

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEVIN SCHWING,)
)
Plaintiff) Civil Action
) No. 03-CV-04848
)
vs.)
)
THE ELI LILLY AND COMPANY HEALTH)
CARE FLEXIBLE SPENDING PLAN;)
THE LILLY SEVERANCE PAY PLAN;)
THE ELI LILLY AND COMPANY)
HOLIDAY AND VACATION PLAN;)
ELI LILLY AND COMPANY,)
Individually and as Plan Sponsor,)
Fiduciary and Administrator of)
The Lilly Retirement Plan, and)
The Lilly Severance Pay Plan,)
and The Eli Lilly and Company)
Holiday and Vacation Plan, and)
The Lilly Health Plan, and)
The Lilly DentalPlus Plan, and)
PCS Pharmacy Benefits Management)
Service Program;)
THE EMPLOYEE BENEFITS COMMITTEE,)
As Administrator and Named)
Fiduciary of The Lilly Retirement)
Plan, and The Lilly Severance)
Pay Plan, and The Eli Lilly and)
Company Holiday and Vacation)
Plan, and The Lilly Health Plan,)
and The Lilly DentalPlus Plan,)
and PCS Pharmacy Benefits)
Management Service Program; and)
LILLY GLOBAL SHARES STOCK)
OPTION PLAN,)
)
Defendants)

VERDICT

NOW, this 29th day of September, 2006, upon consideration of the non-jury trial held March 1, 2, 3, 4, 7 and 8, 2005 and November 22, 2005; after closing arguments; upon consideration of the testimony and evidence adduced at trial;

upon consideration of the pleadings and record papers; upon consideration of the parties' post-trial submissions; and for the reasons expressed in the accompanying Adjudication, including Findings of Fact, Conclusions of Law, and Discussion:

We find in favor of plaintiff Kevin Schwing and against defendants Eli Lilly and Company, The Lilly Severance Pay Plan and The Employee Benefits Committee in the amount of \$102,130 on plaintiff's claim under the severance pay plan.

We find in favor of defendants Eli Lilly and Company, The Eli Lilly and Company Holiday and Vacation Plan and The Employee Benefits Committee and against plaintiff Kevin Schwing on plaintiff's claim for vacation benefits.

We find in favor of defendants Eli Lilly and Company, The Eli Lilly and Company Health Care Flexible Spending Plan and The Employee Benefits Committee and against plaintiff Kevin Schwing on plaintiff's claim for medical benefits.

We find in favor of defendants Eli Lilly and Company, the Lilly Global Shares Stock Option Plan and The Employee Benefits Committee and against plaintiff Kevin Schwing on plaintiff's claim for stock options.

Finally, we find in favor of defendant Eli Lilly and Company and against plaintiff Kevin Schwing on plaintiff's claim for reimbursement of his final expenses.

IT IS FURTHER ORDERED that judgment is granted in favor of plaintiff Kevin Schwing and against defendants Eli Lilly and Company, The Lilly Severance Pay Plan and The Employee Benefits Committee in the amount of \$102,130 on plaintiff's claim under the severance pay plan.

IT IS FURTHER ORDERED that judgment is granted in favor of defendants and against plaintiff Kevin Schwing on all remaining claims.

IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment in favor of plaintiff Kevin Schwing against defendant Eli Lilly and Company in the amount of \$102,130.¹

IT IS FURTHER ORDERED that the parties shall have until on or before November 15, 2006 to file a petition for counsel fees pursuant to 29 U.S.C. § 1132(g).

IT IS FURTHER ORDERED that the Clerk of Court shall mark this matter closed for statistical purposes.

BY THE COURT:

/s/ JAMES KNOLL GARDNER
James Knoll Gardner
United States District Judge

¹ It is the sense of this Order that because The Lilly Severance Pay Plan is unfunded and the payment of any severance benefit is ultimately the responsibility of defendant Eli Lilly and Company, we have directed the Clerk of Court to enter judgment only against Eli Lilly and Company.