION TO PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OR ARGUMENT REGARDING OTHER DRUGS MANUFACTURED BY ELI LILLY AND COMPANY

Defendant Eli Lilly and Company ("Lilly") concurs with the State of Alaska's motion in limine to the extent that it prohibits both parties from referencing any medication, other than Zyprexa, manufactured by Lilly. Evidence of other Lilly medications (i) is irrelevant, and its unfairly prejudicial effects outweigh any probative value; (ii) could mislead the jury; and (iii) will confuse the issues. To the extent that the State seeks only to limit evidence regarding the uses and benefits of Zyprexa, or seeks only to limit Lilly's references to other Lilly medications, this motion should be denied.

I. INTRODUCTION

Lilly and the State agree that evidence of medications manufactured by Lilly, other than Zyprexa, has no place in this litigation. The State's motion in limine creates confusion, however, because it describes the evidence to be excluded in inconsistent terms. In the

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motion's opening sentence, the State requests that the Court preclude *Lilly's* counsel from introducing evidence regarding the *uses or benefits* of other medications manufactured by Lilly. The motion's concluding sentence, however, simply requests that the Court "exclude any argument or reference to other prescription drugs manufactured by defendant," without reference to party or topic. The State's proposed order further muddies its request, because it seeks only to limit Lilly's references, but not the State's, to other Lilly medications.[1]

II. ARGUMENT

The State correctly recognizes that although Lilly "manufactures a number of prescription [medications] indicated for the treatment of a variety of medical conditions[,] [t]he only product at issue in this case is Zyprexa . . . the fact that [Lilly] produces a number of other prescription [medications] that are not the subject of this litigation does not have any bearing on [Lilly's] conduct with respect to Zyprexa."[2] These statements apply equally to evidence submitted by *both* parties, and to *all* information about other Lilly medications–not just information regarding benefits and uses. All references to Lilly's other medications should therefore be excluded, regardless of how direct the reference is, or which party seeks to make the reference.

---

[1] [Proposed] Order Regarding Plf's Mot. in Limine to Exclude Testimony or Argument Regarding Other Drugs Manufactured by Def. Eli Lilly and Company ("Defendant may not offer any argument or evidence referring to other prescription drugs manufactured by Lilly.")

[2] Pl.'s Mot. in Limine to Exclude Testimony or Argument Regarding Other Drugs Manufactured by Def. Eli Lilly and Company at 2.

To the extent that Lilly's request is denied, and evidence of other Lilly medications is admitted, this Court should not sign the State's one-sided proposed order. The proposed order prevents Lilly from referencing other of its medications while allowing the State to do so. In short, if the Court denies Lilly's request to preclude both parties from referencing other Lilly medications, then both parties should be permitted to use such evidence at trial, within the bounds of the Alaska Rules of Evidence.

III. CONCLUSION

For the foregoing reasons, evidence regarding other Lilly medications should be excluded.

DATED this 14th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 14, 2008, a copy of The foregoing was served by hand on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
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_____
009667.0038/165479.1

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO OTHER LITIGATION INVOLVING THE DEFENDANT

Defendant Eli Lilly and Company ("Lilly") has moved to exclude from the trial of this case any evidence relating to "other Lilly-related litigation, investigations, regulatory action or settlements."

While the State does not intend to offer evidence of other Lilly litigation in this action, it does oppose this motion in one important respect. On January 31, 2008, the *New York Times* reported that Lilly and federal prosecutors are discussing a potential billion dollar settlement of civil and criminal investigation involving Lilly's marketing of Zyprexa to the federal and state governments.[1] The negotiations reportedly include a criminal plea. The State respectfully requests that the Court require Lilly to disclose any

[1] Alex Berenson, *Lilly Considers $1 Billion Fine to Settle Case*, New York Times, January 31, 2008, at A1.

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plea or agreement to plea if such arises at any time before or during the trial of this case or during the jury's deliberations. The jury would certainly be entitled to know if Lilly pled guilty to criminal conduct which mirrored the conduct alleged by the State in this case.

For the reasons stated above, the Court should deny Defendant's Motion in Limine.

Respectfully submitted this 14 day of February, 2008.

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Certificate of Service

I hereby certify that true and correct copies of **Plaintiff's Response to Defendant's Motion in Limine to Exclude Evidence Relating to Other Litigation Involving the Defendant and (Proposed) Order** were served by messenger on:

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Barry Boise, via email (boiseb@pepperlaw.com)
Pepper Hamilton

By Peggy S. Crowe
Date 2/14/08

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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

VIDEOTAPED DEPOSITION OF DUANE HOPSON, M.D.

December 11, 2007
10:18 a.m.

Taken at:
The Offices of Lane Powell, LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska

Reported by: Leslie J. Knisley
Shorthand Reporter

EXHIBIT C
PAGE 1 OF 8

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

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Commercial/Fair Business Section
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Also Present: STEVE MIEDZWIADOK, VIDEOGRAPHER

I-N-D-E-X

DUANE HOPSON, M.D. DECEMBER 11, 2007

EXAMINATION

EXHIBITS

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safety or effectiveness, have you attempted to
connect that or bring it to the speaker's
attention?

A. There have been opportunities when questions would be asked of the speaker, particularly if it was something that was just kind of glaring and maybe one of my doctors -- I've had two-some of doctors, as I've said. Some are more outspoken than others; some more committed to their beliefs. And they, you know, they will ask a challenging question. That's not my expertise, perhaps, or something like that. Get some feedback going.

Q. Do you remember whether Lilly sent any speakers in to speak to your staff around the time of the label change in 2012?

A. What month was that?

Q. September.

A. There's a likelihood that they did, yes. That's a long time ago.

Q. Well, do you have a recollection of any companies -- let me step back.

Do you remember that there was a nizatidine label change for the atypical anti-psychotics in 2012?

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A B C D E

A. Yes.

Q. Do you recall whether companies other than Lilly came in to talk about that label change?

A. Yes.

Q. What companies?

A. It seems like probably Serogenl Ark. I can't recall others, but it seems like I do recall them.

Q. Serogenl being Natalbetata?

A. Yes.

Q. Do you recall the Serogenl representatives talking about or trying to distinguish Serogenl from Zyprexa?

A. Yes.

Q. In what ways?

A. Well, there again, there -- their belief of a safer profile of side effects, less weight gain, less effect on lipids, all of those issues, you know, what they compare themselves to each other.

Q. And even though you might not remember the specific medication or the specific company, do you think that you had representatives from other manufacturers of atypical antipsychotics

Q. Which people are you referring to?

A. Well, I think physicians in general, if you talk with them.

Q. And when you say "have always," what do you mean by that?

A. Well, as this has come to light, that people need to be mindful of this and adjust their practice accordingly, if that's appropriate.

Q. Well, were you aware of Zyprexa's -- let me rephrase this. I'm sorry.

When competitors came and touted their product over Lilly with regard to these issues relating to weight gain, lipids and diabetes, did it come as any surprise to you?

A. A surprise in that they were coming and saying that?

Q. Yes.

A. No.

Q. You were aware of such issues from reading the literature and talking to your colleagues; is that correct?

A. Yes.

Q. And you were aware of such issues through your own use of Zyprexa with your own

patients; is that correct?

A Yes.

Q And that was true long before the label change in 2003; is that correct?

A It was a risk. I think that, you know, it was a risk that we did not know, I guess, the seriousness of the risk at that stage of the game.

Q What did you become aware of the seriousness of the risk?

A Well, probably around the time of the label change. Maybe perhaps before.

Q ... from reading the literature and from going to CMEs?

A Yes. And clinical practice, too, seeing your patients.

Q Were those issues before the label change that you had discussed with doctors in your staff meetings either here or in Fairbanks?

A We talked about it here. In Fairbanks, no, not that I recall.

Q But you talked about it here in Anchorage before the label change, right?

A Yes, that it was something that we needed to be cognizant of.

EXHIBIT C
PAGE 7 OF 8

Q. Nonetheless, you and your fellow psychiatrists at NIC continued to prescribe Zyprexa for individual patients?

A. Yes. We tend to -- doctors continued to do that despite the --

Q. Despite?

A. Despite risks with all classes -- all types of medications.

Q. Why is it that you would continue to prescribe Zyprexa given that higher risk of weight gain, lipids and diabetes?

A. Well, I think one -- one treatment approach is you try other medications perhaps first. You go with those with a less risk profile, and if perhaps those are not effective, patients had perhaps side effects to them, didn't tolerate them, and then you would make a change in your approach and try Zyprexa. Some docs might do that, you know, rather than put it on as first line.

Q. But there were also some doctors in your group who treated with Zyprexa first line; is that correct?

A. That's possible, yes.

Q. That's because they were making

EXHIBIT C
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A B C D E

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

In re: ZYPREXA PRODUCTS LIABILITY LITIGATION THIS DOCUMENT RELATES TO: ALL CASES	MDL No. 1596 04 MD 1596
DFCW LOCAL 1776 AND PARTICIPATING EMPLOYERS HEALTH AND WELFARE FUND, et al. v. ELI LILLY AND COMPANY	
LOCAL 28 SHEET METAL WORKERS, et al. v. ELI LILLY AND COMPANY	
SERGEANTS BENEVOLENT ASSOCIATION HEALTH AND WELFARE FUND, et al. v. ELI LILLY AND COMPANY	

DEPOSITION OF: WILLIAM C. WIRSHING, M.D.

DATE: May 1, 2007

TIME: 9:34 a.m.

LOCATION: 22122 Victory Boulevard
Pacific Room
Woodland Hills, CA 91367

TAKEN BY: Counsel for Eli Lilly and Company

REPORTED BY: K.C. Bolden, RPR, CSR
Certified Shorthand
Reporter No. 4728

EXHIBIT D
PAGE 1 OF 4

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DAVID FIDDES, VIDEOGRAPHER

EXHIBIT D
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DEPONENT:	EXAMINED BY:	PAGE:
WILLIAM C. WIRSHING, M.D.	MR. LEVADA	4
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	MS. ABRAMS	214

EXHIBITS MARKED FOR IDENTIFICATION:

1 -	"Amended Notice of Videotaped Deposition and Subpoena Duces Tecum," 2 pages	6
2 -	"Expert Witness Report and Declaration of William Wirshing, M.D.," and attachments thereto, 54 pages	8
3 -	Letter from Latney (Pepper Hamilton) to various counsel in the Plaintiffs' Steering Committee dated 04/14/07, 3 pages	18
4 -	Letter from Fibich (Fibich, Hampton & Leebron) to Latney (Pepper Hamilton) dated 04/23/07, 47 pages	19
5 -	Article titled "Medicolegal Considerations in the Treatment of Psychosis with Second-Generation Antipsychotics" dated 12/01/05, 8 pages	124
6 -	Article titled "Consensus Development Conference on Antipsychotic Drugs and Obesity and Diabetes" dated February 2004, 4 pages	134
7 -	Condensed version of the deposition of Wirshing, M.D. in the case of "Chavies v. Janssen" dated 11/13/03	147
8 -	"Review of Clinical Data," completed 04/11/05, PSNC0E8 003158 through	234

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I N D E X (Continued)

EXHIBITS MARKED PAGE:
FOR IDENTIFICATION:

9 - "Declaration of Alice M. Dieterich" dated 236
11/29/04, 13 pages

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1 top-tier medications, that they are guaranteed for most
2 people?
3 A. Absolutely not.
4 Q. Do you continue to believe that?
5 A. They're the sickest thing to begin that I
6 have ever experienced in my professional life.
7 Q. In terms of creating benefits for patients
8 who may receive the therapeutic benefit that they have
9 to offer?
10 A. Absolutely. When you achieve it, it's one of
11 the most gratifying things that occurs as a doctor.
12 Q. Allows people to sort of regain a certain
13 normal control over their life and experience things
14 that they haven't been able to experience before; is
15 that correct?
16 A. Can. Can free them from just -- from a hell
17 that most people can't even imagine.
18 I apologize for having forgotten that I --
19 Q. No, not at all. And I am not trying to trick
20 you about that either.
21 Let me ask you -- You mentioned earlier
22 we -- except the issue of pancreatitis. Let's talk
23 about pancreatitis for a minute.
24 A. Certainly.
25 Q. And as page -- While you have your opinion

A. Well, direct -- because I don't really believe that olanzapine has a specific selective toxicity to the pancreas. I do, however, believe that it has a specific direct toxicity to the liver which indirectly, then, destroys the pancreas.

Q. So why don't you go through and explain how that happens.

A. Certainly, certainly. The -- Pancreatitis, which just means inflammation, swelling of the pancreas, is a huge deal for one reason: The pancreas is the only organ in the body whose job it is to dissolve basically the structure of us. It is basically designed to emulsify fats, basically break down the structures of our cells which separate us from not us. And it -- So all the fats that we consume, all the animal products we consume, the pancreas is crucially involved in.

But you can imagine, if you have an organ who's decision to dissolve you, you've got to be very careful with that organ. And when pancreatitis occurs, it's a lot bigger deal that hepatitis, inflammation of the liver, or, you know, intestinal inflammation. Because when pancreatitis becomes inflamed, it potentially leaks out the enzymes which can consume you. They -- And if they start to leak

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

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
[illegible],)
)
Defendant.)
)

Case No. [illegible]

STATUS CONFERENCE
BEFORE THE HONORABLE [illegible]

Pages [illegible]
Wednesday, October [illegible], 2007
[illegible] P.M.
Anchorage, Alaska

Court Reported and Transcribed by:
[illegible]
PACIFIC RIM REPORTING
[illegible]
Anchorage, Alaska 99501

EXHIBIT E
PAGE 1 OF 4

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

2

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Eric J. Rothschild
16 PEPPER HAMILTON
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17 Philadelphia, Pennsylvania 19103-2799

18

19

20

21

22

23

24

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would be after the liability finding.

THE COURT: We'll talk about -- First I want to see -- I want to take this a step at a time.

That you would give them your reports supported. I still don't know what all this other information that isn't forthcoming is going to be forthcoming, because I assume that the defendants are going to tell me that they want to have that information in order to adequately review your reports and to prepare their reports. So we've got to cut that in somewhere. But that -- at let me just at a step at a time.

MR. ZABOROSKI: Okay.

THE COURT: Mr. Rothschild and Mr. Jamieson, as I understand it, Mr. Sanders is proposing, in saying if there is any missing -- there is missing information, but it all goes to damages, liability, and I assume that's whether or not the drug was defective.

Everybody has got their information from the DOJ, and we've got all the stuff, and you've got all these reports, and so it's going to not just be two days to put on your case anyway.

What is your -- what do you have to say about this idea of bifurcating this?

EXHIBIT E
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1 resolution of this issue is March and that, you know,
2 maybe, I don't know, June, July, that same jury, a
3 different jury, says --
4 THE COURT: I recognize the procedural
5 issues and I'll have to discuss it as we go this way.
6 MR. KAMENSKY: Right.
7 THE COURT: I don't want to get into things
8 until I know that I'm going to go this way.
9 MR. KAMENSKY: Right.
10 THE COURT: Mr. Kamensky gives me an answer
11 to my question. He says if you try this first case,
12 you can do the liability, and if you're right, it's
13 not a defective product and you didn't do anything
14 under the Consumer Protection Act, all of this other
15 need to produce this other information, all this need
16 to get into the newspaper are going to be proved and
17 stuff completely goes away because there is no
18 liability, so I don't need to worry about damages.
19 Why isn't he right about that?
20 MR. KITSCHELIS: Well, it would make me
21 happy if that's the way the case was resolved in the
22 end and we can avoid some of this, but that doesn't,
23 as I see it, avoid of necessity much of standing ahead to
24 trial with half a case only to have to do --
25 potentially to do more much later. And just to

EXHIBIT E
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IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

STATE OF ALASKA	:	CASE NO.
	:	
V.	:	
	:	
ELI LILLY AND	:	
COMPANY	:	3AN-04-5833-CIV

* * *

January 8, 2007

* * *

Hearing held before Judge Mark Rindner, held on the above date.

* * *

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- - -

EXHIBIT F
PAGE 2 OF 6

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- - -

case is that person whose the defense comes in and says, this case is X, and the plaintiff says, no, this case is not X. This is not that kind of case. It's this kind of case. I've never heard what you're proposing.

THE COURT: I don't tell whether your approach to the case is a valid one or not until I see what the discovery is on your side of the case and what your experts are.

MR. ZABLOCKI: Well, here's what it's going to be. I can tell you this. This is where the rubber meets the road in the case. If they have to prove each prescription, I don't know how exactly you articulated from there, but in other words, each prescription, what the doctor was doing with each prescription, why the patient received prescription.

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this case is going to get dismissed because we're not going to proceed on that theory. So, I mean, we're using epidemiological evidence. I can let Mr. Hahn explain to you the way that's coming in, but it can be explained without having the expert reports. I mean, this is not 1,000 individual plaintiffs' cases jammed into one case on behalf of the state.

THE COURT: Hold on. Let me flip it that. Is there a way for the plaintiffs, before anybody does any discovery, to bring a summary judgment motion or some motion to test the theory of law that the plaintiffs are espousing here? I don't know how that can be done without discovery and the reports being filed. But if there's a way to do that, let's do that first. Then everybody will

before the first deposition is taken or not taken, we'll know how this case is going to unfold and how much discovery it will take.

THE COURT: Mr. Sanders, can you file a motion for a rule of law saying here's what we think our burden is in this case, here's how we intend to -- here's how we believe we can prove and meet that burden without the need to the extent of discovery that I think is floated out enough so that I understand what they're proposing. And they can then respond to it and we can have that briefed based on your first motion saying this is -- as to what the elements are and the basis is and the means that you've got to prove your case.

MR. SANDERS: Yes. And, again, in the interest of keeping the railroad running on time, we

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

[redacted],

Defendant.

Case No. 3AN-06-9650 CI

NOTICE OF FILING PLAINTIFF'S OBJECTIONS TO DEFENDANT'S PAGE/LINE COUNTER DESIGNATIONS

On this date the State of Alaska is filing a pleading titled "Plaintiff's Objections to Defendant's Page/Line Counter Designations." Because one or more exhibits listed with this pleading may be confidential documents under the Court's April 6, 2007 oral ruling, the State of Alaska is submitting this pleading and the attached exhibits under seal.

DATED this ___ day of February, 2008.

[redacted]
Counsel for Plaintiff

BY: _____
[redacted]
AK Bar No. [redacted]

Notice of Filing Plaintiff's Objections to Defendant's Page/Line Counter Designations Under Seal
State of Alaska v. [redacted]

Case No. 3AN-06-9650 CI
Page 1 of 1

002320

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	Case No. 3AN-06-9630 CIV
Defendant.	)	
	)	

ORDER GRANTING
STIPULATION FOR EXTENSION OF TIME

IT IS HEREBY ORDERED that the parties' Stipulation for Extension of Time is GRANTED. The State's response to Lilly's Supplemental Brief Seeking Dismissal of the State's Claims Pursuant to the UTPCPA Exemption and Federal Preemption is due February 15, 2008.

DATED this 12th day of Feb, 2008.

