

Page 1	
1	COMMONWEALTH OF KENTUCKY
2	PIKE CIRCUIT COURT - DIV. II
3	CIVIL ACTION NO. 07-CI-01303
4	COMMONWEALTH OF KENTUCKY, ex rel.
5	JACK CONWAY, ATTORNEY GENERAL
6	PLAINTIFF
7	VS. VIDEO DEPOSITION FOR THE PLAINTIFF
8	
9	
10	PURDUE PHARMA L.P., et al.
11	DEFENDANTS
12	
13	* * *
14	
15	DEPONENT: RICHARD SACKLER, M.D.
16	DATE: AUGUST 28, 2015
17	
18	* * *
19	
20	
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Page 3	
1	EXHIBITS CONTINUED:
2	Exhibit No. 9..... 73
3	(Memo dated 12-14-93 from James Komorowski to
4	OxyContin Project Team re Project Team Meeting
5	Minutes of 11-30-93)
6	Exhibit No. 10..... 74
7	(Memo dated 8-10-92 to Distribution from
8	R. Reder re Oxycodone Project Team Meeting
9	Minutes of 8-4-92)
10	Exhibit No. 11..... 77
11	(E-mail dated 5-28-97 from Richard Sackler
12	to Michael Friedman)
13	Exhibit No. 12..... 86
14	(Memo dated 6-12-97 from Richard Sackler to
15	Michael Friedman re OxyContin Team Meeting
16	Minutes)
17	Exhibit No. 13.....103
18	(Interoffice Memorandum dated 12-29-94 to
19	Mortimer Sackler, Raymond Sackler and
20	Richard Sackler from Michael Friedman re
21	Product Pipeline and Strategy)
22	Exhibit No. 14.....109
23	(Memo dated 4-23-97 from Richard Sackler to
24	Michael Friedman re San Antonio)
25	Exhibit No. 15.....110
	(Memo dated 4-2-93 from E. Natz to
	Distribution re PFRD R&D Meeting of 3-22-93)
	Exhibit No. 16.....117
	(Memo dated 8-30-93 from James Komorowski
	to OxyContin Project Team re Project Team
	Meeting Minutes of 8-17-93)
	Exhibit No. 17.....122
	(Article in Teamlink, Winter 1996, titled
	"OxyContin: The Most Significant Launch in
	Purdue History)
	Exhibit No. 18.....127
	(Medical Officer Review, Integrated Summary
	of Efficacy Oxycodone Controlled-Release)

Page 2	
1	I N D E X
2	Examination by Mr. Thompson..... 10
3	Reporter's Certificate.....337
4	
5	
6	EXHIBITS
7	
8	Exhibit No. 1..... 29
9	(Memo dated 7-16-90 from Robert Kaiko to
10	Richard Sackler and Michael Friedman re
11	Controlled-Release Oxycodone)
12	Exhibit No. 2..... 29
13	(E-mail dated 5-31-99 from Richard Sackler to
14	EdM at PurdueUS re New Office)
15	Exhibit No. 3..... 32
16	(Memo dated 5-31-99 from Richard Sackler to
17	EdM at PurdueUS re New Office)
18	Exhibit No. 4..... 38
19	(Memorandum dated 7-15-92 from Dr. JW Watkins
20	re Minutes of Analgesics Compendium Meeting
21	with Shionogi 6-24-92)
22	Exhibit No. 5..... 39
23	(Untitled document re "Our meeting ended
24	with a question and comment period...")
25	Exhibit No. 6..... 43
	(Letter dated 7-5-07 to Randy Ramseyer from
	Brent Gurney re Profit Calculations)
	Exhibit No. 7..... 48
	(Memo dated 3-15-97 from Paul Goldenheim to
	Richard Sackler re Is this an opening to
	descheduling the agent?)
	Exhibit No. 8..... 54
	(E-mail chain dated 4-4-97 from Robert
	Kaiko to Michael Friedman, Howard Udell,
	Richard Sackler, Paul Goldenheim and Robert
	Reder re Oxycodone)

Page 4	
1	EXHIBITS CONTINUED:
2	Exhibit No. 19.....134
3	(Memo dated 4-13-94 from James Komorowski to
4	OxyContin Project Team re Project Team
5	Meeting Minutes of 3-22-94)
6	Exhibit No. 20.....135
7	(Memo dated 6-22-94 from James Komorowski
8	to OxyContin Tablets Project Team re
9	Project Team Meeting Minutes of 6-8-94)
10	Exhibit No. 21.....141
11	(Confidential Minutes of International
12	R & D Meeting Held at 86 Park Lane, London
13	11-2-94)
14	Exhibit No. 22.....154
15	(Memo dated 9-25-95 from Alfonso at
16	Norwalk re Rescue use in OxyContin PI)
17	Exhibit No. 23.....164
18	(Memo dated 4-20-2000 from Richard Sackler
19	to Mark Alfonso re Recommendations of 4-7)
20	Exhibit No. 24.....173
21	(Memo dated 4-4-95 from Lydia Johnson to
22	OxyContin Launch Team re Launch Team
23	Meeting 3-31-95 minutes)
24	Exhibit No. 25.....177
25	(Memo dated 3-7-96 from Ellen Ingber and
	Linda Harrison to OxyContin Product Team
	re Minutes of the OxyContin Product Team
	Meeting of 2-22-96)
	Exhibit No. 26.....200
	(OxyContin Launch Plan)
	Exhibit No. 27.....200
	(Memo dated 10-23-96 from Friedman to
	Alfonso re Phase IV OxyContin Team Minutes)
	Exhibit No. 28.....204
	(Memo dated 6-9-99 from Richard Sackler to
	Stuart Baker, Edward Albright, Michael
	Friedman, James Dolan, Mark Alfonso and
	Edward Mahoney re Promotion of OxyContin
	by Abbott)

Page 5

Page 7

## 1 EXHIBITS CONTINUED:

- 2 Exhibit No. 29.....205  
(Memo dated 6-16-97 from E. Chickering and  
3 L. Harrison to Distribution re Phase IV  
Oxycontin Tablets Team Meeting of 6-13-97)
- 4 Exhibit No. 30.....218  
5 (GAO Report to Congressional Requesters  
December 2003 titled Prescription Drugs  
6 OxyContin Abuse and Diversion and Efforts  
to Address the Problem)
- 7 Exhibit No. 31.....220  
8 (E-mail chain dated 9-4-96 from Richard  
Sackler to Friedman and Alfonso re Press  
9 Release or similar promotion)
- 10 Exhibit No. 32.....226  
11 (5-17-05 letter to Gregory Stumbo from  
Howard Udell)
- 12 Exhibit No. 33.....226  
13 (Agreed Statement of Facts re United States  
of America v. The Purdue Frederick Company)
- 14 Exhibit No. 34.....247  
15 (Memo dated 1-25-01 from Mark Alfonso to  
Michael Friedman re Hydrocodone)
- 16 Exhibit No. 35.....278  
17 (Memo dated 12-8-99 from Michael Friedman  
to Paul Goldenheim, David Haddox, Paul  
18 Goldenheim, Robert Kaiko, Robert Reder re  
Oxycontin abuse-Jacksonville, FL)
- 19 Exhibit No. 36.....286  
20 (Memo dated 8-29-97 from Joann Coletto to  
Richard Sackler re Send some Betadine to)
- 21 Exhibit No. 37.....287  
22 (Memo dated 5-15-96 from Claudia Bobillier  
To Claydon, Goldenheim, Fleischer, Howell,  
Kaiko, Kuster, Manners, A.J. Miller, R.B.  
23 Miller, Sackler and Wimmer re Minutes of  
Meeting with Prof. Dayer in Geneva 5-6-96)
- 24
- 25

## 1 APPEARANCES

## 2 FOR THE PLAINTIFF:

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Page 6

Page 8

## 1 EXHIBITS CONTINUED:

- 2 Exhibit No. 38.....324  
(Memo dated 1-14-97 from Richard Sackler to  
3 Michael Friedman, James Lang, Paul  
Goldenheim, Robert Kaiko and Robert Reder  
4 re Merck-Medco)
- 5 Exhibit No. 39.....327  
(Memo dated 9-30-96 from Alfonso to John  
6 Stewart, Friedman, Lang, Sackler, Darke,  
Jeffery, Stables and Franco re Analgesic  
7 Plans)
- 8 Exhibit No. 40.....331  
(Sales Bulletin to Prescription Sales Force  
9 From Russ Gasdia of 1-25-99, First Quarter  
Bonus Payouts Oxycontin and MS Contin)
- 10
- 11

## 12 CERTIFIED QUESTION

13 Page 298, Line 11

15 \* \* \*

## 1 APPEARANCES CONTINUED:

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## 11 VIDEOGRAPHER:

12 GEORGE PARKER

14 \* \* \*



Page 9

1 The video deposition of RICHARD SACKLER,  
2 M.D., taken in the offices of Dolt, Thompson, Shepherd  
3 & Kinney, 13800 Lake Point Circle, Louisville,  
4 Kentucky, on Friday, the 28th day of August, 2015, at  
5 approximately 9:11 a.m.; said deposition being taken  
6 pursuant to Notice for use in accordance with the  
7 Kentucky Rules of Civil Procedure.  
8  
9 \* \* \*  
10  
11 VIDEOGRAPHER: We are on the record at  
12 9:12 a.m., August 28th, 2015 in the matter of  
13 Commonwealth of Kentucky, Pike Circuit Court, Division  
14 2, Civil Action No. 07-CI-01303, The Commonwealth of  
15 Kentucky versus Purdue Pharma. This is the deposition  
16 of Dr. Richard S. Sackler.  
17 If I could have the attorneys state  
18 their name into the record.  
19 MR. THOMPSON: Do you want to just go  
20 ahead and read the list of the names?  
21 VIDEOGRAPHER: Just read the list?  
22 MR. THOMPSON: I'll tell you what,  
23 let's just go ahead, let's just say our names.  
24 MR. SAYERS: Jason Sayers on behalf of  
25 Abbott.

Page 10

1 MR. DANFORD: Dan Danford on behalf of  
2 the Purdue defendants.  
3 MR. STRAUBER: Donald Strauber on  
4 behalf of the various Purdue defendants.  
5 MR. SILBERT: Oh, sorry. Richard  
6 Silbert in-house at Purdue.  
7 MR. HENNEBERRY: Jay Henneberry on  
8 behalf of the Purdue defendants.  
9 MR. THOMPSON: Tyler Thompson on  
10 behalf of the State of Kentucky.  
11 MR. ELLIS: Anthony Ellis on behalf of  
12 the State of Kentucky.  
13 MR. DENHAM: And Mitchell Denham from  
14 the Attorney General's Office on behalf of  
15 Kentucky.  
16  
17 RICHARD SACKLER, M.D., after first  
18 being duly sworn, was examined and testified as  
19 follows:  
20  
21 EXAMINATION  
22  
23 BY MR. THOMPSON:  
24 Q. Would you state your name, please.  
25 A. Richard Sackler.

Page 11

1 Q. And you are here today to give  
2 testimony in a case pending against Purdue, various  
3 entities by the State of Kentucky.  
4 Are you aware of that?  
5 A. That's my understanding.  
6 Q. And you've given --  
7 MR. STRAUBER: Mr. Thompson, before  
8 you get started, I'd just like to note that I expect  
9 we will be designating portions of this transcript as  
10 confidential pursuant to the order.  
11 MR. THOMPSON: Is that correct,  
12 Mitchell?  
13 MR. DENHAM: Yeah, they can designate  
14 portions confidential, and then there's provisions  
15 about challenging them.  
16 MR. THOMPSON: We won't disseminate  
17 until you-all designate and we respond.  
18 MR. DANFORD: There's a 30-day period  
19 in the rule. We'll get you a copy of the agreed  
20 protective order.  
21 MR. THOMPSON: And just so you know --  
22 I know you're not from Kentucky; is that correct?  
23 MR. STRAUBER: That's correct.  
24 MR. THOMPSON: All objections, other  
25 than to the form of the question, are preserved in

Page 12

1 Kentucky on video.  
2 MR. STRAUBER: Thank you.  
3 BY MR. THOMPSON:  
4 Q. What is your current role at Purdue?  
5 MR. STRAUBER: Excuse me. I -- there  
6 are a number of defendants that bear some portion of  
7 the Purdue name, and the distinction can be  
8 significant. So I'd ask when you phrase your  
9 questions, specify which Purdue entity you are talking  
10 about.  
11 Q. Well, let's -- let's talk about the  
12 number of Purdue entities there are.  
13 How many Purdue entities are there?  
14 A. I don't know.  
15 Q. I've seen upwards of 69 different  
16 corporations, perhaps, that the Sackler family owns.  
17 Is that correct?  
18 A. If you've counted them. I can't  
19 differ with you. I don't know the answer.  
20 Q. There are a number of Purdue entities.  
21 The Purdue Frederick Company, Inc., does it still  
22 exist?  
23 A. I don't know.  
24 Q. Tell me what companies that you  
25 currently have a role with that involve Purdue.

Page 13

1 A. Purdue Pharma.  
 2 **Q. Do you sit on the board of any other**  
 3 **Purdue companies?**  
 4 A. Not to my knowledge.  
 5 **Q. What about Mundipharma?**  
 6 A. I sit on the board of a consulting  
 7 firm which consults to Mundipharma.  
 8 **Q. Does the Sackler family own**  
 9 **Mundipharma?**  
 10 A. Yes.  
 11 **Q. What about -- what is Mundipharma?**  
 12 A. Mundipharma is -- is a name that is  
 13 attached to many different companies, such as -- just  
 14 similar to Purdue.  
 15 **Q. Is that company over in Germany?**  
 16 A. There is a Mundipharma company in  
 17 Germany.  
 18 **Q. What about Roxane? Does Purdue own**  
 19 **Roxane?**  
 20 A. No.  
 21 **Q. Did they own Roxane in the past?**  
 22 A. Never.  
 23 **Q. All right. Do you know how many**  
 24 **current companies are owned by the Sackler family?**  
 25 A. No.

Page 14

1 **Q. All right. In discussing OxyContin,**  
 2 **how many companies were involved in the production,**  
 3 **manufacturing or distribution of OxyContin?**  
 4 A. Could you specify the geography?  
 5 **Q. In the world.**  
 6 A. Many. I've never counted them.  
 7 **Q. Does Purdue do licensing agreements**  
 8 **with other companies to sell OxyContin?**  
 9 A. It does.  
 10 **Q. Do they own parts of those companies?**  
 11 A. No.  
 12 **Q. How many companies does Purdue own**  
 13 **that distributes or dispenses OxyContin?**  
 14 A. Many.  
 15 **Q. Can you tell me the names of them?**  
 16 A. A few of them, but not all of them.  
 17 **Q. Are you still the director of Purdue**  
 18 **Pharma, Inc.?**  
 19 A. I'm not sure.  
 20 **Q. Are you still a general partner of**  
 21 **Purdue Pharma, L.P.?**  
 22 A. I am not. It is owned by two trusts.  
 23 **Q. On July 30th of 2014, were you a**  
 24 **director of Purdue Pharma, Inc.?**  
 25 A. Not that I'm aware.

Page 15

1 **Q. This is an affidavit filed in the**  
 2 **Southern District of West Virginia.**  
 3 **And does that appear to be your name**  
 4 **(indicating)?**  
 5 A. That does.  
 6 **Q. And it's dated July 30th, 2014. It**  
 7 **says "Declaration of Dr. Richard S. Sackler. I am a**  
 8 **director of Purdue Pharma, Inc., the general partner**  
 9 **of Purdue Pharma, L.P. I've held this position since**  
 10 **1990."**  
 11 **A. If that's what it says, then that's**  
 12 **what it says.**  
 13 **Q. How involved are you in the production**  
 14 **and marketing and promotion and the training and**  
 15 **management of Purdue sales representatives for**  
 16 **OxyContin?**  
 17 MR. STRAUBER: I object to the form of  
 18 the question.  
 19 A. Should I answer?  
 20 **Q. Go ahead.**  
 21 MR. STRAUBER: You can answer.  
 22 A. It depends on the time.  
 23 **Q. Okay. And when you say "it depends on**  
 24 **the time," why do you say that?**  
 25 A. Because I was involved in the areas at

Page 16

1 a supervisory level, not as an active level, for a  
 2 period of time that began with the launching of  
 3 OxyContin and ended in early 2003.  
 4 **Q. When you were involved on the**  
 5 **supervisory level but not the active level, how much**  
 6 **of your day-to-day activity was devoted to OxyContin?**  
 7 A. It varied enormously.  
 8 **Q. In this declaration it says, "During**  
 9 **the time period set forth in the amended complaint,**  
 10 **1996 to 2009, I was not directly involved with the**  
 11 **day-to-day marketing or promoting of OxyContin, the**  
 12 **training or management of Purdue sales**  
 13 **representatives, or the scientific research into the**  
 14 **conversion ratio from MS Contin to OxyContin. Those**  
 15 **responsibilities principally fell to Purdue senior**  
 16 **management in research and development, regulatory**  
 17 **affairs, sales training and marketing, among others."**  
 18 **Is that accurate?**  
 19 A. Yes.  
 20 **Q. I want to show you an e-mail,**  
 21 **Dr. Sackler, dated Monday, May 31st, 1999.**  
 22 **Do you know who Cornelia --**  
 23 **Dr. Cornelia Hentzsch is?**  
 24 A. I do.  
 25 **Q. And who is that?**

Page 17

1 A. She was general manager of Mundipharma  
2 Australia.  
3 **Q. And to give this a little bit of**  
4 **context, you-all had a drug called MS Contin, morphine**  
5 **sulfate, that was an immediate-release narcotic**  
6 **opioid -- or narcotic; is that correct?**  
7 A. It was controlled release.  
8 **Q. Controlled release. I'm sorry.**  
9 **And that was used primarily for cancer**  
10 **patients or malignant pain patients; is that correct?**  
11 A. The majority of use, yes; but not -- I  
12 don't think "primarily" conveys an accurate picture.  
13 **Q. Majority of use was for?**  
14 A. Over 50 percent.  
15 **Q. And it was sort of felt by Purdue**  
16 **Pharma that morphine had a stigma attached to it that**  
17 **kept doctors from prescribing it across the board; is**  
18 **that accurate?**  
19 A. Yes.  
20 **Q. And you-all had a --**  
21 A. May I amend that?  
22 **Q. Yes.**  
23 A. It didn't prevent doctors from  
24 prescribing it across the board. It was an inhibition  
25 to the use of a product in every application.

Page 18

1 **Q. Have you ever gone back and studied**  
2 **the history of addiction and how it has played out in**  
3 **the 19th and 20th centuries?**  
4 A. I'm not a student of that literature.  
5 **Q. All right. What was your**  
6 **understanding of why doctors did not want to prescribe**  
7 **morphine for anything or had a stigma about**  
8 **prescribing it for anything other than cancer and**  
9 **malignant pain?**  
10 A. As I said before, the stigma prevented  
11 many physicians from prescribing it for any pain.  
12 **Q. Why do you think that stigma existed?**  
13 A. I'm not a student of the issue, but I  
14 believe the stigma existed because of a popular  
15 understanding shared by both professionals and by  
16 laymen that morphine was an end-of-life drug, if it  
17 was to be used at all.  
18 **Q. Were there concerns about addiction**  
19 **and dependence with respect to morphine?**  
20 A. Some people had those concerns.  
21 **Q. So going back to building our context**  
22 **here. You-all had a drug called MS Contin that you**  
23 **had the exclusive right to sell; is that correct?**  
24 A. That's correct.  
25 **Q. Do you know when that exclusivity was**

Page 19

1 **set to expire?**  
2 A. I'm -- I'm not certain that I know the  
3 date, no.  
4 **Q. Do you recall that one of the concerns**  
5 **that Purdue's senior management had -- and I'm using**  
6 **"Purdue" in relation to Purdue companies that are**  
7 **involved with OxyContin. And rather than just sit**  
8 **here and name them all out, can we agree that when I**  
9 **say "Purdue," I'm referring to Purdue companies of all**  
10 **the OxyContin?**  
11 MR. STRAUBER: Mr. Thompson, I have to  
12 object to that because I said at the outset there are  
13 different Purdue entities that are defendants in the  
14 case, and the distinction between them may at times be  
15 significant. And so if you lump them all together  
16 under "Purdue," we're going to get a record that will  
17 not be easily decipherable at the end.  
18 **Q. Well, let's -- let's talk about it**  
19 **then.**  
20 **Which Purdue companies were involved**  
21 **in the sale and distribution of OxyContin?**  
22 A. Both Purdue Frederick and Purdue  
23 Pharma were involved in the early years of selling the  
24 product.  
25 **Q. Okay. Were there any other Purdue**

Page 20

1 **companies involved in the selling of the product?**  
2 A. Not in the U.S.  
3 **Q. Who had the exclusive right to sell**  
4 **MS Contin?**  
5 A. At first it was Purdue Frederick.  
6 **Q. And --**  
7 A. I don't know at what point Purdue  
8 Pharma acquired rights to sell it or if it did at all.  
9 **Q. What is the distinction between Purdue**  
10 **Frederick and Purdue Pharma?**  
11 A. Purdue Frederick was the original  
12 company that my father and uncle acquired in 1952. It  
13 was a shell company and it was the first  
14 pharmaceutical company that they owned.  
15 Purdue Pharma was established in the  
16 early 1990s to take on new products and to also take  
17 on the risk of -- well, take on the risk of new  
18 products and also a few established products, but not  
19 all.  
20 **Q. Were there any actions taken with**  
21 **respect to Purdue -- or with respect to OxyContin that**  
22 **would not fall under the Purdue Pharma umbrella?**  
23 A. I'm sorry, could you repeat the  
24 question?  
25 **Q. Yeah. Are you -- are you maintaining**



Page 21

1 that there are any actions done with respect to  
2 **OxyContin, its -- its creation, production, marketing,**  
3 **sales, that do not fall under the Purdue Pharma**  
4 **umbrella?**  
5 A. Its creation was done in Purdue  
6 Frederick --  
7 **Q. Okay.**  
8 A. -- until the early '90s when that  
9 responsibility was transferred to Purdue Pharma.  
10 **Q. And then Purdue Frederick continued to**  
11 **exist, though, correct?**  
12 A. It did.  
13 **Q. Okay. And was Purdue Frederick also a**  
14 **company involved with marketing, promoting, sales and**  
15 **production of OxyContin?**  
16 A. I'm trying to give you an accurate  
17 answer because this is confusing and complex.  
18 There was a period of time in which  
19 once Purdue Pharma became involved that Purdue  
20 Frederick was involved, but Purdue Frederick was never  
21 involved nor Purdue Pharma in manufacturing the drug,  
22 which was when it was developed, was manufactured by a  
23 company named P.F. Laboratories.  
24 **Q. Okay. Other than the manufacture, did**  
25 **Purdue Frederick and Purdue Pharma both play a role in**

Page 22

1 the production of it?  
2 A. I can't recall in detail whether they  
3 both played a role or whether when Purdue Pharma took  
4 on the project it carried most of the weight or all of  
5 it.  
6 **Q. Is there any difference between the**  
7 **employees of Purdue Frederick and Purdue Pharma?**  
8 A. There were differences.  
9 **Q. Okay. Any difference in the board of**  
10 **directors?**  
11 A. That would test my memory, and I'm not  
12 sure.  
13 **Q. All right. Well, let me go back to --**  
14 **let's talk about OxyContin. And I'm going to use the**  
15 **term "Purdue" for both Purdue Frederick and Purdue**  
16 **Pharma. If at some point you feel like there's a**  
17 **distinction to be made, you let me know. Okay? But**  
18 **at a time when --**  
19 MR. STRAUBER: Mr. Thompson, I object  
20 to your combining the two under the name "Purdue." If  
21 you're going to do it, then I'd like to have a  
22 standing objection to that combination.  
23 MR. THOMPSON: What is your reason for  
24 the objection?  
25 MR. STRAUBER: My reason is, as

Page 23

1 Dr. Sackler has explained briefly, they were two  
2 entities that did different things at different times,  
3 and if you lump the two together, inevitably there's  
4 going to be confusion in terms of the witness's  
5 answer.  
6 **Q. Okay. Let's do this. I'm going to**  
7 **refer to Purdue as Purdue Pharma, L.P. and also Purdue**  
8 **Frederick, L.P. If at some point you feel like it's**  
9 **only Purdue Frederick or only Purdue Pharma, you let**  
10 **me know. Okay?**  
11 A. It's kind of a burden, but with the  
12 help of my attorney...  
13 **Q. Sure.**  
14 A. Because there may be issues. It's  
15 going to be -- it tests my memory to separate the two.  
16 So I'm sorry for the confusion, but it is important.  
17 **Q. For instance -- let me ask you this.**  
18 **Sales reps. Were sales reps employed by Purdue**  
19 **Frederick or Purdue Pharma?**  
20 A. For a period of time they were -- each  
21 sales rep was employed by one, but not necessarily the  
22 other.  
23 **Q. Do you know which sales reps were**  
24 **employed by Purdue Frederick versus Purdue Pharma?**  
25 A. I don't know.

Page 24

1 **Q. Do you know if they received different**  
2 **training?**  
3 A. I believe the training was the same.  
4 **Q. Well, I'll tell you what, I'm going to**  
5 **refer to when I say "Purdue" as Purdue Frederick. If**  
6 **you feel like it's Purdue Pharma, you let me know.**  
7 **Okay?**  
8 A. Okay.  
9 **Q. All right. So back in 19 -- early**  
10 **'90s when you were developing MS Contin, this**  
11 **exclusive license that you had to sell MS Contin was**  
12 **going to expire and there was going to be competition**  
13 **from generic companies, correct?**  
14 A. Well, the product MS Contin was  
15 developed in the late '70s and early '80s. And -- so  
16 are you discussing development or are you discussing a  
17 later time?  
18 **Q. The later time when its license is**  
19 **about to expire.**  
20 A. Eventually we knew that there would be  
21 competition for MS Contin.  
22 **Q. And one of the things in developing**  
23 **Oxycodone Controlled-Release, one of the -- one of the**  
24 **concerns was how to position it in the market and**  
25 **whether you were going to position it an obsolete**



Page 25

1 **MS Contin or try to position it alongside MS Contin.**  
 2 **Do you recall that issue?**  
 3 MR. STRAUBER: I object to the form of  
 4 the question. Could you repeat it? I'm not sure I  
 5 understood the question.  
 6 MR. THOMPSON: Yes.  
 7 **Q. One of the concerns when you were**  
 8 **developing Oxycodone -- I'm sorry -- OxyContin**  
 9 **Controlled-Release was how you were going to position**  
 10 **it for market share and whether you were going to**  
 11 **position it and make MS Contin obsolete and take that**  
 12 **market share that MS Contin had, or whether you were**  
 13 **going to position it alongside MS Contin and sell them**  
 14 **both together.**  
 15 **Do you recall that concern?**  
 16 A. I recall discussions, but that wasn't  
 17 the principal driver. The principal -- the principal  
 18 goal was to produce the best product we could, and we  
 19 believed when we started it and subsequently...  
 20 Should I stop?  
 21 **Q. No, no.**  
 22 A. We believed it was and is a better  
 23 product than MS Contin.  
 24 **Q. Here's a memo dated -- to Richard S.**  
 25 **Sackler from Robert Kaiko.**

Page 26

1 **Do you know Dr. Kaiko?**  
 2 A. I do.  
 3 **Q. He's a Ph.D.?**  
 4 A. He is.  
 5 **Q. What was his role?**  
 6 A. He was the person who undertook or ran  
 7 the project and was involved -- the project of  
 8 developing OxyContin -- and was -- as a clinical  
 9 pharmacologist was deeply involved in selecting  
 10 formulations that would be most likely to achieve the  
 11 desired effect.  
 12 **Q. And under here it says, "Rationale for**  
 13 **Another Controlled-Release Opioid Analgesic."**  
 14 **This is Bates number -- it's actually**  
 15 **got two Bates stamps. So it's PDD9520805292.**  
 16 **But it says, "Rationale for Another**  
 17 **Controlled-Release Opioid Analgesic: MS Contin may**  
 18 **eventually face such serious generic competition that**  
 19 **other controlled-release opioids must be considered.**  
 20 **Other pharmaceutical firms are thought to also be**  
 21 **developing other controlled-released opioid**  
 22 **analgesics."**  
 23 MR. STRAUBER: Mr. Thompson, if you're  
 24 reading from a document, could you show it to the  
 25 witness?

Page 27

1 MR. THOMPSON: Sure. That's why I was  
 2 holding it over here.  
 3 MR. STRAUBER: It's hard to read from  
 4 that distance.  
 5 MR. ELLIS: Here's an extra copy.  
 6 MR. THOMPSON: Great.  
 7 MR. STRAUBER: Do you have a copy for  
 8 me, also?  
 9 MR. ELLIS: (Passing document.)  
 10 MR. STRAUBER: Thank you.  
 11 **Q. So do you see down there the second**  
 12 **highlighted portion that says "Rationale."**  
 13 **A. Mine is not highlighted.**  
 14 **Q. Yeah. I'll tell you where to go.**  
 15 A. Okay.  
 16 **Q. So the second highlighted portion,**  
 17 **"Rationale for another controlled-release opioid**  
 18 **analgesic." And do you see the first sentence below**  
 19 **that?**  
 20 A. Oh, I see. That's a cross-title.  
 21 **Q. Yes.**  
 22 A. I was looking at the text.  
 23 **Q. And the text below that says,**  
 24 **"MS Contin may eventually face such serious generic**  
 25 **competition that other controlled-release opioids must**

Page 28

1 **be considered. Other pharmaceutical firms are thought**  
 2 **to be -- to also be developing other**  
 3 **controlled-release opioid analgesics."**  
 4 **Did I read that correctly?**  
 5 A. You did.  
 6 **Q. And was that a concern at that time?**  
 7 A. It was a secondary or tertiary driver.  
 8 **Q. And then if you'll turn to the next**  
 9 **page and look at the second paragraph. And I'll read**  
 10 **that. It says, "While we have reason to believe that**  
 11 **other pharmaceutical firms are formulating**  
 12 **controlled-release morphine and controlled-release**  
 13 **hydromorphone, there is no evidence to date that this**  
 14 **is being done with Oxycodone. A controlled-release**  
 15 **Oxycodone is, thus, less likely to initially have**  
 16 **generic competition."**  
 17 **Was that a consideration when deciding**  
 18 **to come out with Oxycodone -- or OxyContin?**  
 19 A. Not for me.  
 20 **Q. All right. Now, we read your**  
 21 **paragraph 11 where you discuss that you had limited**  
 22 **role in the --**  
 23 MR. DANFORD: Do you have a copy of  
 24 that so he can take a look at that?  
 25 MR. THOMPSON: Yes. Paragraph 11.

Page 29	Page 31
<p>1 (Passing document.)</p> <p>2 Let's make this Exhibit 1 to the</p> <p>3 deposition.</p> <p>4 (DEPOSITION EXHIBIT NO. 1 MARKED)</p> <p>5 Q. And this declaration said that you</p> <p>6 were not directly involved with the day-to-day</p> <p>7 marketing or promotion of OxyContin, the training or</p> <p>8 management of Purdue sales representatives, or the</p> <p>9 scientific research into the conversion ratio of</p> <p>10 MS Contin to OxyContin. Is that correct?</p> <p>11 A. That is correct.</p> <p>12 Q. I want to show you an e-mail. Let's</p> <p>13 mark this Exhibit 2 to the deposition.</p> <p>14 (DEPOSITION EXHIBIT NO. 2 MARKED)</p> <p>15 A. I need to just clarify. I'm</p> <p>16 emphasizing "directly involved." I didn't do any of</p> <p>17 the work. I didn't do any of the training. I was not</p> <p>18 a salesperson.</p> <p>19 Q. Okay.</p> <p>20 A. But as a senior executive, I certainly</p> <p>21 was aware of what was going on and I consulted with</p> <p>22 other senior executives about what was going on and</p> <p>23 what should be going on and so on.</p> <p>24 Q. Okay. And then this e-mail that was</p> <p>25 just handed to you a few moments ago says -- again,</p>	<p>1 MS Contin, to pay perhaps more attention than I</p> <p>2 thought she was paying to the prospects of potential</p> <p>3 for OxyContin. So this was in the spirit of</p> <p>4 motivating her.</p> <p>5 It was true that I was very gladdened</p> <p>6 to see that OxyContin was meeting with so -- with such</p> <p>7 a strong positive reception by both physicians and</p> <p>8 patients, and I was working hard at the business. But</p> <p>9 it -- if you -- you would misinterpret this if you</p> <p>10 thought that I was working only on OxyContin. That</p> <p>11 was not the case.</p> <p>12 Q. Okay. When you say you were</p> <p>13 encouraged by the number of physicians that were</p> <p>14 selling it --</p> <p>15 A. Prescribing it.</p> <p>16 Q. -- prescribing it, you were not aware</p> <p>17 at this time, were you -- or were you aware -- that</p> <p>18 your company was committing a felony in how they were</p> <p>19 marketing and branding the drug?</p> <p>20 MR. STRAUBER: I object to the form of</p> <p>21 the question.</p> <p>22 A. I was not aware at all of what you're</p> <p>23 saying. And when I say I was heartened by physicians'</p> <p>24 reception, when I did speak to physicians at</p> <p>25 meetings -- I didn't go on sales calls -- but at some</p>
Page 30	Page 32
<p>1 it's Cornelia Hentzsch. It's dated May 29th, 1999.</p> <p>2 It says -- if you'll read the highlighted portion. It</p> <p>3 says -- this is an e-mail from you to her, correct?</p> <p>4 A. Yes.</p> <p>5 Q. It says, "You won't believe how</p> <p>6 committed I am to make OxyContin a huge success. It</p> <p>7 is almost that I dedicated my life to it. After the</p> <p>8 initial launch phase, I will have to catch up with my</p> <p>9 private life again."</p> <p>10 Did I read that correctly?</p> <p>11 A. You did.</p> <p>12 Q. When you say you dedicated your life</p> <p>13 to it and that you have no time for your private life,</p> <p>14 what were your day-to-day activities with respect to</p> <p>15 OxyContin?</p> <p>16 A. May I read the -- the whole document?</p> <p>17 I haven't seen this for 16 years.</p> <p>18 Q. Have you read your deposition in the</p> <p>19 Endo litigation?</p> <p>20 A. No. In preparation for this?</p> <p>21 Q. Yes.</p> <p>22 A. No.</p> <p>23 The context of this was to encourage</p> <p>24 Dr. Hentzsch, who was the head of the Australian</p> <p>25 business and was meeting with great success with</p>	<p>1 meetings and conferences, they were extremely</p> <p>2 enthusiastic about the effectiveness and the safety</p> <p>3 and the reception their patients had, the response</p> <p>4 they had to the product. That was what I was</p> <p>5 referring to. Because, as I had told you before, our</p> <p>6 goal was to make a better product than MS Contin, and</p> <p>7 I believe we -- this was one of the ratifications of</p> <p>8 that.</p> <p>9 MR. THOMPSON: Let's mark this Exhibit</p> <p>10 3.</p> <p>11 (DEPOSITION EXHIBIT NO. 3 MARKED)</p> <p>12 MR. STRAUBER: May I have a copy?</p> <p>13 MR. ELLIS: You already have it.</p> <p>14 MR. STRAUBER: The witness has it.</p> <p>15 I'd like to have a copy.</p> <p>16 MR. ELLIS: I think you have it in</p> <p>17 front of you and your hand is physically on it.</p> <p>18 MR. STRAUBER: You tell me. I don't</p> <p>19 see it.</p> <p>20 MR. ELLIS: You're holding it.</p> <p>21 MR. STRAUBER: I'm holding 1 and 2.</p> <p>22 MR. ELLIS: That e-mail that you have</p> <p>23 your hand on. We may have just marked it twice. That</p> <p>24 may be the problem.</p> <p>25 MR. STRAUBER: You've marked it twice.</p>

Page 33

1 3 and 2 are the same?

2 MR. ELLIS: Yeah.

3 MR. STRAUBER: Okay. Then I have it

4 because I have 2.

5 **Q. And we'll get into this a little more**

6 **later on, but you're aware that Purdue pled guilty to**

7 **a felony charge of misbranding a drug, which was**

8 **OxyContin, with the intent to defraud or mislead? You**

9 **are aware of that, correct?**

10 MR. STRAUBER: That is Purdue -- that

11 is -- pursuant to your earlier statement, that is

12 Purdue Frederick; is that right?

13 MR. THOMPSON: Yes.

14 MR. STRAUBER: Okay.

15 A. Okay. So when you said "Purdue," you

16 meant Purdue Frederick?

17 **Q. Purdue Frederick Company, Inc.**

18 A. Yes, I am aware.

19 **Q. Did you -- is it your understanding**

20 **that the fraud only occurred with respect to the**

21 **Purdue Frederick Company and not with respect to**

22 **Purdue Pharma, L.P.?**

23 A. That's my understanding. But I'm not

24 an attorney and that's a very deep legal question.

25 **Q. Did you do any investigation to find**

Page 34

1 **out whether sales reps employed by Purdue Pharma were**

2 **exceeding what they were allowed to do when they were**

3 **marketing, that they were making claims that were**

4 **untrue?**

5 MR. STRAUBER: Objection to form. He

6 can answer.

7 A. When you say "you," are you referring

8 to me personally or are you referring to the company?

9 **Q. I'm referring to you personally.**

10 A. I did not conduct or manage any

11 investigation. But from the time we learned at top

12 management levels that there was an abuse and

13 diversion program, which was years before the

14 settlement with the government, we launched multiple

15 investigations both with inside resources and people

16 and with external attorneys and others to identify --

17 and this was before any charges were made -- to

18 identify if we had in any sense mislead or caused this

19 to happen.

20 More important, we spent enormous

21 resources to try to mitigate the problem whatever the

22 cost was, and that effort, which was launched sometime

23 in 2000 or 2001, continued right through the period

24 that you're referring to of the plea with the U.S.

25 government.

Page 35

1 **Q. And did you-all launch this**

2 **investigation as soon as you learned there was a**

3 **problem?**

4 A. Yes. Within -- within months or

5 weeks. I can't recall. It was 16 -- 15, 16 years

6 ago.

7 **Q. Do you -- who is Michael Friedman?**

8 A. Michael Friedman is the -- was at that

9 time the head of sales and marketing.

10 **Q. Have you seen his presentation**

11 **At Purdue that he -- do you know what At Purdue is,**

12 **your-all's internal newsletter that goes out to all**

13 **the employees?**

14 A. I don't believe I saw a presentation

15 At Purdue from him.

16 **Q. All right. We'll get to that later.**

17 **This is a memorandum dated July 15th,**

18 **1992, "Meeting with Shionogi held Wednesday July 24th,**

19 **1992" from Dr. J.W. Watkins, and there's a**

20 **distribution list.**

21 **I'll assume you are Dr. R.S. Sackler;**

22 **is that correct?**

23 A. That would be me.

24 **Q. And if you would turn to page 6 of**

25 **this document that is PDD1701546226. And to give it a**

Page 36

1 **little context, Shionogi, is that a Japanese company?**

2 A. It is.

3 **Q. And at one time were you-all talking**

4 **about doing some sort of business with them involving**

5 **potentially OxyContin Controlled-Release?**

6 A. Yes.

7 **Q. And did you do business with them**

8 **involving OxyContin Controlled-Release?**

9 A. Yes.

10 **Q. Let's look at page 6, if you would,**

11 **the -- it looks like maybe the third paragraph down**

12 **that begins with "Dr. Kaiko..." Do you see that?**

13 A. Yes.

14 **Q. "Dr. Kaiko presented two options**

15 **identified for positioning OxyContin AcroContin..."**

16 **Now, is that the controlled-release?**

17 A. That was our working title of the

18 controlled-release system.

19 **Q. "...versus MST Contin Tablets in the**

20 **U.S. The first was relevant if PF" -- who is PF?**

21 A. Purdue Frederick.

22 **Q. -- "did not suffer substantial erosion**

23 **of its MS Contin market by generic competition. This**

24 **envisioned using Oxycodone AcroContin Tablets over the**

25 **entire spectrum of pain in patients whose treatment**



<p style="text-align: right;">Page 37</p> <p>1 had been initiated with this product, whilst MS Contin 2 Tablets would be used as therapy for chronic severe 3 pain in patients who were changed from other 4 medication including Oxycodone AcroContin Tablets. 5 "An alternative scenario would apply 6 if MS Contin Tablets were subject to erosion by 7 generic competitors. In this case Oxycodone 8 AcroContin Tablets would be promoted for use across 9 the entire pain spectrum, including those patients who 10 might otherwise receive controlled-release morphine." 11 Did I read that correctly? 12 A. You did. 13 Q. Okay. And was it your intent to 14 promote OxyContin Controlled-Release across the entire 15 pain spectrum? 16 A. Where? You're referring to Japan, 17 which is where Shionogi either had or was negotiating 18 a license for OxyContin. 19 Q. Was it also your intent in the U.S. to 20 promote it across the entire pain spectrum? 21 A. It was our hope that it would be 22 well-received for pain -- moderate to severe pain 23 requiring opioids. 24 MR. THOMPSON: Let's mark this as 25 Exhibit 4.</p>	<p style="text-align: right;">Page 39</p> <p>1 efforts now to a successful launch of OxyContin." 2 Did I read that correctly? 3 A. You did. 4 Q. And who is Lydia Johnson? 5 A. I don't know. 6 Q. This department, it looks like it's 7 the marketing department; is that right? 8 A. I just see a distribution list. I 9 don't see a source. I don't know -- it says that the 10 department is marketing, but I don't know Lydia 11 Johnson. 12 Q. Was it your belief that it was of 13 extreme timely importance that OxyContin be 14 established because AB generics were going to arrive 15 and compete with MS Contin? 16 A. No. 17 Q. All right. Let's mark this as 18 Exhibit 4. 19 MR. STRAUBER: We already have a 4. 20 MR. THOMPSON: Then this would be 5. 21 (DEPOSITION EXHIBIT NO. 5 MARKED) 22 Q. Dr. Sackler, do you know how much 23 money to date has been generated by the sale of 24 OxyContin? 25 A. I don't understand the question, money</p>
<p style="text-align: right;">Page 38</p> <p>1 (DEPOSITION EXHIBIT NO. 4 MARKED) 2 Q. And here is PDD9524706426, OxyContin 3 launch team memo dated 3-31-95. 4 And OxyContin was actually launched in 5 January of '96; is that correct? 6 A. That sounds correct. 7 Q. And what this says -- if you will turn 8 to page -- first of all, let me ask you this. 9 Do you recall having any significant 10 problem with MS Contin with respect to addiction, 11 abuse, diversion or any of the problems that you 12 experienced with OxyContin CR? 13 A. I -- I recall never hearing about 14 that. 15 Q. All right. So let's look at page 2, 16 the last paragraph. It says, "Our meeting ended with 17 a question and comment period. Michael Friedman 18 emphasized the threat that AB-rated generics posed to 19 MS Contin. We're not sure when AB-rated generics will 20 be launched, but we don't think it will be until 1996. 21 Inevitably, AB-rated generics will arrive, and this is 22 why it is of extreme timely importance that we must 23 establish OxyContin. OxyContin can cure the 24 vulnerability of the AB-rated generic threat, and that 25 is why it is so crucial that we devote our fullest</p>	<p style="text-align: right;">Page 40</p> <p>1 generated. 2 Q. How much money has Purdue Frederick or 3 Purdue Pharma made off the sale of OxyContin? 4 A. I don't know. 5 Q. There was an article last month in 6 Forbes. "The OxyContin Clan. The 14 Billion Newcomer 7 to Forbes 2015 List of the Richest U.S. Families." 8 Have you seen that? 9 A. I have seen it once. 10 Q. Do you know what percentage of Purdue 11 Pharma sales is made up of OxyContin? 12 A. Presently? 13 Q. Yes. 14 A. Approximately two-thirds. 15 Q. I've looked at the -- 16 A. That's Purdue Pharma's sales. 17 Q. Sales. Purdue Frederick does not sell 18 anymore, correct? 19 A. No. 20 Q. You've got another -- a number of 21 other entities that generate income from the sale of 22 OxyContin, correct? 23 A. Overseas. 24 Q. Yes. And do approximately 90 percent 25 of the profits of the company come from OxyContin?</p>



Page 41

Page 43

1 MR. STRAUBER: Question. "The  
2 company"? You're referring to now Purdue Pharma?

3 MR. THOMPSON: Purdue Pharma.

4 A. I don't believe it would be 90  
5 percent, but it is certainly a majority.

6 **Q. Do you currently make over a billion  
7 dollars a year selling OxyContin?**

8 MR. STRAUBER: Objection to the form.  
9 By "you," now you're talking about Dr. Sackler?

10 MR. THOMPSON: Yes.

11 A. No, I don't.

12 **Q. All right. Does Purdue Pharma make  
13 over a billion dollars a year?**

14 A. I'm not sure. I don't think it would  
15 be that much.

16 **Q. Let's talk about gross sales.  
17 Are gross sales over 3 billion dollars  
18 a year?**

19 A. No, they're not.

20 **Q. What are the gross sales?**

21 A. Well, I think what you're looking for  
22 is net sales. Because in the industry a lot of money  
23 is inherently rebated back to purchasers, insurance  
24 companies, hospitals, et cetera, through wholesalers  
25 in rebate agreements, which are negotiated. So I

1 A. I don't know.

2 (DEPOSITION EXHIBIT NO. 6 MARKED)

3 (Passing document.)

4 Q. This appears to me -- what's been  
5 marked as Exhibit 5, it's PKY --

6 MR. ELLIS: 6.

7 **Q. 6, I'm sorry.**

8 **Exhibit 6, PKY1738172006, appears to  
9 be a profit calculation for a Purdue entity.**

10 **Can you tell me which entity that is?**

11 A. If it's not on the document, I

12 couldn't possibly tell you.

13 **Q. Did Purdue Frederick still exist in  
14 2006?**

15 A. I'm not clear. I think it did.

16 **Q. This appears to be a profit  
17 calculation for OxyContin Tablets only. Do you see  
18 that?**

19 A. I do.

20 **Q. And it appears that at least by 2006  
21 profit contribution was 4 million -- 4,718,767,000.  
22 Is that correct?**

23 A. You've read the number correctly, but

24 profit contribution is not profit.

25 **Q. And what would you subtract from that?**

Page 42

Page 44

1 believe the net sales are in the range of, this year,  
2 a billion dollars.

3 MR. STRAUBER: Your question was  
4 directed to Purdue Pharma?

5 MR. THOMPSON: Purdue Pharma.

6 A. Right.

7 **Q. Are there any other Purdue entities  
8 that make money that would not be included in that one  
9 billion dollar sales?**

10 A. Not --

11 MR. STRAUBER: Objection to the form  
12 of the question.

13 You can answer.

14 A. Not in the United States.

15 **Q. Do you know how much the Sackler  
16 family has made off the sale of OxyContin?**

17 A. I don't know.

18 **Q. But fair to say it's over a billion  
19 dollars?**

20 A. It would be fair to say that, yes.

21 **Q. Do you know if it's over 10 billion  
22 dollars?**

23 A. I don't think so.

24 **Q. Do you know if it's over 5 billion  
25 dollars?**

1 A. All of the money that was invested in  
2 the business to develop new products. That would be a  
3 major deduction from that.

4 **Q. Let's mark this -- well, let's --  
5 you're right, I think it is.**

6 **Look up at the top where it says,  
7 "Gross profit 7,502,367,000."**

8 A. Just a second. Small type. Just a  
9 second. "Gross Profit." I see "Gross Sales." I see  
10 "Rebates," and then "Net Sales." Okay, I'm with you  
11 on "Gross Profit."

12 **Q. Okay. So deducted from that is  
13 shipping, warehousing. You have 536 million paid to  
14 Abbott for co-promotion commission?**

15 A. That's correct.

16 **Q. You have an S&P expense. What's that?**

17 A. Sales and promotion.

18 **Q. All right. That was 141 million on  
19 sales and promotion; is that correct?**

20 A. That's correct.

21 **Q. R&D expense, 308 million?**

22 A. Right. And I'm looking for the

23 number. I'm sorry.

24 **Q. Sales force.**

25 A. Yes, I see that. But can I explain?

Page 45	Page 47
<p>1 That's the R&amp;D associated with the product.</p> <p>2 <b>Q. Right.</b></p> <p>3 A. Not the R&amp;D for other products.</p> <p>4 <b>Q. Right. And then sales force is 960 --</b></p> <p>5 <b>or 87,222,000 that they've been paid?</b></p> <p>6 A. That's what it says.</p> <p>7 <b>Q. And then it's got a G&amp;A expense. What</b></p> <p>8 <b>is that?</b></p> <p>9 A. General and administrative.</p> <p>10 <b>Q. All right. 492 million?</b></p> <p>11 A. Yes. Over how many years? '96 to</p> <p>12 2005. So it's nine years. Am I counting correctly?</p> <p>13 <b>Q. You are.</b></p> <p>14 <b>Then there is product liability and</b></p> <p>15 <b>patent litigation expense. You had OxyContin</b></p> <p>16 <b>litigation expenses. Then you have profit after all</b></p> <p>17 <b>those are subtracted on OxyContin of 4,718,000,000.</b></p> <p>18 <b>Is that correct?</b></p> <p>19 A. That's what it says. I can't testify</p> <p>20 that that's correct, but that's what it says.</p> <p>21 MR. THOMPSON: Let's mark this as</p> <p>22 Plaintiff's Exhibit 6. I think we've already marked</p> <p>23 it.</p> <p>24 MR. DANFORD: We've been going about</p> <p>25 an hour.</p>	<p>1 <b>approximately 95 percent of the patients out there</b></p> <p>2 <b>could be treated with MS Contin?</b></p> <p>3 A. No.</p> <p>4 <b>Q. Do you disagree with that statement</b></p> <p>5 <b>that --</b></p> <p>6 A. I do. I disagree.</p> <p>7 <b>Q. What percentage do you think of</b></p> <p>8 <b>patients could be adequately treated with MS Contin?</b></p> <p>9 A. Between 50 and 75 percent.</p> <p>10 <b>Q. And what studies are you basing that</b></p> <p>11 <b>on?</b></p> <p>12 A. I'm basing it on general experience of</p> <p>13 being involved with MS Contin and OxyContin since</p> <p>14 1980.</p> <p>15 <b>Q. Did you ever do any studies to</b></p> <p>16 <b>determine what percentage of patients could be</b></p> <p>17 <b>adequately treated with MS Contin?</b></p> <p>18 A. I don't remember any.</p> <p>19 <b>Q. Okay. Did you ever do any studies on</b></p> <p>20 <b>abuse liability for OxyContin before you--all put it on</b></p> <p>21 <b>the market?</b></p> <p>22 A. I'm not aware of any.</p> <p>23 <b>Q. Let me show you what's been identified</b></p> <p>24 <b>by Bates stamp PDD8801123847. We'll mark this</b></p> <p>25 <b>Plaintiff's Exhibit 7.</b></p>
Page 46	Page 48
<p>1 MR. THOMPSON: I try to go a little</p> <p>2 bit longer. I mean, if you all need a break, we can</p> <p>3 take a break, but...</p> <p>4 THE WITNESS: I need to take a break.</p> <p>5 VIDEOGRAPHER: We are off the record</p> <p>6 at 10:06 a.m.</p> <p>7 (RECESS)</p> <p>8 VIDEOGRAPHER: We are back on the</p> <p>9 record at 10:18 a.m.</p> <p>10 BY MR. THOMPSON:</p> <p>11 <b>Q. All right. Dr. Sackler, I want to ask</b></p> <p>12 <b>you about one more thing in Exhibit 4.</b></p> <p>13 <b>(Passing document.)</b></p> <p>14 <b>And if you look at the second</b></p> <p>15 <b>paragraph, there's a comment that says, when</b></p> <p>16 <b>discussing Oxycodone AcroContin, which is</b></p> <p>17 <b>controlled-release Oxycodone --</b></p> <p>18 A. I'm sorry. Just -- page what?</p> <p>19 <b>Q. The first page, second paragraph.</b></p> <p>20 A. Okay.</p> <p>21 <b>Q. It says, "The molecule lacks the</b></p> <p>22 <b>stigma of morphine and may be of particular advantage</b></p> <p>23 <b>in the five percent, approximately, of patients who</b></p> <p>24 <b>cannot be adequately treated with morphine."</b></p> <p>25 <b>Was it your understanding that</b></p>	<p>1 <b>(DEPOSITION EXHIBIT NO. 7 MARKED)</b></p> <p>2 <b>Q. And I'll ask you if you can identify</b></p> <p>3 <b>this?</b></p> <p>4 <b>(Passing document.)</b></p> <p>5 MR. STRAUBER: May I have a copy?</p> <p>6 MR. ELLIS: I'm getting one.</p> <p>7 (Passing document.)</p> <p>8 MR. STRAUBER: Thank you.</p> <p>9 <b>Q. And does this appear to be a memo to</b></p> <p>10 <b>you from Paul Goldenheim?</b></p> <p>11 A. It is.</p> <p>12 <b>Q. And who is Paul Goldenheim?</b></p> <p>13 A. At the time he was head of Research</p> <p>14 and Development.</p> <p>15 <b>Q. Okay. And just to kind of walk</b></p> <p>16 <b>through this memo. From the bottom down there, it</b></p> <p>17 <b>looks like you had sent a memo on March 14th of '97 to</b></p> <p>18 <b>a number of individuals at --</b></p> <p>19 A. I'm looking for that. I'm looking for</p> <p>20 my -- oh, from me. Okay. I see that. Okay. I'm</p> <p>21 sorry. I see now. It's two e-mails. Okay. Thank</p> <p>22 you.</p> <p>23 <b>Q. And the paragraph at the bottom says,</b></p> <p>24 <b>"The BfArM," what is that?</b></p> <p>25 A. That was the German regulatory agency</p>

Page 49

1 at that time.

2 **Q.** It says, "Were asked whether OxyContin

3 to be classified as a controlled drug or whether it

4 would be possible to obtain a relaxed status because

5 of the difficulty in extracting Oxycodone from the

6 matrix and the fact it was less liable to abuse

7 because it was unknown."

8 So just dialing down on that first

9 sentence, you were wondering whether Oxycodone could

10 be less regulated in Germany; is that correct?

11 A. I believe that I was reporting

12 something to Paul that I must have heard, but I was

13 not involved in making any discussions or meetings

14 with BfArM.

15 **Q.** Okay.

16 A. Can I -- may I just read the rest of

17 it if we're going to continue on this?

18 **Q.** Sure. I'll tell you what, I'll read

19 it to you.

20 The next sentence says, "The BfArM" --

21 B-f-A-r-M -- which I understand is the German

22 regulatory authority?

23 A. That's correct.

24 **Q.** -- "answered that unfortunately

25 OxyContin would definitely be classified as a

Page 50

1 controlled drug for all strengths as is morphine.

2 There could be no exception because of the

3 controlled-release protection because there had been a

4 few reports of abuse and there were limited data on

5 long-term use."

6 Did I read that correctly?

7 A. You did.

8 **Q.** Okay. And then you have here in caps,

9 "We have a lot of use data in the U.S. with very,

10 very, very few ADEs."

11 What are ADEs?

12 A. Those are reports to the agency, to

13 the FDA. And ADE stands for adverse drug experience.

14 All adverse drug experiences are reportable to the

15 agency. Anything we are aware of we must report

16 periodically. Anybody else, however, can also report

17 ADEs to the agency. And so the agency maintains a

18 catalog for every drug of ADEs.

19 **Q.** And then you have in caps, continuing,

20 "We can run another long-term trial to get more data,

21 and if the abuse potential is equal or lower than with

22 another nonscheduled drugs, would BfArM unschedule

23 it?"

24 That's your question, correct?

25 A. That was a question.

Page 51

1 **Q.** And then Dr. Goldenheim writes back on

2 the subject of "Is this an opening to descheduling the

3 agent?"

4 And descheduling means make it less

5 restrictive, correct?

6 A. That -- that's how I would understand

7 it.

8 **Q.** And if it's less restricted, would you

9 think that you could sell it to more people?

10 A. It would be easier for physicians to

11 prescribe it.

12 **Q.** It's going to increase sales?

13 A. That is reasonable because they could

14 prescribe it -- if it were Schedule III instead of

15 Schedule II, as are some drugs, physicians could

16 prescribe by telephone.

17 **Q.** And his response is, "We do not have

18 any abuse liability studies."

19 And this is as of 1997, correct?

20 A. That's correct.

21 **Q.** To date have you done abuse liability

22 studies?

23 A. Yes; many.

24 **Q.** When were they done?

25 A. I don't know when the first ones were

Page 52

1 done, but they were done repeatedly for many

2 formulations subsequently of both Oxycodone and of

3 other abusable opioids, both in controlled-release

4 form and in immediate-release form.

5 **Q.** Have you done abuse liability studies

6 for OxyContin Controlled-Release?

7 A. I don't -- yes, the new -- the new

8 formulations definitely.

9 **Q.** And when were those done?

10 A. I don't know exactly. But before the

11 products were submitted to the agency.

12 **Q.** You're saying the new formulations?

13 A. The new formulation.

14 **Q.** When were the new formulations

15 submitted?

16 A. I'm doing this from memory now. About

17 2008.

18 **Q.** Okay.

19 A. But I could be in error by a year or

20 two.

21 **Q.** So by 1997, two years after this

22 product was on the market, he says, "We do not have

23 any abuse liability studies. I think this is a dead

24 end. Adding naloxone, I think, is the only

25 possibility, but this is a difficult project from the

<p style="text-align: right;">Page 53</p> <p>1 clinical perspective. We are investigating for 2 Oxycodone." 3 Was that his response? 4 A. That is what he wrote. 5 Q. He's basically saying they're not 6 going to deschedule this? 7 A. Unless -- perhaps they might if it 8 incorporated naloxone. 9 Q. And naloxone is an additive? 10 A. It is -- it is a reversal agent. It 11 blocks the effect of opioids. 12 Q. And you-all did not incorporate 13 naloxone, correct? 14 A. We subsequently did in some markets. 15 In Europe in particular and to some extent elsewhere. 16 Q. Did they require you to do that? 17 A. No. We did it for another reason. 18 Q. What was the reason? 19 A. We discovered that it did not block 20 the effect of the opioid apparently at all, but it did 21 reduce the gastrointestinal side effects dramatically, 22 including constipation, which is the most common side 23 effect for any opioid. 24 I could add that by the time we had a 25 full press to develop an abuse-resistant form of</p>	<p style="text-align: right;">Page 55</p> <p>1 you, Dr. Sackler. 2 THE WITNESS: Pardon? 3 MR. ELLIS: I've highlighted your 4 e-mail. 5 A. 2-27. It's not -- oh, it's the middle 6 page for me, not the last. Okay. Yep. 7 MR. DANFORD: Can we organize those? 8 MR. STRAUBER: Yeah, I'm not sure that 9 all the pages have been assembled properly. 10 MR. ELLIS: These are the -- this is 11 the way this document was produced to us. The reason 12 that there's a skip in the Bates range from the last 13 two pages is because Purdue produced a totally random 14 document in between it. But if you look at the Bates 15 numbers of the original Bates stamp on this document, 16 they're consecutive among those pages in a consecutive 17 e-mail chain. 18 So I have taken the liberty of 19 removing the completely erroneous page that has 20 nothing to do with this e-mail chain and produced it 21 to the witness. 22 MR. DANFORD: My question is not about 23 that. The question is if he has a different 24 formulation. 25 MR. ELLIS: No. He's got the same</p>
<p style="text-align: right;">Page 54</p> <p>1 OxyContin we did do extensive work with another 2 antagonist called naltrexone, and naltrexone did, when 3 it got released, block the effect of the opioid. But, 4 unfortunately, after a huge investment, we could never 5 be certain that it wouldn't be released when it was 6 taken orally. It was almost perfect, but it had to be 7 perfect because the agency said that if it released 8 and blocked the effect of the opioid in patients, they 9 would not approve it and we could not reach 10 perfection. 11 Q. Let me show you an e-mail chain that's 12 been produced. I'll mark this. 13 (DEPOSITION EXHIBIT NO. 8 MARKED) 14 Q. It's PDD29520806439. And if you start 15 at the back, I believe, this e-mail chain begins at 16 the back. And this is an e-mail from you dated -- the 17 last e-mail is the first e-mail, and it's dated 18 3-2-97. 19 A. Wait. I'm seeing 3-11-97. It's sort 20 of a little out of order, isn't it? 21 Q. I'm sorry, yeah. There is -- mine 22 tore off. 23 A. Oh, no, 3-12-97. 24 Q. 2-12-97 is the first. 25 MR. ELLIS: I've highlighted it for</p>	<p style="text-align: right;">Page 56</p> <p>1 document. 2 MR. STRAUBER: Exactly. We're just 3 trying to make sure that we're all working from the 4 same document here. 5 Q. So if you'll go to the 2-27-97 e-mail. 6 MR. STRAUBER: That's it (indicating). 7 A. I had to look for it. I expected it 8 at the end, but it wasn't. Okay. Yes. 9 Q. It says -- this is from Walter Wimmer 10 at Mundipharma-Germany. 11 And that's a company that's owned by 12 the Sackler family, correct? 13 A. It is. 14 Q. And who is Walter Wimmer? 15 A. He was the general manager at that 16 time. 17 Q. And he says, "Dear Bob." First 18 paragraph. "In the course of this conversation he 19 explained to you that due to his discussions with 20 BfArM he does see a 50 percent chance to get OxyContin 21 off the narcotic drug status provided you could give 22 some information on the very low abuse potential of 23 our CR formulation." 24 Did I read that correctly? 25 A. You did.</p>



Page 57

1 Q. And then in response to that, if you  
2 go up to the top, Dr. Robert Kaiko has an e-mail dated  
3 2-27-97.

4 A. He does.

5 Q. And he says, "While my thinking is  
6 still developing, frankly, I'm very concerned, and I  
7 would have to recommend against the uncontrolled but  
8 monitored proposal at this time. (Perhaps if only to  
9 make sure the risks are appreciated and accepted  
10 before we proceed as proposed)."

11 Do you know what risk he was  
12 discussing?

13 A. I have no idea.

14 Q. Did you ever discuss with him why he  
15 was recommending against going uncontrolled but  
16 monitored with respect to OxyContin?

17 A. I don't even know what it means.

18 Q. All right.

19 A. If I read the rest of it, do you think  
20 it would give me a clue or -- I infer that because you  
21 didn't highlight it, you don't think it would shed any  
22 light on what was meant above?

23 Q. Well, let's read the rest of it. It  
24 might help. He says under paragraph B, "I don't  
25 believe we have a sufficiently strong case to argue

Page 59

1 Were you aware at that time that

2 OxyContin -- there was a concern that Oxycodone  
3 opioids could be injected or abused?

4 A. I don't remember this memo and I don't  
5 remember whether I had read the whole chain carefully  
6 or not or even saw it.

7 Q. Then he says, "Our dossier  
8 acknowledges" -- by "dossier," I assume he means the  
9 documents --

10 A. Yes.

11 Q. -- Purdue has?

12 A. Yes.

13 Q. "Our dossier acknowledges a small  
14 handful of patients in our research program" -- and  
15 that means studies you-all were doing; is that  
16 correct?

17 A. That's -- that's what I would  
18 understand it would mean.

19 Q. -- "who were suspect in terms of their  
20 drug accountability."

21 Do you know if that was reported to  
22 anyone, that your-all's dossier had a handful of  
23 patients who were suspect in terms of their drug  
24 accountability?

25 A. I don't know if it was reported, but

Page 58

1 that OxyContin has minimal or no abuse liability."

2 This is dated 1997, correct?

3 A. Yes.

4 Q. He says, "In the U.S.  
5 Oxycodone-containing products were once less  
6 controlled than now. Abuse resulted in greater  
7 controls."

8 Is that accurate?

9 A. I believe it is.

10 Q. And what he's saying there is, these  
11 weren't as controlled at one time and they got abused,  
12 and that's why we have controls now, correct?

13 A. I believe that is the case.

14 Q. He says, "Oxycodone-containing  
15 products are still among the most abused opioids in  
16 the U.S. This information is available to BfArM, the  
17 German regulators."

18 A. I -- that's certainly true that the  
19 information would be available to them.

20 Q. And he says, "The local tissue  
21 necrosis that can result from injection of OxyContin  
22 'fixed' for such abuse is not likely to be a deterrent  
23 to abuse. Let us not forget that in New Zealand MST  
24 is the most common sources of parenterally abused  
25 morphine/heroin."

Page 60

1 I'm confident it was. If it was an FDA-submitted  
2 trial, it would have been in either the safety summary  
3 or the -- or the efficacy summary, or both.

4 Q. Do you remember the issues with the  
5 Roth reprint where there were patients who they  
6 determined had withdrawal symptoms and that was not  
7 reported?

8 MR. STRAUBER: Objection to form.

9 A. No. I'm sorry.

10 Q. Are you familiar with the Roth  
11 reprint?

12 A. No.

13 Q. Do you know whether that was part of  
14 the plea agreement that Purdue Frederick had when they  
15 pled guilty to a felony?

16 A. I don't -- I don't recall.

17 Q. And it says under paragraph C,  
18 continuing on, "We do not" -- "We do not have a  
19 post-marketing abuse monitoring system and database  
20 from which we could conclude that diversion abuse is  
21 not occurring."

22 Were you aware that you-all put this  
23 on the market, OxyContin CR, and did not have a  
24 post-marketing abuse monitoring system or database  
25 from which you could tell whether abuse or diversion

<p style="text-align: right;">Page 61</p> <p>1 was occurring?</p> <p>2 A. I was not aware of that. I don't</p> <p>3 believe it was a requirement at the time. I'm sure we</p> <p>4 would have fulfilled all the FDA requirements that</p> <p>5 they asked us.</p> <p>6 Q. Do you think it would have been a good</p> <p>7 idea before putting OxyContin Controlled-Release on</p> <p>8 the market to have an abuse monitoring system and</p> <p>9 database from which to tell if it was being diverted</p> <p>10 or abused?</p> <p>11 A. Absolutely, yes.</p> <p>12 Q. And then under paragraph C it says,</p> <p>13 "If OxyContin is uncontrolled in Germany, it is highly</p> <p>14 likely that it will eventually be abused there and</p> <p>15 then controlled. This may be more damaging to</p> <p>16 OxyContin internationally than any temporarily higher</p> <p>17 sales that could be gleaned from an uncontrolled</p> <p>18 status. Let us not forget the experience with</p> <p>19 buprenorphine, which was initially uncontrolled.</p> <p>20 Reports of abuse in Germany in part eventually led to</p> <p>21 lots of bad press and controlled status. Worldwide</p> <p>22 sales suffered even where buprenorphine had already</p> <p>23 been controlled. So, given the above, what do others</p> <p>24 have to offer that should prompt us to pursue the</p> <p>25 proposal for uncontrolled status for OxyContin</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. And this is your response to Robert</p> <p>2 Kaiko saying this is a bad idea for all these reasons.</p> <p>3 And you say, "This is the first time I've heard of</p> <p>4 this idea. What makes us believe that we can</p> <p>5 accomplish it, Walter? How substantially would it</p> <p>6 improve your sales?"</p> <p>7 And what you're talking about there is</p> <p>8 if we can get it uncontrolled in Germany, how</p> <p>9 substantially will it improve sales, correct?</p> <p>10 A. Yeah. Yes, that was -- it would</p> <p>11 appear that that's what my question was.</p> <p>12 Q. "Please give a five-year projection</p> <p>13 with control and without. Does each member of the</p> <p>14 EU" -- is that the European Union?</p> <p>15 A. Yes.</p> <p>16 Q. -- "decide this for themselves or</p> <p>17 would one lead? If one would lead, then is Denmark or</p> <p>18 Germany more likely to agree?"</p> <p>19 And then Harry Kletzko of Mundipharma</p> <p>20 writes you back on March 7th and says, "Dear</p> <p>21 Dr. Richard" --</p> <p>22 A. Just a second. Now we're on page 1 or</p> <p>23 2?</p> <p>24 Q. That's the same page. The one right</p> <p>25 above.</p>
<p style="text-align: right;">Page 62</p> <p>1 anywhere?"</p> <p>2 And was that the response of Robert</p> <p>3 Kaiko?</p> <p>4 A. It appears to be so.</p> <p>5 Q. And who was Robert Kaiko?</p> <p>6 A. He was in charge of the development</p> <p>7 program of OxyContin.</p> <p>8 Q. Was he the chief medical officer?</p> <p>9 A. No. But he was -- he was respected.</p> <p>10 His opinions were respected and were heeded.</p> <p>11 Q. And then the next e-mail, which comes</p> <p>12 from you, is Dr. Richard Sackler at Norwalk.</p> <p>13 A. Give me just a little time to find it</p> <p>14 since they're not in order. Okay, Norwalk. And could</p> <p>15 you read the date, please?</p> <p>16 Q. It looks like it's 3-2-1997.</p> <p>17 A. 3-12. 3-12-97?</p> <p>18 Q. I'm looking at 3-2. It says 02-03-97,</p> <p>19 but I think the way it's computed, it's really March</p> <p>20 3rd.</p> <p>21 A. Okay. I see something from 3-12. I</p> <p>22 see something from 11-3-97.</p> <p>23 Q. It's page 5. Maybe that will help.</p> <p>24 A. Oh, I don't think I have page -- oh,</p> <p>25 page 5. Okay. Thank you.</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Okay.</p> <p>2 Q. "Please find stated below our</p> <p>3 five-year projection of OxyContin without and with</p> <p>4 controls as requested."</p> <p>5 A. Uh-huh.</p> <p>6 Q. And it was projected that with first</p> <p>7 year non-narcotic -- narcotic drug with control would</p> <p>8 be 3.000 TDM. Do you know what that is?</p> <p>9 A. I assume total or something</p> <p>10 Deutschmarks. Something Deutschmarks.</p> <p>11 Q. And that would be 3 million?</p> <p>12 A. That would be my understanding.</p> <p>13 Q. And then turnover non-narcotic drug</p> <p>14 without control is 10 million?</p> <p>15 A. The first year.</p> <p>16 Q. The first year. And on the fifth year</p> <p>17 it was projected to be 18 million with control but 30</p> <p>18 million without control, correct?</p> <p>19 A. That's what it says.</p> <p>20 Q. And then you wrote back on 3-8-97,</p> <p>21 right above that one, and it says, "BK advised that</p> <p>22 the regulatory authorities did say" --</p> <p>23 A. RK. BK. I'm sorry. I heard DK.</p> <p>24 Q. -- "advised the regulatory authorities</p> <p>25 said that Oxy would be scheduled and so it would be</p>

Page 65

1 under narcotic control. Does this correspond to your  
2 info? If so, is this matter now closed or is there  
3 some appeal or other procedure you would want to  
4 consider?"  
5 So you still saw the advantage of  
6 getting OxyContin CR uncontrolled and were wondering  
7 if there was some way you might appeal the German  
8 decision?  
9 MR. STRAUBER: Objection to form.  
10 That's not what the statement says that you just read.  
11 Q. Well, correct me if I'm wrong there.  
12 Why did you say is there some appeal or other  
13 procedure you want to consider?  
14 A. Okay. This whole experience is  
15 actually like reliving a third of my life, and I had  
16 completely forgotten, until I saw this document, that  
17 Walter had been very hesitant to pursue the  
18 development or the marketing of OxyContin because he  
19 didn't believe it would sell very well. He turned out  
20 to be completely wrong and when it was introduced it  
21 did extremely well.  
22 We were of the contrary opinion, but  
23 he said -- he came back and he did quite a bit of work  
24 without any reference to anybody else on determining  
25 or trying to get the BfArM to consider not scheduling

Page 66

1 it. And this whole stream was occasioned by that.  
2 We -- many of us in the U.S. were not enthusiastic  
3 about not scheduling it.  
4 In Germany there is no equivalent, at  
5 least at that time that I recall, of anything like  
6 Schedule III. You are either an abusable drug and,  
7 thus, you had all the abusable drug controls or you  
8 were not. And we were not in favor of this, but we  
9 were trying to be polite and solicitous rather than  
10 saying, this is a terrible idea, forget it, don't do  
11 it. Because we still felt that with the controls,  
12 which we thought would be appropriate and were  
13 appropriate obviously, it would still be very welcome,  
14 very useful to patients in the German market.  
15 So this whole stream -- this whole  
16 trail really was occasioned by that. But I don't  
17 remember anymore. So if we go on, I'm going to relive  
18 another few days of my life.  
19 Q. Sure. Let me ask you. If you thought  
20 controls were appropriate, why were you asking here or  
21 raising the issue if there was some appeal that could  
22 be taken with regard to the --  
23 A. Just to be polite, not to just shut  
24 him down.  
25 Q. Okay. Well, let me ask you this.

