

February 5, 2007

**George Freeman**  
Vice President &  
Assistant General Counsel

BY HAND

Hon. Jack B. Weinstein  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

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*Re: In re Zyprexa Products Liability Litigation*  
(04-MDL-1596)

Dear Judge Weinstein:

I write in response to your Invitation and Order of January 29, 2007 ("1/29 Order") which, in accordance with Your Honor's instructions, was provided to us by counsel for Eli Lilly, together with other materials pertinent to the motion for a preliminary injunction now pending before the Court.

We have reviewed the materials forwarded to us by counsel and most particularly the 1/29 Order and understand that there has been testimony presented to the Court by others concerning their perceptions of the circumstances that gave rise to The New York Times's receipt of certain materials referenced in a series of articles published in the Times over the course of the last several weeks concerning Zyprexa and the controversy concerning it. On behalf of The Times and Alex Berenson, I would like to thank the Court for offering Mr. Berenson the opportunity voluntarily to appear before the Court and, in Your Honor's words, to "confront [that] testimony."

We know that Your Honor will appreciate the reasons that lead us to decline your invitation. As a matter of long-held principle, we believe that it would be inappropriate for any of our journalists voluntarily to testify about news gathering methods at the Times, our reporters' communications with their sources or the editorial judgments that are made in deciding what is and what is not published by the Times, just as we would vigorously resist any effort by any party to compel such testimony. We guard quite zealously our role as a member of a free and independent press and believe quite passionately that, consistent with the principles embodied in the First Amendment, it is not the role of the newspaper or its reporters to submit to cross-examination about such matters even where it may otherwise serve our particular interests in a particular case to do so. I want to emphasize as clearly as I can that in declining Your Honor's invitation we mean absolutely no disrespect whatsoever to the Court.

Consistent with the procedures set forth in the 1/29 Order, by copy of this letter I am requesting counsel for Eli Lilly to forward this correspondence to all interested counsel as I do not have contact information for all concerned.

Thank you for your time and consideration.

Respectfully submitted,



George Freeman

cc: Floyd Abrams, Esq.

Nina Gussack, Esq.  
Counsel for Eli Lilly  
By E-Mail