BY THE COURT

Mark Rindner
Superior Court Judge

002321

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO DEFENDANT'S PROFITS, NET WORTH AND THE PRICE OF ZYPREXA

Defendant has moved to exclude from evidence in the trial of this case any evidence relating to Lilly's *Zyprexa*-based profits or general net worth, and evidence relating to the price of *Zyprexa*.

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evidence of Lilly's net worth, profits and the price of *Zyprexa* are relevant and probative on the issue of Lilly's motive and intent regarding its failure to warn of *Zyprexa*'s safety problems, its affirmative

Alaska R. Evid. 401.

misrepresentations about the drug, its conduct in promoting Zyprexa for off label uses and to impeach or controvert evidence that Lilly might offer on those issues.

For example, some of the evidence presented by the parties in this case will touch upon Lilly's launch of a Zyprexa marketing campaign into the primary care physician ("PCP") market in 2000. Lilly will likely present evidence or testimony that this launch was merely to satisfy an unmet need of primary care physicians for antipsychotic drugs (despite the fact Lilly was aware that such physicians typically do not treat schizophrenics or patients with bipolar disorder). Evidence regarding Lilly's net worth, profits and Zyprexa's price are probative on Lilly's real motive for its PCP launch -- in August of 2000, a federal court of appeals held that Lilly's patent on Prozac, another blockbuster drug, would expire sooner than had been anticipated resulting in a $56 billion dollar loss in the value of Lilly's stock in a single day and the company was facing the loss of hundreds of millions of dollars in Prozac sales every year thereafter. Lilly was "betting the farm" on Zyprexa to carry it through. Thus, the evidence provides an important counterbalance to the possible unfair perception the jury might get that Lilly's motivation for the PCP launch was purely altruistic.

Further, the evidence in the case will also involve what is referred to as "open access." "Open access" refers to the availability of medications on a Medicaid formulary or drug list without any restrictions. Lilly fought fiercely for "open access" to Zyprexa in Alaska and elsewhere. Again, evidence of Lilly's net worth, profits and the price of

Zyprexa bears directly upon an alternative motivation for "open access," that is, to keep *Zyprexa* sales unrestricted. The evidence provides an important balance to Lilly's likely arguments or testimony that the fight for "open access" was solely one for the benefit of mental health patients.

For the reasons stated above, the Court should deny Defendant's Motion in Limine.

Respectfully submitted this 15th day of February, 2008.

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Certificate of Service

I hereby certify that true and correct copies of **Plaintiff's Response to Defendant's Motion in Limine to Exclude Evidence Relating to Defendant's Profits, Net Worth and the Price of Zyprexa and (Proposed) Order** were served by messenger on:

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Barry Boise, via email (bboise@pepperlaw.com)
Pepper Hamilton

By: Peggy A. Cooper
Date: 3/13/08

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO PLAINTIFF'S DAMAGES OR ECONOMIC INJURY

Defendant Eli Lilly and Company ("Lilly") has moved to exclude from the trial of this case any evidence related to Plaintiff's damages or economic injury, arguing any such evidence is not relevant to the liability phase of the case.

While a jury will determine the extent of the State's damages in a second trial if the State achieves a verdict on liability in the first trial, the jury in the first trial must at least understand the potential nature of such damages. The jury must know, without needing to know whether it actually occurred, that the potential for injuries and damages existed in connection with Lilly's conduct. Further, the fact that some of those damages directly correlate to profit for Lilly is relevant to Lilly's motive and intent, and to

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impeach any suggestion by Lilly that any of its actions were motivated by other considerations.

For the reasons stated above, the Court should deny Defendant's Motion in Limine.

Respectfully submitted this 14 day of February, 2008.

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Date 2/14/08

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FILED
STATE OF ALASKA
THIRD DISTRICT

08 FEB 14 PM 4:13
CLERK OF TRIAL COURTS

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE
DEPUTY CLERK

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

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE CERTAIN TESTIMONY OF THE STATE'S EXPERTS

Defendant Eli Lilly and Company ("Lilly") has moved to exclude from evidence in the trial of this case any testimony or opinions from the State's experts regarding the knowledge or beliefs of the FDA, Lilly or individual physicians.

The State filed expert reports per the Court's Routine Pretrial Order on November 12, 2007. At that time, the State incorporated both the expert reports and deposition testimony of a number of experts previously identified in the Zyprexa multidistrict litigation (MDL). In that same pretrial order, the deadline for filing motions related to expert testimony was January 7, 2008. Lilly actually sought and received a one week extension of that deadline, yet it filed no motions related to any of the State's experts' testimony. It now files a motion in limine to exclude certain testimony of the state's

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experts as having "no basis in any body of knowledge or expertise" and lying "outside the bounds of expert testimony."[1]

Lilly has waived its right to attack the foundation or admissibility of the State's experts' opinions. Lilly had the opportunity to do so in accordance with the Court's pretrial schedule and chose not to. It should not be allowed to make an end run around that schedule by casting its motion in a different light or seeking the same relief through a motion of another kind.

Specifically, Lilly attacks certain testimony of Dr. John Gueriguian.[2] Dr. Gueriguian is a medical doctor, a pharmacologist, who among other things was employed as a medical officer by the U.S. Food and Drug Administration ("FDA") for twenty years. Rule 702(a) provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.[3]

---

[1] Def. Mot. in Limine to Exclude Certain Testimony of the State's Experts, 3.

[2] Lilly concludes its argument in the motion by stating, "In addition, the State should be precluded from introducing or referring to excerpts of any deposition containing such testimony." Def. Mot. at 3. This vague, one-off request should be disregarded by the Court. It is inherently unfair to require the State to respond to this exclusion request when Lilly has provided absolutely no notice of either the specific testimony or deponents to which it is referring.

[3] Alaska R. Evid. 702.

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As Lilly has not challenged Dr. Gueriguian's qualifications in any manner, he is entitled to render opinions on the evidence based upon his expertise and qualifications. He is entitled to give an opinion on what evidence means, including what knowledge the evidence would have imparted to a regulatory body which he was a part of for twenty years and which he would have expertise on by virtue of his training and experience.

For the reasons stated above, the Court should deny Defendant's Motion in Limine.

Respectfully submitted this 14 day of February, 2008.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO NEW YORK TIMES ARTICLES

Defendant Eli Lilly and Company ("Lilly") has moved to exclude from evidence in the trial of this case any evidence relating to a series of articles published in *The New York Times* in December 2006, regarding Zyprexa, as well as the surrounding controversy which led to the February 13, 2007 injunction precluding further disclosure of confidential Lilly documents entered in the Zyprexa multidistrict litigation ("MDL").

The State does not intend to offer into evidence the *New York Times* articles referred to by Lilly, and thus does not oppose this motion in that regard. However, the State does intend to offer into evidence documents referenced in those articles, and documents which may have been generated as a result thereof. The admissibility of any such documents should be judged on its own terms without reference to the *New York*

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Times articles. Specifically, the State does intend to offer into evidence the two documents specifically cited by Lilly in its motion: Lilly's February 20, 2007 submission to the U.S. Food and Drug Administration ("FDA"), and the FDA's March 28, 2007 letter to Lilly.

The February 20, 2007 submission by Lilly to the FDA does indeed contain, at least in part, a point by point response to issues raised in the *New York Times* articles. However, these responses discuss in particular documents and data at issue in this litigation, and thus represent Lilly's views and explanations on those issues. Some of those views or explanations could be admissible as evidence of Lilly's state of mind, be admissions or statements against interest, or be used by the State to impeach inconsistent views or statements by Lilly witnesses. Thus, any ruling that the document is per se inadmissible would be inappropriate.

The March 28, 2007 letter has even less connection to the *New York Times* article. As Lilly notes, the letter is at least in part related to Lilly's New Drug Application for an additional treatment indication for Symbyax, a combination drug which includes the olanzapine (Zyprexa) molecule. However, the letter is also a critical assessment of study data involving Zyprexa and of the adequacy of the Zyprexa label itself. As discussed in the State's response to Lilly's Motion in Limine to Exclude References to Recent Regulatory Developments, this letter is admissible evidence probative on a number of issues in this case. In the entirety of the letter, there is but a single mention of the *New*

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York Times articles, when the FDA notes that Lilly's February 20, 2007 submission was "not particularly helpful" in response to FDA's concerns regarding the articles. A ruling finding the March 2007 letter inadmissible simply because of its tenuous connection to (and single mention of) the *New York Times* articles would be inappropriate.

For the reasons stated above, the Court should deny Defendant's Motion in Limine.

Respectfully submitted this 14 day of February, 2008.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT
FEB 14 2008
Clerk of the Trial Courts
By _____ Deputy

Case No. 3AN-06-05630 CI

DEFENDANT ELI LILLY AND COMPANY'S OPPOSITION TO THE STATE OF ALASKA'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OR EVIDENCE REGARDING THE LACK OF RESTRICTIONS ON THE AVAILABILITY OF ZYPREXA OR LACK OF AN INJUNCTION AGAINST CERTAIN CONDUCT BY DEFENDANT

Despite conceding that nearly 3½ years ago, the State of Alaska became aware of Zyprexa's® alleged health risks, the State seeks to prevent Eli Lilly and Company from introducing evidence that, to this day, the State had not imposed *any restriction* on Alaska Medicaid patients' access to the medication. The State also seeks to blind the jury from learning that the State could have sought an injunction against Lilly for the conduct alleged in this lawsuit, but did not. This motion must be denied because the facts regarding the State's inaction are probative of whether Lilly's conduct violate the State's Unfair Trade Practices Consumer Protection Act ("UTPCPA") and whether Lilly's warnings have been adequate.

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I. THE STATE'S REFUSAL TO RESTRICT ACCESS TO ZYPREXA TO THIS DAY DEMONSTRATES THAT LILLY'S ACTIONS DID NOT VIOLATE THE UTPCPA.

Among the State's UTPCPA claims are that Lilly "represented that Zyprexa had characteristics, uses, benefits, and/or qualities that it did not have" and "represented that Zyprexa was of a particular standard, quality, and grade suitable for consumption when in fact it was not."[1] The State proposes to prove these claims with "evidence that Lilly through its representatives marketed Zyprexa as safe and effective, both for uses for which it was approved by the FDA and for many uses that were not approved … [and that] Lilly knew that the drug was not safe for any of these uses."[2]

Dave Campana, the State's pharmacy benefit director and 30(b)(6) designee with knowledge of allegations in the Complaint, testified that the State was aware of "an issue of Zyprexa and diabetes" by the fall of 2004, and took steps to further investigate the alleged issue at that time.[3] Following that investigation, the State did nothing – such as communicating the alleged risk to Alaska physicians,[4] or placing restrictions on its payment

[1] Compl. at ¶53.

[2] Pl's. Mem. Describing Claims and Proofs at 22.

[3] Exhibit A, Deposition of David Campana, September 19, 2007, at 243-44, 246.

[4] *See* Exhibit B, Plf's First Am. Resp. to Def.'s First Set of Interrog. No. 26. *See also, e.g.*, Exhibit C, Deposition of Lucy Ljubicich Curtiss, December 13, 2007, at 27 (no memory of receiving a letter from the State concerning the use of antipsychotics); Exhibit D, Deposition of Duane Hopson, December 11, 2007, at 76-77 (never received letter from Drug Utilization Committee of State of Alaska concerning use of Zyprexa).

for Zyprexa[5] – except to file this lawsuit in 2006. The State has otherwise taken no action to protect its citizens from an allegedly dangerous (and FDA-approved) medication or to advise doctors of the risk. It has not implemented a preferred drug list for antipsychotic medications, as it could, and as it has for some other classes of medications.[6] Nor has it instituted any sort of prior authorization process for Zyprexa, despite its claims that the medication is unsafe.[7] Instead the State has continued to pay for the medicine to this day, with no change to its payment policies.[8]

Moreover, one would have expected that the Department of Health and Social Services, the agency charged with safeguarding the health of Alaska citizens and with administering Medicaid pharmacy benefits, would have been the source of the grievance that led to this lawsuit. Not only was it not the source, but it was not even involved in the

[5] *See* Exhibit A, Campana Depo. at 260-69 (testifying that, in fall 2004, or perhaps earlier, he had gathered information he interpreted to be communicating that Zyprexa caused diabetes, yet never required prior authorization for Medicaid reimbursement of Zyprexa prescriptions, implemented a "step-edit" procedure, or created a PDL for antipsychotics).

[6] Exhibit A, Campana Depo. at 265-69; Exhibit E, Pl's. Resp. to Def's. First Set of Interrogs. at 2-3.

[7] Exhibit A, Campana Depo. at 258-59; Exhibit E at 2.

[8] The State's basis for not placing restrictions on Zyprexa is to place blame on unspecified lobbying efforts. The State's suggestion that inappropriate interactions occurred with or by the State legislature is both slanderous and unsupported. Like many allegations the State has levied here, they were once pled, but dropped when the State was put to its proofs. There are no fraud claims being tried, and the State's suggestion that relevant evidence should not be admitted because of the existence of unspecified and unproven conduct should be rejected.

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decision to sue. Nobody told the Commissioner of DHSS about the lawsuit, or the serious allegations contained within, until November 2007, one month before her deposition.[9]

Caselaw from other jurisdictions confirms that evidence that a purchaser continued to use a prescription medication after learning of a particular risk is relevant to whether the medication actually possesses the benefits or qualities asserted by the defendant pharmaceutical manufacturer. For example, in *Heindel v. Pfizer,* a New Jersey federal court held that purchasers of Vioxx and Celebrex asserting consumer fraud and breach of warranty claims based on the pharmaceutical manufacturers' alleged failures to warn of cardiovascular side-effects were not entitled to a refund because, *inter alia*, they found the medication to be effective treatment and continued to use it.[10] Although the plaintiffs claimed that the medications "were not as they were described and thus [were] not merchantable," [11] the court found that plaintiffs could not claim to have received less than "the effective . . . remedy that they bargained for" and were not entitled to any recovery.[12] In similar fashion, a Florida district court in *Prohias v. Pfizer* ruled that plaintiffs asserting statutory unfair trade practice, negligent misrepresentation, and unjust enrichment claims based on allegedly deceptive

[9] Exhibit F, Deposition of Karleen Kay Jackson, December 12, 2007, at 6-7.

[10] *Heindel v. Pfizer*, 381 F. Supp. 2d 364, 367, 379-80 (D.N.J. 2004).

[11] *Id.* at 379–80.

[12] *Id.*

advertising regarding Lipitor could not establish injury when they continued to pay for and consume the medicine in light of "their knowledge of its alleged lack of benefits."[13]

Thus, contrary to the State's contention, the fact that the State continues to pay for Zyprexa after learning the "truth" about the medicine almost 3½ years ago is highly relevant to whether Zyprexa had "characteristics, uses, benefits, and/or qualities that it did not have."[14] As with the plaintiffs in *Heindel* and *Prohias*, the State's continued use of and payment for Zyprexa, as well as its decision not to seek an injunction against Lilly, is strong evidence that the State has found Zyprexa to be both safe and suitable for consumption. The State's policies contradict its allegations against Lilly in this action, and undermine its contention that Zyprexa "was not safe" for any uses.

II. EVIDENCE OF THE STATE'S CONTINUED PAYMENT IS RELEVANT TO DEMONSTRATE THAT LILLY ADEQUATELY WARNED PHYSICIANS OF ZYPREXA'S SIDE EFFECTS.

For reasons similar to those above, evidence of the State's continued payment shows that Lilly adequately warned of Zyprexa's risks, and is therefore not liable to the State for strict liability failure-to-warn.

---

[13] *Prohias v. Pfizer*, 485 F.Supp.2d 1329, 1334-35 (S.D. Fla. 2007) (applying Florida and New York law); *see also Whalen v. Pfizer*, No. 600125/05, 2005 WL 2875291, at *3 (N.Y.Sup. Sept. 22, 2005) (consumer asserting claim under New York's unfair trade practices statute in class-action alleging harm from deceptive Listerine advertisement could not show injury in light of her continued use of the product).

[14] *See The Middlebury Corp. v. Hussmann Corp.*, No. 90 C 2744, 1992 WL 220922 (N.D.Ill., Aug. 27, 1992) (plaintiff's conduct that was inconsistent with the allegation in its complaint was relevant under Fed R. Evid. 401).

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For a warning to be adequate, it must be "sufficient to put the physician on notice of the nature and extent of any scientifically knowable risks or dangers inherent in the use of the drug."[15] If, in 2004, the State had learned for the first time of risks inherent in the use of Zyprexa – risks that were not disclosed in the Zyprexa label – one would expect the State to use its available means to restrict and limit the use of Zyprexa. At a minimum, one would expect the State to issue its own warning to physicians about the alleged dangers of Zyprexa, which it certainly could have done. Instead, the State maintained the status quo, tending to show that the warnings contained in the Zyprexa label were already "sufficient to put [a] physician on notice of the nature and extent of any scientifically knowable risks or dangers inherent in the use of the drug."

CONCLUSION

For the foregoing reasons, this Court should deny the State's motion in limine.

DATED this 14th day of February, 2008.

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and
LANE POWELL LLC
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By _____
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[15] *Shanks v. Upjohn Co.*, 835 P.2d 1189, 1200 (Alaska 1992).

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IN THE SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630

VIDEOTAPED 30(b)(6) DEPOSITION OF
STATE OF ALASKA
DESIGNEE: DAVID CAMPANA

Wednesday, September 19, 2007
9:30 a.m.
Volume II

Taken by Counsel for Defendant
at
Lane Powell, LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska

Page 242

MR. ROTHSCHILD: Counsel, I'm prepared to go off the record if you want to give him a few minutes.

MR. HAHN: Let's let him look at it and see what he wants to do first.

Q. You know, actually, let me just pause for a minute before I ask you to do that. When you had this conversation with Mr. Peeples, this was shortly after the lawsuit was filed, correct?

A. Correct.

Q. Do you know whether you had seen the complaint at that point?

A. I don't believe I saw the complaint at that time.

Q. So maybe this is a better question for me to ask you: What was your understanding about what the lawsuit was about when you found out about it?

A. I would have to speculate. I don't exactly remember.

Q. Do you have any sort of recollection of your understanding about what the lawsuit was about?

A. I really don't remember.

Q. Do you have an understanding about what the lawsuit is about now?

A. I have a lot better understanding of what it is about now.

Q. What's your understanding about what the lawsuit

Page 243

is about?

A. The lawsuit is about the problem of discovery that Zyprexa causes diabetes, that the knowledge of that was not disclosed early enough to the prescribing community, and that there was improper marketing going on by Eli Lilly that was not disclosing that to the prescribing community.

Q. Not disclosing what to the prescribing community?

A. Was not disclosing the causation of diabetes.

Q. So that -- you know, the understanding of the lawsuit you just described, I mean was that consistent with what you had understood before the lawsuit was filed?

A. Yes. We did have an understanding of Zyprexa causing diabetes.

Q. Before the lawsuit was filed?

A. Before the lawsuit was filed.

Q. You say "we". You are referring to yourself?

A. I guess I have to get rid of the "we". It's myself and I.

Q. How did you develop your understanding that Zyprexa caused diabetes?

A. I don't remember where I got the knowledge originally. I know we did do a drug utilization review study on the atypicals and diabetes, diabetes drugs, and

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that was back in 2004. And then we did an intervention on that also.