Page 67

1 Let's go to the next one, which is page 4. He writes  
2 back, "Yes, Richard, this does correspond to the  
3 information given by Mr. Goerich, our registration  
4 officer. We also attended the meeting with the BGA.  
5 This matter is now closed. There is no way of  
6 appeal."  
7 Is that what he told you?  
8 A. That seems to be what he told me.  
9 Q. And then you wrote back and said,  
10 "When we are next together we should talk about how  
11 this idea was raised and why it failed to be realized.  
12 I thought that it was a good idea if it could be  
13 done."  
14 Was that your response to --  
15 A. That's what it said, but I didn't mean  
16 it. I just wanted to be encouraging. I was very glad  
17 it was closed.  
18 Q. Up at the top there's a note --  
19 there's another response from Walter Wimmer who says,  
20 "To get the product off narcotic drug status, it would  
21 be possible to combine Oxycodone with naloxone  
22 provided the development costs weren't too high."  
23 That was sent on 3-12.  
24 A. Okay. Let me --  
25 Q. And then the top one is cut off, but

Page 68

1 it says, "Paul, Michael. Would this be a feasible  
2 approach here in the U.S.? I don't know of any C-II  
3 narcotic that is de-scheduled when naloxone is added,  
4 do you?"  
5 Was that a question you were raising?  
6 A. It looks like I raised it just as a  
7 matter of information. As I said, they eventually did  
8 develop that product and it was extremely successful.  
9 At the time they researched it, they quickly  
10 discovered that naloxone didn't achieve the desired  
11 blocking effect, but they made another discovery that  
12 was even more valuable.  
13 Q. Would I be correct that Purdue Pharma  
14 never conducted or retained anyone to conduct studies  
15 regarding addiction and physical dependency rates of  
16 Oxycodone products at least as of March 4th, 2002?  
17 A. I don't know the answer.  
18 Q. Are you aware that counsel for Purdue  
19 Pharma's answer to interrogatories that requested the  
20 names of all individuals retained by Purdue Pharma to  
21 do studies regarding addiction and physical dependency  
22 rates of OxyContin products and copies of all studies,  
23 and he answered, "We never conducted or retained  
24 anyone to conduct studies regarding addiction and  
25 physical dependency rates of Oxycodone products."

Page 69	Page 71
<p>1 MR. STRAUBER: Mr. Thompson, if you're</p> <p>2 reading from a document, could you show it to the</p> <p>3 witness?</p> <p>4 MR. THOMPSON: No. I'm just asking if</p> <p>5 he's aware of it because I'm trying to move the</p> <p>6 deposition along.</p> <p>7 <b>Q. So are you aware of that?</b></p> <p>8 A. No, I'm not aware of his -- his</p> <p>9 statement.</p> <p>10 <b>Q. Are you aware of any studies conducted</b></p> <p>11 <b>or retained -- or anyone being retained to conduct</b></p> <p>12 <b>studies regarding addiction and physical dependency</b></p> <p>13 <b>rates of Oxycodone products prior to 2002?</b></p> <p>14 A. I'm not aware of any or don't remember</p> <p>15 any. In 2002 I was the president of Purdue Pharma,</p> <p>16 and this would not have necessarily -- this wouldn't</p> <p>17 have required my approval or knowledge unless it</p> <p>18 was -- it led to something that was surprising or</p> <p>19 important and unexpected.</p> <p>20 MR. STRAUBER: Mr. Thompson, did you</p> <p>21 put an -- give an exhibit number to the last document</p> <p>22 that we were discussing, which was a series of</p> <p>23 e-mails?</p> <p>24 MR. THOMPSON: It was 8.</p> <p>25 MR. STRAUBER: 8. Okay. Thank you.</p>	<p>1 <b>Q. Do you have a knowledge of what</b></p> <p>2 <b>Percocet and Duragesic was used mostly to treat?</b></p> <p>3 A. Percocet and -- Percocet was an</p> <p>4 extremely widely used product used to treat both short</p> <p>5 and long-term pain conditions, both non-malignant and</p> <p>6 malignant.</p> <p>7 <b>Q. And then, if you'll turn over to</b></p> <p>8 <b>paragraph 2.3. And this says 1993. It says, "Abuse</b></p> <p>9 <b>Toxicity Bench-Top Study - The results of a spoon" --</b></p> <p>10 A. Okay. I see. 2.3 you said?</p> <p>11 <b>Q. Yes.</b></p> <p>12 A. Thank you.</p> <p>13 <b>Q. -- "The results of a 'spoon &amp; shoot'</b></p> <p>14 <b>study have been sent to the FDA."</b></p> <p>15 <b>What was a 'spoon &amp; shoot' study?</b></p> <p>16 A. I don't know. I could guess, but I</p> <p>17 don't know.</p> <p>18 <b>Q. Was that a study done to determine if</b></p> <p>19 <b>the drug could be abused by extracting Oxycodone from</b></p> <p>20 <b>the tablet?</b></p> <p>21 A. It's a reasonable guess, but I don't</p> <p>22 know the details of what that study was.</p> <p>23 <b>Q. And then under 3.2, the last sentence</b></p> <p>24 <b>says, "A crushed tablet study may be conducted if we</b></p> <p>25 <b>decide such a study is needed."</b></p>
Page 70	Page 72
<p>1 (Passing document.)</p> <p>2 <b>Q. All right. I'm going to switch and</b></p> <p>3 <b>ask you a little bit about the OxyContin Project Team.</b></p> <p>4 <b>And this is a memo dated December 14th, 1993,</b></p> <p>5 <b>PDD9520509356. There's a few paragraphs I want to try</b></p> <p>6 <b>to cover here.</b></p> <p>7 <b>If you will look at the bulletin</b></p> <p>8 <b>points on the front page, the second one from the</b></p> <p>9 <b>bottom says "Marketing: OxyContin Tablets will be</b></p> <p>10 <b>marketed against Percocet and Duragesic. The</b></p> <p>11 <b>OxyContin line may replace our MS Contin line if</b></p> <p>12 <b>MSC generics are competing." Is that correct?</b></p> <p>13 A. That's correct.</p> <p>14 <b>Q. And that's not the -- is that the</b></p> <p>15 <b>malignant cancer group of patients, or is that the</b></p> <p>16 <b>non-malignant cancer group of patients?</b></p> <p>17 A. I'm sorry?</p> <p>18 MR. STRAUBER: Objection to the form.</p> <p>19 I don't understand the question.</p> <p>20 <b>Q. Go ahead, you may answer.</b></p> <p>21 A. MS Contin, as I said before, was used</p> <p>22 in treating both cancer patients and non-cancer</p> <p>23 patients and there was no focus, I don't believe, or</p> <p>24 consideration in this statement of whether it would be</p> <p>25 both, I think.</p>	<p>1 <b>Do you know if you ever decided such a</b></p> <p>2 <b>study was needed?</b></p> <p>3 A. What's the number on that? I'd just</p> <p>4 like to read it.</p> <p>5 <b>Q. 3.2, the last sentence.</b></p> <p>6 A. I'm sorry. Thank you. 3.2?</p> <p>7 <b>Q. Uh-huh.</b></p> <p>8 A. Yes. Okay, I've read that.</p> <p>9 I don't know if such a study was done.</p> <p>10 <b>Q. And then on 5.4, the very last</b></p> <p>11 <b>sentence says, "Mike Innaurato." Was he a guy in</b></p> <p>12 <b>charge of marketing? "</b></p> <p>13 A. No. He was -- he worked in the</p> <p>14 marketing department, but he was not -- at this time</p> <p>15 he was not in charge. He was a middle manager of</p> <p>16 marketing.</p> <p>17 <b>Q. All right. It says, "Mike Innaurato</b></p> <p>18 <b>asked if we had any quality of life questions in our</b></p> <p>19 <b>ongoing studies. Robert Reder stated that we did not,</b></p> <p>20 <b>but that we could include quality of life questions in</b></p> <p>21 <b>future studies."</b></p> <p>22 <b>Do you know if quality of life</b></p> <p>23 <b>questions were included?</b></p> <p>24 A. I believe there were studies later</p> <p>25 that included quality of life measures, but I am not</p>



Page 73

1 certain of that. I am certain it would have been  
2 favorable, but I'm not certain just what studies were  
3 or were not done.  
4 MR. THOMPSON: Let's mark that as --  
5 has it been marked yet?  
6 COURT REPORTER: No. 9.  
7 MR. THOMPSON: -- Exhibit 9.  
8 (DEPOSITION EXHIBIT NO. 9 MARKED)  
9 Q. With respect to Oxycodone and  
10 morphine, do you know whether OxyContin is more  
11 powerful or less powerful a drug than morphine?  
12 A. It depends what you mean by  
13 "powerful."  
14 Q. I think Dr. -- is it Goldenheim?  
15 A. Yes.  
16 Q. Was he an employee of --  
17 A. Yes.  
18 Q. I think he testified that -- that  
19 Oxycodone was twice as strong as morphine. Is that  
20 your understanding?  
21 A. If the question -- if powerful means  
22 potency, absolutely, it is twice as potent as  
23 morphine. And we were very proud that we discovered  
24 this, first in animal studies and then in human  
25 studies, and we made it widely known perhaps even

Page 74

1 before the drug was introduced, but certainly in the  
2 package insert and all the promotional material.  
3 Q. Do you know how many doctors or what  
4 percentage of doctors thought that it was equal to or  
5 less strong than morphine?  
6 A. I would assume very few if they -- if  
7 they were promoted to. I can't believe that they  
8 wouldn't have understood that. That formed the basis  
9 of our recommendations of dosing of the strength of  
10 the tablets that were developed. And, in fact, it was  
11 consistent with physicians' own experience with  
12 Percocet where they would administer a 5-milligram  
13 dose and they -- if they used morphine, they knew that  
14 5 milligrams of morphine would achieve very little  
15 pain relief if given orally, perhaps somewhat more if  
16 given by injection.  
17 MR. THOMPSON: Let's mark this as  
18 Plaintiff's Exhibit 10.  
19 (DEPOSITION EXHIBIT NO. 10 MARKED)  
20 (Passing document.)  
21 Q. This is the memo dated 1992, August  
22 10th, Oxycodone Project Team Meeting Minutes.  
23 A. I'm sorry, August 10th.  
24 Q. And it is PDD9521410329.  
25 A. 39? I have 30. The first page is 39.

Page 75

1 Q. Correct. And if you'll look at this,  
2 it says, "A literature search" -- the second  
3 paragraph. "A literature search on oxycodone and  
4 oxymorphone is being conducted" --  
5 A. I'm sorry. It's just not very clear.  
6 Give me a second. "A literature search" -- are we  
7 looking at the same page?  
8 Q. No, we're not. You're on page 2, I'm  
9 on page 1, second paragraph.  
10 A. I'm sorry. I thought you said August  
11 10th. This one is August 4th. Okay. I'm sorry.  
12 Q. Second paragraph. "A literature  
13 search on oxycodone and oxymorphone is being conducted  
14 by one of the summer employees."  
15 Do you know who was doing the  
16 literature search initially?  
17 A. No. It would have been a son or  
18 daughter of one of the people who worked for Purdue  
19 Frederick or Purdue Pharma.  
20 Q. Fifth paragraph down, second sentence  
21 says, "The current consideration is to develop 20, 40,  
22 80 and 160 milligram tablets in addition to the 10  
23 milligram tablets now in the clinic."  
24 And whose idea was it to develop 20,  
25 40, 80 and 160 milligram tablets?

Page 76

1 MR. STRAUBER: I'm sorry. Which page  
2 are you reading from, Mr. Thompson?  
3 MR. THOMPSON: The first page, just  
4 what I called out, fourth paragraph, second sentence.  
5 MR. STRAUBER: Okay. Thank you.  
6 A. This was a team decision. It was  
7 discussed extensively.  
8 Q. Then if you'll go to the second page,  
9 first paragraph, it says, "With regard to the package  
10 insert and the first year advertising claims, it was  
11 discussed that Mr. Segar should meet with others and  
12 rework the 'draft' package insert. The purpose would  
13 be to idealize the insert and coordinate the contents  
14 with the advertising claims and clinical trials  
15 program. The package insert should include  
16 comparative claims. It must be kept in mind this is a  
17 working document."  
18 Why did you want to coordinate the  
19 package insert with your advertising claims?  
20 A. The package insert is the Bible for  
21 the product. It is the core document from which all  
22 promotion or communication with physicians is to be  
23 based. It is typical in the industry that a lot of  
24 work is expended to make the package insert as  
25 comprehensive and complete as possible.

Page 77

Page 79

1 Q. Then this is a -- you talked about  
2 physicians being aware of OxyContin being twice as  
3 strong as morphine a second ago. Let me hand you --  
4 let's mark this as Exhibit 11.  
5 (DEPOSITION EXHIBIT NO. 11 MARKED)  
6 (Passing document.)  
7 Q. This is an e-mail. It says the author  
8 is Dr. --  
9 MR. STRAUBER: May I have a copy?  
10 MR. THOMPSON: Right in front of you.  
11 MR. STRAUBER: I'm sorry.  
12 Q. It says the author is Dr. Richard  
13 Sackler at Norwalk dated 5-28-97.  
14 Are you familiar with this e-mail to  
15 Michael Friedman?  
16 A. Yes.  
17 Q. Who is Michael Friedman?  
18 A. He was head of marketing and sales.  
19 Q. Okay. And let's drop down and see  
20 what Michael Friedman has written.  
21 The first paragraph he says, "My  
22 purpose in writing this memorandum is to clarify our  
23 position on the very complex issues raised by Mike  
24 Cullen during the Phase IV team meeting and which were  
25 the subject of Dr. Richard's inquiry."

1 market."  
2 And it says, "Our pricing of the  
3 product was geared toward the non-malignant market.  
4 We knew if we priced low per milligram for the higher  
5 dosed cancer patient we would be priced way too low  
6 per milligram for the standard non-malignant pain  
7 patient, where we really wanted to make a market. We  
8 feared that the 'cancer pain experts' would object to  
9 the two-to-one ratio" -- and that two-to-one ratio is  
10 the ratio of oxycodone -- OxyContin to morphine; is  
11 that correct?  
12 A. Actually, if you want to strictly  
13 understand the ratio, the two-to-one would refer to  
14 the ratio of morphine to oxycodone.  
15 Q. Okay.  
16 A. Not the other way around.  
17 Q. All right.  
18 A. That's what you -- I know that's what  
19 you meant to say.  
20 Q. Yes. Yes.  
21 -- "and resulting cost of therapy for  
22 high-dose patients. However, we had no choice given  
23 our position for OxyContin. In any case, we're  
24 developing hydromorphone codeine" --  
25 A. I've lost you here. "In any case" --

Page 78

Page 80

1 When they say "Dr. Richards," who's  
2 that?  
3 A. That was me.  
4 Q. All right.  
5 First paragraph. "We are well aware  
6 of the view held by many physicians that oxycodone is  
7 weaker than morphine. We all know that this is the  
8 result of their association of oxycodone with less  
9 serious pain syndromes. This association arises from  
10 their extensive experience with and use of oxycodone  
11 combinations to treat pain arising from a diverse set  
12 of causes, some serious, but most less serious. This  
13 'personality' of oxycodone is an integral part of the  
14 'personality'" -- "this 'personality' of oxycodone is  
15 an integral part of the 'personality' of OxyContin.  
16 "When we launched OxyContin, we  
17 intentionally avoided a promotional theme that would  
18 link OxyContin to cancer pain. We specifically linked  
19 OxyContin to the oxycodone combinations with our  
20 'old way, new way' campaign. We made sure our initial  
21 detail piece provided reps with the opportunity to  
22 sell the product for a number of different pain  
23 states. With all of this, we were still concerned  
24 that the drug would be slotted for cancer pain and we  
25 would encounter resistance in the non-malignant pain

1 what paragraph are you in now?  
2 Q. -- "for the high-dose patient."  
3 A. Okay. I'm at the end of paragraph 4.  
4 Q. And then it says, "Despite our initial  
5 uncertainty, we've been successful beyond our  
6 expectations in the non-malignant pain market."  
7 A. Yes.  
8 Q. And non-malignant pain market is sort  
9 of the chronic arthritis, back pain, those types of  
10 patients?  
11 A. Well, those are most typically  
12 moderate pain patients, some of them may be severe.  
13 But there are many less common conditions that produce  
14 severe, crippling, life-destroying pain. And we had  
15 an indication, and still have, for all pain states  
16 that are appropriately treatable with opioids for an  
17 extended period of time.  
18 We wanted -- so non-malignant really  
19 is a distinction. All pain other than the pain  
20 directly caused by the encroachment and destruction of  
21 tumor tissue in the patient.  
22 Q. And then he says here, "Doctors use  
23 the drug in non-malignant pain because it is effective  
24 and the personality of OxyContin is less threatening  
25 to them and their patients than that of the morphine

Page 81

1 alternatives. I apologize for this unspecific term,  
 2 but I feel it captures the notion that there are  
 3 image-related attributes that influence drug  
 4 acceptance. While we might wish to see more of this  
 5 product sold for cancer pain, it would be extremely  
 6 dangerous at this early stage in the life of the  
 7 product to tamper with this 'personality' to make  
 8 physicians think the drug is stronger or equal to  
 9 morphine. We are better off expanding use of  
 10 OxyContin in the non-malignant pain states and waiting  
 11 for hydromorphone, in 1999, to relaunch into cancer  
 12 pain."

13 Why was it felt that there would be a  
 14 danger -- it would be extremely dangerous at the early  
 15 stage in the life of this product to tamper with this  
 16 "personality" to make physicians think the drug is  
 17 stronger or equal to morphine?

18 A. The context of this was, as you know,  
 19 a thread of e-mails that actually, he alludes to, I  
 20 started.

21 The whole context and the whole  
 22 discussion of Mr. Friedman here and in other -- I'll  
 23 pause here.

24 Q. No, go ahead.

25 A. Because I think it's really important

Page 82

1 for you to understand this.

2 The whole context was not to -- the  
 3 context was not to stigmatize oxycodone in a way that  
 4 morphine was stigmatized. Morphine was seen as an  
 5 end-of-life extreme duress -- patient in extreme  
 6 duress, often dying of cancer, but not only cancer.  
 7 It was reserved by most physicians, if it was used at  
 8 all, even when patients were in serious severe or even  
 9 crippling pain, because telling a patient "I'm going  
 10 to put you on morphine," "I'm going to prescribe  
 11 morphine for you," "Now we've got to use morphine,"  
 12 however the physician told the patient, it often was  
 13 associated with a death sentence. Oh, thinks the  
 14 patient, he's telling me I'm going to die. Even  
 15 worse, my doctor's putting me on morphine, he's giving  
 16 up on me.

17 We didn't want oxycodone to -- to  
 18 change the, as he says, personality of oxycodone, but  
 19 you could say all the associated feelings of  
 20 oxycodone, which were generally appropriate to a  
 21 narcotic. We didn't want that to be polluted by all  
 22 of the bad associations that patients and healthcare  
 23 givers had with morphine.

24 Q. Did you think that if physicians  
 25 thought it was stronger or equal to morphine, much

Page 83

1 less twice as strong as morphine, that they would be  
 2 less likely to write prescriptions and sales of  
 3 OxyContin would go down?

4 A. No. If its personality was changed,  
 5 if it was stigmatized as an end-of-life drug, it could  
 6 limit its usefulness. The term "stronger" here meant  
 7 more threatening, more frightening. There is no way  
 8 that this intended or had the effect of causing  
 9 physicians to overlook the fact that it was twice as  
 10 potent.

11 It was called out in virtually every  
 12 promotional piece of literature, it was reflected in a  
 13 conversion chart which we had developed for the few  
 14 patients who were being treated with morphine where we  
 15 made it very clear if they're on any dose -- daily  
 16 dose of morphine, you cut that dose in half for  
 17 OxyContin.

18 And every action we took before the  
 19 product was launched with the FDA in the package  
 20 insert and promotion and in all detailing emphasized  
 21 that it was twice as strong. Some physicians had  
 22 formed their own impression that it wasn't twice as  
 23 strong, it was less strong, and we insisted that they  
 24 observe -- we said, "With this drug, Doctor, it is  
 25 twice as strong." Even when they said, "No, I think

Page 84

1 it's one and a half times as strong." And some  
 2 physicians even said, "I think it's about the same  
 3 potency as morphine." We would insist, "No. Please  
 4 use it the way we have researched it and the way the  
 5 FDA has approved it."

6 Q. Okay. Now --

7 A. And I think we were effective in  
 8 getting that message across in time to most and  
 9 eventually almost all physicians.

10 Q. Okay. This is 1997, two years after  
 11 the launch of OxyContin Controlled-Release, correct?

12 A. Yes.

13 Q. So it's been on the market now over --  
 14 well, you launched it January '96. We're now in May  
 15 of '97. And it says, "We are well aware of the view  
 16 held by many physicians that oxycodone is weaker than  
 17 morphine."

18 And the conclusion of this was, "I do  
 19 not plan to do anything about that."

20 And you wrote back and said, "I agree  
 21 with you. Is there a general agreement, or are there  
 22 some holdouts?"

23 Is that what you wrote at the top of  
 24 the e-mail?

25 A. I did. And I agreed with him then and



Page 85

1 I agree with him now because I knew what he meant, and  
2 so did everybody else know -- knew what he meant.  
3 And, more important, our actions in promoting the  
4 "twice as potent as morphine" never wavered. We never  
5 disguised it or hid it; we emphasized it.  
6 **Q. So you weren't doing this because the**  
7 **pain market for non-malignant pain was a much greater**  
8 **market share; is that your testimony?**  
9 A. No. No, that isn't. We wanted to  
10 address both markets. The e-mail -- which perhaps you  
11 want to explore or not. What started this was, as he  
12 says in the first paragraph, something that I had  
13 inquired about. And what I had inquired about was an  
14 error on my part.  
15 When we -- before we launched  
16 OxyContin, we thought that our sales would be about  
17 equally divided between cancer pain and non-malignant  
18 pain. We knew that the market for non-malignant pain  
19 was much larger, of course. Fortunately for all of  
20 us, cancer is not -- is much less common than other  
21 pain states. But we had expected it would be about  
22 50/50.  
23 I had seen some report or had attended  
24 a meeting where I learned it was about 20 percent of  
25 our sales, and, thus, I wrote to Michael and said,

Page 86

1 why -- what's going on here? Why aren't we getting  
2 more cancer sales?  
3 **Q. Let's -- let's look at the e-mail you**  
4 **wrote to Michael Cullen at Norwalk. Let's mark this**  
5 **Plaintiff's Exhibit 12.**  
6 **(DEPOSITION EXHIBIT NO. 12 MARKED)**  
7 **Q. And Michael Cullen writes on June 2nd**  
8 **of '97 -- that was after the e-mail we were just**  
9 **looking at -- and says, "In recent team meetings we've**  
10 **discussed the issue that OxyContin is perceived by**  
11 **some physicians, particularly oncologists, as not**  
12 **being as strong as MS Contin."**  
13 **Now, oncologists are cancer --**  
14 A. Yes.  
15 **Q. -- doctors, correct?**  
16 **So even the cancer doctors don't think**  
17 **that OxyContin is as strong as MS Contin according to**  
18 **this, correct?**  
19 MR. STRAUER: Objection to the form.  
20 That's not what it says.  
21 MR. THOMPSON: Well, let me rephrase  
22 it.  
23 **Q. You were aware -- or at least Michael**  
24 **Cullen was advising you that OxyContin is perceived by**  
25 **some physicians, particularly oncologists, as not**

Page 87

1 **being as strong as MS Contin; is that correct?**  
2 A. That's what the words say.  
3 **Q. And he says, "Although this perception**  
4 **has had some effect with physicians switching to**  
5 **MS Contin with more severe cancer pain patients, it**  
6 **has actually had a positive effect with physicians'**  
7 **use in non-cancer pain."**  
8 **And there he's saying non-cancer**  
9 **physicians that don't think it's as strong as**  
10 **MS Contin were having a positive effect from that.**  
11 **And I assume it's talking about sales,**  
12 **wouldn't you?**  
13 A. Yes.  
14 **Q. He says, "Since oxycodone is perceived**  
15 **as being a weaker opioid than morphine, it has**  
16 **resulted in OxyContin being used much earlier for**  
17 **non-cancer pain. Physicians are positioning this**  
18 **product where Percocet, hydrocodone and Tylenol with**  
19 **codeine have been traditionally used."**  
20 **So he's saying here physicians are**  
21 **using it because they think it's weaker than morphine,**  
22 **correct?**  
23 A. He's using the word "weaker," but not  
24 meaning less potent than morphine. Within this time  
25 it appears that people had fallen into a habit of

Page 88

1 signifying less frightening, less threatening, more  
2 patient acceptable as under the rubric of weaker or  
3 more frightening, more -- less acceptable and less  
4 desirable under the rubric or word "stronger." But we  
5 knew that the word "weaker" did not mean less potent.  
6 We knew that the word "stronger" did not mean more  
7 potent. And we knew that because, by this time  
8 surely, anybody who was using this product recognized  
9 it was more potent, they knew it was more potent.  
10 So it's very unfortunate for your  
11 understanding as well as anybody else's understanding  
12 that all those issues of the stigma of morphine, of  
13 the frightening nature of morphine, of morphine being  
14 a cancer drug, end-of-life drug, it's very unfortunate  
15 for your understanding and for most people's  
16 understanding that the word "weaker" and "stronger"  
17 was used, but we understood what it meant.  
18 **Q. We're not done reading it yet, but let**  
19 **me ask you this.**  
20 A. Okay.  
21 **Q. You were advised by your senior**  
22 **employees that physicians perceived OxyContin**  
23 **Controlled-Release as less strong than morphine? Many**  
24 **physicians perceived it that way, correct?**  
25 A. Words used, but didn't mean that they

<p style="text-align: right;">Page 89</p> <p>1 believed it was less potent, because I knew they 2 believed it was more potent. Their own practice 3 proved they recognized it was more potent. As I said 4 before, Percocet was 5 milligrams. 5 <b>Q. Did you do any studies yourself or</b> 6 <b>conduct any investigation to determine what percentage</b> 7 <b>of physicians believed that OxyContin</b> 8 <b>Controlled-Release was less powerful than morphine and</b> 9 <b>were not aware it was twice as strong as morphine?</b> 10 A. You're talking about less potent? 11 <b>Q. Yes.</b> 12 A. I don't know of such studies. But in 13 common parlance in discussions with physicians, if 14 really a substantial -- if any substantial number of 15 them believed -- believed in the -- believed -- had an 16 erroneous belief -- excuse me. If any had an 17 erroneous belief and said to a representative, "Oh, 18 this is -- this stuff is less potent than morphine," 19 the salesman had ample materials to demonstrate to the 20 physician that he was in error and was instructed to 21 use those and did use it. 22 And I wish we had a survey -- had done 23 a survey to demonstrate it in retrospect, but it was 24 so generally accepted that it was at least one and a 25 half times more potent by even the skeptics -- most</p>	<p style="text-align: right;">Page 91</p> <p>1 <b>smaller cancer pain market but hurt us in the</b> 2 <b>larger -- larger potential non-cancer pain market.</b> 3 <b>Some physicians may start positioning this product</b> 4 <b>where morphine is used and wait until the pain is</b> 5 <b>severe before using it.</b> 6 "Marketing has decided that" -- and by 7 that, they're talking about the marketing group, 8 correct? 9 A. The marketing department, yes. 10 <b>Q. Yeah, marketing department.</b> 11 <b>So it says, "Marketing has decided</b> 12 <b>that the effects of the Phase IV team should be</b> 13 <b>predominantly focussed on expanding OxyContin use for</b> 14 <b>non-cancer pain."</b> 15 <b>And then if you look at the last</b> 16 <b>paragraph, it says, "It is important that we be</b> 17 <b>careful not to change the perception of physicians</b> 18 <b>toward oxycodone when developing promotional pieces,</b> 19 <b>symposia, review articles, studies, et cetera."</b> 20 <b>And what they're talking about there</b> 21 <b>is, let's not clear up this misconception that</b> 22 <b>physicians have that OxyContin is not as strong as</b> 23 <b>NS Contin, correct?</b> 24 MR. STRAUBER: I object to the form of 25 the question, Mr. Thompson. You, in reading this,</p>
<p style="text-align: right;">Page 90</p> <p>1 skeptics -- and there weren't many -- but generally 2 recommended to be twice as potent as morphine, it just 3 never occurred to us. 4 <b>Q. Sure. And it's your belief that your</b> 5 <b>sales force was telling these physicians that it's</b> 6 <b>actually twice as strong as morphine and correcting</b> 7 <b>that misperception that they had?</b> 8 A. Absolutely. It was in the package 9 insert, the promotion, in the conversion tables, and 10 in the recommended dosing, which -- 11 <b>Q. So promotional pieces, your</b> 12 <b>symposiums, your review articles, your studies would</b> 13 <b>all point that out?</b> 14 A. I can't say that every one would point 15 it out in every page, but it should have been an 16 important part of most promotional materials. 17 <b>Q. Let's read the rest of Michael</b> 18 <b>Cullen's e-mail dated 6-2-97, well after the launch of</b> 19 <b>OxyContin.</b> 20 <b>Paragraph 3 says, "Since the</b> 21 <b>non-cancer pain market is much greater than the cancer</b> 22 <b>pain market, it is important that we allow this</b> 23 <b>product to be positioned where it currently is in the</b> 24 <b>physician's mind. If we stress the 'power of</b> 25 <b>OxyContin' versus morphine, it may help us in the</b></p>	<p style="text-align: right;">Page 92</p> <p>1 skipped over two sentences. I'd ask that you go back 2 and read this with the two sentences that you omitted. 3 The one beginning with "The sales force can teach the 4 oncologists..." 5 MR. THOMPSON: Oh, sure. 6 <b>Q. "Our approach to cancer pain will be</b> 7 <b>to get physicians to use it earlier instead of</b> 8 <b>products such as Percocet, Vicodin or Tylenol 3. The</b> 9 <b>sales force can teach the oncologists the proper dose</b> 10 <b>and titrate OxyContin to ensure that they stay with it</b> 11 <b>as the pain increases."</b> 12 <b>Now, oncologists are the cancer pain</b> 13 <b>doctors, correct?</b> 14 A. Yes. 15 <b>Q. That doesn't say anything about all</b> 16 <b>the non-malignant doctors -- all the doctors that</b> 17 <b>treat non-malignant pain, correct?</b> 18 A. But they would be taught the same 19 thing, how to titrate. Because that was the -- that 20 was, in a sense, the fundamental doctrine of treating 21 pain with opioids; start low and titrate. 22 <b>Q. And -- well, the whole --</b> 23 A. Adjust the dose, in other words, 24 upward. 25 <b>Q. Well, the whole purpose of this e-mail</b></p>

Page 93

1 is that you not teach the non-malignant pain  
2 physicians that OxyContin is twice as strong as  
3 morphine and let them continue with their perception  
4 that it's not, correct?

5 A. No, not correct.

6 Q. Well, let's -- let's continue reading  
7 the rest of it, then.

8 The last paragraph. "It is important  
9 that we be careful not to change the perception of  
10 physicians toward oxycodone when developing  
11 promotional pieces, symposia, review articles,  
12 studies, et cetera."

13 Now, am I correct that what he's  
14 saying in here is, let's not clear up the  
15 misperception in any of our promotional pieces,  
16 symposia, review articles or studies?

17 A. Don't change the personality. Don't  
18 change this to an end-of-life cancer drug to a drug  
19 that shouldn't be used except at the end of life when  
20 everything else has been exhausted. That was the  
21 thrust.

22 I may just add something here.

23 There's a conflation within this which you wouldn't  
24 understand, and that was in the first paragraph which  
25 you read where he said that oncologists think it isn't

Page 94

1 as strong as MS Contin. Here the meaning that we  
2 understood -- certainly I understood and anybody who  
3 was involved -- was the cancer doctors who were using  
4 the drug were stopping at -- they had established a  
5 notional idea based on their past habit of using  
6 Percocet that they shouldn't go above 40 to 60  
7 milligrams a day of oxycodone. And the reason they  
8 developed that habit, that practice limit, was not  
9 because of the oxycodone, it was because of the  
10 Tylenol, which was the more toxic agent in that  
11 combination.

12 You're probably aware that recently  
13 the FDA has recommended lowering the maximum daily  
14 Tylenol dose from 4 grams a day to 3. But even then  
15 4 grams a day was recognized as being the then  
16 practical limit.

17 So oncologists who were using  
18 oxycodone as Percocet were just in the habit, well,  
19 you're getting 40 milligrams a day of Oxycodone, your  
20 pain is coming back. Rather than titrate those  
21 patients to a higher OxyContin level, they said, Well,  
22 we've got to switch to something else.

23 And that was really what was going on  
24 and in part why oncologists' use of a product had not  
25 developed as well as we had wished that it would

Page 95

1 develop. And that was understood and contained within  
2 this dialogue, not all of it documented here.

3 Q. Yeah. Sure. Let's go back and talk  
4 about it a little bit more, then.

5 In the first paragraph he says, "We've  
6 discussed the issue that OxyContin is perceived by  
7 some physicians, particularly oncologists, as not  
8 being as strong as MS Contin. Although this  
9 perception has had some effect with physicians  
10 switching to MS Contin with the more severe cancer  
11 pain, it has actually had a positive effect with  
12 physicians' use in non-cancer pain."

13 So what he's saying there, if I'm  
14 reading this correctly, is that because they think it  
15 is not as strong as MS Contin, when they need a strong  
16 drug for cancer pain patients, some of the physicians  
17 aren't switching to it because they don't think it's  
18 as strong, and that may hurt sales a little bit there.  
19 But with the non-cancer pain, where you don't want as  
20 strong a drug as an end-of-life malignant cancer pain  
21 patient might need, it's actually helping our sales  
22 that they have this misperception because they are  
23 going ahead and prescribing it because they don't  
24 think it's as strong as MS Contin.

25 Is that what that first paragraph is

Page 96

1 saying?

2 A. You're -- that's what the words say.  
3 But the meaning of "strong" here would be effective.  
4 It is not as effective. And the reason they thought  
5 it was not as effective is, they had a mental notion  
6 of a limit and they didn't follow the doctrine of  
7 titrating -- increasing the dose when the pain is  
8 getting worse.

9 And all of this was greatly known. I  
10 mean, by 1997 most of the people who disagreed and  
11 thought that OxyContin was not two-to-one, they  
12 thought it was one-and-a-half-to-one, that was by far  
13 the most common objection. Still stronger than  
14 morphine, but not quite as much stronger as we said it  
15 was. They had been persuaded if they used the drug,  
16 oh, yes, particularly those oncologists who switched  
17 from MS Contin to OxyContin.

18 Q. So then he says, "Since oxycodone is  
19 perceived as being a weaker opioid than morphine, it  
20 has resulted in OxyContin being used much earlier for  
21 non-cancer pain." Correct?

22 So he's saying more people are using  
23 it earlier for non-cancer pain because they think it's  
24 weaker?

25 A. Not -- not less potent. More



Page 97

1 acceptable to the patient, not frightening, not  
2 stigmatized as morphine unfairly was by history. That  
3 was the meaning.  
4 And I've lost my thought here. Could  
5 you just repeat your question so I can finish my  
6 answer?  
7 **Q. Sure. And what he's saying here is,**  
8 **the non-cancer pain doctors -- which is the much**  
9 **bigger market share when you're trying to sell**  
10 **OxyContin, is the non-malignant pain market -- it's**  
11 **actually helping sales there because they don't think**  
12 **it's as strong as morphine?**  
13 A. Again, as I've testified before, the  
14 term "stronger" and "weaker" was a very unfortunate  
15 term.  
16 **Q. Do you want to use "effective"?**  
17 A. In the case of here, "effective," yes,  
18 in the case of cancer. Because they were using it.  
19 Let me explain one other thing. At  
20 the time that this product was introduced, the World  
21 Health Organization had promulgated a stepladder  
22 approach to cancer pain. And when OxyContin was  
23 introduced, we properly, with the agreement of the  
24 FDA, said that MS -- that OxyContin was appropriate  
25 for the second step and the third step. That's where

Page 98

1 the start with and stay with theme came from.  
2 So I know that this could cause real  
3 confusion reading these documents if you're not  
4 involved day to day, but there is no way that any of  
5 the people on these documents understood "stronger" to  
6 mean more potent, "weaker" to mean less potent. We  
7 had never departed from a strong promotional theme,  
8 that it was twice as strong as morphine.  
9 **Q. And then down at the bottom he says --**  
10 **or let's take the middle paragraph. "Since the**  
11 **non-cancer pain market is much greater than the cancer**  
12 **pain market, it is important we allow this product to**  
13 **be positioned where it currently is in the physicians'**  
14 **mind."**  
15 **And that means let them believe that**  
16 **OxyContin Controlled-Release is not as effective as**  
17 **morphine?**  
18 A. No. I said the effectiveness really  
19 applied to the oncologists who were saying, This isn't  
20 as effective, or, you know, I have to -- when the pain  
21 gets really bad, I switch them to something else. And  
22 that was the one place or the one circumstance in  
23 which we understood it as effective. And I've  
24 explained that we believe that that was a consequence  
25 of them just having a mental limit.

Page 99

1 **Q. Sure. He says, "If we stress the**  
2 **'power of OxyContin' versus morphine, it may help us**  
3 **in the smaller cancer pain market..."**  
4 **That means let them know that it is**  
5 **more powerful than morphine; that will help in the**  
6 **smaller cancer pain market, correct?**  
7 A. That's what he says.  
8 **Q. Yeah. "...but hurt us in the larger**  
9 **potential non-cancer pain market. Some physicians --**  
10 **physicians may start positioning this product where**  
11 **morphine is used and wait until pain is severe before**  
12 **using it."**  
13 A. He's coming back probably to the  
14 cancer market. I'm not sure. But we always said it  
15 was a powerful drug. We implied that. We didn't use  
16 the words. Because words can elicit a whole variety  
17 of responses.  
18 **Q. And then, "The marketing department**  
19 **has decided that the efforts of the Phase IV team**  
20 **should be predominantly focused on expanding OxyContin**  
21 **use for non-cancer pain."**  
22 A. Right.  
23 **Q. That's the -- that's the group that if**  
24 **you clear up the misperception may be less likely to**  
25 **prescribe according to what he's written here,**

Page 100

1 **correct?**  
2 A. If you change the -- if you change the  
3 character of the drug in their mind. If you tell them  
4 it's a cancer drug, it's for end-of-life care, yes,  
5 you might change their perception. We didn't believe  
6 that that was appropriate, nor did the FDA, nor did  
7 the opinion leaders believe it was appropriate. It  
8 truly was a drug that, in appropriate doses, could  
9 manage moderate and severe and extremely severe pain  
10 where patients needed an opioid to manage their pain.  
11 It's important, also, that you  
12 understand that for a hundred years, and even today,  
13 there is no drug that is more effective or safer than  
14 opioids for treating pain over a long term. And it  
15 was a shame that when -- that for decades no opioid  
16 was used in many -- most, perhaps overwhelming  
17 majority of patients who had severe pain.  
18 **Q. Do you think it might compromise**  
19 **patient care if Purdue Pharma allowed patients'**  
20 **physicians to believe that the drug they are**  
21 **prescribing them is weaker than morphine?**  
22 A. Could you just repeat the question?  
23 **Q. Yes.**  
24 A. I just want to get the question  
25 straight.

Page 101	Page 103
<p>1 Q. Do you think it might compromise 2 patient care if Purdue Pharma was aware that many 3 physicians felt like OxyContin was weaker than 4 morphine and did nothing to clear up that 5 misconception? 6 A. No. If they believed it was less 7 potent than morphine, we clearly cleared up that 8 misconception. We told them it was twice as potent. 9 We told them to use doses that were considerably lower 10 than the morphine doses that they might have been 11 accustomed to. What we didn't want to do is to turn 12 this into a cancer drug. 13 Q. Right. And this is 1997. 14 A. That's correct. 15 Q. Well after the launch, well after your 16 package insert has been put out and all that, correct? 17 A. Yes. 18 Q. And Michael Cullen says, "It is 19 important that we be careful not to change the 20 perception of physicians toward oxycodone when 21 developing promotional pieces, symposia, review 22 articles, studies, et cetera," correct? Is that what 23 he wrote? 24 A. It looks like that's what he wrote. 25 Q. And you replied to him and did not</p>	<p>1 promotional pieces, symposia, review articles or 2 studies." 3 A. That's correct. Not change the 4 character of the drug, not change -- not change it 5 into a frightening, scary, end-of-life drug. 6 Q. All right. Let me hand you -- let's 7 mark this as Plaintiff's Exhibit 13. 8 (DEPOSITION EXHIBIT NO. 13 MARKED) 9 (Passing document.) 10 Q. This is an interoffice memo dated 11 1994. 12 MR. STRAUBER: You gave me two copies. 13 Q. And this is from Michael Friedman. 14 What was his role in 1994? 15 A. He was head of marketing and sales. 16 Q. And it's to? 17 A. To the three people he reported to. 18 Q. And that's Mortimer Sackler, Raymond 19 Sackler, and Dr. Richard Sackler, which would be you? 20 A. That's correct. Yes. 21 Q. And under "Discussion," if you go to 22 page 4, it says, "We believe that the FDA will 23 restrict our initial launch of OxyContin to the cancer 24 pain market." 25 Did you believe that at the time?</p>
Page 102	Page 104
<p>1 say, no, we need to clear up this misconception 2 immediately. What you said is, "I think that you have 3 this issue well in hand." 4 A. That's correct. 5 Q. "If there are developments, please let 6 me know." 7 A. That's what I said. But the 8 misconception that you're referring to didn't exist. 9 The misconception that this was a benign, harmless, 10 weak drug for treating pain was not the perception 11 that existed. So that was not the error that he -- I 12 don't know quite what he -- let me just read what he 13 said here. 14 What are we reading from, please? 15 We've gone through this a number of times, so where 16 were you reading from here? 17 Q. We were reading from -- 18 A. You just read me something from -- 19 Q. From your top where you said "I think 20 that you have this issue well in hand." 21 A. But where you said I was responding, 22 where was that? 23 Q. Where he says, "It is important that 24 we be careful not to change the perception of 25 physicians toward oxycodone when developing</p>	<p>1 A. He may have believed it; I didn't 2 believe it. 3 Q. Okay. "However, we also believe that 4 physicians will perceive OxyContin" -- 5 A. Where are you reading from, which 6 number? 7 Q. Next sentence, 1.3. 8 A. 1.3. Thank you. 9 Q. "However, we also believe that 10 physicians will perceive OxyContin as 11 controlled-release Percocet without acetaminophen and 12 expand its use." 13 Now, is OxyContin Controlled-Release 14 Percocet? 15 A. Without acetaminophen that would be 16 one way of describing it, because there are only two 17 active ingredients, acetaminophen and oxycodone. 18 Q. Is -- is OxyContin Controlled-Release 19 more powerful than Percocet? 20 A. It depends on the dose. The initial 21 dose at 10 milligrams twice a day would be equivalent 22 to the standard introductory dose of Percocet four 23 tablets -- one tablet four times a day; in other 24 words, four. So it would be the same dose. 25 Q. When you-all did studies, did you find</p>

Page 105

1 out that 10 milligrams of OxyContin had the same  
2 effect as a placebo and it was really only the 20  
3 milligram that was effective?  
4 A. I don't recall that, but it's  
5 possible.  
6 Q. "We do not want to position OxyContin  
7 in a way that will discourage physicians from using  
8 OxyContin for the chronic non-malignant pain,  
9 especially" --  
10 A. Where are you reading from again?  
11 Q. Next paragraph.  
12 A. Okay.  
13 Q. I mean next sentence.  
14 -- "especially when we have studies  
15 available that demonstrate efficacy and safety for  
16 this indication."  
17 A. Okay.  
18 Q. Do you know what your studies showed  
19 about non-malignant chronic pain patients developing  
20 tolerance or dependency or withdrawal from OxyContin?  
21 A. I don't have them immediately in my  
22 mind.  
23 MR. THOMPSON: Let's mark -- that's  
24 been marked, correct?  
25 MR. DANFORD: Just off the record.

Page 106

1 VIDEOGRAPHER: We are off the record  
2 at 11:45 a.m.  
3 (RECESS)  
4 VIDEOGRAPHER: We are back on the  
5 record at 11:57 a.m.  
6 BY MR. THOMPSON:  
7 Q. I'm going to hand you a document that  
8 is dated April 23, 1997.  
9 (Passing document.)  
10 And on the bottom of page 1 is an  
11 e-mail you sent regarding San Antonio, and it says --  
12 it's 4-22-97. This is PDD1701801141. And it's to, it  
13 looks like, Michael Friedman.  
14 "Michael, I am somewhat surprised that  
15 18 months into marketing significant groups of  
16 experts, oncologists, for example, believe that  
17 OxyContin has a ceiling effect."  
18 What did you mean by "ceiling effect"?  
19 A. Has a dose above which it would not be  
20 effective. That was what I meant, not be effective.  
21 Q. Okay. "What materials could we pull  
22 together that would smash this critical misconception?  
23 Can we put together some approaches and test whether  
24 they would be potent weapons in this effort?"  
25 And he writes back and says to you,

Page 107

1 "There will always be misconceptions about drug  
2 substances. For controlled-release drugs, many of  
3 these misconceptions are the result of residual  
4 attitudes associated with the immediate-release  
5 forms."  
6 I'll just read the whole thing.  
7 "For example, morphine has a  
8 'personality' that was shaped when it was an IV drug.  
9 Oxycodone has a 'personality' that was influenced by  
10 many years of Oxycodone use in Percocet. We built a  
11 large part of our platform on this personality and it  
12 is to differentiate OxyContin from MS Contin and  
13 Duragesic. This differentiation has led to much  
14 non-malignant business.  
15 "Marketing" -- this is the next  
16 paragraph.  
17 "Marketing is not only about what you  
18 are, but it's about what you are not. We have had  
19 success beyond our expectations that is in part due to  
20 the unique personality of OxyContin. Even as we seek  
21 to increase the use of the drug in higher doses, we  
22 should be very careful. As you know, the strength of  
23 the drug is principally a barrier in malignant pain.  
24 If we do not want to change the image in a way" -- I'm  
25 sorry. "We do not want to change the image in a way

Page 108

1 that will discourage non-malignant use. A barrage  
2 would be ill advised."  
3 And you wrote back, "Excellent points.  
4 What about rifle shots?"  
5 Is that correct?  
6 A. That's correct, that's what I wrote.  
7 Q. And over here before that, there's a  
8 letter to you from James Lang, and he's pointing out  
9 that he sat in some oncology focus groups and --  
10 A. What page is that?  
11 Q. It's page 2.  
12 A. The second page of what you handed me?  
13 Oh, Jim. Yes. Okay.  
14 Q. It says, "Issues affecting the  
15 oncologists' utilization of OxyContin are: M.D.s feel  
16 the product dosing has a ceiling; don't feel it is as  
17 strong as MS Contin; like and are very comfortable  
18 with MS Contin and don't see a need for another  
19 product except where MS Contin fails.  
20 "Interestingly, when asked to describe  
21 what they like about OxyContin, they for the most part  
22 cited all the key points our reps are or should be  
23 stating in their sales presentation.  
24 "The anesthesiology focus group  
25 Saturday evening was of less value however. Their



<p style="text-align: right;">Page 109</p> <p>1 primary concerns were the Medtronic pump being used by 2 the orthopods and the need for Purdue to educate 3 surgeons on proper post surgery pain management and 4 fears with opioid prescribing." 5 Is that the e-mail that prompted you 6 to write the letter? 7 A. It might be; I don't recall. 8 Q. I'm sorry, prompted you to write your 9 e-mail. 10 A. It could be. 11 MR. THOMPSON: Why don't we mark that 12 as Exhibit 14. 13 (DEPOSITION EXHIBIT NO. 14 MARKED) 14 A. But I'm not sure. It could have been 15 there could be another e-mail in which I pointed out 16 the lack of sales development with oncologists as 17 compared to our plan. So I'm not sure that this is -- 18 but it would have been around the same time perhaps. 19 Maybe I looked at the results with oncologists after I 20 read this. 21 MR. ELLIS: That's already in 22 evidence. It's either Exhibit 2 or 3. It's the May 23 1993 memorandum. Here we go. 24 MR. THOMPSON: All right. 25 A. Are we finished with this</p>	<p style="text-align: right;">Page 111</p> <p>1 A. That's what it says. 2 Q. And the part I wanted to ask you 3 about, if you go back to page 10 -- and you were in 4 attendance at this meeting, correct? 5 A. I don't -- let me check that. I 6 certainly don't recollect by date. 7 Q. R.S. Sackler attended. 8 A. Yes, that was me. 9 Q. All right. So on page 10, it looks 10 like you're discussing an osteoarthritis study that 11 was being done. 12 A. Okay. Where on page 10? 13 Q. I am on the third paragraph. 14 A. Okay. I'm sorry. 15 Q. Fourth paragraph. 16 A. It says page 10, but it doesn't look 17 like what you have here. 18 Q. That's it. 19 A. Is it? 20 Q. Yeah. 21 A. Okay. Pardon my eyesight. 22 Q. So read along with me the section over 23 here "RR." Do you know who "RR" is? 24 A. Robert Reder. 25 Q. What was his job at that time?</p>
<p style="text-align: right;">Page 110</p> <p>1 (indicating)? 2 Q. Yes, sir. 3 I wanted to go back to the May 1993 4 memorandum. 5 (Passing document.) 6 And this is the -- 7 A. July '92? 8 MR. STRAUBER: What exhibit number are 9 we talking about? 10 Q. Wait a minute. Let me -- can I see 11 what you have here? 12 (Passing document.) 13 Let me just clear this up. It's not 14 in evidence yet. April 2nd, 1993. 15 Let's -- I'm sorry. I misspoke. 16 Let's -- let's jump to the April 2nd, 1993 memorandum. 17 Let's mark this as Sackler 15. 18 (DEPOSITION EXHIBIT NO. 15 MARKED) 19 (Passing document.) 20 Q. What is "PFRC" at the top of this? 21 A. Purdue Frederick Research Center. 22 Q. And it's the R&amp;D meeting? 23 A. R&amp;D meeting. 24 Q. And it is dated April 2nd, 1993, 25 correct?</p>	<p style="text-align: right;">Page 112</p> <p>1 A. He was senior medical researcher. 2 Q. And he says here in this paragraph, 3 "The protocol for the placebo-controlled study versus 4 two dose levels in patients with osteoarthritis was 5 discussed with C. Wright." 6 Would that be Curtis Wright? 7 A. That's -- that's what I would 8 understand it to be. 9 Q. And at that time he was the person who 10 was reviewing your-all's OxyContin submission to the 11 FDA? 12 A. He was the medical reviewer, that's 13 correct. 14 Q. And he's the guy that actually 15 approved it to be sold, you know, allowed you-all to 16 sell it from the FDA? 17 A. That's my recollection. 18 Q. You-all ultimately hired him a few 19 years later, didn't you? 20 A. We did hire him, but not after his 21 tenure at the FDA. We -- he spoke to somebody at 22 Purdue when he was planning on leaving the FDA, and 23 Paul and I discussed it and agreed that we should not 24 hire somebody who had -- who had reviewed our product 25 and had left. And so he went to another company,</p>

Page 113

1 regrettably for us, because he was very, very  
2 knowledgeable --

3 **Q. Sure. He went there --**

4 **A. -- and very smart.**

5 **Q. He went there for a short period of**  
6 **time and then came to work for you--all?**

7 **A. I don't remember. It was certainly --**  
8 **it was certainly -- my recollection is a couple of**  
9 **years, two or three years, but I don't recall exactly.**  
10 **The record, I'm certain, could be produced.**

11 **Q. All right. Well, let's -- let's take**  
12 **a look at page 10. "The protocol for the**  
13 **placebo-control study versus two dose levels in**  
14 **patients with osteoarthritis was discussed with**  
15 **C. Wright. He stated there were very strong opinions**  
16 **of members at the FDA that opiates should not be used**  
17 **for non-malignant pain. And this study" --**

18 **A. Let me just follow you, if I may. I'm**  
19 **a slow reader, I'm sorry, but I just do want to follow**  
20 **you.**

21 **Q. Great. Well, I'll read it again.**

22 **A. Okay.**

23 **Q. "He stated there were very strong**  
24 **opinions of members at the FDA that opiates should not**  
25 **be used for non-malignant pain and this study would**

Page 114

1 **not be greatly accepted by the FDA as it is written**  
2 **now for that reason. C. Wright has suggested**  
3 **rewriting the protocol in order to make it clear**  
4 **osteoarthritis is being used as a convenient pain**  
5 **model. He would also like the open label extension to**  
6 **be eliminated from the protocol."**

7 **Now, what do you refer to as the open**  
8 **label extension?**

9 **A. In many trials of chronic-use drugs,**  
10 **after the trial period, which might have been 12**  
11 **weeks, was completed, the subjects in the trial were**  
12 **given an option to continue being treated and**  
13 **monitored by their physician. It's completely at**  
14 **their election or choice. They -- they -- some decide**  
15 **that they want to, some decide that they don't. And**  
16 **we continue them on medication for an extended period**  
17 **of time. This is extremely common in all kinds of**  
18 **trials.**

19 **Q. "P. Goldenheim stated the open label**  
20 **extension could be done as a post-marketing study.**  
21 **B. Kaiko and R. Reder will meet with P. Lacouture to**  
22 **communicate what is necessary to revise the protocol.**  
23 **The protocol must be clear that we are not going for a**  
24 **general indication for the treatment of osteoarthritis**  
25 **with osteo -- with oxycodone."**

Page 115

1 **And then down below that it says,**

2 **"Dr. Richard Sackler asked if there was consensus**  
3 **within the pain group about the appropriate use of**  
4 **opiates for certain patient groups. B. Kaiko stated**  
5 **this is very -- a very controversial area, and most**  
6 **people in the pain group say that well-controlled**  
7 **studies are necessary to investigate the questions."**

8 **"Dr. Sackler" -- next paragraph says,**  
9 **"Dr. Sackler has suggested a smaller group meet**  
10 **in-house to clarify the political issues."**

11 **What were the political issues?**

12 **A. The political issues would have**  
13 **referred to the preferences and the sometimes**  
14 **prejudices of physicians and other experts.**

15 **Q. Over whether you should prescribe**  
16 **opioids for non-malignant pain at all?**

17 **A. And for what conditions in**  
18 **non-malignant pain. I don't think there were very**  
19 **many people, or any people really, of any reputation**  
20 **who would have proscribed, that is prohibited, the use**  
21 **of opioids for non-malignant pain, but there were a**  
22 **lot of opinions when it came to listing one condition**  
23 **or another or another or another.**

24 **Pain is the most common symptom that**  
25 **patients have and present to doctors, and so every**

Page 116

1 **doctor has his own opinion as to what is -- what is**  
2 **best and what is appropriate for treating pain, or in**  
3 **some cases what pains are not appropriate to be**  
4 **treated at all. And this is a highly -- is a highly**  
5 **personal and contentious issue in the medical world**  
6 **and has been so for a hundred years.**

7 **Q. And that's the reason that morphine**  
8 **was stigmatized and not prescribed generally for**  
9 **non-malignant pain, it was more reserved by physicians**  
10 **for end-of-life Hospice care and cancer pain in the**  
11 **medical community?**

12 **A. I don't understand the connection**  
13 **you're drawing. I think the situation with morphine**  
14 **is unique and it doesn't relate to what we're talking**  
15 **about here.**

16 **Q. What about heroin, was it prescribed**  
17 **for --**

18 **A. For pain?**

19 **Q. -- pain?**

20 **A. It is prescribed for pain in many**  
21 **countries and is part of the pharmaco -- the**  
22 **pharmacopeia. For example, it is very popular in the**  
23 **UK.**

24 **Q. Is it controlled?**

25 **A. It is, just like morphine.**

Page 117

1 **Q. Is it used for end-of-life pain**  
2 **mostly?**  
3 A. I can't tell you that because I don't  
4 know. But it is -- it's -- I don't believe that it  
5 established itself as an analgesic in the United  
6 States at any time even when it was -- was an  
7 analgesic and was available.  
8 **Q. I'm going to hand you a memo --**  
9 A. Are we finished with this  
10 (indicating)?  
11 **Q. Yes, we are.**  
12 **I'm going to hand you a memo dated --**  
13 **Project Team Meeting Minutes of Tuesday, August 17,**  
14 **1993.**  
15 **(DEPOSITION EXHIBIT NO. 16 MARKED)**  
16 **(Passing document.)**  
17 **Q. It says here under "Marketing,"**  
18 **"There's some initial interest in having a 5 milligram**  
19 **and 10 milligram immediate release Oxycodone capsule**  
20 **produced."**  
21 **Do you know why marketing wanted those**  
22 **produced?**  
23 A. I -- I could -- I could guess, but I  
24 don't know specifically why they wanted it.  
25 **Q. Well, if you don't mind, turn back to**

Page 118

1 **page 4. And on page 4 what I really want to ask you**  
2 **about is potential studies.**  
3 A. Okay.  
4 **Q. And Mike Innaurato is the guy we**  
5 **mentioned earlier who was in --**  
6 A. Innaurato, yes.  
7 **Q. -- in the marketing department,**  
8 **correct?**  
9 A. Yes. Yes.  
10 **Q. And he's the guy in charge of perhaps**  
11 **the sales force that goes out and tries to sell?**  
12 A. No. He would be in charge of the  
13 marketing execution of the strategy. So he would be  
14 intimately involved with the promotional materials,  
15 secondarily involved with training, and would be the  
16 person who would set the direction and themes that  
17 would be used. But he wouldn't be a person who would  
18 be responsible for sales, although he might go out in  
19 the field, and he should, to determine what is  
20 happening.  
21 **Q. Let me rephrase it then.**  
22 A. Sure.  
23 **Q. As part of marketing, he's the guy who**  
24 **is supposed to get the word out and hopefully increase**  
25 **sales by advertising the product and convincing people**

Page 119

1 **to write prescriptions?**  
2 A. Not directly. The salespeople were  
3 the principal agents of getting the word out, to use  
4 your expression.  
5 **Q. All right.**  
6 A. Of putting the materials in the hands  
7 of doctors, et cetera. I don't recollect that  
8 advertising ever played much of a role in the  
9 promotion of OxyContin.  
10 **Q. Let's talk about -- if you'll look at**  
11 **4.3, "Potential Studies." "Mike" -- I'm going to read**  
12 **that paragraph. "Mike Innaurato said that an**  
13 **OxyContin versus Percocet comparative study" --**  
14 A. Oh, you weren't reading -- I see.  
15 **Q. From "Potential Studies."**  
16 A. Okay. I'm sorry, this is so small,  
17 it's not too easy.  
18 **Q. "Mike Innaurato" -- and,**  
19 **unfortunately, that's the way Purdue gave it to us, so**  
20 **we're stuck with it, too.**  
21 **"Potential Studies: Mike Innaurato**  
22 **said that an OxyContin versus Percocet comparative**  
23 **study would be useful for marketing purposes."**  
24 **Now, in trying to decide whether the**  
25 **drug is safe, is it normal to have the marketing**

Page 120

1 **people decide what studies will be done?**  
2 A. They might be involved in commenting  
3 on it or suggesting things, but normally it's the  
4 medical department that has the primary responsibility  
5 both for the medical research strategy and the -- and  
6 certainly the implementation.  
7 **Q. "Through such a study" -- I'm going to**  
8 **read the next sentence. "Through such a study**  
9 **(OC88-1105) has previously been conducted and**  
10 **published in abstract form, it was a single-dose study**  
11 **using non-GMP released material. Mike Innaurato**  
12 **stated that a multiple-dose study would be best to**  
13 **support claims relating to relief of post-surgical**  
14 **pain, low back pain and herpetic neuralgia pain."**  
15 **From my review of that, it looks like**  
16 **he's got claims he wants to make and is trying to**  
17 **design studies to support them.**  
18 **Is that what that appears to you?**  
19 A. No. He -- half yes, half no. What I  
20 think he is doing here in the general is he is, in a  
21 group meeting, presenting ideas for consideration by  
22 the group. Certainly this was not directed and he was  
23 not in a position to direct any studies be done or not  
24 done.  
25 **Q. Then the next sentence says, "Mike**



Page 121

1 Innaurato stated marketing would like to position  
2 differently than MS Contin. Robert Reder" --  
3 A. Just a second.  
4 Q. Who is Robert Reder?  
5 A. He was the senior medical officer in  
6 this -- in this minute of the meeting.  
7 Let me just read -- catch up to you.  
8 Q. "Robert Reder stated that the FDA has  
9 suggested that we do not issue claims supporting the  
10 general use of a Schedule II opiate in patients with  
11 non-malignant pain. Robert Reder indicated that  
12 decisions to make additional claims could be developed  
13 after the product is marketed. Jim Conover agreed  
14 with Robert Reder, but added that any study conducted  
15 in a patient with non-malignant pain could be included  
16 in the clinical studies section of a package insert.  
17 "Robert Reder added that any proposed  
18 marketing claims and their supported studies should be  
19 first reviewed with our legal and regulatory  
20 departments; perhaps the marketing concepts could be  
21 reviewed now. Robert Reder stated that the marketing  
22 could start thinking of a five-year plan on potential  
23 marketing studies and strategies."  
24 Did I read that correctly?  
25 A. You did.

Page 122

1 Q. I'm going hand you -- let's mark  
2 this --  
3 A. Are we finished with this?  
4 Q. -- Exhibit 17.  
5 (DEPOSITION EXHIBIT NO. 17 MARKED)  
6 (Passing document.)  
7 MR. THOMPSON: If I haven't done it,  
8 I'm going to move to admit all these into evidence as  
9 Exhibits 1 through 16 and 17.  
10 Q. And this is a -- appears to be a  
11 speech you gave, is that what this is, or a  
12 publication you made?  
13 A. This looks like it was a newspaper or  
14 magazine-like internal document for the field force  
15 principally. I think it was basically the field  
16 force. And -- and in-house marketing and salespeople  
17 would like to see their picture there or be quoted or  
18 whatever.  
19 Q. And it's the winter of 1996; is that  
20 right?  
21 A. That's correct.  
22 Q. And if you'll turn to page 8 for me,  
23 please. I'm sorry, I misspoke. Turn to page 2,  
24 please. Over on the third column --  
25 A. Yes.

Page 123

1 Q. -- halfway down it says, "The  
2 development and launching of OxyContin Tablets is the  
3 first time that we have chosen to obsolete our own  
4 product, and we have done it before the competition  
5 has slowed our growth of sales."  
6 And you were referring to MS Contin  
7 that you obsoleted; is that correct?  
8 A. That's correct.  
9 Q. And then at the bottom it says, "We  
10 have the most powerful selling package insert in the  
11 category and in the industry."  
12 And is that accurate?  
13 A. I'm trying to see where it is. "We  
14 have" -- which paragraph in that column?"  
15 Q. The very last paragraph.  
16 A. Yes, that is correct.  
17 Q. And if you'll turn to page 8. It says  
18 "Speech" at the top, "continued from page 2." So I'm  
19 assuming this is a speech you gave?  
20 A. Maybe, but I don't know. We'll see.  
21 Q. "OxyContin was brought to NDA" --  
22 What's NDA?  
23 A. "...to NDA filing." That's the filing  
24 of the new drug application.  
25 Q. Right.

Page 124

1 -- "from early Phase I work on time  
2 and in an incredibly compressed period of two years'  
3 time."  
4 That's because an NDA usually takes  
5 longer, correct?  
6 A. Well --  
7 Q. And let me just preface it with, the  
8 reason that it takes longer is because there's a  
9 number of studies that have to be done, both animal  
10 and human, to determine if a drug is safe and  
11 efficacious, correct?  
12 A. Right. In general, that's correct.  
13 Q. But in this case you-all got it done  
14 in an incredibly compressed period of time of two  
15 years.  
16 "Robert Reder set the goal in November  
17 of '93 to file by December 31st, '95, and we submitted  
18 on December 28th, '95, three days ahead of schedule.  
19 This didn't 'just happen.' It was a deftly  
20 coordinated planned event that took dozens of workers  
21 years of effort to succeed."  
22 A. True.  
23 Q. "The most demanding NDA package for  
24 any analgesic product ever submitted didn't languish  
25 at the agency. Unlike the years that other filings

Page 125	Page 127
<p>1 linger at FDA, this product was approved in 11 months, 2 14 days. Our previous best approval time for other 3 products was measured in years, not months. 4 "Much can be attributed to the 5 unparalleled teamwork of the product team and the 6 FDA's approval team which came into being as a result 7 of our joint desires to operate within the context of 8 a new time frame. Both we and the Pilot Drug Division 9 of the FDA were motivated by the same goal to set the 10 high standard NDA with the broadest indications 11 approved in the shortest possible time frame." 12 Did I read that correctly? 13 A. You did. Did you have any questions 14 about that? 15 Q. No. I just wanted to know if that was 16 the statement you got and is it accurate? 17 A. This was a -- I believe it is 18 accurate. I'm certain that the facts in there were 19 accurate. The tone was very upbeat, almost a team 20 enthusiasm building expression. I believe the facts 21 are correct. And I perhaps -- I don't regret trying 22 to energize our sales force, I think that was my 23 mission. But this isn't what I would have written if 24 a board had been -- or said if the board had been 25 there. I wouldn't have been -- the tone would have</p>	<p>1 Q. He was hired by Purdue Pharma 2 subsequently, correct? 3 A. He was hired by Purdue Pharma -- 4 Q. In his last -- 5 A. -- maybe three years after this. I 6 don't recall exactly. 7 Q. Why don't we go ahead and mark this as 8 Exhibit 18. 9 (DEPOSITION EXHIBIT NO. 18 MARKED) 10 Q. His overall conclusion on the last 11 page is, "CR Oxycodone" -- that's controlled-release, 12 correct? 13 A. Yes. 14 Q. -- "appears to be a b.i.d. alternative 15 to conventional q.i.d. Oxycodone. Approval is 16 recommended. Care should be taken to limit 17 competitive promotion." 18 What is "competitive promotion"? 19 A. I'm not sure what he meant. I could 20 guess that he means promotion comparing this to other 21 agents that are used in various pain conditions, but 22 that's a guess on my part. 23 Q. And, then, I think the next sentence 24 explains it. He says, "The product has been shown to 25 be as good as current therapy, but has not been shown</p>
Page 126	Page 128
<p>1 been more restrained. I'm not embarrassed by the 2 tone. In the context, I think it was very reasonable. 3 Do you have any questions about the 4 reason it was so quick or anything else? 5 Q. No. We've got a lot of documents to 6 get through, so I'm trying to hit the high points and 7 ask you about those. 8 A. Okay. 9 Q. One of the things that they wrote 10 you -- 11 MR. THOMPSON: Do you have the other 12 pages of this (indicating)? 13 MR. ELLIS: Yeah. Here. Right here. 14 (Passing document.) 15 Q. -- when you got your approval. 16 (Passing document.) 17 If you'll look at the last page on 18 overall conclusion. And this is a document from the 19 Medical Officer Review, Curtis Wright. 20 A. This is part of the approval -- part 21 of the FDA approval process. 22 Q. He's the guy that now works for Purdue 23 Pharma, correct? 24 A. No. No, he hasn't worked for Purdue 25 Pharma for a long time, regrettably.</p>	<p>1 to have a significant advantage beyond reduction in 2 frequency of dosing." 3 So other than you don't have to take 4 it as much, the FDA has concluded that there's no 5 benefit other than -- "it has not been shown to have a 6 significant advantage beyond reduction in frequency of 7 dosing"? 8 A. Not been shown in the NDA, yes. 9 Q. All right. Let's -- 10 (Knock at the door.) 11 THE WITNESS: Probably announcing 12 lunch. 13 MR. THOMPSON: Probably so. Let's go 14 off the record. 15 VIDEOGRAPHER: We are off the record 16 at 12:32 p.m. 17 (RECESS) 18 VIDEOGRAPHER: We are back on the 19 record at 12:32 p.m. 20 (Passing document.) 21 Q. This is the OxyContin Project Team 22 Memo. 23 Do you know if you ever reviewed this 24 memo? 25 A. I wasn't on the project team. I don't</p>

Page 129

1 know if I reviewed it. I'm curious. I could read  
2 through this. Was it sent to me or not?  
3 **Q. I don't know if it was or not.**  
4 **A.** It looks like I was not on the  
5 circulation list.  
6 **Q. Well, this list down here is -- yeah,**  
7 **there's a circulation list. It appears that it was**  
8 **not.**  
9 **And, if you would, go over to page 4.**  
10 **The last paragraph down at the bottom, 6.2, "Mike**  
11 **Innaurato asked if marketing would be able to review**  
12 **the package insert."**  
13 **Do you have any idea why marketing**  
14 **wanted to review the package insert?**  
15 **A.** Surely. They have many reasons.  
16 **Q. "Robert Reder stated the package**  
17 **insert will be circulated to marketing and other**  
18 **reviewers at the same time as the protocol review."**  
19 **A. As I said earlier, the package insert**  
20 **was becoming -- originally, 20 years prior to this,**  
21 **package inserts were very, very brief and very simple.**  
22 **Over time the agency wanted them to be more complete**  
23 **documents, and then it had regulatory implications, as**  
24 **well.**  
25 **So if you look at the history of use**

Page 130

1 of package inserts, they, by this time, had become  
2 fairly long and extensive documentation for the  
3 physician. Their notion of being printed in that tiny  
4 format and stuck with every package in a sense was  
5 inconsistent, so you ended up sometimes having this  
6 package insert that was as big as the bottle adhered  
7 to every bottle. But it was available to physicians  
8 in a variety of other forms. The Physician's Desk  
9 Reference, I think you must be familiar with, which  
10 was the way most physicians then would read a package  
11 insert. It was just a compilation of all the approved  
12 products package inserts.  
13 **Q. What is marketing going to add to**  
14 **that?**  
15 **A.** First of all, they have to understand  
16 what the package insert is going to say about the  
17 product so that they can think of how they're going to  
18 present promotional materials.  
19 **Secondarily, they might, if the**  
20 **package insert is in draft form and under discussion**  
21 **with the agency, turn to the responsible medical**  
22 **officer as an example or the regulatory people and**  
23 **say, you know, this could be misunderstood, this could**  
24 **represent a problem, and so they would contribute to**  
25 **the clarity.**

Page 131

1 But the medical department was, and  
2 regulatory department, were the principal owners of  
3 the document in the company. And the owner of the  
4 document for the government was the Food and Drug  
5 Administration, and, of course, they had determinative  
6 power as to what it -- what it ultimately ended up as.  
7 **Q. Sure. If you'll turn to page 5 under**  
8 **7.0, "Marketing."**  
9 **A. Yes.**  
10 **Q. It says, "Post-Marketing Studies (QQL,**  
11 **Pharmacoeconomic, Percocet, Duragesic) - Robert Reder**  
12 **discussed some of the planned post-marketing studies.**  
13 **These included an OxyContin versus MS Contin**  
14 **comparative study, the Duragesic study, which is**  
15 **currently on hold, and a relative potency study**  
16 **comparing OxyContin to MS Contin.**  
17 **"Robert Reder stated that we would**  
18 **need additional studies to recruit several hundred**  
19 **patients in order to get data to support claims for**  
20 **non-cancer pain."**  
21 **This was in March of 1994. Do you**  
22 **know if those studies were done?**  
23 **A.** I'm sure they were done after  
24 approval, but I don't know whether any were done  
25 before approval.

