

Concurring Opinion issued October 26, 2010

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In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-10-00801-CV

IN RE QUALITY SAFETY SYSTEMS COMPANY,
A CANADIAN PARTNERSHIP, Relator

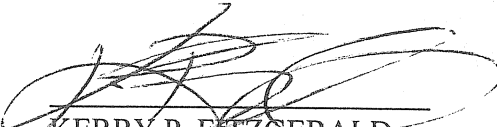
Original Proceeding from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. 09-10093-E

CONCURRING OPINION

Before Justices O'Neill, FitzGerald, and Lang-Miers
Concurring Opinion By Justice FitzGerald

Although I agree with the majority that the rulings of the supreme court require denial of the petition in this case, I disagree with allowing the sharing of confidential trade secret information with people who are identified merely as “potential” litigants. In *Eli Lilly & Co. v. Marshall*, 850 S.W.2d 155, 160 (Tex. 1993), the supreme court found that such sharing was appropriate, citing *Garcia v. Peebles*, 734 S.W.2d 343 (Tex. 1987). However, *Garcia* involved a protective order allowing shared discovery only between similarly situated litigants, and it does not mention potential litigants. *Id.* at 347–48. *Eli Lilly* provides no discussion or reasoning for its conclusion. See *Eli Lilly*, 850 S.W.2d at 160. In the absence of *Eli Lilly*, I would find that a protective order that allowed parties to share confidential information with persons who had identified themselves only as potential litigants was insufficient protection for trade secrets. However, in light of that case, I

concur in the majority's judgment.



KERRY P. FITZGERALD
JUSTICE

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