Q. At the time you did the drug utilization review, did you have the understanding that Zyprexa caused diabetes?

A. Yes.

Q. Was your understanding that Zyprexa caused diabetes a precipitating event to the drug utilization review? Is that why you did it?

A. Well, and I don't remember and I don't have any documentation of why we did that study, but I know that I had read information that there was a cause and effect with Zyprexa in causing diabetes.

Q. Where did you read that?

A. I don't remember.

Q. When did you read that?

A. I don't remember the exact date on that either or a time period. It was probably in August of 2004.

Q. Did you say what materials you read that caused you to reach that conclusion?

A. I don't remember.

Q. You said you did an intervention on that. What was the intervention?

A. Well, we had pulled the drug utilization review profiles, and I mentioned that yesterday, I believe, how

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the profiles come out and give you the pharmacy claims and the medical claims.

And the drug utilization review committee had reviewed those and then we produced a letter that we were going to send to providers, to the prescribing providers about monitoring for the side effects of Zyprexa that could be associated with diabetes, the metabolic side effects.

Q. Did you actually create that letter?

A. Yes.

Q. Was it sent?

A. It was sent.

Q. When was that sent?

A. In the fall of 2004.

Q. Did that letter address only Zyprexa, or other medications?

A. That I don't remember.

Q. Do you still have a copy of that letter?

A. I think it was provided with the interrogatory.

Q. Prior to August 2004, had you read any literature relating to any relationship between Zyprexa and diabetes?

A. I don't remember.

Q. And let me extend the question to atypical anti-psychotics and diabetes.

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A. That I don't remember either.
Q. Prior to August 2004, did you have any awareness about whether Zyprexa had any relationship to weight gain?
A. I did have some information prior to that, and that came in on a prior authorization request for one of the anorexic drugs, the drugs to help cause weight loss.
That was basically an anecdotal piece of information, but I had seen that.
Q. Other than that anecdotal episode, any other -- did you have any other knowledge about any relationship between Zyprexa and weight gain?
A. No, I don't.
Q. So it's fair to say that by the fall of 2004, you had come to the conclusion that Zyprexa caused diabetes?
A. I had information indicating that.
Q. Other than diabetes, is it the state's position that Zyprexa causes any other medical condition?
A. Well, there is a whole list of side effects that Zyprexa causes that are listed in the package insert.
Q. Other than the package insert --
A. Well, and, you know, it is listed in there that diabetes and heart disease and high lipids and all of that is mentioned in the package insert.
Q. When you received this information that Zyprexa

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causes diabetes, what did you do about it?
A. Developed a drug utilization review study about that.
Q. What conclusions, if any, did you draw from the drug utilization review?
A. That it appeared that a number of the people who were taking Zyprexa had diabetes and were taking diabetic drugs.
Q. Did you, through that drug utilization review study, conclude -- reach any conclusions about whether the number of Zyprexa users taking diabetes medication was higher than would be expected?
A. I don't remember.
Q. Did you take any other actions besides the DUR study, and I think you mentioned the letter, anything else?
A. That's all we have done up to that point.
Q. Up to what point?
A. Up to this point now based on the information that or that letter from the FDA, we're looking at another intervention.
Q. Did you take any action as a result of what you found out from the DUR study?
A. Well, as far as the action we had taken was just doing the intervention, sending out a notice to the

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prescribers that watch out for these metabolic effects that could happen while patients are taking Zyprexa.
Q. That's the letter you referred to?
A. That's the letter.
Q. Again, you don't remember sitting here today whether it was Zyprexa specific or a class specific?
A. Correct.
Q. The FDA letter you were referring to, what letter is that?
A. The letter on CBX that the FDA sent to Eli Lilly requesting that they improve the labelling on the causation of diabetes.
Q. When did you receive -- do you remember the date of that letter?
A. It was March 28th.
Q. Of --
A. Of -- well, actually, there wasn't an actual date from the FDA, but there was a date on the letter of March 28th.
Q. 2007?
A. 2007.
Q. When did you receive that letter?
A. It was in my notebook again, and so I had received it as from counsel.
Q. And you said -- do you know when you received it?

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A. I don't remember exactly when I had received it.
Q. But you said that's now motivating another intervention?
A. That's correct.
Q. What intervention?
A. That will be an intervention to look at Zyprexa and to also remind prescribers that it can cause diabetes and to be on the watch out for metabolic changes.
Q. So let me just make sure I understand that. One intervention is to look at Zyprexa?
A. Well, one study or one review is to look at Zyprexa and look at whether or not diabetes drugs are being used in those who are taking Zyprexa.
Q. So one intervention that you were talking about as a result of this letter is to do another drug utilization review?
A. Correct.
Q. And another intervention that you are considering is to send another communication to prescribers?
A. Well, the intervention would grow out of the drug utilization review.
Q. So you would do a drug utilization review and then after that is completed, you might or might not send a letter to prescribers?

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this on prior authorization? Why don't we get every drug we want?"

Also, psychiatrists are one group of physicians that, in my opinion, think that every drug should be available on their arsenal to every patient, and they have a stronger opinion of that than other practicing physicians.

Q. Do you understand why they hold that opinion?

A. No, I don't.

Q. Clozapine was subject to a prior authorization process?

A. It is subject to a prior authorization process.

Q. And what is the reason that Clozapine is subject to a prior authorization process?

A. Safety issue for Clozapine causes blood dyscrasias.

Q. So that's an example of a mental health medication which, notwithstanding the political pressure, the state has implemented a prior authorization process?

A. Correct.

Q. Has the state instituted a prior authorization process for Zyprexa?

A. No.

Q. Why not?

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A. We haven't.

Q. Is it the same reasons that you haven't done a step edit?

A. Correct.

Q. So the state is capable of doing it for safety reasons, but has chosen not to for Zyprexa?

A. Correct.

Q. And you have been able to resist the pressure from the mental health community and psychiatrists in keeping Clozapine on prior authorization?

A. Correct.

Q. And you have experienced that pressure?

A. I have experienced that pressure.

VIDEOGRAPHER: Off record. The time is 12:18.

(There was a lunch break.)

VIDEOGRAPHER: On the record. The time is 1:31.

Q. Good afternoon, Mr. Campana.

A. Hello.

Q. Your counsel has given me two disks. One of them has just a tape label on it that says "gender control". One has a label, and the other one has a label that says "gender tally and gender zip".

I have looked at those disks, and I'm just going

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to give you some representations about the numbers, unique Medicaid recipients that I saw there just to confirm that's consistent with your understanding of what was expected.

On the disc that includes the gender tally file, that appears to just be a duplicate of the gender file that we looked at earlier today which had relatively small numbers, 700 or so Zyprexa users and about 8,000 other users.

Then there is a file "gender Zyp" and it has 6,455 unique recipients. Is that number consistent with your recollection about the number of Zyprexa users who you received gender data for?

A. That's closer to consistent to my number.

Q. I mean, is there anything about that number that sounds wrong to you or you just don't have a perfect recollection of the number?

A. I don't have a perfect recollection of that number, but it's more than 700, and 6,000 sounds better.

Q. Other than that, you can't -- you don't know whether it was 8,000 or 4,000?

A. Right.

Q. It was in the thousands?

A. Thousands.

Q. The other disk, which is "gender control," has

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256,772 unique recipients. Does that sound roughly consistent with the information you pulled for the gender of what you would label the control group?

A. That sounds like a number more consistent with the control group.

Q. Thank you. For the prior authorization of Clozapine, I understood your testimony to be that that prior authorization was already in effect when you became part of the Department of Health and Social Services; is that correct?

A. That is correct.

Q. Has that treatment, reimbursement treatment of Clozapine, been up for review during your tenure?

A. We have reviewed it. I have reviewed it and I changed the criteria set for that and developed a specific form for authorization of Clozapine.

Q. It's been up for review and you have made changes. Is that subject to any kind of public proceeding or comment period or anything like that?

A. No.

Q. You have indicated that you felt political pressure regarding that treatment of Clozapine.

What was the context where you would receive pressure?

A. I have met at different times with different

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

PLAINTIFF'S FIRST AMENDED RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26(e)(2) and 33 of the Alaska Rules of Civil Procedure, Plaintiff hereby amends it's Responses to Defendant's First Set of Interrogatories as follows. Plaintiff specifically reserves the right to further supplement and or amend these responses as discovery continues and as provided for by the applicable rules of procedure.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each Medicaid State Plan in effect for the State of Alaska since 1996, and for each plan:

a. state whether pharmacy benefits are offered as part of the coverage;

b. state whether pharmacy benefits are offered for Zyprexa prescriptions; and

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c. describe in detail any rules and/or restrictions relating to the pharmacy benefits offered for Zyprexa.

ANSWER: The current Medicaid plan in effect for the State is on the State Health Department website and may be accessed at: http://www.hss.state.ak.us/commissioner/medicaidstateplan/default.htm. The State will produce copies of all responsive plans in its possession as soon as possible. Upon information and belief, the following has been true from 1996 to the present:

a. Pharmacy benefits are offered.

b. Pharmacy benefits are offered for Zyprexa prescriptions.

c. Zyprexa benefits are available for "medically necessary" prescriptions. To be "medically necessary," a prescription must comply with FDA approved uses or be for a use found within standard medical or pharmaceutical compendia.

INTERROGATORY NO. 2: Identify each formulary and/or Preferred Drug List (PDL) in effect for the State of Alaska's Medicaid State Plan since 1996, and for each formulary and/or PDL:

a. state whether Zyprexa is on the formulary and/or PDL;

b. describe in detail any rules and/or restrictions on the formulary and/or PDL relating to Zyprexa; and

c. state whether any other atypical antipsychotic is on the formulary and/or PDL.

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ANSWER: See response to Request for Production No. 3. The State has had a formulary since approximately 1995. The State has had a PDL since approximately 2004. The PDL does not include any atypical antipsychotic medications.

a. Zyprexa is on the formulary but it is not on the PDL.

b. There are no rules, regulations and/or restrictions on the prescription of Zyprexa except the general requirement that the prescription be "medically necessary."

c. Other atypical antipsychotic medications are on the formulary but there are no atypical antipsychotics on the PDL.

INTERROGATORY NO. 3: Did you ever modify the formulary and/or PDL for any antipsychotic drug? If so, explain why.

ANSWER: Neither the PDL nor the formulary has ever been modified for any antipsychotic drug.

INTERROGATORY NO. 4: Identify the Alaska employees or representatives who communicated with Lilly about Zyprexa since 1996.

ANSWER: David Campana and Tom Porter, M.D.

INTERROGATORY NO. 5: Identify each employee of Alaska that had supervisory or management responsibility for any of the pharmacy benefits offered to Medicaid recipients, or any role in selecting drugs for the formulary and/or PDL, since 1996. For all employees identified in response to this interrogatory, identify all documents they considered regarding Zyprexa.

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ANSWER: Upon information and belief, the individuals most knowledgeable about the selection of drugs for the formulary are David Campana and Tom Porter, M.D. Plaintiff objects to the request to identify all documents these individuals "considered" regarding Zyprexa on the grounds that it is overbroad, vague and burdensome.

INTERROGATORY NO. 6: Identify each of Alaska's committees, including its P&T Committees, and its constituent members, that have had supervisory or management responsibility for any of the pharmacy benefits offered to Medicaid recipients, or any role in selecting drugs for the formulary and/or PDL, since 1996. For all committees and members identified in response to this interrogatory, identify all documents they considered regarding Zyprexa.

ANSWER: Upon information and belief, the State has not organized a P & T committee since 1996 that had any management or supervisory role in the selection of pharmacy benefits offered to Medicaid recipients. However, the P&T Committee did have a role in selecting the individual drug products for the formulary or PDL.

INTERROGATORY NO. 7: Did Alaska retain a PBM to assist in the development or administration of its Medicaid pharmacy benefit? If the answer is yes, identify the PBM(s), the Alaska employees with any supervisory or management responsibility for the relationship between Alaska and Alaska's PBM(s) since 1996, and the individuals at Alaska's PBM(s) with whom Alaska communicated regarding Zyprexa since 1996, and any documents exchanged with the PBM(s) regarding Zyprexa since 1996.

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ANSWER: The State of Alaska has engaged the services of a PBM, First Health Services Corporation. First Health's services have been limited to administrating the pharmacy program. It has had no responsibility for selecting drugs to include on the formulary or PDL. David Campana and Lynda Walsh are the State's employees with responsibility for communicating with First Health. Plaintiff objects to the interrogatory to the extent it requests Plaintiff to identify any documents exchanged with the PBM(s) regarding Zyprexa since 1996 on the grounds that the request is overbroad, vague, and burdensome.

INTERROGATORY NO. 8: Identify any false or misleading statements alleged to have been made to Alaska by Lilly.

ANSWER: The State reserves the right to supplement this response as discovery progresses in this case. The following is a general description of the types of false or misleading statements made by Lilly regarding Zyprexa. As discovery has only begun in this case, it is neither intended to be exhaustive nor exclusive.

Lilly's false and misleading statements regarding Zyprexa span a decade beginning with the launch of the drug in 1996 and continuing through the FDA mandated label change for all atypical antipsychotics in 2003.

In 1995, a prelaunch analysis by Lilly of data from its HGAJ study of Zyprexa showed a statistically significant increased incidence of high blood glucose in Zyprexa patients as compared to patients using Haldol. This analysis has never been disclosed to

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prescribing physicians. In October 1996, Lilly began its Zyprexa marketing campaign by characterizing weight gain on Zyprexa as "therapeutic" instead of an adverse event. By 1998, despite Lilly's knowledge of significant numbers of post-marketing adverse event reports related to weight gain and hyperglycemia, Lilly continued to refer to these adverse events as "infrequent" events seen in clinical studies and made no mention of them in post-marketing reports. Also, by 1998 Lilly employees were internally discussing the link between atypical antipsychotics, weight gain and diabetes, but declined to notify physicians or the public of their concerns.

In 1999, Lilly knew there was a reasonable association between Zyprexa and treatment-emergent hyperglycemia, yet it refused to provide any such information to physicians or the public because it would be damaging to Zyprexa. In early 2000, however, Lilly's Global Product Labeling Committee was reviewing information in consideration of a labeling change regarding hyperglycemia. The information indicated that analyses of Lilly's clinical trial data showed an incidence of treatment-emergent hyperglycemia in Zyprexa patients that was 3 ½ times higher than in patients treated with placebo. Rather than providing this information to physicians, however, Lilly engaged in a tortured reanalysis of the data and in may May of 2000 issued a label change without prior FDA approval claiming there was no significant difference in treatment-emergent hyperglycemia rates between Zyprexa and placebo. Lilly had its sales force actively promote this tortured data nationwide. Five months later, in October 2000, FDA demanded that Lilly remove the

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language from the label claiming there was no difference in the rates of treatment-emergent hyperglycemia, noting that the changed label inappropriately implied that Zyprexa was safe.

In 2000, while trumpeting the supposedly superior efficacy of Zyprexa and falsely stating that it carried no significant risk of treatment-emergent hyperglycemia, Lilly additionally began a nationwide campaign to promote Zyprexa to primary care physicians for non-indicated or off-label uses. Lilly not only falsely promoted Zyprexa as safe and effective, it promoted it for a wide array of intentionally broad and vague mental disorders. At the same time, outside Lilly consultants were warning the company to "come clean" on the hyperglycemia issue, yet Lilly failed to do so. Instead, in 2001 Lilly tripled its direct-to-physician promotion of Zyprexa using a "sell sheet" which featured its tortured clinical trial data analysis and a "comparable rates" message claiming Zyprexa patients had rates of hyperglycemia and diabetes comparable to those treated with other antipsychotics. Internally, however, Lilly acknowledged that appropriate analysis of clinical trial data showed that Zyprexa treatment resulted in statistically significant mean increases in random glucose compared with both placebo and other antipsychotics.

Regardless, in 2002 Lilly's position was that diabetes occurred at comparable rates across antipsychotics. While it knew this position was false, it believed that advancing it would help eliminate diabetes concerns from the risk-benefit equation. Further, Lilly advanced the position that weight gain on Zyprexa was manageable for most patients even though it knew that position was false. Lilly instructed its sales force to avoid the issue of

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hyperglycemia altogether if possible, and if confronted with it, to use the "comparable rates" story.

In July 2003, Lilly intensified its efforts to influence the public that Zyprexa did not cause diabetes and that if diabetes occurred with Zyprexa use it did so at "comparable rates" with other antipsychotics. While admitting internally that weight gain caused by Zyprexa could be a substantial contributing factor pushing some patients into diabetes, Lilly falsely represented to the public that there was no causal link, that weight gain was manageable, and that diabetes occurred at "comparable rates" across all antipsychotics. Even after the September 2003 label change mandated by the FDA, Lilly continued to trumpet its "comparable rates" message, even though subsequent pronouncements by the ADA Consensus Conference and the Veterans Healthcare Administration clearly demonstrated that the consensus of the medical community most knowledgeable on this issue was that use of Zyprexa resulted in more weight gain and a higher risk of diabetes than most other atypical antipsychotics..

INTERROGATORY NO. 9: Identify any false or misleading statements alleged to have been made to Alaska's PBM(s) by Lilly.

ANSWER: See response to Interrogatory No. 8 above.

INTERROGATORY NO. 10: Identify every on-label Zyprexa prescription that you reimbursed or paid for as a result of Lilly's alleged wrongful conduct.

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ANSWER: The State objects to this interrogatory to the extent it seeks information and/or documents, the disclosure of which would violate the privacy or confidentiality rights of non-parties including, but not limited to, those privacy rights guaranteed by the Federal and state constitutions as well as Federal and state statutes and regulations. Subject to and without waiving this objection, upon the execution of a proper confidentiality agreement, Alaska will provide in electronic form data which does not identify individuals from which Alaska is extracting the comparative data which will substantiate its claim.

INTERROGATORY NO. 11: For each Zyprexa prescription identified in response to Interrogatory No. 10:

a. identify the patient;

b. identify the age of the patient;

c. identify the patient's diagnosis for which Zyprexa was prescribed;

d. identify the period of time the patient took Zyprexa;

e. state whether the patient is still being prescribed Zyprexa;

f. state what treatment, if any, you contend the patient would have received if the Zyprexa prescription you allege was the result of Lilly's wrongful conduct was not prescribed;

g. identify the prescriber;

h. state whether the prescriber continues to prescribe Zyprexa;

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i. state whether you contend that Zyprexa was not efficacious for the patient;

j. state whether you contend that Zyprexa caused a physical injury(ies) to the patient, and if so, what injury(ies) were caused; and

k. state the dollar amount Alaska is seeking to recover from Lilly for that prescription.

ANSWER: See response to Interrogatory No. 10 above. The State further objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties and is not reasonably calculated to lead to the discovery of admissible evidence. As the State noted in its Memorandum Describing its Claims and Proofs, because the State seeks compensation for increased costs within a population, its burden is to establish generic causation in that population (i.e., the rate by which Alaska Medicaid recipients who took Zyprexa show an increased incidence of diabetes compared to the background rate of the disease in matched controls). The State does not need to prove specific causation in any particular individual.