Page 132

1 **Q. Do you know if they were done before**  
2 **the drug was put on the market?**  
3 **A.** I don't know.  
4 **Q. Okay. Who is Robert Reder?**  
5 **A.** He was the senior medical officer on  
6 this project at Purdue Frederick.  
7 **Q. And then it says, "Mike Innaurato" --**  
8 **again, he's the marketing guy, correct?**  
9 **A.** Right.  
10 **Q. -- "stated that a Percocet comparative**  
11 **study would be of benefit to marketing. Mike**  
12 **Innaurato replied to Bob Kaiko's question on claims by**  
13 **answering that equal efficacy of OxyContin to Percocet**  
14 **with better quality of life would be a beneficial**  
15 **claim. Mike Innaurato stated in the future Tramadol**  
16 **would pose a threat to the OxyContin market."**  
17 **And then down below that it says, 7.2,**  
18 **"Marketing Claims/Studies Desired - Mike Innaurato**  
19 **gave a presentation on the results from the focus**  
20 **groups. A copy of the market research results would**  
21 **be issued to the OxyContin team. The results of the**  
22 **focus groups are attached. The results cover issues**  
23 **such as benefits, positioning and claims."**  
24 **Do you know whether the studies**  
25 **recommended by Robert Reder were done before it went**



Page 133

1 to market or the studies requested by the marketing  
2 guy were done before it went to market?  
3 A. I don't know.  
4 Q. Then there is a -- if you go to  
5 page -- the very last page, I guess, it is --  
6 "OxyContin Presentation 3-22-94" up at the top.  
7 A. Just a second. "OxyContin  
8 Presentation." I see it.  
9 Q. And it says down at the bottom, it's  
10 got all the list of -- "OxyContin will be positioned  
11 as the only opioid combining the efficacy and safety  
12 of Oxycodone with the convenience of a 12-hour  
13 schedule, which allows for precise and accurate  
14 conversion and titration, while allowing the patient  
15 to lead a more normal quality of life. OxyContin is  
16 the opiate to start with for patients who may be on  
17 Percocet, Lortab or Vicodin and the opiate to stay  
18 with as the disease progresses."  
19 Now, that was a marketing campaign,  
20 correct, the "Start With, Stay With"?  
21 A. Yes.  
22 Q. And the "Start With, Stay With"  
23 campaign, do you know who came up with the "Start  
24 With, Stay With" marketing campaign?  
25 A. I wish I could lay claim to it, but,

Page 134

1 no, I don't know who came up with it.  
2 Q. And then it says --  
3 A. That was not the launch campaign in a  
4 sense. It may have been a subtext of the launch  
5 campaign, which was the old way and the new way.  
6 But...  
7 Q. It says at the bottom, "Less potential  
8 abuse than other opioids."  
9 Do you know where that claim came  
10 from?  
11 A. I don't know. Looking at -- is this  
12 after the package insert? No. No, it's before the  
13 package insert was approved. I don't know.  
14 Q. Do you know whether OxyContin had less  
15 potential abuse than other opioids?  
16 A. I don't know what this refers to.  
17 MR. THOMPSON: Let's mark that as 19  
18 and move to admit it into evidence.  
19 (DEPOSITION EXHIBIT NO. 19 MARKED)  
20 Q. And here is this one.  
21 (Passing document.)  
22 This is PDD9520821306. This appears  
23 to be the --  
24 A. Do you want to mark it?  
25 Q. Yes, let's do that.

Page 135

1 (DEPOSITION EXHIBIT NO. 20 MARKED)  
2 A. Now it's 20.  
3 THE WITNESS: Are you keeping these?  
4 MR. STRAUBER: Yes.  
5 THE WITNESS: Okay. It's No. 20.  
6 Q. "OxyContin Tablets Project Team."  
7 A. Okay.  
8 Q. And this is June 22nd, 1994, correct?  
9 A. That's what it says.  
10 Q. And on page 2, "Marketing" it says --  
11 A. Wait, wait.  
12 Q. -- 1.0.  
13 A. I see June 8th, not June 22nd.  
14 Q. Oh, the date it's sent is June 22nd  
15 over on the right.  
16 A. Woops. Okay. My mistake. Okay.  
17 Q. But it's project team meetings from  
18 June 8th, you're correct.  
19 On page 2 under 1.0 "Marketing," under  
20 the "OxyContin Tablets Project Team Meeting Minutes,"  
21 "Mike Innaurato gave an overview of the Oxycodone  
22 market referring to sales and growth charts and  
23 prescription data. Mr. Innaurato also presented our  
24 current strategy for introducing OxyContin Tablets to  
25 the market. OxyContin Tablets will be targeted at the

Page 136

1 cancer pain market."  
2 Was a decision subsequently made not  
3 to target specifically at the cancer pain market?  
4 A. I would infer that, but I don't know  
5 when.  
6 Q. But at least by June 8th of '94 the  
7 plan was still to target the cancer pain market?  
8 A. Yes. It doesn't say, however, that  
9 we -- let me just read this again. "Will be targeted  
10 at the cancer pain market."  
11 It doesn't say that it will not be  
12 promoted to the non-malignant pain market.  
13 Q. It says, "OxyContin Tablets will be  
14 targeted at the cancer pain market. Since it is  
15 possible that morphine generic products may soon be in  
16 competition with MS Contin Tablets, we will target  
17 patients who are currently receiving MS Contin as well  
18 as those patients thought to eventually use MS Contin  
19 Tablets (i.e., on the analgesic ladder late step one,  
20 step two and step three). The bulk of opiate business  
21 comes from 7,500 physicians, 3,000 of whom are  
22 oncologists."  
23 A. That's correct.  
24 Q. So you-all had market share from  
25 MS Contin, correct?

Page 137

1 A. Yes.  
2 **Q. And in order to keep from losing that**  
3 **market share to generics who are going to be priced**  
4 **much lower than MS Contin generally, correct?**  
5 A. That was the trend at that time, yes.  
6 **Q. What you did is put out OxyContin and**  
7 **obsoleted MS Contin, and if you could keep the**  
8 **MS Contin market through the use of OxyContin, you**  
9 **wouldn't lose any market share there; and if you could**  
10 **expand it to non-malignant pain, you would gain all of**  
11 **that market share, correct?**  
12 MR. STRAUBER: I object to the form of  
13 the question. At the minimum, it's compound.  
14 MR. THOMPSON: Sure.  
15 **Q. Go ahead, you can answer.**  
16 A. So could you just break it into two  
17 questions and I'll answer them both?  
18 MR. THOMPSON: Can you read the  
19 question back?  
20 THE WITNESS: And stop after one.  
21 (Record read.)  
22 A. Okay. And that's what this seems to  
23 say, and certainly that was an element of  
24 consideration and part of the strategy. What I think  
25 might be missing here is any discussion of the

Page 138

1 non-malignant pain market, which you asked me a  
2 question.  
3 THE WITNESS: Could you read question  
4 two?  
5 (Record read.)  
6 A. We would not -- we would not gain all  
7 of the non-malignant pain market share, but we could  
8 augment or add to the cancer pain market non-malignant  
9 pain.  
10 And I'm quite surprised, actually,  
11 that this didn't discuss non-malignant pain as late as  
12 June 8th. So for whatever reason, the -- either  
13 Mr. Innaurato or the person who was writing the  
14 minutes didn't seem to include that, because I don't  
15 think -- not to my recollection was there ever  
16 consideration of restricting this product to malignant  
17 pain alone. It was widely used. Percodan, Percocet  
18 were widely used in non-malignant pain.  
19 **Q. Down below that it says, "Marketing**  
20 **has been interviewing potential advertising groups and**  
21 **is close to selecting one."**  
22 **Do you know which advertising group**  
23 **was ultimately selected?**  
24 A. I don't know, but I'm sure we could  
25 find out if that were important.

Page 139

1 **Q. And then under "Publications," right**  
2 **below that, "Manuscripts for studies C90-0708 and**  
3 **OC93-0101 have been sent to Drs. Stanski and Mandema**  
4 **for review as potential authors."**  
5 **Why was Purdue sending out manuscripts**  
6 **to doctors to be potential authors?**  
7 A. I can't say for sure, but two  
8 possibilities arise in my mind. One possibility is  
9 that the manuscript had come to us in draft form and  
10 we had helped them fill in details, such as the  
11 references and so forth. That was one of the ways  
12 that companies helped authors lighten the burden, so  
13 to speak, of writing a paper.  
14 The second possibility is the first  
15 draft might have been written in-house and sent to  
16 them for their review and their correction and  
17 additions.  
18 **Q. Well, it says "as potential**  
19 **authors" --**  
20 A. Yes.  
21 **Q. -- meaning it would appear that they**  
22 **authored the manuscript even though it really came**  
23 **from Purdue, correct?**  
24 MR. STRAUBER: Objection.  
25 A. It's a collaborative effort. It's --

Page 140

1 we can't -- we don't impose on any author what they  
2 submit. What they submit for publication is submitted  
3 from them, by them and totally in their control.  
4 **Q. Do you know if Drs. Stanski and**  
5 **Mandema were paid by Purdue?**  
6 A. I don't know.  
7 **Q. Do you know whether these manuscripts**  
8 **ultimately identified Purdue Pharma as being any part**  
9 **of the author?**  
10 A. I don't know. But it was not  
11 infrequent that employees of Purdue Pharma would be  
12 co-authors on manuscripts. I don't know whether in  
13 this case they were.  
14 **Q. And then if you'll turn over to page 4**  
15 **of this document. It says, "Clinical: Status of Core**  
16 **Clinical Program - Robert Reder" -- now, he's the**  
17 **medical --**  
18 A. Senior -- senior medical officer on  
19 this product.  
20 **Q. Okay. "Robert Reder stated that the**  
21 **OC92-1102 study (OA Pain) has been completed and**  
22 **preliminary data is currently being reviewed. It**  
23 **appears that the 10 milligram tablet is similar to**  
24 **placebo in efficacy, but the 20 milligram tablet was**  
25 **significantly different compared to placebo."**

Page 141	Page 143
<p>1           <b>Were you aware that the 10 milligram</b></p> <p>2 <b>tablet was similar to placebo in efficacy?</b></p> <p>3       A.    I don't recall that. That would not</p> <p>4 be unusual in any analgesic trial, however.</p> <p>5       <b>Q.    I'm going to ask you about the</b></p> <p>6 <b>meetings of the international R&amp;D meeting. This is --</b></p> <p>7 <b>did we mark that? We did.</b></p> <p>8       <b>This is PDD --</b></p> <p>9       MR. THOMPSON: I'm sorry. We can go</p> <p>10 ahead and mark it if you want.</p> <p>11       PDD1701824723, Exhibit 21.</p> <p>12       (DEPOSITION EXHIBIT NO. 21 MARKED)</p> <p>13       (Passing document.)</p> <p>14       Q.    Which appears to -- now we're in</p> <p>15 November of '94, and present was Dr. R.S. Sackler,</p> <p>16 correct?</p> <p>17       A.    If that's what it says, I must have</p> <p>18 been present for at least part of that.</p> <p>19       <b>Q.    Then on page 13 --</b></p> <p>20       A.    Oh, yes, I was probably present for</p> <p>21 all of it.</p> <p>22       <b>Q.    Page 13, third paragraph.</b></p> <p>23       A.    Okay.</p> <p>24       <b>Q.    "Dr. Yeang asked if there were any" --</b></p> <p>25       A.    Just a second. I'm sorry. Page 13.</p>	<p>1 <b>that not all patients can be successfully treated with</b></p> <p>2 <b>morphine and that there is a stigma attached to</b></p> <p>3 <b>morphine so far as many patients and physicians are</b></p> <p>4 <b>concerned."</b></p> <p>5       <b>And that stigma is what?</b></p> <p>6       A.    It's an end-of-life in many hands,</p> <p>7 principally cancer, drug associated with a whole bunch</p> <p>8 of negative associations.</p> <p>9       <b>Q.    Were one of the negative associations</b></p> <p>10 <b>side effects addiction, dependency, tolerance buildup?</b></p> <p>11       A.    Yes. But that -- the dependency did</p> <p>12 not differentiate it from any other opioid. It was</p> <p>13 not more dependence causing or less.</p> <p>14       <b>Q.    And under this, "In summary, the</b></p> <p>15 <b>efficacy of the product has been demonstrated" -- I'm</b></p> <p>16 <b>sorry, go to page 12.</b></p> <p>17       A.    Okay. Thank you. Okay.</p> <p>18       <b>Q.    It's therapeutic --</b></p> <p>19       A.    Okay. I'm on page --</p> <p>20       <b>Q.    Third paragraph.</b></p> <p>21       A.    From the top or bottom?</p> <p>22       <b>Q.    Third paragraph from the top.</b></p> <p>23 <b>Actually, the fourth. Where it says, "In summary..."</b></p> <p>24       A.    Yes. Thank you.</p> <p>25       <b>Q.    "...the efficacy of the product has</b></p>
Page 142	Page 144
<p>1 This one (indicating)? Are you reading from the top</p> <p>2 here?</p> <p>3       <b>Q.    Yes, I'm reading from the middle of</b></p> <p>4 <b>the paragraph.</b></p> <p>5       A.    Okay. Thank you.</p> <p>6       <b>Q.    About the eighth line down.</b></p> <p>7       <b>"Dr. Yeang asked if there were any</b></p> <p>8 <b>statistically significant results. It was confirmed</b></p> <p>9 <b>that the 20 milligram product was significantly better</b></p> <p>10 <b>than the placebo but the 10 milligram product was</b></p> <p>11 <b>not."</b></p> <p>12       <b>Was that brought up at the meeting?</b></p> <p>13       A.    It must have been. This is minutes of</p> <p>14 the meeting, so I'm sure this was -- these minutes</p> <p>15 were generally of good quality.</p> <p>16       <b>Q.    If you'll turn over to page 11. And</b></p> <p>17 <b>this is shortly before the launch of OxyContin,</b></p> <p>18 <b>correct? We're now into November of '90- -- no, it</b></p> <p>19 <b>was not. This is over a year before the launch,</b></p> <p>20 <b>November of '94.</b></p> <p>21       <b>It says, in the third paragraph,</b></p> <p>22 <b>halfway down that paragraph --</b></p> <p>23       A.    Yes. Dr. Reder?</p> <p>24       <b>Q.    Dr. Reder.</b></p> <p>25       <b>It says, "Advantages for OxyContin are</b></p>	<p>1 <b>been demonstrated in six double-blind clinical trials</b></p> <p>2 <b>involving 713 patients. Therapeutic conclusions are:</b></p> <p>3 <b>The equivalence of 1 milligram of Oxycodone to 2</b></p> <p>4 <b>milligrams of morphine sulfate."</b></p> <p>5       <b>A.    That's correct.</b></p> <p>6       <b>Q.    All right. No. 2 says, "Equivalence</b></p> <p>7 <b>to IR Oxycodone."</b></p> <p>8       <b>A.    Immediate release.</b></p> <p>9       <b>Q.    Yeah. So they're saying</b></p> <p>10 <b>controlled-release is equivalent to immediate-release</b></p> <p>11 <b>Oxycodone?</b></p> <p>12       A.    The implication here is in terms of</p> <p>13 potency, I assume.</p> <p>14       <b>Q.    No. 3 was "The need for dose</b></p> <p>15 <b>titration."</b></p> <p>16       <b>A.    Yes.</b></p> <p>17       <b>Q.    And No. 4 says, "The need for the</b></p> <p>18 <b>availability of a rescue formulation." And No. 5</b></p> <p>19 <b>said, "The need for aggressive management of side</b></p> <p>20 <b>effects."</b></p> <p>21       <b>Why would you need the availability of</b></p> <p>22 <b>a rescue formulation?</b></p> <p>23       A.    At this time, and still today, the</p> <p>24 doctrine of using opioids is to titrate to effect.</p> <p>25 But in some conditions, cancer and others, the dose</p>



Page 145

1 that has, in general, a good effect may suddenly be  
2 insubstantial due to what's called breakthrough pain,  
3 and breakthrough pain could be occasioned by movement  
4 or trauma or just occasioned by the fluctuation in the  
5 pain state.

6 Rather than maintaining a patient on  
7 the highest number of milligrams of any opioid around  
8 the clock just to prevent breakthrough pain, the  
9 normal practice -- and I think it's the prudent and  
10 safest practice -- is to give the patient an  
11 immediate-release form ideally of the same analgesic  
12 agent that they can take when they have breakthrough  
13 pain on an as-needed basis.

14 **Q. Were there studies done at Purdue that**  
15 **showed that blood plasma levels that the medication,**  
16 **instead of lasting for 12 hours really lasted between**  
17 **8 and 12 hours?**

18 A. There were -- there were blood level  
19 studies that showed the profile of blood level, but  
20 there is no prediction of what blood level you will  
21 need to control what pain. So when we -- what we  
22 attended to were the clinical results of treating  
23 patients at a 12-hour basis, and that was what we  
24 researched.

25 Now, may I just go on a little bit?

Page 146

1 **Q. Sure. Let me ask you this though.**  
2 **What your research actually showed is that OxyContin**  
3 **Controlled-Release provides pain relief somewhere**  
4 **between 8 and 12 hours, correct?**

5 A. I think there were some patients who  
6 appeared that way, but principally most were 12 hours.

7 Allow me to just elaborate just a bit.

8 Normally people take a Tylenol tablet  
9 every -- or two tablets every four hours, but they  
10 will get essentially the same effect if they take one  
11 tablet every two hours. What we had found was in most  
12 patients -- this was found as the drug was marketed --  
13 who complained that at eight or nine hours they were  
14 back in pain, yes, they could be treated every  
15 three -- three times a day. But if you took that  
16 dosage, daily dose, and divided it twice a day, q. 12  
17 hours, they were just as pleased with the pain relief.  
18 It was simply that the physician, perhaps by habit or  
19 for other reasons, rather than increasing the  
20 twice-a-day dose increased the daily dose by telling  
21 the patient, Well, take it every eight hours, and it  
22 would work fine.

23 **Q. Do you recall Purdue Pharma running**  
24 **into a real problem with their rescue drug because**  
25 **they were trying to decide how to market it and**

Page 147

1 **whether to say it was for three to four hours or for**  
2 **six hours, and there was a real debate at the company**  
3 **of how we're going to market this because we're going**  
4 **to hurt ourselves one way or the other depending on**  
5 **whether we say our rescue drug is three to four versus**  
6 **six, because it's the same and you're marketing it two**  
7 **different ways?**

8 MR. STRAUBER: Objection to the form  
9 of the question. It consists of multiple questions  
10 and parts.

11 You can answer it if you can.

12 A. I have a vague recollection of it. If  
13 you could show me some documents -- if you wanted to  
14 pursue this with other questions, please show me some  
15 documents. I have -- I do have a very hazy  
16 recollection of this very minor complication, but  
17 perhaps it was a big regulatory complication. I don't  
18 remember. I couldn't explain it to you.

19 **Q. So we'll go back to that in a second.**  
20 **He's going to pull something. Let me continue to read**  
21 **from this document.**

22 **It says, "Dr. Kaiko reported that bio**  
23 **studies" -- it's the fourth paragraph.**

24 A. Right.

25 **Q. -- "undertaken to show that the 10, 20**

Page 148

1 **and 40 milligram tablets were bioequivalent and dose**  
2 **proportional. In normal subjects it has been**  
3 **demonstrated that at the same total daily dose the**  
4 **controlled-release product given 12 hourly showed the**  
5 **same twofold fluctuation as the immediate-release**  
6 **product given six hourly and that this held across the**  
7 **four-fold dosage range."**

8 **Were you-all aware of that in 1994?**

9 A. I'm not certain what this means. I'm  
10 sorry, but I don't know -- I don't know what "two-fold  
11 fluctuation" means. I'm sorry.

12 **Q. Did you ask anybody when you were at**  
13 **the meeting?**

14 A. I'm sure I understood it, but I have  
15 a -- my -- my best guess is that whoever was taking  
16 the minutes somehow perhaps even didn't understand the  
17 discussion or may have understood it but wrote it up  
18 in a way that doesn't make any sense to me now.

19 **Q. Going down to the fifth paragraph.**  
20 **"A clinical study has been undertaken comparing**  
21 **Oxycodone b.d. versus immediate-release Oxycodone**  
22 **q.i.d. in patients previously stabilized to pain**  
23 **relief."**

24 **And then if you drop down, "the study**  
25 **demonstrated that both products maintained baseline**

Page 149	Page 151
<p>1 pain control and pain intensity was the same 2 throughout the day. The acceptability score was the 3 same throughout the study and the same for immediate- 4 and controlled-release products."</p> <p>5 And then if you drop down to the next 6 paragraph. "The conclusion from the study was that 7 the 12-hour product was equivalent in efficacy to 8 immediate-release Oxycodone."</p> <p>9 And is that why the FDA said other 10 than how many times you take the product being the 11 dosing requirements, there's really not any other 12 benefit?</p> <p>13 A. The F- -- I can't tell you whether 14 this was the study that convinced the FDA of that, but 15 it certainly -- it's not -- the finding is completely 16 consistent with that. There may have been other 17 studies that led them to that conclusion with this 18 being just supportive of that conclusion.</p> <p>19 In pain studies, I might point out 20 that the biggest advance in measuring pain -- which, 21 of course, is a personal experience. No doctor can 22 look at you and say, Oh, you've got a pain level of 3 23 and you have a pain level of 6. There's no way of 24 doing it. You have to depend on the patient's report. 25 And the huge advance that led to all the research in</p>	<p>1 Q. Do you recall that study being 2 dismissed as a failed study?</p> <p>3 A. I don't know that it was dismissed. 4 It was studied. But they must have concluded that 5 that finding is not consistent with either their 6 expectation or ours, or, more importantly, other 7 studies and experience. And clearly the product's 8 success in treating patients in pain, which is 9 indisputable, would put a lie to anybody who would 10 say, Oh, Oxycodone is no better than placebo. I don't 11 think any doctor would assert that. For treating 12 pain, I should say.</p> <p>13 Q. Right.</p> <p>14 A. Maybe they -- maybe they would say in 15 terms of urinary incontinence it's not effective, but 16 for treating pain.</p> <p>17 Q. But whether it's effective or not also 18 depends on other factors, such as abuse. I mean, you 19 can kill somebody and take away their pain, but that 20 certainly wouldn't be effective, would it?</p> <p>21 A. I don't think that death would be 22 considered a sign of efficacy.</p> <p>23 Q. Correct.</p> <p>24 A. Yes -- I mean, in the extreme, yes, 25 what you said is correct.</p>
Page 150	Page 152
<p>1 analgesia and pain relief was called the McGill Visual 2 Analog Scale that was developed in the '50s at McGill 3 University in Montreal. Seventy years later we have 4 no advance on that.</p> <p>5 And needless to say -- I suspect 6 everybody in this room has gone to a doctor where they 7 say, "Do you have pain," and if you say -- or to a 8 nurse when they take your blood pressure -- "Yes, I 9 have pain," and they ask you to rate it. That is 10 clearly better than just saying, patient has pain 11 plus, yes or no. But it's not a lot better. It's not 12 terribly -- it's not reproducible and it is highly 13 influenced by the environment and other factors that 14 affect the report the patient gives.</p> <p>15 So very often you can compare a highly 16 effective pain reliever to a placebo and you get in 17 the study no difference, and that is widely 18 recognized, and that probably related to the study 19 that you talked about earlier.</p> <p>20 The FDA, however, would have required 21 studies that showed a difference, and they did, before 22 they would approve the product. In other words, the 23 negative didn't -- was dismissed as a failed study by 24 the FDA. The positive studies control, because 25 negative studies --</p>	<p>1 Q. So just because it takes away pain 2 doesn't mean it's a good drug, does it?</p> <p>3 A. No.</p> <p>4 Q. All right. Let's look at Sackler 5 Exhibit 13 again. I did want to ask you one question 6 about this.</p> <p>7 A. There's always a balance between 8 effectiveness -- I'm sorry. There's always a balance 9 between effectiveness and safety.</p> <p>10 Q. If you go to page 4, 1.4. It says, 11 "If physicians perceive OxyContin as 12 controlled-release Percocet, it is likely that they 13 will start to use it in place of Oxycodone 14 combinations. As physicians become more comfortable 15 with the use of the Oxycodone combination market, it 16 is possible they will start to use OxyContin in place 17 of Class III hydrocodone or codeine combination 18 drugs."</p> <p>19 And Class III are not as regulated as 20 Class II, correct?</p> <p>21 A. That is correct.</p> <p>22 Q. "Therefore, it is imperative that we 23 establish a literature to support such use."</p> <p>24 Who at Purdue Pharma was trying to 25 establish a literature to support a Class III use for</p>

Page 153

1 **OxyContin?**  
 2 MR. STRAUBER: Object to the form of  
 3 the question.  
 4 A. Your -- the answer to your question is  
 5 nobody. We had no plan, program or expectation  
 6 that -- or intention to change OxyContin from a  
 7 Class II to Class III. In fact, it is not too long  
 8 ago the FDA has reclassified Oxycodone as a Class II  
 9 drug.  
 10 **Q. Okay. So you think that -- where it**  
 11 **says, "Therefore, it is imperative we establish a**  
 12 **literature to support such use" is referring to**  
 13 **physicians believing where it says "Physicians**  
 14 **perceive OxyContin as controlled-release Percocet, it**  
 15 **is likely they will start to use it in place of**  
 16 **Oxycodone combinations"? Is that what that**  
 17 **development of literature is referring to in your**  
 18 **opinion?**  
 19 A. Probably, yes.  
 20 **Q. Who -- who was --**  
 21 A. I don't know.  
 22 **Q. -- trying to develop that literature?**  
 23 A. I don't know. That would have been a  
 24 combination. That would have been the medical  
 25 department to do studies and then have them published.

Page 154

1 That would have been a research effort.  
 2 Are we finished with this one?  
 3 MR. STRAUBER: Off the record. In  
 4 between subjects, would now be a good time to break  
 5 for lunch?  
 6 MR. THOMPSON: Yes.  
 7 VIDEOGRAPHER: We are off the record.  
 8 1:11 p.m.  
 9 (RECESS)  
 10 VIDEOGRAPHER: We are back on the  
 11 record at 2:03 p.m.  
 12 BY MR. THOMPSON:  
 13 **Q. All right. Dr. Sackler, picking back**  
 14 **up after our break. We've taken a number of breaks,**  
 15 **but I'll just remind you, any time you need to stop or**  
 16 **need a break, just let us know --**  
 17 A. Thank you.  
 18 **Q. -- and we'll stop again.**  
 19 **We were talking earlier about this**  
 20 **issue with rescue OxyContin. And let me hand you what**  
 21 **we're going to mark as Exhibit 22.**  
 22 (DEPOSITION EXHIBIT NO. 22 MARKED)  
 23 (Passing document.)  
 24 **Q. And if you go back to the last page,**  
 25 **there is a memo dated 9-21-95 from Robert Reder,**

Page 155

1 **R-E-D-E-R.**  
 2 A. Yes.  
 3 **Q. And he says, "Currently our draft**  
 4 **PI" -- that's package insert, correct?**  
 5 A. Yes.  
 6 **Q. -- "and, therefore, our sales material**  
 7 **have the same dosing of rescue as q. 3-4h p.r.n."**  
 8 **And that is -- means what?**  
 9 A. It means every three to four hours as  
 10 needed.  
 11 **Q. Okay. And do you know if the people**  
 12 **who were involved in the studies of OxyContin were**  
 13 **given OxyContin for rescue pain?**  
 14 A. OxyContin?  
 15 **Q. Yes.**  
 16 A. Or you mean Oxycodone?  
 17 **Q. Oxycodone. I'm sorry.**  
 18 A. I'm sorry. I don't know.  
 19 **Q. It says, "BK brought this issue up**  
 20 **some time ago. It is now surfacing again because of**  
 21 **the review of our sales material. OxyIR" -- and is**  
 22 **that Oxycodone?**  
 23 A. Yes.  
 24 **Q. -- "is being promoted as rescue q.**  
 25 **3-4h."**

Page 156

1 **And that's every three to four hours,**  
 2 **right?**  
 3 A. That's correct.  
 4 **Q. He said, "While this may be consistent**  
 5 **with the OxyContin package insert if it is approved as**  
 6 **stands, it will be inconsistent with the OxyIR 5**  
 7 **milligram package insert which uses q. 6h," meaning**  
 8 **you take it every six hours, correct?**  
 9 A. That's what it means.  
 10 **Q. He says, "Moreover, if we use the q.**  
 11 **3-4 hours, it will help to validate Roxane's change in**  
 12 **their package insert."**  
 13 **What was the reason that you-all did**  
 14 **not want to validate Roxane's change in their package**  
 15 **insert?**  
 16 A. I -- I would have to read this  
 17 completely and try to answer your question, but I'm  
 18 not sure this will prompt me to remember. May I?  
 19 **Q. Sure.**  
 20 A. I really don't remember this well  
 21 enough to answer your question.  
 22 **Q. Well, let me continue reading here.**  
 23 **It says, "Finally, it creates a problem for the OxyIR**  
 24 **10 milligram and 20 milligram capsules as the package**  
 25 **insert would have two different dosing intervals**



Page 157

1 depending upon the use, i.e., q. 4 for rescue and q. 6  
2 for usual pain use."  
3 He says, "One suggestion would be to  
4 make everything consistent at q. 6 hours. Rescue  
5 would then be q. 6 p.r.n." -- as needed -- "as would  
6 some acute pain prescriptions. For ATC use, it would  
7 be just q. 6 hours.  
8 "Although I hate the thought of  
9 recommending a PI change" -- package insert change --  
10 "I understand FDA may recommend a change or two such  
11 as removing the plasma curve graph. At this point we  
12 could change the frequency of dosing in the PI. What  
13 do you guys think?"  
14 So what he's saying here is, we've got  
15 the exact same drug, we've marketed it for two  
16 different purposes, and we've got two different dosing  
17 regimens for the exact same drug, correct?  
18 A. It seems to suggest that, but I can't  
19 confirm it.  
20 Q. And then Paul Goldenheim -- if you  
21 turn to the next page and read the next one at the  
22 bottom -- says -- and who is Paul Goldenheim?  
23 A. He was head of R&D, research and  
24 development and medical.  
25 Q. He says, "The issue that won't go

Page 158

1 away. Robert is right, we need to discuss again.  
2 Robert, please arrange a meeting. Round up the usual  
3 suspects. This is too complicated for e-mail."  
4 Then Friedman -- and what was his  
5 role?  
6 A. He was head of marketing and sales.  
7 Q. The head of marketing and sales writes  
8 back and says, "Is it unreasonable to have a q. 6h  
9 dose" -- meaning take it every six hours -- "for  
10 normal dosing and a q. 3-4 hour for rescue?"  
11 So the marketing guy is saying, Well,  
12 hey, can't we just take the exact same medication and  
13 say if it's for a normal dosing, take it every six  
14 hours, but if it's for rescue, take it every three to  
15 four hours?  
16 A. That's what he says. And what he  
17 meant was for normal around-the-clock dosing rather  
18 than rescue, which is one or two or three doses and  
19 that's it, as needed.  
20 Q. And then up at the top you write back  
21 and say, second one down, "I agree, this is too  
22 complicated to solve through written exchange. Paul,  
23 I think that you should get us together soon. Good  
24 pickup someone."  
25 Do you recall writing that e-mail?

Page 159

1 A. No, but it looks like I wrote it.  
2 Q. Okay. And then Robert Kaiko writes  
3 back and says, "Unfortunately soon may be too late.  
4 Robert? As previously" -- so he's saying I brought  
5 this up again.  
6 "As previously, I recommend we change  
7 everything to q. 6 hours for immediate-release  
8 Oxycodone products."  
9 And he is the head of what, Robert  
10 Kaiko?  
11 A. He was in the medical department and  
12 he was the project -- the research project head for  
13 the overall OxyContin project.  
14 Q. Okay. So he's saying, it appears to  
15 me, maybe perhaps to be a little frustrated and  
16 saying --  
17 A. I don't know.  
18 Q. -- "Soon may be too late. As  
19 previously, I recommend we change everything to q. 6  
20 hours"?  
21 A. I can't say why he wrote the first  
22 sentence, whether he was frustrated or whether he was  
23 actually referring to some sort of deadline, maybe in  
24 a clinical trial, maybe on submissions to the FDA. I  
25 don't know why.

Page 160

1 Q. But at least from the appearance of  
2 this, you've got Friedman, the head of marketing,  
3 saying why don't we take the same product and just say  
4 take it every six hours, and if it's for rescue it's  
5 good for three or four hours?  
6 A. Right. This -- essentially to fill in  
7 the blank here, what his -- what he must have meant  
8 was, have two indications. For regular use of  
9 immediate-release Oxycodone, administer it around the  
10 clock every six hours; for rescue use, administer --  
11 you can administer the dose every three to four. But  
12 that wouldn't be indefinite, this would be for rescue  
13 for breakthrough -- actually for breakthrough pain.  
14 Q. And Friedman, the head of marketing,  
15 is not a physician, correct?  
16 A. That's correct. So he's making a  
17 suggestion.  
18 Q. Dr. Robert Kaiko, the head of the  
19 project for Oxycodone, is a physician, correct?  
20 A. He is.  
21 Q. And he's saying, don't do what  
22 Friedman's saying, we need to make it q. 6 hours for  
23 immediate-release Oxycodone products, correct?  
24 A. First of all, Friedman asks a question  
25 here. He's not asserting a proposition, he's asking,

Page 161

1 explain to me why we can't do this. And I understand  
2 why he asks the question. And the only answer could  
3 be it would -- it might be confusing to a physician,  
4 but I think the emphasis should be on "might be  
5 confusing."  
6 Q. And then you write back the next day  
7 and say, "I don't know how urgent this is. If it  
8 can't wait until tomorrow, let us know immediately. I  
9 don't have a problem with this change at all. Does  
10 anyone question it?"  
11 And who is Mr. Alfonso?  
12 A. He was head of marketing at the time.  
13 Q. Okay. So the head of marketing comes  
14 back and he says, "The way these drugs are written are  
15 q. 4-6. The rescue is for q. 3-4 hours." And he  
16 explains, "The problem might be that if we go the q.  
17 3-4 hour route, we will validate the Roxane dosing..."  
18 Again, I'm going to ask you, do you  
19 know what the problem was what validating the Roxane  
20 dosing and why he thought it was a problem?  
21 A. I don't remember. I don't really  
22 think it was a problem. I can't imagine what he was  
23 thinking of.  
24 Q. Okay. So he writes, "The problem  
25 might be that if we go the q. 4 -- q. 3-4 hour route,

Page 162

1 we will validate the Roxane dosing and possibly  
2 present a challenge to the OxyContin studies."  
3 So if he's validating the Roxane with  
4 the q. 3-4, would it appear that perhaps the Roxane  
5 had required -- now, that's an overseas company,  
6 correct?  
7 A. No. Roxane was an American company, I  
8 believe, at that time owned by Boehringer-Ingelheim.  
9 Q. Okay. Did they -- did they put a  
10 dosing limit on OxyContin to your knowledge?  
11 A. Oxycodone you mean?  
12 Q. On Oxycodone.  
13 A. No, not to my knowledge. I don't  
14 think it was an issue of limit.  
15 Q. Do you know what Roxane's dosing was  
16 that he's referring to?  
17 A. No.  
18 Q. So he says, "The problem might be that  
19 if we go the q. 3-4h route, we will validate the  
20 Roxane dosing and possibly present a challenge to the  
21 OxyContin studies. On the other hand, a much more  
22 dangerous scenario can occur if we go the q. 6 hour  
23 for maintenance and rescue. If we go this route and  
24 price continues to be a major issue when we narrow the  
25 value of OxyContin closer to the IRs" -- and that's

Page 163

1 immediate releases? Is that what that is?  
2 A. Yes, IR would be immediate releases.  
3 I'm just reading the sentence because I'm not -- I  
4 didn't follow what it meant.  
5 Q. He says -- the next sentence says, "In  
6 essence if you can use an IR q. 6 hours at a cheap  
7 price, then those doctors that use OxyContin q. 8  
8 hours (there will be some regardless of what we say or  
9 do) will not see a benefit over the immediate  
10 releases. In addition, our promotional campaign has a  
11 visual, six cups representing q. 4 hours. If we go  
12 q. 6 hours, we will -- might have to change the visual  
13 to four cups, and this will not have as much impact.  
14 We need to go q. 6 hours for maintenance and q. 3-4  
15 hours for rescue so that we can maintain the integrity  
16 of our OxyContin studies."  
17 Did I read that correctly?  
18 A. You did.  
19 Q. Do you know whether you went q. 3-4  
20 hours for rescue and 6 hours for maintenance?  
21 A. I don't know.  
22 Q. All right. Let's -- let me jump back.  
23 I'm going to hand you this document.  
24 (Passing document.)  
25 MR. THOMPSON: Why don't we go ahead

Page 164

1 and mark that as Exhibit 23.  
2 (DEPOSITION EXHIBIT NO. 23 MARKED)  
3 Q. This is from you dated April 20th,  
4 2000.  
5 So OxyContin has been on the market  
6 over four years at this point, correct?  
7 A. Yes.  
8 Q. And under No. 5 it says, "OxyContin  
9 Tablets price increase is the central decision. Every  
10 0.1 percent is 1M" -- I'm assuming that's one million?  
11 A. That's correct.  
12 Q. -- "one million to the bottom line.  
13 What would the risk of having a 4 percent  
14 increase instead of a" -- "what would the risk be of  
15 having a 4 percent increase instead of a 3 percent  
16 increase?"  
17 And you're talking about price  
18 increase, correct?  
19 A. That's correct.  
20 Q. "Our average realized price is  
21 constant, suggesting that rebates and other discounts  
22 are taking a larger share of our business. 3 percent  
23 annual notional increases seems to hold our per KG" --  
24 is that kilogram?  
25 A. Kilogram.

Page 165

1 Q. -- "price constant in an environment  
2 where many prices are going up."  
3 Was it true that every time you  
4 increased the price 0.1 percent you added one million  
5 to the bottom line of Purdue Pharma?  
6 A. I don't remember. The answer is no to  
7 your question. I don't remember whether this is  
8 correct or not when I wrote it, but it certainly  
9 wouldn't have been correct every time.  
10 Q. We were talking earlier about Purdue  
11 Frederick versus Purdue Pharma. Did you ever  
12 determine whether the employees -- the sales force  
13 that engaged in improper conduct as referenced in the  
14 felony plea agreement were employees of Purdue  
15 Frederick or employees of Purdue Pharma?  
16 MR. STRAUBER: I object to the form of  
17 the question. I don't think it accurately reflects  
18 the plea agreement.  
19 A. Could you just restate the question  
20 because I kind of lost the thrust?  
21 Q. Sure. Did you ever make a -- we've  
22 talked about Purdue Pharma and Purdue Frederick. Did  
23 you ever make a determination whether the employees  
24 who engaged in illegal activity as referenced in the  
25 felony plea agreement -- or improper activity as

Page 166

1 referenced in the felony plea agreement were employees  
2 of Purdue Frederick or employees of Purdue Pharma?  
3 A. I'm not aware of whether such a study  
4 was done or anybody focused on that question that may  
5 have been done. But you should be -- you should think  
6 of this, that the felony plea agreement came years  
7 after many remedial actions had been taken to retrain  
8 everybody, to discipline, sanction -- correct,  
9 discipline, sanction or dismiss employees who had  
10 behaved improperly, and those processes which started  
11 late in 2000 or early 2001 continued right up to the  
12 plea agreement and then after the plea agreement.  
13 Q. Sure. Have you looked at the call  
14 notes of the reps in Kentucky?  
15 A. I have not seen any except those that  
16 were showed to me during my preparation. There were  
17 three or four that I saw.  
18 Q. Did you review the documents that  
19 Mr. Shapiro, the lawyer that you-all hired, put  
20 together for the U.S. attorney in Virginia?  
21 A. I don't think so. Those don't seem  
22 familiar to me.  
23 Q. And that was the attorney that you-all  
24 hired to defend you in the case brought by the U.S.  
25 attorney in Virginia; is that correct?

Page 167

1 A. Yes.  
2 Q. You-all paid him approximately 50  
3 million dollars to defend you in that case -- or paid  
4 his firm approximately 50 million dollars to defend  
5 Purdue in that case?  
6 A. I'm -- I can't verify. That's the  
7 first time I've heard a number attached to that.  
8 Q. If he testified to that, would you  
9 dispute it?  
10 A. I would have no basis to dispute it.  
11 Q. And do you know if anybody at Purdue  
12 made an effort to determine whether the submission and  
13 the call notes that were pulled by the lawyer hired to  
14 represent you were accurate or not?  
15 MR. STRAUBER: I object to the form,  
16 because I don't know how anyone knows what it is  
17 you're referring to.  
18 Q. Are you aware that he made a  
19 submission on behalf of Purdue to the U.S. Attorney's  
20 Office?  
21 A. I am not aware of anything that he  
22 submitted to the U.S. Attorney's Office.  
23 Q. You've not reviewed any of the  
24 materials he submitted to the U.S. Attorney's Office  
25 when he was defending Purdue?

Page 168

1 A. I did not.  
2 Q. Were you aware of the call notes that  
3 he pulled and purported were evidence of improper  
4 behavior on behalf of Purdue salespeople?  
5 A. No.  
6 Q. Did anyone at Purdue, to your  
7 knowledge -- Purdue Pharma or Purdue Frederick -- make  
8 any attempt to ascertain what percentage of reps in  
9 Kentucky were engaging in the type of behavior that  
10 the plea agreement says was improper?  
11 A. I'm not aware of that.  
12 Q. Did you ever instruct anybody to do  
13 it?  
14 A. To do? Could you be more precise,  
15 please?  
16 Q. Did you ever instruct anybody at  
17 Purdue to undertake an investigation to find out what  
18 percentage of reps in Kentucky, and which ones, were  
19 engaging in conduct that was referenced as improper in  
20 the felony plea agreement?  
21 A. No, I did not.  
22 Q. Have you reviewed Howard Shapiro's  
23 deposition in this case?  
24 A. I have never seen it.  
25 Q. He was asked -- let me read this



<p style="text-align: right;">Page 169</p> <p>1 question and his answer.</p> <p>2 "Mr. Shapiro, before the break, we</p> <p>3 were discussing the agreed statement of facts, and</p> <p>4 specifically paragraph 20. One of the questions that</p> <p>5 I asked you previously about the conduct described in</p> <p>6 the agreed statement of facts was, did you ever figure</p> <p>7 out who the employees referenced in the agreed</p> <p>8 statement of facts worked for, was it Purdue Frederick</p> <p>9 Company, was it Purdue Pharma, L.L.P., or some other</p> <p>10 entity?</p> <p>11 "With respect to the employees we've</p> <p>12 been discussing -- and those are employees whose</p> <p>13 conduct is described in paragraph 20 and its various</p> <p>14 subparts -- did you ever do a determination to</p> <p>15 determine whether those employees were employees of</p> <p>16 Purdue Frederick Company who signed the agreed</p> <p>17 statement of facts or some other Purdue entity?"</p> <p>18 And his answer is, "Without going into</p> <p>19 too much work product, let me state we did sufficient</p> <p>20 investigation once -- once it turned this direction to</p> <p>21 satisfy ourselves and our client that there were</p> <p>22 Purdue Frederick employees who engaged in the conduct</p> <p>23 that's referenced in here and that forms the basis for</p> <p>24 the guilty plea."</p> <p>25 "Question: Were there any employees</p>	<p style="text-align: right;">Page 171</p> <p>1 A. No. I think he would like to see it.</p> <p>2 MR. STRAUBER: I'd like to see it</p> <p>3 also. Plus, he really can't see that distance</p> <p>4 physically.</p> <p>5 MR. ELLIS: We'll print off some</p> <p>6 copies.</p> <p>7 MR. THOMPSON: Why don't we go off the</p> <p>8 record while we get some copies of this.</p> <p>9 VIDEOGRAPHER: We are off the record</p> <p>10 at 2:28 p.m.</p> <p>11 (RECESS)</p> <p>12 VIDEOGRAPHER: We are back on the</p> <p>13 record at 2:29 p.m.</p> <p>14 Q. Sure. And to save time, I'll let you</p> <p>15 read it. Can you start with the next question, which</p> <p>16 was "Uh-huh" and read the answer.</p> <p>17 A. Read the answer. The "Uh-huh" doesn't</p> <p>18 really set up the answer for me.</p> <p>19 MR. STRAUBER: That's page 214, line</p> <p>20 27, the "Uh-huh."</p> <p>21 THE WITNESS: 2017?</p> <p>22 MR. STRAUBER: Yes, I'm sorry. Page</p> <p>23 2 --</p> <p>24 THE WITNESS: 214.</p> <p>25 MR. STRAUBER: -- 14, line 17.</p>
<p style="text-align: right;">Page 170</p> <p>1 of Purdue Pharma, LLP that are referenced here or any</p> <p>2 other Purdue entity?"</p> <p>3 "Answer: Well, again, and I'm -- just</p> <p>4 what I said before, the -- I don't know whether at --</p> <p>5 at which point in time Michael Friedman hired Udell,</p> <p>6 Paul Goldenheim, whether they were Purdue Pharma or</p> <p>7 Purdue Frederick or some of the -- some of them had</p> <p>8 been one and then the other. Beyond them there</p> <p>9 were -- when we looked, for instance, at the names</p> <p>10 that are associated with the -- in the first</p> <p>11 supplemental responses to whatever that was, 23, I</p> <p>12 think."</p> <p>13 Now, did you understand that answer?</p> <p>14 MR. STRAUBER: Mr. Thompson, I object</p> <p>15 to the question. Plus, could you let the witness have</p> <p>16 a copy to read, as it's very hard to follow when</p> <p>17 you're reading such a lengthy --</p> <p>18 MR. THOMPSON: Sure.</p> <p>19 MR. STRAUBER: -- series of questions</p> <p>20 and answers.</p> <p>21 MR. THOMPSON: Do we have another copy</p> <p>22 of this, Tony?</p> <p>23 Q. Here. I'll tell you what, you can</p> <p>24 just read along with me, if you want to do that, and</p> <p>25 I'll hold it over here.</p>	<p style="text-align: right;">Page 172</p> <p>1 THE WITNESS: Right.</p> <p>2 MR. STRAUBER: Okay.</p> <p>3 A. "Uh-huh" is the question.</p> <p>4 "Answer: Of people who are referenced</p> <p>5 but not named in some of the paragraphs, I don't</p> <p>6 believe that we made any effort to determine whether</p> <p>7 at the relevant times they were Purdue Frederick</p> <p>8 Company employees or Purdue Pharma employees."</p> <p>9 Q. Okay. And is that testimony accurate?</p> <p>10 A. I can't -- I can't vouch that it's</p> <p>11 accurate. It's consistent with my knowledge.</p> <p>12 Q. So the next question says, "So it</p> <p>13 could have been either or one or both."</p> <p>14 A. Yes. The question is, "So it could</p> <p>15 have been one or either or both; you're not sure?"</p> <p>16 And the answer is, "Correct."</p> <p>17 Q. Yeah. Now, in 2001, who did Michael</p> <p>18 Friedman work for?</p> <p>19 A. I don't know.</p> <p>20 Q. You don't know if he worked for Purdue</p> <p>21 Pharma in 2001?</p> <p>22 A. My best guess is he worked for Purdue</p> <p>23 Frederick, but it's a guess, and maybe for Purdue</p> <p>24 Pharma, but I don't really know.</p> <p>25 Q. How about Howard Udell, do you know</p>

Page 173

1 who he worked for?  
2 A. No.  
3 Q. What about Paul Goldenheim, do you  
4 know who he worked for?  
5 A. I don't -- I don't know that.  
6 Q. Do you know whether you worked for  
7 Purdue Pharma or Purdue Frederick in 2001?  
8 A. I don't know for sure.  
9 Q. So going back to our OxyContin launch  
10 team. I'll hand you that.  
11 (Passing document.)  
12 A. Do you want to put a number on this?  
13 Q. Yes. Let's mark that as Exhibit --  
14 A. 25?  
15 Q. -- 25.  
16 A. No.  
17 COURT REPORTER: 24.  
18 (DEPOSITION EXHIBIT NO. 24 MARKED)  
19 Q. And I've just got a couple of  
20 paragraphs I want to ask you about.  
21 A. Sure.  
22 Q. So on -- this is dated April 4th,  
23 1995, and it says at the first paragraph, second  
24 sentence, "Mike Innaurato" --  
25 A. Oops. First paragraph on which page?

Page 174

1 Q. I'm sorry. Page 1, second paragraph.  
2 A. Oh, second paragraph. Okay.  
3 Q. "Mike Innaurato" -- he's the marketing  
4 guy again, correct?  
5 A. Yes.  
6 Q. -- "discussed the marketplace that  
7 OxyContin will enter and how OxyContin will expand out  
8 of the cancer pain market. OxyContin will be launched  
9 in 10, 20, 40 milligram tablet strength, 80 and 160  
10 milligram tablet strength to follow."  
11 And if you go on down a little bit  
12 further, he says, "OxyContin will be indicated for the  
13 relief of pain with the convenience of q. 12 dosing.  
14 OxyContin's primary market positioning will be for  
15 cancer pain and the secondary market will be for  
16 non-malignant pain, musculoskeletal injury and trauma.  
17 It was reinforced that we do not want to niche  
18 OxyContin just for cancer pain."  
19 And was it part of your--all's  
20 marketing strategy not to niche OxyContin for cancer  
21 pain?  
22 A. Not to limit it, yes.  
23 Q. Below that it says, on the last  
24 paragraph, "In our market research efforts, focus  
25 groups, personal one-on-one interviews and telephone

Page 175

1 interviews were conducted with more than 500  
2 healthcare professionals. In our focus group findings  
3 we learned that MS Contin" -- that's the drug that you  
4 already sold, correct?  
5 A. I'm sorry, I didn't hear the question.  
6 Q. That's morphine sulfate, correct?  
7 A. Yes.  
8 Q. That's the one that you had not had  
9 any reports of abuse or diversion with that you could  
10 recall, correct?  
11 A. None that I was aware of, yes.  
12 Q. And it says, "We learned that  
13 MS Contin is the gold standard for cancer pain. Our  
14 creative concept testing showed the likelihood of  
15 OxyContin usage by physicians and nurses were 4.6 on a  
16 scale of 1 to 5, which is very favorable."  
17 Were you aware of this creative  
18 concept testing and focus groups that were being  
19 conducted?  
20 A. I don't recall.  
21 Q. And then if you go to the next page,  
22 page 2, last paragraph. "Our meeting ended with a  
23 question and comment period. Michael Friedman  
24 emphasized the threat that AB-rated generics posed to  
25 MS Contin. We're not sure when AB-rated generics will

Page 176

1 be launched, but we don't think it will be until 1996.  
2 Inevitably the AB-rated generics will arrive and this  
3 is why it is extremely timely importance that we must  
4 establish OxyContin. OxyContin can cure the  
5 vulnerability of the AB-rated generic threat, and that  
6 is why it is so crucial that we devote our fullest  
7 efforts now to a successful launch of OxyContin."  
8 Were you aware that was part of the  
9 strategy?  
10 A. I'm sorry, but what was part of the  
11 strategy?  
12 Q. That the AB-rated generics were going  
13 to arrive and that is why it was extremely timely  
14 importance -- that's the way it's written -- that we  
15 just establish OxyContin and it was crucial to devote  
16 the fullest efforts to a successful launch because of  
17 AB-rated generics?  
18 MR. STRAUBER: Objection to the form.  
19 The witness can answer.  
20 A. Yes, I was aware of that. And the  
21 reason is clear. MS Contin was our most important  
22 product at that point, and when the sales were eroded  
23 by generics, we would have -- If we had not replaced  
24 those sales with other product sales, we would have a  
25 much smaller company. That would cost many people

Page 177

1 their jobs.

2 **Q. Are you familiar with the OxyContin**

3 **Product Team?**

4 A. I've become reminded of it, yes.

5 MR. THOMPSON: Let's mark this as

6 Exhibit -- is it 25?

7 COURT REPORTER: 25.

8 (DEPOSITION EXHIBIT NO. 25 MARKED)

9 (Passing document.)

10 Q. And this is minutes of the OxyContin

11 Product Team dated -- the meeting was February 22nd,

12 1996 up at the top.

13 A. Washington's birthday.

14 **Q. It says, first paragraph, "The**

15 **OxyContin Product Team met on Friday, February 22nd,**

16 **1996, and topics of discussion included the**

17 **following:" Number one is "Marketing's wish list for**

18 **clinical studies," and then it's got a list of**

19 **studies. Number one is "Postoperative pain to support**

20 **the Abbott agreement."**

21 **Why did you need studies on**

22 **postoperative pain to support the Abbott agreement?**

23 A. I don't recall.

24 **Q. "Pharmacoeconomic." What was the**

25 **reason for pharmacoeconomic studies being needed, if**

Page 178

1 **you recall?**

2 A. I don't recall that circumstance.

3 **Q. And then it says, "Non-malignant pain**

4 **(example, functional improvement)." And then the**

5 **subcategories are "Low back pain; osteoarthritis,**

6 **long-term safety data."**

7 A. Right.

8 **Q. Why did you think that marketing**

9 **needed -- was needing on March 7th, 1996, after the**

10 **product had already been launched, long-term safety**

11 **data?**

12 A. I don't remember precisely. But all

13 studies would include or would enhance the data

14 available to support long-term safety if the studies

15 were long term. And the studies that were referenced

16 here, low back pain and osteoarthritis, would surely

17 have been long enough to add to that database.

18 **Q. Then can you explain why the head of**

19 **the OxyContin -- or the OxyContin Product Team on**

20 **February 22nd, 1996, after the product launch said we**

21 **need long-term safety data?**

22 A. I don't think there was any question

23 about the safety of the drug. It was just an addition

24 that it would enhance the dossier that was available.

25 **Q. Do you --**

Page 179

1 A. I don't know how you would do a

2 long-term safety study devoid of some condition, so

3 the long-term study would be focused on following a

4 condition, that's low back pain or osteoarthritis.

5 And at that time the studies were typically 12 weeks

6 and with an open extension at the end they could go on

7 for a year.

8 **Q. That is a subcategory of non-malignant**

9 **pain, correct?**

10 A. These two studies, low back pain and

11 osteoarthritis. Long-term safety would be a general

12 concept that would apply to any kind of study that's

13 long enough to accumulate that data.

14 **Q. They've included long-term safety data**

15 **under their marketing wish list under non-malignant**

16 **pain, correct?**

17 A. They did.

18 **Q. So it looks like they're saying we**

19 **need long-term safety data on prescribing OxyContin**

20 **for non-malignant pain.**

21 **Do you read that the same way or**

22 **differently?**

23 A. I -- I guess I read it differently

24 than you do. Just that it wasn't that we needed it,

25 it was a wish list. But it was inherent in any

Page 180

1 long-term study we did of any pain condition.

2 **Q. And then we talked about the FDA's**

3 **statement about comparative studies. Do you remember**

4 **that, where they said you should refrain from**

5 **comparative analysis?**

6 A. I don't remember. So if you could

7 just go forward with the question, that would be

8 great.

9 **Q. Sure. One of the things that the**

10 **OxyContin marketing team's wish list has under No. 5**

11 **is "Comparative studies, especially versus:**

12 **Combination opioids such as hydrocodone combinations,**

13 **Duragesic, MS Contin, Kadian and Ultram NSAIDS."**

14 **Those are nonsteroidal**

15 **antiinflammatory drugs; is that right?**

16 A. Ultram is an opioid drug. NSAIDS are

17 nonsteroidal antiinflammatory drugs.

18 **Q. Right, NSAIDS.**

19 A. So they're not the same. I don't know

20 why they were -- the bullet put them together, but

21 they're different.

22 **Q. Right. No, no. I get it. I'm asking**

23 **you, is that what NSAID stands for, nonsteroidal?**

24 A. Yes.

25 **Q. Has that been marked?**



Page 181

1 A. That's been marked 25.  
2 **Q. All right. Now, let's go to the**  
3 **launch plan. And this is dated September 27th, 1995.**  
4 **And if you'll go to page 42 of the launch plan.**  
5 **(Passing document.)**  
6 **Under 5.851 under "Public Relations"**  
7 **at the top it says, "The objective of the public**  
8 **relations campaign is to create broad awareness of the**  
9 **launch of OxyContin. This awareness will be directed**  
10 **at the consumer and healthcare professionals through**  
11 **various media channels, such as print, TV and radio.**  
12 **In an effort to create a 'media hook' that would**  
13 **coincide with the launch of OxyContin, a consumer**  
14 **survey conducted by a company such as the Gallop Poll**  
15 **is being proposed. This survey would focus on the**  
16 **prevalence and problems of chronic pain, both**  
17 **malignant and nonmalignant. The release of the**  
18 **results of such a survey would be publicized along**  
19 **with the recent FDA approval of the new**  
20 **controlled-release Oxycodone preparation OxyContin.**  
21 **This is a classic problem/solution strategy to create**  
22 **a need for the launch of a product such as OxyContin."**  
23 **Did I read that correctly?**  
24 A. You did.  
25 **Q. Do you know if a poll was conducted by**

Page 182

1 **someone such as the Gallop Poll?**  
2 A. I don't know what the poll is  
3 precisely.  
4 **Q. Then -- then the next paragraph**  
5 **says -- 5.852. It says, "In an effort to continue the**  
6 **publicity about the launch of OxyContin, approximately**  
7 **two to three months after the initial public relations**  
8 **campaign, another campaign would be launched focusing**  
9 **on the expansion of Purdue Frederick's Partners**  
10 **Against Pain Program developed to improve pain**  
11 **management knowledge among healthcare professionals**  
12 **and patients' caregivers."**  
13 **Partners Against Pain was a creation**  
14 **of Purdue Frederick, correct?**  
15 A. That's what it says.  
16 **Q. And there were no partners, correct?**  
17 A. No, I think there were partners, the  
18 meaning of the campaign.  
19 **Q. Who do you think the partners were?**  
20 A. Physicians, nurses. Other healthcare  
21 workers are partners.  
22 **Q. Oh, okay. So -- but as far as setting**  
23 **it up, there weren't any other partners involved in**  
24 **setting up Partners Against Pain? I mean, the**  
25 **government wasn't involved in Partners Against Pain,**

Page 183

1 **other healthcare companies weren't involved?**  
2 A. I don't know whether other healthcare  
3 companies were involved, but the government would not  
4 have been involved in setting up this program.  
5 **Q. And it says, "This campaign would**  
6 **reiterate the prevalence and problems uncovered in the**  
7 **consumer survey and explain how Purdue Frederick has**  
8 **made a commitment to improving the level of care for**  
9 **patients suffering in pain. In addition, the campaign**  
10 **would expand the recent launch of Purdue Frederick's**  
11 **newest partner against pain; OxyContin."**  
12 MR. STRAUBER: Excuse me. I think you  
13 just made an error in reading. "It would explain" not  
14 "would expand."  
15 MR. THOMPSON: I thought I said  
16 "explain."  
17 **Q. And then the next paragraph says, "In**  
18 **addition to the above public relations campaigns, we**  
19 **are exploring the possibility of Purdue Frederick**  
20 **sponsoring a pain management foundation in association**  
21 **with an organization such as Gilda's Club."**  
22 Do you know if you sponsored a pain  
23 management foundation?  
24 A. I do not, but I -- no, I don't -- I  
25 don't know if we did that. I don't think we did, but

Page 184

1 that's a vague recollection.  
2 **Q. Can we agree that the main way you**  
3 **marketed and promoted OxyContin was with your sales**  
4 **force?**  
5 A. Yes.  
6 **Q. And those are the people that actually**  
7 **go out to the physicians' offices and pharmacies and**  
8 **to the communities and sell OxyContin, correct?**  
9 A. They don't actually sell, but they  
10 promote OxyContin. The distinction being that they  
11 don't actually take orders and arrange deliveries and  
12 collect any money.  
13 **Q. Okay. And you would consider them the**  
14 **most valuable resource that Purdue had to sell**  
15 **OxyContin, correct?**  
16 A. It was the most valuable resource that  
17 we used. We thought it was the most efficient  
18 resource and that's why we used them. Whether other  
19 approaches or resources would have been more valuable,  
20 I can't say.  
21 **Q. At some point did you figure out that**  
22 **the key to getting physicians to prescribe and keep**  
23 **prescribing OxyContin was through regular visits from**  
24 **the sales force?**  
25 A. That would be typical of any

Page 185

1 pharmaceutical sales force, yes.  
2 **Q. And was there a realization that**  
3 **developed that certain physicians, so-called core**  
4 **physicians, were more likely to prescribe OxyContin?**  
5 A. I'm not sure. It wasn't -- I think it  
6 was the other way around. Our most significant  
7 prescribers were called core, not that we identified a  
8 core and then they became important prescribers.  
9 **Q. And how many companies were sending**  
10 **sales representatives to physicians' offices to talk**  
11 **to them about opioids during this time?**  
12 A. Three to five. It's a guess on my  
13 part. I don't recall any survey that counted that up.  
14 But it's a guess based upon my recollection of what  
15 was being actively promoted.  
16 **Q. And you compensated your sales force**  
17 **very well based predominantly on how much OxyContin**  
18 **they sold; is that correct?**  
19 A. The successful -- the most successful  
20 salespeople, a majority of their income was bonus.  
21 The average salesman, certainly when we launched the  
22 product the overwhelming majority of their income was  
23 their salary and the benefits that they received. And  
24 for the average sales force -- salesman, I think it  
25 would have been 50 percent of their income or 70

Page 186

1 percent of their income salary and the balance in  
2 bonus.  
3 **Q. Sure.**  
4 A. But I don't -- I don't remember this  
5 in detail. And, of course, it changed over time.  
6 **Q. The way the sales scheme was set up,**  
7 **if they sold more OxyContin, they made more money,**  
8 **basically?**  
9 A. Yes. Yes. The same as almost every  
10 other company in the industry.  
11 **Q. And then you-all gave your reps an**  
12 **additional incentive because you decenteralized them to**  
13 **sell MS Contin but you increased the incentive for**  
14 **selling OxyContin; is that true?**  
15 A. Yes.  
16 **Q. And then you had one of the highest**  
17 **paid sales forces in the country; is that accurate?**  
18 A. I've heard that said for one or two  
19 years. It certainly wasn't the case or hasn't been  
20 the case during the history of OxyContin.  
21 **Q. Do you know if reps that promoted and**  
22 **sold OxyContin sometimes ended up making over \$250,000**  
23 **a year?**  
24 A. I've heard that that was the case.  
25 I'm sure it was unusual.

Page 187

1 **Q. And then your top sellers were**  
2 **rewarded with trips to Bermuda or London in what was**  
3 **called the Toppers Program; is that correct?**  
4 A. Yes.  
5 **Q. And during the first five years of**  
6 **OxyContin's release, Purdue more than doubled the size**  
7 **of its sales force, correct?**  
8 A. That's correct.  
9 **Q. And do you know how much of the sales**  
10 **force during the first five years was Purdue Frederick**  
11 **versus Purdue Pharma employees?**  
12 A. I don't know.  
13 **Q. At some point were some people**  
14 **designated -- all new hires designated Purdue Pharma**  
15 **as opposed to Purdue Frederick?**  
16 A. I believe that that's the case.  
17 **Q. But you're not sure what date that**  
18 **started?**  
19 A. No.  
20 **Q. Do you know if it was after the**  
21 **creation of Purdue Pharma that that started?**  
22 A. It would had to have been. If Purdue  
23 Pharma didn't exist, we couldn't have hired somebody.  
24 **Q. Right. But, I mean, was it**  
25 **immediately after that that all -- once it was created**

Page 188

1 **all reps were hired by Purdue Pharma as opposed to**  
2 **Purdue Frederick?**  
3 A. I don't know.  
4 **Q. Who would know that at Purdue?**  
5 A. I don't know. At Purdue now?  
6 **Q. Yes.**  
7 A. At Purdue Pharma you mean?  
8 **Q. Yes.**  
9 A. Well, the people who were there at  
10 that time might recall it, but I don't know who today  
11 would know it.  
12 **Q. And then in addition to targeting or**  
13 **providing initiatives to the sales force, you also**  
14 **targeted wholesalers, correct?**  
15 A. Wholesalers were called upon by the  
16 salesmen, yes.  
17 **Q. And, in fact, I think if you go to**  
18 **page 27 of the initial launch plan -- let's see if I**  
19 **can find this -- the last paragraph. It says, "All**  
20 **promotional efforts for the retail distribution of**  
21 **OxyContin will focus on the incredible success that**  
22 **Purdue Frederick has achieved and sustained with the**  
23 **MS Contin product line. Wholesale pharmaceutical**  
24 **buyers and retail pharmacists should be reminded of**  
25 **how MS Contin created such a large market for the use**



Page 189

1 of sustained-release opioids for the treatment of  
2 pain. This in turn created profits for pharmacists  
3 helping to grow their businesses. Promotional copies  
4 should focus on the market potential for OxyContin and  
5 patient populations to be targeted, including the  
6 number of prescriptions written for Class II and Class  
7 III opioids every year.  
8 "The executive director of national  
9 accounts should work with drug wholesalers in  
10 developing programs to utilize the wholesaler sales  
11 representatives to ensure adequate distribution.  
12 Consideration should be given to advertisements in  
13 drug wholesaler ad books and computer programs."  
14 Were the sales force told to emphasize  
15 with pharmacists that they could make more money with  
16 OxyContin prescriptions?  
17 A. I don't think that they would have  
18 been encouraged to say that. The objective when any  
19 product is launched, and certainly any medicine is  
20 launched, is to be -- is to minimize the number of  
21 times a patient -- number of patients who get  
22 prescriptions from their doctor and go to the pharmacy  
23 and the pharmacist says "I don't have that" or, even  
24 worse, "I never heard of that," for obvious reasons.  
25 So in order to reduce that, one tries

Page 190

1 to stock all three strengths in as many pharmacies as  
2 possible. But to begin with, there's no demand. So  
3 there's a bit of tension there. In order to supply  
4 the pharmacists, the wholesalers have to have enough  
5 stock on hand for the ones who buy it early and a  
6 sufficient backup stock both to supply the early  
7 buyers and the later adopters. And that was all that  
8 we needed to accomplish and there's not much more I  
9 can say about it except that however we did it was  
10 ethical and proper.  
11 Q. And let me go back to my question.  
12 Where it says "Wholesale pharmaceutical buyers and  
13 retail pharmacists should be reminded of how MS Contin  
14 created such a large market for the use of  
15 sustained-release opioids for the treatment of pain.  
16 This in turn created profit for pharmacists."  
17 Am I reading that incorrectly somehow  
18 that --  
19 A. You're reading it correctly.  
20 Q. What you're telling -- what this  
21 launch plan, sales force -- under the title "Sales  
22 Force Allocation and Representative Delivered  
23 Promotional Materials" is saying, hey, remind them  
24 they're making a bunch of money selling our product?  
25 A. As opposed to not selling any product.