Subject to and without waiving these objections, the State will provide in electronic form the data described in Interrogatory No. 10 above. Further, to the extent this interrogatory seeks information related to the State's damages, this response will be supplemented and made as part of the expert disclosures and accompanying reports related to its proof of damages in this case.

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INTERROGATORY NO. 12: Identify every off-label Zyprexa prescription you reimbursed or paid for as a result of Lilly's alleged wrongful conduct.

ANSWER: See response to Interrogatory No. 10 above. Subject to and without waiving this objection, the State will provide in electronic form the data described in Interrogatory No. 10 above.

INTERROGATORY NO. 13: For each Zyprexa prescription identified in response to Interrogatory No. 12:

a. identify the patient;

b. identify the age of the patient;

c. identify the patient's diagnosis for which Zyprexa was prescribed;

d. identify the period of time the patient took Zyprexa;

e. state whether the patient is still being prescribed Zyprexa;

f. state what treatment, if any, you contend the patient would have received if the Zyprexa prescription you allege was the result of Lilly's wrongful conduct was not prescribed;

g. identify the prescriber;

h. state whether the prescriber continues to prescribe Zyprexa;

i. state whether you contend that Zyprexa was not efficacious for the patient;

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j. state whether you contend that Zyprexa caused a physical injury(ies) to the patient, and if so, what injury(ies) were caused; and

k. state the dollar amount Alaska is seeking to recover from Lilly for that prescription.

ANSWER: See responses to Interrogatory Nos. 10 and 11 above. Subject to and without waiving these objections, the State will provide in electronic form the data described in Interrogatory No. 10 above. Further, to the extent this interrogatory seeks information related to the State's damages, this response will be supplemented and made as part of the expert disclosures and accompanying reports related to its proof of damages in this case.

INTERROGATORY NO. 14: Describe in detail how Lilly's alleged wrongful conduct caused you to reimburse or pay for each of the Zyprexa prescriptions identified in response to Interrogatories 10 and 12.

ANSWER: Lilly's wrongful conduct, the general nature of which is described in response to Interrogatory No. 8 above, caused the State to pay for numerous Zyprexa prescriptions when there were safer, equally efficacious treatments available which could have been used if the physicians and the public had known the true risks and benefits of Zyprexa. Additionally, Lilly's wrongful conduct described generally in Interrogatory No. 8 caused the State to pay for numerous prescriptions of Zyprexa that were not medically necessary.

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INTERROGATORY NO. 15: Identify every person whose alleged deception by Lilly caused your reimbursement or payment for a Zyprexa prescription identified in response to Interrogatories 10 and 12.

ANSWER: The State objects to this interrogatory in that it is vague, ambiguous, and unintelligible. To the extent this interrogatory seeks the identities of specific Lilly employees or representatives who made misrepresentations; the State reserves the right to respond as discovery progresses.

INTERROGATORY NO. 16: Identify each physician that has written a prescription for Zyprexa the cost of which was reimbursed or paid for by Alaska, that you allege was deceived by Lilly and that but for the deception would not have prescribed Zyprexa to some or all of his/her patients.

ANSWER: See responses to Interrogatory Nos. 10 and 11 above.

INTERROGATORY NO. 17: For each physician identified in response to Interrogatory No. 16, identify any false or misleading statements made to him or her by Lilly.

ANSWER: See responses to Interrogatory Nos. 10 and 11 above.

INTERROGATORY NO. 18: Do you contend that the price to you of Zyprexa would have been lower but for Lilly's alleged wrongful conduct? If so, identify each fact that forms the basis of that contention, identify the amount at which you contend Zyprexa

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should have been priced, and set forth your methodology and data for calculating the difference in price.

ANSWER: The State objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties, is not reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous. The State contends it paid for unnecessary Zyprexa prescriptions, regardless of price, because it was deceptively and illegally marketed.

INTERROGATORY NO. 19: Do you contend that Lilly's alleged wrongful conduct increased the number of on-label Zyprexa prescriptions you reimbursed or paid for? If so, identify each fact that supports that contention.

ANSWER: Yes, the State alleges that Lilly's wrongful conduct increased the number of on-label Zyprexa prescriptions. Had Lilly appropriately warned the State, physicians and the public about the true efficacy and side effects of Zyprexa, there would have been fewer prescriptions. The State intends to provide proof, as described in its Memorandum Describing Claims and Proofs, that a reasonable physician would have instead prescribed equally efficacious and safer alternatives to Zyprexa. While the State reserves the right to supplement this response with more specific facts as discovery progresses, see generally the facts discussed in response to Interrogatory No. 8 above. Additionally, the number of prescriptions has declined since the FDA mandated label change.

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INTERROGATORY NO. 20: Please quantify the number of additional on-label prescriptions you contend were caused by Lilly's alleged wrongful conduct and set forth your methodology and data for calculating the increased number of on-label Zyprexa prescriptions and the excess dollar amount that you reimbursed or paid as a result of Lilly's alleged wrongful conduct.

ANSWER: The State's response to this interrogatory will be part of its expert disclosures and accompanying reports related to its proof of damages in this case.

INTERROGATORY NO. 21: Do you contend that Lilly's alleged wrongful conduct increased the number of off-label Zyprexa prescriptions you reimbursed or paid for? If so, identify each fact that supports that contention.

ANSWER: Yes, the State of Alaska maintains that Lilly's wrongful conduct increased the number of off-label Zyprexa prescriptions. The State intends to provide proof, as described in its Memorandum Describing Claims and Proofs, that Lilly promoted Zyprexa for numerous non-indicated or off-label uses which resulted in prescriptions which were not medically necessary. While the State reserves the right to supplement this response with more specific facts as discovery progresses, see generally the facts discussed in response to Interrogatory No. 8, above.

INTERROGATORY NO. 22: Please quantify the number of additional off-label prescriptions you contend were caused by Lilly's alleged wrongful conduct and set forth your methodology and data for calculating the increased number of on-label Zyprexa

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prescriptions and the excess dollar amount that you reimbursed or paid as a result of Lilly's alleged wrongful conduct.

ANSWER: The State's response to this interrogatory will be supplemented and made as part of its expert disclosures and accompanying reports related to its proof of damages in this case.

INTERROGATORY NO. 23: Identify all payments for medical treatment of injuries you allege were caused by Zyprexa for which you seek damages in this matter.

ANSWER: The State's response to this interrogatory will be supplemented and made as part of its expert disclosures and accompanying reports related to its proof of damages in this case.

INTERROGATORY NO. 24: For each payment identified in response to Interrogatory No. 23:

a. identify the patient;

b. identify the age of the patient;

c. identify the patient's diagnosis for which Zyprexa was prescribed;

d. identify the period of time the patient took Zyprexa;

e. state whether the patient is still being prescribed Zyprexa;

f. state what treatment, if any, you contend the patient would have received if the Zyprexa prescription you allege was the result of Lilly's wrongful conduct was not prescribed;

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g. identify the prescriber;

h. state whether the prescriber continues to prescribe Zyprexa;

i. identify any misrepresentations you allege caused the physician to prescribe Zyprexa;

j. identify the injury you allege was caused by Zyprexa for which you seek damages;

k. identify the physician that diagnosed the injury;

l. identify all physicians that treated the injury; and

m. state the dollar amount that Alaska is claiming against Lilly in damages.

ANSWER: See responses to Interrogatory Nos. 10 and 11 above.

INTERROGATORY NO. 25: Identify any communications since 1996 by Alaska to Medicaid recipients concerning Zyprexa.

ANSWER: The State has no documents or communications responsive to this request.

INTERROGATORY NO. 26: Identify any communications since 1996 by Alaska to physicians concerning Zyprexa.

ANSWER: The State objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties, is not reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous. Subject to and without

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waiving these objections, the State has no documents or communications responsive to this request.

INTERROGATORY NO. 27: Identify any Drug Utilization Reviews and/or Drug Class Reviews done by Alaska since 1996 concerning Zyprexa.

ANSWER: The State did a review of atypical antipsychotic medications in approximately 2005 with respect to their propensity to cause diabetes. The minutes of this review meeting are being produced with the State's responses to Lilly's Requests for Production.

INTERROGATORY NO. 28: Identify any algorithms or protocols adopted by Alaska for treatment of schizophrenia, bipolar disorder, and/or any other algorithms or protocols that include Zyprexa.

ANSWER: The State of Alaska has used a protocol for the use of atypical antipsychotic medications, although it does not specifically address Zyprexa. This protocol was developed by a grant from Eli Lilly. It is generally known as the BPMS program and is run by a contractor, CNS.

INTERROGATORY NO. 29: Identify any studies or analyses performed by Alaska to assess the effect on overall costs to the state of prescribing atypical anti-psychotics to mental health patients.

ANSWER: The State objects to this interrogatory in that it is vague and ambiguous. Subject to and without waiving this objection, and assuming this interrogatory is limited to

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the Medicaid program, cost reports were prepared in response to a request from the Anchorage Daily News in approximately 2005. These reports are produced in the State's responses to Lilly's Requests for Production.

INTERROGATORY NO. 30: Identify all employees of Alaska with knowledge of the events alleged in the Complaint.

ANSWER: David Campana and Tom Porter, M.D.

INTERROGATORY NO. 31: Identify any lawsuits filed by plaintiff against any manufacturer of atypical anti-psychotics other than Lilly.

ANSWER: The State objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, the State has filed no other such lawsuits.

INTERROGATORY NO. 32: Identify all Alaska Medicaid recipients who have filed lawsuits or otherwise asserted claims against Lilly on their own behalf in connection with their ingestion of Zyprexa.

ANSWER: The State objects to this interrogatory to the extent it seeks information and/or documents, the disclosure of which would violate the privacy or confidentiality rights of non-parties including, but not limited to, those privacy rights guaranteed by the Federal and state constitutions as well as Federal and state statutes and regulations. The State further objects to this interrogatory in that it seeks information that is irrelevant to the claims and

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defenses of the parties and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 33: Did you ever take any steps to reduce the amount you were paying or reimbursing for any anti-psychotic drug? If the answer is anything but an unqualified "no," describe in detail what steps you took.

ANSWER: The State participated in the BPMS program sponsored by Lilly. Additionally, the State has investigated the possibility of joining with other states to negotiate further rebates. Further, the State limits the prescription of pharmaceuticals as set out in the answer to interrogatory 1(c).

INTERROGATORY NO. 34: Did Alaska impose the maximum allowable charges pursuant to Alaska Stat. §47.07.042 or any predecessor statute for purchases of Zyprexa? If the answer is anything but an unqualified "yes," explain the reason why not.

ANSWER: The maximum allowable charge is $3.00 per co-payment. The State has chosen to impose a co-payment of $2.00 as being more reasonable given the finances of Alaska Medicaid recipients.

INTERROGATORY NO. 35: Has Alaska involuntarily medicated any Alaska citizens with Zyprexa? If the answer is yes, please state when such involuntary medications have occurred, the conditions for which Zyprexa was prescribed, and identify any court filings relating to the involuntary medications.

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ANSWER: See response to Interrogatory No. 10 above. The State further objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties, is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 36: State when you first became aware that:

a. Lilly advertised and sold Zyprexa for non-approved or "off-label" uses as alleged in paragraph 12 of the Complaint, and what actions, if any, you took upon discovering those facts.

b. Beginning in 1998, scientific journals began to publish studies that established a causal association between using Zyprexa and developing or exacerbating diabetes mellitus and development of dangerously high blood sugar levels, also known as hyperglycemia, as alleged in paragraph 14 of the Complaint, and what actions, if any, you took upon discovering those facts.

c. In April 2002, the British Medicines Control Agency warned about the risk of diabetes for patients prescribed Zyprexa, of diabetes, hyperglycemia, diabetic ketoacidosis, diabetic coma, and one death among and required Lilly to warn consumers about the risk of diabetes and diabetic ketoacidosis, and further required Lilly to instruct patients who were using Zyprexa to monitor their blood sugar levels, as alleged in paragraph 15 of the Complaint, and what actions, if any, you took upon discovering those facts.

d. In April 2002, the Japanese Health and Welfare Ministry issued emergency safety information regarding the risk of diabetes, diabetic ketoacidosis, and

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diabetic coma for users of Zyprexa, as alleged in paragraph 16 of the Complaint, and what actions, if any, you took upon discovering those facts.

e. Lilly had failed to warn consumers in this country, including Alaska, about the serious risks of diabetes, hyperglycemia, diabetic ketoacidosis, and other serious conditions associated with the use of Zyprexa, as alleged in paragraph 17 of the Complaint, and what actions, if any, you took upon discovering those facts.

f. Lilly failed to warn consumers, including Alaska, its physicians, and Medicaid recipients, of the dangerous and permanent health consequences caused by the use of Zyprexa, and instructed its representatives to minimize and misrepresent the dangers of Zyprexa, as alleged in paragraph 19 of the Complaint, and what actions, if any, you took upon discovering those facts.

g. Beginning in the 1990s, Lilly's strategy has been to aggressively market and sell Zyprexa by willfully misleading potential users about serious dangers resulting from the use of Zyprexa and that Lilly advertised the use of Zyprexa for off-label uses, including geriatric dementia, pediatric symptoms, and for general depression, as alleged in paragraph 20 of the Complaint, and what actions, if any, you took upon discovering those facts.

h. Lilly engaged in an advertising program that purposefully disguised the risks associated with Zyprexa use, including serious illness and death, as alleged in paragraph 22 of the Complaint, and what actions, if any, you took upon discovering those facts.

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i. Lilly in making Zyprexa available to Medicaid patients, knowingly misrepresented to the State of Alaska that Zyprexa was safe and effective, as alleged in paragraph 25 of the Complaint, and what actions, if any, you took upon discovering those facts.

ANSWER: The general answer to all subparts is that when the State of Alaska became aware of Lilly's misrepresentations, it filed a lawsuit. This general awareness took place in the summer of 2005.

However, Lilly took affirmative actions to hide the true nature of Zyprexa and its side effects from the State. For example in 2002, Lilly's representative Kevin Walters met with David Campana to discuss Lilly products. He focused upon diabetic products. With respect to atypical medications, he introduced the BPMS system but did not disclose the evidence connecting Zyprexa with diabetes. In approximately the same time period, Alaska joined a group of other States, led by *Michigan* to negotiate manufacturer rebates. At no time did Lilly or its representatives disclose the connection between Zyprexa and diabetes.

Lilly consistently concealed important safety information regarding Zyprexa from plaintiff, physicians and the public. When such information surfaced in the popular or scientific press, Lilly took steps to blunt the information or spin available data to its purposes, primarily further concealing the risks of Zyprexa. Thus, Lilly falsely maintained that weight gain due to Zyprexa was manageable for most patients, that there was no

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association between Zyprexa and hyperglycemia, and that even if hyperglycemia occurred in patients taking Zyprexa, it occurred at rates comparable to other antipsychotics.

INTERROGATORY NO. 37: Identify all witnesses you intend to call to testify at the trial of this matter.

ANSWER: The State will designate witness at the time called for under the pre-trial order.

INTERROGATORY NO. 38: Identify all expert witnesses you intend to call to testify at the trial of this matter.

ANSWER: The State will designate expert witness, provide reports and make those experts available for deposition in accordance with the pre-trial report.

Respectfully SUBMITTED and DATED this 31 day of October, 2007

FELDMAN, ORLANSKY & SANDERS
Counsel for Plaintiff

BY _____
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Alaska Bar No. 7510085

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(843) 727-6500
Counsel for Plaintiff

Certificate of Service

I hereby certify that a true and correct copy of the foregoing **Plaintiff's First Amended Responses to Defendant's First Set of Interrogatories** was served by messenger on:

Brewster H. Jamieson
Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

Barry Boise, via email (boiseb@pepperlaw.com)
Pepper Hamilton

By Peggy S Crowe
Date 10/31/07

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VERIFICATION

David Campana, being duly sworn, deposes and says: that he is the Medicaid Pharmacy Program Manager for the State of Alaska, Department of Health and Social Services, Division of Health Care Services and as an agent of the State of Alaska, the plaintiff in the foregoing action; that he has read Plaintiff's First Amended Answers to Defendant's First Set of Interrogatories and knows the contents thereof are true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters, he believes them to be true.

David Campana
David Campana

NOTARY:

Laura M Capen
Notary Public

Date: 10/15/07

State of: Alaska

County of: Anchorage

My Commission Expires: 10/22/08

LAURA M. CAPEN NOTARY PUBLIC STATE OF ALASKA

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

VIDEOTAPED DEPOSITION OF

LUCY LJUBICICH CURTISS, M.D.

December 13, 2007
1:35 p.m.

Taken at:
Anchorage Community Mental Health
4020 Folker Street, Conference Room C
Anchorage, Alaska

Reported by: Sandra M. Mierop, CRR, CPP, CBC

preference. Patients have been on medications for a long period of time. They know what works; they know what they trust.

Q. Any other factors that would militate in favor of using perphenazine besides patient preference?

A. Well, it has anti-psychotic effect. You know, I'm looking for effectiveness of a medication, and acceptability to a patient.

Q. For new patients who have not used perphenazine and therefore wouldn't have a preference for it, do you, nevertheless, from time to time prescribe perphenazine for such patients?

A. At times.

Q. And what are the factors you consider in those cases?

A. The patients that come here, it is very rare that I would see a patient who has -- is treatment naive. That, by definition, the people that we take are people that are coming out of other treatment facilities, and generally have been started on an agent. And so I'm not the first one that is prescribing for somebody. They typically have experience with treatment.

And so often people will have come here after having failed other treatments.

Q. For a treatment-naive patient, have you used perphenazine?

A. Not since my residency, no.

Q. Why is that?

A. Well, first, I don't see very many treatment-naive patients. But in terms of options that are available, I do preferentially use the newer anti-psychotics.

Q. Have you ever received -- do you recall ever receiving a letter from the State regarding the use of anti-psychotics?

A. I don't. I don't know.

Q. Are you familiar with the Behavioral Pharmacy Management Steering Committee?

A. I am aware of the process.

Q. What do you know about it?

A. That there is -- the BPMS, it is -- I believe it is sponsored, paid for, by Eli Lilly, and they have a number of indicators that they review, and they send out notification to prescribers every other month when patients that we're -- for whom we're prescribing meet certain indicators. If they're on three or more

psychotropics, if they're on a subtherapeutic dose, if they're on a higher-than-recommended dose, if they're not filling their prescriptions, if they're getting prescriptions from more than one provider, we get those lists every two months.

Q. Have you personally received them?

A. Yes, I have.

Q. Have any of those notifications affected your practice with any of these patients?

A. There have been times when I have learned that patients are seeing more than one provider; that's useful information.

Q. And receiving more medication than you're aware of?

A. Yes.

Q. Any other times it's affected your practice?

A. Overall, I'd say not.

Q. Dr. Curtiss, are you ever involved in treating patients who are involuntarily committed?

A. Yes, I am.

Q. Where do you treat them?

A. I treat them here as outpatients. We do

get patients who are on -- it's called an early release. It is an outpatient commitment that -- it starts as an inpatient commitment, and then patients can agree that they will adhere to treatment recommendations specified in the early release. We as an agency would accept responsibility for their care. And if they don't follow through with what they've agreed to, then -- well, then, it's our responsibility to seek rehospitalization. So, yes, I have treated patients like that.