Page 191

1 Q. It says, "A cooperative direct mail  
2 advertising sales sheet offering a rebate on the  
3 initial order of OxyContin to retail pharmacists will  
4 be mailed every month during the first three months of  
5 launch."  
6 What was the rebate you-all were  
7 offering to pharmacists?  
8 A. Some discount on their early orders to  
9 encourage them to stock the product in advance of  
10 seeing any prescriptions or one or two prescriptions.  
11 And like the rest of -- there was nothing innovative  
12 in this program. This is -- this was standard  
13 programming in the pharmaceutical industry and in  
14 other industries.  
15 Q. Well, some of your other literature  
16 talks about you-all had an unprecedented marketing  
17 campaign.  
18 Have you ever seen another company  
19 that instituted a more broad-ranging marketing  
20 campaign than you-all did for OxyContin?  
21 A. I think this was conventional.  
22 Unprecedented perhaps for us, but not unprecedented in  
23 the industry. This would -- this is conventional  
24 standard textbook. This is how you do it.  
25 Q. All right. You-all also were involved

Page 192

1 with third-party organizations, Partners in Pain.  
2 They were referenced in the launch campaign. And did  
3 you use Partners in Pain to drum up demand for  
4 OxyContin?  
5 A. No. I -- I think that Partners in  
6 Pain was principally designed to inform doctors about  
7 the proper use of our drugs, our medicines, and to  
8 encourage patients who may have had pain, sometimes  
9 for years, inadequately treated or not treated at all  
10 to present themselves to their physicians.  
11 Q. There was also -- Purdue funded a  
12 variety of so-called pain societies. The American  
13 Pain Society, was that funded by Purdue Pharma?  
14 A. We donated money to the American Pain  
15 Society.  
16 Q. Did you also fund the American  
17 Association for Pain Management?  
18 A. If -- it wouldn't surprise me. I  
19 don't remember.  
20 Q. Did you also fund the Appalachian Pain  
21 Society?  
22 A. I don't know that, and I wouldn't have  
23 known it. But if that's what the record shows, it  
24 wouldn't surprise me.  
25 Q. There was a figure we looked at a



Page 193

Page 195

1 while ago that said there was -- basically the target  
2 market for physicians was about 7,500 physicians,  
3 including the cancer, malignant pain and the  
4 non-malignant pain across the U.S. Do you remember  
5 seeing that?  
6 A. No.  
7 Q. Do you think the market was more than  
8 7,500 physicians --  
9 A. Much larger.  
10 Q. -- for pain?  
11 A. Much larger. Pain is the most common  
12 presenting symptom for physicians in total, and very  
13 few physicians would have a different experience.  
14 Perhaps ophthalmologists or dermatologists may, but  
15 every other physician it would be the most common or  
16 the second most common presenting complaint.  
17 Q. Do you recall whether Purdue Pharma  
18 set up a speakers bureau in which it allowed  
19 physicians who were recommended by salespeople to be  
20 put on the so-called, quote, speakers bureau?  
21 A. They -- yes, such a program existed.  
22 Not everybody who was recommended was put on the  
23 speakers bureau. They were vetted by internal experts  
24 to determine their qualifications.  
25 Q. Do you recall that there were over

1 attended and spoke were trainers, and some of them  
2 were in-house people and some were outside physicians.  
3 Q. And would these take place at resorts,  
4 like in Florida and Arizona, these meetings?  
5 A. Certainly might have.  
6 Q. And you also --  
7 A. But -- but -- but to my knowledge, I  
8 don't think anybody would go more than once, and they  
9 were trained in what they could say, what they  
10 couldn't say, and they were given materials to use in  
11 the presentations, for a while slides and then I guess  
12 eventually PowerPoint presentations. So it was to  
13 create some control to see, hopefully, that they would  
14 not go off label.  
15 Q. And did Purdue pay for that, or did  
16 they pay their own way?  
17 A. At the time it was started, Purdue  
18 paid for it. This was, again, customary in the  
19 industry.  
20 Q. Who told you that was customary in the  
21 industry?  
22 A. I don't remember who told me. But I  
23 can tell you that sometimes I'd go to hotels and I'd  
24 see events sponsored by Pfizer or sponsored by J & J,  
25 and they were precisely -- either they were speaking

Page 194

Page 196

1 3,000 physicians on the speakers bureau?  
2 A. I don't recall it, but it wouldn't  
3 surprise me.  
4 Q. Do you think somebody vetted all 3,000  
5 physicians internally that were on the speakers  
6 bureau?  
7 A. We had quite a large organization to  
8 do that and to manage the speakers bureau. So I think  
9 everyone was -- should have been vetted. There was --  
10 there was no excuse for not validating their degrees  
11 and confirming that they were licensed to practice in  
12 the place that they were practicing and so forth. I  
13 don't know precisely how they were vetted, but they  
14 definitely should have all been vetted.  
15 Q. Do you think putting these 3,000  
16 doctors on your speakers bureau caused them to write  
17 more prescriptions for OxyContin or less prescriptions  
18 for OxyContin?  
19 A. I don't think it would have had an  
20 effect.  
21 Q. And there were also individuals -- you  
22 started a program called Train the Trainers where you  
23 would fly physicians around the country to speak on  
24 behalf of Purdue. Do you recall that?  
25 A. Actually, the -- the physicians who

1 engagements in which somebody spoke, and occasionally  
2 they were Train the Trainer kind of ideas where the  
3 company in question -- other companies in that case --  
4 trained physicians, you can say this and this and  
5 this, beware you shouldn't say that and that and that.  
6 Q. Do you know whether pharmaceutical  
7 companies and medical device companies have come under  
8 criticism for giving incentives for doctors to write  
9 prescriptions or use their medical devices?  
10 A. I'm aware of that.  
11 Q. And the answer is, they have come  
12 under criticism for that?  
13 A. Yes. I...  
14 Q. Was Russell Portenoy one of the  
15 speakers that spoke on behalf of Purdue Pharma at  
16 these meetings?  
17 A. OxyContin?  
18 Q. Yes.  
19 A. I don't know.  
20 Q. In addition to the stuff we've just  
21 talked about, you also hired a number of third parties  
22 to assist in the marketing of OxyContin, such as  
23 marketing firms, correct?  
24 A. I don't know.  
25 Q. Do you know if Purdue retained Lyons

Page 197

1 Lavey to market OxyContin?  
 2 A. I've heard the name, but I don't know  
 3 that it was OxyContin.  
 4 Q. Do you know if public relation firms  
 5 were also hired to assist in the marketing and the  
 6 expansion of the market --  
 7 A. I don't know.  
 8 Q. You've got to let me finish my  
 9 question.  
 10 A. I'm sorry. Excuse me.  
 11 Q. That's okay. We've got a video, but  
 12 we also have a court reporter/stenographer taking it  
 13 down.  
 14 A. I'm sorry. Apologies.  
 15 Q. She can't get it if we both talk at  
 16 the same time.  
 17 So my question is, do you know --  
 18 MR. THOMPSON: Can you read my  
 19 question back?  
 20 (Record read.)  
 21 Q. -- for OxyContin?  
 22 A. I don't know.  
 23 Q. Have you heard of a company called  
 24 FleishmanHilliard?  
 25 A. That's a vaguely familiar name, but I

Page 198

1 don't know whether they were ever hired by Purdue  
 2 Frederick or Purdue Pharma.  
 3 Q. Do you recall at some point being  
 4 notified of a problem with abuse occurring with  
 5 OxyContin and Purdue Pharma hiring a crisis management  
 6 firm?  
 7 A. Yes.  
 8 Q. Do you recall when that crisis  
 9 management firm was hired?  
 10 A. I don't recall precisely, no.  
 11 Q. Have you ever read the interview  
 12 Michael Friedman gave to the crisis management firm?  
 13 A. No.  
 14 Q. And in addition to all that, you also  
 15 put out videos. Are you familiar with the "I Got My  
 16 Life Back" video?  
 17 A. I've heard the title; I'm not familiar  
 18 with it.  
 19 Q. Did you ever do any follow-up to find  
 20 out whether the participants in the "I Got My Life  
 21 Back" video actually got their life back or wound up  
 22 having problems with dependency on OxyContin?  
 23 A. No, I did not.  
 24 Q. Did Purdue also give away coupons so  
 25 people could get a week's free supply of OxyContin?

Page 199

1 A. I don't know, but that would be common  
 2 in the industry.  
 3 Q. And all of the things we've just  
 4 discussed would be done, these marketing efforts, to  
 5 sell more OxyContin, correct?  
 6 A. To see to it that appropriate patients  
 7 had access to OxyContin, yes.  
 8 Q. Were you aware that there was a direct  
 9 link between the number of sales representatives that  
 10 were out promoting OxyContin and how much OxyContin  
 11 would be prescribed?  
 12 A. Could you just ask that again?  
 13 Q. Yeah. Was there a link -- a direct  
 14 link between the number of sales representatives that  
 15 were out promoting OxyContin and how much OxyContin  
 16 would be prescribed?  
 17 A. I don't think "direct link" would  
 18 capture the concept. So the answer is no.  
 19 Q. Do you believe that the number of  
 20 sales representatives that promoted OxyContin would  
 21 increase; the more sales representatives that promoted  
 22 OxyContin, the more prescriptions would be written?  
 23 A. I don't think anybody thought of it  
 24 that way. We had a product that had tremendous  
 25 potential and our principal means of getting it used

Page 200

1 was to convince physicians -- convince physicians that  
 2 he had in his practice appropriate patients to use it,  
 3 but the linkage there is very loose.  
 4 Q. Was there also a correlation between  
 5 the number of times a sales representative called on a  
 6 physician to how much OxyContin that physician would  
 7 prescribe?  
 8 A. Again, that would be a loose  
 9 correlation, and there would be -- clearly if he  
 10 called not at all, there would be nothing to  
 11 correlate. And I am sure there was a practical limit  
 12 as to how many calls he could make. I don't know  
 13 whether there was any kind of specific relationship  
 14 between calling every quarter or every month or more  
 15 frequently or less frequently.  
 16 Q. Okay. Why don't we mark the OxyContin  
 17 Launch Plan as 27.  
 18 MR. STRAUBER: It's 26.  
 19 (DEPOSITION EXHIBIT NO. 26 MARKED)  
 20 MR. THOMPSON: And this is going to be  
 21 27.  
 22 (DEPOSITION EXHIBIT NO. 27 MARKED)  
 23 MR. STRAUBER: Mr. Thompson, I note on  
 24 Exhibit 27 there's some material that's been -- a good  
 25 deal of material that's been bracketed, and I've seen

Page 201

1 that on other documents that you've marked. My  
2 assumption throughout is that the brackets were not on  
3 the original and this is something that you guys  
4 added.

5 MR. ELLIS: That is incorrect. The  
6 brackets were produced that way.

7 MR. STRAUBER: It came to you with the  
8 brackets?

9 MR. ELLIS: These documents that have  
10 writing on them were produced that way. If the e-mail  
11 ends and it's only half an e-mail, that's also the way  
12 that they were produced to us.

13 MR. STRAUBER: And what if the  
14 document was highlighted in yellow, was it produced to  
15 you --

16 MR. ELLIS: If it was highlighted in  
17 the context that I just gave it to him, I would have  
18 added that highlighting just now; but in terms of  
19 attachments that aren't connected to the e-mails,  
20 that's because we didn't get them from Purdue.

21 MR. STRAUBER: I'm asking about the --

22 MR. ELLIS: I'm trying to explain to  
23 you --

24 MR. THOMPSON: Tony, it's okay.  
25 Brackets were not added.

Page 203

1 meaningless. Was the number of increased  
2 prescriptions commercially significant? If so, what  
3 would the cost per increased prescription be assuming  
4 that the absolute difference persisted? When will a  
5 more complete report be available?"

6 And was that your --

7 A. You read it correctly.

8 Q. -- e-mail?

9 Did you ever get a more complete  
10 report?

11 A. I don't remember.

12 Q. And then above that it looks like

13 Alfonso (sic) writes back to you. And Alfonso was --

14 A. Alfonso.

15 Q. Alfonso was head of marketing?

16 A. He was head of marketing.

17 Q. And he says, "Interesting comments  
18 from Dr. Richard. I also wonder if there was a bias  
19 in the form of representatives increasing calls to the  
20 selected physicians. Would we get the same ROI" -- is  
21 that return on investment?

22 A. Yes.

23 Q. -- "in prescriptions" -- "Would we get  
24 the same return on investment in prescriptions as a  
25 result of the representatives increasing the call rate

Page 202

1 MR. STRAUBER: Okay. Thank you.

2 BY MR. THOMPSON:

3 Q. Sackler Exhibit 27. And this is an  
4 e-mail from you, "Phase IV OxyContin Team Minutes"  
5 dated 10-23-96, and you have a copy of it.

6 And -- so this would have been after  
7 the launch of OxyContin, correct?

8 A. Yes.

9 Q. Okay. And it says here, "Michael:  
10 The oxymin12 said:"

11 What was the oxymin12?

12 A. I don't know.

13 Q. Reading from it, it says, "Results  
14 showed the following: Physicians who attended the  
15 dinner programs or the weekend meetings wrote more  
16 than double the number of new prescriptions for  
17 OxyContin compared to the control group, and this was  
18 sustained over the three-month post-meeting evaluation  
19 period. Weekend meetings had the greatest impact,  
20 increasing new prescriptions for OxyContin by a factor  
21 between 2.16 and 2.62. These results will be  
22 presented in more detail at a later date.

23 "This is very encouraging, although I  
24 must allow that a proportion of the percentage without  
25 the associated absolute numbers is inherently

Page 204

1 to the selected group regardless of dinners? I don't  
2 have the list, therefore, I don't know if there was a  
3 selected preference toward this group in the part of  
4 the reps. It's reasonable that these core doctors  
5 were already receiving special attention, which would  
6 have generated an increase in prescriptions. If this  
7 is the case, the cost of the dinners would  
8 unnecessarily increase the cost per prescription."

9 A. Right.

10 Q. Did you-all ever determine whether the  
11 dinners that you were taking the doctors on were  
12 helping to sell OxyContin?

13 A. I don't remember.

14 MR. THOMPSON: Let's mark this 28.

15 (DEPOSITION EXHIBIT NO. 28 MARKED)

16 (Passing document.)

17 Q. And this says, "6-9-99, Dr. Richard  
18 Sackler. Subject: Promotion of OxyContin by Abbott."

19 And if you would go down to the  
20 bottom, it says, "Enclosed for your information is a  
21 memorandum from Mark Alfonso that describes a  
22 substantial increase in Abbott's field force  
23 allocation toward OxyContin. 120 Abbott reps  
24 previously selling urokinase, which has been  
25 temporarily withdrawn from the market, will be



<p style="text-align: right;">Page 205</p> <p>1 assigned full time to OxyContin. This will be totally 2 at Abbott's expense and should have a very positive 3 effect on OxyContin sales." 4 That is from Michael Friedman, 5 correct? 6 A. Right. 7 <b>Q. What was the agreement reached with</b> 8 <b>Abbott to sell OxyContin?</b> 9 A. I don't recall the details of the 10 agreement. 11 <b>Q. And then up at the top it says,</b> 12 <b>"Sender: Dr. Richard Sackler." So this would be, I</b> 13 <b>think, your reply to that. And it says, "This sounds</b> 14 <b>very good for the brand. I just hope that we can</b> 15 <b>supply the surge that may follow this program."</b> 16 <b>And were you referring to a surge of</b> 17 <b>OxyContin sales?</b> 18 A. Yes. 19 <b>Q. And was it your expectation that the</b> 20 <b>sales representatives were going to create a surge in</b> 21 <b>OxyContin sales?</b> 22 A. I didn't know. I said let's hope. 23 (DEPOSITION EXHIBIT NO. 29 MARKED) 24 (Passing document.) 25 <b>Q. And then this is a document that I</b></p>	<p style="text-align: right;">Page 207</p> <p>1 <b>Now, did I read that correctly?</b> 2 A. You read the words. 3 <b>Q. "Words such as powerful may make some</b> 4 <b>people think the drug is dangerous and should be</b> 5 <b>reserved for the more severe pain."</b> 6 MR. STRAUBER: If I could interject 7 for one second. While you are reading it correctly, 8 what you haven't included is the fact that the word 9 "powerful" is in quotes. 10 MR. THOMPSON: Yes. 11 MR. STRAUBER: Okay. 12 MR. THOMPSON: We'll read it again and 13 include those. 14 <b>Q. "We can" -- second paragraph. "We can</b> 15 <b>show that we are 'effective' as morphine, but do not</b> 16 <b>want to say OxyContin is as 'powerful' as morphine.</b> 17 <b>Words such as 'powerful' may make some people think</b> 18 <b>the drug is dangerous and should be reserved for the</b> 19 <b>more severe pain. This could have a negative effect</b> 20 <b>in the much larger non-cancer pain market. Mike</b> 21 <b>reminded the team that we should keep this positioning</b> 22 <b>in mind as we develop future marketing programs,</b> 23 <b>symposia, clinical study manuscripts and any other</b> 24 <b>items that discuss the use of OxyContin."</b> 25 <b>Did I read that correctly?</b></p>
<p style="text-align: right;">Page 206</p> <p>1 wanted to bring to your attention, because we were 2 talking earlier today where you said -- you know, when 3 I was pointing out to you the documents from your 4 officers that said OxyContin is believed by other 5 physicians to be not as strong as morphine. 6 Remember us having that discussion? 7 A. I recall. 8 <b>Q. And this is a Phase II OxyContin</b> 9 <b>Tablets Team Meeting, June 13th, 1997.</b> 10 <b>So this would be well over a year</b> 11 <b>after -- a year and a half after OxyContin has been</b> 12 <b>launched and in the marketplace, correct?</b> 13 A. Yes. About a year and a half. Maybe 14 a little less. 15 <b>Q. And if you could go to the -- it says</b> 16 <b>"Marketing and Sales Update." The first paragraph.</b> 17 <b>"Mike Cullen discussed in detail marketing's</b> 18 <b>positioning of OxyContin. He explained we want to</b> 19 <b>expand extensively in the non-cancer market segment</b> 20 <b>while promoting OxyContin as the one to start with in</b> 21 <b>cancer pain and the one to stay with through proper</b> 22 <b>titration."</b> 23 <b>And the next paragraph reads, "We can</b> 24 <b>show that we are as effective as morphine, but do not</b> 25 <b>want to say OxyContin is as powerful as morphine."</b></p>	<p style="text-align: right;">Page 208</p> <p>1 A. Are you asking me? 2 <b>Q. Yes.</b> 3 A. I believe you did. 4 <b>Q. All right. Were you aware that your</b> 5 <b>marketing and sales team were being careful not to and</b> 6 <b>did not want to say that OxyContin is as powerful as</b> 7 <b>morphine?</b> 8 A. I don't recall if I was aware of this. 9 <b>Q. And, in effect, it's twice as powerful</b> 10 <b>as morphine, correct?</b> 11 A. No, it's not. We've gone through this 12 quite a few times. And here "powerful" is in quotes. 13 Sometimes the words "stronger," "weaker," "powerful" 14 are not in quotes. But here it is very clear that it 15 was specifically the word "powerful" that he did 16 not -- he was advising people to stay away from. It 17 had nothing to do with potency. 18 <b>Q. When you go in and see a doctor and</b> 19 <b>you say -- if they say OxyContin is not as powerful as</b> 20 <b>morphine, what do you think the doctor thinks?</b> 21 A. He was not supposed to say that, and I 22 don't think he did say that. That would create 23 confusion. He was warning not to use the word 24 "powerful" in any context. But he clearly didn't mean 25 potency, because potency was declared as twice as</p>

Page 209

1 potent as morphine from day one of marketing to  
2 yesterday and today in every piece of material, in all  
3 the conversion charts and was recognized and  
4 understood by physicians.  
5 THE WITNESS: Do you want to take a  
6 break now?  
7 MR. STRAUBER: It's almost 3:30.  
8 Would this be a time to take a break?  
9 MR. THOMPSON: This would be a great  
10 time.  
11 VIDEOGRAPHER: We are off the record  
12 at 3:27 p.m.  
13 (RECESS)  
14 VIDEOGRAPHER: We are back on the  
15 record at 3:42 p.m.  
16 BY MR. THOMPSON:  
17 Q. Okay. A while ago when we were  
18 talking about salespeople making calls, did I  
19 understand you to say that you did not believe the  
20 number of calls made by a salesperson affected the  
21 number of prescriptions for OxyContin?  
22 A. I didn't mean to communicate that.  
23 Q. Thank you. In fact, Purdue had  
24 requirements on their salespeople that they had to  
25 make a certain number of calls every day to

Page 210

1 physicians, correct?  
2 A. There was a standard number of calls,  
3 yes.  
4 Q. And before we broke, we were  
5 discussing this Phase II OxyContin Tablets team  
6 meeting. And to kind of put this in perspective,  
7 there was this e-mail dated 6-2-97 -- so that's June  
8 2nd, '97 -- that we were discussing earlier where we  
9 discussed that physicians did not think OxyContin was  
10 as strong as MS Contin and that perception was out  
11 there, and it noted that it was important to be  
12 careful not to change the perception by physicians  
13 toward Oxycodone when developing promotional pieces.  
14 MR. STRAUBER: Mr. Thompson, if you're  
15 referring to another document, could you identify it  
16 and give it to the witness?  
17 MR. THOMPSON: We've already talked  
18 about it earlier. I'm just asking a question right  
19 now.  
20 MR. STRAUBER: Well, but you're asking  
21 your question based on the earlier document and  
22 reading from the earlier document.  
23 MR. THOMPSON: I won't read from it  
24 then.  
25 Q. Let me ask you. Do you recall us

Page 211

1 having that conversation?  
2 A. I'm not sure which documents. I've  
3 seen a lot of documents. But I do recall having --  
4 talking about this many times, yes.  
5 Q. Yes. And your comment was, Well,  
6 we're not saying that it's not as strong, we're saying  
7 it's not as effective. I'm sorry. Let me rephrase  
8 that.  
9 MR. STRAUBER: I object to the form of  
10 that question.  
11 Q. Your comment was, We're not trying to  
12 convey that it's not as powerful; is that correct?  
13 A. No. What I thought I communicated --  
14 perhaps I didn't do it well -- was that the meaning of  
15 that word "strong" was not that it was a weak drug,  
16 weaker than morphine. It was not that meaning. The  
17 meaning related to the stigma of morphine and to the  
18 fear of morphine. And precisely in this case I  
19 believe that the efficacy of the drug -- and I really  
20 would like to see the document, if I might, if we're  
21 going to talk about it, because I'd like to refresh my  
22 memory not only as to the document but as to what I  
23 had meant to say if I didn't say it clearly.  
24 Q. Here's the one we were talking about  
25 when we broke.

Page 212

1 (Passing document.)  
2 MR. STRAUBER: What exhibit is that,  
3 sir? Is that 29?  
4 THE WITNESS: 29.  
5 MR. THOMPSON: It's on the bottom.  
6 THE WITNESS: 29.  
7 MR. STRAUBER: 29. Okay.  
8 Q. And they've actually used two words  
9 here that are in quotes, correct? One is "effective"  
10 and one is "power." And the sentence reads, "We can  
11 show that we are as effective as morphine, but we do  
12 not want to say OxyContin is as powerful as morphine."  
13 Did I read that correctly?  
14 A. That's correct.  
15 Q. Have you reviewed the "OxyContin Abuse  
16 and Diversion and Efforts to Address the Problem" that  
17 was put out in December of 2003 by the GAO?  
18 A. No, I did not review that.  
19 Q. I'll give you a copy of that.  
20 (Passing document.)  
21 You've never seen that document; is  
22 that correct?  
23 A. Do you want to mark it as an exhibit?  
24 Q. I will, yes. But have you ever seen  
25 that document?

Page 213	Page 215
<p>1 A. I don't recollect seeing that 2 document.</p> <p>3 Q. If you would, turn to page 9. And I'm 4 looking at the second paragraph, last two sentences. 5 "In both 2001 and 2002, OxyContin's sales exceeded 1 6 billion and prescriptions were over 7 million. The 7 drug became Purdue's main product, accounting for 90 8 percent of the company's total prescription sales by 9 2001."</p> <p>10 Is that information correct?</p> <p>11 A. To the best of my recollection, it's 12 correct -- very close to correct.</p> <p>13 Q. And if you'll turn to page 17. Under 14 the heading "Purdue Focused on Promoting OxyContin for 15 Treatment of Non-Cancer Pain," and if you go down to 16 the last sentence in the second paragraph, it says, 17 "One of Purdue's goals was to identify primary care 18 physicians who would expand the company's OxyContin 19 prescribing base. Sales representatives were also 20 directed to call on oncology nurses, consultant 21 pharmacists, hospices, hospitals and nursing homes."</p> <p>22 Is that information accurate?</p> <p>23 A. As a general proposition, yes. It 24 doesn't include oncologists. I don't think -- in the 25 spirit I think it's accurate.</p>	<p>1 prescriptions for non-cancer pain than for cancer pain 2 in 1997 through 2002. According to IMS Health data, 3 the annual number of OxyContin prescriptions for 4 non-cancer pain increased nearly tenfold, from about 5 670,000 in 1997 to 6.2 million in 2002."</p> <p>6 Is that information accurate?</p> <p>7 A. I don't know. I just don't have these 8 numbers in my mind.</p> <p>9 Q. If you'd go to page 20, the second 10 paragraph. "By more than doubling its total sales 11 representatives, Purdue significantly increased the 12 number of physicians to whom it was promoting 13 OxyContin. Each Purdue sales representative had 14 specific sales territory and is responsible for 15 developing a list of about 105 to 140 physicians to 16 call on who already prescribe opioids or who are 17 candidates for prescribing opioids.</p> <p>18 "In 1996, the 300-plus Purdue sales 19 representatives had a total physician call list of 20 33,400 to 44,500. By 2000, the nearly 700 21 representatives had a total call list of approximately 22 70,500 to 94,000 physicians. Each Purdue sales 23 representative is expected to make 35 physician calls 24 per week and typically calls on each physician every 25 three to four weeks. Each hospital sales</p>
Page 214	Page 216
<p>1 Q. And then down, the second sentence 2 from the bottom, "Purdue has stated that by 2003 3 primary care physicians had grown to constitute nearly 4 half of all OxyContin prescribers, based on data from 5 IMS Health, an information service providing 6 pharmaceutical market research."</p> <p>7 Is that information accurate?</p> <p>8 A. I can't vouch for the accuracy of 9 this.</p> <p>10 Q. The next sentence says, "DEA's 11 analysis of physicians prescribing OxyContin found 12 that the scope of medical specialties was wider for 13 OxyContin than five other controlled-release, 14 schedule II narcotic analgesics. DEA" -- and is that 15 the Drug Enforcement Agency?</p> <p>16 A. I believe it would be.</p> <p>17 Q. "DEA expressed concern that this 18 related in OxyContin's being promoted to physicians who 19 were not adequately trained in pain management."</p> <p>20 Do you recall the DEA expressing that 21 concern?</p> <p>22 A. No.</p> <p>23 Q. The next two sentences. "Purdue's 24 promotion of OxyContin for the treatment of non-cancer 25 pain contributed to a greater increase in</p>	<p>1 representative is expected to make about 50 calls per 2 week and typically calls on each facility every four 3 weeks."</p> <p>4 Was that, to your knowledge, accurate 5 information about how Purdue was marketing OxyContin 6 through its sales force?</p> <p>7 A. Without quibbling, it isn't really -- 8 you're asking me to vouch for the accuracy of this. I 9 just don't carry these numbers in my mind, so I can't 10 agree or dis- -- I just don't know. But this is a 11 count of physicians and a description of the standards 12 of calls, but I don't -- but that's -- that really 13 doesn't describe how we were marketing it, to use your 14 question. So I'm not trying to quibble with you, sir, 15 but I just don't know.</p> <p>16 Q. All right. And if you'll go down to 17 the middle of that next paragraph. "The total amount 18 of -- the amount of total bonuses that Purdue 19 estimated were tied to OxyContin sales increased 20 significantly from about 1 million in 1996, when 21 OxyContin was first marketed, to about 40 million in 22 2001."</p> <p>23 Do you recall -- do you have any 24 reason to disagree with the 40 million number for 25 bonuses paid out to your marketing salesmen in 2001?</p>



Page 217

1 A. I don't have -- I don't know the  
2 number, so I don't have any reason to disagree.  
3 Q. And then if you go to the next page,  
4 the last paragraph, it says, "According to DEA's  
5 analysis of IMS Health data, Purdue spent  
6 approximately 6 to 12 times more on promotional  
7 efforts during OxyContin's first six years on the  
8 market than it had spent for its older product,  
9 MS Contin, during its first six years or than had been  
10 spent by Janssen Pharmaceutical for one of OxyContin's  
11 drug competitors, Duragesic."  
12 Do you see that?  
13 A. Yes. Yes, I did.  
14 Q. Is that accurate?  
15 A. I don't know. I have no reason to  
16 agree with it or disagree with it at this point.  
17 Q. Do you believe Purdue's marketing was  
18 overly aggressive?  
19 A. No.  
20 Q. Do you believe Purdue's marketing was  
21 appropriate?  
22 A. I believe so.  
23 Q. It says here under -- on page 30,  
24 "OxyContin's Wide Availability May Have Increased  
25 Opportunities for Illicit Use."

Page 218

1 A. I'm sorry. What page are you reading  
2 from?  
3 Q. Page 30.  
4 A. Page 30?  
5 Q. Yes.  
6 A. 3-0. Okay. Where should I look?  
7 Q. Last paragraph.  
8 A. Okay. Thank you.  
9 Q. "The large amount of OxyContin  
10 available in the marketplace may have increased  
11 opportunities for abuse and diversion. Both DEA and  
12 Purdue have stated that an increase in a drug's  
13 availability in the marketplace may be a factor that  
14 attracts interest by those who abuse and divert  
15 drugs."  
16 "OxyContin" -- if you go on down.  
17 "OxyContin became the top-telling name-brand narcotic  
18 pain reliever seller in 2001..."  
19 Is that accurate?  
20 A. I don't know, but -- I just don't  
21 know.  
22 MR. THOMPSON: So let's mark that as  
23 Exhibit 30.  
24 (DEPOSITION EXHIBIT NO. 30 MARKED)  
25 Q. Have you ever seen an article called

Page 219

1 "What Happened to the Poster Children of OxyContin?"  
2 A. No, that doesn't sound familiar.  
3 Q. Nobody has ever provided that to you  
4 at Purdue Pharma?  
5 A. When was it published?  
6 Q. September 8th, 2012.  
7 A. No. That wouldn't necessarily have  
8 been provided to the board. But I don't -- I  
9 really -- I'm not familiar with it.  
10 Q. Do you recall a time when Purdue's  
11 OxyContin was considered so successful that other  
12 companies were thinking about whether they could make  
13 their own version of OxyContin?  
14 A. Just -- just -- ask the question again  
15 so I can answer it.  
16 Q. Sure. Do you recall a period of time  
17 where OxyContin was considered so successful that  
18 other companies were considering making their own  
19 version of OxyContin?  
20 A. I can't say that they did it because  
21 it was, quote, so successful, but I do recall that I  
22 did hear that other companies were trying to copy  
23 OxyContin, yes.  
24 (Passing document.)  
25 Q. So this is an e-mail chain that was

Page 220

1 provided. Let's go ahead and mark that as 31.  
2 (DEPOSITION EXHIBIT NO. 31 MARKED)  
3 Q. And if you go to page 2 it says,  
4 "Subject: Press release or similar promotion.  
5 Author: Dr. Richard Sackler, 8-23-96."  
6 A. Just let me catch up with you.  
7 8-23 -- oh, the bottom of the page. Okay, I'm with  
8 you.  
9 Q. And it says, "I think it is noteworthy  
10 to release information on OxyContin Tablets, its use  
11 and success in the market and the tremendous reception  
12 it received in Vancouver." Basically, "The newsworthy  
13 occasion is that this product has achieved our first  
14 year's sales projection four months early and that by  
15 the end of the year we should have 130,000 to 150,000  
16 per salesman of sales.  
17 "The objectives of this release would  
18 be: Stimulate interest in the U.S. community -- in  
19 the medical community of the U.S. to recognize the  
20 tremendous success of OxyContin Tablets clinically and  
21 the ratification commercially. We want many more  
22 physicians than have presently used it to become aware  
23 of its availability and importance in their practice.  
24 It would be hoped that this would lead to greater use  
25 by those currently prescribing and broaden our

Page 221

Page 223

1 prescribing base in the U.S. and Canada."  
2 Do you know whether that press release  
3 took place?  
4 A. I don't know.  
5 Q. And then above that it looks like  
6 there's a response to your e-mail from Robert Reder.  
7 A. Yes.  
8 Q. "Given the diverse in both short- and  
9 mid-term goals, I would recommend a full-fledged PR  
10 firm with a one- to three-year contract. That way  
11 this can be coordinated actively to achieve all goals  
12 rather than a one-shot flash. Is this a departure  
13 from traditional PF/PPLP?"  
14 And that's Purdue Frederick/Purdue  
15 Pharma, L.P. strategy; is that correct?  
16 A. Correct.  
17 Q. And you wrote back and said, "I don't  
18 see this as a 'departure' from policy."  
19 And then it looks like -- and perhaps  
20 this is Friedman who says, "My view is different. If  
21 you want to use PR to signal our market as to our  
22 development pipeline, I have no problem. I do not  
23 want to spend money on PR to increase sales. We do  
24 not need to have an agency in our pockets. I have  
25 learned my lessons."

1 17th, 2005 to Greg Stumbo, the Attorney General of  
2 Kentucky. And he points out that none of the federal  
3 courts in Kentucky has found any misconduct on the  
4 part of Purdue. Correct?  
5 A. I'm not sure just where you're reading  
6 from.  
7 Q. Oh, I'm sorry. I'm on page 5.  
8 A. Oh, page 5. I'm sorry. I was on the  
9 wrong page. And where are you reading from?  
10 Q. The third paragraph down.  
11 A. It begins, "I believe that even this  
12 brief..."?  
13 Q. No. I'm reading in the middle of the  
14 paragraph. "Significantly, however, not one of these  
15 courts has found any misconduct on the part of  
16 Purdue."  
17 A. Please bear with me while I try to  
18 find this.  
19 Q. Do you see that? Right above the case  
20 cites.  
21 A. I'm sorry. In the paragraph that has  
22 a list of cases?  
23 Q. Yes. The paragraph right above it.  
24 A. "Significantly, however..." Thank  
25 you.

Page 222

Page 224

1 And then you write back on page 1 and  
2 say, "I agree about the agency. I want to signal the  
3 licensing in market for the product around the world,  
4 get an audience for our patent infringement suits so  
5 that we are feared as a tiger with claws, teeth and  
6 balls and build some excitement with prescribers that  
7 OxyContin Tablets is the way to go."  
8 And what was your concern there about  
9 licensing and patent infringement?  
10 A. Well, licensing in market meant the --  
11 get the attention of companies that had products that  
12 might be attractive for us to license.  
13 Q. Do you recall Howard Udell making a  
14 trip down to Kentucky to meet with Attorney General  
15 Greg Stumbo and other members of the -- of his staff?  
16 A. I don't recall it, no.  
17 Q. This is a letter dated May 17th, 2005.  
18 And that would be prior to the felony plea agreement  
19 that Purdue Frederick entered into, correct?  
20 A. I'm not -- I think I'm clear on the  
21 dates and that that would be correct. Please  
22 correct -- somebody here correct me if I'm wrong.  
23 (Passing document.)  
24 Q. If you'll turn to page 6. This  
25 appears to be a letter from Howard Udell dated May

1 Q. Yeah. Purdue answered -- filed an  
2 answer in all of these cases and claimed they had  
3 never done anything improper or wrong; isn't that  
4 true?  
5 A. I don't know.  
6 Q. Are you aware prior to the --  
7 A. That is, I don't know whether we filed  
8 in all these cases or whatever. That's what I mean  
9 when I say "I don't know."  
10 Q. Are you aware of Purdue ever admitting  
11 to doing anything improper prior to the plea agreement  
12 where the company pled guilty to a felony of  
13 misbranding a drug with the intent to defraud or  
14 mislead?  
15 A. Okay. Just ask the question. Before  
16 the plea am I what? Aware?  
17 Q. Are you aware of anyone at Purdue ever  
18 admitting they did anything improper prior to entering  
19 into the plea agreement where the company pled guilty  
20 to misbranding a drug with the intent to defraud or  
21 mislead?  
22 A. I am not aware of anybody.  
23 Q. And then if you go to page 6, the  
24 middle of the second paragraph from the bottom, it  
25 says, "First, any suit brought under the Act requires

Page 225

1 proof that a defendant engaged in a practice of  
2 violation of KRS 367.170, an unsurmountable obstacle  
3 since Purdue has committed no unlawful act."  
4 Did I read that correctly?  
5 A. You did.  
6 Q. And were you aware that Howard Udell  
7 had communicated with Greg Stumbo that Purdue had  
8 committed no unlawful act on May 17th, 2005?  
9 A. I think he was writing for Purdue  
10 Pharma, just for clarity, but I was not aware of this.  
11 Q. And May 17th of 2005, did Purdue  
12 Frederick exist?  
13 A. I don't know.  
14 Q. Do you know if the companies were  
15 merged at some point?  
16 A. I don't believe they were.  
17 Q. Let's talk about the Agreed Statement  
18 of Facts.  
19 MR. ELLIS: Might as well mark both  
20 the letter and the Agreed Statement of Facts.  
21 MR. THOMPSON: Yeah, that's a good  
22 idea, T.  
23 MR. ELLIS: The letter is going to be  
24 Exhibit --  
25 MR. THOMPSON: 32.

Page 226

1 MR. ELLIS: -- 32, and the Agreed  
2 Statement of Facts is going to be Exhibit 33.  
3 (DEPOSITION EXHIBIT NOS. 32 AND 33  
4 MARKED)  
5 MR. STRAUBER: By "the letter," you're  
6 talking about the Udell letter?  
7 MR. ELLIS: Yeah, May 2005.  
8 Q. Who was in charge of preparing and  
9 approving the sales and marketing materials at the  
10 time of OxyContin's release?  
11 A. I'm sorry. At the time of  
12 OxyContin's --  
13 Q. Release?  
14 A. Release, meaning launch?  
15 Q. Launch.  
16 A. Michael Friedman, I believe.  
17 Q. And at that time -- at the time of the  
18 launch, who was in charge of the marketing department?  
19 A. To the best of my recollection, Mark  
20 Alfonso.  
21 Q. And Michael Friedman, was he the  
22 person who ultimately was appointed CEO of Purdue?  
23 A. He was. Purdue Pharma.  
24 Q. Is he one of the individuals who pled  
25 guilty to the misdemeanor at the time of the plea

Page 227

1 agreement?  
2 A. Yes.  
3 Q. Do you recall whether Purdue had  
4 received warning letters about its marketing of  
5 MS Contin?  
6 A. I don't recall.  
7 Q. You don't recall six warning letters  
8 coming in from MS Contin?  
9 A. No, I don't -- I don't recall the  
10 instances.  
11 Q. Do you recall Purdue getting warning  
12 letters with respect to the way it was marketing  
13 MS -- marketing OxyContin?  
14 A. I don't recall.  
15 Q. Do you know if Purdue consistently  
16 denied it was doing anything wrong with respect to  
17 marketing OxyContin?  
18 A. I'm not sure. I would think that we  
19 denied doing anything wrong, but that's a guess on my  
20 part. I don't really know.  
21 Q. The guilty --  
22 A. I don't recollect.  
23 Q. Were you involved in approving the  
24 Agreed Statement of Facts for the guilty plea?  
25 A. The board voted in favor of

Page 228

1 management's recommendation that we have -- that we  
2 plead guilty under a plea agreement with the  
3 U.S. Attorney.  
4 Q. And just so there's no confusion, the  
5 board voted to adopt the Agreed Statement of Facts; is  
6 that correct?  
7 A. I don't know. I don't remember.  
8 Q. Is the Agreed Statement of Facts  
9 accurate?  
10 A. I believe it is.  
11 Q. And in addition to the guilty plea of  
12 a felony for misbranding a drug with the intent to  
13 defraud or mislead -- and that drug is OxyContin,  
14 correct?  
15 A. I believe it is.  
16 Q. -- these three individuals, Howard  
17 Udell, Michael Friedman and Paul Goldenheim, also pled  
18 guilty to misdemeanors, correct?  
19 A. Yes.  
20 Q. And Howard Udell was Purdue's  
21 executive vice president and chief legal officer?  
22 A. He was.  
23 Q. Michael Friedman was the president and  
24 CEO of Purdue at the time of the guilty plea?  
25 A. I believe he was.



Page 229

1 **Q. And Paul Goldenheim was the former**  
2 **executive vice president for worldwide research and**  
3 **development and chief scientific officer, correct?**  
4 A. I believe so.  
5 **Q. By 2006 Dr. Goldenheim had already**  
6 **left Purdue, correct?**  
7 A. Yes.  
8 **Q. Did he leave voluntarily?**  
9 A. He did.  
10 **Q. What reason did he provide you**  
11 **regarding why he was leaving Purdue?**  
12 A. He was leaving Purdue in order to be  
13 CEO of another company.  
14 **Q. Have you seen this Agreed Statement of**  
15 **Facts before?**  
16 A. Before today? Yes.  
17 **Q. Did you provide comments on this**  
18 **document?**  
19 A. No, I did not.  
20 **Q. Were you surprised by any of the**  
21 **allegations in the document?**  
22 A. I don't -- I didn't read the whole  
23 document, so I can't say if there are allegations that  
24 would surprise me. I had understood that this was a  
25 settlement document and that people in the company who

Page 230

1 investigated thoroughly said to the board that the  
2 statements in the document were true.  
3 **Q. And when you say "I didn't read the**  
4 **document," as we sit here today, have you ever read**  
5 **the entire document?**  
6 A. No.  
7 **Q. At the time this was signed, May 7th**  
8 **and 8th of 2007, what was your position in the**  
9 **company?**  
10 A. I was a director of the company.  
11 **Q. Did you have any other role at that**  
12 **time?**  
13 A. Not to my recollection. For a period  
14 of time after I ceased to be CEO in early 2003, I was  
15 co-nonexecutive chairman of the board. But that came  
16 to an end more or less around this time, but I don't  
17 remember whether it was before the plea or after.  
18 **Q. You ceased to be CEO in 2003; is that**  
19 **correct?**  
20 A. That's correct.  
21 **Q. When were you first notified that the**  
22 **U.S. attorneys for the Western District of Virginia**  
23 **were investigating Purdue?**  
24 A. I can't recall precisely. We were, as  
25 a board, notified that the U.S. attorney was

Page 231

1 investigating OxyContin abuse and diversion and that  
2 the law department in general and Howard Udell in  
3 particular were providing any documents he wished  
4 voluntarily to help his investigation. That the  
5 investigation turned on Purdue was a surprise, but I  
6 don't remember when that happened.  
7 **Q. Was it before you left as CEO?**  
8 A. I don't recall.  
9 **Q. Do you recall there being issues about**  
10 **addiction, dependency, tolerance buildup, abuse and**  
11 **diversion prior to your leaving as CEO?**  
12 A. Yes. Not all of those, but abuse and  
13 diversion, yes.  
14 **Q. Do you recall there being issues with**  
15 **addiction?**  
16 A. Yes. Same time as I was informed  
17 about possible abuse and diversion.  
18 **Q. And when were you first informed about**  
19 **possible abuse and diversion?**  
20 A. Sometime in 2000 an article was  
21 published in a newspaper in Maine that very  
22 graphically described the impact of abuse and  
23 diversion of individuals who were using OxyContin.  
24 That was the first -- the first time I became aware of  
25 that possibility.

Page 232

1 **Q. Do you recall receiving a letter or**  
2 **being notified about a letter from a hospital in**  
3 **Pikeville or Hazard concerning problems with patients**  
4 **who were on OxyContin?**  
5 A. I don't recall a letter. Was it  
6 directed to me?  
7 **Q. I don't believe so. I think it came**  
8 **to Purdue, and I'm wondering if you saw it.**  
9 **All right. Let's go back to the plea**  
10 **agreement and we'll try to get through this.**  
11 **Are you aware that we've requested**  
12 **Purdue to identify the names of documents referenced**  
13 **in the Agreed Statement of Facts?**  
14 A. I'm not aware of that.  
15 **Q. Are you aware we've asked them to**  
16 **identify the individuals who are referenced in the**  
17 **Agreed Statement of Facts?**  
18 A. No.  
19 **Q. Paragraph -- if we can go to paragraph**  
20 **13 of the Agreed Statement of Facts. Paragraph 13**  
21 **says that on December 28th, 2004 "Purdue submitted an**  
22 **OxyContin NDA to the FDA. The NDA included clinical**  
23 **trials showing that OxyContin, when dosed every 12**  
24 **hour, was as safe and as effective as**  
25 **Immediate-Release Oxycodone dosed every 12 hours."**

Page 233

1 A. Every six hours.  
2 Q. I'm sorry, every six hours, yes.  
3 A. Yes, that's what it says.  
4 Q. And then paragraph 14 says, "The NDA  
5 did not claim that OxyContin was safer or more  
6 effective than Immediate-Release Oxycodone or other  
7 pain medications, and Purdue did not have and did not  
8 provide the FDA with any clinical studies  
9 demonstrating that OxyContin was less addictive, less  
10 subject to abuse and diversion or less likely to cause  
11 tolerance and withdrawal than other pain medications."  
12 Is that paragraph correct?  
13 A. That's what it says. I don't know if  
14 it's correct, but I wouldn't differ with it.  
15 Q. And then there are some medical  
16 officer reviews, correct?  
17 A. Yes. I believe those are within the  
18 FDA.  
19 Q. Right. And those also did not state  
20 that OxyContin was more effective than or superior to,  
21 safer, had less opioid effects or caused fewer adverse  
22 events than any other marketed product, correct?  
23 A. I believe that's true.  
24 Q. And let me back up a minute.  
25 Do you know what -- when salespeople

Page 234

1 go call on physicians what type of information the  
2 physician usually asks the salesperson?  
3 A. I would not be able to comment on  
4 that.  
5 Q. You don't know whether they want to  
6 know if there's any studies, if there's any  
7 contraindications to the medicine, any problems  
8 reported? Have you ever heard that sort of thing?  
9 A. That makes sense. I thought you meant  
10 in more -- that's a very general thing. They want to  
11 understand what is the medicine for, what kind of  
12 condition, who are the patients, what is the -- what  
13 is the effectiveness. They might ask for comparative  
14 effectiveness if it exists; and if it doesn't exist,  
15 the answer is we can't give you any. They might ask  
16 about safety. They might ask about anything related  
17 to what they feel they should know when they -- were  
18 they to use the medicine.  
19 Q. One of the things they might ask is  
20 why is it better than what I'm already using, why  
21 should I switch. Is that reasonable?  
22 A. Perfectly reasonable.  
23 Q. One of the things they might ask is,  
24 you know, you got any studies that show it's better.  
25 Is that another thing that comes up?

Page 235

1 A. They might.  
2 Q. Paragraph 16 says, "The Medical  
3 Officer Review of the ISS included these statements:  
4 The blood level data in clinical use suggests the  
5 opioid effects of OxyContin and Immediate-Release  
6 Oxycodone would be similar."  
7 To your knowledge, is that clinically  
8 correct?  
9 A. Well, it's an inference, and I  
10 certainly can't differ with the inference. But it may  
11 not be correct.  
12 Q. Under "d" it said, "Withdrawal is  
13 possible in patients who have their dosage abruptly  
14 reduced or discontinued."  
15 Is that your understanding of the  
16 characteristic of the drug?  
17 A. Absolutely.  
18 Q. Then it said, "Care should be taken to  
19 limit competitive promotion. OxyContin has been shown  
20 to be as good as current therapy, but has not been  
21 shown to have a significant advantage beyond reduction  
22 in frequency of dosing."  
23 Is that your understanding of the  
24 characteristic of the drug?  
25 A. No. It is my understanding that that

Page 236

1 statement is correct. But the reason I said that that  
2 may not be the case was the very surprisingly large  
3 number of reports from the field that I heard second  
4 and third hand, that early in the life of the product  
5 doctors spontaneously volunteered that the drug was  
6 better than we said it was. And this was so frequent  
7 and so unusual that it raised in my mind, and  
8 continues to raise, the question maybe it is actually  
9 superior, but we were never able to demonstrate using  
10 the methods that would be generally accepted that this  
11 was the case. It was an impression that doctors  
12 developed on their own.  
13 Q. Any studies -- retrospective studies,  
14 anything of that nature that would support that  
15 statement?  
16 A. No. I said we could never prove it.  
17 Q. So if you go on here under the heading  
18 "Misbranding of OxyContin" and -- and when we talk  
19 about misbranding, that's just really making claims  
20 and statements that aren't true about a drug. That's  
21 called misbranding the drug. Is that correct?  
22 A. No, I wouldn't say it's that. I would  
23 say it's got a different meaning in the regulatory  
24 world. It's stating things that are not strictly in  
25 the package insert.

Page 237

1 Q. Okay.  
2 A. They may be true, but if they're not  
3 in the package insert, they're misbranding.  
4 Q. Do you know if Purdue had information  
5 that physicians were concerned about the abuse  
6 potential for OxyContin?  
7 A. I did not have that. It wouldn't  
8 surprise me that physicians would be concerned about  
9 that as with any other strong opioid or, in fact, any  
10 other opioid.  
11 Q. Let me refer you to paragraph 20. It  
12 says here, "Beginning on or about December 12, 1995  
13 and continuing on or about June 30th, 2001..."  
14 And that is the time frame that the  
15 U.S. Attorney's Office looked into the conduct at  
16 Purdue, correct?  
17 A. I don't know.  
18 Q. "...certain Purdue supervisors and  
19 employees, with the intent to defraud or mislead,  
20 marketed and promoted OxyContin as less addictive,  
21 less subject to abuse and diversion, and less likely  
22 to cause tolerance and withdrawal than other pain  
23 medications as follows:"  
24 Under "a" it says that you "Trained  
25 Purdue sales representatives" -- meaning -- when I say

Page 238

1 "you," I mean Purdue, the company -- "Trained Purdue  
2 sales representatives and told some healthcare  
3 providers that it was more difficult to extract the  
4 Oxycodone from an OxyContin tablet for the purpose of  
5 intravenous abuse, although Purdue's own study showed  
6 that a drug abuser could extract approximately 68  
7 percent of the Oxycodone from a single 10 milligram  
8 OxyContin tablet by crushing the tablet, stirring it  
9 in water and drawing the solution through cotton into  
10 a syringe."  
11 Were you aware that Purdue trained  
12 sales representatives to make that misrepresentation?  
13 A. No.  
14 Q. Is that a misrepresentation that would  
15 cause a physician to be more likely to use -- to write  
16 prescriptions for OxyContin or less likely to write  
17 prescriptions for OxyContin?  
18 A. I would -- I couldn't guess. The  
19 implication is that it would be more likely, but I  
20 don't know.  
21 Q. And then number "b" says, "Told Purdue  
22 sales representatives they could tell healthcare  
23 providers that OxyContin potentially creates less  
24 chance for addiction than immediate-release opioids."  
25 Were you aware that Purdue told sales

Page 239

1 representatives they could tell healthcare providers  
2 that there was less chance for addiction with  
3 OxyContin than with immediate-release opioids?  
4 A. No, I was not aware of that.  
5 Q. And under "c" it says, "Sponsored  
6 training that taught Purdue's sales supervisors that  
7 OxyContin had fewer 'peak and trough' blood level  
8 effects than immediate-release opioids resulting in  
9 less euphoria and less potential for abuse than  
10 short-acting opioids."  
11 Were you aware that they were teaching  
12 sales supervisors to make that misleading --  
13 A. Absolutely not.  
14 Q. -- statement?  
15 Under "d" it says, "Told healthcare  
16 providers that patients could stop therapy abruptly  
17 without experiencing withdrawal symptoms and that  
18 patients who took OxyContin would not develop  
19 tolerance to the drug."  
20 MR. STRAUBER: I object to the form of  
21 the question. In reading "d," you omitted the word  
22 "certain" which appears before "healthcare providers."  
23 Q. Oh. Well, let me read it again.  
24 Under "d," "Purdue told certain  
25 healthcare providers that patients could stop therapy

Page 240

1 abruptly without experiencing withdrawal symptoms and  
2 that patients who took OxyContin would not develop  
3 tolerance to the drug."  
4 Were you aware that certain healthcare  
5 providers were being told that they could stop therapy  
6 abruptly without experiencing withdrawal symptoms and  
7 that patients who took OxyContin would not develop  
8 tolerance to the drug?  
9 A. No.  
10 Q. Okay. And that statement is false,  
11 correct?  
12 A. It -- no. It's -- it's not clear to  
13 me it's false, but I am eager not to contend with it.  
14 It says "certain healthcare providers" and it -- the  
15 rest of it is conditioned really, in large measure,  
16 on, in the first case, the dose that the patient is  
17 on, and the second case in the duration that the  
18 patient is on. But reading between the lines, as I  
19 suspect those who shaped this did and understood the  
20 government, I can accept it as being a reasonable  
21 expression of improper conduct. That is, certain  
22 healthcare providers might have been told regardless  
23 of dose or regardless of duration.  
24 But had I known about this, I would  
25 have alerted our attorneys when negotiating this that



Page 241

1 this ought to be a little bit more specific because  
2 it's going to be difficult to agree with it the way  
3 it's written. But I'm -- I won't quibble with it.

4 **Q. Well, there was actually a whole lot**  
5 **of back and forth on this document.**

6 A. There may have been, but it wasn't  
7 with me.

8 **Q. And a lot of the things brought up the**  
9 **U.S. Attorney's Office said, no, we've reviewed the**  
10 **documents and we're not changing this stuff.**

11 **Is that what happened?**

12 A. I don't know.

13 MR. STRAUBER: Just to be clear, in  
14 the document we're reading, the Agreed Statement of  
15 Facts, "Purdue" refers to the Purdue Frederick  
16 Company, which is the practice we've had in this  
17 deposition from the outset that you've used "Purdue"  
18 to refer to Purdue Frederick.

19 **Q. Yes. And because nobody at Purdue is**  
20 **able to say which employees were Purdue Frederick and**  
21 **which employees were Purdue Pharma as far as I've been**  
22 **able to ascertain in any of the depositions I've read**  
23 **so far, and including ones taken in the past, but**  
24 **we'll cover that later.**

25 Under "e" here it says that Purdue --

Page 242

1 "Certain Purdue supervisors and employees, with the  
2 intent to defraud or mislead, told certain healthcare  
3 providers that OxyContin did not cause a 'buzz' or  
4 euphoria, caused less euphoria, had less addiction  
5 potential, had less abuse potential, was less likely  
6 to be diverted than immediate-release opioids, and  
7 could not be -- and could be used to 'weed out'  
8 addicts and drug seekers."

9 **Were you aware that those statements**  
10 **were being made to healthcare providers?**

11 A. No.

12 **Q. And then the next section is**  
13 **"Misbranding of OxyContin: Use of Graphical**  
14 **Depictions by Sales Representatives." And it says,**  
15 **"Data from Purdue's clinical studies was used to**  
16 **create the following graphical demonstration of the**  
17 **difference in the plasma levels at steady state**  
18 **between patients who took OxyContin every 12 hours and**  
19 **patients who took Immediate-Release OxyContin every 6**  
20 **hours."**

21 **And it says that "On October 12th,**  
22 **1995, Purdue requested comments from the FDA's**  
23 **Division of Drug Marketing, Advertising and**  
24 **Communication about its proposed launch marketing**  
25 **materials, which included the following graph and text**

Page 243

1 **showing Oxycodone plasma concentration provided by**  
2 **OxyContin on a logarithmic scale along with a**  
3 **statement that OxyContin's Oxycodone blood plasma**  
4 **levels provided fewer 'peaks and valleys' than**  
5 **Immediate-Release OxyContin."**

6 MR. STRAUBER: Oxycodone.

7 A. Oxycodone.

8 **Q. Oxycodone. I'm sorry.**  
9 **Paragraph 23 says, On December 20th of**  
10 **'95, after --**

11 A. We're going -- I'm sorry. Turn the  
12 page?

13 **Q. Yes.**

14 A. Thank you.

15 **Q. On December 20th, '95, "After**  
16 **reviewing the proposed OxyContin launch materials,**  
17 **DDMAC" -- what is DDMAC?**

18 A. DDMAC. It's the division of the  
19 FDA -- I don't know what the letters stand for, but it  
20 is the division of the FDA that reviews promotional  
21 materials and comments on their agreement that they  
22 are reasonably reasonable and accurate and consistent  
23 with the package insert or they differ with them and  
24 recommend changes or elimination of things.

25 **Q. And to sort of cut through it, what**

Page 244

1 **they did is they said, if you wish to compare blood**  
2 **levels in this text, we suggest that the blood levels**  
3 **for both dosage forms be presented in the graphic so**  
4 **that the reader can accurately interpret this claim.**

5 **They thought it was misleading the way**  
6 **it was, correct?**

7 A. No, I don't -- I don't think so. I  
8 think they had a suggestion that we should add that.  
9 And I don't know why it wasn't there. We certainly  
10 had the data as is shown above.

11 **Q. Okay.**

12 A. So I assume we added the data.

13 **Q. And then it says, paragraph 24, "On or**  
14 **about January 11, 1996, Purdue told DDMAC that it had**  
15 **'deleted' the statement 'fewer peaks and valleys than**  
16 **with Immediate-Release Oxycodone."**

17 **They took the statement out, correct?**

18 A. That's what it says. I don't know  
19 why. It was true. But I have no knowledge of the  
20 dialogue between them or why they took it out.

21 **Q. Did you review any of the studies that**  
22 **were done -- I mean actually get down and look at the**  
23 **data in the studies that were done prior to the**  
24 **launch?**

25 A. I looked at the analysis of studies,

<p style="text-align: right;">Page 245</p> <p>1 but I didn't look at the data, that is, the individual 2 case report forms.</p> <p>3 <b>Q. And as we sit here today, have you 4 ever seen the data of the studies themselves?</b></p> <p>5 A. No. That would be voluminous, and I 6 don't -- I don't think it would be necessary for a 7 senior executive to do that because every study is 8 subject to extremely rigorous validation of the 9 database with the paper record, the paper record that 10 exists with the doctor's own records.</p> <p>11 And so this approach, which has been 12 standard in the industry and, I believe, part of good 13 laboratory practices or one of the other standards 14 that the FDA has promulgated, is extremely exhaustive, 15 which is one of the reasons the studies take so long, 16 because the validation of the data can take anything 17 from a month to a year.</p> <p>18 <b>Q. Are you saying that your studies that 19 you did before putting Purdue on the market were 20 extremely exhaustive?</b></p> <p>21 A. They were certainly appropriate for a 22 molecule that had been in use, at that point, 80 years 23 or more, that was believed then to be safe and 24 effective as a molecule, and that had no -- at that 25 time no long-term toxicities that hadn't been</p>	<p style="text-align: right;">Page 247</p> <p>1 package insert then and through many changes has not 2 denied that, in fact, has called it out explicitly in 3 several places, including right in the front of the 4 label when we said it was a Class II narcotic, and 5 every doctor knows that Class II narcotics are among 6 the most abusable products.</p> <p>7 <b>Q. A Class II narcotic that your own 8 records show there was a belief among physicians that 9 it wasn't as strong as morphine, correct?</b></p> <p>10 A. No. That it wasn't stigmatized as 11 morphine was. They knew it was -- if you would ask 12 them, Is it more potent than morphine, many physicians 13 knew it was more potent. If they used both drugs, 14 they knew that they would always start with a much 15 lower dose of Oxycodone than they would with morphine.</p> <p>16 <b>Q. So you think physicians -- most 17 physicians knew it was more potent than morphine?</b></p> <p>18 A. Yes. They also knew what doses to use 19 it in.</p> <p>20 MR. THOMPSON: Let's mark this as 21 Exhibit --</p> <p>22 MR. STRAUBER: It's 34. 23 (DEPOSITION EXHIBIT NO. 34 MARKED) 24 (Passing document.) 25 Q. Let me refer you to the first</p>
<p style="text-align: right;">Page 246</p> <p>1 well-developed, and so a lot of that information was 2 brought into the package insert whether we observed 3 them in the trials or not.</p> <p>4 So the standards for this kind of an 5 approval, which has its own designation, are easier to 6 meet. They're called 505(b)(2) NDA, and draw upon, in 7 this case, a vast public literature, as I said 8 extended back 80-plus years. So for that it was very 9 extensive in those kind of applications.</p> <p>10 <b>Q. But when you took a controversial 11 opioid and expanded it to non-malignant pain at pills 12 that contained high dosages of opiate, you didn't do 13 any addiction studies before putting it on the market, 14 correct?</b></p> <p>15 MR. STRAUBER: I object to the form of 16 the question.</p> <p>17 A. First of all, the compound Oxycodone 18 was mostly used in non-malignant pain before we 19 entered the market. That was where the market -- the 20 great bulk of the market existed. So there was no 21 innovation or change in our bringing it to the 22 non-malignant pain market.</p> <p>23 The second thing was that we didn't -- 24 we assumed that it was potentially addictive, that it 25 could be subject to abuse and diversion, and the</p>	<p style="text-align: right;">Page 248</p> <p>1 paragraph of this document dated January 26th, 2001.</p> <p>2 We're now five years after OxyContin 3 has been on the market, correct?</p> <p>4 A. Which part of this should I read from?</p> <p>5 Yes, the date is around five years from marketing.</p> <p>6 <b>Q. And it says up here -- this is from 7 Mark Alfonso. The first paragraph says, "I think it 8 will. In the mind of the physicians, hydrocodone 9 gives them a great degree of comfort. Physicians rank 10 the drugs based on the position that they have created 11 in their mind as a result of prescription" --</b></p> <p>12 A. Prescribing.</p> <p>13 <b>Q. -- "prescribing habit and promotion." 14 And promotion would be, what, 15 marketing from Purdue Pharma?</b></p> <p>16 A. No.</p> <p>17 <b>Q. What do you think it means when it 18 says --</b></p> <p>19 A. Promotion is the promotion of 20 everybody in the industry from going back years and 21 years.</p> <p>22 <b>Q. Okay. It says, "For them morphine and 23 hydromorphone are the most potent, followed by 24 Oxycodone and then hydrocodone."</b></p> <p>25 A. I see it.</p>

Page 249

1 **Q. Yeah. Were you aware that on January**  
 2 **25th of 2001 Mark Alfonso -- and what was his role at**  
 3 **Purdue?**  
 4 A. He was head of marketing.  
 5 **Q. -- the head of marketing, felt like**  
 6 **physicians did not feel like Oxycodone was as potent**  
 7 **as morphine?**  
 8 A. We've gone through this before. It  
 9 was -- that was a term that didn't refer to relative  
 10 potency, it just didn't. He didn't include Fentanyl  
 11 in this, which is the most potent, but is often used  
 12 before hydrocodone or morphine.  
 13 **Q. Well, let me ask you this --**  
 14 A. So -- well, I'm just saying, it  
 15 just -- I realize that you've changed the meaning that  
 16 was intended and understood by the recipients.  
 17 **Q. No. That's his word, "potent," not**  
 18 **mine, correct?**  
 19 A. No, no, no. You've changed the  
 20 meaning of the word "potent." Not the word, the  
 21 meaning of the word.  
 22 **Q. Well, I didn't change it. It's --**  
 23 **it's his word.**  
 24 A. No. You've changed it when you've  
 25 tried to use it as though it means relative potency.

Page 250

1 **Q. All right. When we first discussed**  
 2 **the first group of documents, you said, no, they're**  
 3 **just talking about effectiveness, not strength. The**  
 4 **second group of documents where they said it's**  
 5 **stronger than morphine, you said, no, they just mean**  
 6 **strong in a general sense, they don't mean potent.**  
 7 **Here they use the word "potent."**  
 8 **Do you just not think physicians don't**  
 9 **think it's as strong as morphine? Because that's what**  
 10 **they keep saying they don't want to clear up in the**  
 11 **physicians' mind, that it's as strong as morphine.**  
 12 A. It -- this is a hierarchy here.  
 13 **Q. Okay.**  
 14 A. Okay?  
 15 **Q. Well, we'll just have to disagree**  
 16 **about that.**  
 17 A. Here Mark Alfonso said here that -- if  
 18 following your reasoning, if your reasoning were  
 19 correct -- the physicians would see morphine as the  
 20 most potent of all these drugs. It was the for them  
 21 morphine, and then hydrocodone, and in most places  
 22 Oxycodone, and then hydrocodone.  
 23 The facts are that hydromorphone is  
 24 three to eight times more potent than morphine, but  
 25 that isn't how he listed it. And hydrocodone and

Page 251

1 Oxycodone are close to equal potent. But he didn't  
 2 say "potent," he said "powerful," and "powerful" in  
 3 this case has to do with the hierarchy that they place  
 4 drugs. Morphine was the last because it was the most  
 5 stigmatized.  
 6 **Q. So when he says here, "Remember that**  
 7 **we tried to reposition OxyContin as powerful as**  
 8 **morphine and we could not, finally we decided not to**  
 9 **mess with this perception since it was helping us in**  
 10 **the non-cancer market."**  
 11 **Did you see where he wrote that?**  
 12 A. I see where he wrote it.  
 13 **Q. All right. Let's go back to the plea**  
 14 **agreement.**  
 15 MR. ELLIS: Tyler, we need to mark  
 16 that document.  
 17 MR. THOMPSON: It's marked.  
 18 MR. STRAUBER: It's No. 34.  
 19 **Q. Paragraph 25 of the Agreed Statement**  
 20 **of Facts says, "On or about December 1998, Purdue**  
 21 **sponsored training for all its district sales**  
 22 **managers."**  
 23 **Now, it wasn't some of them, it's all**  
 24 **of them, correct?**  
 25 A. It says "all."

Page 252

1 **Q. "During this meeting, a pharmacist**  
 2 **retained by Purdue" -- do you know who that pharmacist**  
 3 **was?**  
 4 A. No.  
 5 **Q. -- a pharmacist retained by Purdue to**  
 6 **conduct a portion of the training used the following**  
 7 **graphical demonstration (instead of the graphical**  
 8 **demonstration of the actual clinical data described in**  
 9 **paragraph 21 of this Agreed Statement of Facts) and**  
 10 **falsely stated that OxyContin had significantly fewer**  
 11 **'peak and trough' blood level effects than**  
 12 **immediate-release opioids resulting in less euphoria**  
 13 **and less potential for abuse than short-acting**  
 14 **opioids." And they've got a graph that was used at**  
 15 **the training for the Purdue employees.**  
 16 A. I would call that a cartoon, not a  
 17 graph.  
 18 **Q. And it says on paragraph 26,**  
 19 **"Beginning in or around 1999, some of Purdue's new**  
 20 **sales representatives" -- those would be Purdue Pharma**  
 21 **sales representatives in 1999, correct?**  
 22 A. I can't say.  
 23 MR. STRAUBER: Object to the question.  
 24 Purdue is defined in this document as Purdue  
 25 Frederick.



Page 253

1 MR. THOMPSON: Yeah, but it says "new  
2 sales representatives."  
3 Q. So are we talking about Purdue Pharma  
4 or Purdue Frederick?  
5 A. I just don't know.  
6 MR. STRAUBER: The document on its  
7 face is talking only about Purdue Frederick.  
8 MR. THOMPSON: Yeah. The guy that  
9 helped put the document together, the lawyer, we took  
10 his deposition. Have you seen his deposition?  
11 MR. STRAUBER: I've seen his  
12 deposition.  
13 MR. THOMPSON: Yeah. And he says he  
14 doesn't know if they're Purdue Frederick or Purdue  
15 when he refers to this.  
16 MR. STRAUBER: I'm telling you, I'm  
17 taking this document on its face defines Purdue as  
18 Purdue Frederick. I don't care what anyone else said.  
19 MR. THOMPSON: Sure. And I'm asking  
20 him if it's correct, and he's saying --  
21 Q. You don't know, correct?  
22 A. That's -- go -- I said I don't know  
23 who employed these new representatives.  
24 Q. Okay. It says, "Some of Purdue's new  
25 sales representatives were permitted, during training

Page 254

1 at Purdue's training headquarters, to draw their own  
2 blood level graphs to falsely represent that  
3 OxyContin, unlike immediate-release or short-acting  
4 opioids, did not swing up and down between euphoria  
5 and pain and resulted in less abuse potential.  
6 Were you aware that the sales reps  
7 were doing that?  
8 A. No.  
9 Q. And then it says, "During the period  
10 1999 through June 30th, 2001 Purdue reps used  
11 graphical depictions similar to the one described in  
12 paragraph 25 of this Agreed Statement of Facts and  
13 falsely stated to some healthcare providers that  
14 OxyContin had less euphoric effect and less abuse  
15 potential than short-acting opioids."  
16 Were you aware that they had --  
17 A. No.  
18 Q. -- engaged in that conduct?  
19 A. No. I'm sorry.  
20 Q. And then to go on with the conduct,  
21 paragraph 28 says, "Misbranding of OxyContin:  
22 Misleading Use of Article to Claim No Withdrawal or  
23 Tolerance," and it proceeds to discuss how Purdue --  
24 well, let's go ahead and read it. I'll try to shorten  
25 this a little bit.