Q. Are those patients coming out from API?

A. Yes.

Q. Are any --

A. There -- I'm sorry, there are also patients who are in court-ordered treatment who as conditions of their parole or probation are mandated to -- to follow treatment recommendations, in which case I would recommend to someone this is -- this is what I think you should do; if you disagree, go to your P.O. about it. That's involuntary. Coercive.

Q. The folks who are coming out of API, are any of them, when you receive them, on Zyprexa?

A. Some.

EXHIBIT C
PAGE 2 OF 2

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D E F

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

VIDEOTAPED DEPOSITION OF DUANE HOPSON, M.D.

December 11, 2007
10:18 a.m.

Taken at:
The Offices of Lane Powell, LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska

Reported by: Leslie J. Knisley
Shorthand Reporter

psychiatric drugs?
A Well, I think the way they were introduced and marketed and presented to the physicians was that it revolutionized treatment, particularly for schizophrenia, and that it treated the positive and the negative symptoms of schizophrenia. So I think that was with lower risk of tardive dyskinesia. That was usually in the -- in the scheme of presentation, too.
Q Have you seen patients with tardive dyskinesia?
A Yes.
Q Can you describe what that is?
A It's generally a permanent and can be a very disabling disorder caused by dopamine block A from the older atypical -- from the older typical antipsychotics. And there are tremors involved, some muscular rigidity, a lot of oral dyskinesias, oral abnormal movements of the tongue. And it's not only socially embarrassing, but it can be very impairing to some individuals.
Q And in weighing the risks and benefits of using the typicals against the atypicals, why is it that you come down on the side of the atypicals?

A I think I believe and I think a lot of docs believe that if -- I've heard discussion about this -- is that we, if we're properly informed about the risks associated with a medication, we can monitor those risks. And it's all in the process of being adequately informed and then us monitoring for it. The problem with tardive dyskinesia is it can come on even with just one dose. There have been reported cases. So it's not kind of a progressive thing that we might see with the atypicals, so we have more time to intervene with it.
Q So it's your practice, then, to monitor your patients on atypicals for those side effects that you're concerned about?
A As we've become more aware and educated about the risks, yes.
Q And as you said, though, you were aware of the weight gain and blood sugar issues really from the start; is that right?
A Yes.
Q You described earlier the use of Zyprexa in an involuntary situation -- or the involuntary use of Zyprexa. How is the medication administered when it's administered

involuntarily?
A Well, ideally, orally. And, interestingly, you can convince a patient after they've gone before a judge and a judge has told them, you know, this doctor is going to give you this medication, you can usually tell the patient, you need to take this, the judge has said you have to take it, and they usually will. If not, then it can be administered to them with a shot, intramuscular.
Q That includes Zyprexa?
A Yes.
Q Have you seen the intramuscular injection of Zyprexa work for these patients?
A Yes. I would say as much as, you know, any other intramuscular.
Q Have you ever read the Complaint that the State has filed against Eli Lilly?
A No.
Q Did anyone in the attorney general's office consult with you before filing the Complaint?
A No.
Q Did you ever receive a letter from a drug utilization review committee regarding the

use of Zyprexa here in Alaska?
A Not that I recall, no.
Q Are you able to say that there are -- there is -- as a blanket statement, a drug that's equally as effective as Zyprexa in all situations, but with a better safety profile?
A In all situations? No.
Q Why is that?
A Because I think patients are unique and illnesses are unique, and you can't -- I think you would be in error to say that one particular medication in all instances is going to be superior.
Q When you prescribe Zyprexa, do you talk to your patients about the risks and benefits?
A Yes.
Q Have you always done that?
A Yes.
Q What are the risks that you've told your patients about Zyprexa?
A Well, there again, I think it's been a -- it's been a process of changing how we do informed consent over time with Zyprexa, as we've learned more about it. But now it includes the weight gain, increase in lipids, blood sugar,

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Alaska Rules of Civil Procedure, Plaintiff provides the following Responses to Defendant's First Set of Interrogatories. Plaintiff specifically reserves the right to supplement and amend these responses as provided by the applicable rules of procedure.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each Medicaid State Plan in effect for the State of Alaska since 1996, and for each plan:

a. state whether pharmacy benefits are offered as part of the coverage;

b. state whether pharmacy benefits are offered for Zyprexa prescriptions; and

c. describe in detail any rules and/or restrictions relating to the pharmacy benefits offered for Zyprexa.

ANSWER: The current Medicaid plan in effect for the State is on the State Health Department website and may be accessed at: http://www.hss.state.ak.us/commissioner/medicaidstateplan/default.htm. The State will produce

copies of all responsive plans in its possession as soon as possible. Upon information and belief, the following has been true from 1996 to the present:

a. Pharmacy benefits are offered.

b. Pharmacy benefits are offered for Zyprexa prescriptions.

c. Zyprexa benefits are available for "medically necessary" prescriptions. To be "medically necessary," a prescription must comply with FDA approved uses or be for a use found within standard medical or pharmaceutical compendia.

INTERROGATORY NO. 2: Identify each formulary and/or Preferred Drug List (PDL) in effect for the State of Alaska's Medicaid State Plan since 1996, and for each formulary and/or PDL:

a. state whether Zyprexa is on the formulary and/or PDL;

b. describe in detail any rules and/or restrictions on the formulary and/or PDL relating to Zyprexa; and

c. state whether any other atypical antipsychotic is on the formulary and/or PDL.

ANSWER: See response to Request for Production No. 3. The State has had a formulary since approximately 1995. The State has had a PDL since approximately 2004. The PDL does not include any atypical antipsychotic medications.

a. Zyprexa is on the formulary but it is not on the PDL.

b. There are no rules, regulations and/or restrictions on the prescription of Zyprexa except the general requirement that the prescription be "medically necessary."

c. Other atypical antipsychotic medications are on the formulary but there are no atypical antipsychotics on the PDL.

INTERROGATORY NO. 3: Did you ever modify the formulary and/or PDL for any antipsychotic drug? If so, explain why.

ANSWER: Neither the PDL nor the formulary has ever been modified for any antipsychotic drug.

INTERROGATORY NO. 4: Identify the Alaska employees or representatives who communicated with Lilly about Zyprexa since 1996.

ANSWER: David Campana, Lynda Walsh, and Tom Porter, M.D.

INTERROGATORY NO. 5: Identify each employee of Alaska that had supervisory or management responsibility for any of the pharmacy benefits offered to Medicaid recipients, or any role in selecting drugs for the formulary and/or PDL, since 1996. For all employees identified in response to this interrogatory, identify all documents they considered regarding Zyprexa.

ANSWER: Upon information and belief, the individuals most knowledgeable about the selection of drugs for the formulary are David Campana and Tom Porter, M.D. Plaintiff objects to the request to identify all documents these individuals "considered" regarding Zyprexa on the grounds that it is overbroad, vague and burdensome.

INTERROGATORY NO. 6: Identify each of Alaska's committees, including its P&T Committees, and its constituent members, that have had supervisory or management responsibility for any of the pharmacy benefits offered to Medicaid recipients, or any role in selecting drugs for the formulary and/or PDL, since 1996. For all committees and members identified in response to this interrogatory, identify all documents they considered regarding Zyprexa.

ANSWER: Upon information and belief, the State has not organized a P & T committee since 1996 that had any management or supervisory role in the selection of pharmacy benefits offered to Medicaid recipients or any role in selecting drugs for the formulary or PDL.

INTERROGATORY NO. 7: Did Alaska retain a PBM to assist in the development or administration of its Medicaid pharmacy benefit? If the answer is yes, identify the PBM(s), the

Alaska employees with any supervisory or management responsibility for the relationship between Alaska and Alaska's PBM(s) since 1996, and the individuals at Alaska's PBM(s) with whom Alaska communicated regarding Zyprexa since 1996, and any documents exchanged with the PBM(s) regarding Zyprexa since 1996.

ANSWER: The State of Alaska has engaged the services of a PBM, First Health Services, Corporation. First Health's services have been limited to administrating the pharmacy program. It has had no responsibility for selecting drugs to include on the formulary or PDL. David Campana and Lynda Walsh are the State's employees with responsibility for communicating with First Health. Plaintiff objects to the interrogatory to the extent it requests Plaintiff to identify any documents exchanged with the PBM(s) regarding Zyprexa since 1996 on the grounds that the request is overbroad, vague, and burdensome.

INTERROGATORY NO. 8: Identify any false or misleading statements alleged to have been made to Alaska by Lilly.

ANSWER: The State reserves the right to supplement this response as discovery progresses in this case. The following is a general description of the types of false or misleading statements made by Lilly regarding Zyprexa. As discovery has only begun in this case, it is neither intended to be exhaustive nor exclusive.

Lilly's false and misleading statements regarding Zyprexa span a decade beginning with the launch of the drug in 1996 and continuing through the FDA mandated label change for all atypical antipsychotics in 2003.

In 1995, a prelaunch analysis by Lilly of data from its HGAJ study of Zyprexa showed a statistically significant increased incidence of high blood glucose in Zyprexa patients as compared to patients using Haldol. This analysis has never been disclosed to prescribing

physicians. In October 1996, Lilly began its Zyprexa marketing campaign by characterizing weight gain on Zyprexa as "therapeutic" instead of an adverse event. By 1998, despite Lilly's knowledge of significant numbers of post-marketing adverse event reports related to weight gain and hyperglycemia, Lilly continued to refer to these adverse events as "infrequent" events seen in clinical studies and made no mention of them in post-marketing reports. Also, by 1998 Lilly employees were internally discussing the link between atypical antipsychotics, weight gain and diabetes, but declined to notify physicians or the public of their concerns.

In 1999, Lilly knew there was a reasonable association between Zyprexa and treatment-emergent hyperglycemia, yet it refused to provide any such information to physicians or the public because it would be damaging to Zyprexa. In early 2000, however, Lilly's Global Product Labeling Committee was reviewing information in consideration of a labeling change regarding hyperglycemia. The information indicated that analyses of Lilly's clinical trial data showed an incidence of treatment-emergent hyperglycemia in Zyprexa patients that was 3 ½ times higher than in patients treated with placebo. Rather than providing this information to physicians, however, Lilly engaged in a tortured reanalysis of the data and in May of 2000 issued a label change without prior FDA approval claiming there was no significant difference in treatment-emergent hyperglycemia rates between Zyprexa and placebo. Lilly had its sales force actively promote this tortured data nationwide. Five months later, in October 2000, FDA demanded that Lilly remove the language from the label claiming there was no difference in the rates of treatment-emergent hyperglycemia, noting that the changed label inappropriately implied that Zyprexa was safe.

In 2000, while trumpeting the supposedly superior efficacy of Zyprexa and falsely stating that it carried no significant risk of treatment-emergent hyperglycemia, Lilly additionally began a

nationwide campaign to promote Zyprexa to primary care physicians for non-indicated or off-label uses. Lilly not only falsely promoted Zyprexa as safe and effective, it promoted it for a wide array of intentionally broad and vague mental disorders. At the same time, outside Lilly consultants were warning the company to "come clean" on the hyperglycemia issue, yet Lilly failed to do so. Instead, in 2001 Lilly tripled its direct-to-physician promotion of Zyprexa using a "sell sheet" which featured its tortured clinical trial data analysis and a "comparable rates" message claiming Zyprexa patients had rates of hyperglycemia and diabetes comparable to those treated with other antipsychotics. Internally, however, Lilly acknowledged that appropriate analysis of clinical trial data showed that Zyprexa treatment resulted in statistically significant mean increases in random glucose compared with both placebo and other antipsychotics.

Regardless, in 2002 Lilly's position was that diabetes occurred at comparable rates across antipsychotics. While it knew this position was false, it believed that advancing it would help eliminate diabetes concerns from the risk-benefit equation. Further, Lilly advanced the position that weight gain on Zyprexa was manageable for most patients even though it knew that position was false. Lilly instructed its sales force to avoid the issue of hyperglycemia altogether if possible, and if confronted with it, to use the "comparable rates" story.

In July 2003, Lilly intensified its efforts to influence the public that Zyprexa did not cause diabetes and that if diabetes occurred with Zyprexa use it did so at "comparable rates" with other antipsychotics. While admitting internally that weight gain caused by Zyprexa could be a substantial contributing factor pushing some patients into diabetes, Lilly falsely represented to the public that there was no causal link, that weight gain was manageable, and that diabetes occurred at "comparable rates" across all antipsychotics. Even after the September 2003 label change mandated by the FDA, Lilly continued to trumpet its "comparable rates" message, even

though subsequent pronouncements by the ADA Consensus Conference and the Veterans Healthcare Administration clearly demonstrated that the consensus of the medical community most knowledgeable on this issue was that use of Zyprexa resulted in more weight gain and a higher risk of diabetes than most other atypical antipsychotics.

INTERROGATORY NO. 9: Identify any false or misleading statements alleged to have been made to Alaska's PBM(s) by Lilly.

ANSWER: See response to Interrogatory No. 8 above.

INTERROGATORY NO. 10: Identify every on-label Zyprexa prescription that you reimbursed or paid for as a result of Lilly's alleged wrongful conduct.

ANSWER: The State objects to this interrogatory to the extent it seeks information and/or documents, the disclosure of which would violate the privacy or confidentiality rights of non-parties including, but not limited to, those privacy rights guaranteed by the Federal and state constitutions as well as Federal and state statutes and regulations. Subject to and without waiving this objection, upon the execution of a proper confidentiality agreement, Alaska will provide in electronic form data which does not identify individuals from which Alaska is extracting the comparative data which will substantiate its claim.

INTERROGATORY NO. 11: For each Zyprexa prescription identified in response to Interrogatory No. 10:

a. identify the patient;

b. identify the age of the patient;

c. identify the patient's diagnosis for which Zyprexa was prescribed;

d. identify the period of time the patient took Zyprexa;

e. state whether the patient is still being prescribed Zyprexa;

f. state what treatment, if any, you contend the patient would have received if the Zyprexa prescription you allege was the result of Lilly's wrongful conduct was not prescribed;

g. identify the prescriber;

h. state whether the prescriber continues to prescribe Zyprexa;

i. state whether you contend that Zyprexa was not efficacious for the patient;

j. state whether you contend that Zyprexa caused a physical injury(ies) to the patient, and if so, what injury(ies) were caused; and

k. state the dollar amount Alaska is seeking to recover from Lilly for that prescription.

ANSWER: See response to Interrogatory No. 10 above. The State further objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties and is not reasonably calculated to lead to the discovery of admissible evidence. As the State noted in its Memorandum Describing its Claims and Proofs, because the State seeks compensation for increased costs within a population, its burden is to establish generic causation in that population (i.e., the rate by which Alaska Medicaid recipients who took Zyprexa show an increased incidence of diabetes compared to the background rate of the disease in matched controls). The State does not need to prove specific causation in any particular individual.

Subject to and without waiving these objections, the State will provide in electronic form the data described in Interrogatory No. 10 above. Further, to the extent this interrogatory seeks information related to the State's damages, this response will be supplemented and made as part of the expert disclosures and accompanying reports related to its proof of damages in this case.

INTERROGATORY NO. 12: Identify every off-label Zyprexa prescription you reimbursed or paid for as a result of Lilly's alleged wrongful conduct.

ANSWER: See response to Interrogatory No. 10 above. Subject to and without waiving this objection, the State will provide in electronic form the data described in Interrogatory No. 10 above.

INTERROGATORY NO. 13: For each Zyprexa prescription identified in response to Interrogatory No. 12:

a. identify the patient;

b. identify the age of the patient;

c. identify the patient's diagnosis for which Zyprexa was prescribed;

d. identify the period of time the patient took Zyprexa;

e. state whether the patient is still being prescribed Zyprexa;

f. state what treatment, if any, you contend the patient would have received if the Zyprexa prescription you allege was the result of Lilly's wrongful conduct was not prescribed;

g. identify the prescriber;

h. state whether the prescriber continues to prescribe Zyprexa;

i. state whether you contend that Zyprexa was not efficacious for the patient;

j. state whether you contend that Zyprexa caused a physical injury(ies) to the patient, and if so, what injury(ies) were caused; and

k. state the dollar amount Alaska is seeking to recover from Lilly for that prescription.

ANSWER: See responses to Interrogatory Nos. 10 and 11 above. Subject to and without waiving these objections, the State will provide in electronic form the data described in Interrogatory No. 10 above. Further, to the extent this interrogatory seeks information related to the State's

damages, this response will be supplemented and made as part of the expert disclosures and accompanying reports related to its proof of damages in this case.

INTERROGATORY NO. 14: Describe in detail how Lilly's alleged wrongful conduct caused you to reimburse or pay for each of the Zyprexa prescriptions identified in response to Interrogatories 10 and 12.

ANSWER: Lilly's wrongful conduct, the general nature of which is described in response to Interrogatory No. 8 above, caused the State to pay for numerous Zyprexa prescriptions when there were safer, equally efficacious treatments available which could have been used if the physicians and the public had known the true risks and benefits of Zyprexa. Additionally, Lilly's wrongful conduct described generally in Interrogatory No. 8 caused the State to pay for numerous prescriptions of Zyprexa that were not medically necessary.

INTERROGATORY NO. 15: Identify every person whose alleged deception by Lilly caused your reimbursement or payment for a Zyprexa prescription identified in response to Interrogatories 10 and 12.

ANSWER: The State objects to this interrogatory in that it is vague, ambiguous, and unintelligible. To the extent this interrogatory seeks the identities of specific Lilly employees or representatives who made misrepresentations; the State reserves the right to respond as discovery progresses.

INTERROGATORY NO. 16: Identify each physician that has written a prescription for Zyprexa the cost of which was reimbursed or paid for by Alaska, that you allege was deceived by Lilly and that but for the deception would not have prescribed Zyprexa to some or all of his/her patients.

ANSWER: See responses to Interrogatory Nos. 10 and 11 above.

INTERROGATORY NO. 17: For each physician identified in response to Interrogatory No. 16, identify any false or misleading statements made to him or her by Lilly.

ANSWER: See responses to Interrogatory Nos. 10 and 11 above.

INTERROGATORY NO. 18: Do you contend that the price to you of Zyprexa would have been lower but for Lilly's alleged wrongful conduct? If so, identify each fact that forms the basis of that contention, identify the amount at which you contend Zyprexa should have been priced, and set forth your methodology and data for calculating the difference in price.

ANSWER: The State objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties, is not reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous. The State contends it paid for unnecessary Zyprexa prescriptions, regardless of price, because it was deceptively and illegally marketed.

INTERROGATORY NO. 19: Do you contend that Lilly's alleged wrongful conduct increased the number of on-label Zyprexa prescriptions you reimbursed or paid for? If so, identify each fact that supports that contention.

ANSWER: Yes, the State alleges that Lilly's wrongful conduct increased the number of on-label Zyprexa prescriptions. Had Lilly appropriately warned the State, physicians and the public about the true efficacy and side effects of Zyprexa, there would have been fewer prescriptions. The State intends to provide proof, as described in its Memorandum Describing Claims and Proofs, that a reasonable physician would have instead prescribed equally efficacious and safer alternatives to Zyprexa. While the State reserves the right to supplement this response with more specific facts as discovery progresses, see generally the facts discussed in response to

Interrogatory No. 8 above. Additionally, the number of prescriptions has declined since the FDA mandated label change.