Page 255

1 Purdue had an osteoarthritis study --  
2 A. That's okay, you don't have to rush.  
3 Q. Yeah. Are you familiar with that?  
4 A. May I read it? If you don't want to  
5 read it into the record, can I just read it and then  
6 respond?  
7 Q. Sure. I'll tell you what, it will  
8 save time, I'll read it into the record.  
9 A. Okay.  
10 Q. "On or about January 16, 1997, certain  
11 Purdue supervisors and employees sent to the FDA the  
12 results of a clinical study pertaining to the use of  
13 low doses of OxyContin by osteoarthritis patients."  
14 They call it the "Osteoarthritis Study." "And a final  
15 report that included, in a section pertaining to  
16 respite periods, the statement 'No investigator  
17 reported 'withdrawal syndrome' as an adverse  
18 experience during the respite periods.'  
19 "In a section entitled 'Adverse  
20 Experiences by Body System During Respite Periods,'  
21 the report summary of the major results listed the  
22 most frequently reported adverse experiences in  
23 respite periods to be nervousness, insomnia, nausea,  
24 pain, anxiety, depression and diarrhea followed by the  
25 statement: '28 patients (26 percent) had symptoms

Page 256

1 recorded during one or more respite periods.'"  
2 Did I read that correctly?  
3 A. I think so. I was kind of reading  
4 ahead of you.  
5 Q. And then it says, paragraph 29, "On or  
6 about May 1997, certain Purdue supervisors and  
7 employees stated that while they were well aware of  
8 the incorrect view held by many physicians that  
9 Oxycodone was weaker than morphine, they did not want  
10 to do anything 'to make physicians think that  
11 Oxycodone was stronger or equal to morphine' or to  
12 'take any steps in the form of promotional material,  
13 symposia, clinical publications, conventions or  
14 communications with the field force that would affect  
15 the unique position that OxyContin had in many  
16 physicians' minds.'"  
17 And did I read that correctly?  
18 A. You read the words correctly.  
19 Q. And was that part of the Agreed  
20 Statement of Facts?  
21 A. It is.  
22 Q. And then it goes on to say, "On or  
23 about February 12th, 1997, certain supervisors and  
24 employees of a United Kingdom company affiliated with  
25 Purdue provided certain Purdue supervisors and

Page 257

1 employees with an analysis of the osteoarthritis study  
2 together with another clinical study. This analysis  
3 included a list of eight patients in the  
4 osteoarthritis study and eleven patients in the other  
5 study who had symptoms recorded that may possibly have  
6 been related to opioid withdrawal, including one  
7 patient in the other study who required treatment for  
8 withdrawal syndrome."

9 Did you ever review that study?

10 A. No.

11 Q. "The 'Discussion' section of this  
12 analysis included the following: 'It's not surprising  
13 that some patients in the clinical trials developed  
14 some degree of physical dependence and consequently  
15 experienced withdrawal symptoms as a result of abrupt  
16 discontinuation of OxyContin Tablets. All patients  
17 who were suspected to have withdrawal symptoms have  
18 been reported, but this may have resulted in a falsely  
19 high incidence.

20 "Of the patients who participated in  
21 the osteoarthritis study (in which patients entered  
22 respite periods without OxyContin Tablets) many  
23 symptoms suspected to be due to opioid withdrawal may  
24 simply have resulted from the return of pain. After  
25 withdrawal of OxyContin Tablets, patient 6007

Page 259

1 Q. -- "included the following three  
2 statements pertaining to the incidence of withdrawal  
3 syndrome and withdrawal symptoms experienced by study  
4 patients: One patient was hospitalized for withdrawal  
5 symptoms. The patient who was hospitalized with  
6 withdrawal symptoms had completed the study on the  
7 previous day and had been receiving CR Oxycodone, 70  
8 milligrams. Symptoms resolved after three days.

9 "A second patient received 60

10 milligrams CR Oxycodone, experienced withdrawal  
11 symptoms after running out of study medication. The  
12 patient had not reported withdrawal symptoms during  
13 scheduled respites from doses of 30 or 40.

14 "Withdrawal symptom was not reported  
15 as an adverse event for any patient during scheduled  
16 respites. Adverse experiences reported by more than  
17 10 percent of patients during scheduled respites were  
18 nervousness (nine patients) and insomnia (eight  
19 patients)."

20 Paragraph 32 says the article included  
21 a "Comment" section, summarized the three statements  
22 and the "Results" and "further suggested that patients  
23 taking low doses could have their OxyContin treatment  
24 abruptly discontinued without experiencing withdrawal  
25 if their condition so warranted."

Page 258

1 complained of nervousness, patient 2004 complained of  
2 insomnia and felt restless, patients 2020 and 2028  
3 were restless and anxious.

4 "Since these are symptoms which often  
5 accompany the return of significant pain, it may be  
6 wrong to label these as withdrawal symptoms.  
7 Nonetheless, the incidence of withdrawal symptoms in  
8 patients treated with OxyContin Tablets is a concern,  
9 and it is safer to over report than under report this  
10 problem."

11 "This analysis' conclusions included  
12 the statement: 'As expected, some patients did become  
13 physically dependent on OxyContin Tablets, but this is  
14 not expected to be a clinical problem so long as  
15 abrupt withdrawal of the drug is avoided.'"

16 Were you aware that certain Purdue  
17 employees participating in the final draft of the  
18 article regarding the osteoarthritis study that was  
19 published in a medical journal on or about March 27th,  
20 2000, were you aware they participated in the  
21 publishing of that study?

22 A. No.

23 Q. "The 'Results' section of the  
24 article" -- I'm reading from paragraph 31.

25 A. Right.

Page 260

1 Were you aware they were making that  
2 claim?

3 A. No.

4 Q. If you go over to paragraph 34, it  
5 says, "On or about June 26, 2000, certain Purdue  
6 supervisors and employees sent the full text of this  
7 osteoarthritis study article..."

8 Do you know which supervisors and  
9 employees sent the full text of this article?

10 A. No.

11 Q. Do you know if it was the marketing  
12 group?

13 A. I don't know.

14 Q. And it says, "...together with a  
15 'marketing tip' to Purdue's entire sales force. The  
16 marketing tip stated that a reprint of the  
17 osteoarthritis study article was available for use in  
18 achieving sales success. The marketing tip also  
19 included as one of the articles 12 key points: There  
20 were two reports of withdrawal symptoms after patients  
21 abruptly stopped taking CR Oxycodone at doses of 60 or  
22 70. Withdrawal syndrome was not reported as an  
23 adverse event during scheduled respites, indicating  
24 that CR Oxycodone at doses below 60 milligrams can be  
25 discontinued without tapering the dose if the patient



Page 261

Page 263

1 condition so warrants."

2 It says, "On or about February 13th,  
3 2001, certain Purdue supervisors and employees  
4 received a review of the accuracy of the withdrawal  
5 data in the osteoarthritis study and stated" --

6 Now, this is Purdue's own people  
7 reviewing this data, correct?

8 A. That's how I would read it.

9 Q. And it says, "Upon a review of all  
10 comments for the enrolled patients, it was noted that  
11 multiple had comments which directly stated or implied  
12 that an adverse experience was due to possible  
13 withdrawal symptoms. This was followed by a list of  
14 11 study patients who reported adverse experience due  
15 to possible withdrawal symptoms during these periods.  
16 106 patients initially participated in the  
17 osteoarthritis study. 32 of them withdrew because of  
18 severe" -- I'm sorry -- "because of adverse (not  
19 necessarily related to withdrawal) and 38 patients  
20 remained in the study at 12 months."

21 And then the next paragraph reads, "On  
22 or about March 28th, 2001" -- so this was a month and  
23 a half later -- "a Purdue employee e-mailed a Purdue  
24 supervisor regarding the review of the withdrawal data  
25 described in paragraph 35 of the Agreed Statement of

1 it and asked should we write it up or is this going to  
2 add to the current negative press and should be  
3 deferred, the person's supervisor said, "I would not  
4 write it up at this point." Correct?

5 A. That's what it says.

6 Q. Do you know if it ever got written up?

7 A. I don't know.

8 Q. Do you know if any of these doctors  
9 that were shown this were ever told that it actually  
10 wasn't correct?

11 A. I don't know.

12 Q. Do you know if anybody at Purdue made  
13 an effort to go tell these doctors that all of these  
14 marketing things that have been brought up in the  
15 Agreed Statement of Facts were not correct?

16 A. I don't know.

17 Q. Did you yourself ever tell anybody to  
18 go inform doctors that these marketing statements that  
19 had been used by Purdue's employees that were not  
20 accurate were -- were, in fact, not accurate?

21 A. I was not aware of this story or the  
22 study or the marketing materials or statements.

23 Q. And as the director of Purdue Pharma,  
24 you were not made aware of any of this?

25 MR. STRAUBER: I object to the form of

Page 262

Page 264

1 Facts asking: 'Do you think the withdrawal data from  
2 the osteoarthritis study is worth writing up (an  
3 abstract)? Or would this add to the current negative  
4 press that should be deferred?' The supervisor  
5 responded: 'I would not write it up at this point.'

6 And no abstract was prepared."

7 Do you see that?

8 A. I see it.

9 Q. So am I correct that Purdue was using  
10 the marketing material from this article improperly  
11 and not reporting the adverse effects and was allowing  
12 their sales force to use it?

13 MR. STRAUBER: I object to the form of  
14 the question.

15 A. Let's break that into one question at  
16 a time, please.

17 Q. Sure. Was Purdue's marketing  
18 department using this article?

19 A. That's what it says here.

20 Q. And were they using it  
21 inappropriately?

22 A. That's what it says here.

23 Q. And when somebody pointed out that the  
24 withdrawal data from the osteoarthritis study was  
25 actually different than how the sales force was using

1 the question.

2 You can answer.

3 A. I do not recall whether we were --  
4 you're talking about at the time of this document  
5 being written?

6 Q. Yes.

7 A. I don't recall.

8 Q. And at the time that this conduct went  
9 on, from '96 to 2001, the time period investigated by  
10 at least this U.S. attorney under this Agreed  
11 Statement of Facts, you were, in fact, the CEO of  
12 Purdue Pharma, correct?

13 A. During 2000, very, very late '99 until  
14 early 2003 I was the CEO, yes.

15 Q. So if this conduct occurred on May  
16 18th, 2000, June 22nd, 2000, February 13th, 2000 and  
17 on March 18th, 2001, this employee was told not to  
18 write up the withdrawal data because of negative press  
19 and that it should be deferred, you would have been  
20 the CEO during this time period, correct?

21 A. Yes.

22 Q. What was Robert --

23 A. From '99 until this.

24 Q. Yeah. What was Robert Reder's role at  
25 Purdue?



Page 265

1 A. He was a senior medical officer.  
2 Q. The next paragraph says, "Between June  
3 26, 2000 and June 30th, 2001, Certain Purdue  
4 supervisors and employees distributed copies of the  
5 reprint of the osteoarthritis study article to all of  
6 Purdue's sales representatives for use in the  
7 promotion and marketing of OxyContin to healthcare  
8 providers, including the distribution of 10,615 copies  
9 to certain Purdue sales representatives between  
10 February 13th, 2001 and June 30th, 2001."

11 So it looks like on March 28th the  
12 supervisor tells the employee, Don't write up the  
13 withdrawal data from the osteoarthritis study, it  
14 would add to the current negative press and should be  
15 deferred, and between February 13th, 2001 and June  
16 30th, 2001, 10,615 copies of the osteoarthritis study  
17 were distributed to sales representatives, correct?

18 A. That's what it says.

19 MR. STRAUBER: It says "certain Purdue  
20 sales representatives."

21 Q. Was the purpose of submitting it to  
22 the sales representatives so they could show it to the  
23 physicians that they called on?

24 A. I don't know.

25 Q. There was only 800 sales reps at

Page 266

1 Purdue's highest volume of sales reps during this  
2 period of time, correct?

3 A. To the best of my recollection, that's  
4 approximately true.

5 Q. So if you wanted to give a copy to  
6 each sales rep for their own use, you'd probably only  
7 need 800; but they printed off 10,615 copies, correct?

8 A. Distributed, yes.

9 Q. Is it reasonable to conclude that the  
10 sales reps were showing these to the doctors?

11 A. It's reasonable to conclude that some  
12 sales reps may have shown them to doctors, yes. To  
13 some doctors.

14 Q. Do you know if Purdue ever got any of  
15 this 10,615 copies of the osteoarthritis article back?

16 A. I don't know. If this -- when this  
17 was found -- and I don't know when this was found --  
18 by sales or marketing management or the medical  
19 department, it would have been the practice to recover  
20 them, yes. But I don't know if it was found and I  
21 don't know if it was done. This all came to light in  
22 2006 or '7, so I don't know. It could have been long  
23 past, but I don't know.

24 Q. It says in paragraph 38, "During the  
25 period June 26, 2000 through June 30th, 2001, certain

Page 267

1 Purdue sales representatives distributed the reprint  
2 of the osteoarthritis article to some healthcare  
3 providers and falsely or misleadingly stated that  
4 patients taking OxyContin at doses below 60 milligrams  
5 per day can always be discontinued abruptly without  
6 withdrawal symptoms and that patients on such doses  
7 would not develop tolerance."

8 And that's not an accurate statement,  
9 is it?

10 A. I don't believe so.

11 Q. And then with regard to "Misbranding  
12 of OxyContin: Use of Reduced Abuse Liability Claims  
13 in Marketing," it says, paragraph -- "OxyContin  
14 package insert approved by the FDA stated: 'Delayed  
15 absorption, as provided by OxyContin Tablets, is  
16 believed to reduce the abuse liability of the drug.'"

17 That's called the Reduced Liability  
18 Statement.

19 "Certain Purdue supervisors and  
20 employees instructed Purdue's sales representatives to  
21 use this statement to market and promote OxyContin."

22 Paragraph 40 says, "Certain Purdue  
23 sales reps, while promoting and marketing OxyContin,  
24 falsely told some healthcare providers that the  
25 Reduced Abuse Liability Statement meant that OxyContin

Page 268

1 did not cause a 'buzz' or euphoria, caused less  
2 euphoria, had less addiction potential, had less abuse  
3 potential, was less likely to be diverted than  
4 immediate-release opioids, and could be used to 'weed  
5 out' addicts and drug seekers."

6 It says, "By March 2000, various  
7 Purdue supervisors and employees in different parts of  
8 the company had received reports of OxyContin abuse  
9 and diversion occurring in different communities."  
10 And that "On or about November 27, 2000, certain  
11 Purdue supervisors and employees amended the Reduced  
12 Abuse Liability Statement to say that 'delayed  
13 absorption, as provided by OxyContin Tablets, when  
14 used properly for the management of pain, is believed  
15 to reduce the abuse liability of the drug,' and  
16 instructed Purdue sales reps to use the amended  
17 statement to promote and market OxyContin."

18 Do you know why that statement was  
19 changed?

20 A. I'm not sure -- no, I don't, and I'm  
21 not certain where it was changed. In the package  
22 insert? I don't know. If it was in the package  
23 insert, then that had to be submitted to the FDA to  
24 get approval in advance of using it, but I just don't  
25 know what this refers to.

Page 269

1 Q. Well, when Purdue found out that  
2 OxyContin was being abused and diverted, they changed  
3 their packet insert, kind of cleverly really, if you  
4 read it right, "When used properly for the management  
5 of pain."  
6 Do you know what they meant by that?  
7 A. I don't know what the people who wrote  
8 it meant by that or what the FDA understood, because I  
9 was not involved in rewriting it.  
10 Q. Okay. The next paragraph says, "From  
11 March 2000 through June 30th, 2001, certain Purdue  
12 sales representatives, while promoting and marketing  
13 OxyContin, falsely told some healthcare providers that  
14 the Reduced Abuse Liability Statement and the amended  
15 statement meant that OxyContin did not cause a 'buzz'  
16 or euphoria, caused less euphoria, had less addiction  
17 potential, had less abuse potential, was less likely  
18 to be diverted than immediate-release opioids, and can  
19 be used to 'weed out' addicts and drug seekers."  
20 And those statements are not correct?  
21 A. No, they're not correct.  
22 Q. All right.  
23 "Introduction of Misbranded OxyContin  
24 Into Interstate Commerce."  
25 And that is actually the guilty plea.

Page 270

1 A. Pardon?  
2 Q. It points out that Purdue manufactured  
3 and sold OxyContin in interstate commerce from various  
4 locations --  
5 A. Are you reading -- I'm sorry to  
6 interrupt you, sir. Just tell me which number I  
7 should be following.  
8 Q. It's the very next paragraph.  
9 A. Which is 44?  
10 Q. Yes. And that's just pointing out  
11 that Purdue sold OxyContin all over the U.S., correct?  
12 A. Let me read it and I'll tell you if I  
13 agree.  
14 MR. STRAUBER: That's not what it  
15 says, if you're reading from 44.  
16 MR. THOMPSON: You're right. I'll  
17 withdraw the question.  
18 Q. Did Purdue Pharma sell OxyContin all  
19 over the U.S.?  
20 A. During what time period?  
21 Q. 1996 to 2001.  
22 A. Yes.  
23 Q. Now, is part of the reason Purdue was  
24 able to get away with making these misrepresentations  
25 is because Purdue was aware that physicians did not

Page 271

1 understand the complex processes of treating pain?  
2 A. I don't think so.  
3 MR. STRAUBER: I object to the form of  
4 the question. It's argumentative.  
5 A. Should I answer it?  
6 Q. Sure.  
7 MR. STRAUBER: You can answer it.  
8 A. I don't think so.  
9 Q. Did Purdue's own focus group show that  
10 doctors didn't understand whether OxyContin was  
11 stronger than morphine?  
12 A. I don't know.  
13 Q. What about the treatment of pain, did  
14 you feel like doctors understood or physicians  
15 understood prescribing practices that should be  
16 utilized for the treatment of pain?  
17 A. You'd have to put a time frame to that  
18 or ask the question with more color and more details.  
19 Q. Isn't that the reason you-all were  
20 claiming that you needed to spend so much money  
21 educating physicians is because they didn't understand  
22 pain prescribing?  
23 A. Some physicians learned how to  
24 prescribe for pain from materials that we produced or  
25 information that sales reps gave them; others knew how

Page 272

1 to treat pain and they would be more interested in  
2 trying this agent in comparison to how they were  
3 treating pain before.  
4 When we entered the pain market in  
5 1985 in the U.S., there was almost -- it was abysmal  
6 in a sense, not ignorance so much as ignoring pain of  
7 patients. Doctors just didn't want to deal with it  
8 and left patients inadequately treated.  
9 Q. Would you agree that the only way to  
10 get a large sales force to use a marketing message is  
11 to instruct them explicitly and unmistakably to do so?  
12 A. I don't understand the question.  
13 Q. Mr. Shapiro has testified --  
14 A. Oh, okay.  
15 Q. I want you to assume he's testified  
16 that the only way to get a large sales force to use a  
17 marketing message is to instruct them explicitly and  
18 unmistakably to do so.  
19 Would you agree with that?  
20 A. I really don't understand it.  
21 MR. STRAUBER: Once again, if you're  
22 reading from a transcript, please share it with him.  
23 Q. I want you to assume he's testified to  
24 that.  
25 A. But I don't --

Page 273	Page 275
<p>1 MR. STRAUBER: Why should he assume it</p> <p>2 when you have a transcript in front of you?</p> <p>3 MR. THOMPSON: I don't have a</p> <p>4 transcript in front of me. I'm asking from my own</p> <p>5 memory.</p> <p>6 A. Oh, okay. I don't understand. I</p> <p>7 don't understand that statement, so I really can't</p> <p>8 agree or disagree with it.</p> <p>9 Q. Do you believe there's evidence of</p> <p>10 improper training that has occurred at Purdue based</p> <p>11 upon the Agreed Statement of Facts?</p> <p>12 A. I would have to review it. My</p> <p>13 recollection as you read -- as we read through it was</p> <p>14 that one or two things involved improper training, but</p> <p>15 I can't affirm that until I reread it.</p> <p>16 Q. Did you ever -- do you know as we sit</p> <p>17 here today what percentage of your sales force was</p> <p>18 using these improper statements to educate physicians</p> <p>19 about prescribing OxyContin?</p> <p>20 A. No, I don't know.</p> <p>21 Q. Okay. Whether it was a hundred</p> <p>22 percent, 50 percent, 10 percent; you don't have any</p> <p>23 idea?</p> <p>24 A. I have no idea.</p> <p>25 Q. Do you know if anybody at Purdue tried</p>	<p>1 three-quarters of them would have been gone. But I</p> <p>2 don't -- I can't answer that I know of any attempt to</p> <p>3 assess blame in that sense or to count.</p> <p>4 Q. Yeah. And that's not really my</p> <p>5 question. My question is, did anybody at Purdue</p> <p>6 Pharma attempt to go back and find out which reps</p> <p>7 specifically had made comments to physicians that were</p> <p>8 improper or misleading about the attributes of</p> <p>9 OxyContin?</p> <p>10 A. The answer is, I don't know.</p> <p>11 Q. Would you agree that giving -- making</p> <p>12 the statements -- the improper statements that are</p> <p>13 referred to in the Agreed Statement of Facts could</p> <p>14 compromise patient care?</p> <p>15 A. Some of them, yes. In some patients.</p> <p>16 Obviously not all patients, but in some patients some</p> <p>17 of the statements could compromise care. I would like</p> <p>18 to say suboptimize care, but...</p> <p>19 Q. And if I understand correctly, you</p> <p>20 have not reviewed any of the call notes that were</p> <p>21 pulled by Mr. Shapiro when he was doing his</p> <p>22 investigation?</p> <p>23 A. That's correct. As far as I know. I</p> <p>24 didn't -- I was shown a few call notes. I didn't ask</p> <p>25 were these shown to Mr. Shapiro.</p>
Page 274	Page 276
<p>1 to find out how many of their sales force had given</p> <p>2 physicians improper and incorrect information?</p> <p>3 A. I know, as I said before, that from</p> <p>4 2000 -- sometime in 2000, as we became convinced that</p> <p>5 there was a problem, many efforts were launched to</p> <p>6 train, retrain and to determine whether sales reps</p> <p>7 were following company policy, and that effort goes on</p> <p>8 to this day.</p> <p>9 We put in place, for example, a whole</p> <p>10 compliance department in 2003 or 2004 with many</p> <p>11 employees who reported independently to the board and</p> <p>12 have continued to report independently to the board</p> <p>13 to, in a sense, back up the sales department and</p> <p>14 marketing department's own efforts to assure proper</p> <p>15 training and compliance with training. But I don't</p> <p>16 know of any attempt to measure who said what and how</p> <p>17 many times. When people were properly trained and</p> <p>18 they deviated from that or went beyond that, they were</p> <p>19 sanctioned, and many of them were dismissed.</p> <p>20 We also had a whole downsizing in the</p> <p>21 field force from about 2003 or '4 until about 2007 or</p> <p>22 '8 in which the 800 eventually went down to something</p> <p>23 like 200. So I don't think there are too many</p> <p>24 survivors from this period because they were</p> <p>25 selectively weeded out and because, on average,</p>	<p>1 Q. Was there a recommendation made by</p> <p>2 somebody right about that same time that the call note</p> <p>3 system be changed?</p> <p>4 A. At about what time?</p> <p>5 Q. About the same time he was doing his</p> <p>6 investigation and reviewing the call notes.</p> <p>7 A. I believe it was.</p> <p>8 Q. Yeah. And do the call notes not</p> <p>9 contain as much information as they used to back in</p> <p>10 two thousand --</p> <p>11 A. That, I don't know. But the biggest</p> <p>12 change was to make the first and second-line</p> <p>13 supervisors audit a substantial percentage of the call</p> <p>14 notes in their span of control.</p> <p>15 Q. If the call notes have less</p> <p>16 information in them, is it more difficult to audit</p> <p>17 them?</p> <p>18 A. I would have -- I couldn't possibly</p> <p>19 guess. I don't know what they were before or after.</p> <p>20 They were very sketchy notes, the ones I saw. I must</p> <p>21 say, they were selected and shown to me, but the ones</p> <p>22 I saw were, in some cases, almost indeterminant. You</p> <p>23 could not know what was happening.</p> <p>24 Q. How many did you see?</p> <p>25 A. Six, eight. No more. I think</p>



Page 277

1 probably fewer than six or eight, but I'll say six.  
2 **Q. And who were those -- who showed those**  
3 **to you?**  
4 A. I was shown them during the  
5 preparation for the deposition. I had never seen them  
6 before.  
7 **Q. Were the call notes you were shown**  
8 **call notes from Kentucky reps, or do you know?**  
9 A. My recollection is some were.  
10 **Q. Did you hire anybody or ask anybody to**  
11 **review Mr. Shapiro's investigation for accuracy?**  
12 A. I did not ask would his investigation  
13 be audited for accuracy. There were many people in  
14 the law department and then the compliance department  
15 who may well have done so, but I don't know.  
16 **Q. And would you expect if we did our own**  
17 **investigation we would have essentially about the same**  
18 **number of improper call notes that he found?**  
19 A. That would be my expectation.  
20 MR. THOMPSON: Do you want to take a  
21 little break?  
22 MR. STRAUBER: Let's take a short  
23 break.  
24 MR. THOMPSON: That's fine.  
25 VIDEOGRAPHER: We are off the record

Page 278

1 at 5:26 p.m.  
2 (RECESS)  
3 VIDEOGRAPHER: We are back on the  
4 record at 5:55 p.m.  
5 BY MR. THOMPSON:  
6 **Q. So let me show you an e-mail. If**  
7 **you'll go to page 2 of this e-mail.**  
8 (Passing document.)  
9 This is from Jim Speed dated Tuesday,  
10 November 30th. Let's mark this as Exhibit 35.  
11 (DEPOSITION EXHIBIT NO. 35 MARKED)  
12 **Q. Dated November 30th, 1999. Second**  
13 **paragraph, "During physician calls, this issue is a**  
14 **topic of hot discussion between me and the physician.**  
15 **While many salespeople have sold controlled-release**  
16 **opioids as having less abuse potential, the current**  
17 **situation has placed us in an awkward situation. I**  
18 **feel like we have a credibility issue with our**  
19 **product.**  
20 "Many physicians now think OxyContin  
21 is obviously the street drug all the drug addicts are  
22 seeking. Issues like purposely crushing the 40  
23 milligram and 80 milligrams tabs to 'get high' have  
24 been expressed. I have heard from physicians that  
25 pharmacists -- and pharmacists that on the streets

Page 279

1 people are finding ways to extract the Oxycodone from  
2 the tablet and are using a cotton ball to filter the  
3 talc as they draw it up in a syringe for 'main  
4 lining.'"  
5 Were you aware that that was a concern  
6 in November of 1999?  
7 A. No.  
8 **Q. When did you first become aware that**  
9 **OxyContin was being diverted or being abused?**  
10 A. In the winter -- to the best of my  
11 recollection, winter of 2000. That is early in the  
12 year 2000.  
13 **Q. Who is Dr. J. David Haddox?**  
14 A. Dr. Haddox is both a dentist and an  
15 M.D. He's an expert in both analgesic pain -- the use  
16 of analgesics and pain management in general, and  
17 also, I think, is a recognized expert on addiction and  
18 treatment of addiction.  
19 **Q. Did he work for Purdue Pharma?**  
20 A. He did.  
21 **Q. And what about Rena Golden and Windell**  
22 **Fisher, what were their jobs?**  
23 A. Rena Golden, I don't know; and Windell  
24 Fisher was a sales manager, but I don't recall how  
25 high up he was in sales management. He was a -- I

Page 280

1 think he was a regional manager at that point.  
2 **Q. And what about Jim Speed?**  
3 A. I recognize the name, but I don't -- I  
4 can't tell you what his position was. He was a field  
5 salesperson. I don't know whether he was a manager or  
6 not, if he was a district manager or sales manager.  
7 **Q. Is it true that Windell Fisher was a**  
8 **regional manager with oversights for the districts and**  
9 **territories located in Kentucky?**  
10 A. I don't know.  
11 **Q. Is it true that OxyContin does produce**  
12 **a buzz or euphoria just like -- the controlled-release**  
13 **just like the immediate-release?**  
14 A. When used in pain patients --  
15 **Q. Yes.**  
16 A. -- or when abused?  
17 **Q. When used in pain patients.**  
18 A. I don't -- I can't tell you the  
19 percentages. I'm sure there are some people who might  
20 say that they feel a sense of euphoria. I really  
21 don't know what "buzz" means when people say they have  
22 a buzz; I'm not familiar. But there may be a brief  
23 period of time in which they feel some euphoria or  
24 sensation.  
25 **Q. And whether you feel a buzz or**

Page 281

1 **euphoria, does that have to do with how quickly the**  
 2 **drug works?**  
 3 A. Not so -- well, that's an element, but  
 4 it has to do also with the dose, and also with the  
 5 patient's familiarity. If they've been on the same  
 6 dose for a while, I would think it's far less likely.  
 7 And then there's individual patient variation finally.  
 8 **Q. And with respect to peaks and valleys,**  
 9 **do the peaks and valleys that are referred to in all**  
 10 **the marketing materials, or a number of the marketing**  
 11 **materials, does that have to do with whether somebody**  
 12 **experiences a euphoria from taking OxyContin?**  
 13 A. If they have any psyche --  
 14 psychological experience, like euphoria, it's most  
 15 likely to be at the peak blood level. So the fewer  
 16 the peaks, the fewer the periods of euphoria. But I'm  
 17 just generalizing. I'm not telling you that we've  
 18 ever measured that.  
 19 **Q. When did you first become aware that**  
 20 **Purdue had marketed and promoted OxyContin as having**  
 21 **less abuse potential?**  
 22 A. Not until the investigations were  
 23 done. And I can't tell you which investigation or  
 24 when, but I certainly didn't know that people were  
 25 saying that until I was told by management that they

Page 282

1 had done investigation and found that some people had  
 2 said that.  
 3 **Q. Let me -- let me ask you about**  
 4 **patients who have not had a prior incidence of**  
 5 **addiction or abuse, but just someone who's put on**  
 6 **OxyContin and has never had an opioid in the past. Do**  
 7 **you know if they're put on a 20 milligram dose of**  
 8 **OxyContin twice a day how long they would have to take**  
 9 **it before developing dependency?**  
 10 A. I can give you a guess, but I don't  
 11 know. It would -- there's enormous individual  
 12 variation here. So you can't say with any one person  
 13 or predict that this person will develop dependency or  
 14 that this person won't at 40 milligrams a day. I  
 15 assume that's the presumptive daily dose you're asking  
 16 me about?  
 17 **Q. Yes. Do you know if Purdue ever**  
 18 **conducted any studies to determine how long a**  
 19 **non-malignant pain patient who's never had an opioid**  
 20 **before would have to be on the drug before they**  
 21 **developed dependency or addiction?**  
 22 A. I'm not aware of those studies being  
 23 conducted.  
 24 **Q. Is it fair to say that if Purdue**  
 25 **wanted to do a study to make that determination that**

Page 283

1 **could be done?**  
 2 A. Dependency, that is, physiologic  
 3 dependence I think would be an achievable study that  
 4 could be done. Addiction remains to be seen. A lot  
 5 of people would say it's almost impossible to do that.  
 6 But Purdue and other industry partners are just on  
 7 the -- on the cusp of trying to do that with a number  
 8 of studies.  
 9 **Q. Could you do a retrospective study, or**  
 10 **could you have done a retrospective study if you had**  
 11 **wanted to look at patients?**  
 12 A. I would have to think about whether I  
 13 could figure out a retrospective study. It would be  
 14 an interesting -- it's an interesting question, but I  
 15 don't know the answer to it.  
 16 **Q. And what was Robert Reder's role?**  
 17 A. Robert was a senior medical scientist  
 18 in the medical department.  
 19 **Q. And I want you to assume he's**  
 20 **testified that Purdue lacked any evidence that**  
 21 **OxyContin had a lower abuse potential.**  
 22 **If that's true -- if he testified to**  
 23 **that -- assume he testified to that -- would you agree**  
 24 **with that statement or disagree?**  
 25 A. If you could just repeat the statement

Page 284

1 so that I can concentrate on it.  
 2 **Q. That he testified Purdue lacked any**  
 3 **evidence that OxyContin had a lower abuse potential.**  
 4 MR. STRAUBER: Yeah, I object to the  
 5 question. It's a very odd hypothetical question.  
 6 A. I don't know of any study that was  
 7 done, but I don't know that no study was done. I just  
 8 can't -- I can't tell you for sure.  
 9 You're referring to Purdue Frederick  
 10 and you're referring to the time frame up to 2007 or  
 11 2010?  
 12 **Q. Yes.**  
 13 A. Okay. I just wanted to -- I don't  
 14 know. My answer is the same, but I just wanted to be  
 15 clear that my answer conformed.  
 16 **Q. Has Purdue Pharma done a study since**  
 17 **then?**  
 18 A. We've done studies on abusability of  
 19 many formulations, and we did them in the course of  
 20 trying to develop and then select amongst several  
 21 formulations. These were studies that were pioneered  
 22 by Purdue with outside investigators, and they  
 23 attempted to and, I think, quite -- would be  
 24 considered today state-of-the art, to discern how  
 25 easily practiced drug abusers might be able to defeat

Page 285

Page 287

1 the delivery system and abuse it.  
2 **Q. Have you ever seen the deposition of**  
3 **Curtis Wright in the Poston case?**  
4 A. In the?  
5 **Q. Poston. P-O-S-T-O-N.**  
6 A. No, I have not.  
7 **Q. Did you ever discuss with Curtis**  
8 **Wright whether studies could have been done on the**  
9 **abuse potential of OxyContin prior to the release of**  
10 **OxyContin?**  
11 A. No.  
12 **Q. If he testified those studies were**  
13 **possible and could have been performed prior to the**  
14 **release of OxyContin, would it surprise you?**  
15 A. I would have to know more before I'd  
16 registered surprise or not. I'd have to know what he  
17 meant, what kind of studies and -- and so on. Perhaps  
18 he said we could have attempted to do it. That would  
19 surprise me less than if he said absolutely it could  
20 have been done. So I just have to know what he's  
21 talking about.  
22 **Q. This -- let me hand you this e-mail.**  
23 **Sorry about the delay there.**  
24 **(Passing document.)**  
25 **This is an e-mail from -- appears to**

1 A. He was a doctor who a friend in Utah  
2 was using. And he must -- it looks like he may have  
3 asked through his friend for me to send him some  
4 Betadine. He was a DPM, Doctor of Podiatric Medicine,  
5 and they do a lot of surgery, and Betadine is a  
6 necessary part of any surgical procedure. At least  
7 it's an antiseptic, and antiseptics are a necessary  
8 part.  
9 **Q. Let me give you a copy of this. And**  
10 **this is -- if we can mark this as Exhibit 37.**  
11 **(DEPOSITION EXHIBIT NO. 37 MARKED)**  
12 **(Passing document.)**  
13 **Q. This is an e-mail dated May 15th,**  
14 **1996. It looks like it was received by P. Goldenheim,**  
15 **M.D.**  
16 **He does work at Purdue Pharma,**  
17 **correct?**  
18 A. Yes. He was --  
19 **Q. And it looks like you were also**  
20 **included by fax, Dr. Richard Sackler?**  
21 A. That's what it says.  
22 **Q. And if you go to the third page, it**  
23 **says, "Professor Dayer did not see any major problems**  
24 **regarding registration of OxyContin in Switzerland.**  
25 **Some specific points need to be clarified (monitored**

Page 286

Page 288

1 **be Richard Sackler on 8-27-97 to Craig A. McManama in**  
2 **Utah. That's a doctor; is that right?**  
3 A. The name is not familiar.  
4 **Q. If you will go to the -- why don't we**  
5 **mark this 36.**  
6 **(DEPOSITION EXHIBIT NO. 36 MARKED)**  
7 **Q. If you'll go to the bottom of the**  
8 **second paragraph, you write to him, "I am drawing your**  
9 **attention to our newest product, OxyContin Tablets**  
10 **(controlled-release Oxycodone HCI) and have included**  
11 **some literature. Most important to your practice,**  
12 **time of onset of OxyContin is as rapid as**  
13 **Immediate-Release Oxycodone, but duration is a full 12**  
14 **hours and the patient reaches full blood levels in**  
15 **just two doses (one day)."**  
16 **Was it your belief that the time of**  
17 **onset of OxyContin was as rapid as Immediate-Release**  
18 **Oxycodone?**  
19 A. That is what our data showed more or  
20 less. Almost as immediate. I believe in the study  
21 that I was referencing, but didn't reference in the  
22 note, I think it was 41 minutes for immediate-release  
23 and 45 minutes or something like that for OxyContin.  
24 Now I recognize who he is.  
25 **Q. And who is he?**

1 **release approval as for DHC may be a possibility). He**  
2 **considers the following subjects as important and**  
3 **would need further investigations:"**  
4 **The first paragraph says, "Information**  
5 **about the abuse/addiction potential versus other**  
6 **opioids because of the rapid onset of action of**  
7 **OxyContin."**  
8 **Did I read that correctly?**  
9 A. You did.  
10 **Q. Did -- do you know if you obtained**  
11 **approval to sell OxyContin in Switzerland?**  
12 A. I believe we did.  
13 **Q. And did you provide him with the**  
14 **information about the abuse/addiction potential versus**  
15 **other opioids because of the rapid onset of action of**  
16 **OxyContin that he requested?**  
17 A. I'm not clear that he was actually  
18 requesting it, just saying that it was his opinion it  
19 was necessary for registration, but I don't know  
20 whether anything was produced. I doubt anything was  
21 produced here that was not produced for the FDA or the  
22 other European agencies who approved OxyContin. If  
23 anything was produced that was different, that is,  
24 additional studies, they would have also gone to the  
25 FDA.



Page 289

1 Q. Do you know why he was concerned about  
2 the rapid onset of action of OxyContin with respect to  
3 abuse and addiction?

4 A. I don't know.

5 Q. With respect to the claims about peaks  
6 and valleys, did you ever review the information to  
7 see what peaks and valleys were present in the plasma  
8 blood levels with respect to OxyContin?

9 A. In the five months did you say?

10 Q. No. Did you ever review --

11 A. I'm sorry. My hearing is not perfect.

12 Q. That's okay.

13 I said, with respect to peaks and  
14 valleys, the claim that peaks and valleys are  
15 different, did you ever review the literature  
16 regarding that?

17 A. I was familiar with some studies that  
18 demonstrated that. It was, to some extent, an obvious  
19 characteristic. Since the drug was taken twice a day,  
20 you'd have two peaks; whereas, the immediate release  
21 was taken four to six times a day and so you'd have  
22 four to six peaks.

23 Q. Do you know if the level of peaks and  
24 troughs are similar or different?

25 A. My recollection is that they are about

Page 290

1 the same. But that's a fuzzy recollection and I would  
2 need to see the data to refresh myself and be sure. I  
3 think you -- my recollection is they were close.

4 Q. Do you know whether the  
5 controlled-release, because it maintained a higher  
6 level and didn't have as much trough during the day,  
7 would be more likely to cause addiction or less likely  
8 to cause addiction?

9 A. I -- my impression is that the average  
10 blood level was the same, and I'm not certain -- so  
11 your question is, given that the average blood level  
12 is the same -- if I'm correct. And that's a  
13 recollection. I haven't seen that data for a very  
14 long time. The only difference -- the difference in  
15 the blood level, the remarkable difference, would be  
16 half as many or a third as many peaks and valleys.

17 And to the extent that somebody was  
18 seeking the drug or enjoying that element of the drug,  
19 the peak effect, I would think that the drug would be  
20 less attractive. But it's a conjecture, it's not  
21 knowledge, because I don't think we ever did a study  
22 that I'm aware of.

23 Q. My question is, if somebody has a  
24 controlled-release and maintains a higher level during  
25 the day with respect to valleys, they don't have as

Page 291

1 many valleys, does that cause -- is that more likely  
2 to make them become addicted or less likely, do you  
3 know?

4 A. I don't think the -- the valleys were  
5 about the same, too. So I don't think that the  
6 valleys or the height of the peak would have been any  
7 different. The principal difference, I think, would  
8 have been -- and you're saying "addictive" -- would  
9 have been fewer peaks. And all of this presumes that  
10 they were abusing the drugs as they were made and  
11 presented.

12 Q. And if they use it as made and  
13 presented, they would also be taking drugs for  
14 breakthrough pain potentially, correct?

15 A. They might well be -- have gotten two  
16 prescriptions from a physician.

17 Q. Right. If they -- you know, the  
18 studies show that it lasts from 8 to 12 hours, and if  
19 it lasts 8 or 9 hours in a patient and doesn't last  
20 until 12, he may need an additional prescription --  
21 rescue prescription for that also, correct?

22 A. Possibly. I would have told the  
23 physician, use the rescue, compute the daily dose and  
24 try giving that dose as OxyContin twice a day; that  
25 is, half of that dose twice a day.

Page 292

1 Q. Do you know, was there any study done  
2 to determine whether patients who were given  
3 Controlled-Release OxyContin and then had to take  
4 another one, because it didn't last 12 hours, were  
5 more likely to develop addiction or less likely to  
6 develop addiction?

7 A. I know of no such study, and I don't  
8 recollect that anybody ever suggested such a study or  
9 such a hypothesis. I would have had -- I would have  
10 asked them why do you think that they are more prone  
11 or less prone to addiction. I wouldn't think it would  
12 make a difference. Again, not based on a study but  
13 based on a conjecture. So I really would have to  
14 understand what is the reasoning why -- why taking the  
15 drug three times a day would be more likely to cause  
16 addiction or less likely.

17 MR. THOMPSON: Could we go off the  
18 record one second?

19 VIDEOGRAPHER: We are off the record  
20 at 6:20 p.m.

21 (RECESS)

22 VIDEOGRAPHER: We are back on the  
23 record at 6:33 p.m.

24 BY MR. THOMPSON:

25 Q. What I'd like to do is have you sift

Page 293

Page 295

1 through these documents, and with the exception of the  
2 GAO report, are all of these documents that are kept  
3 in the ordinary course of business at Purdue?

4 A. No, they would not all have been kept,  
5 to my knowledge, in the ordinary course of business.  
6 We would have had some sort of destruction policy.  
7 But we have been engaged in litigation for so long and  
8 so many different matters that basically, at least my  
9 documents I have, I don't think anything has been  
10 thrown away.

11 Q. Are these all documents that are  
12 generated in the ordinary course of business at  
13 Purdue?

14 A. Or at -- at Purdue Frederick or in  
15 other companies or some of the overseas companies,  
16 yes.

17 Q. Sure. Purdue Pharma and Mundipharma?

18 A. Purdue Pharma, Mundipharma, Purdue  
19 Frederick, whatever.

20 Q. And are all of these business records?

21 A. I don't know. You know, I'm not a  
22 lawyer.

23 MR. STRAUBER: I think that's asking  
24 for a legal conclusion.

25 MR. THOMPSON: I'm not sure it is.

1 conduct has led to an increase in people being  
2 addicted in the Commonwealth of Kentucky?

3 A. No.

4 Q. Do you agree that education  
5 information presented by a drug company to physicians  
6 needs to be fair and balanced?

7 A. Yes.

8 Q. And do you agree if a company learns a  
9 physician does not understand a drug that is being  
10 sold by the company that they have a responsibility to  
11 educate them properly about the drug?

12 A. Yes.

13 Q. Do you think Purdue has an obligation  
14 to provide physicians with truthful information?

15 A. Yes.

16 Q. Do you believe Purdue provided any of  
17 the physicians in Kentucky with information that was  
18 not truthful?

19 A. No, I don't believe that.

20 Q. And is that because you don't believe  
21 any of the sales reps engaged in the conduct that  
22 is -- any of the sales reps in Kentucky engaged in the  
23 conduct that is described in the felony plea  
24 agreement?

25 A. That's my belief. I don't have any

Page 294

Page 296

1 Q. Can you answer the question?

2 A. Okay. Are they business records? I  
3 really don't understand what that term means. It's  
4 not a term I've ever used, so -- they are what they  
5 are.

6 Q. I asked you about the OxyContin 20  
7 milligram prescription. To your knowledge, was  
8 anything done to determine how many people put on 40  
9 milligram, 80 milligram or 160 milligram prescriptions  
10 would become addicted or dependent if they took it for  
11 a certain period of time?

12 A. No.

13 Q. Sitting here today, after all you've  
14 come to learn as a witness, do you believe Purdue's  
15 conduct in marketing and promoting OxyContin in  
16 Kentucky caused any of the prescription drug addiction  
17 problems now plaguing the Commonwealth?

18 A. I don't believe so.

19 Q. Sitting here today, after all you've  
20 come to learn as a witness, do you believe that  
21 Purdue's conduct in Kentucky has led to an excessive  
22 or unnecessary amount of opioids being located  
23 throughout the Commonwealth of Kentucky?

24 A. I don't believe so.

25 Q. Do you believe that any of Purdue's

1 facts to inform me otherwise.

2 Q. And you never checked, did you?

3 A. I don't know how I would have checked  
4 that.

5 Q. Could you have looked at the call  
6 notes from your salespeople in Kentucky to see what  
7 they were telling physicians and whether it was the  
8 same information referenced in the felony plea  
9 agreement?

10 A. I could have looked at the call notes,  
11 but I believe that all the call notes were reviewed at  
12 least once and probably multiple times by many people.

13 Q. And why do you have that belief?

14 A. Because I know of the number of  
15 investigations and the extensive training and  
16 retraining that was done, and I believe it would have  
17 surfaced, any evidence of wrongdoing and been  
18 actionable.

19 But as I've said, I've only seen a few  
20 call notes, and the ones I've seen are so cryptic and  
21 imprecise and unclear in their references. Often you  
22 don't even know who's saying what. These were memory  
23 joggers that I've seen. They were written by a person  
24 who had a conversation who wanted to recall that  
25 conversation two, four, six weeks later.

Page 297

1 **Q. And when the call notes say "I told**  
 2 **the doctor about less abuse" or "I told the doctor the**  
 3 **drug had less euphoria" or emphasized that, that would**  
 4 **be improper, correct?**

5 A. If such call notes existed and they  
 6 were that explicit, yes. I didn't see any like that.

7 **Q. Did it ever occur to you to check and**  
 8 **see whether the people you hired and paid 50 million**  
 9 **dollars for to do a presentation and defend Purdue in**  
 10 **the U.S. Attorney's Office in the Western District of**  
 11 **Virginia gave accurate and truthful information to the**  
 12 **U.S. attorneys regarding the call notes?**

13 MR. STRAUBER: I object to the form of  
 14 the question.

15 You can answer.

16 A. It wouldn't occur to me that any  
 17 attorney that we hired would give false information to  
 18 any other attorney, and much less so to the U.S.  
 19 attorney and his deputies.

20 **Q. When doing a call note search, did you**  
 21 **ever find out how they went about it?**

22 A. I'm sorry?

23 **Q. When -- when the people you hired did**  
 24 **their call note search, did you ever find out how they**  
 25 **went about it?**

Page 298

1 A. At the time it was described fairly  
 2 explicitly, but that was years and years ago. That  
 3 was almost 15 years ago.

4 MR. STRAUBER: I think any further  
 5 questions along this line will really impinge on  
 6 attorney-client privilege, so I object.

7 **Q. Was a breakdown of the results ever**  
 8 **provided to you?**

9 A. In a way, yes.

10 **Q. When you say "in a way," how was it**  
 11 **provided?**

12 A. Well, I was told that --

13 MR. STRAUBER: Let me interrupt. I  
 14 think your questions are really leading the witness  
 15 into attorney-client communications, and I would  
 16 direct him not to -- not to respond to those  
 17 questions.

18 MR. THOMPSON: Well, certify the  
 19 question and we'll talk to the judge about it. I  
 20 think I'm entitled to go into it. If the judge says  
 21 no, then of course we can't.

22 MR. STRAUBER: That's fine.

23 (Whereupon, the pending question  
 24 was certified to the Court for  
 25 ruling.)

Page 299

1 Q. So here's a call on a Marc Dubick in  
 2 Lexington, Kentucky from a K. Boyles.

3 Do you know who that is?

4 A. I don't know either of those people.

5 **Q. Under "Notes Memo" it says, "Got to**  
 6 **convince him to counsel patients that they won't get**  
 7 **buzzed as they will with short-acting."**

8 **Now, would that be an appropriate**  
 9 **thing to do, counsel the doctor that the patients --**  
 10 **tell the doctor -- convince the doctor to counsel**  
 11 **patients that they won't get buzzed as they will with**  
 12 **short-acting?**

13 MR. STRAUBER: Again, if you're  
 14 reading from a document, please show the witness.

15 (Passing document.)

16 MR. STRAUBER: May I have a copy?

17 MR. THOMPSON: This is the only copy  
 18 we have. You'll have to look at it together.

19 A. This is pretty easy to read. So could  
 20 you repeat the question?

21 **Q. Yes. Would it be appropriate to**  
 22 **counsel the doctor -- to convince the doctor to**  
 23 **counsel his patients that they would get less buzz**  
 24 **with OxyContin versus --**

25 A. Well, what it says here is that they

Page 300

1 won't get a buzz. And I don't think that telling a  
 2 patient "I don't think you'll get a buzz" is harmful,  
 3 because if they do, I would think that the patient  
 4 would report it and he would know, oh -- I don't know  
 5 why he would have told this to a patient. But I think  
 6 that it actually could be helpful, because many  
 7 patients won't get a buzz, and if he would like to  
 8 know if they do, he might have had a good medical  
 9 reason for wanting to know that.

10 **Q. Do you know whether telling patients**  
 11 **they won't -- telling doctors patients won't get a**  
 12 **buzz was one of the things prohibited by the -- in the**  
 13 **statement -- Agreed Statement of Facts in the felony**  
 14 **plea?**

15 A. Yes. But that isn't what it says. He  
 16 said -- we don't know what the conversation was  
 17 between the doctor and the rep. But, as I've  
 18 testified just a minute ago, I could see that this  
 19 could have been not only -- not harmless, but helpful.

20 **Q. Here's one --**

21 MR. STRAUBER: Are you going to mark  
 22 that as an exhibit?

23 MR. THOMPSON: No, I'm just going to  
 24 ask him about these.

25 **Q. Here is one --**



Page 301	Page 303
<p>1 MR. STRAUBER: The only difficulty I 2 have with that is, you're asking him questions about 3 them and then we, going forward from here, have no 4 record of what it is he was looking at.</p> <p>5 MR. THOMPSON: Well, this is my only 6 copy. That's why I don't want to --</p> <p>7 THE WITNESS: You can keep it.</p> <p>8 MR. STRAUBER: Why don't you mark it 9 as an exhibit, don't give me a copy --</p> <p>10 MR. THOMPSON: If you want to mark it 11 later, you can, but I'm going to ask him my questions 12 right now so I can get out of here.</p> <p>13 MR. STRAUBER: I object to this line 14 of questions.</p> <p>15 MR. THOMPSON: You can object. I 16 don't have to mark it if I don't want.</p> <p>17 <b>Q. Here is Ellen Ballard in Louisville,</b> 18 <b>Kentucky, sales rep Mark Curran.</b> 19 <b>Do you know who that is?</b> 20 A. Yes. 21 <b>Q. And in here it says, "Talked of less</b> 22 <b>euphoria and more convoluta with Oxy."</b> 23 <b>Would it be inappropriate to tell</b> 24 <b>patients they get less euphoria with Oxy?</b> 25 A. We really don't know what was said.</p>	<p>1 <b>time period, correct?</b> 2 A. Yes. 3 <b>Q. So by what kind of twisted logic are</b> 4 <b>you saying that saying this in 1998 wouldn't be</b> 5 <b>improper because the -- because the Agreed Statement</b> 6 <b>of Facts is in 2007?</b> 7 MR. STRAUBER: I object to the form of 8 the question. It isn't a question; it's 9 argumentative, and it's really uncalled for.</p> <p>10 <b>Q. If you can answer, go ahead.</b> 11 A. I think I should stand on what I said. 12 <b>Q. Well, let me ask you this. Tell me</b> 13 <b>all the bases you have for believing that saying this</b> 14 <b>in 1998, to talk of less euphoria with Oxy, would</b> 15 <b>somehow not be a problem because the agreed statement</b> 16 <b>was in 2007?</b> 17 A. I don't know what he said in 1998. I 18 know what he wrote, but I don't have quotes on it, I 19 don't have a dialogue. I wasn't present. I don't 20 know what he said. And I don't even know whether this 21 was a document upon which the Agreed Statement of 22 Facts was constructed. For all I know, this document 23 was tossed away as inexact or inexplicit. 24 <b>Q. Let me ask you about this document.</b> 25 <b>James Donley is the doctor at the Trover Clinic in</b></p>
Page 302	Page 304
<p>1 As I said, this is a memory jogger. He might have 2 said, "There may be less euphoria," or, "Some people 3 have less euphoria," or -- we just don't know what was 4 said here.</p> <p>5 <b>Q. Okay.</b> 6 A. If all he said was "There may be less 7 euphoria," that could be true, and I don't see the 8 harm. If he promised less euphoria, it shouldn't have 9 been said.</p> <p>10 <b>Q. An Agreed Statement of Facts doesn't</b> 11 <b>say you have to promise less euphoria, it says if you</b> 12 <b>mention to a doctor or infer that it causes less</b> 13 <b>euphoria, that's improper, correct?</b> 14 A. That was what we agreed to, yes. But 15 this was 1998, long before there was an Agreed 16 Statement of Facts.</p> <p>17 <b>Q. What difference does that make? If</b> 18 <b>it's improper in 2007, wouldn't it be improper in</b> 19 <b>1998?</b> 20 A. Not necessarily. 21 <b>Q. Well, the improper conduct that the</b> 22 <b>Agreed Statement of Facts -- the time period was 1996</b> 23 <b>to 2001, correct?</b> 24 A. Yes. 25 <b>Q. And if this is 1998, it's within that</b></p>	<p>1 <b>Madisonville, Kentucky who was called on by Holly</b> 2 <b>Will. The note's memo says, "Quick, reminded him that</b> 3 <b>Oxy gives flat blood levels, so less buzz than</b> 4 <b>Lortab."</b> 5 <b>Is that the type of statement that's</b> 6 <b>prohibited by the Agreed Statement of Facts?</b> 7 A. I don't know that that's what she 8 said. If you're asking me a hypothetical, I would say 9 that this is not -- neither accurate nor appropriate. 10 It doesn't actually give flat blood levels as you 11 know, and as our rep knew and as any doctor who had 12 been properly presented the product would know. But, 13 nevertheless, even though it is demonstrably wrong, it 14 would be still inappropriate to say on two bases; on 15 the basis of the Agreed Statement of Facts and also on 16 the basis it's untrue. 17 But, again, I have to emphasize, these 18 are not transcripts. These are about as distant from 19 transcripts as anybody can get. This is a memory 20 jogger, and I don't know what she said, and I find it 21 hard to believe that she said anything like this. 22 This was to remind her of a discussion. 23 <b>Q. Have you ever spoken to her?</b> 24 A. No. 25 <b>Q. Okay. This is Dr. David Parks in</b></p>

Page 305

Page 307

1 **Bowling Green, Kentucky, who was called on by Philip**  
2 **Gross. "Love the idea of getting effective pain**  
3 **relief, but not euphoria to get rid of druggies."**  
4 **(Passing document.)**  
5 **If it was discussed with him that it**  
6 **gives effective pain relief but not euphoria and he**  
7 **loved the idea, would that be inappropriate comments**  
8 **to make?**

9 A. Yes. If our rep made it. If the  
10 doctor made it, I don't think that it's -- it may be  
11 erroneous, but it isn't improper. And I don't know  
12 who made the statement.

13 **Q. If the rep made it --**

14 A. Or, in fact, even what statement was  
15 made. I have not -- I don't remember seeing any of  
16 these notes, by the way. But these are typical. They  
17 are fragments of fragments of fragments of a  
18 conversation that are designed to remind the rep of a  
19 conversation that he or she had two, three, four,  
20 five, six weeks prior. So they mean a lot, but  
21 without asking the person who wrote them what it  
22 meant, we don't, sitting here, have any idea what it  
23 means.

24 **Q. If the -- if the Purdue sales rep**  
25 **calls on a doctor in Kentucky and explains to him that**

1 at the package insert and could see was that in the  
2 package insert or was it reasonably the same as what  
3 was in the package insert. I'd have to do a textual  
4 analysis. It's close to what was in the package  
5 insert, very close, but it might have drifted away  
6 from the package insert so that at that time it was  
7 inappropriate. But I'm not sure because I have to  
8 read the two -- the hypothetical statement you put  
9 forward and the package insert to give you an opinion  
10 as to whether it has drifted away from the package  
11 insert.

12 **Q. It would be pretty easy to tell if we**  
13 **looked at the Agreed Statement of Facts because they**  
14 **outlined the comments they felt were improper between**  
15 **1996 and 2001, correct?**

16 A. I didn't memorize the Agreed Statement  
17 of Facts either. But, yes, if that statement was an  
18 example of an inappropriate statement, obviously it  
19 would -- we agreed it was inappropriate.

20 **Q. And these call notes, you-all actually**  
21 **required your -- your representatives or salespeople**  
22 **to do call notes and instructed them to do them within**  
23 **minutes of completion of the call, correct?**

24 A. That's correct.

25 **Q. And that's because the information**

Page 306

Page 308

1 **Oxy has less potential for abuse due to its sustained**  
2 **release, would that be improper and the type of**  
3 **statement that was agreed was improper in the Agreed**  
4 **Statement of Facts when Purdue pled guilty to a**  
5 **felony?**

6 A. Okay. State the hypo --

7 THE WITNESS: Could he just restate  
8 the hypothetical question?

9 **Q. Sure. If Purdue called -- I want you**  
10 **to assume a hypothetical. If Purdue called on a**  
11 **doctor and said that OxyContin has less potential for**  
12 **abuse due to its sustained release, would that be the**  
13 **type of statement that would be inappropriate?**

14 A. And when was that said? You're going  
15 to set a time limit to it or a time period to that  
16 hypothetical?

17 **Q. No. I'm just trying to get an idea of**  
18 **what statements you consider inappropriate versus**  
19 **appropriate.**

20 **Would that be an inappropriate**  
21 **statement for a rep to tell a doctor?**

22 A. Today, yes.

23 **Q. Would it have been inappropriate from**  
24 **1996 to 2001?**

25 A. I'm not sure, because I'd have to look

1 **recorded is generally more accurate when it's recorded**  
2 **immediately after the sales call while the events of**  
3 **the call are fresh in the representatives' minds,**  
4 **correct?**

5 A. I don't think that that would be true  
6 in the way these call notes were used -- written or  
7 used when reviewed. I don't think it would have  
8 mattered if they had done it that evening.

9 But when the system was -- or when  
10 that policy was established, whoever established it  
11 probably had a different use in mind and expected them  
12 to be much, much more -- much closer to a "he said, I  
13 said," "he said, I said," "he's interested in this, I  
14 have to get him an answer for that."

15 And the notes I've seen so far depart  
16 so far from that that I don't think it mattered  
17 whether they did it in a minute, an hour or a day. So  
18 long as the conversation was fresh in their mind, they  
19 sketched some notes to remind them of the conversation  
20 a few weeks later, two to six weeks later.

21 **Q. When you disciplined people, how did**  
22 **you make a determination which ones needed to be**  
23 **disciplined -- sales reps needed to be disciplined?**

24 A. I didn't discipline anybody and so I  
25 was not asked to make a determination.

Page 309

1 **Q. Do you know if the people who did make**  
2 **that determination relied on the call notes in**  
3 **determining whether discipline should take place?**  
4 A. I don't know.  
5 **Q. Do you know if the reps in Kentucky**  
6 **were disciplined for having inappropriate call notes**  
7 **that reflected their conversations with physicians?**  
8 A. I don't know.  
9 **Q. If a sales rep went to a doctor and**  
10 **said "Discussed lack of buzz and, thus, won't be drug**  
11 **seeking," would that be an inappropriate comment to**  
12 **make?**  
13 A. Could you form the comment for me,  
14 since it's a hypothetical, as a sentence and then I'll  
15 respond to it?  
16 **Q. If a sales rep went to a physician and**  
17 **said, "You don't get a buzz with OxyContin," would**  
18 **that be an inappropriate comment?**  
19 A. Yes.  
20 **Q. If a sales rep went to a physician --**  
21 MR. STRAUBER: I have to -- you're  
22 going through a whole line of questioning where you  
23 have documents, you purport to be reading from them,  
24 you're not showing them to me, you're not showing them  
25 to the witness. I don't think it's a fair line of

Page 310

1 inquiry.  
2 MR. THOMPSON: I'm asking him what  
3 types of questions a sales rep says. Whether I've got  
4 notes or documents or I've got them in my head doesn't  
5 matter. I get to ask my questions. You can follow up  
6 if you want.  
7 MR. STRAUBER: You appear to have  
8 documents in front of you that you're reading from.  
9 **Q. If a salesman went in and discussed**  
10 **abuse potential and benefits of Oxycodone --**  
11 **OxyContin -- I'm sorry -- and it not giving a**  
12 **euphoria, would that be inappropriate?**  
13 MR. STRAUBER: Objection.  
14 A. I believe that would be inappropriate.  
15 **Q. If he tells them that there's less**  
16 **euphoria with OxyContin, he or she, the sales rep,**  
17 **says there's less euphoria with OxyContin, would that**  
18 **be inappropriate?**  
19 A. Less amount of euphoria or less likely  
20 to be euphoria or something else?  
21 **Q. Either of those.**  
22 A. I believe that today that would  
23 definitely be inappropriate.  
24 **Q. Would it have been inappropriate**  
25 **between 1996 and 2006?**

Page 311

1 A. I would have to study the package  
2 insert.  
3 **Q. Let me -- let me go back and talk**  
4 **about what -- maybe this will help us here.**  
5 Under "Misbranding of OxyContin" there  
6 were several things that were brought up that were --  
7 were inappropriate. And it says, "With the intent to  
8 defraud or mislead" --  
9 MR. STRAUBER: Are you reading from  
10 the Agreed Statement of Facts?  
11 MR. THOMPSON: I'm reading from page 5  
12 of the Agreed Statement of Facts.  
13 A. What number is that?  
14 MR. STRAUBER: It's Exhibit 33.  
15 A. I'll have to find it now. Is this it?  
16 **Q. Yes.**  
17 A. And where are you reading from,  
18 please?  
19 **Q. Page 5, paragraph 20. "With the**  
20 **intent to defraud or mislead" -- I'm sorry. Let's**  
21 **back up.**  
22 "Purdue's supervisors and employees,  
23 between December 12th, 1995" --  
24 MR. STRAUBER: Again, you left out the  
25 word "certain."

Page 312

1 MR. THOMPSON: Sorry. Well, I'll just  
2 read it in its entirety, then.  
3 MR. STRAUBER: Okay.  
4 **Q. "Beginning on or about December 12th,**  
5 **1995 and continuing on or about June 30th, 2001,**  
6 **certain Purdue supervisors and employees, with the**  
7 **intent to defraud or mislead, marketed and promoted**  
8 **OxyContin as less addictive, less subject to abuse and**  
9 **diversion, less likely to cause tolerance and**  
10 **withdrawal than other pain medications."**  
11 **Did I read that correctly?**  
12 A. I think so. It's getting late, so I  
13 might have missed, too.  
14 **Q. And it was a review of the call notes**  
15 **by the U.S. Attorney's Office that formed the basis of**  
16 **this plea agreement, correct?**  
17 A. I don't know that.  
18 **Q. Did you ever review any of the**  
19 **documents filed by the U.S. Attorney's Office in the**  
20 **case where Purdue pled guilty to the felony?**  
21 A. No, I didn't.  
22 **Q. All right. And it says here --**  
23 A. They didn't footnote these documents,  
24 so I don't even know if they -- the documents -- they  
25 reviewed millions of documents. I don't know whether



Page 313

Page 315

1 they referenced any of the documents to this. I  
2 certainly couldn't have reviewed millions of  
3 documents. No one person could have done that.  
4 **Q. Under number -- subparagraph "e" it**  
5 **says, "Told certain healthcare providers that**  
6 **OxyContin did not cause a 'buzz' or euphoria."**  
7 **And that would be improper, correct?**  
8 A. It depends on -- oh, did not cause.  
9 Yes, that would be inappropriate.  
10 **Q. "Caused less euphoria, had less**  
11 **addiction potential, had less abuse potential, was**  
12 **less likely to be diverted than immediate-release**  
13 **opioids, and could be used to 'weed out' addicts and**  
14 **drug seekers."**  
15 A. In its totality, it's inappropriate.  
16 **Q. And one of the things that it points**  
17 **out in here, when we went on, was the osteoarthritis**  
18 **study.**  
19 **Do you remember us talking about that?**  
20 A. I do.  
21 **Q. Here's Carol Neilheisel, sales rep.**  
22 **This is William Yates, doctor, Florence, Kentucky.**  
23 **And the note's memo says, "Brought osteoarthritis**  
24 **studies that show non-addiction. Discussed how he**  
25 **could use Oxy to deter addictive behavior. Less**

1 MR. THOMPSON: I wasn't going to.  
2 MR. STRAUBER: Could you identify it  
3 so we'll know what it is?  
4 MR. THOMPSON: I thought I did. It's  
5 the reply of the United States to Defendant's response  
6 to Blue Cross/Blue Shield.  
7 **Q. I'm looking at the third paragraph.**  
8 **"Purdue states an analysis of the notes that Purdue's**  
9 **sales representatives kept from their visits to**  
10 **physicians revealed that less than .2 percent**  
11 **contained any evidence of statements that were**  
12 **arguably improper."**  
13 **Were you aware that they had claimed**  
14 **that two-tenths of one percent of the sales notes were**  
15 **arguably improper?**  
16 A. As they say, actually, here in their  
17 response, "were even arguably improper."  
18 **Q. But the U.S. attorney says, "This bare**  
19 **statistical reference does not provide a complete**  
20 **picture of the magnitude of the unlawful activity**  
21 **described in the information in the Agreed Statement**  
22 **of Facts. In fact, these very same notes show the**  
23 **pervasive nature of the false and misleading**  
24 **statements.**  
25 "For example, according to the notes,

Page 314

Page 316

1 **pills, less potential for abuse."**  
2 **(Passing document.)**  
3 **Would you agree that those comments**  
4 **would be improper and inappropriate?**  
5 A. If they were quotes of the transcript  
6 or of what he said, yes, this is inappropriate.  
7 **Q. And --**  
8 A. In its totality it's inappropriate.  
9 MR. STRAUBER: Are you planning to  
10 mark this as an exhibit?  
11 MR. THOMPSON: I was not going to mark  
12 it, no.  
13 **Q. And it says here, "Purdue states**  
14 **that" -- I'm reading from the reply of the United**  
15 **States to Defendant's response to Blue Cross/Blue**  
16 **Shield of Tennessee, another private third-party's**  
17 **request for restitution.**  
18 **(Passing document.)**  
19 A. This is a new document, right?  
20 **Q. Uh-huh.**  
21 A. Is this an exhibit or not?  
22 **Q. I just want to ask you about some of**  
23 **the information in here.**  
24 MR. STRAUBER: You're not going to  
25 mark this as an exhibit either?

1 in at least 41 states physicians were informed that  
2 addicts would not like OxyContin or that OxyContin  
3 could be used to weed out drug seekers because addicts  
4 would not like it. In at least 49 states physicians  
5 were informed that OxyContin produces no 'buzz' or  
6 euphoria, and in 50 states physicians were informed  
7 that OxyContin had less abuse potential than other  
8 opioids."  
9 Would all of those comments be  
10 improper?  
11 A. Those comments would be improper, yes.  
12 **Q. This says, "In addition, once Purdue**  
13 **learned of the investigation, it conducted training**  
14 **that cautioned sales representatives to avoid**  
15 **including references to the false and misleading**  
16 **statements in their call notes. Eventually Purdue**  
17 **changed the call notes system altogether to preclude**  
18 **such references by allowing sales representatives to**  
19 **choose only from preselected menu items that, not**  
20 **surprisingly, omitted the false and misleading**  
21 **statements that the employees had previously -- that**  
22 **the employees previously -- had previously**  
23 **spontaneously recorded in the notes."**  
24 **Were you aware of that?**  
25 MR. STRAUBER: I object to the form of

Page 317

1 that question. You're showing the witness an argument  
2 written by the government and submitted to the Court  
3 in a brief that this witness has never seen. There  
4 are government arguments and you're asking if he was  
5 aware of it.  
6 MR. THOMPSON: I'm asking if he was  
7 aware of that activity.  
8 A. What activity?  
9 Q. That "Once Purdue learned of the  
10 investigation, it conducted training that cautioned  
11 sales representatives to avoid including references to  
12 the false and misleading statements in their call  
13 notes." That's number one.  
14 Were you aware they did that?  
15 A. I don't think they did that.  
16 Q. And it says, "Eventually Purdue  
17 changed the call notes system altogether to preclude  
18 such references by allowing sales representatives to  
19 choose from preselected menu items that, not  
20 surprisingly, omitted the false and misleading  
21 statements that the employees had previously  
22 spontaneously recorded in their notes."  
23 Were you aware that that had occurred?  
24 MR. STRAUBER: Well, I object. You're  
25 assuming that something occurred based upon an

Page 318

1 argument of one party to a litigation in a brief.  
2 MR. THOMPSON: All right.  
3 A. Can I verify that this occurred? I  
4 can't.  
5 Q. The statements referenced in the  
6 Agreed Statement of Facts under "Misbranding of  
7 OxyContin" --  
8 A. I don't even see a date on this.  
9 Q. The statements --  
10 A. I'm sorry. Can we -- are we on the  
11 same document, or not?  
12 Q. No. I'm asking about the Agreed  
13 Statement of Facts now.  
14 A. Oh, okay, we're back on that. Okay.  
15 Q. The statement under "Misbranding of  
16 OxyContin" --  
17 A. What page or what number?  
18 Q. Page 5. You've read paragraph 20 in  
19 its entirety, correct?  
20 A. I had read it, but it might help me to  
21 read it again. But why don't you pose your question?  
22 Q. Are those the statements that were  
23 improper and constituted the guilty plea?  
24 A. Of Purdue Frederick?  
25 Q. Yes.