INTERROGATORY NO. 20: Please quantify the number of additional on-label prescriptions you contend were caused by Lilly's alleged wrongful conduct and set forth your methodology and data for calculating the increased number of on-label Zyprexa prescriptions and the excess dollar amount that you reimbursed or paid as a result of Lilly's alleged wrongful conduct.

ANSWER: The State's response to this interrogatory will be part of its expert disclosures and accompanying reports related to its proof of damages in this case.

INTERROGATORY NO. 21: Do you contend that Lilly's alleged wrongful conduct increased the number of off-label Zyprexa prescriptions you reimbursed or paid for? If so, identify each fact that supports that contention.

ANSWER: Yes, the State of Alaska maintains that Lilly's wrongful conduct increased the number of off-label Zyprexa prescriptions. The State intends to provide proof, as described in its Memorandum Describing Claims and Proofs, that Lilly promoted Zyprexa for numerous non-indicated or off-label uses which resulted in prescriptions which were not medically necessary. While the State reserves the right to supplement this response with more specific facts as discovery progresses, see generally the facts discussed in response to Interrogatory No. 8, above.

INTERROGATORY NO. 22: Please quantify the number of additional off-label prescriptions you contend were caused by Lilly's alleged wrongful conduct and set forth your methodology and data for calculating the increased number of on-label Zyprexa prescriptions and the excess dollar amount that you reimbursed or paid as a result of Lilly's alleged wrongful conduct.

ANSWER: The State's response to this interrogatory will be supplemented and made as part of its expert disclosures and accompanying reports related to its proof of damages in this case.

INTERROGATORY NO. 23: Identify all payments for medical treatment of injuries you allege were caused by Zyprexa for which you seek damages in this matter.

ANSWER: The State's response to this interrogatory will be supplemented and made as part of its expert disclosures and accompanying reports related to its proof of damages in this case.

INTERROGATORY NO. 24: For each payment identified in response to Interrogatory No. 23:

a. identify the patient;

b. identify the age of the patient;

c. identify the patient's diagnosis for which Zyprexa was prescribed;

d. identify the period of time the patient took Zyprexa;

e. state whether the patient is still being prescribed Zyprexa;

f. state what treatment, if any, you contend the patient would have received if the Zyprexa prescription you allege was the result of Lilly's wrongful conduct was not prescribed;

g. identify the prescriber;

h. state whether the prescriber continues to prescribe Zyprexa;

i. identify any misrepresentations you allege caused the physician to prescribe Zyprexa;

j. identify the injury you allege was caused by Zyprexa for which you seek damages;

k. identify the physician that diagnosed the injury;

l. identify all physicians that treated the injury; and

m. state the dollar amount that Alaska is claiming against Lilly in damages.

ANSWER: See responses to Interrogatory Nos. 10 and 11 above.

INTERROGATORY NO. 25: Identify any communications since 1996 by Alaska to Medicaid recipients concerning Zyprexa.

ANSWER: The State has no documents or communications responsive to this request.

INTERROGATORY NO. 26: Identify any communications since 1996 by Alaska to physicians concerning Zyprexa.

ANSWER: The State objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties, is not reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous. Subject to and without waiving these objections, the State has no documents or communications responsive to this request.

INTERROGATORY NO. 27: Identify any Drug Utilization Reviews and/or Drug Class Reviews done by Alaska since 1996 concerning Zyprexa.

ANSWER: The State did a review of atypical antipsychotic medications in approximately 2005 with respect to their propensity to cause diabetes. The minutes of this review meeting are being produced with the State's responses to Lilly's Requests for Production.

INTERROGATORY NO. 28: Identify any algorithms or protocols adopted by Alaska for treatment of schizophrenia, bipolar disorder, and/or any other algorithms or protocols that include Zyprexa.

ANSWER: The State of Alaska has used a protocol for the use of atypical antipsychotic medications, although it does not specifically address Zyprexa. This protocol was developed by

a grant from Eli Lilly. It is generally known as the BPMS program and is run by a contractor, CNS.

INTERROGATORY NO. 29: Identify any studies or analyses performed by Alaska to assess the effect on overall costs to the state of prescribing atypical anti-psychotics to mental health patients.

ANSWER: The State objects to this interrogatory in that it is vague and ambiguous. Subject to and without waiving this objection, and assuming this interrogatory is limited to the Medicaid program, cost reports were prepared in response to a request from the Anchorage Daily News in approximately 2005. These reports are produced in the State's responses to Lilly's Requests for Production.

INTERROGATORY NO. 30: Identify all employees of Alaska with knowledge of the events alleged in the Complaint.

ANSWER: David Campana, Lynda Welch and Tom Porter, M.D.

INTERROGATORY NO. 31: Identify any lawsuits filed by plaintiff against any manufacturer of atypical anti-psychotics other than Lilly.

ANSWER: The State objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, the State has filed no other such lawsuits.

INTERROGATORY NO. 32: Identify all Alaska Medicaid recipients who have filed lawsuits or otherwise asserted claims against Lilly on their own behalf in connection with their ingestion of Zyprexa.

ANSWER: The State objects to this interrogatory to the extent it seeks information and/or documents, the disclosure of which would violate the privacy or confidentiality rights of non-parties including, but not limited to, those privacy rights guaranteed by the Federal and state constitutions as well as Federal and state statutes and regulations. The State further objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 33: Did you ever take any steps to reduce the amount you were paying or reimbursing for any anti-psychotic drug? If the answer is anything but an unqualified "no," describe in detail what steps you took.

ANSWER: The State is and has been working on a formulary aimed at reducing the amount paid for all pharmaceuticals, including atypical antipsychotics. The State participated in the BPMS program sponsored by Lilly. Additionally, the State has investigated the possibility of joining with other states to negotiate further rebates. Further, the State limits the prescription of pharmaceuticals as set out in the answer to interrogatory 1(c).

INTERROGATORY NO. 34: Did Alaska impose the maximum allowable charges pursuant to Alaska Stat. §47.07.042 or any predecessor statute for purchases of Zyprexa? If the answer is anything but an unqualified "yes," explain the reason why not.

ANSWER: The maximum allowable charge is $3.00 per co-payment. The State has chosen to impose a co-payment of $2.00 as being more reasonable given the finances of Alaska Medicaid recipients.

INTERROGATORY NO. 35: Has Alaska involuntarily medicated any Alaska citizens with Zyprexa? If the answer is yes, please state when such involuntary medications have occurred,

the conditions for which Zyprexa was prescribed, and identify any court filings relating to the involuntary medications.

ANSWER: See response to Interrogatory No. 10 above. The State further objects to this interrogatory in that it seeks information that is irrelevant to the claims and defenses of the parties, is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 36: State when you first became aware that:

a. Lilly advertised and sold Zyprexa for non-approved or "off-label" uses as alleged in paragraph 12 of the Complaint, and what actions, if any, you took upon discovering those facts.

b. Beginning in 1998, scientific journals began to publish studies that established a causal association between using Zyprexa and developing or exacerbating diabetes mellitus and development of dangerously high blood sugar levels, also known as hyperglycemia, as alleged in paragraph 14 of the Complaint, and what actions, if any, you took upon discovering those facts.

c. In April 2002, the British Medicines Control Agency warned about the risk of diabetes for patients prescribed Zyprexa, of diabetes, hyperglycemia, diabetic ketoacidosis, diabetic coma, and one death among and required Lilly to warn consumers about the risk of diabetes and diabetic ketoacidosis, and further required Lilly to instruct patients who were using Zyprexa to monitor their blood sugar levels, as alleged in paragraph 15 of the Complaint, and what actions, if any, you took upon discovering those facts.

d. In April 2002, the Japanese Health and Welfare Ministry issued emergency safety information regarding the risk of diabetes, diabetic ketoacidosis, and diabetic coma for users of Zyprexa, as alleged in paragraph 16 of the Complaint, and what actions, if any, you took upon discovering those facts.

e. Lilly had failed to warn consumers in this country, including Alaska, about the serious risks of diabetes, hyperglycemia, diabetic ketoacidosis, and other serious conditions associated with the use of Zyprexa, as alleged in paragraph 17 of the Complaint, and what actions, if any, you took upon discovering those facts.

f. Lilly failed to warn consumers, including Alaska, its physicians, and Medicaid recipients, of the dangerous and permanent health consequences caused by the use of Zyprexa, and instructed its representatives to minimize and misrepresent the dangers of Zyprexa, as alleged in paragraph 19 of the Complaint, and what actions, if any, you took upon discovering those facts.

g. Beginning in the 1990s, Lilly's strategy has been to aggressively market and sell Zyprexa by willfully misleading potential users about serious dangers resulting from the use of Zyprexa and that Lilly advertised the use of Zyprexa for off-label uses, including geriatric dementia, pediatric symptoms, and for general depression, as alleged in paragraph 20 of the Complaint, and what actions, if any, you took upon discovering those facts.

h. Lilly engaged in an advertising program that purposefully disguised the risks associated with Zyprexa use, including serious illness and death, as alleged in paragraph 22 of the Complaint, and what actions, if any, you took upon discovering those facts.

i. Lilly in making Zyprexa available to Medicaid patients, knowingly misrepresented to the State of Alaska that Zyprexa was safe and effective, as alleged in paragraph 25 of the Complaint, and what actions, if any, you took upon discovering those facts.

ANSWER: The general answer to all subparts is that when the State of Alaska became aware of Lilly's misrepresentations, it filed a lawsuit. This general awareness took place in the summer of 2005.

However, Lilly took affirmative actions to hide the true nature of Zyprexa and its side effects from the State. For example in 2002, Lilly's representative Kevin Walters met with David Campana to discuss Lilly products. He focused upon diabetic products. With respect to atypical medications, he introduced the BPMS system but did not disclose the evidence connecting Zyprexa with diabetes. In approximately the same time period, Alaska joined a group of other States, led by Missouri, to negotiate manufacturer rebates. At no time did Lilly or its representatives disclose the connection between Zyprexa and diabetes.

Lilly consistently concealed important safety information regarding Zyprexa from plaintiff, physicians and the public. When such information surfaced in the popular or scientific press, Lilly took steps to blunt the information or spin available data to its purposes, primarily further concealing the risks of Zyprexa. Thus, Lilly falsely maintained that weight gain due to Zyprexa was manageable for most patients, that there was no association between Zyprexa and hyperglycemia, and that even if hyperglycemia occurred in patients taking Zyprexa, it occurred at rates comparable to other antipsychotics.

INTERROGATORY NO. 37: Identify all witnesses you intend to call to testify at the trial of this matter.

ANSWER: The State will designate witness at the time called for under the pre-trial order.

INTERROGATORY NO. 38: Identify all expert witnesses you intend to call to testify at the trial of this matter.

ANSWER: The State will designate expert witness, provide reports and make those experts available for deposition in accordance with the pre-trial report.

Respectfully SUBMITTED and DATED this 23rd day of April, 2007

FELDMAN, ORLANSKY & SANDERS
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BY _____

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EXHIBIT E
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F

CERTIFICATE OF SERVICE

Plaintiff, State of Alaska, hereby certifies that it has caused to be served upon the below listed individuals copies of Plaintiff's Answers to Defendants First set of Interrogatories by placing copies of same in a Federal Express envelope, postage prepaid, on April 23, 2007.

Respectfully submitted,

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Dated: April 23, 2007

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

VIDEOTAPED DEPOSITION OF KARLEEN KAY JACKSON

December 12, 2007
1:35 p.m.

Taken at:
The Offices of Lane Powell, LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska

Reported by: Sandra M. Mierop, CRR, CPP, CBC

A. It would appear to be a lawsuit, the State of Alaska versus Eli Lilly.
Q. Have you ever seen that document before?
A. No, sir, I have not.
Q. And you're sure of that?
A. It's possible that it may have come through my office, but that -- I would not necessarily remember it, and I have not read it in detail.
Q. Have you read it -- do you remember reading it at all?
A. No, I do not.
Q. When did you first find out that the State of Alaska had filed a lawsuit against Eli Lilly & Company?
A. Actually, when I had a conversation with Mr. Sniffen.
Q. How long ago?
A. I spoke with him today.
Q. Is that the first time that you've learned of this lawsuit?
A. No. We had an earlier conversation, oh, a month or so ago.
Q. Was that the first time you've learned of this lawsuit?

A. I -- yes, that is the first time I've learned of the lawsuit.
Q. What are your duties as the commissioner of the Department of Health and Social Services for the State of Alaska?
A. Basically, to serve as a member of the governor's cabinet. To -- to, to the best of my ability, fulfill the mission of the department; promote and protect the health and well-being of Alaskans; to uphold the Constitution of the United States and of the State of Alaska.
Q. How large is the budget for your department?
A. Approximately $2 billion a year.
Q. What are the major components or divisions of your department?
A. We're what's referred to by other state agencies as a super agency. So we include everything from children's services, which is Child Protection, Division of Juvenile Justice, Behavioral Health, which is mental health and substance abuse. Boy, this is going to be a test. Division of Senior and Disability Services; our Alaska Pioneer Home System; Public Health. I'm missing a couple here. Let me think

for a minute. What am I missing.
Q. It's not a memory test?
A. I was not anticipating this one.
Q. That's all right.
How is public health related to behavioral health?
A. Public health deals with the physical health of the general population of the state of Alaska. Behavioral health specifically looks at issues of mental health, substance abuse, and those kind of more behavioral issues.
Q. Is there overlap between those two?
A. There's overlap in terms of when we're looking at the health of an individual. You can't compartmentalize mental, physical, behavioral as neatly as happens in the industries around those three pieces. There's overlap in terms of the divisions trying to work together to promote and protect the health and well-being of Alaskans. In terms of industry, they can sometimes be separate.
Q. What is the biggest component of your Department's budget?
A. The largest amount of money is involved in the Medicaid component, which includes federal

funds as well as general funds.
Q. How big is the Medicaid component?
A. Approximately $1 billion a year.
Q. So that's 50 percent of your budget?
A. Correct.
Q. That includes the funds that the State spends for Medicaid as well as federal funds that are contributed to the State?
A. That's correct.
Q. Do you know what percentage of the one billion for 2007 was federal money?
A. It would be a little more than 50 percent. The federal matching rate, I believe, in '07 was at about 52 percent; and then some of the Medicaid money includes our SCHIP program for children's health, which is a higher rate. It's at a 70-percent match rate.
Q. The State pays 30 percent and the federal government pays 70 percent?
A. For the Denali KidCare component.
Q. How big is the Denali KidCare component?
A. I don't -- I couldn't give you a guess, I'm sorry.
Q. Included in the $1 billion for Medicaid -- well, does that $1 billion for

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STATE OF ALASKA
THIRD DISTRICT
2008 FEB 14 PM
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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-06-5630 CIV

NOTICE OF FILING UNDER SEAL

On this date the State of Alaska is filing a pleading titled "Plaintiff's Response to Defendant's Motion in Limine to Exclude References to Foreign Regulatory Action." Because one or more exhibits filed with this pleading may be confidential documents under the Court's April 6, 2007 oral ruling, the State of Alaska is submitting this pleading and the attached exhibits under seal.

DATED this 14 day of February, 2008.

FELDMAN ORLANSKY & SANDERS
Counsel for Plaintiff

BY _____
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STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED in the Trial Courts
2008 FEB 15
BY _____ DEPUTY CLERK

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	Case No. 3AN-06-5630 CIV
Defendant.	)	
	)	

NOTICE OF FILING UNDER SEAL

On this date the State of Alaska is filing a pleading titled "Plaintiff's Response to Defendant's Motion in Limine to Exclude Testimony and Call Notes of Non-Alaska Based Sales Representatives." Because one or more exhibits filed with this pleading may be confidential documents under the Court's April 6, 2007 oral ruling, the State of Alaska is submitting this pleading and the attached exhibits under seal.

DATED this 14 day of February, 2008.

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STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA 4: 14

THIRD JUDICIAL DISTRICT AT ANCHORAGE

BY DEPUTY CLERK

STATE OF ALASKA,

Plaintiff,

vs.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-5630 CIV

NOTICE OF FILING UNDER SEAL

On this date the State of Alaska is filing a pleading titled "Plaintiff's Response to Defendant's Motion to Exclude References to Recent Regulatory Communications and Developments." Because one or more exhibits filed with this pleading may be confidential documents under the Court's April 6, 2007 oral ruling, the State of Alaska is submitting this pleading and the attached exhibits under seal.

DATED this 14 day of February, 2008.

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Counsel for Plaintiff

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

NOTICE OF COMPLIANCE WITH DEFICIENCY CARD

Defendant Eli Lilly and Company, by and through counsel, hereby complies with the Court's Deficiency Card, dated February 11, 2008, by filing herewith a proposed order to accompany defendant's Motion in Limine to Exclude References to Recent Regulatory Communications and Developments, filed on February 4, 2008.

DATED this 12th day of February, 2008.

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Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
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A B C

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

ELI LILLY AND COMPANY'S MOTION IN RESPONSE TO THE COURT'S ON-RECORD COMMENTS DURING THE JANUARY 29, 2008 HEARING

During the January 29, 2008, hearing on Eli Lilly and Company's ("Lilly") motion for summary judgment, the Court asked the parties, "should I reconsider my decision as to whether or not to allow [discovery of] individual decisions of physicians in this case?"[1] Lilly submits that the Court should reconsider this decision, and allow discovery of individual prescriber decisions, including medical records and prescriber depositions. This evidence is essential to determining which prescriptions, if any, were written because of alleged improper labeling or promotions by Lilly and which would have been written anyway.

In conjunction with reconsidering its discovery rulings, Lilly also requests that the Court reconsider its bifurcated trial plan. Doctors are the crucial actors in the series of events for which the State seeks damages: Doctors made the decisions to treat mentally ill patients with Zyprexa® that may have relieved symptoms of mental illness, but which, according to

[1] Exhibit A, Oral Argument Transcript 26:13 to 26:15, January 29, 2008. *See* Discovery Master Order, September 24, 2007 (denying Lilly discovery of individual Zyprexa users' medical records); and Order, November 14, 2007 (affirming the September 24 Discovery Master Order).

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the State, may have inflicted serious medical injuries on some of them. Doctors were the recipients of the allegedly improper labeling and promotion, which the State alleges may have influenced their prescribing decisions. Currently, there is no record that doctors were actually misled into prescribing Zyprexa, nor is there any statistical evidence to support this allegation. The Court should not refer allegations of misconduct to the jury before it knows whether there is a record about prescribers' behavior that will create a material issue of fact about causation and damages. The Court should not rush half of this case ahead to trial, when it is not clear that the second half will ever be delivered.