Page 319

1 MR. STRAUBER: Can I hear the question  
2 again? I just missed it.  
3 Q. The statements outlined in paragraph  
4 20, are those the improper and misleading statements  
5 that were made with intent to defraud by Purdue's  
6 sales force? Does that set them forth?  
7 A. I don't know. To me this is almost a  
8 legal question, and I'd like to know whether our  
9 attorneys would agree with this or not. These are  
10 some of the statements that are in here. I think  
11 there are others. So I'm not sure that you mean is  
12 this all and nothing else.  
13 Q. I don't mean -- I just mean under  
14 paragraph 20 --  
15 A. Okay.  
16 Q. -- would that constitute --  
17 A. Examples of?  
18 Q. -- examples of inappropriate and --  
19 A. That's what --  
20 Q. -- misleading statements?  
21 MR. STRAUBER: I object to the  
22 question. It's been a long exam, we're late in the  
23 day, and now you seem to be going over the Agreed  
24 Statement of Facts again and asking the witness what  
25 the Agreed Statement of Facts says. What it says is

Page 320

1 written in the Agreed Statement of Facts.  
2 MR. THOMPSON: Yes.  
3 MR. STRAUBER: I don't know where this  
4 is getting us. At this late hour I think it's  
5 starting to border on harassment.  
6 MR. THOMPSON: Can you read my  
7 question back?  
8 (Record read.)  
9 THE WITNESS: Should I answer?  
10 MR. STRAUBER: I object, but you can  
11 answer, yes.  
12 A. Yes.  
13 Q. If a sales rep told a doctor that  
14 using OxyContin would provide smoother blood levels,  
15 would that be an appropriate statement?  
16 A. I don't know -- if smoother blood  
17 levels was not in the package insert, it may not -- it  
18 might be an inappropriate statement, but I'm not sure  
19 that it wasn't in the -- in the package insert.  
20 Although it might be inappropriate, I don't know.  
21 It would have been true depending upon  
22 what was meant by "smoother." "Smoother" is not a  
23 medical term or a pharmacokinetic term. It's an  
24 opinion of -- it's a term that somebody might apply to  
25 a graph. It's a smoother line; it's not a smoother

<p style="text-align: right;">Page 321</p> <p>1 line. But it's not really a clear statement and, 2 thus, I can't say it's clearly right or clearly wrong. 3 It would have been fine if that terminology was in the 4 package insert. I don't know whether it was. 5 <b>Q. All right. What information did you</b> 6 <b>review to prepare for your deposition today?</b> 7 A. Documents. 8 <b>Q. Which documents?</b> 9 A. Not too many of the ones you've shown 10 me. This Agreed Statement of Facts we reviewed in 11 part. 12 Am I supposed to answer this? I mean, 13 I don't -- 14 <b>Q. Yes. Any other documents that you</b> 15 <b>reviewed?</b> 16 A. That I recall and can describe to you? 17 <b>Q. Yes.</b> 18 A. No. 19 <b>Q. You did say you reviewed six -- less</b> 20 <b>than eight call notes; is that right?</b> 21 A. Yes. 22 <b>Q. And that was the first time you'd seen</b> 23 <b>call notes?</b> 24 A. Yes. This was the second time. And 25 as I said, they are both -- both experiences are the</p>	<p style="text-align: right;">Page 323</p> <p>1 A. I did. 2 <b>Q. What was that title?</b> 3 A. I was a senior vice president. 4 <b>Q. And do you know when you relinquished</b> 5 <b>that title?</b> 6 A. I don't recall, but it probably was 7 either simultaneous with ending my presidency at 8 Purdue Pharma or before. 9 <b>Q. There are different types of</b> 10 <b>corporations. There are not-for-profit corporations</b> 11 <b>and there are for-profit corporations.</b> 12 <b>Would I be correct that Purdue</b> 13 <b>Frederick and Purdue Pharma are for-profit</b> 14 <b>corporations?</b> 15 A. They're for-profit businesses, but not 16 all of the companies that you've named are 17 corporations. 18 <b>Q. All right. That's a good distinction.</b> 19 <b>Would I be correct that Purdue</b> 20 <b>Frederick or Purdue Pharma are for-profit not</b> 21 <b>not-for-profit?</b> 22 A. They're for-profit. 23 MR. THOMPSON: Can we go off the 24 record a minute? 25 VIDEOGRAPHER: We are off the record</p>
<p style="text-align: right;">Page 322</p> <p>1 same. They are so fragmentary that they can mean -- 2 it's impossible to know really what was said. That's 3 why you had to pose hypothetical statements. 4 <b>Q. Yes. Purdue Pharma, L.P., Purdue</b> 5 <b>Pharma, Inc., The Purdue Frederick Company, Purdue</b> 6 <b>Pharmaceuticals, L.P., P.F. Laboratories, Inc., do you</b> 7 <b>know if they have the same directors or are there</b> 8 <b>different directors for those entities?</b> 9 A. I don't know. 10 <b>Q. Do you currently practice medicine?</b> 11 A. No. Not practice in the sense that I 12 have an office or see patients by appointment, no, I 13 don't. 14 <b>Q. When is the last time that you</b> 15 <b>practiced medicine?</b> 16 A. In 1974 during my residency. 17 <b>Q. From 1999 to 2002 you were the</b> 18 <b>president of Purdue Pharma, L.P.?</b> 19 A. From the very last days of '99 until 20 March of 2003. 21 <b>Q. Were you also at some point the</b> 22 <b>president of Purdue Frederick?</b> 23 A. I don't think so, no. 24 <b>Q. Did you have any office title at</b> 25 <b>Purdue Frederick?</b></p>	<p style="text-align: right;">Page 324</p> <p>1 at 7:18 p.m. 2 (RECESS) 3 VIDEOGRAPHER: We are back on the 4 record at 7:39 p.m. 5 BY MR. THOMPSON: 6 <b>Q. All right. Let's go back through --</b> 7 <b>I'm going to hand you a document that is at the top --</b> 8 <b>let's mark this as Exhibit 38.</b> 9 (DEPOSITION EXHIBIT NO. 38 MARKED) 10 <b>Q. It's from Richard Sackler. Do you</b> 11 <b>recognize that?</b> 12 A. I recognize the name. Okay. 13 <b>Q. All right. Was this an e-mail that</b> 14 <b>you sent to Michael Friedman?</b> 15 A. Yep. 16 <b>Q. And it says here under "importance"</b> 17 <b>down below, "Importance: Low." But down below it</b> 18 <b>says, "Why don't you guys plan a presentation about</b> 19 <b>addiction that could be given first by RR or BK..."</b> 20 <b>Now, who are those individuals?</b> 21 A. Robert Reder or Bob Kaiko. 22 <b>Q. "...and eventually by our senior</b> 23 <b>managed healthcare people."</b> 24 <b>Next paragraph, "I think that Paul has</b> 25 <b>a good point, but we should consider that 'addiction'</b></p>



Page 325

Page 327

1 may be a convenient way to 'just say no,' and when  
2 this objection is obliterated, they will fall back on  
3 the question of cost. Unless we can give a convincing  
4 presentation that CR products" -- that's  
5 controlled-release products, is that what that is?  
6 A. Yes.  
7 Q. -- "are less prone to addiction  
8 potential, abuse or diversion than IR products" -- is  
9 that immediate release?  
10 A. Yes.  
11 Q. -- "I think that this can be done, but  
12 I defer to BK and RR and other experts."  
13 A. Yes.  
14 Q. What were you trying to accomplish  
15 there by trying to show that controlled-release  
16 products are less prone to addiction, abuse or  
17 diversion than immediate-release products?  
18 A. Well, I wasn't trying to show  
19 anything. I was basically asking the question. And  
20 if the answer were yes, we can put together a good,  
21 effective and medically correct presentation, I  
22 thought it would be useful to do so. But I was asking  
23 them can we do that, do we have the information, do we  
24 have the data, and obviously if we had contrary  
25 information or data, then obviously I couldn't do

1 Q. And is that a Purdue Pharma affiliate?  
2 A. It's an affiliated company, yes.  
3 Q. Does the Sackler family own PF Canada?  
4 A. Yes. Yes, we do.  
5 Q. He says under the first paragraph, "In  
6 my opinion, the action that will produce the greatest  
7 sales gains are the acquisition of IMS's practice  
8 quartile data and the resulting improvement in  
9 targeting of our sales and marketing activities."  
10 What does that mean?  
11 A. In the United States from the  
12 inception of the launch of OxyContin, we focused our  
13 salesmen's attention to physicians who were, based on  
14 their history, physicians whose practice and their  
15 practice was to use -- write a lot of prescriptions  
16 for opioids. We didn't go to people who didn't write  
17 them, we went to people who did.  
18 And I don't recall whether this  
19 practice was or was not done in PF, but I might have  
20 learned in a meeting that they were not doing it and  
21 they could not purchase the same data source from IMS  
22 in Canada, but they appear to have had something that  
23 would have been similar where they divided physicians  
24 into quartiles.  
25 Q. And if you look at your response to

Page 326

Page 328

1 that.  
2 Q. Are you aware of any presentation  
3 showing that controlled-release products are less  
4 prone to addiction, potential abuse and diversion than  
5 immediate-release products was ever done?  
6 A. No, I don't think so, but I don't  
7 remember how this came to an end. I put on low in  
8 importance to indicate it was not something that was  
9 urgent, it was an idea I had, and I said, Can we do  
10 this.  
11 Q. Then another e-mail I'm going to hand  
12 you, we'll mark this as Exhibit 39.  
13 (DEPOSITION EXHIBIT NO. 39 MARKED)  
14 (Passing document.)  
15 Q. And this is dated -- it looks like at  
16 the bottom "Analgesic Plans, Dr. Richard Sackler at  
17 Norwalk."  
18 And is this an e-mail that you sent?  
19 A. Yes. It's quite a dense e-mail.  
20 Q. And if you go back to page 3, the  
21 e-mail that preceded it was from John Stewart.  
22 A. Yes.  
23 Q. Who is John Stewart?  
24 A. He was the general manager in Canada,  
25 PF Canada.

1 him on 9-27-96, you say, "Your most important question  
2 to me was: Have physicians been reluctant to use Oxy  
3 p.r.n." --  
4 What does Oxy p.r.n. mean?  
5 A. I assume that Oxy referred to  
6 OxyContin. P.r.n. would mean as needed.  
7 Q. -- "in place of IR forms of  
8 Oxycodone."  
9 And that's Immediate-Release  
10 Oxycodone, correct?  
11 A. Right.  
12 Q. "I've not asked this question, but  
13 judging from the very strong sales performance and  
14 continuing growth, I would guess that this has not  
15 been a problem. I think that were this the case, it  
16 would be because of the very rapid rate of onset (as  
17 fast as IR Oxycodone, that is, 45 minutes versus 41  
18 minutes for the IR form - not even close to a  
19 significant clinical or statistical difference)."  
20 And was it your understanding when you  
21 wrote this that OxyContin Controlled-Release did not  
22 have a significant clinical statistical difference  
23 with rate of onset when compared to Oxycodone  
24 Immediate-Release?  
25 A. That's correct. This was drawn from a

<p style="text-align: right;">Page 329</p> <p>1 study that was done. "Onset" is not defined here, but</p> <p>2 it was a medical term in the trial that, I believe,</p> <p>3 John Stewart had either been given or was familiar</p> <p>4 with which basically recorded the first instance where</p> <p>5 the patient said, Oh, I'm beginning to feel better, my</p> <p>6 pain is less. That was meant by "onset." That was</p> <p>7 the meaning of "onset" in that trial. And that was</p> <p>8 what I was quoting from.</p> <p>9 <b>Q. And it says here, "The fast rise</b></p> <p>10 <b>character (now a patent in the U.S.) of the drug</b></p> <p>11 <b>combined with familiarity and a marketing program that</b></p> <p>12 <b>emphasized that IR was the old was" -- I think that's</b></p> <p>13 <b>supposed to be "way" --</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. -- "and OxyContin Tablets are the new</b></p> <p>16 <b>way to treat moderate to severe pain has resulted in</b></p> <p>17 <b>our success."</b></p> <p>18 <b>Did I read that correctly?</b></p> <p>19 A. You read -- you read very correctly</p> <p>20 what is written here.</p> <p>21 <b>Q. When it says "the fast rise</b></p> <p>22 <b>character," you're referring to OxyContin having a</b></p> <p>23 <b>fast rise as far as when relief occurs, correct?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. And then down below that, if you go to</b></p>	<p style="text-align: right;">Page 331</p> <p>1 <b>fondest dreams."</b></p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q. Did I read that correctly?</b></p> <p>4 A. You did.</p> <p>5 <b>Q. All right. And then the last one I</b></p> <p>6 <b>want to ask you about --</b></p> <p>7 A. There's no question?</p> <p>8 <b>Q. No.</b></p> <p>9 <b>When you say it outperformed your</b></p> <p>10 <b>fondest dreams, you're talking in terms of market</b></p> <p>11 <b>share and what it was earning; is that correct?</b></p> <p>12 A. It's the overall sales trajectory.</p> <p>13 <b>Q. And then I've got one more e-mail to</b></p> <p>14 <b>ask you about. Who was -- I'm sorry. Let's mark this</b></p> <p>15 <b>as No. 40.</b></p> <p>16 <b>(DEPOSITION EXHIBIT NO. 40 MARKED)</b></p> <p>17 <b>Q. Did you read the sales bulletins when</b></p> <p>18 <b>you were the -- when these were sent to you?</b></p> <p>19 A. I was senior vice president. Not</p> <p>20 generally. I might have scanned this. I didn't read</p> <p>21 them carefully. They were very carefully crafted by</p> <p>22 sales and marketing people and others and I didn't</p> <p>23 usually read them.</p> <p>24 <b>Q. Who is Russ Gasdia?</b></p> <p>25 A. Russ was then either a district</p>
<p style="text-align: right;">Page 330</p> <p>1 <b>about the fourth paragraph, "The overall schema that</b></p> <p>2 <b>Marketing here has worked our for three of the</b></p> <p>3 <b>four" -- I think that's "out of three of the four"</b></p> <p>4 <b>should probably be. But it's written, "The overall</b></p> <p>5 <b>schema that Marketing here has worked our for three of</b></p> <p>6 <b>the four is: Oxy - 1. IR old way, OxyContin Tablet,</b></p> <p>7 <b>new way, emphasizing the b.i.d. was q. 4h." And</b></p> <p>8 <b>that's --</b></p> <p>9 A. Versus. Versus.</p> <p>10 <b>Q. "...b.i.d. versus q. 4h and</b></p> <p>11 <b>underscoring the similarity of onset. Other</b></p> <p>12 <b>differential benefits are emphasized, such as range of</b></p> <p>13 <b>doses, the very small tablets, et cetera."</b></p> <p>14 <b>And then Oxy - 2, your second point</b></p> <p>15 <b>with regard to Oxy, is, "In cancer and severe</b></p> <p>16 <b>non-malignant pain, the one to start with and the one</b></p> <p>17 <b>to stay with. Here we are going directly after the</b></p> <p>18 <b>MSC and Duragesic business."</b></p> <p>19 <b>What is MSC?</b></p> <p>20 A. MS Contin.</p> <p>21 <b>Q. And Duragesic, who made Duragesic?</b></p> <p>22 A. J &amp; J.</p> <p>23 <b>Q. And you say, "Clearly" -- this is</b></p> <p>24 <b>highlighted -- or capitalized. "Clearly this strategy</b></p> <p>25 <b>has outperformed our expectations, market research and</b></p>	<p style="text-align: right;">Page 332</p> <p>1 manager or a regional manager.</p> <p>2 <b>Q. And this is January 25th, 1999.</b></p> <p>3 <b>"Prescription Sales Force."</b></p> <p>4 <b>Does that mean it went out to</b></p> <p>5 <b>everybody?</b></p> <p>6 A. No. It probably means it went out to</p> <p>7 salesmen who were doing -- who were selling the</p> <p>8 prescription products.</p> <p>9 <b>Q. Well, would it have gone to everyone</b></p> <p>10 <b>selling OxyContin?</b></p> <p>11 A. I believe so, yes.</p> <p>12 <b>Q. And the first paragraph says,</b></p> <p>13 <b>"...effective with the first quarter 1999, MS Contin</b></p> <p>14 <b>sales volume and growth" --</b></p> <p>15 A. First paragraph. I see "As was</p> <p>16 announced..." Okay?</p> <p>17 <b>Q. "As was announced at the national</b></p> <p>18 <b>meeting..."</b></p> <p>19 <b>A. Right.</b></p> <p>20 <b>Q. I skipped that.</b></p> <p>21 A. Okay. Right.</p> <p>22 <b>Q. "...effective with the first quarter</b></p> <p>23 <b>1999, MS Contin sales volume and growth as well as</b></p> <p>24 <b>quota will be calculated at .50 cents for every</b></p> <p>25 <b>\$1.00."</b></p>

Page 333

Page 335

1     **A.**    **I'm not following you. Can you just**  
2     **show me where.**  
3           MR. STRAUBER: I have the same  
4     problem. I don't know where you're reading from.  
5     **Q.**    **The first paragraph.**  
6     **A.**    **Okay. I'm looking for "effective."**  
7     Oh, I see. Okay. Sorry. These are small and I can't  
8     read them that fast. I'm now following you.  
9     **Q.**    **Let me give you this one and we'll**  
10    **make it the exhibit.**  
11    **A.**    **Okay. I'm following you now.**  
12    **Q.**    **Sure. So let's read the first**  
13    **paragraph. "As was announced at the national sales**  
14    **meeting, effective with the first quarter 1999,**  
15    **MS Contin sales volume and growth as well as quota**  
16    **will be calculated at .50 cents for every \$1.00."**  
17           **What does that mean?**  
18    **A.**    **I -- I can't be sure, but I think that**  
19    we were reducing the bonus for MS Contin. I'd have to  
20    read the whole thing to be sure of that. Would you  
21    like me to read it all?  
22    **Q.**    **That's all right. I'm going to read**  
23    **it with you here.**  
24    **A.**    **Oh, okay.**  
25    **Q.**    **The next sentence says, "OxyContin**

1    don't recall the details of the incentive compensation  
2    well enough to be sure.  
3           **Q.**    **And then it says, "As pointed out,**  
4    **your priority is to sell, sell, sell" -- and that's in**  
5    **bold -- "OxyContin."**  
6           **A.**    **Right.**  
7           **Q.**    **And is that what the sales force was**  
8    **instructed to do?**  
9           **A.**    That's what he said they were  
10    instructed to do. But they were instructed to do  
11    their best to sell OxyContin, I guess. This was a  
12    sales force related kind of rah-rah piece.  
13           **Q.**    **And it also says, in the last**  
14    **paragraph, "Remain focused on positioning OxyContin as**  
15    **the opioid to start with and stay with in chronic,**  
16    **malignant and non-malignant pain states. In addition,**  
17    **continue to aggressively position OxyContin for use in**  
18    **osteoarthritis, low back pain, post-neuropathic**  
19    **neuralgia and post-surgical applications where**  
20    **appropriate. Finally, continue to highlight the**  
21    **advantages of OxyContin, especially for use in the**  
22    **elderly. If you have any questions regarding the**  
23    **bonus calculations for the first quarter of '99,**  
24    **please contact your district manager."**  
25           **A.**    That tells me he was a regional

Page 334

Page 336

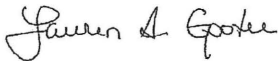
1    sales volume and growth as well as quota will be  
2    calculated at \$1.15 for every \$1.00."  
3           **A.**    Again, it was de-emphasizing MS Contin  
4    sales growth and increasing the incentive by a small  
5    amount on OxyContin sales growth.  
6           **Q.**    And then the next paragraph says,  
7    "Early estimates indicate that the fourth quarter 1998  
8    bonus payout will be another record payout. Remember,  
9    this record payout came at a time when we were  
10   utilizing a factor of .55 cents for every MS Contin  
11   dollar and \$1.15 for every OxyContin dollar. As we  
12   continue to drive more business toward OxyContin, each  
13   of you will benefit significantly from the factoring  
14   of \$1.15 for every \$1.00 of OxyContin."  
15           Again, is that referring to  
16   de-incentivizing MS Contin sales and incentivizing  
17   OxyContin sales?  
18           **A.**    Yes. We were moving the incentive  
19   program to focus on OxyContin. And every time you  
20   take an incentive program, reduce it, you have, at  
21   least in some of the people who are affected, some  
22   strong negative feelings, and that's probably why  
23   there was a small increase to OxyContin. It looks  
24   like it was 15 percent. But I'm interpolating here.  
25   I don't recall. I certainly didn't read this and I

1   manager then.  
2           **Q.**    Have you made any effort, or as we sit  
3   here today do you know how many patients who took  
4   OxyContin in Kentucky became dependent or addicted?  
5           **A.**    No.  
6           **Q.**    Do you believe that an inappropriate  
7   number of patients or an excessive number of patients  
8   who took OxyContin in Kentucky became addicted or  
9   dependent?  
10           **A.**    No.  
11           **Q.**    Do you know or has Purdue made any  
12   effort to ascertain how many people who were started  
13   on OxyContin wound up becoming dependent and moving on  
14   to heroin at some point?  
15           **A.**    No.  
16           MR. THOMPSON: I think that's all the  
17   questions I have, Dr. Sackler. Thank you very much.  
18           THE WITNESS: Are we finished? Or  
19   maybe not. I don't know.  
20           MR. STRAUBER: No questions.  
21           VIDEOGRAPHER: That is the conclusion  
22   of this deposition. We are off the record at 7:58  
23   p.m.  
24           (Deposition concluded at 7:58 p.m.)  
25           \* \* \* \* \*



Page 337

1 STATE OF KENTUCKY        )(  
2 COUNTY OF JEFFERSON     )(  
3        I, LAUREN I. GOOTEE, Notary Public, State of  
4 Kentucky at Large, hereby certify that the foregoing  
5 deposition was taken at the time and place stated in  
6 the caption; that the appearances were as set forth in  
7 the caption; that prior to giving testimony the  
8 witness was first duly sworn by me; that said  
9 testimony was taken down by me in stenographic notes  
10 and thereafter reduced under my supervision to the  
11 foregoing typewritten pages and that said typewritten  
12 transcript is a true, accurate and complete record of  
13 my stenographic notes so taken.  
14        I further certify that I am not related by blood or  
15 marriage to any of the parties hereto and that I have  
16 no interest in the outcome of captioned case.  
17        My commission as Notary Public expires March 26,  
18 2017.  
19        Given under my hand this the \_\_\_\_\_ day of  
20 \_\_\_\_\_, 2015, at Louisville, Kentucky.

21   
22  
23

24               LAUREN I. GOOTEE  
25               NOTARY PUBLIC

# WORD INDEX

< \$ >

**\$1.00** 332:25  
333:16 334:2,  
14  
**\$1.15** 334:2, 11,  
14  
**\$250,000** 186:22

< 0 >

**0.1** 164:10  
165:4  
**02-03-97** 62:18  
**06901-3431** 8:4  
**07-CI-01303**  
1:2 9:14

< 1 >

**1** 2:8 29:2, 4  
32:21 63:22  
75:9 106:10  
122:9 144:3  
174:1 175:16  
213:5 216:20  
222:1 330:6  
**1.0** 135:12, 19  
**1.3** 104:7, 8  
**1.4** 152:10  
**1:11** 154:8  
**10** 2:1 3:3  
42:21 64:14  
74:18, 19 75:22  
104:21 105:1  
111:3, 9, 12, 16  
113:12 117:19  
140:23 141:1  
142:10 147:25  
156:24 174:9  
238:7 259:17  
273:22  
**10,615** 265:8,  
16 266:7, 15  
**10:06** 46:6  
**10:18** 46:9  
**10019** 7:16  
**101** 1:22  
**10-23-96** 4:21  
202:5

**105** 215:15  
**106** 261:16  
**10th** 74:22, 23  
75:11  
**11** 3:7 6:13  
28:21, 25 77:4,  
5 125:1 142:16  
244:14 261:14  
**11:45** 106:2  
**11:57** 106:5  
**11-2-94** 4:8  
**11-30-93** 3:3  
**11-3-97** 62:22  
**1-14-97** 6:2  
**118** 7:9  
**12** 3:9 86:5, 6  
114:10 143:16  
145:16, 17  
146:4, 6, 16  
148:4 174:13  
179:5 217:6  
232:23, 25  
237:12 242:18  
260:19 261:20  
286:13 291:18,  
20 292:4  
**12:32** 128:16, 19  
**120** 204:23  
**12-14-93** 3:2  
**12-29-94** 3:12  
**1-25-01** 5:14  
**1-25-99** 6:9  
**12-8-99** 5:16  
**12-hour** 133:12  
145:23 149:7  
**12th** 242:21  
256:23 311:23  
312:4  
**13** 103:7, 8  
141:19, 22, 25  
152:5 232:20,  
20  
**130,000** 220:15  
**1301** 7:15  
**13103** 3:10  
**13800** 7:5 9:3  
**13th** 206:9  
261:2 264:16  
265:10, 15

**14** 40:6 109:12,  
13 125:2  
171:25 233:4  
**140** 215:15  
**141** 44:18  
**14109** 3:13  
**14th** 48:17  
70:4  
**15** 35:5 110:17,  
18 298:3  
334:24  
**150,000** 220:15  
**15110** 3:15  
**15th** 35:17  
287:13  
**16** 30:17 35:5,  
5 117:15 122:9  
235:2 255:10  
**160** 75:22, 25  
174:9 294:9  
**16117** 3:17  
**17** 117:13  
122:4, 5, 9  
171:25 213:13  
**17122** 3:21  
**17th** 222:17  
223:1 225:8, 11  
**18** 64:17  
106:15 127:8, 9  
**18127** 3:22  
**18th** 264:16, 17  
**19** 24:9 134:17,  
19  
**19134** 4:2  
**1952** 20:12  
**1974** 322:16  
**1980** 47:14  
**1985** 272:5  
**1990** 15:10  
**1990s** 20:16  
**1992** 35:18, 19  
74:21  
**1993** 70:4 71:8  
109:23 110:3,  
14, 16, 24  
117:14  
**1994** 103:11, 14  
131:21 135:8  
148:8

**1995** 173:23  
181:3 237:12  
242:22 311:23  
312:5  
**1996** 3:21  
16:10 38:20  
122:19 176:1  
177:12, 16  
178:9, 20  
215:18 216:20  
244:14 270:21  
287:14 302:22  
306:24 307:15  
310:25  
**1997** 51:19  
52:21 58:2  
84:10 96:10  
101:13 106:8  
206:9 215:2, 5  
255:10 256:6,  
23  
**1998** 251:20  
302:15, 19, 25  
303:4, 14, 17  
334:7  
**1999** 16:21  
30:1 81:11  
252:19, 21  
254:10 278:12  
279:6 322:17  
332:2, 13, 23  
333:14  
**19th** 18:3  
**1M** 164:10

< 2 >

**2** 2:9 9:14  
29:13, 14 32:21  
33:1, 4 38:15  
63:23 75:8  
108:11 109:22  
122:23 123:18  
135:10, 19  
144:3, 6 171:23  
175:22 220:3  
246:6 278:7  
315:10 330:14  
**2.16** 202:21  
**2.3** 71:8, 10

**2.62** 202:21  
**2:03** 154:11  
**2:28** 171:10  
**2:29** 171:13  
**20** 75:21, 24  
85:24 105:2  
129:20 135:1, 2,  
5 140:24 142:9  
147:25 156:24  
169:4, 13 174:9  
215:9 237:11  
282:7 294:6  
311:19 318:18  
319:4, 14  
**200** 1:22  
274:23  
**2000** 34:23  
164:4 166:11  
215:20 231:20  
258:20 260:5  
264:13, 16, 16,  
16 265:3  
266:25 268:6,  
10 269:11  
274:4, 4 279:11,  
12  
**2001** 34:23  
166:11 172:17,  
21 173:7 213:5,  
9 216:22, 25  
218:18 237:13  
248:1 249:2  
254:10 261:3,  
22 264:9, 17  
265:3, 10, 10, 15,  
16 266:25  
269:11 270:21  
302:23 306:24  
307:15 312:5  
**2002** 68:16  
69:13, 15 213:5  
215:2, 5 322:17  
**2003** 5:5 16:3  
212:17 214:2  
230:14, 18  
264:14 274:10,  
21 322:20  
**2004** 232:21  
258:1 274:10

<b>2005</b> 45:12	181:1 251:19	<b>3:27</b> 209:12	17, 25 162:4	331:15, 16
222:17 223:1	254:12	<b>3:30</b> 209:7	163:14, 19	<b>40202</b> 7:5, 23
225:8, 11 226:7	<b>250</b> 7:18	<b>3:42</b> 209:15	<b>34247</b> 5:14	<b>40203</b> 1:23
<b>2006</b> 43:14, 20	<b>25177</b> 4:16	<b>30</b> 64:17 74:25	<b>3-4h</b> 155:7, 25	<b>40331</b> 6:8
229:5 266:22	<b>25th</b> 249:2	217:23 218:3, 4,	162:19	<b>40507-1758</b> 7:19
310:25	332:2	23, 24 259:13	<b>35</b> 215:23	<b>40601</b> 7:10
<b>2007</b> 230:8	<b>26</b> 200:18, 19	<b>3-0</b> 218:6	261:25 278:10,	<b>41</b> 286:22
274:21 284:10	252:18 255:25	<b>300-plus</b> 215:18	11	316:1 328:17
302:18 303:6,	260:5 265:3	<b>30218</b> 5:3	<b>350</b> 7:22	<b>4-13-94</b> 4:2
16	266:25 337:17	<b>308</b> 44:21	<b>35278</b> 5:16	<b>42</b> 181:4
<b>2008</b> 52:17	<b>26200</b> 4:19	<b>30-day</b> 11:18	<b>36</b> 286:5, 6	<b>4-20-2000</b> 4:12
<b>2009</b> 16:10	<b>26th</b> 248:1	<b>30th</b> 14:23	<b>36286</b> 5:19	<b>4-22-97</b> 106:12
<b>2010</b> 284:11	27 171:20	15:6 237:13	<b>367.170</b> 225:2	<b>4-23-97</b> 3:15
<b>2012</b> 219:6	188:18 200:17,	254:10 265:3,	<b>37</b> 287:10, 11	<b>4-2-93</b> 3:17
<b>20135</b> 4:3	21, 22, 24 202:3	10, 16 266:25	<b>37287</b> 5:21	<b>43</b> 2:19
<b>2014</b> 14:23	268:10	269:11 278:10,	<b>3-7-96</b> 4:16	<b>44</b> 270:9, 15
15:6	<b>27200</b> 4:19	12 312:5	<b>38</b> 2:13 261:19	<b>44,500</b> 215:20
<b>2015</b> 1:4 9:4,	<b>27th</b> 181:3	<b>31</b> 220:1, 2	266:24 324:8, 9	<b>4-4-95</b> 4:14
12 40:7 337:20	258:19	258:24	<b>38324</b> 6:2	<b>4-4-97</b> 2:24
<b>2017</b> 171:21	<b>28</b> 1:4 204:14,	<b>3-11-97</b> 54:19	<b>3-8-97</b> 64:20	<b>45</b> 286:23
337:18	15 254:21	<b>3-12</b> 62:17, 21	<b>39</b> 2:17 74:25,	328:17
<b>2020</b> 258:2	255:25	67:23	25 326:12, 13	<b>4-6</b> 161:15
<b>2028</b> 258:2	<b>28204</b> 4:21	<b>31220</b> 5:6	<b>39327</b> 6:5	<b>4-7</b> 4:12
<b>20th</b> 18:3	<b>28th</b> 9:4, 12	<b>3-12-97</b> 54:23	<b>3rd</b> 62:20	<b>48</b> 2:21
164:3 243:9, 15	124:18 232:21	62:17	< 4 >	<b>49</b> 316:4
<b>21</b> 141:11, 12	261:22 265:11	<b>3-15-97</b> 2:21	<b>4</b> 2:13 37:25	<b>492</b> 45:10
252:9	<b>29</b> 2:8, 9	<b>31st</b> 16:21	38:1 39:18, 19	<b>4h</b> 330:7, 10
<b>21141</b> 4:7	205:23 212:3, 4,	124:17	43:21 46:12	<b>4th</b> 68:16
<b>21202</b> 8:9	6, 7 256:5	<b>32</b> 2:11 225:25	67:1 80:3	75:11 173:22
<b>2-12-97</b> 54:24	<b>29205</b> 5:2	226:1, 3 259:20	94:14, 15	< 5 >
<b>214</b> 171:19, 24	<b>298</b> 6:13	261:17	103:22 118:1, 1	<b>5</b> 2:17 39:20,
<b>22</b> 154:21, 22	<b>29th</b> 30:1	<b>3-2</b> 62:18	129:9 140:14	21 42:24 43:5
<b>22154</b> 4:8	<b>2nd</b> 86:7	<b>3-2-1997</b> 62:16	144:17 152:10	62:23, 25 74:14
<b>2-22-96</b> 4:18	110:14, 16, 24	<b>32226</b> 5:10	157:1 161:25	89:4 117:18
<b>2-27</b> 55:5	210:8	<b>3-22-93</b> 3:17	163:11 164:13,	131:7 144:18
<b>2-27-97</b> 56:5	< 3 >	<b>3-22-94</b> 4:3	15 274:21	156:6 164:8
57:3	<b>3</b> 2:11 32:10,	133:6	<b>4,718,000,000</b>	175:16 180:10
<b>22nd</b> 135:8, 13,	11 33:1 41:17	<b>3-2-97</b> 54:18	45:17	223:7, 8 311:11,
14 177:11, 15	64:11 90:20	<b>32nd</b> 7:22	<b>4,718,767,000</b>	19 318:18
178:20 264:16	92:8 94:14	<b>33</b> 226:2, 3	43:21	<b>5.4</b> 72:10
<b>23</b> 106:8 164:1,	109:22 144:14	311:14	<b>4.3</b> 119:11	<b>5.851</b> 181:6
2 170:11 243:9	149:22 164:15,	<b>33,400</b> 215:20	<b>4.6</b> 175:15	<b>5.852</b> 182:5
<b>2300</b> 7:19	22 326:20	<b>3-31-95</b> 4:15	<b>40</b> 75:21, 25	<b>5:26</b> 278:1
<b>23164</b> 4:10	<b>3,000</b> 136:21	38:3	94:6, 19 148:1	<b>5:55</b> 278:4
<b>24</b> 173:17, 18	194:1, 4, 15	<b>33226</b> 5:12	174:9 216:21,	<b>50</b> 17:14 47:9
244:13	<b>3.000</b> 64:8	<b>34</b> 247:22, 23	24 259:13	56:20 85:22, 22
<b>24173</b> 4:12	<b>3.2</b> 71:23 72:5,	251:18 260:4	267:22 278:22	167:2, 4 185:25
<b>24th</b> 35:18	6	<b>3-4</b> 156:11	282:14 294:8	216:1 273:22
<b>25</b> 173:14, 15		158:10 161:15,		
177:6, 7, 8				



297:8 316:6 332:24 333:16 <b>500</b> 175:1 <b>502</b> 1:23, 24 <b>505</b> 246:6 <b>50s</b> 150:2 <b>5-15-96</b> 5:21 <b>5-17-05</b> 5:10 <b>5-28-97</b> 3:7 77:13 <b>5-31-99</b> 2:11, 13 <b>536</b> 44:13 <b>54</b> 2:22 <b>55</b> 334:10 <b>5-6-96</b> 5:23 <b>582-1627</b> 1:23 <b>587-6299</b> 1:24 <b>5-milligram</b> 74:12  < 6 > <b>6</b> 2:19 35:24 36:10 43:2, 6, 7, 8 45:22 149:23 157:1, 4, 5, 7 159:7, 19 160:22 162:22 163:6, 12, 14, 20 217:6 222:24 224:23 242:19 <b>6.2</b> 129:10 215:5 <b>6:20</b> 292:20 <b>6:33</b> 292:23 <b>60</b> 94:6 259:9 260:21, 24 267:4 <b>6007</b> 257:25 <b>6-12-97</b> 3:9 <b>6-13-97</b> 5:3 <b>6-16-97</b> 5:2 <b>6-22-94</b> 4:5 <b>6-24-92</b> 2:16 <b>6-2-97</b> 90:18 210:7 <b>670,000</b> 215:5 <b>68</b> 238:6 <b>6-8-94</b> 4:6 <b>69</b> 12:15	<b>6-9-99</b> 4:23 204:17 <b>6h</b> 158:8 <b>6h,</b> 156:7  < 7 > <b>7</b> 2:21 47:25 48:1 213:6 266:22 <b>7,500</b> 136:21 193:2, 8 <b>7,502,367,000</b> 44:7 <b>7.0</b> 131:8 <b>7.2</b> 132:17 <b>7:18</b> 324:1 <b>7:39</b> 324:4 <b>7:58</b> 336:22, 24 <b>70</b> 185:25 259:7 260:22 <b>70,500</b> 215:22 <b>700</b> 7:9 215:20 <b>70s</b> 24:15 <b>713</b> 144:2 <b>7-15-92</b> 2:15 <b>7-16-90</b> 2:8 <b>73</b> 3:2 <b>74</b> 3:3 <b>75</b> 47:9 <b>750</b> 8:8 <b>7-5-07</b> 2:19 77 3:7 <b>7th</b> 63:20 178:9 230:7  < 8 > <b>8</b> 2:22 54:13 69:24, 25 122:22 123:17 145:17 146:4 163:7 274:22 291:18, 19 <b>80</b> 75:22, 25 174:9 245:22 278:23 294:9 <b>800</b> 265:25 266:7 274:22 <b>80-plus</b> 246:8 <b>80s</b> 24:15	<b>8-10-92</b> 3:5 <b>8-17-93</b> 3:20 <b>8-23</b> 220:7 <b>8-23-96</b> 220:5 <b>8-27-97</b> 286:1 <b>8-29-97</b> 5:19 <b>8-30-93</b> 3:19 <b>8-4-92</b> 3:6 <b>86</b> 3:9 4:8 <b>87,222,000</b> 45:5 <b>8th</b> 135:13, 18 136:6 138:12 219:6 230:8  < 9 > <b>9</b> 3:2 73:6, 7, 8 213:3 291:19 <b>9:11</b> 9:5 <b>9:12</b> 9:12 <b>90</b> 40:24 41:4 142:18 213:7 <b>900</b> 8:8 <b>90071</b> 7:22 <b>90s</b> 21:8 24:10 <b>92</b> 110:7 <b>9-21-95</b> 154:25 <b>9-25-95</b> 4:10 <b>9-27-96</b> 328:1 <b>93</b> 124:17 <b>9-30-96</b> 6:5 <b>94</b> 136:6 141:15 142:20 <b>94,000</b> 215:22 <b>9-4-96</b> 5:8 <b>95</b> 47:1 124:17, 18 243:10, 15 <b>96</b> 38:5 45:11 84:14 264:9 <b>960</b> 45:4 <b>97</b> 48:17 84:15 86:8 210:8 <b>99</b> 264:13, 23 322:19 335:23  < A > <b>A.J</b> 5:22 <b>a.m</b> 9:5, 12 46:6, 9 106:2, 5 <b>AB</b> 39:14	<b>Abbott</b> 4:25 8:6, 6 9:25 44:14 177:20, 22 204:18, 23 205:8 <b>Abbott's</b> 204:22 205:2 <b>able</b> 129:11 234:3 236:9 241:20, 22 270:24 284:25 <b>AB-rated</b> 38:18, 19, 21, 24 175:24, 25 176:2, 5, 12, 17 <b>abrupt</b> 257:15 258:15 <b>abruptly</b> 235:13 239:16 240:1, 6 259:24 260:21 267:5 <b>absolute</b> 202:25 203:4 <b>Absolutely</b> 61:11 73:22 90:8 235:17 239:13 285:19 <b>absorption</b> 267:15 268:13 <b>abstract</b> 120:10 262:3, 6 <b>abusability</b> 284:18 <b>abusable</b> 52:3 66:6, 7 247:6 <b>Abuse</b> 5:6 34:12 38:11 47:20 49:6 50:4, 21 51:18, 21 52:5, 23 56:22 58:1, 6, 22, 23 60:19, 20, 24, 25 61:8, 20 71:8 134:8, 15 151:18 175:9 198:4 212:15 218:11, 14 231:1, 10, 12, 17, 19, 22 233:10 237:5, 21 238:5	239:9 242:5 246:25 252:13 254:5, 14 267:12, 16, 25 268:2, 8, 12, 15 269:14, 17 278:16 281:21 282:5 283:21 284:3 285:1, 9 288:5, 14 289:3 297:2 306:1, 12 310:10 312:8 313:11 314:1 316:7 325:8, 16 326:4 <b>abused</b> 58:11, 15, 24 59:3 61:10, 14 71:19 269:2 279:9 280:16 <b>abuse-Jacksonvil</b> <b>le</b> 5:18 <b>abuser</b> 238:6 <b>abuse-resistant</b> 53:25 <b>abusers</b> 284:25 <b>abusing</b> 291:10 <b>abysmal</b> 272:5 <b>accept</b> 240:20 <b>acceptability</b> 149:2 <b>acceptable</b> 88:2, 3 97:1 <b>acceptance</b> 81:4 <b>accepted</b> 57:9 89:24 114:1 236:10 <b>access</b> 199:7 <b>accompany</b> 258:5 <b>accomplish</b> 63:5 190:8 325:14 <b>accountability</b> 59:20, 24 <b>accounting</b> 213:7 <b>accounts</b> 189:9 <b>accumulate</b> 179:13
--	--	---	---	--

<b>accuracy</b> 214:8 216:8 261:4 277:11, 13	<b>actions</b> 20:20 21:1 85:3 166:7	316:2, 3	255:17, 19, 22 259:15, 16 260:23 261:12, 14, 18 262:11	184:2 216:10 217:16 222:2 241:2 270:13 272:9, 19 273:8 275:11 283:23 295:4, 8 314:3 319:9
<b>accurate</b> 16:18 17:12, 18 21:16 58:8 123:12 125:16, 18, 19 133:13 167:14 172:9, 11 186:17 213:22, 25 214:7 215:6 216:4 217:14 218:19 228:9 243:22 263:20, 20 267:8 297:11 304:9 308:1 337:12	<b>active</b> 16:1, 5 104:17 <b>actively</b> 185:15 221:11 <b>activities</b> 30:14 327:9 <b>activity</b> 16:6 165:24, 25 315:20 317:7, 8 <b>actual</b> 252:8 <b>acute</b> 157:6 <b>ad</b> 189:13 <b>add</b> 53:24 93:22 130:13 138:8 178:17 244:8 262:3 263:2 265:14 <b>added</b> 68:3 121:14, 17 165:4 201:4, 18, 25 244:12 <b>addicted</b> 291:2 294:10 295:2 336:4, 8 <b>addiction</b> 18:2, 18 38:10 68:15, 21, 24 69:12 143:10 231:10, 15 238:24 239:2 242:4 246:13 268:2 269:16 279:17, 18 282:5, 21 283:4 288:5, 14 289:3 290:7, 8 292:5, 6, 11, 16 294:16 313:11 324:19, 25 325:7, 16 326:4 <b>addictive</b> 233:9 237:20 246:24 291:8 312:8 313:25 <b>addicts</b> 242:8 268:5 269:19 278:21 313:13	<b>addition</b> 75:22 163:10 178:23 183:9, 18 188:12 196:20 198:14 228:11 316:12 335:16 <b>additional</b> 121:12 131:18 186:12 288:24 291:20 <b>additions</b> 139:17 <b>additive</b> 53:9 <b>Address</b> 5:6 85:10 212:16 <b>ADE</b> 50:13 <b>adequate</b> 189:11 <b>adequately</b> 46:24 47:8, 17 214:19 <b>ADEs</b> 50:10, 11, 17, 18 <b>adhered</b> 130:6 <b>Adjust</b> 92:23 <b>administer</b> 74:12 160:9, 10, 11 <b>Administration</b> 131:5 <b>administrative</b> 45:9 <b>admit</b> 122:8 134:18 <b>admitting</b> 224:10, 18 <b>adopt</b> 228:5 <b>adopters</b> 190:7 <b>advance</b> 149:20, 25 150:4 191:9 268:24 <b>advantage</b> 46:22 65:5 128:1, 6 235:21 <b>Advantages</b> 142:25 335:21 <b>adverse</b> 50:13, 14 233:21	<b>advertisements</b> 189:12 <b>advertising</b> 76:10, 14, 19 118:25 119:8 138:20, 22 191:2 242:23 <b>advised</b> 64:21, 24 88:21 108:2 <b>advising</b> 86:24 208:16 <b>aellis@kytrial.co</b> <b>m</b> 7:6 <b>affairs</b> 16:17 <b>affect</b> 150:14 256:14 <b>affidavit</b> 15:1 <b>affiliate</b> 327:1 <b>affiliated</b> 256:24 327:2 <b>affirm</b> 273:15 <b>agencies</b> 288:22 <b>agency</b> 48:25 50:12, 15, 17, 17 52:11 54:7 124:25 129:22 130:21 214:15 221:24 222:2 <b>agent</b> 2:22 51:3 53:10 94:10 145:12 272:2 <b>agents</b> 119:3 127:21 <b>aggressive</b> 144:19 217:18 <b>aggressively</b> 335:17 <b>ago</b> 29:25 35:6 77:3 153:8 155:20 193:1 209:17 298:2, 3 300:18 <b>agree</b> 19:8 63:18 84:20 85:1 158:21	<b>Agreed</b> 5:12 11:19 84:25 112:23 121:13 169:3, 6, 7, 16 225:17, 20 226:1 227:24 228:5, 8 229:14 232:13, 17, 20 241:14 251:19 252:9 254:12 256:19 261:25 263:15 264:10 273:11 275:13 300:13 302:10, 14, 15, 22 303:5, 15, 21 304:6, 15 306:3, 3 307:13, 16, 19 311:10, 12 315:21 318:6, 12 319:23, 25 320:1 321:10 <b>agreement</b> 60:14 84:21 97:23 165:14, 18, 25 166:1, 6, 12, 12 168:10, 20 177:20, 22 205:7, 10 222:18 224:11, 19 227:1 228:2 232:10 243:21 251:14 295:24 296:9 312:16 <b>agreements</b> 14:7 41:25 <b>ahead</b> 9:20, 23 15:20 70:20 81:24 95:23 124:18 127:7 137:15 141:10 163:25 220:1



254:24 256:4 303:10 <b>al</b> 1:4 <b>Albright</b> 4:23 <b>alerted</b> 240:25 <b>Alfonse</b> 203:13, 13 <b>Alfonso</b> 4:10, 12, 21, 24 5:8, 14 6:5 161:11 203:14, 15 204:21 226:20 248:7 249:2 250:17 <b>allegations</b> 229:21, 23 <b>Allocation</b> 190:22 204:23 <b>allow</b> 90:22 98:12 146:7 202:24 <b>allowed</b> 34:2 100:19 112:15 193:18 <b>allowing</b> 133:14 262:11 316:18 317:18 <b>allows</b> 133:13 <b>alludes</b> 81:19 <b>alongside</b> 25:1, 13 <b>alternative</b> 37:5 127:14 <b>alternatives</b> 81:1 <b>altogether</b> 316:17 317:17 <b>amend</b> 17:21 <b>amended</b> 16:9 268:11, 16 269:14 <b>America</b> 5:13 <b>American</b> 162:7 192:12, 14, 16 <b>Americas</b> 7:15 <b>amount</b> 216:17, 18 218:9 294:22 310:19	334:5 <b>ample</b> 89:19 <b>analgesia</b> 150:1 <b>Analgesic</b> 6:6 26:13, 17 27:18 117:5, 7 124:24 136:19 141:4 145:11 279:15 326:16 <b>Analgesics</b> 2:15 26:22 28:3 214:14 279:16 <b>Analog</b> 150:2 <b>analysis</b> 180:5 214:11 217:5 244:25 257:1, 2, 12 258:11 307:4 315:8 <b>anesthesiology</b> 108:24 <b>Angeles</b> 7:22 <b>animal</b> 73:24 124:9 <b>announced</b> 332:16, 17 333:13 <b>announcing</b> 128:11 <b>annual</b> 164:23 215:3 <b>answer</b> 12:19 15:19, 21 21:17 23:5 34:6 42:13 68:17, 19 70:20 97:6 137:15, 17 147:11 153:4 156:17, 21 161:2 165:6 169:1, 18 170:3, 13 171:16, 17, 18 172:4, 16 176:19 196:11 199:18 219:15 224:2 234:15 264:2 271:5, 7 275:2, 10 283:15 284:14, 15 294:1 297:15 303:10	308:14 320:9, 11 321:12 325:20 <b>answered</b> 49:24 68:23 224:1 <b>answering</b> 132:13 <b>answers</b> 170:20 <b>antagonist</b> 54:2 <b>ANTHONY</b> 7:4 10:11 <b>antiinflammator</b> <b>y</b> 180:15, 17 <b>antiseptic</b> 287:7 <b>antiseptics</b> 287:7 <b>Antonio</b> 3:15 106:11 <b>anxiety</b> 255:24 <b>anxious</b> 258:3 <b>Anybody</b> 50:16 65:24 88:8, 11 94:2 148:12 151:9 166:4 167:11 168:12, 16 195:8 199:23 224:22 263:12, 17 273:25 275:5 277:10, 10 292:8 304:19 308:24 <b>anymore</b> 40:18 66:17 <b>Apologies</b> 197:14 <b>apologize</b> 81:1 <b>Appalachian</b> 192:20 <b>apparently</b> 53:20 <b>appeal</b> 65:3, 7, 12 66:21 67:6 <b>appear</b> 15:3 48:9 63:11 139:21 162:4 310:7 327:22 <b>appearance</b> 160:1	<b>APPEARANCE</b> <b>S</b> 8:1 337:6 <b>appeared</b> 146:6 <b>appears</b> 43:4, 8, 16, 20 62:4 87:25 120:18 122:10 127:14 129:7 134:22 140:23 141:14 159:14 222:25 239:22 285:25 <b>application</b> 17:25 123:24 <b>applications</b> 246:9 335:19 <b>applied</b> 98:19 <b>apply</b> 37:5 179:12 320:24 <b>appointed</b> 226:22 <b>appointment</b> 322:12 <b>appreciated</b> 57:9 <b>approach</b> 68:2 92:6 97:22 245:11 <b>approaches</b> 106:23 184:19 <b>appropriate</b> 66:12, 13, 20 82:20 97:24 100:6, 7, 8 115:3 116:2, 3 199:6 200:2 217:21 245:21 299:8, 21 304:9 306:19 320:15 335:20 <b>appropriately</b> 80:16 <b>approval</b> 69:17 125:2, 6 126:15, 20, 21 127:15 131:24, 25 181:19 246:5 268:24 288:1, 11 <b>approve</b> 54:9 150:22	<b>approved</b> 84:5 112:15 125:1, 11 130:11 134:13 156:5 267:14 288:22 <b>approving</b> 226:9 227:23 <b>approximately</b> 9:5 40:14, 24 46:23 47:1 167:2, 4 182:6 215:21 217:6 238:6 266:4 <b>April</b> 106:8 110:14, 16, 24 164:3 173:22 <b>area</b> 115:5 <b>areas</b> 15:25 <b>arguably</b> 315:12, 15, 17 <b>argue</b> 57:25 <b>argument</b> 317:1 318:1 <b>argumentative</b> 271:4 303:9 <b>arguments</b> 317:4 <b>arises</b> 78:9 <b>arising</b> 78:11 <b>Arizona</b> 195:4  <b>around-the-clock</b> 158:17 <b>arrange</b> 158:2 184:11 <b>arrive</b> 38:21 39:14 176:2, 13 <b>art</b> 284:24 <b>arthritis</b> 80:9 <b>Article</b> 3:21 40:5 218:25 231:20 254:22 258:18, 24 259:20 260:7, 9, 17 262:10, 18 265:5 266:15 267:2 <b>articles</b> 90:12 91:19 93:11, 16
--	--	---	---	---



101:22 103:1  
260:19  
**ascertain** 168:8  
241:22 336:12  
**asked** 49:2  
61:5 72:18  
108:20 115:2  
129:11 138:1  
141:24 142:7  
168:25 169:5  
232:15 263:1  
287:3 292:10  
294:6 308:25  
328:12  
**asking** 66:20  
69:4 160:25  
180:22 201:21  
208:1 210:18,  
20 216:8  
253:19 262:1  
273:4 282:15  
293:23 301:2  
304:8 305:21  
310:2 317:4, 6  
318:12 319:24  
325:19, 22  
**asks** 160:24  
161:2 234:2  
**as-needed**  
145:13  
**assembled** 55:9  
**assert** 151:11  
**asserting** 160:25  
**assess** 275:3  
**assigned** 205:1  
**assist** 196:22  
197:5  
**Assistant** 7:8  
**Associate** 8:3  
**associated** 45:1  
82:13, 19 107:4  
143:7 170:10  
202:25  
**association**  
78:8, 9 183:20  
192:17  
**associations**  
82:22 143:8, 9  
**assume** 35:21  
59:8 64:9 74:6

87:11 144:13  
244:12 272:15,  
23 273:1  
282:15 283:19,  
23 306:10  
328:5  
**assumed** 246:24  
**assuming**  
123:19 164:10  
203:3 317:25  
**assumption**  
201:2  
**assure** 274:14  
**ATC** 157:6  
**attached** 13:13  
17:16 132:22  
143:2 167:7  
**attachments**  
201:19  
**attempt** 168:8  
274:16 275:2, 6  
**attempted**  
284:23 285:18  
**attendance**  
111:4  
**attended** 67:4  
85:23 111:7  
145:22 195:1  
202:14  
**attention** 31:1  
204:5 206:1  
222:11 286:9  
327:13  
**attitudes** 107:4  
**ATTORNEY**  
1:4 7:8, 8  
10:14 23:12  
33:24 166:20,  
23, 25 222:14  
223:1 228:3  
230:25 264:10  
297:17, 18, 19  
315:18  
**attorney-client**  
298:6, 15  
**attorneys** 9:17  
34:16 230:22  
240:25 297:12  
319:9

**Attorney's**  
167:19, 22, 24  
237:15 241:9  
297:10 312:15,  
19  
**attractive**  
222:12 290:20  
**attracts** 218:14  
**attributed** 125:4  
**attributes** 81:3  
275:8  
**audience** 222:4  
**audit** 276:13, 16  
**audited** 277:13  
**augment** 138:8  
**AUGUST** 1:4  
9:4, 12 74:21,  
23 75:10, 11  
117:13  
**Australia** 17:2  
**Australian**  
30:24  
**author** 77:7, 12  
140:1, 9 220:5  
**authored**  
139:22  
**authorities**  
64:22, 24  
**authority** 49:22  
**authors** 139:4,  
6, 12, 19  
**availability**  
144:18, 21  
217:24 218:13  
220:23  
**available** 58:16,  
19 105:15  
117:7 130:7  
178:14, 24  
203:5 218:10  
260:17  
**Avenue** 7:9, 15,  
22  
**average** 164:20  
185:21, 24  
274:25 290:9,  
11  
**avoid** 316:14  
317:11

**avoided** 78:17  
**avoided.'** 258:15  
**aware** 11:4  
14:25 29:21  
31:16, 17, 22  
33:6, 9, 18  
47:22 50:15  
59:1 60:22  
61:2 68:18  
69:5, 7, 8, 10, 14  
77:2 78:5  
84:15 86:23  
89:9 94:12  
101:2 141:1  
148:8 166:3  
167:18, 21  
168:2, 11  
175:11, 17  
176:8, 20  
196:10 199:8  
208:4, 8 220:22  
224:6, 10, 16, 17,  
22 225:6, 10  
231:24 232:11,  
14, 15 238:11,  
25 239:4, 11  
240:4 242:9  
249:1 254:6, 16  
256:7 258:16,  
20 260:1  
263:21, 24  
270:25 279:5, 8  
281:19 282:22  
290:22 315:13  
316:24 317:5, 7,  
14, 23 326:2  
**awareness**  
181:8, 9  
**awkward**  
278:17  
  
< B >  
**b.d** 148:21  
**b.i.d** 127:14  
330:7, 10  
**back** 18:1, 21  
22:13 24:9  
41:23 46:8  
51:1 54:15, 16  
63:20 64:20

65:23 67:2, 9  
80:9 84:20  
92:1 94:20  
95:3 99:13  
106:4, 25 108:3  
110:3 111:3  
117:25 120:14  
128:18 137:19  
146:14 147:19  
154:10, 13, 24  
158:8, 20 159:3  
161:6, 14  
163:22 171:12  
173:9 178:5, 16  
179:4, 10  
190:11 197:19  
198:16, 21, 21  
203:13 209:14  
221:17 222:1  
232:9 233:24  
241:5 246:8  
248:20 251:13  
266:15 274:13  
275:6 276:9  
278:3 292:22  
311:3, 21  
318:14 320:7  
324:3, 6 325:2  
326:20 335:18  
**backup** 190:6  
**bad** 61:21  
63:2 82:22  
98:21  
**Baker** 4:23  
**balance** 152:7,  
8 186:1  
**balanced** 295:6  
**ball** 279:2  
**Ballard** 301:17  
**balls** 222:6  
**Baltimore** 8:9  
**bare** 315:18  
**barrage** 108:1  
**barrier** 107:23  
**base** 213:19  
221:1  
**based** 76:23  
94:5 185:14, 17  
210:21 214:4  
248:10 273:10

292:12, 13  
317:25 327:13  
**baseline** 148:25  
**bases** 303:13  
304:14  
**basically** 53:5  
122:15 186:8  
193:1 220:12  
293:8 325:19  
329:4  
**basing** 47:10, 12  
**basis** 74:8  
145:13, 23  
167:10 169:23  
304:15, 16  
312:15  
**Bates** 26:14, 15  
47:24 55:12, 14,  
15  
**bear** 12:6  
223:17  
**becoming**  
129:20 336:13  
**began** 16:2  
**beginning** 92:3  
237:12 252:19  
312:4 329:5  
**begins** 36:12  
54:15 223:11  
**behalf** 9:24  
10:1, 4, 8, 10, 11,  
14 167:19  
168:4 194:24  
196:15  
**behaved** 166:10  
**behavior** 168:4,  
9 313:25  
**belief** 39:12  
89:16, 17 90:4  
247:8 286:16  
295:25 296:13  
**believe** 18:14  
24:3 28:10  
30:5 32:7  
35:14 41:4  
42:1 49:11  
54:15 57:25  
58:9, 13 61:3  
63:4 65:19  
70:23 72:24

74:7 98:15, 24  
100:5, 7, 20  
103:22, 25  
104:2, 3, 9  
106:16 117:4  
125:17, 20  
162:8 172:6  
187:16 199:19  
208:3 209:19  
211:19 214:16  
217:17, 20, 22  
223:11 225:16  
226:16 228:10,  
15, 25 229:4  
232:7 233:17,  
23 245:12  
267:10 273:9  
276:7 286:20  
288:12 294:14,  
18, 20, 24, 25  
295:16, 19, 20  
296:11, 16  
304:21 310:14,  
22 329:2  
332:11 336:6  
**believed** 25:19,  
22 89:1, 2, 7, 15,  
15, 15 101:6  
104:1 206:4  
245:23 267:16  
268:14  
**believing**  
153:13 303:13  
**Bench-Top** 71:9  
**beneficial**  
132:14  
**benefit** 128:5  
132:11 149:12  
163:9 334:13  
**benefits** 132:23  
185:23 310:10  
330:12  
**benign** 102:9  
**Bermuda** 187:2  
**best** 25:18  
116:2 120:12  
125:2 148:15  
172:22 213:11  
226:19 266:3  
279:10 335:11

**Betadine** 5:20  
287:4, 5  
**better** 25:22  
32:6 81:9  
132:14 142:9  
150:10, 11  
151:10 234:20,  
24 236:6 329:5  
**beware** 196:5  
**beyond** 80:5  
107:19 128:1, 6  
170:8 235:21  
274:18  
**BfArM** 49:14,  
20 50:22 56:20  
58:16 65:25  
**B-f-A-r-M**  
49:21  
**BfArM**, 48:24  
**BGA** 67:4  
**bias** 203:18  
**Bible** 76:20  
**big** 130:6  
147:17  
**bigger** 97:9  
**biggest** 149:20  
276:11  
**Billion** 40:6  
41:6, 13, 17  
42:2, 9, 18, 21,  
24 213:6  
**bio** 147:22  
**bioequivalent**  
148:1  
**birthday** 177:13  
**bit** 17:3 46:2  
65:23 70:3  
95:4, 18 145:25  
146:7 174:11  
190:3 241:1  
254:25  
**BK** 64:21, 23  
155:19 324:19  
325:12  
**blame** 275:3  
**blank** 160:7  
**block** 53:19  
54:3  
**blocked** 54:8

**blocking** 68:11  
**blocks** 53:11  
**blood** 145:15,  
18, 19, 20 150:8  
235:4 239:7  
243:3 244:1, 2  
252:11 254:2  
281:15 286:14  
289:8 290:10,  
11, 15 304:3, 10  
320:14, 16  
337:14  
**Blue** 314:15, 15  
315:6, 6  
**board** 13:2, 6  
17:17, 24 22:9  
125:24, 24  
219:8 227:25  
228:5 230:1, 15,  
25 274:11, 12  
**Bob** 56:17  
132:12 324:21  
**Bobillier** 5:21  
**Body** 255:20  
**Boehringer-Ingel**  
**heim** 162:8  
**bold** 335:5  
**Bonus** 6:9  
185:20 186:2  
333:19 334:8  
335:23  
**bonuses** 216:18,  
25  
**books** 189:13  
**border** 320:5  
**bottle** 130:6, 7  
**bottom** 48:16,  
23 70:9 98:9  
106:10 123:9  
129:10 133:9  
134:7 143:21  
157:22 164:12  
165:5 204:20  
212:5 214:2  
220:7 224:24  
286:7 326:16  
**Bowling** 305:1  
**Boyles** 299:2  
**bracketed**  
200:25

**brackets** 201:2,  
6, 8, 25  
**brand** 205:14  
**branding** 31:19  
**break** 46:2, 3, 4  
137:16 154:4,  
14, 16 169:2  
209:6, 8 262:15  
277:21, 23  
**breakdown**  
298:7  
**breaks** 154:14  
**breakthrough**  
145:2, 3, 8, 12  
160:13, 13  
291:14  
**Brent** 2:20  
**brief** 129:21  
223:12 280:22  
317:3 318:1  
**briefly** 23:1  
**bring** 206:1  
**bringing** 246:21  
**broad** 181:8  
**broaden** 220:25  
**broadest** 125:10  
**broad-ranging**  
191:19  
**broke** 210:4  
211:25  
**brought** 123:21  
142:12 155:19  
159:4 166:24  
224:25 241:8  
246:2 263:14  
311:6 313:23  
**build** 222:6  
**Building** 7:9  
18:21 125:20  
**buildup** 143:10  
231:10  
**built** 107:10  
**bulk** 136:20  
246:20  
**bullet** 180:20  
**Bulletin** 6:8  
70:7  
**bulletins** 331:17  
**bunch** 143:7  
190:24



<b>buprenorphine</b> 61:19, 22 <b>burden</b> 23:11 139:12 <b>bureau</b> 193:18, 20, 23 194:1, 6, 8, 16 <b>business</b> 30:25 31:8 36:4, 7 44:2 107:14 136:20 164:22 293:3, 5, 12, 20 294:2 330:18 334:12 <b>businesses</b> 189:3 323:15 <b>buy</b> 190:5 <b>buyers</b> 188:24 190:7, 12 <b>buzz</b> 242:3 268:1 269:15 280:12, 21, 22, 25 299:23 300:1, 2, 7, 12 304:3 309:10, 17 313:6 316:5 <b>buzzed</b> 299:7, 11  < C > <b>C90-0708</b> 139:2 <b>CA</b> 7:22 <b>calculated</b> 332:24 333:16 334:2 <b>calculation</b> 43:9, 17 <b>Calculations</b> 2:20 335:23 <b>call</b> 166:13 167:13 168:2 203:25 213:20 215:16, 19, 21 234:1 252:16 255:14 275:20, 24 276:2, 6, 8, 13, 15 277:7, 8, 18 296:5, 10, 11, 20 297:1, 5, 12, 20, 24 299:1	307:20, 22, 23 308:2, 3, 6 309:2, 6 312:14 316:16, 17 317:12, 17 321:20, 23 <b>called</b> 17:4 18:22 54:2 76:4 83:11 145:2 150:1 185:7 187:3 188:15 194:22 197:23 200:5, 10 218:25 236:21 246:6 247:2 265:23 267:17 304:1 305:1 306:9, 10 <b>calling</b> 200:14 <b>calls</b> 31:25 200:12 203:19 209:18, 20, 25 210:2 215:23, 24 216:1, 2, 12 278:13 305:25 <b>campaign</b> 78:20 133:19, 23, 24 134:3, 5 163:10 181:8 182:8, 8, 18 183:5, 9 191:17, 20 192:2 <b>campaigns</b> 183:18 <b>Canada</b> 221:1 326:24, 25 327:3, 22 <b>cancer</b> 17:9 18:8 70:15, 16, 22 78:18, 24 79:5, 8 81:5, 11 82:6, 6 85:17, 20 86:2, 13, 16 87:5 88:14 90:21 91:1 92:6, 12 93:18 94:3 95:10, 16, 20 97:18, 22 98:11 99:3, 6, 14 100:4	101:12 103:23 116:10 136:1, 3, 7, 10, 14 138:8 143:7 144:25 174:8, 15, 18, 20 175:13 193:3 206:21 215:1 330:15 <b>candidates</b> 215:17 <b>Capital</b> 7:9 <b>capitalized</b> 330:24 <b>Capitol</b> 7:9 <b>caps</b> 50:8, 19 <b>capsule</b> 117:19 <b>capsules</b> 156:24 <b>caption</b> 337:6, 7 <b>captioned</b> 337:16 <b>capture</b> 199:18 <b>captures</b> 81:2 <b>care</b> 100:4, 19 101:2 116:10 127:16 183:8 213:17 214:3 235:18 253:18 275:14, 17, 18 <b>careful</b> 91:17 93:9 101:19 102:24 107:22 208:5 210:12 <b>carefully</b> 59:5 331:21, 21 <b>caregivers</b> 182:12 <b>Carol</b> 313:21 <b>carried</b> 22:4 <b>carry</b> 216:9 <b>cartoon</b> 252:16 <b>case</b> 11:2 19:14 31:11 37:7 57:25 58:13 79:23, 25 97:17, 18 124:13 140:13 166:24 167:3, 5 168:23 186:19, 20, 24 187:16 196:3 204:7	211:18 223:19 236:2, 11 240:16, 17 245:2 246:7 251:3 285:3 312:20 328:15 337:16 <b>cases</b> 116:3 223:22 224:2, 8 276:22 <b>catalog</b> 50:18 <b>catch</b> 30:8 121:7 220:6 <b>category</b> 123:11 <b>cause</b> 98:2 233:10 237:22 238:15 242:3 268:1 269:15 290:7, 8 291:1 292:15 312:9 313:6, 8 <b>caused</b> 34:18 80:20 194:16 233:21 242:4 268:1 269:16 294:16 313:10 <b>causes</b> 78:12 302:12 <b>causing</b> 83:8 143:13 <b>cautioned</b> 316:14 317:10 <b>ceased</b> 230:14, 18 <b>ceiling</b> 106:17, 18 108:16 <b>Center</b> 110:21 <b>central</b> 164:9 <b>cents</b> 332:24 333:16 334:10 <b>centuries</b> 18:3 <b>CEO</b> 226:22 228:24 229:13 230:14, 18 231:7, 11 264:11, 14, 20 <b>certain</b> 19:2 54:5 73:1, 1, 2 113:10 115:4 125:18 148:9	185:3 209:25 237:18 239:22, 24 240:4, 14, 21 242:1, 2 255:10 256:6, 23, 25 258:16 260:5 261:3 265:3, 9, 19 266:25 267:19, 22 268:10, 21 269:11 290:10 294:11 311:25 312:6 313:5 <b>certainly</b> 29:20 41:5 58:18 74:1 94:2 111:6 113:7, 8 120:6, 22 137:23 149:15 151:20 165:8 185:21 186:19 189:19 195:5 235:10 244:9 245:21 281:24 313:2 334:25 <b>Certificate</b> 337 2:1 <b>certified</b> 298:24 <b>certify</b> 298:18 337:4, 14 <b>cetera</b> 41:24 91:19 93:12 119:7 330:13 <b>cetera</b> , 101:22 <b>Chadbourne</b> 7:15, 21 <b>chain</b> 2:24 5:8 54:11, 15 55:17, 20 59:5 219:25 <b>chairman</b> 230:15 <b>challenge</b> 162:2, 20 <b>challenging</b> 11:15 <b>chance</b> 56:20 238:24 239:2 <b>change</b> 82:18 91:17 93:9, 17, 18 100:2, 2, 5
--	---	---	---	--