I. AGGREGATE EVIDENCE CANNOT DETERMINE WHY DOCTORS PRESCRIBED ZYPREXA.

The State of Alaska's ("the State") aggregate evidence is not legally adequate to demonstrate causation and does not fit the facts of Zyprexa use and reimbursement in Alaska. The circumstances of Zyprexa use vary from doctor to doctor, and patient to patient, including Zyprexa's use as:

- First-line treatment;
- Second- or third-line treatment after other medications had failed;
- Emergency treatment by a State hospital;
- Treatment for off-label indications supported by medical compendia; and
- Treatment for other off-label uses.[2]

The State must acknowledge that doctors appropriately prescribed Zyprexa for these different purposes for many patients, because after the labeling changed, doctors and the State continued to use the medication for these reasons. It also cannot be disputed that doctors consider many sources of information in addition to labeling and communications from sales representatives, including medical literature, continuing medical education, other

[2] Exhibit A, Oral Argument Transcript 48:22 to 49:7, January 29, 2008.

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doctors, and their own experience using the medication.[3] Not all doctors are receptive to sales representatives.[4] There is no evidence of record that any Alaska doctors abandoned their own independent medical judgment in response to sales representatives' marketing efforts.

As the Court recognized, a jury can find no fault for those prescriptions that would have been written even if there was a different disclosure about side effects, or where the physician knew from sources, independent of Lilly, of the risks alleged by the State and made a decision to use Zyprexa.[5] The question then becomes—how can the jury figure out which prescriptions those are?

Judge Kaplan's recent decision in *In re Rezulin* confirms that the causation issue is, to use this Court's term, "doctor determinative."[6] That is, in a prescription drug case, in Alaska, as elsewhere, the focus must be on the prescribing physician and the patient.[7] The State has offered no support for its suggestion at oral argument that Alaska juries decide causation in prescription drug cases differently from juries in every other state.[8] The State

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[3] Exhibit B, Lucy Ljubicich Curtiss, M.D., Depo., 35:17 to 36:7, December 13, 2007; Exhibit C, Duane Hopson, M.D., Depo. 56:10 to 57:16, December 11, 2007; Lilly's Rule 26(a)(2) Expert Witness Disclosure for David Kahn, M.D., at Exhibit B, p. 5, March 20, 2007.

[4] Exhibit B, Lucy Ljubicich Curtiss, M.D., Depo., 39:2 to 39:13, December 13, 2007; Lilly's Rule 26(a)(2) Expert Witness Disclosure for David Kahn, M.D., at Exhibit B, p. 5, March 20, 2007.

[5] Exhibit A, Oral Argument Transcript 26:17 to 27:18, January 29, 2008.

[6] *Id.* at 31:14 to 32:1.

[7] *Shanks v. Upjohn Co.*, 835 P.2d 1189, 1200 (Alaska 1992).

[8] Evidence that a plaintiff would have relied on a warning is required under Alaska law to establish proximate causation and recover under failure-to-warn causes of action. In *Prince v. Parachutes, Inc.*, 685 P.2d 83, 89-90 (Alaska 1984), the Alaska Supreme Court, while reversing summary judgment, stated, "There is sufficient evidence in the record from which reasonable minds could conclude that Prince would not have used the [product] had he been

Continued

has not identified *one* case, in Alaska or anywhere else, where a private or public payor has been allowed to use aggregate evidence, as the State proposes here, to prove that a misleading label or promotion caused doctors to prescribe a medication they otherwise would not have, leading to medical injuries.

The State is asking the jury to gloss over prescribing decisions made by individual Alaska physicians involving medications that the State's own expert describes as "the closest thing to magic that I have ever experienced in my professional life [freeing mentally ill patients] . . . from a hell that most people can't even imagine."[9] The State does not plan to call any physicians to demonstrate causation. However, Alaska doctors deposed by Lilly have testified that they continue to use Zyprexa for mentally ill patients, after changes to Zyprexa labeling regarding metabolic issues[10]—persuasive evidence that earlier label changes and disclosures would not have stopped them from prescribing Zyprexa to many patients. The State has not explained how its aggregate evidence approach would

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adequately warned . . . ." In other words, the Court found sufficient evidence for summary judgment purposes that the plaintiff would have relied upon the warning and avoided the accident. In an Arizona Supreme Court decision cited by the Alaska Supreme Court in *Shanks* for the proposition that failure to warn or instruct can serve as the basis for a strict liability cause of action, the court held that in order for a plaintiff to establish proximate causation in a failure-to-warn claim he or she must present evidence that "had a proper warning been given, [a plaintiff] would not have used the product in the manner which resulted in his injury." *Gosewisch v. Am. Honda Motor Co., Inc.*, 737 P.2d 376, 379 (Ariz. 1987) (quoting W. Kimble & R. Lesher, *Products Liability* sec. 257, at 296 (1979)). In *Gosewisch*, the Arizona Supreme Court found no error in the trial court's refusal to give a jury instruction on failure to warn where plaintiff at trial failed to present evidence of either reliance on the warnings that were provided with the product or evidence that he would have relied upon some allegedly non-defective warning. *Id.* at 380.

[9] Exhibit D, William C. Wirshing, M.D., Depo., 171, May 1, 2007.

[10] *See* Exhibit B, Lucy Ljubicich Curtiss, M.D., Depo., 44:10 to 44:16, December 13, 2007; Exhibit C, Duane Hopson, M.D., Depo. 52:23 to 53:1, 58:1 to 58:8, December 11, 2007.

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differentiate between prescriptions that would not have been written if Lilly had provided whatever the State contends was appropriate disclosure, and prescriptions that would have been written anyway.

Consider, as just one example, the patient with schizophrenia who takes Risperdal® or Seroquel® for four or five months without success, is then switched to Zyprexa by their physician and stays on it for years because the patient and doctor jointly conclude that it is relieving his or her symptoms.

The Alaska claims data suggest that there are Medicaid recipients that fit this example.[11] Absent testimony from the doctor herself, or medical records, there is no way to know what would have happened, but it is highly likely the doctor would have kept the patient on Zyprexa, even if Lilly had provided more information about metabolic effects, because the patient was succeeding. No aggregate methodology, blind to the patient's circumstances or the factors considered by the doctor, can address this scenario. The aggregate evidence that the State will rely upon is particularly inapt.[12]

Similarly, even if the State could establish the fact of off-label promotion from fragmentary notations in sales representatives' call notes – which Lilly disputes – it has no way of demonstrating that these communications, as opposed to doctors' independent medical judgment, caused doctors to prescribe for off-label uses, a practice that is legal, medically sound, and particularly prevalent in the treatment of mentally ill patients.[13]

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[11] *See* Lilly's Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment at 14, January 17, 2008 (citing several examples of Alaska Medicaid patients who were first treated with Risperdal for three to four *months* and then treated with Zyprexa for four to five *years*).

[12] *See id.* at 11-14.

[13] *See* Exhibit B, Lucy Ljubicich Curtiss, M.D., Depo., 31:13 to 32:11, December 13, 2007.

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II. PROPOSALS FOR ADVANCING THE CASE.

If the Court, consistent with *In re Rezulin*, has reservations whether any aggregate evidence can account for the myriad of physician decisions about using Zyprexa that exist in the day-to-day treatment of mentally ill patients in Alaska, it should consider the following actions:

1. If the State insists, as it has, on proceeding solely with the aggregate evidence it described in its Response to Lilly's Summary Judgment Motion, the Court should dismiss its claims because the State cannot prove causation with that evidence.

2. Allow Lilly to take discovery into individual decisions for patients, including medical records discovery, and testimony from prescribers. In the case brought by the State of Louisiana against the manufacturer of the prescription antipsychotic Risperdal, the Court allowed discovery of a statistically significant sample of patient records and prescriber depositions, because "the claims and allegations contained in this action cannot fairly and properly be litigated" otherwise.[14]

The State's plea not to "burden us too much,"[15] provides no basis for allowing it to proceed without evidence needed for a crucial element of its case, or for denying Lilly access to discovery that would show the element cannot be satisfied.

III. RECONSIDERATION OF BIFURCATION.

In light of recent developments in the case, and the considerations raised above, Lilly also requests that the Court revisit its bifurcation order. As Lilly has previously argued, severing causation from liability in this case is inconsistent with Alaska law, will prevent the first jury from entering a verdict that can be applied by the second jury, will result in

[14] Consent Judgment, *Attorney General* ex rel. *Louisiana v. Janssen Pharmaceutica, Inc.*, No. 04-3967-D, *consolidated with* 04-3977-D at 2 (Parish of St. Landry, La., filed April 10, 2007).

[15] Exhibit A, Oral Argument Transcript 54:4 to 54:7, 54:21 to 54:22, January 29, 2008.

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duplicative proceedings, and will violate Lilly's right to due process under the United States and Alaska Constitutions.[16]

Any possible efficiencies from bifurcation, which Lilly has always contested, are further diminished by the State's formulation of the case, which has changed since the Court's bifurcation order. The State dismissed its design defect claim, which was the focus of discussion when the Court first considered bifurcation.[17] It also appears from its proposed jury instructions that the State is trying to establish only some, not all, of its alleged unfair trade practice violations in the first phase, leaving determinations about additional violations to the second jury.[18] Nevertheless, the State has projected that the phase one trial will last at least twenty trial days, which is as long as the State originally estimated for the entire trial.[19]

In addition, if the Court reconsiders the proof of causation that it will require, the Court should postpone phase one to see whether the necessary evidence ever materializes. This case has come full circle back to the issue the Court recognized as central to this litigation -- whether the State can muster evidence to prove causation.[20] As the parties prepare for trial, it is unclear whether:

1. The State has any admissible, competent proof regarding physician decision making;

2. The State will ever produce a complete database (after failing to do so by this Court's January 31, 2008 deadline);

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[16] Lilly's Opp. in Response to Plaintiff's Memo in Support of Bifurcation, November 9, 2007.

[17] *See* Exhibit E, Status Conference Transcript 10:18 to 10:24; 18:10 to 18:19, October 24, 2007.

[18] *See* State's (Proposed) Jury Instructions and Verdict Form, State's Instructions 24-26, Verdict Form (3), February 4, 2008 ("Did Lilly violate the Unfair Trade Practices and Consumer Protection Act in one or more ways?").

[19] *See* Exhibit A, Oral Argument Transcript 77:9 to 77:13, January 29, 2008.

[20] *See* Exhibit F, Hearing Transcript 28:14 to 29:12, 61:5 to 61:21, January 8, 2007.

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3. There was any increased incidence of diabetes or increase in total health care costs to the State attributable to Zyprexa.

These issues should be resolved before a jury is empanelled for a month-long trial that cannot resolve the ultimate issues in the case.

IV. CONCLUSION

For the foregoing reasons, Lilly requests that the Court reconsider its Order denying discovery into individual decisions for patients and its Order bifurcating this case.

DATED this 12th day of February, 2008.

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THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

Case No. 3AN-06-05630 CI

ORAL ARGUMENT
BEFORE THE HONORABLE MARK RINDNER

January 29, 2008

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advised, would they still have used the drug, and -- or did they know about it already? And I had that conversation with Mr. Brenner about that issue.

I guess one question I have for you: Is there any indication in the discovery so far about how many of what kind of uses we're talking about, or don't you know? And then, secondly, which I suppose is the elephant in the room: If there are all these uses and all these possibilities and the State is now claiming labeling and that the labels and the calls were your UTPA misrepresentations, should I reconsider my decision as to whether or not to allow individual decision of physicians in this case?

MR. STEELE: Sure.

THE COURT: And isn't -- particularly for the UTPA claim, isn't that necessary? And, again, you can feel to point out to me kind of what my approach was that I -- so far, and whether or not -- why that would be the better approach and that I should continue to adhere to that approach. But I'm just concerned that, you know, it would be one thing if you said, "Zyprexa shouldn't have been used in this

condition." And then I would have expected Zyprexa should have been used off the market, and we could have that debate. But given that Zyprexa even with all the -- even with perfect disclosure and everything might still be an appropriate drug. My question is: How are we going to know which of these cases is that case, and which of these cases are cases where people wouldn't have used that. Because if people still would have used Zyprexa, I don't see how you've got a damages claim for them. It's only if Zyprexa wouldn't have been used, I suppose, at all, or, you know -- or if Zyprexa was used and it caused other conditions that the State is now paying for, that Zyprexa wouldn't have been used for, do we have a damages case?

So, take them in whatever order you want.

MR. STEELE: Thank you. It's a little bit like going to the Academy Awards. You can prepare a speech, but you're not sure you get to give it.

THE COURT: That tends to be how oral argument goes with me.

MR. STEELE: I have a speech. The

saying is: You can't import that element-skipping case into a pharmaceutical case.

THE COURT: And -- and why does he say that?

MR. STEELE: Because, when you're buying pharmaceuticals, the question is not really -- at least in our case, it's not really a price-sensitive issue. It's -- Lilly has a monopoly. Rezulin -- whoever was making Rezulin, they have a monopoly, okay? They can price it the way they want to price it.

So it's not a price-sensitive kind of a case.

THE COURT: What is -- I mean, don't they -- isn't what Judge Kaplan is suggesting is that what happens in a pharmaceutical case -- it's not a price-sensitive case, it's a doctor-determinative in consultation, I suppose, with the patient, but doctor-determinative case as to what the doctor believes is the best drug for the patient, and understanding what the risks are, whether it's worth taking those risks and also consideration of whether you've tried other drugs that you think might be -- might have less risk or might

be better, and whether they would work or not.

MR. STEELE: Right. And that would all be instructive if we were in Louisiana and that were the cause requirement, but we're in Alaska and that's not the cause requirement.

So, my third point is that with respect to the cause requirement in Alaska -- in other words, to prove cause, do you have to prove specific reliance by a specific physician?

Do you have to do that in order to prevail on any cause of action in Alaska?

The answer to that is: You do not. Under 45.50.551(b), there is no cause requirement, period.

45.50.551(b) is like traffic-ticket liability.

If you go faster than the speed limit, even if you don't hit somebody, you've got to pay the fine.

If, in Alaska you go out and -- as a corporation, as a business you go out and you make misrepresentations that are prohibited, you get the fine, whether it causes anybody to do anything at all.

THE COURT: Doesn't there have to

good for that. So, that's my hypothetical. They're lying about it. They're lying about the deadly disease, and they're saying pass this stuff out like candy, all right?

So you go: Well, let's see, how do I get out of this if I'm the Defendant? The way that I get out of it is I say we have got to depose every single doctor and every single patient in the state because they know we can't do it. They know that it makes it too onerous. That's why discussing Judge Weinstein's case, Judge Weinstein says when you've got a sophisticated broad-based scheme, statistical proof of causation or reliance is appropriate because, otherwise, like in tobacco, you leave people without a remedy. That's why. That's why it has to be done that way.

Because it -- as a matter of policy, they should not be allowed to come into the state, pull off a -- a pervasive scheme that was better planned than most wars --

THE COURT: But -- but the problem -- the big problem I'm having is there's so many ways I'm hearing that this drug can be used and so many purposes. And it can be used

for FDA-approved things and as -- and a doctor might choose it as its first-line drug. They could be used for the reasons as a second or third or fourth, I suppose, line drug where you're willing to take more risks because the first-line drugs with less risks having been used, there's these off -- off-use labels, there's these -- what now I'm hearing are -- and I'll call noncompendia uses which seems to be -- may be different than the other ones and may be the same. How, without knowing what a doctor used the drug for, can you separate any of those?

MR. STEELE: Well, you know what the doctor used the drug for.

THE COURT: But don't you have to talk to the doctor as to -- do you know whether the doctor -- whether it's a second or third or fourth --

MR. STEELE: Sure, you do.

THE COURT: Okay.

MR. STEELE: The -- the Medicaid data is voluminous, and in the Medicaid data the doctor's required by law to say what he's treating the patient for. They're call ICD-9 codes. International Disease Coding --

"Yes."

We've got the script. We know what they had to say.

THE COURT: Okay. Shouldn't I, again, revisiting prior decisions, let Lilly depose the doctors to say: What were you told of this script? Did they really follow the script? What impact did it have on you? Did you -- why if these are the communications that caused the violation of the UTPA shouldn't I do more than let an expert interpret a script? Shouldn't I know from the people who received the communication that violates the UTPA exactly what they received?

MR. STEELE: Okay. It is possible that evidence from a selected group of doctors -- it is possible that evidence from a selected group of doctors might produce -- might produce some relevant and admissible evidence. You and I have had this discussion before, okay?

What I'm saying is: Don't burden us too much. Don't make it impossible for the State to pursue a remedy for this obnoxious conduct. But what you told the Defendants and what you said in your order is: If you want to

22nd might be too late, but I don't get back in the office until the 19th, Mr. Sanders, so I'm not sure how I can move it up.

MR. SANDERS: Just in terms of broad planning, I'm assuming that -- that roughly the -- the trial that we've got laid out, 20 days, is going to be divided approximately in half so --

THE COURT: Right. Except it was 20 days for the whole case when we first set this. Is it now a 20-day trial for just liability without causation?

MR. SANDERS: Probably. I don't know. I mean, I mean -- ask Lilly how long their --

THE COURT: I'm going to tell this, when we have our pretrial, I'm going to expect each side to tell me how long this case is going to be, and I've been known to keep time, and I will.

MR. SANDERS: Well, and --

THE COURT: I mean, because the long -- I mean, I need to tell the jury how long their lives are going to be disrupted.

MR. SANDERS: Absolutely. No

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THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

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ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

VIDEOTAPED DEPOSITION OF
LUCY LJUBICICH CURTISS, M.D.

December 13, 2007
1:35 p.m.

Taken at:
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I-N-D-E-X

KARLEEN JACKSON DECEMBER 12, 2007

EXAMINATION

EXHIBIT B
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patient against his or her will?
A. Not directly. No.
Q. Have you ever sought a court order to medicate somebody?
A. No. We don't do that in the outpatient setting. If we think that someone is at imminent risk, we seek hospitalization; we would never seek a court order to medicate someone in the community.
Q. And the hospitalization would be typically in this community at API?
A. At API.
Q. For what kinds of conditions do you use Zyprexa in your practice today?
A. In my practice today, I have patients that take Zyprexa for schizophrenia, schizoaffective disorder, bipolar disorder, PTSD, and behavioral disturbances associated with dementia.
Q. And for several of those illnesses, the treatment with Zyprexa would be off label; is that correct?
A. Yes.
Q. Why do you use Zyprexa off label?
A. Well, in psychiatry there is very much

EXHIBIT B
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off-label prescribing; and particularly in the field of geriatric psychiatry, there are no FDA-indicated treatments for behavioral disturbances associated with dementia. All of that prescribing is off label. And so I think as -- as a field, we are more comfortable with off-label prescribing than other fields may be.

Q. How about for post-traumatic stress disorder?

A. That is also a diagnosis for which most prescribing is off label.

Q. Have you found in your practice that using Zyprexa for schizoaffective disorder, post-traumatic stress disorder and behavioral disturbances associated with dementia has been effective for your patients?

A. For some patients, yes.

MR. STEELE: Is there a "T" in that word?

MR. ROGOFF: Yes, no, does not have a T in it.

MR. STEELE: He's got a "T" in his "schizo," "schizo."

MR. ROGOFF: No.

MR. JAMIESON: It's the German

in 2003 with regard to the second-generation anti-psychotics?

A. I don't. I'm sorry.

Q. Do you recall any label changes for either Zyprexa or the class of medications? And I'm not asking you for a date, but just the -- the event or the fact of it occurring.