101:19 102:24 103:3, 4, 4 107:24, 25 153:6 156:11, 14 157:9, 9, 10, 12 159:6, 19 161:9 163:12 210:12 246:21 249:22 276:12 <b>changed</b> 37:3 83:4 186:5 249:15, 19, 24 268:19, 21 269:2 276:3 316:17 317:17 <b>changes</b> 243:24 247:1 <b>changing</b> 241:10 <b>channels</b> 181:11 <b>character</b> 100:3 103:4 329:10 <b>character,</b> 329:22 <b>characteristic</b> 235:16, 24 289:19 <b>charge</b> 33:7 62:6 72:12, 15 118:10, 12 226:8, 18 <b>charges</b> 34:17 <b>chart</b> 83:13 <b>charts</b> 135:22 209:3 <b>cheap</b> 163:6 <b>check</b> 111:5 297:7 <b>checked</b> 296:2, 3 <b>Chickering</b> 5:2 <b>chief</b> 62:8 228:21 229:3 <b>Children</b> 219:1 <b>choice</b> 79:22 114:14 <b>choose</b> 316:19 317:19 <b>chosen</b> 123:3	<b>chronic</b> 37:2 80:9 105:8, 19 181:16 335:15 <b>chronic-use</b> 114:9 <b>C-II</b> 68:2 <b>Circle</b> 7:5 9:3 <b>CIRCUIT</b> 1:1 9:13 <b>circulated</b> 129:17 <b>circulation</b> 129:5, 7 <b>circumstance</b> 98:22 178:2 <b>cited</b> 108:22 <b>cites</b> 223:20 <b>CIVIL</b> 1:2 9:7, 14 <b>claim</b> 132:15 133:25 134:9 233:5 244:4 254:22 260:2 289:14 <b>claimed</b> 224:2 315:13 <b>claiming</b> 271:20 <b>claims</b> 34:3 76:10, 14, 16, 19 120:13, 16 121:9, 12, 18 131:19 132:12, 18, 23 236:19 267:12 289:5 <b>Clan</b> 40:6 <b>clarified</b> 287:25 <b>clarify</b> 29:15 77:22 115:10 <b>clarity</b> 130:25 225:10 <b>Class</b> 152:17, 19, 20, 25 153:7, 7, 8 189:6, 6 247:4, 5, 7 <b>classic</b> 181:21 <b>classified</b> 49:3, 25 <b>Claudia</b> 5:21 <b>claws</b> 222:5 <b>Claydon</b> 5:22	<b>clear</b> 43:15 75:5 83:15 91:21 93:14 99:24 101:4 102:1 110:13 114:3, 23 176:21 208:14 222:20 240:12 241:13 250:10 284:15 288:17 321:1 <b>cleared</b> 101:7 <b>clearly</b> 101:7 150:10 151:7 200:9 208:24 211:23 321:2, 2 330:23, 24 <b>cleverly</b> 269:3 <b>client</b> 169:21 <b>clinic</b> 75:23 303:25 <b>clinical</b> 26:8 53:1 76:14 121:16 140:15, 16 144:1 145:22 148:20 159:24 177:18 207:23 232:22 233:8 235:4 242:15 252:8 255:12 256:13 257:2, 13 258:14 328:19, 22 <b>clinically</b> 220:20 235:7 <b>clock</b> 145:8 160:10 <b>close</b> 138:21 213:12 251:1 290:3 307:4, 5 328:18 <b>closed</b> 65:2 67:5, 17 <b>closer</b> 162:25 308:12 <b>Club</b> 183:21 <b>clue</b> 57:20 <b>co-authors</b> 140:12	<b>codeine</b> 79:24 87:19 152:17 <b>coincide</b> 181:13 <b>Coletto</b> 5:19 <b>collaborative</b> 139:25 <b>collect</b> 184:12 <b>color</b> 271:18 <b>column</b> 122:24 123:14 <b>combination</b> 22:22 94:11 152:15, 17 153:24 180:12 <b>combinations</b> 78:11, 19 152:14 153:16 180:12 <b>combine</b> 67:21 <b>combined</b> 329:11 <b>combining</b> 22:20 133:11 <b>come</b> 28:18 40:25 139:9 196:7, 11 294:14, 20 <b>comes</b> 62:11 136:21 161:13 234:25 <b>comfort</b> 248:9 <b>comfortable</b> 108:17 152:14 <b>coming</b> 94:20 99:13 227:8 <b>comment</b> 2:18 38:17 46:15 175:23 211:5, 11 234:3 259:21 309:11, 13, 18 <b>commenting</b> 120:2 <b>comments</b> 203:17 229:17 242:22 243:21 261:10, 11 275:7 305:7 307:14 314:3 316:9, 11	<b>Commerce</b> 269:24 270:3 <b>commercially</b> 203:2 220:21 <b>commission</b> 44:14 337:17 <b>commitment</b> 183:8 <b>committed</b> 30:6 225:3, 8 <b>committing</b> 31:18 <b>common</b> 53:22 58:24 80:13 85:20 89:13 96:13 114:17 115:24 193:11, 15, 16 199:1 <b>COMMONWEA</b> <b>LTH</b> 1:1, 4 9:13, 14 294:17, 23 295:2 <b>communicate</b> 114:22 209:22 <b>communicated</b> 211:13 225:7 <b>communication</b> 76:22 242:24 <b>communications</b> 256:14 298:15 <b>communities</b> 184:8 268:9 <b>community</b> 116:11 220:18, 19 <b>companies</b> 12:24 13:3, 13, 24 14:2, 8, 10, 12 19:6, 9, 20 20:1 24:13 41:24 139:12 183:1, 3 185:9 196:3, 7, 7 219:12, 18, 22 222:11 225:14 293:15, 15 323:16 <b>Company</b> 5:13 7:12, 13 12:21 13:15, 16 20:12,
---	--	---	--	--

13, 14 21:14, 23 31:18 33:17, 21 34:8 36:1 40:25 41:2 56:11 112:25 131:3 147:2 162:5, 7 169:9, 16 172:8 176:25 181:14 186:10 191:18 196:3 197:23 224:12, 19 229:13, 25 230:9, 10 238:1 241:16 256:24 268:8 274:7 295:5, 8, 10 322:5 327:2 <b>company's</b> 213:8, 18 <b>comparative</b> 76:16 119:13, 22 131:14 132:10 180:3, 5, 11 234:13 <b>compare</b> 150:15 244:1 <b>compared</b> 109:17 140:25 202:17 328:23 <b>comparing</b> 127:20 131:16 148:20 <b>comparison</b> 272:2 <b>Compendium</b> 2:15 <b>compensated</b> 185:16 <b>compensation</b> 335:1 <b>compete</b> 39:15 <b>competing</b> 70:12 <b>competition</b> 24:12, 21 26:18 27:25 28:16 36:23 123:4 136:16	<b>competitive</b> 127:17, 18 235:19 <b>competitors</b> 37:7 217:11 <b>compilation</b> 130:11 <b>complained</b> 146:13 258:1, 1 <b>complaint</b> 16:9 193:16 <b>complete</b> 76:25 129:22 203:5, 9 315:19 337:12 <b>completed</b> 114:11 140:21 259:6 <b>completely</b> 55:19 65:16, 20 114:13 149:15 156:17 <b>completion</b> 307:23 <b>complex</b> 21:17 77:23 271:1 <b>compliance</b> 274:10, 15 277:14 <b>complicated</b> 158:3, 22 <b>complication</b> 147:16, 17 <b>compound</b> 137:13 246:17 <b>comprehensive</b> 76:25 <b>compressed</b> 124:2, 14 <b>compromise</b> 100:18 101:1 275:14, 17 <b>compute</b> 291:23 <b>computed</b> 62:19 <b>computer</b> 189:13 <b>concentrate</b> 284:1 <b>concentration</b> 243:1	<b>concept</b> 175:14, 18 179:12 199:18 <b>concepts</b> 121:20 <b>concern</b> 25:15 28:6 59:2 214:17, 21 222:8 258:8 279:5 <b>concerned</b> 57:6 78:23 143:4 237:5, 8 289:1 <b>concerning</b> 232:3 <b>concerns</b> 18:18, 20 19:4 24:24 25:7 109:1 <b>conclude</b> 60:20 266:9, 11 <b>concluded</b> 128:4 151:4 336:24 <b>conclusion</b> 84:18 126:18 127:10 149:6, 17, 18 293:24 336:21 <b>conclusions</b> 144:2 258:11 <b>condition</b> 115:22 179:2, 4 180:1 234:12 259:25 261:1 <b>conditioned</b> 240:15 <b>conditions</b> 71:5 80:13 115:17 127:21 144:25 <b>conduct</b> 34:10 68:14, 24 69:11 89:6 165:13 168:19 169:5, 13, 22 237:15 240:21 252:6 254:18, 20 264:8, 15 294:15, 21 295:1, 21, 23 302:21	<b>conducted</b> 68:14, 23 69:10 71:24 75:4, 13 120:9 121:14 175:1, 19 181:14, 25 282:18, 23 316:13 317:10 <b>conferences</b> 32:1 <b>confident</b> 60:1 <b>Confidential</b> 4:7 11:10, 14 <b>confirm</b> 157:19 <b>confirmed</b> 142:8 <b>confirming</b> 194:11 <b>conflation</b> 93:23 <b>conformed</b> 284:15 <b>confusing</b> 21:17 161:3, 5 <b>confusion</b> 23:4, 16 98:3 208:23 228:4 <b>Congressional</b> 5:5 <b>conjecture</b> 290:20 292:13 <b>connected</b> 201:19 <b>connection</b> 116:12 <b>co-nonexecutive</b> 230:15 <b>Conover</b> 121:13 <b>consecutive</b> 55:16, 16 <b>consensus</b> 115:2 <b>consequence</b> 98:24 <b>consequently</b> 257:14 <b>consider</b> 65:4, 13, 25 184:13 306:18 324:25 <b>considerably</b> 101:9 <b>consideration</b> 28:17 70:24	75:21 120:21 137:24 138:16 189:12 <b>considered</b> 26:19 28:1 151:22 219:11, 17 284:24 <b>considering</b> 219:18 <b>considers</b> 288:2 <b>consistent</b> 74:11 149:16 151:5 156:4 157:4 172:11 243:22 <b>consistently</b> 227:15 <b>consists</b> 147:9 <b>constant</b> 164:21 165:1 <b>constipation</b> 53:22 <b>constitute</b> 214:3 319:16 <b>constituted</b> 318:23 <b>constructed</b> 303:22 <b>consultant</b> 213:20 <b>consulted</b> 29:21 <b>consulting</b> 13:6 <b>consults</b> 13:7 <b>consumer</b> 181:10, 13 183:7 <b>contact</b> 335:24 <b>contain</b> 276:9 <b>contained</b> 95:1 246:12 315:11 <b>contend</b> 240:13 <b>contentious</b> 116:5 <b>contents</b> 76:13 <b>context</b> 17:4 18:21 30:23 36:1 81:18, 21 82:2, 3 125:7 126:2 201:17 208:24
---	--	---	--	---



<b>Contin</b> 6:9 16:14 17:4 18:22 20:4 24:10, 11, 14, 21 25:1, 1, 11, 12, 13, 23 26:17 27:24 29:10 31:1 32:6 36:19, 23 37:1, 6 38:10, 19 39:15 47:2, 8, 13, 17 70:11, 21 86:12, 17 87:1, 5, 10 91:23 94:1 95:8, 10, 15, 24 96:17 107:12 108:17, 18, 19 121:2 123:6 131:13, 16 136:16, 17, 18, 25 137:4, 7, 8 175:3, 13, 25 176:21 180:13 186:13 188:23, 25 190:13 210:10 217:9 227:5, 8 330:20 332:13, 23 333:15, 19 334:3, 10, 16 <b>continue</b> 49:17 93:3, 6 114:12, 16 147:20 156:22 182:5 334:12 335:17, 20 <b>CONTINUED</b> 3:1 4:1 5:1 6:1 8:1 21:10 34:23 123:18 166:11 274:12 <b>continues</b> 162:24 236:8 <b>continuing</b> 50:19 60:18 237:13 312:5 328:14 <b>contract</b> 221:10 <b>contraindication</b> s 234:7	<b>contrary</b> 65:22 325:24 <b>contribute</b> 130:24 <b>contributed</b> 214:25 <b>contribution</b> 43:21, 24 <b>control</b> 63:13 64:7, 14, 17, 18 65:1 140:3 145:21 149:1 150:24 195:13 202:17 276:14 <b>controlled</b> 17:7, 8 49:3 50:1 58:6, 11 61:15, 21, 23 116:24 <b>Controlled-Relea</b> <b>se</b> 2:9 3:24 24:23 25:9 26:13, 17, 19 27:17, 25 28:3, 12, 12, 14 36:5, 8, 16, 18 37:10, 14 46:17 50:3 52:3, 6 61:7 84:11 88:23 89:8 98:16 104:11, 13, 18 107:2 127:11 144:10 146:3 148:4 149:4 152:12 153:14 181:20 214:13 278:15 280:12 286:10 290:5, 24 292:3 325:5, 15 326:3 328:21 <b>controlled-releas</b> <b>ed</b> 26:21 <b>controls</b> 58:7, 12 64:4 66:7, 11, 20 <b>controversial</b> 115:5 246:10 <b>convenience</b> 133:12 174:13	<b>convenient</b> 114:4 325:1 <b>conventional</b> 127:15 191:21, 23 <b>conventions</b> 256:13 <b>conversation</b> 56:18 211:1 296:24, 25 300:16 305:18, 19 308:18, 19 <b>conversations</b> 309:7 <b>conversion</b> 16:14 29:9 83:13 90:9 133:14 209:3 <b>convey</b> 211:12 <b>conveys</b> 17:12 <b>convince</b> 200:1, 1 299:6, 10, 22 <b>convinced</b> 149:14 274:4 <b>convincing</b> 118:25 325:3 <b>convoluta</b> 301:22 <b>CONWAY</b> 1:4 <b>cooperative</b> 191:1 <b>coordinate</b> 76:13, 18 <b>coordinated</b> 124:20 221:11 <b>copies</b> 68:22 103:12 171:6, 8 189:3 265:4, 8, 16 266:7, 15 <b>co-promotion</b> 44:14 <b>copy</b> 11:19 27:5, 7 28:23 32:12, 15 48:5 77:9 132:20 170:16, 21 202:5 212:19 219:22 266:5 287:9 299:16, 17 301:6, 9	<b>core</b> 76:21 140:15 185:3, 7, 8 204:4 <b>Cornelia</b> 16:22, 23 30:1 <b>corporations</b> 12:16 323:10, 10, 11, 14, 17 <b>correct</b> 11:11, 22, 23 12:17 17:6, 10 18:23, 24 21:11 24:13 29:10, 11 30:3 33:9 35:22 38:5, 6 40:18, 22 43:22 44:15, 19, 20 45:18, 20 49:10, 23 50:24 51:5, 19, 20 53:13 56:12 58:2, 12 59:16 63:9 64:18 65:11 68:13 70:12, 13 75:1 79:11 84:11 86:15, 18 87:1, 22 88:24 91:8, 23 92:13, 17 93:4, 5, 13 96:21 99:6 100:1 101:14, 16, 22 102:4 103:3, 20 105:24 108:5, 6 110:25 111:4 112:13 118:8 122:21 123:7, 8, 16 124:5, 11, 12 125:21 126:23 127:2, 12 132:8 133:20 135:8, 18 136:23, 25 137:4, 11 139:23 141:16 142:18 144:5 146:4 151:23, 25 152:20, 21 155:4 156:3, 8 157:17 160:15, 16, 19, 23 162:6	164:6, 11, 18, 19 165:8, 9 166:8, 25 172:16 174:4 175:4, 6, 10 179:9, 16 182:14, 16 184:8, 15 185:18 187:3, 7, 8 188:14 196:23 199:5 202:7 205:5 206:12 208:10 210:1 211:12 212:9, 14, 22 213:10, 12, 12 221:15, 16 222:19, 21, 22, 22 223:4 228:6, 14, 18 229:3, 6 230:19, 20 233:12, 14, 16, 22 235:8, 11 236:1, 21 237:16 240:11 244:6, 17 246:14 247:9 248:3 249:18 250:19 251:24 252:21 253:20, 21 261:7 262:9 263:4, 10, 15 264:12, 20 265:17 266:2, 7 269:20, 21 270:11 275:23 287:17 290:12 291:14, 21 297:4 302:13, 23 303:1 307:15, 23, 24 308:4 312:16 313:7 318:19 323:12, 19 325:21 328:10, 25 329:23 331:11 <b>correcting</b> 90:6 <b>correction</b> 139:16
--	---	---	---	---



<b>correctly</b> 28:4 30:10 37:11 39:2 43:23 45:12 50:6 56:24 95:14 121:24 125:12 163:17 181:23 190:19 203:7 207:1, 7, 25 212:13 225:4 256:2, 17, 18 275:19 288:8 312:11 329:18, 19 331:3 <b>correlate</b> 200:11 <b>correlation</b> 200:4, 9 <b>correspond</b> 65:1 67:2 <b>cost</b> 34:22 79:21 176:25 203:3 204:7, 8 325:3 <b>costs</b> 67:22 <b>cotton</b> 238:9 279:2 <b>Coulter</b> 1:21 <b>Counsel</b> 8:3 68:18 299:6, 9, 10, 22, 23 <b>count</b> 216:11 275:3 <b>counted</b> 12:18 14:6 185:13 <b>counting</b> 45:12 <b>countries</b> 116:21 <b>country</b> 186:17 194:23 <b>COUNTY</b> 337:2 <b>couple</b> 113:8 173:19 <b>coupons</b> 198:24 <b>course</b> 56:18 85:19 131:5 149:21 186:5 284:19 293:3, 5, 12 298:21 <b>COURT</b> 1:1 9:13 73:6	173:17 177:7 197:12 298:24 317:2 <b>courts</b> 223:3, 15 <b>cover</b> 70:6 132:22 241:24 <b>CR</b> 38:12 56:23 60:23 65:6 127:11 259:7, 10 260:21, 24 325:4 <b>crafted</b> 331:21 <b>Craig</b> 286:1 <b>create</b> 181:8, 12, 21 195:13 205:20 208:22 242:16 <b>created</b> 187:25 188:25 189:2 190:14, 16 248:10 <b>creates</b> 156:23 238:23 <b>creation</b> 21:2, 5 182:13 187:21 <b>creative</b> 175:14, 17 <b>credibility</b> 278:18 <b>crippling</b> 80:14 82:9 <b>crisis</b> 198:5, 8, 12 <b>critical</b> 106:22 <b>criticism</b> 196:8, 12 <b>Cross</b> 314:15 315:6 <b>cross-title</b> 27:20 <b>crucial</b> 38:25 176:6, 15 <b>crushed</b> 71:24 <b>crushing</b> 238:8 278:22 <b>cryptic</b> 296:20 <b>CT</b> 8:4 <b>Cullen</b> 77:24 86:4, 7, 24	101:18 206:17 <b>Cullen's</b> 90:18 <b>cups</b> 163:11, 13 <b>cure</b> 38:23 176:4 <b>curious</b> 129:1 <b>Curran</b> 301:18 <b>current</b> 12:4 13:24 75:21 127:25 135:24 235:20 262:3 263:2 265:14 278:16 <b>currently</b> 12:25 41:6 90:23 98:13 131:15 136:17 140:22 155:3 220:25 322:10 <b>Curtis</b> 112:6 126:19 285:3, 7 <b>curve</b> 157:11 <b>cusp</b> 283:7 <b>customary</b> 195:18, 20 <b>cut</b> 67:25 83:16 243:25  < D > <b>d,</b> 239:21, 24 <b>daily</b> 83:15 94:13 146:16, 20 148:3 282:15 291:23 <b>damaging</b> 61:15 <b>Dan</b> 10:1 <b>DANFORD</b> 7:16 10:1, 1 11:18 28:23 45:24 55:7, 22 105:25 <b>danger</b> 81:14 <b>dangerous</b> 81:6, 14 162:22 207:4, 18 <b>DANIEL</b> 7:16 <b>Darke</b> 6:6 <b>data</b> 50:4, 9, 20 131:19 135:23 140:22 178:6,	11, 13, 21 179:13, 14, 19 214:4 215:2 217:5 235:4 242:15 244:10, 12, 23 245:1, 4, 16 252:8 261:5, 7, 24 262:1, 24 264:18 265:13 286:19 290:2, 13 325:24, 25 327:8, 21 <b>database</b> 60:19, 24 61:9 178:17 245:9 <b>DATE</b> 1:4 19:3 28:13 39:23 51:21 62:15 111:6 135:14 187:17 202:22 248:5 318:8 <b>dated</b> 2:8, 11, 13, 15, 19, 21, 24 3:2, 5, 7, 9, 12, 15, 17, 19 4:2, 5, 10, 12, 14, 16, 21, 23 5:2, 8, 14, 16, 19, 21 6:2, 5 15:6 16:21 25:24 30:1 35:17 38:3 54:16, 17 57:2 58:2 70:4 74:21 77:13 90:18 103:10 106:8 110:24 117:12 154:25 164:3 173:22 177:11 181:3 202:5 210:7 222:17, 25 248:1 278:9, 12 287:13 326:15 <b>dates</b> 222:21 <b>daughter</b> 75:18 <b>David</b> 5:17 279:13 304:25 <b>day</b> 9:4 94:7, 14, 15, 19 98:4,	4 104:21, 23 146:15, 16 149:2 161:6 209:1, 25 259:7 267:5 274:8 282:8, 14 286:15 289:19, 21 290:6, 25 291:24, 25 292:15 308:17 319:23 337:19 <b>Dayer</b> 5:23 287:23 <b>days</b> 66:18 124:18 125:2 259:8 322:19 <b>day-to-day</b> 16:6, 11 29:6 30:14 <b>ddanford@stites.</b> <b>com</b> 7:20 <b>DDMAC</b> 243:17, 17, 18 244:14 <b>DEA</b> 214:14, 17, 20 218:11 <b>dead</b> 52:23 <b>deadline</b> 159:23 <b>deal</b> 200:25 272:7 <b>Dear</b> 56:17 63:20 <b>DEA's</b> 214:10 217:4 <b>death</b> 82:13 151:21 <b>debate</b> 147:2 <b>decades</b> 100:15 <b>December</b> 5:5 70:4 124:17, 18 212:17 232:21 237:12 243:9, 15 251:20 311:23 312:4 <b>decentivized</b> 186:12 <b>decide</b> 63:16 71:25 114:14, 15 119:24 120:1 146:25
---	--	--	--	--

<b>decided</b> 72:1 91:6, 11 99:19 251:8 <b>deciding</b> 28:17 <b>decipherable</b> 19:17 <b>decision</b> 65:8 76:6 136:2 164:9 <b>decisions</b> 121:12 <b>Declaration</b> 15:7 16:8 29:5 <b>declared</b> 208:25 <b>dedicated</b> 30:7, 12 <b>deducted</b> 44:12 <b>deduction</b> 44:3 <b>de-emphasizing</b> 334:3 <b>deep</b> 33:24 <b>deeply</b> 26:9 <b>defeat</b> 284:25 <b>defend</b> 166:24 167:3, 4 297:9 <b>defendant</b> 225:1 <b>DEFENDANTS</b> 1:4 7:12 8:6 10:2, 4, 8 12:6 19:13 <b>Defendant's</b> 314:15 315:5 <b>defending</b> 167:25 <b>defer</b> 325:12 <b>deferred</b> 262:4 263:3 264:19 265:15 <b>defined</b> 252:24 329:1 <b>defines</b> 253:17 <b>definitely</b> 49:25 52:8 194:14 310:23 <b>defraud</b> 33:8 224:13, 20 228:13 237:19 242:2 311:8, 20 312:7 319:5 <b>deftly</b> 124:19	<b>degree</b> 248:9 257:14 <b>degrees</b> 194:10 <b>de-incentivizing</b> 334:16 <b>delay</b> 285:23 <b>Delayed</b> 267:14 268:12 <b>deleted</b> 244:15 <b>Delivered</b> 190:22 <b>deliveries</b> 184:11 <b>delivery</b> 285:1 <b>demand</b> 190:2 192:3 <b>demanding</b> 124:23 <b>demonstrably</b> 304:13 <b>demonstrate</b> 89:19, 23 105:15 236:9 <b>demonstrated</b> 143:15 144:1 148:3, 25 289:18 <b>demonstrating</b> 233:9 <b>demonstration</b> 242:16 252:7, 8 <b>DENHAM</b> 7:6 10:13, 13 11:13 <b>denied</b> 227:16, 19 247:2 <b>Denmark</b> 63:17 <b>dense</b> 326:19 <b>dentist</b> 279:14 <b>depart</b> 308:15 <b>departed</b> 98:7 <b>department</b> 39:6, 7, 10 72:14 91:9, 10 99:18 118:7 120:4 131:1, 2 153:25 159:11 226:18 231:2 262:18 266:19 274:10, 13	277:14, 14 283:18 <b>departments</b> 121:20 <b>department's</b> 274:14 <b>departure</b> 221:12, 18 <b>depend</b> 149:24 <b>dependence</b> 18:19 143:13 257:14 283:3 <b>dependency</b> 68:15, 21, 25 69:12 105:20 143:10, 11 198:22 231:10 282:9, 13, 21 283:2 <b>dependent</b> 258:13 294:10 336:4, 9, 13 <b>depending</b> 147:4 157:1 320:21 <b>depends</b> 15:22, 23 73:12 104:20 151:18 313:8 <b>Depictions</b> 242:14 254:11 <b>DEPONENT</b> 1:4 <b>DEPOSITION</b> 1:4 9:1, 5, 15 29:3, 4, 13, 14 30:18 32:11 38:1 39:21 43:2 48:1 54:13 69:6 73:8 74:19 77:5 86:6 103:8 109:13 110:18 117:15 122:5 127:9 134:19 135:1 141:12 154:22 164:2 168:23 173:18 177:8 200:19, 22	204:15 205:23 218:24 220:2 226:3 241:17 247:23 253:10, 10, 12 277:5 278:11 285:2 286:6 287:11 321:6 324:9 326:13 331:16 336:22, 24 337:5 <b>depositions</b> 241:22 <b>depression</b> 255:24 <b>deputies</b> 297:19 <b>Deputy</b> 7:8 <b>dermatologists</b> 193:14 <b>deschedule</b> 53:6 <b>de-scheduled</b> 68:3 <b>descheduling</b> 2:22 51:2, 4 <b>describe</b> 108:20 216:13 321:16 <b>described</b> 169:5, 13 231:22 252:8 254:11 261:25 295:23 298:1 315:21 <b>describes</b> 204:21 <b>describing</b> 104:16 <b>description</b> 216:11 <b>design</b> 120:17 <b>designate</b> 11:13, 17 <b>designated</b> 187:14, 14 <b>designating</b> 11:9 <b>designation</b> 246:5 <b>designed</b> 192:6 305:18 <b>desirable</b> 88:4	<b>desired</b> 26:11 68:10 132:18 <b>desires</b> 125:7 <b>Desk</b> 130:8 <b>Despite</b> 80:4 <b>destruction</b> 80:20 293:6 <b>detail</b> 22:2 78:21 186:5 202:22 206:17 <b>detailing</b> 83:20 <b>details</b> 71:22 139:10 205:9 271:18 335:1 <b>deter</b> 313:25 <b>determination</b> 165:23 169:14 282:25 308:22, 25 309:2 <b>determinative</b> 131:5 <b>determine</b> 47:16 71:18 89:6 118:19 124:10 165:12 167:12 169:15 172:6 193:24 204:10 274:6 282:18 292:2 294:8 <b>determined</b> 60:6 <b>determining</b> 65:24 309:3 <b>deterrent</b> 58:22 <b>Deutschmarks</b> 64:10, 10 <b>develop</b> 44:2 53:25 68:8 75:21, 24 95:1 153:22 207:22 239:18 240:2, 7 267:7 282:13 284:20 292:5, 6 <b>developed</b> 21:22 24:15 74:10 83:13 94:8, 25 121:12 150:2 182:10 185:3 236:12 257:13 282:21
--	--	--	---	--



<b>developing</b> 24:10, 22 25:8 26:8, 21 28:2 57:6 79:24 91:18 93:10 101:21 102:25 105:19 189:10 210:13 215:15 282:9	236:23 262:25 268:7, 9 288:23 289:15, 24 291:7 293:8 308:11 322:8 323:9	<b>disciplined</b> 308:21, 23, 23 309:6	<b>dismissed</b> 150:23 151:2, 3 274:19	<b>Division</b> 9:13 125:8 242:23 243:18, 20
<b>development</b> 16:16 24:16 48:14 62:6 65:18 67:22 109:16 123:2 153:17 157:24 221:22 229:3	<b>different</b> 330:12	<b>discontinuation</b> 257:16	<b>dispenses</b> 14:13	<b>DK</b> 64:23
<b>developments</b> 102:5	<b>differentiate</b> 107:12 143:12	<b>discontinued</b> 235:14 259:24 260:25 267:5	<b>dispute</b> 167:9, 10	<b>Doctor</b> 83:24 116:1 149:21 150:6 151:11 189:22 208:18, 20 247:5 286:2 287:1, 4 297:2, 2 299:9, 10, 10, 22, 22 300:17 302:12 303:25 304:11 305:10, 25 306:11, 21 309:9 313:22 320:13
<b>deviated</b> 274:18	<b>differentiation</b> 107:13	<b>discounts</b> 164:21	<b>disseminate</b> 11:16	<b>doctors</b> 17:17, 23 18:6 74:3, 4 80:22 86:15, 16 92:13, 16, 16 94:3 97:8 115:25 119:7 139:6 163:7 192:6 194:16 196:8 204:4, 11 236:5, 11 263:8, 13, 18 266:10, 12, 13 271:10, 14 272:7 300:11
<b>device</b> 196:7	<b>difficult</b> 52:25 238:3 241:2 276:16	<b>discourage</b> 105:7 108:1	<b>distant</b> 304:18	<b>doctor's</b> 82:15 245:10
<b>devices</b> 196:9	<b>difficulty</b> 49:5 301:1	<b>discovered</b> 53:19 68:10 73:23	<b>distinction</b> 12:7 19:14 20:9 22:17 80:19 184:10 323:18	<b>doctrine</b> 92:20 96:6 144:24
<b>devoid</b> 179:2	<b>dinner</b> 202:15	<b>discovery</b> 68:11	<b>distributed</b> 265:4, 17 266:8 267:1	<b>document</b> 2:17 26:24 27:9 29:1 30:16 35:25 43:3, 11 46:13 48:4, 7 55:11, 14, 15 56:1, 4 65:16 69:2, 21 70:1 74:20 76:17, 21 77:6 103:9 106:7, 9 110:5, 12, 19 117:16 122:6, 14 126:14, 16, 18 128:20 131:3, 4
<b>devote</b> 38:25 176:6, 15	<b>dinners</b> 204:1, 7, 11	<b>discuss</b> 28:21 57:14 138:11 158:1 207:24 254:23 285:7	<b>distributes</b> 14:13	
<b>devoted</b> 16:6	<b>direct</b> 120:23 191:1 199:8, 13, 17 298:16	<b>discussed</b> 76:7, 11 86:10 95:6 112:5, 23 113:14 131:12 174:6 199:4 206:17 210:9 250:1 305:5 309:10 310:9 313:24	<b>Distribution</b> 3:5, 17 5:3 14:3 19:21 35:20 39:8 188:20 189:11 265:8	
<b>DHC</b> 288:1	<b>directed</b> 42:4 120:22 181:9 213:20 232:6	<b>discussing</b> 14:1 24:16, 16 46:16 57:12 69:22 111:10 169:3, 12 210:5, 8	<b>District</b> 15:2 230:22 251:21 280:6 297:10 331:25 335:24	
<b>dialing</b> 49:8	<b>direction</b> 118:16 169:20	<b>discussion</b> 81:22 130:20 137:25 148:17 177:16 206:6 257:11 278:14 304:22	<b>districts</b> 280:8	
<b>dialogue</b> 95:2 244:20 303:19	<b>directly</b> 16:10 29:6, 16 80:20 119:2 261:11 330:17	<b>Discussion,</b> 103:21	<b>DIV</b> 1:1	
<b>diarrhea</b> 255:24	<b>director</b> 14:17, 24 15:8 189:8 230:10 263:23	<b>discussions</b> 25:16 49:13 56:19 89:13	<b>diverse</b> 78:11 221:8	
<b>die</b> 82:14	<b>directors</b> 22:10 322:7, 8	<b>disease</b> 133:18	<b>Diversion</b> 5:6 34:13 38:11 60:20, 25 175:9 212:16 218:11 231:1, 11, 13, 17, 19, 23 233:10 237:21 246:25 268:9 312:9 325:8, 17 326:4	
<b>differ</b> 12:19 233:14 235:10 243:23	<b>dis</b> 216:10	<b>dismiss</b> 166:9	<b>divert</b> 218:14	
<b>difference</b> 22:6, 9 150:17, 21 203:4 242:17 290:14, 14, 15 291:7 292:12 302:17 328:19, 22	<b>disagree</b> 47:4, 6 216:24 217:2, 16 250:15 273:8 283:24		<b>diverted</b> 61:9 242:6 268:3 269:2, 18 279:9 313:12	
<b>differences</b> 22:8	<b>disagreed</b> 96:10		<b>divided</b> 85:17 146:16 327:23	
<b>different</b> 12:15 13:13 19:13 23:2, 2 24:1 55:23 78:22 140:25 147:7 156:25 157:16, 16 180:21 193:13 221:20	<b>discern</b> 284:24			
	<b>discipline</b> 166:8, 9 308:24 309:3			



134:21 140:15 141:13 147:21 154:23 163:23, 24 173:11 177:9 181:5 201:14 204:16 205:24, 25 210:15, 21, 22 211:20, 22 212:1, 20, 21, 25 213:2 219:24 222:23 229:18, 21, 23, 25 230:2, 5 241:5, 14 247:24 248:1 251:16 252:24 253:6, 9, 17 264:4 278:8 285:24 287:12 299:14, 15 303:21, 22, 24 305:4 314:2, 18, 19 318:11 324:7 326:14 <b>document,</b> 230:4 <b>documentation</b> 130:2 <b>documented</b> 95:2 <b>documents</b> 59:9 98:3, 5 126:5 129:23 147:13, 15 166:18 201:1, 9 206:3 211:2, 3 231:3 232:12 241:10 250:2, 4 293:1, 2, 9, 11 309:23 310:4, 8 312:19, 23, 24, 25 313:1, 3 321:7, 8, 14 <b>doing</b> 36:4 52:16 59:15 75:15 85:6 120:20 149:24 224:11 227:16, 19 254:7 275:21 276:5	297:20 327:20 332:7 <b>Dolan</b> 4:24 <b>dollar</b> 42:9 334:11, 11 <b>dollars</b> 41:7, 13, 17 42:2, 19, 22, 25 167:3, 4 297:9 <b>Dolt</b> 7:4 9:2 <b>DONALD</b> 7:13 10:3 <b>donated</b> 192:14 <b>Donley</b> 303:25 <b>door</b> 128:10 <b>dosage</b> 146:16 148:7 235:13 244:3 <b>dosages</b> 246:12 <b>dose</b> 74:13 83:15, 16, 16 92:9, 23 94:14 96:7 104:20, 21, 22, 24 106:19 112:4 113:13 144:14, 25 146:16, 20, 20 148:1, 3 158:9 160:11 240:16, 23 247:15 260:25 281:4, 6 282:7, 15 291:23, 24, 25 <b>dosed</b> 79:5 232:23, 25 <b>doses</b> 100:8 101:9, 10 107:21 158:18 247:18 255:13 259:13, 23 260:21, 24 267:4, 6 286:15 330:13 <b>dosing</b> 74:9 90:10 108:16 128:2, 7 149:11 155:7 156:25 157:12, 16 158:10, 13, 17 161:17, 20	162:1, 10, 15, 20 174:13 235:22 <b>dossier</b> 59:7, 13, 22 178:24 <b>dossier,</b> 59:8 <b>double</b> 202:16 <b>double-blind</b> 144:1 <b>doubled</b> 187:6 <b>doubling</b> 215:10 <b>doubt</b> 288:20 <b>downsizing</b> 274:20 <b>dozens</b> 124:20 <b>DPM</b> 287:4 <b>Dr</b> 2:15 9:16 15:7 16:21, 23 23:1 26:1 30:24 35:19, 21 36:12, 14 39:22 41:9 46:11 51:1 55:1 57:2 62:12 63:21 73:14 77:8, 12, 25 78:1 103:19 115:2, 8, 9 141:15, 24 142:7, 23, 24 147:22 154:13 160:18 203:18 204:17 205:12 220:5 229:5 279:13, 14 287:20 304:25 326:16 336:17 <b>draft</b> 76:12 130:20 139:9, 15 155:3 258:17 <b>dramatically</b> 53:21 <b>draw</b> 246:6 254:1 279:3 <b>drawing</b> 116:13 238:9 286:8 <b>drawn</b> 328:25 <b>dreams</b> 331:1, 10 <b>drifted</b> 307:5,	10 <b>drive</b> 334:12 <b>driver</b> 25:17 28:7 <b>drop</b> 77:19 148:24 149:5 <b>Drs</b> 139:3 140:4 <b>drug</b> 17:4 18:16, 22 21:21 31:19 33:7 49:3 50:1, 13, 14, 18 56:21 59:20, 23 64:7, 13 66:6, 7 67:20 71:19 73:11 74:1 78:24 80:23 81:3, 8, 16 83:5, 24 88:14, 14 93:18, 18 94:4 95:16, 20 96:15 99:15 100:3, 4, 8, 13, 20 101:12 102:10 103:4, 5 107:1, 8, 21, 23 119:25 123:24 124:10 125:8 131:4 132:2 143:7 146:12, 24 147:5 152:2 153:9 157:15, 17 175:3 178:23 180:16 189:9, 13 207:4, 18 211:15, 19 213:7 214:15 217:11 224:13, 20 228:12, 13 235:16, 24 236:5, 20, 21 238:6 239:19 240:3, 8 242:8, 23 258:15 268:5 269:19 278:21, 21 281:2 282:20 284:25 289:19 290:18, 18, 19 292:15 294:16	295:5, 9, 11 297:3 309:10 313:14 316:3 329:10 <b>drug,</b> 268:15 <b>drug,'</b> 267:16 <b>druggies</b> 305:3 <b>Drugs</b> 5:5 50:22 51:15 107:2 114:9 152:18 161:14 180:15, 17 192:7 218:15 247:13 248:10 250:20 251:4 291:10, 13 <b>drug's</b> 218:12 <b>drum</b> 192:3 <b>dsrauber@chad</b> <b>bourne.com</b> 7:16 <b>Dubick</b> 299:1 <b>due</b> 56:19 107:19 145:2 257:23 261:12, 14 306:1, 12 <b>duly</b> 10:18 337:8 <b>Duragesic</b> 70:10 71:2 107:13 131:11, 14 180:13 217:11 330:18, 21, 21 <b>duration</b> 240:17, 23 286:13 <b>duress</b> 82:5, 6 <b>dying</b> 82:6  < E > <b>eager</b> 240:13 <b>earlier</b> 33:11 87:16 92:7 96:20, 23 118:5 129:19 150:19 154:19 165:10 206:2 210:8, 18, 21, 22
---	---	--	--	--

<b>early</b> 16:3 19:23 20:16 21:8 24:9, 15 81:6, 14 124:1 166:11 190:5, 6 191:8 220:14 230:14 236:4 264:14 279:11 334:7 <b>earning</b> 331:11 <b>easier</b> 51:10 246:5 <b>easily</b> 19:17 284:25 <b>East</b> 1:22 <b>easy</b> 119:17 299:19 307:12 <b>EdM</b> 2:11, 13 <b>educate</b> 109:2 273:18 295:11 <b>educating</b> 271:21 <b>education</b> 295:4 <b>Edward</b> 4:23, 24 <b>effect</b> 26:11 53:11, 20, 23 54:3, 8 68:11 83:8 87:4, 6, 10 95:9, 11 105:2 106:17, 18 144:24 145:1 146:10 194:20 205:3 207:19 208:9 254:14 290:19 <b>effective</b> 80:23 84:7 96:3, 4, 5 97:16 98:16, 20, 23 100:13 105:3 106:20, 20 150:16 151:15, 17, 20 206:24 207:15 211:7 212:9, 11 232:24 233:6, 20 245:24 305:2, 6 325:21 332:13, 22	333:6, 14 <b>effective</b> , 97:17 <b>effectiveness</b> 32:2 98:18 152:8, 9 234:13, 14 250:3 <b>effects</b> 53:21 91:12 143:10 144:20 233:21 235:5 239:8 252:11 262:11 <b>efficacious</b> 124:11 <b>Efficacy</b> 3:24 60:3 105:15 132:13 133:11 140:24 141:2 143:15, 25 149:7 151:22 211:19 <b>efficient</b> 184:17 <b>effort</b> 34:22 106:24 124:21 139:25 154:1 167:12 172:6 181:12 182:5 263:13 274:7 336:2, 12 <b>Efforts</b> 5:6 39:1 99:19 174:24 176:7, 16 188:20 199:4 212:16 217:7 274:5, 14 <b>eight</b> 146:13, 21 250:24 257:3 259:18 276:25 277:1 321:20 <b>eighth</b> 142:6 <b>either</b> 37:17 60:2 66:6 109:22 138:12 151:5 172:13, 15 195:25 299:4 307:17 310:21 314:25 323:7 329:3 331:25 <b>elaborate</b> 146:7	<b>elderly</b> 335:22 <b>election</b> 114:14 <b>element</b> 137:23 281:3 290:18 <b>eleven</b> 257:4 <b>elicit</b> 99:16 <b>eliminated</b> 114:6 <b>elimination</b> 243:24 <b>Ellen</b> 4:16 301:17 <b>ELLIS</b> 7:4 10:11, 11 27:5, 9 32:13, 16, 20, 22 33:2 43:6 48:6 54:25 55:3, 10, 25 109:21 126:13 171:5 201:5, 9, 16, 22 225:19, 23 226:1, 7 251:15 <b>else's</b> 88:11 <b>E-MAIL</b> 1:24 2:11, 24 3:7 5:8 16:20 29:12, 24 30:3 32:22 54:11, 15, 16, 17, 17 55:4, 17, 20 56:5 57:2 62:11 77:7, 14 84:24 85:10 86:3, 8 90:18 92:25 106:11 109:5, 9, 15 158:3, 25 201:10, 11 202:4 203:8 210:7 219:25 221:6 278:6, 7 285:22, 25 287:13 324:13 326:11, 18, 19, 21 331:13 <b>e-mailed</b> 261:23 <b>e-mails</b> 48:21 69:23 81:19 201:19	<b>embarrassed</b> 126:1 <b>emphasis</b> 161:4 <b>emphasize</b> 189:14 304:17 <b>emphasized</b> 38:18 83:20 85:5 175:24 297:3 329:12 330:12 <b>emphasizing</b> 29:16 330:7 <b>employed</b> 23:18, 21, 24 34:1 253:23 <b>employee</b> 73:16 261:23 264:17 265:12 <b>employees</b> 22:7 35:13 75:14 88:22 140:11 165:12, 14, 15, 23 166:1, 2, 9 169:7, 11, 12, 15, 15, 22, 25 172:8, 8 187:11 237:19 241:20, 21 242:1 252:15 255:11 256:7, 24 257:1 258:17 260:6, 9 261:3 263:19 265:4 267:20 268:7, 11 274:11 311:22 312:6 316:21, 22 317:21 <b>Enclosed</b> 204:20 <b>encounter</b> 78:25 <b>encourage</b> 30:23 191:9 192:8 <b>encouraged</b> 31:13 189:18 <b>encouraging</b> 67:16 202:23 <b>encroachment</b> 80:20 <b>ended</b> 2:17 16:3 38:16	130:5 131:6 175:22 186:22 <b>Endo</b> 30:19 <b>end-of-life</b> 18:16 82:5 83:5 88:14 93:18 95:20 100:4 103:5 116:10 117:1 143:6 <b>ends</b> 201:11 <b>energize</b> 125:22 <b>Enforcement</b> 214:15 <b>engaged</b> 165:13, 24 169:22 225:1 254:18 293:7 295:21, 22 <b>engagements</b> 196:1 <b>engaging</b> 168:9, 19 <b>enhance</b> 178:13, 24 <b>enjoying</b> 290:18 <b>enormous</b> 34:20 282:11 <b>enormously</b> 16:7 <b>enrolled</b> 261:10 <b>ensure</b> 92:10 189:11 <b>enter</b> 174:7 <b>entered</b> 222:19 246:19 257:21 272:4 <b>entering</b> 224:18 <b>enthusiasm</b> 125:20 <b>enthusiastic</b> 32:2 66:2 <b>entire</b> 36:25 37:9, 14, 20 230:5 260:15 <b>entirety</b> 312:2 318:19 <b>entities</b> 11:3 12:12, 13, 20 19:13 23:2
---	---	---	---	---



40:21 42:7 322:8 <b>entitled</b> 255:19 298:20 <b>entity</b> 12:9 43:9, 10 169:10, 17 170:2 <b>environment</b> 150:13 165:1 <b>envisioned</b> 36:24 <b>equal</b> 50:21 74:4 81:8, 17 82:25 132:13 251:1 256:11 <b>equally</b> 85:17 <b>equivalence</b> 144:3, 6 <b>equivalent</b> 66:4 104:21 144:10 149:7 <b>eroded</b> 176:22 <b>erosion</b> 36:22 37:6 <b>erroneous</b> 55:19 89:16, 17 305:11 <b>error</b> 52:19 85:14 89:20 102:11 183:13 <b>especially</b> 105:9, 14 180:11 335:21 <b>ESQ</b> 7:1, 4, 6, 13, 16, 21 8:2, 6 <b>essence</b> 163:6 <b>essentially</b> 146:10 160:6 277:17 <b>establish</b> 38:23 152:23, 25 153:11 176:4, 15 <b>established</b> 20:15, 18 39:14 94:4 117:5 308:10, 10 <b>estimated</b> 216:19 <b>estimates</b> 334:7	<b>et</b> 1:4 41:24 91:19 93:12 101:22 119:7 330:13 <b>ethical</b> 190:10 <b>EU</b> 63:14 <b>euphoria</b> 239:9 242:4, 4 252:12 254:4 268:1, 2 269:16, 16 280:12, 20, 23 281:1, 12, 14, 16 297:3 301:22, 24 302:8, 11, 13 303:14 305:3, 6 310:12, 16, 17, 19, 20 313:6, 10 316:6 <b>euphoria,</b> 302:2, 3, 7 <b>euphoric</b> 254:14 <b>Europe</b> 53:15 <b>European</b> 63:14 288:22 <b>evaluation</b> 202:18 <b>evening</b> 108:25 308:8 <b>event</b> 124:20 259:15 260:23 <b>events</b> 195:24 233:22 308:2 <b>Eventually</b> 24:20 26:18 27:24 61:14, 20 68:7 84:9 136:18 195:12 274:22 316:16 317:16 324:22 <b>everybody</b> 85:2 150:6 166:8 193:22 248:20 332:5 <b>evidence</b> 28:13 109:22 110:14 122:8 134:18 168:3 273:9 283:20 284:3 296:17 315:11 <b>ex</b> 1:4	<b>exact</b> 157:15, 17 158:12 <b>exactly</b> 52:10 56:2 113:9 127:6 <b>exam</b> 319:22 <b>Examination</b> 2:1 10:21 <b>examined</b> 10:18 <b>example</b> 106:16 107:7 116:22 130:22 178:4 274:9 307:18 315:25 <b>Examples</b> 319:17, 18 <b>exceeded</b> 213:5 <b>exceeding</b> 34:2 <b>Excellent</b> 108:3 <b>exception</b> 50:2 293:1 <b>excessive</b> 294:21 336:7 <b>exchange</b> 158:22 <b>excitement</b> 222:6 <b>exclusive</b> 18:23 20:3 24:11 <b>exclusivity</b> 18:25 <b>Excuse</b> 12:5 89:16 183:12 194:10 197:10 <b>execution</b> 118:13 <b>executive</b> 29:20 189:8 228:21 229:2 245:7 <b>executives</b> 29:22 <b>exhausted</b> 93:20 <b>exhaustive</b> 245:14, 20 <b>Exhibit</b> 2:8, 9, 11, 13, 17, 19, 21, 22 3:2, 3, 7, 9, 10, 13, 15, 17, 21, 22 4:2, 3, 7, 8, 10, 12, 16, 19, 19, 21 5:2, 3, 6, 10,	12, 14, 16, 19, 21 6:2, 5, 8 29:2, 4, 13, 14 32:9, 11 37:25 38:1 39:18, 21 43:2, 5, 8 45:22 46:12 47:25 48:1 54:13 69:21 73:7, 8 74:18, 19 77:4, 5 86:5, 6 103:7, 8 109:12, 13, 22 110:8, 18 117:15 122:4, 5 127:8, 9 134:19 135:1 141:11, 12 152:5 154:21, 22 164:1, 2 173:13, 18 177:6, 8 200:19, 22, 24 202:3 204:15 205:23 212:2, 23 218:23, 24 220:2 225:24 226:2, 3 247:21, 23 278:10, 11 286:6 287:10, 11 300:22 301:9 311:14 314:10, 21, 25 324:8, 9 326:12, 13 331:16 333:10 <b>EXHIBITS</b> 3:1 4:1 5:1 6:1 122:9 <b>exist</b> 12:22 21:11 43:13 102:8 187:23 225:12 234:14 <b>existed</b> 18:12, 14 102:11 193:21 246:20 297:5 <b>exists</b> 234:14 245:10 <b>expand</b> 104:12 137:10 174:7	183:10, 14 206:19 213:18 <b>expanded</b> 246:11 <b>expanding</b> 81:9 91:13 99:20 <b>expansion</b> 182:9 197:6 <b>expect</b> 11:8 277:16 <b>expectation</b> 151:6 153:5 205:19 277:19 <b>expectations</b> 80:6 107:19 330:25 <b>expected</b> 56:7 85:21 215:23 216:1 258:12, 14 308:11 <b>expended</b> 76:24 <b>expense</b> 44:16, 21 45:7, 15 205:2 <b>expenses</b> 45:16 <b>experience</b> 47:12 50:13 61:18 65:14 74:11 78:10 149:21 151:7 193:13 255:18 261:12, 14 281:14 <b>experienced</b> 38:12 257:15 259:3, 10 <b>experiences</b> 50:14 255:20, 22 259:16 281:12 321:25 <b>experiencing</b> 239:17 240:1, 6 259:24 <b>expert</b> 279:15, 17 <b>experts</b> 79:8 106:16 115:14 193:23 325:12 <b>expire</b> 19:1
--	---	--	---	---



24:12, 19 <b>expires</b> 337:17 <b>explain</b> 44:25 97:19 147:18 161:1 178:18 183:7, 13, 16 201:22 <b>explained</b> 23:1 56:19 98:24 206:18 <b>explains</b> 127:24 161:16 305:25 <b>explicit</b> 297:6 <b>explicitly</b> 247:2 272:11, 17 298:2 <b>explore</b> 85:11 <b>exploring</b> 183:19 <b>expressed</b> 214:17 278:24 <b>expressing</b> 214:20 <b>expression</b> 119:4 125:20 240:21 <b>extended</b> 80:17 114:16 246:8 <b>extension</b> 114:5, 8, 20 179:6 <b>extensive</b> 54:1 78:10 130:2 246:9 296:15 <b>extensively</b> 76:7 206:19 <b>extent</b> 53:15 289:18 290:17 <b>external</b> 34:16 <b>extra</b> 27:5 <b>extract</b> 238:3, 6 279:1 <b>extracting</b> 49:5 71:19 <b>extreme</b> 38:22 39:13 82:5, 5 151:24 <b>extremely</b> 32:1 65:21 68:8 71:4 81:5, 14 100:9 114:17	176:3, 13 245:8, 14, 20 <b>eyesight</b> 111:21  < F > <b>face</b> 26:18 27:24 253:7, 17 <b>facility</b> 216:2 <b>fact</b> 49:6 74:10 83:9 153:7 188:17 207:8 209:23 237:9 247:2 263:20 264:11 305:14 315:22 <b>factor</b> 202:20 218:13 334:10 <b>factoring</b> 334:13 <b>factors</b> 150:13 151:18 <b>Facts</b> 5:12 125:18, 20 169:3, 6, 8, 17 225:18, 20 226:2 227:24 228:5, 8 229:15 232:13, 17, 20 241:15 250:23 251:20 252:9 254:12 256:20 262:1 263:15 264:11 273:11 275:13 296:1 300:13 302:10, 16, 22 303:6, 22 304:6, 15 306:4 307:13, 17 311:10, 12 315:22 318:6, 13 319:24, 25 320:1 321:10 <b>failed</b> 67:11 150:23 151:2 <b>fails</b> 108:19 <b>fair</b> 42:18, 20 282:24 295:6 309:25 <b>fairly</b> 130:2 298:1	<b>fall</b> 20:22 21:3 325:2 <b>fallen</b> 87:25 <b>false</b> 240:10, 13 297:17 315:23 316:15, 20 317:12, 20 <b>falsely</b> 252:10 254:2, 13 257:18 267:3, 24 269:13 <b>familiar</b> 60:10 77:14 130:9 166:22 177:2 197:25 198:15, 17 219:2, 9 255:3 280:22 286:3 289:17 329:3 <b>familiarity</b> 281:5 329:11 <b>Families</b> 40:7 <b>family</b> 12:16 13:8, 24 42:16 56:12 327:3 <b>far</b> 96:12 143:3 182:22 241:21, 23 275:23 281:6 308:15, 16 329:23 <b>fast</b> 328:17 329:9, 21, 23 333:8 <b>father</b> 20:12 <b>favor</b> 66:8 227:25 <b>favorable</b> 73:2 175:16 <b>FAX</b> 1:24 287:20 <b>FDA</b> 50:13 61:4 71:14 83:19 84:5 94:13 97:24 100:6 103:22 112:11, 16, 21, 22 113:16, 24 114:1 121:8 125:1, 9 126:21	128:4 149:9, 14 150:20, 24 153:8 157:10 159:24 181:19 232:22 233:8, 18 243:19, 20 245:14 255:11 267:14 268:23 269:8 288:21, 25 <b>FDA's</b> 125:6 180:2 242:22 <b>FDA-submitted</b> 60:1 <b>fear</b> 211:18 <b>feared</b> 79:8 222:5 <b>fears</b> 109:4 <b>feasible</b> 68:1 <b>February</b> 177:11, 15 178:20 256:23 261:2 264:16 265:10, 15 <b>federal</b> 223:2 <b>feel</b> 22:16 23:8 24:6 81:2 108:15, 16 234:17 249:6 271:14 278:18 280:20, 23, 25 329:5 <b>feelings</b> 82:19 334:22 <b>fell</b> 16:15 <b>felony</b> 31:18 33:7 60:15 165:14, 25 166:1, 6 168:20 222:18 224:12 228:12 295:23 296:8 300:13 306:5 312:20 <b>felt</b> 17:15 66:11 81:13 101:3 249:5 258:2 307:14 <b>Fentanyl</b> 249:10 <b>fewer</b> 233:21 239:7 243:4	244:15 252:10 277:1 281:15, 16 291:9 <b>field</b> 118:19 122:14, 15 204:22 236:3 256:14 274:21 280:4 <b>fifth</b> 64:16 75:20 148:19 <b>figure</b> 169:6 184:21 192:25 283:13 <b>file</b> 124:17 <b>filed</b> 15:1 224:1, 7 312:19 <b>filing</b> 123:23, 23 <b>filings</b> 124:25 <b>fill</b> 139:10 160:6 <b>filter</b> 279:2 <b>final</b> 255:14 258:17 <b>Finally</b> 156:23 251:8 281:7 335:20 <b>find</b> 33:25 62:13 64:2 104:25 138:25 168:17 188:19 198:19 223:18 274:1 275:6 297:21, 24 304:20 311:15 <b>finding</b> 149:15 151:5 279:1 <b>findings</b> 175:2 <b>fine</b> 146:22 277:24 298:22 321:3 <b>finish</b> 97:5 197:8 <b>finished</b> 109:25 117:9 122:3 154:2 336:18 <b>firm</b> 13:7 167:4 198:6, 9, 12 221:10
--	--	---	--	--

<b>firms</b> 26:20 28:1, 11 196:23 197:4 <b>First</b> 6:9 10:17 20:5, 13 27:18 36:20 38:8 46:19 49:8 51:25 54:17, 24 56:17 63:3 64:6, 15, 16 73:24 74:25 76:3, 9, 10 77:21 78:5 85:12 93:24 95:5, 25 121:19 123:3 130:15 139:14 159:21 160:24 167:7 170:10 173:23, 25 177:14 187:5, 10 191:4 206:16 216:21 217:7, 9 220:13 224:25 230:21 231:18, 24, 24 240:16 246:17 247:25 248:7 250:1, 2 276:12 279:8 281:19 288:4 321:22 324:19 327:5 329:4 332:12, 13, 15, 22 333:5, 12, 14 335:23 337:8 <b>Fisher</b> 279:22, 24 280:7 <b>five</b> 46:23 185:12 187:5, 10 214:13 248:2, 5 289:9 305:20 <b>five-year</b> 63:12 64:3 121:22 <b>fixed</b> 58:22 <b>FL</b> 5:18 <b>flash</b> 221:12 <b>flat</b> 304:3, 10 <b>Fleischer</b> 5:22	<b>FleishmanHilliar</b> <b>d</b> 197:24 <b>Floor</b> 7:22 <b>Florence</b> 313:22 <b>Florida</b> 195:4 <b>fluctuation</b> 145:4 148:5, 11 <b>fly</b> 194:23 <b>focus</b> 70:23 108:9, 24 132:19, 22 174:24 175:2, 18 181:15 188:21 189:4 271:9 334:19 <b>focused</b> 99:20 166:4 179:3 213:14 327:12 335:14 <b>focusing</b> 182:8 <b>focussed</b> 91:13 <b>follow</b> 96:6 113:18, 19 163:4 170:16 174:10 205:15 310:5 <b>followed</b> 248:23 255:24 261:13 <b>following</b> 179:3 202:14 242:16, 25 250:18 252:6 257:12 259:1 270:7 274:7 288:2 333:1, 8, 11 <b>following:</b> 177:17 <b>follows</b> 10:19 <b>follows:</b> 237:23 <b>follow-up</b> 198:19 <b>fondlest</b> 331:1, 10 <b>Food</b> 131:4 <b>footnote</b> 312:23 <b>Forbes</b> 40:6, 7 <b>Force</b> 6:8 44:24 45:4 90:5 92:3, 9 118:11 122:14,	16 125:22 165:12 184:4, 24 185:1, 16, 24 187:7, 10 188:13 189:14 190:21, 22 204:22 216:6 256:14 260:15 262:12, 25 272:10, 16 273:17 274:1, 21 319:6 332:3 335:7, 12 <b>forces</b> 186:17 <b>foregoing</b> 337:4, 11 <b>forget</b> 58:23 61:18 66:10 <b>forgotten</b> 65:16 <b>form</b> 11:25 15:17 25:3 31:20 34:5 41:8 42:11 52:4, 4 53:25 60:8 65:9 70:18 86:19 91:24 120:10 130:20 137:12 139:9 145:11 147:8 153:2 165:16 167:15 176:18 203:19 211:9 239:20 246:15 256:12 262:13 263:25 271:3 297:13 303:7 309:13 316:25 328:18 <b>format</b> 130:4 <b>formed</b> 74:8 83:22 312:15 <b>former</b> 229:1 <b>forms</b> 107:5 130:8 169:23 244:3 245:2 328:7 <b>formulating</b> 28:11 <b>formulation</b> 52:13 55:24	56:23 144:18, 22 <b>formulations</b> 26:10 52:2, 8, 12, 14 284:19, 21 <b>for-profit</b> 323:11, 13, 15, 20, 22 <b>forth</b> 16:9 139:11 194:12 241:5 319:6 337:6 <b>Fortunately</b> 85:19 <b>Forum</b> 8:3 <b>forward</b> 180:7 301:3 307:9 <b>found</b> 146:11, 12 214:11 223:3, 15 266:17, 17, 20 269:1 277:18 282:1 <b>foundation</b> 183:20, 23 <b>four</b> 104:22, 23, 24 146:9 147:1, 5 155:9 156:1 158:15 160:5, 11 163:13 164:6 166:17 215:25 216:2 220:14 289:21, 22 296:25 305:19 330:3, 3, 6 <b>four-fold</b> 148:7 <b>fourth</b> 76:4 111:15 143:23 147:23 330:1 334:7 <b>fragmentary</b> 322:1 <b>fragments</b> 305:17, 17, 17 <b>frame</b> 125:8, 11 237:14 271:17 284:10	<b>Franco</b> 6:6 <b>Frankfort</b> 7:10 <b>frankly</b> 57:6 <b>fraud</b> 33:20 <b>Frederick</b> 5:13 7:12, 13 12:21 19:22 20:5, 10, 11 21:6, 10, 13, 20, 20, 25 22:7, 15 23:8, 9, 19, 24 24:5 33:12, 16, 17, 21 36:21 40:2, 17 43:13 60:14 75:19 110:21 132:6 165:11, 15, 22 166:2 168:7 169:8, 16, 22 170:7 172:7, 23 173:7 182:14 183:7, 19 187:10, 15 188:2, 22 198:2 221:14 222:19 225:12 241:15, 18, 20 252:25 253:4, 7, 14, 18 284:9 293:14, 19 318:24 322:5, 22, 25 323:13, 20 <b>Frederick's</b> 182:9 183:10 <b>free</b> 198:25 <b>frequency</b> 128:2, 6 157:12 235:22 <b>frequent</b> 236:6 <b>frequently</b> 200:15, 15 255:22 <b>fresh</b> 308:3, 18 <b>Friday</b> 9:4 177:15 <b>Friedman</b> 2:9, 24 3:8, 10, 13, 15 4:21, 24 5:8, 15, 16 6:3, 6 35:7, 8 38:17 77:15, 17, 20
---	---	---	---	---



81:22 103:13 106:13 158:4 160:2, 14, 24 170:5 172:18 175:23 198:12 205:4 221:20 226:16, 21 228:17, 23 324:14 <b>Friedman's</b> 160:22 <b>friend</b> 287:1, 3 <b>frightening</b> 83:7 88:1, 3, 13 97:1 103:5 <b>front</b> 32:17 70:8 77:10 247:3 273:2, 4 310:8 <b>frustrated</b> 159:15, 22 <b>fulfilled</b> 61:4 <b>full</b> 53:25 205:1 260:6, 9 286:13, 14 <b>fullest</b> 38:25 176:6, 16 <b>full-fledged</b> 221:9 <b>functional</b> 178:4 <b>fund</b> 192:16, 20 <b>fundamental</b> 92:20 <b>funded</b> 192:11, 13 <b>further</b> 174:12 259:22 288:3 298:4 337:14 <b>future</b> 72:21 132:15 207:22 <b>fuzzy</b> 290:1  < G > <b>gain</b> 137:10 138:6 <b>gains</b> 327:7 <b>Gallop</b> 181:14 182:1 <b>GAO</b> 5:5 212:17 293:2	<b>Gasdia</b> 6:9 331:24 <b>gastrointestinal</b> 53:21 <b>geared</b> 79:3 <b>GENERAL</b> 1:4 7:8, 8 8:3 14:20 15:8 17:1 45:9 47:12 56:15 84:21 114:24 120:20 121:10 124:12 145:1 179:11 213:23 222:14 223:1 231:2 234:10 250:6 279:16 326:24 <b>generalizing</b> 281:17 <b>generally</b> 82:20 89:24 90:1 116:8 137:4 142:15 236:10 308:1 331:20 <b>General's</b> 10:14 <b>generate</b> 40:21 <b>generated</b> 39:23 40:1 204:6 293:12 <b>generic</b> 24:13 26:18 27:24 28:16 36:23 37:7 38:24 136:15 176:5 <b>generics</b> 38:18, 19, 21 39:14 70:12 137:3 175:24, 25 176:2, 12, 17, 23 <b>Geneva</b> 5:23 <b>geography</b> 14:4 <b>GEORGE</b> 8:12 <b>German</b> 48:25 49:21 58:17 65:7 66:14 <b>Germany</b> 13:15, 17 49:10 61:13, 20 63:8, 18 66:4	<b>getting</b> 48:6 65:6 84:8 86:1 94:19 96:8 119:3 184:22 199:25 227:11 305:2 312:12 320:4 <b>Gilda's</b> 183:21 <b>give</b> 11:1 17:3 21:16 35:25 56:21 57:20 62:13 63:12 69:21 75:6 145:10 198:24 210:16 212:19 234:15 266:5 282:10 287:9 297:17 301:9 304:10 307:9 325:3 333:9 <b>given</b> 11:6 61:23 67:3 74:15, 16 79:22 114:12 148:4, 6 155:13 189:12 195:10 221:8 274:1 290:11 292:2 324:19 329:3 337:19 <b>givers</b> 82:23 <b>gives</b> 150:14 248:9 304:3 305:6 <b>giving</b> 82:15 196:8 275:11 291:24 310:11 337:7 <b>glad</b> 67:16 <b>gladdened</b> 31:5 <b>gleaned</b> 61:17 <b>go</b> 9:19, 23 15:20 22:13 27:14 31:25 46:1 56:5 57:2 66:17 67:1 70:20 76:8 81:24 83:3 92:1 94:6 95:3 103:21 109:23 110:3 111:3	118:18 127:7 128:13 129:9 133:4 137:15 141:9 143:16 145:25 147:19 152:10 154:24 157:25 161:16, 25 162:19, 22, 23 163:11, 14, 25 171:7 174:11 175:21 179:6 180:7 181:2, 4 184:7 188:17 189:22 190:11 195:8, 14, 23 204:19 206:15 208:18 213:15 215:9 216:16 217:3 218:16 220:1, 3 222:7 224:23 232:9, 19 234:1 236:17 251:13 253:22 254:20, 24 260:4 263:13, 18 275:6 278:7 286:4, 7 287:22 292:17 298:20 303:10 311:3 323:23 324:6 326:20 327:16 329:25 <b>goal</b> 25:18 32:6 124:16 125:9 <b>goals</b> 213:17 221:9, 11 <b>Goerich</b> 67:3 <b>goes</b> 35:12 118:11 256:22 274:7 <b>going</b> 18:21 19:16 22:14, 21 23:4, 6, 15 24:4, 12, 12, 25 25:9, 10, 13 29:21, 22, 23 39:14 45:24 49:17 51:12 53:6 57:15	66:17 70:2 82:9, 10, 14 86:1 94:23 95:23 106:7 114:23 117:8, 12 119:11 120:7 122:1, 8 130:13, 16, 17 137:3 141:5 147:3, 3, 20 148:19 154:21 161:18 163:23 165:2 169:18 173:9 176:12 200:20 205:20 211:21 225:23 226:2 241:2 243:11 248:20 263:1 300:21, 23 301:3, 11 306:14 309:22 314:11, 24 315:1 319:23 324:7 326:11 330:17 333:22 <b>gold</b> 175:13 <b>Golden</b> 279:21, 23 <b>Goldenheim</b> 2:21, 25 5:17, 17, 22 6:3 48:10, 12 51:1 73:14 114:19 157:20, 22 170:6 173:3 228:17 229:1, 5 287:14 <b>good</b> 61:6 67:12 127:25 142:15 145:1 152:2 154:4 158:23 160:5 200:24 205:14 225:21 235:20 245:12 300:8 323:18 324:25 325:20 <b>GOOTEE</b> 1:21 337:3, 24 <b>gotten</b> 291:15
---	---	--	--	--



<b>government</b> 34:14, 25 131:4 182:25 183:3 240:20 317:2, 4 <b>grams</b> 94:14, 15 <b>Grand</b> 7:22 <b>graph</b> 157:11 242:25 252:14, 17 320:25 <b>graphic</b> 244:3 <b>Graphical</b> 242:13, 16 252:7, 7 254:11 <b>graphically</b> 231:22 <b>graphs</b> 254:2 <b>Great</b> 27:6 30:25 113:21 180:8 209:9 246:20 248:9 <b>greater</b> 58:6 85:7 90:21 98:11 214:25 220:24 <b>greatest</b> 202:19 327:6 <b>greatly</b> 96:9 114:1 <b>Green</b> 305:1 <b>Greg</b> 222:15 223:1 225:7 <b>Gregory</b> 5:10 <b>gross</b> 41:16, 17, 20 44:7, 9, 9, 11 305:2 <b>group</b> 70:15, 16 91:7 99:23 108:24 115:3, 6, 9 120:21, 22 138:22 175:2 202:17 204:1, 3 250:2, 4 260:12 271:9 <b>groups</b> 106:15 108:9 115:4 132:20, 22 138:20 174:25 175:18 <b>grow</b> 189:3 <b>grown</b> 214:3	<b>growth</b> 123:5 135:22 328:14 332:14, 23 333:15 334:1, 4, 5 <b>guess</b> 71:16, 21 117:23 127:20, 22 133:5 148:15 172:22, 23 179:23 185:12, 14 195:11 227:19 238:18 276:19 282:10 328:14 335:11 <b>guilty</b> 33:6 60:15 169:24 224:12, 19 226:25 227:21, 24 228:2, 11, 18, 24 269:25 306:4 312:20 318:23 <b>Gurney</b> 2:20 <b>guy</b> 72:11 112:14 118:4, 10, 23 126:22 132:8 133:2 158:11 174:4 253:8 <b>guys</b> 157:13 201:3 324:18  < <b>H</b> > <b>habit</b> 87:25 94:5, 8, 18 146:18 248:13 <b>Haddox</b> 5:17 279:13, 14 <b>half</b> 83:16 84:1 89:25 120:19, 19 201:11 206:11, 13 214:4 261:23 290:16 291:25 <b>halfway</b> 123:1 142:22 <b>hand</b> 32:17, 23 77:3 102:3, 20	103:6 106:7 117:8, 12 122:1 154:20 162:21 163:23 173:10 190:5 236:4 285:22 324:7 326:11 337:19 <b>handed</b> 29:25 108:12 <b>handful</b> 59:14, 22 <b>hands</b> 119:6 143:6 <b>happen</b> 34:19 124:19 <b>Happened</b> 219:1 231:6 241:11 <b>happening</b> 118:20 276:23 <b>harassment</b> 320:5 <b>Harbison</b> 7:18 <b>hard</b> 27:3 31:8 170:16 304:21 <b>harm</b> 302:8 <b>harmful</b> 300:2 <b>harmless</b> 102:9 300:19 <b>Harrison</b> 4:17 5:3 <b>Harry</b> 63:19 <b>hate</b> 157:8 <b>Hazard</b> 232:3 <b>hazy</b> 147:15 <b>HCI</b> 286:10 <b>head</b> 30:24 35:9 48:13 77:18 103:15 157:23 158:6, 7 159:9, 12 160:2, 14, 18 161:12, 13 178:18 203:15, 16 249:4, 5 310:4 <b>heading</b> 213:14 236:17 <b>headquarters</b> 254:1	<b>Health</b> 97:21 214:5 215:2 217:5 <b>healthcare</b> 82:22 175:2 181:10 182:11, 20 183:1, 2 238:2, 22 239:1, 15, 22, 25 240:4, 14, 22 242:2, 10 254:13 265:7 267:2, 24 269:13 313:5 324:23 <b>hear</b> 175:5 219:22 319:1 <b>heard</b> 49:12 63:3 64:23 167:7 186:18, 24 189:24 197:2, 23 198:17 234:8 236:3 278:24 <b>hearing</b> 38:13 289:11 <b>heartened</b> 31:23 <b>heeded</b> 62:10 <b>height</b> 291:6 <b>Held</b> 4:8 15:9 35:18 78:6 84:16 148:6 256:8 <b>help</b> 23:12 57:24 62:23 90:25 99:2, 5 156:11 231:4 311:4 318:20 <b>helped</b> 139:10, 12 253:9 <b>helpful</b> 300:6, 19 <b>helping</b> 95:21 97:11 189:3 204:12 251:9 <b>HENNEBERRY</b> 7:21 10:7, 7 <b>Hentzsch</b> 16:23 30:1, 24 <b>hereto</b> 337:15	<b>heroin</b> 58:25 116:16 336:14 <b>herpetetic</b> 120:14 <b>hesitant</b> 65:17 <b>hey</b> 158:12 190:23 <b>hid</b> 85:5 <b>hierarchy</b> 250:12 251:3 <b>high</b> 67:22 125:10 126:6 246:12 257:19 278:23 279:25 <b>high-dose</b> 79:22 80:2 <b>higher</b> 61:16 79:4 94:21 107:21 290:5, 24 <b>highest</b> 145:7 186:16 266:1 <b>highlight</b> 57:21 335:20 <b>highlighted</b> 27:12, 13, 16 30:2 54:25 55:3 201:14, 16 330:24 <b>highlighting</b> 201:18 <b>highly</b> 61:13 116:4, 4 150:12, 15 <b>hire</b> 112:20, 24 277:10 <b>hired</b> 112:18 127:1, 3 166:19, 24 167:13 170:5 187:23 188:1 196:21 197:5 198:1, 9 297:8, 17, 23 <b>hires</b> 187:14 <b>hiring</b> 198:5 <b>History</b> 3:22 18:2 97:2 129:25 186:20 327:14 <b>hit</b> 126:6
---	--	---	--	--