A. Well, I know that it has definitely become more of a focus. In my practice what stands out more is the black box warnings about patients with vascular dementia and use of anti-psychotics.

Q. But -- I'm not asking you whether you've memorized the labels. But do you read the labels when you use medication for the first time?

A. Generally.

Q. What else do you do to familiarize yourself with new medications?

A. I tend to be a bit of a late-adopter. That -- I read about a medication. I talk with my colleagues. I hear about what their experiences have been. I talk with patients about options. I'm very straightforward with my patients about "I don't have experience with this agent yet." There are particular patients that

they want the newest treatment the moment it becomes available, and so they're typically the first to try them. But I am more likely to hang back and see what my colleagues experience before I jump in with a medication.

Q. You also read the literature?

A. Yes.

Q. Are there publications that you regularly read in your practice?

A. There is not any publication that I regularly read. There's the Green Journal; there is Journal of Clinical Psychiatry. I get this much mail every week (indicating). I pick and choose.

Q. Do you typically read articles about medications that you -- that are available to you to use with your patients?

A. I don't know how to answer that question. Again, I get reams and reams of material. I read some of it. I read when a particular question comes up. I read when I'm considering treatment options for a particular patient.

Q. Have you read the results of the CATIE trials?

A. I'm not sure what company it was.
Q. To what extent do you rely on sales representatives for information about medications that you prescribe to your patients?
A. It's a small, small percentage.
Q. Why is that?
A. Because I assume that they are in the business of sales and that they will tell me good things about their product.
Q. And so you're skeptical of sales reps?
A. Yes.
Q. Has that always been the case?
A. Yes.
Q. When you've met with sales reps from various companies, do they take -- have they taken notes while talking to you?
A. Not often.
Q. Now, since you became medical director, can you characterize how many minutes a week or month that you would spend with a sales rep?
A. Probably less than -- less than 30 minutes a month for all reps.
Q. How many companies are you visited by?
A. Several.
Q. Are you visited by AstraZeneca?

relationship than about immediate risks of the medication until that person has reached a degree of health where they can say, "Yeah, I feel better now."

Q. You learned in medical school that excess weight was a risk factor for diabetes?

A. I don't know where I learned that.

Q. You've known it your entire practice?

A. Yes.

Q. And, nevertheless, with the risk of weight gain and blood sugar issues with Zyprexa, you prescribe the medication?

A. Yes, I do.

Q. Why is that?

A. There are patients for whom it is the only thing that works.

Q. Are there other reasons?

A. If it works and the patient understands the potential risks and wants the treatment, I prescribe it.

Q. So then to go back to a confusing question I asked a long time ago --

A. Yes.

Q. -- which relates, really, to individual prescribing decisions, is it really possible to

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ELI LILLY AND COMPANY'S OBJECTIONS TO THE STATE'S TRIAL DEPOSITION DESIGNATIONS

Defendant Eli Lilly and Company ("Lilly") objects to the following pages and lines of Plaintiff State of Alaska's Amended Trial Deposition Designations:

I. Deposition of Michael Bandick.

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62:13	62:24	Foundation (Alaska R. Evid. 602, 701)
63:7	63:7	Relevance; Incomplete sentence (Alaska R. Evid. 401, 402, 403, 611)
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II. Deposition of Jack E. Jordan.

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157:10	157:19	Foundation; Relevance; Probative value outweighed by danger of unfair prejudice (Alaska R. Evid. 401, 402, 403, 602, 701)
157:20	158:1	Foundation; Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit(Alaska R. Evid. 401, 402, 403, 602, 701)
158:2	158:4	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 402, 403)
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158:14	158:17	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 402, 403)
158:18	158:23	Foundation; Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 403, 602, 701)

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163:9	163:19	Relevance; Probative value outweighed by danger of unfair prejudice (Alaska R. Evid. 401, 402, 403)
163:20	163:22	Relevance; Probative value outweighed by danger of unfair prejudice (Alaska R. Evid. 401, 402, 403)
163:23	164:14	Foundation; Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 402, 403, 602, 701)
164:15	164:19	Foundation; Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 402, 403, 602, 701)
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523:1	523:8	Argumentative; Asked and answered; Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profits (Alaska R. Evid. 401, 402, 403, 611)
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115:20	116:4	Foundation; relevance; lack of personal knowledge; more prejudicial than probative; authentication. (Alaska R. Evid. 401; 403; 602; 901)
116:15	116:20	Improper commentary by counsel; relevance (Alaska R. Evid. 401, 611)
121:1	121:23	Hearsay (Alaska R. Evid. 801)
124:6	126:2	Hearsay (Alaska R. Evid. 801)
127:10	127:17	Hearsay. (Alaska R. Evid. 801)
129:18	134:19	Foundation; lack of personal knowledge; authentication. (Alaska R. Evid. 401; 602; 901)
139:4	139:23	Lay opinion as to what was generally accepted in the field. (Alaska R. Evid. 701)
235:13	235:24	Vague; foundation; foundation (Alaska R. Evid. 401; 602; 901)
242:15	242:20	Asked and answered; lack of personal knowledge (Alaska R. Evid. 602)
244:16	244:22	Probative value is outweighed by the danger of unfair prejudice; calls for a legal conclusion as to "liability"; probative value is outweighed by the danger of unfair prejudice; improper lay opinion testimony, calls for expert opinion (Alaska R. Evid. 403; 701)
245:6	251:8	Foundation; lack of personal knowledge; authentication. (Alaska R. Evid. 401; 602, 901)
248:16	249:24	Vague; misstatement of evidence (Alaska R. Evid. 611)
255:4	256:23	Foundation; lack of personal knowledge; authentication. (Alaska R. Evid. 401; 602, 901)
257:12	257:21	Vague; lack of personal knowledge. (Alaska R. Evid. 602)
258:20	260:6	Foundation; lack of personal knowledge (Alaska R. Evid. 602)
261:12	261:18	Foundation; probative value is outweighed by the danger of unfair prejudice (Alaska R. Evid. 401; 403)
262:14	266:6	Foundation; probative value is outweighed by the danger of unfair prejudice (Alaska R. Evid. 401; 403)

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265:9	265:10	Argumentative (Alaska R. Evid. 611)

IV. Deposition of Denise M. Torres.

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68:9	71:18	Relevance; Probative value outweighed by danger of unfair prejudice (Alaska R. Evid. 401, 402, 403)
79:8	79:9	Designation of answer without any designation of question; Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 402, 403, 611)
79:11	79:17	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit; Foundation; Asked and answered (Alaska R. Evid. 401, 402, 602, 611, 701)
79:18	79:20	Comment by counsel (Alaska R. Evid. 611)
79:23	80:1	Designation of answer without any designation of question; Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit; Foundation (Alaska R. Evid. 401, 402, 403, 601, 611, 702)
80:4	80:18	Relevance; Probative value outweighed by danger of unfair prejudice; Ambiguous; Asked and answered; Foundation; Misstates the evidence (Alaska R. Evid. 401, 402, 403, 602, 611, 701)
84:19	84:23	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit; Foundation (Alaska R. Evid. 401, 402, 403, 602, 701)
84:24	85:6	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit; Foundation (Alaska R. Evid. 401, 402, 403, 602, 701)
85:8	85:16	Relevance; Probative value outweighed by danger of unfair prejudice (Alaska R. Evid. 401, 402, 403)
85:17	85:22	Relevance; Probative value outweighed by danger of unfair prejudice; Ambiguous (Alaska R. Evid. 401, 402, 403, 611)
87:5	88:9	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine - revenue/profit (Alaska R. Evid. 401, 402, 403)
88:18	88:24	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine - revenue/profit (Alaska R. Evid. 401, 402, 403)

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89:8	89:14	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine - revenue/profit; Argumentative Foundation; Misstates the evidence (Alaska R. Evid. 401, 402, 403, 602, 611, 701)
89:15	89:24	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine - revenue/profit (Alaska R. Evid. 401, 402, 403)
90:1	90:13	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine - revenue/profit; Foundation; Misstates the evidence (Alaska R. Evid. 401, 402, 403, 602, 611, 701)
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126:6	127:4	Misstates the testimony (Alaska R. Evid. 611)
134:17	134:23	Asked and answered (Alaska R. Evid. 611)
135:7	135:13	Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
135:17	135:24	Argumentative; Comment by counsel (Alaska R. Evid. 611)
136:1	136:5	Argumentative; Comment by counsel (Alaska R. Evid. 611)
136:6	136:12	Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
136:13	136:15	Foundation (Alaska R. Evid. 602, 701)
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137:13	137:19	Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
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137:22	138:2	Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
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138:20	139:7	Foundation; Misstates the evidence; Asked and answered (Alaska R. Evid. 602, 611, 701)
143:6	143:18	Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)

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161:19	162:6	Relevance; Foundation; Compound; Ambiguous (Alaska R. Evid. 401, 402, 602, 611, 701)
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162:11	162:24	Relevance; Probative value potentially outweighed by prejudice; Compound; Ambiguous (Alaska R. Evid. 401, 402, 403, 611)
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185:15	185:18	Comment by counsel (Alaska R. Evid. 611)

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501:9	501:12	Foundation (Alaska R. Evid. 602, 701)
501:13	501:18	Argumentative (Alaska R. Evid. 611)
502:24	503:7	Foundation (Alaska R. Evid. 602, 701)
503:8	503:13	Compound; Ambiguous (Alaska R. Evid. 611)
503:14	504:3	Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
504:14	505:2	Foundation; Ambiguous (Alaska R. Evid. 602, 611, 701)
507:1	507:19	Foundation; No opportunity for answer (Alaska R. Evid. 602, 701)

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Start (Page:Line)	End (Page:Line)	Objection
507:18	507:23	Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
509:5	509:10	Foundation; Misstates the evidence; Argumentative (Alaska R. Evid. 602, 611, 701)
510:5	510:8	No answer given
510:13	510:15	Foundation; Misstates the evidence; No answer given (Alaska R. Evid. 602, 611, 701)
511:1	511:4	Asked and answered (Alaska R. Evid. 611)
511:5	511:7	Asked and answered (Alaska R. Evid. 611)
511:8	511:11	Asked and answered (Alaska R. Evid. 611)
512:11	513:1	Argumentative (Alaska R. Evid. 611)
513:3	513:8	Asked and answered (Alaska R. Evid. 611)
513:9	513:10	Asked and answered (Alaska R. Evid. 611)
513:11	513:14	Asked and answered (Alaska R. Evid. 611)
514:1	514:6	Foundation (Alaska R. Evid. 602, 701)
529:3	529:9	Foundation (Alaska R. Evid. 602, 701)
529:24	530:20	Ambiguous; Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
530:23	531:5	Ambiguous (Alaska R. Evid. 611)
531:7	531:14	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 402, 403)
531:15	532:5	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 402, 403)
532:6	533:7	Foundation; Argumentative; Misstates the evidence; probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 403, 602, 611, 701)
533:9	533:12	Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 402, 403)
533:18	534:8	Foundation; Relevance; Probative value outweighed by danger of unfair prejudice; Motion in limine – revenue/profit (Alaska R. Evid. 401, 402, 403, 602, 701)
538:13	538:20	Foundation (Alaska R. Evid. 602, 701)

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Start (Page:Line)	End (Page:Line)	Objection
538:22	539:23	Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
540:20	541:6	Argumentative; Compound (Alaska R. Evid. 611)
541:22	545:2	Asked and answered (Alaska R. Evid. 611)
544:20	545:13	Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
545:15	545:18	Relevance; Foundation (Alaska R. Evid. 401, 402, 602, 701)
545:19	546:3	Argumentative; Comment by counsel (Alaska R. Evid. 611)
546:4	546:11	Foundation; Ambiguous (Alaska R. Evid. 602, 611, 701)
546:24	547:3	Asked and answered (Alaska R. Evid. 611)
547:10	547:17	Foundation; Ambiguous (Alaska R. Evid. 602, 611, 701)
548:9	548:16	Compound (Alaska R. Evid. 611)
549:8	549:12	Asked and answered (Alaska R. Evid. 611)
550:19	551:13	Ambiguous; Foundation; Misstates the evidence (Alaska R. Evid. 602, 611, 701)
551:15	552:1	Compound (Alaska R. Evid. 611)
552:16	553:7	Foundation; Argumentative (Alaska R. Evid. 602, 611, 701)
553:8	553:9	Asked and answered; Argumentative (Alaska R. Evid. 611)
554:1	554:13	Argumentative; Misstates the evidence (Alaska R. Evid. 611)
554:15	555:4	Foundation; Argumentative (Alaska R. Evid. 602, 611, 701)
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559:3	559:4	Argumentative (Alaska R. Evid. 611)
561:2	561:5	Asked and answered (Alaska R. Evid. 611)

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DATED this 11th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 11, 2008, a copy of The foregoing was served by hand on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L. Street, Suite 400
Anchorage, Alaska 99501-5911

_____
Nanci L. Biggerstaff, CPS, PLS
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD DISTRICT
2008 FEB 11 PM 4:28
BY DEPUTY CLERK

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630CI

ELI LILLY'S NOTICE OF FILING DEPOSITION DESIGNATIONS UNDER SEAL

Defendant Eli Lilly, by and through counsel of record, files its deposition counter-designations to plaintiff's amended designations with Exhibits A-D, under seal, attached to this notice. Portions of the deposition designations may be confidential.

DATED this 11th day of February, 2008.

PEPPER HAMILTON LLP
Andrew R. Rogoff, admitted *pro hac vice*
John H. Brenner, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 11, 2008, a copy of the foregoing was served by hand-delivery on:

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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-06-5630 CIV

STIPULATION FOR EXTENSION OF TIME

Plaintiff, State of Alaska, and defendant, Eli Lilly and Company, hereby stipulate and agree that plaintiff shall have an extension of time to February 15, 2008, to file its response to Lilly's Supplemental Brief Seeking Dismissal of the State's Claims Pursuant to the UTPCPA Exemption and Federal Preemption.

FELDMAN ORLANSKY & SANDERS
Attorneys for Plaintiff

Date 2/8/08

BY _____
Eric T. Sanders
AK Bar No. 7510085

LANE POWELL
Attorneys for Defendant

Date 2/8/08

BY _____
Brewster Jamieson
Alaska Bar No. 8411122

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT'S REQUEST FOR ORAL ARGUMENT

COMES NOW, defendant Eli Lilly and Company, by and through counsel, pursuant to Civil Rule 77(e), and requests oral argument on Eli Lilly and Company's Supplemental Brief Seeking Dismissal of the State's Claims Pursuant to the UTPCPA Exemption and Federal Preemption.

DATED this 5th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 5, 2008, a copy of The foregoing was served by hand on:

Eric T. Sanders, Esq.
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IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

State of Alaska — Plaintiff/Petitioner,

vs.

Eli Lilly & Co — Defendant/Respondent.

CASE NO: 3AN-06-05630CI

CALENDARING NOTICE

This case is scheduled for:

Date: February 15, 2008
Time: 8:30 am
Event: Settlement Conference: Superior Court
Judge: Morgan Christen
Location: Courtroom 404, Anchorage Courthouse
Court: 825 W 4th Ave
Anchorage, Alaska 99501

called Eric Sanders office 4:30 pm 2/5/08 KB

February 5, 2008
Effective Date

KBitzer
Calendaring Clerk

I certify that on 2/5/2008, a copy of this order was mailed to:
Brewster H Jamieson
Eric T Sanders

Secretary/Clerk: KBitzer KB

Hearing/Event information for this case is also available online at http://www.courtrecords.alaska.gov/.

FILE COPY

filed 2-5-08

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

NOTICE OF FILING UNDER SEAL

COMES NOW defendant and herewith files its Supplemental Brief Seeking Dismissal of the State's Claims Pursuant to the UTPCPA Exemption and Federal Preemption and Exhibits A through E, under seal.

DATED this 5th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

By [signature]
Brewster H. Jamieson, ASBA No. 8411122
Andrea E. Girolamo-Welp, ASBA No. 0211044

I certify that on February 5, 2008, a copy of The foregoing was served by hand on:

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[signature]
Nanci E. Biggerstaff, CPS, PLS
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT'S NOTICE OF FILING OBJECTIONS TO PLAINTIFF'S TRIAL DEPOSITION DESIGNATIONS UNDER SEAL

COMES NOW defendant and files its Objections to Plaintiff's Trial Deposition Designations, under seal, attached to this notice.

DATED this 4th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 4, 2008, a copy of The foregoing was served by hand on:

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002470

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT ELI LILLY AND COMPANY'S NOTICE OF FILING MOTION IN LIMINE TO EXCLUDE CERTAIN TESTIMONY OF THE STATE'S EXPERTS UNDER SEAL

COMES NOW Defendant Eli Lilly and Company ("Lilly") and files its Motion in Limine to Exclude Certain Testimony of the State's Experts, under seal, attached to this notice. The exhibits to the Motion have been deemed confidential.

DATED this 4th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 4, 2008, a copy of The foregoing was served by hand on:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT ELI LILLY AND COMPANY'S NOTICE OF FILING MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO NEW YORK TIMES ARTICLES UNDER SEAL

COMES NOW Defendant Eli Lilly and Company ("Lilly") and files its Motion in Limine to Exclude Evidence Relating to New York Times Articles, under seal, attached to this notice. The Motion and exhibits thereto may be the subject of prior confidentiality rulings.

DATED this 4th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 4, 2008, a copy of The foregoing was served by hand on:

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002472

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-06-5630 CIV

NOTICE OF FILING PLAINTIFF'S AMENDED TRIAL DEPOSITION DESIGNATIONS UNDER SEAL

On this date the State of Alaska is filing a pleading titled "Plaintiff's Amended Trial Deposition Designations." Because one or more exhibits filed with this pleading may be confidential documents under the Court's April 6, 2007 oral ruling, the State of Alaska is submitting this pleading and the attached exhibits under seal.

DATED this 4 day of February, 2008.

FELDMAN ORLANSKY & SANDERS
Counsel for Plaintiff

BY Susan Orlansky
for Eric T. Sanders
AK Bar No. 7510085

Separate Envelope / Sealed

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GARRETSON & STEELE
Matthew L. Garretson
Joseph W. Steele
Counsel for Plaintiff

RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, LLC
H. Blair Hahn
David L. Suggs
Christiaan A Marcum
Counsel for Plaintiff

Certificate of Service
I hereby certify that a true and correct copy of
Notice of Filing Plaintiff's Amended Trial Deposition Designations under Seal
was served by messenger on:

Brewster H. Jamieson
Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

Barry Boise, via email (boiseb@pepperlaw.com)
Pepper Hamilton

By Peggy S Crowe
Date 2/4/08

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

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT'S NOTICE OF FILING COUNTER-DESIGNATIONS AND EXCERPTS OF DEPOSITIONS UNDER SEAL

COMES NOW defendant and files its Deposition Counter-designations for Trial, under seal, attached to this notice. The counter-designations and deposition excerpts have been deemed confidential.

DATED this 4th day of February, 2008.

PEPPER HAMILTON LLP
Nina M. Gussack, admitted *pro hac vice*
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
and
LANE POWELL LLC
Attorneys for Defendant

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

I certify that on February 4, 2008, a copy of The foregoing was served by hand on:

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Nancy L. Biggerstaff, CP, RLS
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