<b>hold</b> 131:15 164:23 170:25	231:2	<b>identify</b> 34:16, 18 48:2 210:15 213:17 232:12, 16 315:2	<b>imperative</b> 152:22 153:11	15, 17 316:10, 11 318:23
<b>holding</b> 27:2 32:20, 21	<b>huge</b> 30:6 54:4 149:25	<b>ignorance</b> 272:6	<b>impinge</b> 298:5	319:4
<b>holdouts</b> 84:22	<b>human</b> 73:24 124:10	<b>ignoring</b> 272:6	<b>implementation</b> 120:6	<b>improperly</b> 166:10 262:10
<b>Holly</b> 304:1	<b>hundred</b> 100:12 116:6 131:18 273:21	<b>II</b> 1:1 51:15 121:10 152:20 153:7, 8 189:6 206:8 210:5 214:14 247:4, 5, 7	<b>implication</b> 144:12 238:19	<b>improve</b> 63:6, 9 182:10
<b>homes</b> 213:21	<b>hurt</b> 91:1 95:18 99:8 147:4	<b>III</b> 51:14 66:6 152:17, 19, 25 153:7 189:7	<b>implications</b> 129:23	<b>improvement</b> 178:4 327:8
<b>hook</b> 181:12	<b>Hydrocodone</b> 5:15 87:18 152:17 180:12 248:8, 24 249:12 250:21, 22, 25	<b>ill</b> 108:2	<b>implied</b> 99:15 261:11	<b>improving</b> 183:8
<b>hope</b> 37:21 205:14, 22	<b>hydromorphone</b> 28:13 79:24 81:11 248:23 250:23	<b>illegal</b> 165:24	<b>importance</b> 38:22 39:13 176:3, 14 220:23 324:16, 17 326:8	<b>IMS</b> 214:5 215:2 217:5 327:21
<b>hoped</b> 220:24	<b>hypo</b> 306:6	<b>illicit</b> 217:25	<b>important</b> 23:16 34:20 69:19 81:25 85:3 90:16, 22 91:16 93:8 98:12 100:11 101:19 102:23 138:25 176:21 185:8 210:11 286:11 288:2 328:1	<b>IMS's</b> 327:7
<b>hopefully</b> 118:24 195:13	<b>hypothesis</b> 292:9	<b>image</b> 107:24, 25	<b>importantly</b> 151:6	<b>inadequately</b> 192:9 272:8
<b>Hospice</b> 116:10	<b>hypothetical</b> 284:5 304:8 306:8, 10, 16 307:8 309:14 322:3	<b>image-related</b> 81:3	<b>impose</b> 140:1	<b>inappropriate</b> 301:23 304:14 305:7 306:13, 18, 20, 23 307:7, 18, 19 309:6, 11, 18 310:12, 14, 18, 23, 24 311:7 313:9, 15 314:4, 6, 8 319:18 320:18, 20 336:6
<b>hospices</b> 213:21	<b>&lt; I &gt;</b>	<b>imagine</b> 161:22	<b>impossible</b> 283:5 322:2	<b>inappropriately</b> 262:21
<b>hospital</b> 215:25 232:2	<b>i.e</b> 136:19 157:1	<b>immediate</b> 117:19 144:8 149:3 163:1, 2, 9 286:20 289:20 325:9	<b>imprecise</b> 296:21	<b>Inc.</b> 14:18, 24
<b>hospitalized</b> 259:4, 5	<b>idea</b> 57:13 61:7 63:2, 4 66:10 67:11, 12 75:24 94:5 129:13 225:22 273:23, 24 305:2, 7, 22 306:17 326:9	<b>immediately</b> 102:2 105:21 161:8 187:25 308:2	<b>impression</b> 83:22 236:11 290:9	<b>incentive</b> 186:12, 13 334:4, 18, 20 335:1
<b>hospitals</b> 41:24 213:21	<b>idealize</b> 76:13	<b>immediate-releas e</b> 17:5 52:4 107:4 144:10 145:11 148:5, 21 149:8 159:7 160:9, 23 232:25 233:6 235:5 238:24 239:3, 8 242:6, 19 243:5 244:16 252:12 254:3 268:4 269:18 280:13 286:13, 17, 22 313:12 325:17 326:5 328:9, 24	<b>improper</b> 165:13, 25 168:3, 10, 19 224:3, 11, 18 240:21 273:10, 14, 18 274:2 275:8, 12 277:18 297:4 302:13, 18, 18, 21 303:5 305:11 306:2, 3 307:14 313:7 314:4 315:12,	<b>incentives</b> 196:8
<b>hot</b> 278:14	<b>ideally</b> 145:11	<b>impact</b> 163:13 202:19 231:22		<b>incentivizing</b> 334:16
<b>hotels</b> 195:23	<b>ideas</b> 120:21 196:2			<b>inception</b> 327:12
<b>hour</b> 45:25 158:10 161:17, 25 162:22 232:24 308:17 320:4	<b>identified</b> 36:15 47:23 140:8 185:7			<b>incidence</b> 257:19 258:7 259:2 282:4
<b>hourly</b> 148:4, 6				<b>include</b> 72:20 76:15 138:14 178:13 207:13 213:24 249:10
<b>hours</b> 145:16, 17 146:4, 6, 9, 11, 13, 17, 21 147:1, 2 155:9 156:1, 8, 11 157:4, 7 158:9, 14, 15 159:7, 20 160:4, 5, 10, 22 161:15 163:6, 8, 11, 12, 14, 15, 20, 20 232:25 233:1, 2 242:18, 20 286:14 291:18, 19 292:4				<b>included</b> 42:8 72:23, 25 121:15 131:13
<b>Howard</b> 2:24 5:11 168:22 172:25 222:13, 25 225:6 228:16, 20				



177:16 179:14 207:8 232:22 235:3 242:25 255:15 257:3, 12 258:11 259:1, 20 260:19 286:10 287:20 <b>including</b> 37:4, 9 53:22 189:5 193:3 241:23 247:3 257:6 265:8 316:15 317:11 <b>income</b> 40:21 185:20, 22, 25 186:1 <b>inconsistent</b> 130:5 156:6 <b>incontinence</b> 151:15 <b>incorporate</b> 53:12 <b>incorporated</b> 53:8 <b>incorrect</b> 201:5 256:8 274:2 <b>incorrectly</b> 190:17 <b>increase</b> 51:12 107:21 118:24 164:9, 14, 15, 16, 18 199:21 204:6, 8, 22 214:25 218:12 221:23 295:1 334:23 <b>increased</b> 146:20 165:4 186:13 203:1, 3 215:4, 11 216:19 217:24 218:10 <b>increases</b> 92:11 164:23 <b>increasing</b> 96:7 146:19 202:20 203:19, 25 334:4	<b>incredible</b> 188:21 <b>incredibly</b> 124:2, 14 <b>indefinite</b> 160:12 <b>independently</b> 274:11, 12 <b>indeterminant</b> 276:22 <b>indicate</b> 326:8 334:7 <b>indicated</b> 121:11 174:12 <b>indicating</b> 15:4 56:6 110:1 117:10 126:12 142:1 260:23 <b>indication</b> 80:15 105:16 114:24 <b>indications</b> 125:10 160:8 <b>indisputable</b> 151:9 <b>individual</b> 245:1 281:7 282:11 <b>individuals</b> 48:18 68:20 194:21 226:24 228:16 231:23 232:16 324:20 <b>industries</b> 191:14 <b>industry</b> 41:22 76:23 123:11 186:10 191:13, 23 195:19, 21 199:2 245:12 248:20 283:6 <b>inevitably</b> 23:3 38:21 176:2 <b>inexact</b> 303:23 <b>inexplicit</b> 303:23 <b>infer</b> 57:20 136:4 302:12 <b>inference</b> 235:9,	10 <b>influence</b> 81:3 <b>influenced</b> 107:9 150:13 <b>info</b> 65:2 <b>inform</b> 192:6 263:18 296:1 <b>information</b> 56:22 58:16, 19 67:3 68:7 204:20 213:10, 22 214:5, 7 215:6 216:5 220:10 234:1 237:4 246:1 271:25 274:2 276:9, 16 288:4, 14 289:6 295:5, 14, 17 296:8 297:11, 17 307:25 314:23 315:21 321:5 325:23, 25 <b>informed</b> 231:16, 18 316:1, 5, 6 <b>infrequent</b> 140:11 <b>infringement</b> 222:4, 9 <b>Ingber</b> 4:16 <b>ingredients</b> 104:17 <b>inherent</b> 179:25 <b>inherently</b> 41:23 202:25 <b>inhibition</b> 17:24 <b>in-house</b> 10:6 115:10 122:16 139:15 195:2 <b>initial</b> 30:8 78:20 80:4 103:23 104:20 117:18 182:7 188:18 191:3 <b>initially</b> 28:15 61:19 75:16 261:16 <b>initiated</b> 37:1	<b>initiatives</b> 188:13 <b>injected</b> 59:3 <b>injection</b> 58:21 74:16 <b>injury</b> 174:16 <b>Innaurato</b> 72:11, 17 118:4, 6 119:12, 18, 21 120:11 121:1 129:11 132:7, 12, 15, 18 135:21, 23 138:13 173:24 174:3 <b>innovation</b> 246:21 <b>innovative</b> 191:11 <b>inquired</b> 85:13, 13 <b>inquiry</b> 77:25 310:1 <b>insert</b> 74:2 76:10, 12, 13, 15, 19, 20, 24 83:20 90:9 101:16 121:16 123:10 129:12, 14, 17, 19 130:6, 11, 16, 20 134:12, 13 155:4 156:5, 7, 12, 15, 25 157:9 236:25 237:3 243:23 246:2 247:1 267:14 268:22, 23 269:3 307:1, 2, 3, 5, 6, 9, 11 311:2 320:17, 19 321:4 <b>inserts</b> 129:21 130:1, 12 <b>inside</b> 34:15 <b>insist</b> 84:3 <b>insisted</b> 83:23 <b>insomnia</b> 255:23 258:2 259:18	<b>instance</b> 23:17 170:9 329:4 <b>instances</b> 227:10 <b>instituted</b> 191:19 <b>instruct</b> 168:12, 16 272:11, 17 <b>instructed</b> 89:20 267:20 268:16 307:22 335:8, 10, 10 <b>insubstantial</b> 145:2 <b>insurance</b> 41:23 <b>integral</b> 78:13, 15 <b>Integrated</b> 3:24 <b>integrity</b> 163:15 <b>intended</b> 83:8 249:16 <b>intensity</b> 149:1 <b>intent</b> 33:8 37:13, 19 224:13, 20 228:12 237:19 242:2 311:7, 20 312:7 319:5 <b>intention</b> 153:6 <b>intentionally</b> 78:17 <b>interest</b> 117:18 218:14 220:18 337:16 <b>interested</b> 272:1 308:13 <b>Interesting</b> 203:17 283:14, 14 <b>Interestingly</b> 108:20 <b>interject</b> 207:6 <b>internal</b> 35:12 122:14 193:23 <b>internally</b> 194:5 <b>International</b> 4:7 141:6 <b>internationally</b> 61:16
--	--	---	--	--



<b>Interoffice</b> 3:12 103:10 <b>interpolating</b> 334:24 <b>interpret</b> 244:4 <b>interrogatories</b> 68:19 <b>interrupt</b> 270:6 298:13 <b>Interstate</b> 269:24 270:3 <b>intervals</b> 156:25 <b>interview</b> 198:11 <b>interviewing</b> 138:20 <b>interviews</b> 174:25 175:1 <b>intimately</b> 118:14 <b>intravenous</b> 238:5 <b>introduced</b> 65:20 74:1 97:20, 23 <b>introducing</b> 135:24 <b>Introduction</b> 269:23 <b>introductory</b> 104:22 <b>invested</b> 44:1 <b>investigate</b> 115:7 <b>investigated</b> 230:1 264:9 <b>investigating</b> 53:1 230:23 231:1 <b>investigation</b> 33:25 34:11 35:2 89:6 168:17 169:20 231:4, 5 275:22 276:6 277:11, 12, 17 281:23 282:1 316:13 317:10	<b>investigations</b> 34:15 281:22 296:15 <b>investigations:</b> 288:3 <b>investigator</b> 255:16 <b>investigators</b> 284:22 <b>investment</b> 54:4 203:21, 24 <b>involve</b> 12:25 <b>involved</b> 14:2 15:13, 25 16:4, 10 19:7, 20, 23 20:1 21:14, 19, 20, 21 26:7, 9 29:6, 16 47:13 49:13 94:3 98:4 118:14, 15 120:2 155:12 182:23, 25 183:1, 3, 4 191:25 227:23 269:9 273:14 <b>involving</b> 36:4, 8 144:2 <b>IR</b> 144:7 163:2, 6 325:8 328:7, 17, 18 329:12 330:6 <b>IRs</b> 162:25 <b>ISS</b> 235:3 <b>issue</b> 18:13 25:2 66:21 86:10 95:6 102:3, 20 116:5 121:9 154:20 155:19 157:25 162:14, 24 278:13, 18 <b>issued</b> 132:21 <b>issues</b> 23:14 60:4 77:23 88:12 108:14 115:10, 11, 12 132:22 231:9, 14 278:22 <b>items</b> 207:24 316:19 317:19	<b>its</b> 21:2, 2, 5 24:18 36:23 83:4, 6 104:12 169:13 187:7 215:10 216:6 217:8, 9 220:10, 23 227:4 242:24 246:5 251:21 253:6, 17 306:1, 12 312:2 313:15 314:8 318:19 <b>IV</b> 4:21 5:3 77:24 91:12 99:19 107:8 202:4  < J > <b>J.W</b> 35:19 <b>JACK</b> 1:4 <b>James</b> 3:2, 19 4:2, 5, 24 6:3 108:8 303:25 <b>Janssen</b> 217:10 <b>January</b> 38:5 84:14 244:14 248:1 249:1 255:10 332:2 <b>Japan</b> 37:16 <b>Japanese</b> 36:1 <b>JASON</b> 8:6 9:24 <b>JAY</b> 7:21 10:7 <b>JEFFERSON</b> 337:2 <b>Jeffery</b> 6:6 <b>jhenneberry@ch</b> <b>adbourne.com</b> 7:23 <b>Jim</b> 108:13 121:13 278:9 280:2 <b>Joann</b> 5:19 <b>job</b> 111:25 <b>jobs</b> 177:1 279:22 <b>jogger</b> 302:1 304:20 <b>joggers</b> 296:23	<b>John</b> 6:5 326:21, 23 329:3 <b>Johnson</b> 4:14 39:4, 11 <b>joint</b> 125:7 <b>journal</b> 258:19 <b>jsayers@Venabl</b> <b>e.com</b> 8:9 <b>judge</b> 298:19, 20 <b>judging</b> 328:13 <b>July</b> 14:23 15:6 35:17, 18 110:7 <b>jump</b> 110:16 163:22 <b>June</b> 86:7 135:8, 13, 13, 14, 18 136:6 138:12 206:9 210:7 237:13 254:10 260:5 264:16 265:2, 3, 10, 15 266:25, 25 269:11 312:5 <b>JW</b> 2:15  < K > <b>Kadian</b> 180:13 <b>Kaiko</b> 2:8, 24 5:17, 22 6:3 25:25 26:1 36:12, 14 57:2 62:3, 5 63:2 114:21 115:4 147:22 159:2, 10 160:18 324:21 <b>Kaiko's</b> 132:12 <b>keep</b> 137:2, 7 184:22 207:21 250:10 301:7 <b>keeping</b> 135:3 <b>KENTUCKY</b> 1:1, 4, 22, 23 7:5, 10, 19, 23 9:4, 7, 13, 15 10:10, 12, 15	11:3, 22 12:1 166:14 168:9, 18 222:14 223:2, 3 277:8 280:9 294:16, 21, 23 295:2, 17, 22 296:6 299:2 301:18 304:1 305:1, 25 309:5 313:22 336:4, 8 337:1, 4, 20 <b>kept</b> 17:17 76:16 293:2, 4 315:9 <b>key</b> 108:22 184:22 260:19 <b>KG</b> 164:23 <b>kill</b> 151:19 <b>kilogram</b> 164:24, 25 <b>kind</b> 23:11 48:15 165:20 179:12 196:2 200:13 210:6 234:11 246:4, 9 256:3 269:3 285:17 303:3 335:12 <b>kinds</b> 114:17 <b>Kingdom</b> 256:24 <b>Kinney</b> 7:4 9:3 <b>Kletzko</b> 63:19 <b>knew</b> 24:20 74:13 79:4 85:1, 2, 18 88:5, 6, 7, 9 89:1 247:11, 13, 14, 17, 18 271:25 304:11 <b>Knock</b> 128:10 <b>know</b> 11:21, 22 12:14, 19, 23 13:23 16:22 18:25 19:2 20:7 22:17 23:10, 23, 25 24:1, 6 26:1 35:11 39:5, 9, 10, 22 40:4, 10
---	--	---	--	---

42:15, 17, 21, 24 43:1 51:25 52:10 57:11, 17 59:21, 25 60:13 64:8 68:2, 17 71:16, 17, 22 72:1, 9, 22 73:10 74:3 75:15 78:7 79:18 81:18 85:2 89:12 98:2, 20 99:4 102:6, 12 105:18 107:22 111:23 112:15 117:4, 21, 24 123:20 125:15 128:23 129:1, 3 130:23 131:22, 24 132:1, 3, 24 133:3, 23 134:1, 9, 11, 13, 14, 16 136:4 138:22, 24 140:4, 6, 7, 10, 12 148:10, 10 151:3 153:21, 23 154:16 155:11, 18 159:17, 25 161:7, 8, 19 162:15 163:19, 21 167:11, 16 170:4 172:19, 20, 24, 25 173:4, 5, 6, 8 179:1 180:19 181:25 182:2 183:2, 22, 25 186:21 187:9, 12, 20 188:3, 4, 5, 10, 11 192:22 194:13 196:6, 19, 24, 25 197:2, 4, 7, 17, 22 198:1 199:1 200:12 202:12 204:2 205:22 206:2 215:7 216:10, 15 217:1, 15	218:20, 21 221:2, 4 224:5, 7, 9 225:13, 14 227:15, 20 228:7 233:13, 25 234:5, 6, 17, 24 237:4, 17 238:20 241:12 243:19 244:9, 18 252:2 253:5, 14, 21, 22 260:8, 11, 13 263:6, 7, 8, 11, 12, 16 265:24 266:14, 16, 17, 20, 21, 22, 23 268:18, 22, 25 269:6, 7 271:12 273:16, 20, 25 274:3, 16 275:2, 10, 23 276:11, 19, 23 277:8, 15 279:23 280:5, 10, 21 281:24 282:7, 11, 17 283:15 284:6, 7, 14 285:15, 16, 20 288:10, 19 289:1, 4, 23 290:4 291:3, 17 292:1, 7 293:21, 21 296:3, 14, 22 299:3, 4 300:4, 4, 8, 9, 10, 16 301:19, 25 302:3 303:17, 18, 20, 20, 22 304:7, 11, 12, 20 305:11 309:1, 4, 5, 8 312:17, 24, 25 315:3 319:7, 8 320:3, 16, 20 321:4 322:2, 7, 9 323:4 333:4 336:3, 11, 19 <b>knowledge</b> 13:4 69:17 71:1 162:10, 13 168:7 172:11 182:11 195:7	216:4 235:7 244:19 290:21 293:5 294:7 <b>knowledgeable</b> 113:2 <b>known</b> 73:25 96:9 192:23 240:24 <b>knows</b> 167:16 247:5 <b>Komorowski</b> 3:2, 19 4:2, 5 <b>KRS</b> 225:2 <b>Kuster</b> 5:22  < L > <b>L.L.P</b> 169:9 <b>L.L.P.</b> 33:22 <b>L.P</b> 1:4 7:12, 13 15:9 23:7, 8 221:15 322:4, 6 <b>L.P.</b> 14:21 322:18 <b>label</b> 114:5, 8, 19 195:14 247:4 258:6 <b>LABORATORI</b> <b>ES</b> 7:13 8:6, 6 21:23 322:6 <b>laboratory</b> 245:13 <b>lack</b> 109:16 309:10 <b>lacked</b> 283:20 284:2 <b>lacks</b> 46:21 <b>Lacouture</b> 114:21 <b>ladder</b> 136:19 <b>Lake</b> 7:5 9:3 <b>Lane</b> 4:8 <b>Lang</b> 6:3, 6 108:8 <b>languish</b> 124:24 <b>large</b> 107:11 188:25 190:14 194:7 218:9 236:2 240:15 272:10, 16 337:4	<b>larger</b> 85:19 91:2, 2 99:8 164:22 193:9, 11 207:20 <b>lasted</b> 145:16 <b>lasting</b> 145:16 <b>lasts</b> 291:18, 19 <b>late</b> 24:15 136:19 138:11 159:3, 18 166:11 264:13 312:12 319:22 320:4 <b>Launch</b> 3:22 4:14, 14, 19 30:8 35:1 38:3 39:1 84:11 90:18 101:15 103:23 134:3, 4 142:17, 19 173:9 176:7, 16 178:20 181:3, 4, 9, 13, 22 182:6 183:10 188:18 190:21 191:5 192:2 200:17 202:7 226:14, 15, 18 242:24 243:16 244:24 327:12 <b>launched</b> 34:14, 22 38:4, 20 78:16 83:19 84:14 85:15 174:8 176:1 178:10 182:8 185:21 189:19, 20 206:12 274:5 <b>launching</b> 16:2 123:2 <b>LAUREN</b> 1:21 337:3, 24 <b>Lavey</b> 197:1 <b>law</b> 231:2 277:14 <b>lawyer</b> 166:19 167:13 253:9 293:22	<b>lay</b> 133:25 <b>laymen</b> 18:16 <b>lead</b> 63:17, 17 133:15 220:24 <b>leaders</b> 100:7 <b>leading</b> 298:14 <b>learn</b> 294:14, 20 <b>learned</b> 34:11 35:2 85:24 175:3, 12 221:25 271:23 316:13 317:9 327:20 <b>learns</b> 295:8 <b>leave</b> 229:8 <b>leaving</b> 112:22 229:11, 12 231:11 <b>led</b> 61:20 69:18 107:13 149:17, 25 294:21 295:1 <b>left</b> 112:25 229:6 231:7 272:8 311:24 <b>legal</b> 33:24 121:19 228:21 293:24 319:8 <b>lengthy</b> 170:17 <b>lessons</b> 221:25 <b>Letter</b> 2:19 5:10 108:8 109:6 222:17, 25 225:20, 23 226:6 232:1, 2, 5 <b>letter,</b> 226:5 <b>letters</b> 227:4, 7, 12 243:19 <b>level</b> 16:1, 1, 5, 5 94:21 145:18, 19, 20 149:22, 23 183:8 235:4 239:7 252:11 254:2 281:15 289:23 290:6, 10, 11, 15, 24 <b>levels</b> 34:12 112:4 113:13 145:15 242:17
---	---	---	---	---



243:4 244:2, 2 286:14 289:8 304:3, 10 320:14, 17 <b>Lexington</b> 7:19 299:2 <b>lgootee@coulterr</b> <b>eorting.com</b> 1:24 <b>liability</b> 45:14 47:20 51:18, 21 52:5, 23 58:1 267:12, 16, 17, 25 268:12, 15 269:14 <b>liable</b> 49:6 <b>liberty</b> 55:18 <b>license</b> 24:11, 18 37:18 222:12 <b>licensed</b> 194:11 <b>licensing</b> 14:7 222:3, 9, 10 <b>lie</b> 151:9 <b>life</b> 30:7, 9, 12, 13 65:15 66:18 72:18, 20, 22, 25 81:6, 15 93:19 132:14 133:15 198:16, 20, 21 236:4 <b>life-destroying</b> 80:14 <b>light</b> 57:22 266:21 <b>lighten</b> 139:12 <b>likelihood</b> 175:14 <b>limit</b> 83:6 94:8, 16 96:6 98:25 127:16 162:10, 14 174:22 200:11 235:19 306:15 <b>limited</b> 28:21 50:4 <b>Linda</b> 4:17 <b>Line</b> 6:13 70:11, 11 142:6 164:12 165:5	171:19, 25 188:23 298:5 301:13 309:22, 25 320:25 321:1 <b>lines</b> 240:18 <b>linger</b> 125:1 <b>lining,'</b> 279:4 <b>link</b> 78:18 199:9, 13, 14, 17 <b>linkage</b> 200:3 <b>linked</b> 78:18 <b>list</b> 9:20, 21 35:20 39:8 40:7 129:5, 6, 7 133:10 177:17, 18 179:15, 25 180:10 204:2 215:15, 19, 21 223:22 257:3 261:13 <b>listed</b> 250:25 255:21 <b>listing</b> 115:22 <b>literature</b> 18:4 75:2, 3, 6, 12, 16 83:12 152:23, 25 153:12, 17, 22 191:15 246:7 286:11 289:15 <b>litigation</b> 30:19 45:15, 16 293:7 318:1 <b>little</b> 17:3 33:5 36:1 46:1 54:20 62:13 70:3 74:14 95:4, 18 145:25 159:15 174:11 206:14 241:1 254:25 277:21 <b>LLC</b> 1:21 <b>LLP</b> 7:15, 21 8:8 170:1 <b>local</b> 58:20 <b>located</b> 280:9 294:22 <b>locations</b> 270:4	<b>logarithmic</b> 243:2 <b>logic</b> 303:3 <b>London</b> 4:8 187:2 <b>long</b> 100:14 126:25 130:2 153:7 178:15, 17 179:13 245:15 258:14 266:22 282:8, 18 290:14 293:7 302:15 308:18 319:22 <b>longer</b> 46:2 124:5, 8 <b>long-term</b> 50:5, 20 71:5 178:6, 10, 14, 21 179:2, 3, 11, 14, 19 180:1 245:25 <b>look</b> 28:9, 24 36:10 38:15 44:6 46:14 55:14 56:7 70:7 75:1 86:3 91:15 111:16 113:12 119:10 126:17 129:25 149:22 152:4 218:6 244:22 245:1 283:11 299:18 306:25 327:25 <b>looked</b> 40:15 109:19 166:13 170:9 192:25 237:15 244:25 296:5, 10 307:13 <b>looking</b> 27:22 41:21 44:22 48:19, 19 62:18 75:7 86:9 134:11 213:4 301:4 315:7 333:6 <b>looks</b> 36:11 39:6 48:17 62:16 68:6	101:24 106:13 111:9 120:15 122:13 129:4 159:1 179:18 203:12 221:5, 19 265:11 287:2, 14, 19 326:15 334:23 <b>loose</b> 200:3, 8 <b>Lortab</b> 133:17 304:4 <b>Los</b> 7:22 <b>lose</b> 137:9 <b>losing</b> 137:2 <b>lost</b> 79:25 97:4 165:20 <b>lot</b> 41:22 50:9 76:23 115:22 126:5 150:11 211:3 241:4, 8 246:1 283:4 287:5 305:20 327:15 <b>lots</b> 61:21 <b>Louisville</b> 1:23 7:5, 23 9:3 301:17 337:20 <b>Love</b> 305:2 <b>loved</b> 305:7 <b>low</b> 56:22 79:4, 5 92:21 120:14 178:5, 16 179:4, 10 255:13 259:23 324:17 326:7 335:18 <b>lower</b> 50:21 101:9 137:4 247:15 283:21 284:3 <b>lowering</b> 94:13 <b>lump</b> 19:15 23:3 <b>lunch</b> 128:12 154:5 <b>Lydia</b> 4:14 39:4, 10 <b>Lyons</b> 196:25  < M >	<b>M.D</b> 1:4 9:2 10:17 279:15 287:15 <b>M.D.s</b> 108:15 <b>Madisonville</b> 304:1 <b>magazine-like</b> 122:14 <b>magnitude</b> 315:20 <b>Mahoney</b> 4:24 <b>mail</b> 191:1 <b>mailed</b> 191:4 <b>Main</b> 7:18 184:2 213:7 279:3 <b>Maine</b> 231:21 <b>maintain</b> 163:15 <b>maintained</b> 148:25 290:5 <b>maintaining</b> 20:25 145:6 <b>maintains</b> 50:17 290:24 <b>maintenance</b> 162:23 163:14, 20 <b>major</b> 44:3 162:24 255:21 287:23 <b>majority</b> 17:11, 13 41:5 100:17 185:20, 22 <b>making</b> 34:3 49:13 160:16 186:22 190:24 209:18 219:18 222:13 236:19 260:1 270:24 275:11 <b>malignant</b> 17:10 18:9 70:15 71:6 95:20 107:23 138:16 181:17 193:3 335:16 <b>manage</b> 34:10 100:9, 10 194:8 <b>managed</b> 324:23
--	--	--	--	---



<b>management</b> 15:15 16:12, 16 19:5 29:8 34:12 109:3 144:19 182:11 183:20, 23 192:17 198:5, 9, 12 214:19 266:18 268:14 269:4 279:16, 25 281:25 <b>management's</b> 228:1 <b>manager</b> 17:1 56:15 72:15 279:24 280:1, 5, 6, 6, 8 326:24 332:1, 1 335:24 336:1 <b>managers</b> 251:22 <b>Mandema</b> 139:3 140:5 <b>Manners</b> 5:22 <b>manufacture</b> 21:24 <b>manufactured</b> 21:22 270:2 <b>manufacturing</b> 14:3 21:21 <b>manuscript</b> 139:9, 22 <b>Manuscripts</b> 139:2, 5 140:7, 12 207:23 <b>Marc</b> 299:1 <b>March</b> 48:17 62:19 63:20 68:16 131:21 178:9 258:19 261:22 264:17 265:11 268:6 269:11 322:20 337:17 <b>Mark</b> 4:12, 24 5:14 29:13 32:9 37:24 39:17 44:4 45:21 47:24 54:12 73:4	74:17 77:4 86:4 103:7 105:23 109:11 110:17 122:1 127:7 134:17, 24 141:7, 10 154:21 164:1 173:13 177:5 200:16 204:14, 21 212:23 218:22 220:1 225:19 226:19 247:20 248:7 249:2 250:17 251:15 278:10 286:5 287:10 300:21 301:8, 10, 16, 18 314:10, 11, 25 324:8 326:12 331:14 <b>MARKED</b> 29:4, 14 32:11, 23, 25 38:1 39:21 43:2, 5 45:22 48:1 54:13 73:5, 8 74:19 77:5 86:6 103:8 105:24 109:13 110:18 117:15 122:5 127:9 134:19 135:1 141:12 154:22 164:2 173:18 177:8 180:25 181:1 200:19, 22 201:1 204:15 205:23 218:24 220:2 226:4 247:23 251:17 278:11 286:6 287:11 324:9 326:13 331:16 <b>market</b> 24:24 25:10, 12 36:23 47:21 52:22 60:23 61:8 66:14 79:1, 3, 7 80:6, 8 84:13	85:7, 8, 18 90:21, 22 91:1, 2 97:9, 10 98:11, 12 99:3, 6, 9, 14 103:24 132:2, 16, 20 133:1, 2 135:22, 25 136:1, 3, 7, 10, 12, 14, 24 137:3, 8, 9, 11 138:1, 7, 8 146:25 147:3 152:15 164:5 174:8, 14, 15, 24 188:25 189:4 190:14 193:2, 7 197:1, 6 204:25 206:19 207:20 214:6 217:8 220:11 221:21 222:3, 10 245:19 246:13, 19, 19, 20, 22 248:3 251:10 267:21 268:17 272:4 330:25 331:10 <b>marketed</b> 70:10 121:13 146:12 157:15 184:3 216:21 233:22 237:20 281:20 312:7 <b>marketing</b> 15:14 16:11, 17 21:2, 14 29:7 31:19 34:3 35:9 39:7, 10 65:18 70:9 72:12, 14, 16 77:18 91:6, 7, 9, 10, 11 99:18 103:15 106:15 107:15, 17 117:21 118:7, 13, 23 119:23, 25 121:1, 18, 20, 21, 23 122:16 129:11, 13, 17 130:13 131:8	132:8, 11, 18 133:1, 19, 24 135:10 138:19 147:6 158:6, 7, 11 160:2, 14 161:12, 13 174:3, 20 178:8 179:15 180:10 191:16, 19 196:22, 23 197:5 199:4 203:15, 16 206:16 207:22 208:5 209:1 216:5, 13, 25 217:17, 20 226:9, 18 227:4, 12, 13, 17 242:23, 24 248:5, 15 249:4, 5 260:11, 15, 16, 18 262:10, 17 263:14, 18, 22 265:7 266:18 267:23 269:12 272:10, 17 274:14 281:10, 10 294:15 327:9 329:11 330:2, 5 331:22 <b>Marketing,</b> 117:17 135:19 267:13 <b>Marketing's</b> 177:17 206:17 <b>marketplace</b> 174:6 206:12 218:10, 13 <b>markets</b> 53:14 85:10 <b>marriage</b> 337:15 <b>material</b> 74:2 120:11 155:6, 21 200:24, 25 209:2 256:12 262:10 <b>materials</b> 89:19 90:16 106:21 118:14 119:6	130:18 167:24 190:23 195:10 226:9 242:25 243:16, 21 263:22 271:24 281:10, 11 <b>matrix</b> 49:6 <b>matter</b> 9:12 65:2 67:5 68:7 310:5 <b>mattered</b> 308:8, 16 <b>matters</b> 293:8 <b>maximum</b> 94:13 <b>McGill</b> 150:1, 2 <b>McManama</b> 286:1 <b>MD</b> 8:9 <b>mean</b> 46:2 59:18 67:15 73:12 88:5, 6, 25 96:10 98:6, 6 105:13 106:18 151:18, 24 152:2 155:16 162:11 182:24 187:24 188:7 208:24 209:22 224:8 238:1 244:22 250:5, 6 305:20 319:11, 13, 13 321:12 322:1 327:10 328:4, 6 332:4 333:17 <b>meaning</b> 87:24 94:1 96:3 97:3 139:21 156:7 158:9 182:18 211:14, 16, 17 226:14 236:23 237:25 249:15, 20, 21 329:7 <b>meaningless</b> 203:1 <b>means</b> 51:4 57:17 59:8, 15 73:21 98:15 99:4 127:20 148:9, 11 155:8,
--	---	--	--	---

9 156:9 199:25 248:17 249:25 280:21 294:3 305:23 332:6 <b>meant</b> 33:16 57:22 79:19 83:6 85:1, 2 88:17 106:20 127:19 158:17 160:7 163:4 211:23 222:10 234:9 267:25 269:6, 8, 15 285:17 305:22 320:22 329:6 <b>measure</b> 240:15 274:16 <b>measured</b> 125:3 281:18 <b>measures</b> 72:25 <b>measuring</b> 149:20 <b>media</b> 181:11, 12 <b>Medical</b> 3:24 62:8 112:1, 12 116:5, 11 120:4, 5 121:5 126:19 130:21 131:1 132:5 140:17, 18 153:24 157:24 159:11 196:7, 9 214:12 220:19 233:15 235:2 258:19 265:1 266:18 283:17, 18 300:8 320:23 329:2 <b>medically</b> 325:21 <b>medication</b> 37:4 114:16 145:15 158:12 259:11 <b>medications</b> 233:7, 11 237:23 312:10 <b>medicine</b> 189:19 234:7,	11, 18 287:4 322:10, 15 <b>medicines</b> 192:7 <b>Medtronic</b> 109:1 <b>meet</b> 76:11 114:21 115:9 222:14 246:6 <b>Meeting</b> 2:15, 17 3:3, 5, 10, 17, 20 4:3, 6, 8, 15, 18 5:3, 23 30:25 31:6 35:18 38:16 67:4 74:22 77:24 85:24 110:22, 23 111:4 117:13 120:21 121:6 135:20 141:6 142:12, 14 148:13 158:2 175:22 177:11 206:9 210:6 252:1 327:20 332:18 333:14 <b>meetings</b> 31:25 32:1 49:13 86:9 135:17 141:6 195:4 196:16 202:15, 19 <b>member</b> 63:13 <b>members</b> 113:16, 24 222:15 <b>Memo</b> 2:8, 13, 21 3:2, 5, 9, 15, 17, 19 4:2, 5, 10, 12, 14, 16, 21, 23 5:2, 14, 16, 19, 21 6:2, 5 25:24 38:3 48:9, 16, 17 59:4 70:4 74:21 103:10 117:8, 12 128:22, 24 154:25 299:5 304:2 313:23	<b>Memorandum</b> 2:15 3:12 35:17 77:22 109:23 110:4, 16 204:21 <b>memorize</b> 307:16 <b>memory</b> 22:11 23:15 52:16 211:22 273:5 296:22 302:1 304:19 <b>mental</b> 96:5 98:25 <b>mention</b> 302:12 <b>mentioned</b> 118:5 <b>menu</b> 316:19 317:19 <b>Merck-Medco</b> 6:4 <b>merged</b> 225:15 <b>mess</b> 251:9 <b>message</b> 84:8 272:10, 17 <b>met</b> 177:15 <b>methods</b> 236:10 <b>Michael</b> 2:9, 24 3:8, 10, 13, 15 4:23 5:15, 16 6:3 35:7, 8 38:17 68:1 77:15, 17, 20 85:25 86:4, 7, 23 90:17 101:18 103:13 106:13, 14 170:5 172:17 175:23 198:12 202:9 205:4 226:16, 21 228:17, 23 324:14 <b>middle</b> 55:5 72:15 98:10 142:3 216:17 223:13 224:24 <b>mid-term</b> 221:9 <b>Mike</b> 72:11, 17 77:23 118:4	119:11, 12, 18, 21 120:11, 25 129:10 132:7, 11, 15, 18 135:21 173:24 174:3 206:17 207:20 <b>Miller</b> 5:22, 23 <b>milligram</b> 75:22, 23, 25 79:4, 6 105:3 117:18, 19 140:23, 24 141:1 142:9, 10 144:3 148:1 156:7, 24, 24 174:9, 10 238:7 278:23 282:7 294:7, 9, 9, 9 <b>milligrams</b> 74:14 89:4 94:7, 19 104:21 105:1 144:4 145:7 259:8, 10 260:24 267:4 278:23 282:14 <b>million</b> 43:21 44:13, 18, 21 45:10 64:11, 14, 17, 18 164:10, 12 165:4 167:3, 4 213:6 215:5 216:20, 21, 24 297:8 <b>millions</b> 312:25 313:2 <b>mind</b> 76:16 90:24 98:14 100:3 105:22 117:25 139:8 207:22 215:8 216:9 236:7 248:8, 11 250:11 308:11, 18 <b>minds</b> 308:3 <b>minds.'</b> 256:16 <b>Mine</b> 27:13 54:21 249:18 <b>minimal</b> 58:1	<b>minimize</b> 189:20 <b>minimum</b> 137:13 <b>minor</b> 147:16 <b>minute</b> 110:10 121:6 233:24 300:18 308:17 323:24 <b>Minutes</b> 2:15 3:3, 6, 10, 20 4:3, 6, 7, 15, 17, 21 5:23 74:22 117:13 138:14 142:13, 14 148:16 177:10 202:4 286:22, 23 307:23 328:17, 18 <b>Minutes,</b> 135:20 <b>Misbranded</b> 269:23 <b>misbranding</b> 33:7 224:13, 20 228:12 236:18, 19, 21 237:3 242:13 254:21 267:11 311:5 318:6, 15 <b>misconception</b> 91:21 101:5, 8 102:1, 8, 9 106:22 <b>misconceptions</b> 107:1, 3 <b>misconduct</b> 223:3, 15 <b>misdeemeanor</b> 226:25 <b>misdeemeanors</b> 228:18 <b>misinterpret</b> 31:9 <b>mislead</b> 33:8 34:18 224:14, 21 228:13 237:19 242:2 311:8, 20 312:7 <b>misleading</b> 239:12 244:5
---	---	--	---	--



254:22 275:8 315:23 316:15, 20 317:12, 20 319:4, 20 <b>misleadingly</b> 267:3 <b>misperception</b> 90:7 93:15 95:22 99:24 <b>misrepresentatio</b> <b>n</b> 238:12, 14 <b>misrepresentation</b> <b>s</b> 270:24 <b>missed</b> 312:13 319:2 <b>missing</b> 137:25 <b>mission</b> 125:23 <b>misspoke</b> 110:15 122:23 <b>mistake</b> 135:16 <b>misunderstood</b> 130:23 <b>MITCHELL</b> 7:6 10:13 11:12 <b>mitchell.denham</b> <b>@ag.ky.gov</b> 7:10 <b>mitigate</b> 34:21 <b>model</b> 114:5 <b>moderate</b> 37:22 80:12 100:9 329:16 <b>molecule</b> 46:21 245:22, 24 <b>moments</b> 29:25 <b>Monday</b> 16:21 <b>money</b> 39:23, 25 40:2 41:22 42:8 44:1 184:12 186:7 189:15 190:24 192:14 221:23 271:20 <b>monitored</b> 57:8, 16 114:13 287:25 <b>monitoring</b> 60:19, 24 61:8	<b>month</b> 40:5 191:4 200:14 245:17 261:22 <b>months</b> 35:4 106:15 125:1, 3 182:7 191:4 220:14 261:20 289:9 <b>Montreal</b> 150:3 <b>morphine</b> 17:4, 16 18:7, 16, 19 28:12 37:10 46:22, 24 50:1 58:25 73:10, 11, 19, 23 74:5, 13, 14 77:3 78:7 79:10, 14 80:25 81:9, 17 82:4, 4, 11, 15, 23, 25 83:1, 14, 16 84:3, 17 85:4 87:15, 21, 24 88:12, 13, 13, 23 89:8, 9 90:2, 6, 25 91:4 93:3 96:14, 19 97:2, 12 98:8, 17 99:2, 5, 11 100:21 101:4, 7, 10 107:7 116:7, 13, 25 136:15 143:2, 3 144:4 175:6 206:5, 24, 25 207:15, 16 208:7, 10, 20 209:1 211:16, 17, 18 212:11, 12 247:9, 11, 12, 15, 17 248:22 249:7, 12 250:5, 9, 11, 19, 21, 24 251:4, 8 256:9, 11 271:11 <b>morphine,</b> 82:10, 11 89:18 <b>Mortimer</b> 3:12 103:18 <b>motivated</b> 125:9 <b>motivating</b> 31:4	<b>move</b> 69:5 122:8 134:18 <b>movement</b> 145:3 <b>moving</b> 334:18 336:13 <b>MSC</b> 70:12 330:18, 19 <b>MST</b> 36:19 58:23 <b>multiple</b> 34:14 147:9 261:11 296:12 <b>multiple-dose</b> 120:12 <b>Mundipharma</b> 13:5, 7, 9, 11, 12, 16 17:1 63:19 293:17, 18 <b>Mundipharma-G</b> <b>ermany</b> 56:10 <b>musculoskeletal</b> 174:16  < N > <b>naloxone</b> 52:24 53:8, 9, 13 67:21 68:3, 10 <b>naltrexone</b> 54:2, 2 <b>name</b> 9:18 10:24 12:7 13:12 15:3 19:8 22:20 197:2, 25 280:3 286:3 324:12 <b>name-brand</b> 218:17 <b>named</b> 21:23 172:5 323:16 <b>names</b> 9:20, 23 14:15 68:20 170:9 232:12 <b>narcotic</b> 17:5, 6 56:21 64:7 65:1 67:20 68:3 82:21 214:14 218:17 247:4, 7	<b>narcotics</b> 247:5 <b>narrow</b> 162:24 <b>national</b> 189:8 332:17 333:13 <b>nature</b> 88:13 236:14 315:23 <b>Natz</b> 3:17 <b>nausea</b> 255:23 <b>NDA</b> 123:21, 22, 23 124:4, 23 125:10 128:8 232:22, 22 233:4 246:6 <b>nearly</b> 214:3 215:4, 20 <b>necessarily</b> 23:21 69:16 219:7 261:19 302:20 <b>necessary</b> 114:22 115:7 245:6 287:6, 7 288:19 <b>necrosis</b> 58:21 <b>need</b> 29:15 46:2, 4 95:15, 21 102:1 108:18 109:2 131:18 144:14, 17, 19, 21 145:21 154:15, 16 158:1 160:22 163:14 177:21 178:21 179:19 181:22 221:24 251:15 266:7 287:25 288:3 290:2 291:20 <b>needed</b> 71:25 72:2 100:10 155:10 157:5 158:19 177:25 178:9 179:24 190:8 271:20 308:22, 23 328:6 <b>needing</b> 178:9 <b>needless</b> 150:5 <b>needs</b> 295:6	<b>negative</b> 143:8, 9 150:23, 25 207:19 262:3 263:2 264:18 265:14 334:22 <b>negotiated</b> 41:25 <b>negotiating</b> 37:17 240:25 <b>Neilheisel</b> 313:21 <b>neither</b> 304:9 <b>nervousness</b> 255:23 258:1 259:18 <b>net</b> 41:22 42:1 44:10 <b>neuralgia</b> 120:14 335:19 <b>Never</b> 13:22 14:6 21:20 38:13 54:4 68:14, 23 85:4, 4 90:3 98:7 168:24 189:24 212:21 224:3 236:9, 16 277:5 282:6, 19 296:2 317:3 <b>nevertheless</b> 304:13 <b>New</b> 2:11, 13 7:16, 16 20:16, 17 44:2 52:7, 7, 12, 13, 14 58:23 78:20 123:24 125:8 134:5 181:19 187:14 202:16, 20 252:19 253:1, 23, 24 314:19 329:15 330:7 <b>Newcomer</b> 40:6 <b>newest</b> 183:11 286:9 <b>newsletter</b> 35:12 <b>newspaper</b> 122:13 231:21 <b>newsworthy</b>
--	---	--	--	--



220:12 <b>niche</b> 174:17, 20 <b>nine</b> 45:12 146:13 259:18 <b>no</b> , 325:1 <b>non-addiction</b> 313:24 <b>non-cancer</b> 70:22 87:7, 8, 17 90:21 91:2, 14 95:12, 19 96:21, 23 97:8 98:11 99:9, 21 131:20 206:19 207:20 213:15 214:24 215:1, 4 251:10 <b>non-GMP</b> 120:11 <b>nonmalignant</b> 181:17 <b>non-malignant</b> 70:16 71:5 78:25 79:3, 6 80:6, 8, 18, 23 81:10 85:7, 17, 18 92:16, 17 93:1 97:10 105:8, 19 107:14 108:1 113:17, 25 115:16, 18, 21 116:9 121:11, 15 136:12 137:10 138:1, 7, 8, 11, 18 174:16 178:3 179:8, 15, 20 193:4 246:11, 18, 22 282:19 330:16 335:16 <b>non-narcotic</b> 64:7, 13 <b>nonscheduled</b> 50:22 <b>nonsteroidal</b> 180:14, 17, 23 <b>normal</b> 119:25 133:15 145:9	148:2 158:10, 13, 17 <b>normally</b> 120:3 146:8 <b>Norwalk</b> 4:10 62:12, 14 77:13 86:4 326:17 <b>NOS</b> 226:3 <b>Notary</b> 337:3, 17, 24 <b>note</b> 11:8 67:18 200:23 276:2 286:22 297:20, 24 <b>noted</b> 210:11 261:10 <b>notes</b> 166:14 167:13 168:2 275:20, 24 276:6, 8, 14, 15, 20 277:7, 8, 18 296:6, 10, 11, 20 297:1, 5, 12 299:5 305:16 307:20, 22 308:6, 15, 19 309:2, 6 310:4 312:14 315:8, 14, 22, 25 316:16, 17, 23 317:13, 17, 22 321:20, 23 337:9, 13 <b>note's</b> 304:2 313:23 <b>noteworthy</b> 220:9 <b>not-for-profit</b> 323:10, 21 <b>Notice</b> 9:6 <b>notified</b> 198:4 230:21, 25 232:2 <b>notion</b> 81:2 96:5 130:3 <b>notional</b> 94:5 164:23 <b>November</b> 124:16 141:15 142:18, 20	268:10 278:10, 12 279:6 <b>NS</b> 91:23 <b>NSAID</b> 180:23 <b>NSAIDS</b> 180:13, 16, 18 <b>number</b> 12:6, 12, 20 26:14 31:13 40:20 43:23 44:23 48:18 69:21 72:3 78:22 89:14 102:15 104:6 110:8 124:9 145:7 154:14 167:7 173:12 177:17, 19 189:6, 20, 21 196:21 199:9, 14, 19 200:5 202:16 203:1 209:20, 21, 25 210:2 215:3, 12 216:24 217:2 236:3 238:21 270:6 277:18 281:10 283:7 296:14 311:13 313:4 317:13 318:17 336:7, 7 <b>numbers</b> 55:15 202:25 215:8 216:9 <b>nurse</b> 150:8 <b>nurses</b> 175:15 182:20 213:20 <b>nursing</b> 213:21  < O > <b>OA</b> 140:21 <b>object</b> 15:17 19:12 22:19 25:3 31:20 79:8 91:24 137:12 153:2 165:16 167:15 170:14 211:9 239:20 246:15 252:23 262:13 263:25 271:3	284:4 297:13 298:6 301:13, 15 303:7 316:25 317:24 319:21 320:10 <b>objection</b> 22:22, 24 34:5 41:8 42:11 60:8 65:9 70:18 86:19 96:13 139:24 147:8 176:18 310:13 325:2 <b>objections</b> 11:24 <b>objective</b> 181:7 189:18 <b>objectives</b> 220:17 <b>obligation</b> 295:13 <b>obliterated</b> 325:2 <b>observe</b> 83:24 <b>observed</b> 246:2 <b>obsolete</b> 24:25 25:11 123:3 <b>obsoleted</b> 123:7 137:7 <b>obstacle</b> 225:2 <b>obtain</b> 49:4 <b>obtained</b> 288:10 <b>obvious</b> 189:24 289:18 <b>obviously</b> 66:13 275:16 278:21 307:18 325:24, 25 <b>OC88-1105</b> 120:9 <b>OC92-1102</b> 140:21 <b>OC93-0101</b> 139:3 <b>occasion</b> 220:13 <b>occasionally</b> 196:1 <b>occasioned</b> 66:1, 16 145:3, 4 <b>occur</b> 162:22 297:7, 16	<b>occurred</b> 33:20 90:3 264:15 273:10 317:23, 25 318:3 <b>occurring</b> 60:21 61:1 198:4 268:9 <b>occurs</b> 329:23 <b>October</b> 242:21 <b>odd</b> 284:5 <b>offer</b> 61:24 <b>offering</b> 191:2, 7 <b>Office</b> 2:11, 13 7:8 10:14 167:20, 22, 24 237:15 241:9 297:10 312:15, 19 322:12, 24 <b>Officer</b> 3:24 62:8 67:4 121:5 126:19 130:22 132:5 140:18 228:21 229:3 233:16 235:3 265:1 <b>officers</b> 206:4 <b>offices</b> 9:2 184:7 185:10 <b>Oh</b> 10:5 27:20 48:20 54:23 55:5 62:24, 24 82:13 89:17 92:5 96:16 108:13 119:14 135:14 141:20 149:22 151:10 174:2 182:22 220:7 223:7, 8 239:23 272:14 273:6 300:4 313:8 318:14 329:5 333:7, 24 <b>Okay</b> 15:23 19:25 21:7, 13, 24 22:9, 17 23:6, 10 24:7, 8 27:15 29:19, 24 31:12 33:3, 14, 15 37:13 44:10, 12 46:20 47:19
--	---	--	--	---

48:15, 20, 20, 21 49:15 50:8 52:18 55:6 56:8 62:14, 21, 25 64:1 65:14 66:25 67:24 69:25 71:10 72:8 75:11 76:5 77:19 79:15 80:3 84:6, 10 88:20 104:3 105:12, 17 106:21 108:13 111:12, 14, 21 113:22 118:3 119:16 126:8 132:4 135:5, 7, 16, 16 137:22 140:20 141:23 142:5 143:17, 17, 19 153:10 155:11 159:2, 14 161:13, 24 162:9 172:2, 9 174:2 182:22 184:13 197:11 200:16 201:24 202:1, 9 207:11 209:17 212:7 218:6, 8 220:7 224:15 237:1 240:10 244:11 248:22 250:13, 14 253:24 255:2, 9 269:10 272:14 273:6, 21 284:13 289:12 294:2 302:5 304:25 306:6 312:3 318:14, 14 319:15 324:12 332:16, 21 333:6, 7, 11, 24 <b>old</b> 78:20 134:5 329:12 330:6 <b>older</b> 217:8	<b>omitted</b> 92:2 239:21 316:20 317:20 <b>once</b> 21:19 40:9 58:5 169:20, 20 187:25 195:8 272:21 296:12 316:12 317:9 <b>oncologists</b> 86:11, 13, 25 92:4, 9, 12 93:25 94:17, 24 95:7 96:16 98:19 106:16 108:15 109:16, 19 136:22 213:24 <b>oncology</b> 108:9 213:20 <b>one-and-a-half-t</b> <b>o-one</b> 96:12 <b>one-on-one</b> 174:25 <b>ones</b> 51:25 168:18 190:5 241:23 276:20, 21 296:20 308:22 321:9 <b>one-shot</b> 221:12 <b>ongoing</b> 72:19 <b>onset</b> 286:12, 17 288:6, 15 289:2 328:16, 23 329:1, 6, 7 330:11 <b>Oops</b> 173:25 <b>open</b> 114:5, 7, 19 179:6 <b>opening</b> 2:22 51:2 <b>operate</b> 125:7  <b>ophthalmologists</b> 193:14 <b>opiate</b> 121:10 133:16, 17 136:20 246:12 <b>opiates</b> 113:16, 24 115:4	<b>opinion</b> 65:22 100:7 116:1 153:18 288:18 307:9 320:24 327:6 <b>opinions</b> 62:10 113:15, 24 115:22 <b>opioid</b> 17:6 26:13, 17, 21 27:17 28:3 53:20, 23 54:3, 8 87:15 96:19 100:10, 15 109:4 133:11 143:12 145:7 180:16 233:21 235:5 237:9, 10 246:11 257:6, 23 282:6, 19 335:15 <b>opioids</b> 26:19 27:25 37:23 52:3 53:11 58:15 59:3 80:16 92:21 100:14 115:16, 21 134:8, 15 144:24 180:12 185:11 189:1, 7 190:15 215:16, 17 238:24 239:3, 8, 10 242:6 252:12, 14 254:4, 15 268:4 269:18 278:16 288:6, 15 294:22 313:13 316:8 327:16 <b>Opportunities</b> 217:25 218:11 <b>opportunity</b> 78:21 <b>opposed</b> 187:15 188:1 190:25 <b>option</b> 114:12 <b>options</b> 36:14 <b>orally</b> 54:6 74:15	<b>order</b> 11:10, 20 54:20 62:14 114:3 131:19 137:2 189:25 190:3 191:3 229:12 <b>orders</b> 184:11 191:8 <b>ordinary</b> 293:3, 5, 12 <b>Organization</b> 97:21 183:21 194:7 <b>organizations</b> 192:1 <b>organize</b> 55:7 <b>original</b> 20:11 55:15 201:3 <b>originally</b> 129:20 <b>orthopods</b> 109:2 <b>osteo</b> 114:25 <b>osteoarthritis</b> 111:10 112:4 113:14 114:4, 24 178:5, 16 179:4, 11 255:1, 13, 14 257:1, 4, 21 258:18 260:7, 17 261:5, 17 262:2, 24 265:5, 13, 16 266:15 267:2 313:17, 23 335:18 <b>ought</b> 241:1 <b>outcome</b> 337:16 <b>outlined</b> 307:14 319:3 <b>outperformed</b> 330:25 331:9 <b>outset</b> 19:12 241:17 <b>outside</b> 195:2 284:22 <b>overall</b> 126:18 127:10 159:13 330:1, 4 331:12 <b>overlook</b> 83:9 <b>overly</b> 217:18	<b>Overseas</b> 40:23 162:5 293:15 <b>oversights</b> 280:8 <b>overview</b> 135:21 <b>overwhelming</b> 100:16 185:22 <b>owned</b> 13:24 14:22 20:14 56:11 162:8 <b>owner</b> 131:3 <b>owners</b> 131:2 <b>owns</b> 12:16 <b>Oxy</b> 64:25 301:22, 24 303:14 304:3 306:1 313:25 328:2, 4, 5 330:6, 14, 15 <b>Oxycodone</b> 2:9, 25 3:5, 24 24:23 25:8 28:14, 15, 18 36:24 37:4, 7 46:16, 17 49:5, 9 52:2 53:2 59:2 67:21 68:16, 25 69:13 71:19 73:9, 19 74:22 75:3, 13 78:6, 8, 10, 13, 14, 19 79:10, 14 82:3, 17, 18, 20 84:16 87:14 91:18 93:10 94:7, 9, 18, 19 96:18 101:20 102:25 104:17 107:9, 10 114:25 117:19 127:11, 15 133:12 135:21 144:3, 7, 11 148:21, 21 149:8 151:10 152:13, 15 153:8, 16 155:16, 17, 22 159:8 160:9, 19, 23 162:11, 12 181:20 210:13
---	---	--	--	--



232:25 233:6 235:6 238:4, 7 243:1, 3, 6, 7, 8 246:17 247:15 248:24 249:6 250:22 251:1 256:9, 11 259:7, 10 260:21, 24 279:1 286:10, 13, 18 310:10 328:8, 10, 17, 23 <b>Oxycodone.'</b> 244:16 <b>Oxycodone-cont</b> <b>aining</b> 58:5, 14 <b>OxyContin</b> 3:3, 10, 19, 22 4:3, 5, 10, 14, 17, 17, 19, 21, 24 5:3, 6, 18 6:9 14:1, 3, 8, 13 15:16 16:3, 6, 11, 14 19:7, 10, 21 20:21 21:2, 15 22:14 25:8 26:8 28:18 29:7, 10 30:6, 15 31:3, 6, 10 33:8 36:5, 8, 15 37:14, 18 38:2, 4, 12, 23, 23 39:1, 13, 24 40:3, 6, 11, 22, 25 41:7 42:16 43:17 45:15, 17 47:13, 20 49:2, 25 52:6 54:1 56:20 57:16 58:1, 21 59:2 60:23 61:7, 13, 16, 25 62:7 64:3 65:6, 18 68:22 70:3, 9, 11 73:10 77:2 78:15, 16, 18, 19 79:10, 23 80:24 81:10 83:3, 17 84:11 85:16 86:10, 17, 24 87:16 88:22 89:7 90:19, 25	91:13, 22 92:10 93:2 94:21 95:6 96:11, 17, 20 97:10, 22, 24 98:16 99:2, 20 101:3 103:23 104:4, 10, 13, 18 105:1, 6, 8, 20 106:17 107:12, 20 108:15, 21 112:10 119:9, 13, 22 123:2, 21 128:21 131:13, 16 132:13, 16, 21 133:6, 7, 10, 15 134:14 135:6, 20, 24, 25 136:13 137:6, 8 142:17, 25 146:2 152:11, 16 153:1, 6, 14 154:20 155:12, 13, 14 156:5 159:13 162:2, 10, 21, 25 163:7, 16 164:5, 8 173:9 174:7, 7, 8, 12, 18, 20 175:15 176:4, 4, 7, 15 177:2, 10, 15 178:19, 19 179:19 180:10 181:9, 13, 20, 22 182:6 183:11 184:3, 8, 10, 15, 23 185:4, 17 186:7, 14, 20, 22 188:21 189:4, 16 191:3, 20 192:4 194:17, 18 196:17, 22 197:1, 3, 21 198:5, 22, 25 199:5, 7, 10, 10, 15, 15, 20, 22 200:6, 16 202:4, 7, 17, 20 204:12, 18, 23 205:1, 3, 8, 17, 21 206:4, 8, 11, 18, 20, 25	207:16, 24 208:6, 19 209:21 210:5, 9 212:12, 15 213:14, 18 214:4, 11, 13, 24 215:3, 13 216:5, 19, 21 218:9, 16, 17 219:1, 11, 13, 17, 19, 23 220:10, 20 222:7 227:13, 17 228:13 231:1, 23 232:4, 22, 23 233:5, 9, 20 235:5, 19 236:18 237:6, 20 238:4, 8, 16, 17, 23 239:3, 7, 18 240:2, 7 242:3, 13, 18, 19 243:2, 5, 16 248:2 251:7 252:10 254:3, 14, 21 255:13 256:15 257:16, 22, 25 258:8, 13 259:23 265:7 267:4, 12, 13, 15, 21, 23, 25 268:8, 13, 17 269:2, 13, 15, 23 270:3, 11, 18 271:10 273:19 275:9 278:20 279:9 280:11 281:12, 20 282:6, 8 283:21 284:3 285:9, 10, 14 286:9, 12, 17, 23 287:24 288:7, 11, 16, 22 289:2, 8 291:24 292:3 294:6, 15 299:24 306:11 310:11, 16, 17 311:5 312:8 313:6 316:2, 2, 5, 7 318:7, 16 320:14 327:12	328:6, 21 329:15, 22 330:6 332:10 333:25 334:5, 11, 12, 14, 17, 19, 23 335:5, 11, 14, 17, 21 336:4, 8, 13 <b>OxyContin,</b> 309:17 <b>OxyContin's</b> 214:18 <b>OxyContin's</b> 174:14 187:6 213:5 217:7, 10, 24 226:10, 12 243:3 <b>OxyIR</b> 155:21 156:6, 23 <b>oxymine12</b> 202:10, 11 <b>oxymorphone</b> 75:4, 13  < P > <b>P.F</b> 7:13 21:23 322:6 <b>p.m</b> 128:16, 19 154:8, 11 171:10, 13 209:12, 15 278:1, 4 292:20, 23 324:1, 4 336:23, 24 <b>p.r.n</b> 155:7 157:5 328:3, 4, 6 <b>package</b> 74:2 76:9, 12, 15, 19, 20, 24 83:19 90:8 101:16 121:16 123:10 124:23 129:12, 14, 16, 19, 21 130:1, 4, 6, 10, 12, 16, 20 134:12, 13 155:4 156:5, 7, 12, 14, 24 157:9 236:25 237:3	243:23 246:2 247:1 267:14 268:21, 22 307:1, 2, 3, 4, 6, 9, 10 311:1 320:17, 19 321:4 <b>packet</b> 269:3 <b>Page</b> 6:13 28:9 35:24 36:10 38:8, 15 46:18, 19 55:6, 19 62:23, 24, 25 63:22, 24 67:1 70:8 74:25 75:7, 8, 9 76:1, 3, 8 90:15 103:22 106:10 108:10, 11, 12 111:3, 9, 12, 16 113:12 118:1, 1 122:22, 23 123:17, 18 126:17 127:11 129:9 131:7 133:5, 5 135:10, 19 140:14 141:19, 22, 25 142:16 143:16, 19 152:10 154:24 157:21 171:19, 22 173:25 174:1 175:21, 22 181:4 188:18 213:3, 13 215:9 217:3, 23 218:1, 3, 4 220:3, 7 222:1, 24 223:7, 8, 9 224:23 243:12 278:7 287:22 311:11, 19 318:17, 18 326:20 <b>pages</b> 55:9, 13, 16 126:12 337:11 <b>paid</b> 44:13 45:5 140:5 167:2, 3 186:17
---	--	---	--	--



195:18 216:25 297:8 <b>pain</b> 17:10 18:9, 11 36:25 37:3, 9, 15, 20, 22, 22 71:5 74:15 78:9, 11, 18, 22, 24, 25 79:6, 8 80:6, 8, 9, 12, 14, 15, 19, 19, 23 81:5, 10, 12 82:9 85:7, 7, 17, 18, 18, 21 87:5, 7, 17 90:21, 22 91:1, 2, 4, 14 92:6, 11, 12, 17, 21 93:1 94:20 95:11, 12, 16, 19, 20 96:7, 21, 23 97:8, 10, 22 98:11, 12, 20 99:3, 6, 9, 11, 21 100:9, 10, 14, 17 102:10 103:24 105:8, 19 107:23 109:3 113:17, 25 114:4 115:3, 6, 16, 18, 21, 24 116:2, 9, 10, 18, 19, 20 117:1 120:14, 14, 14 121:11, 15 127:21 131:20 136:1, 3, 7, 10, 12, 14 137:10 138:1, 7, 8, 9, 11, 17, 18 140:21 145:2, 3, 5, 8, 13, 21 146:3, 14, 17 148:22 149:1, 1, 19, 20, 22, 23 150:1, 10, 16 151:8, 12, 16, 19 152:1 155:13 157:2, 6 160:13 174:8, 13, 15, 16, 18, 21 175:13 177:19, 22 178:3, 5, 16	179:4, 9, 10, 16, 20 180:1 181:16 182:10, 10, 13, 24, 25 183:9, 11, 20, 22 189:2 190:15 192:1, 3, 6, 8, 12, 13, 14, 17, 20 193:3, 4, 10, 11 206:21 207:5, 19, 20 214:19, 25 215:1, 1, 4 218:18 233:7, 11 237:22 246:11, 18, 22 254:5 255:24 257:24 258:5 268:14 269:5 271:1, 13, 16, 22, 24 272:1, 3, 4, 6 279:15, 16 280:14, 17 282:19 291:14 305:2, 6 312:10 329:6, 16 330:16 335:16, 18 <b>pain</b> , 150:7, 9 213:15 <b>pains</b> 116:3 <b>paper</b> 139:13 245:9, 9 <b>paragraph</b> 28:9, 21, 25 36:11 38:16 46:15, 19 48:23 56:18 57:24 60:17 61:12 71:8 75:3, 9, 12, 20 76:4, 9 77:21 78:5 80:1, 3 85:12 90:20 91:16 93:8, 24 95:5, 25 98:10 105:11 107:16 111:13, 15 112:2 115:8 119:12 123:14, 15 129:10 141:22 142:4,	21, 22 143:20, 22 147:23 148:19 149:6 169:4, 13 173:23, 25 174:1, 2, 24 175:22 177:14 182:4 183:17 188:19 206:16, 23 207:14 213:4, 16 215:10 216:17 217:4 218:7 223:10, 14, 21, 23 224:24 232:19, 19, 20 233:4, 12 235:2 237:11 243:9 244:13 248:1, 7 251:19 252:9, 18 254:12, 21 256:5 258:24 259:20 260:4 261:21, 25 265:2 266:24 267:13, 22 269:10 270:8 278:13 286:8 288:4 311:19 315:7 318:18 319:3, 14 324:24 327:5 330:1 332:12, 15 333:5, 13 334:6 335:14 <b>paragraphs</b> 70:5 172:5 173:20 <b>Pardon</b> 55:2 111:21 270:1 <b>parenterally</b> 58:24 <b>Park</b> 4:8 <b>Parke</b> 7:15 <b>PARKER</b> 8:12 <b>Parks</b> 7:21 304:25 <b>parlance</b> 89:13 <b>part</b> 60:13 61:20 78:13, 15	85:14 90:16 94:24 107:11, 19 108:21 111:2 116:21 118:23 126:20, 20 127:22 137:24 140:8 141:18 174:19 176:8, 10 185:13 204:3 223:4, 15 227:20 245:12 248:4 256:19 270:23 287:6, 8 321:11 <b>participants</b> 198:20 <b>participated</b> 257:20 258:20 261:16 <b>participating</b> 258:17 <b>particular</b> 46:22 53:15 231:3 <b>particularly</b> 86:11, 25 95:7 96:16 <b>parties</b> 196:21 337:15 <b>partner</b> 14:20 15:8 183:11 <b>Partners</b> 182:9, 13, 16, 17, 19, 21, 23, 24, 25 192:1, 3, 5 283:6 <b>parts</b> 14:10 147:10 268:7 <b>party</b> 318:1 <b>Passing</b> 27:9 29:1 43:3 46:13 48:4, 7 70:1 74:20 77:6 103:9 106:9 110:5, 12, 19 117:16 122:6 126:14, 16 128:20 134:21 141:13 154:23 163:24	173:11 177:9 181:5 204:16 205:24 212:1, 20 219:24 222:23 247:24 278:8 285:24 287:12 299:15 305:4 314:2, 18 326:14 <b>patent</b> 45:15 222:4, 9 329:10 <b>patient</b> 79:5, 7 80:2, 21 82:5, 9, 12, 14 88:2 95:21 97:1 100:19 101:2 115:4 121:15 133:14 145:6, 10 146:21 150:10, 14 189:5, 21 240:16, 18 257:7, 25 258:1 259:4, 5, 9, 12, 15 260:25 275:14 281:7 282:19 286:14 291:19 300:2, 3, 5 329:5 <b>patients</b> 17:10, 10 31:8 32:3 36:25 37:3, 9 46:23 47:1, 8, 16 54:8 59:14, 23 60:5 66:14 70:15, 16, 22, 23 79:22 80:10, 12, 25 82:8, 22 83:14 87:5 94:21 95:16 100:10, 17, 19 105:19 112:4 113:14 115:25 121:10 131:19 133:16 136:17, 18 143:1, 3 144:2 145:23 146:5, 12 148:22 151:8 182:12 183:9
--	---	--	---	---

189:21 192:8 199:6 200:2 232:3 234:12 235:13 239:16, 18, 25 240:2, 7 242:18, 19 255:13, 25 257:3, 4, 13, 16, 20, 21 258:2, 8, 12 259:4, 17, 18, 19, 22 260:20 261:10, 14, 16, 19 267:4, 6 272:7, 8 275:15, 16, 16 280:14, 17 282:4 283:11 292:2 299:6, 9, 11, 23 300:7, 10, 11 301:24 322:12 336:3, 7, 7 <b>patient's</b> 149:24 281:5 <b>Paul</b> 2:21, 25 5:17, 17 6:3 48:10, 12 49:12 68:1 112:23 157:20, 22 158:22 170:6 173:3 228:17 229:1 324:24 <b>pause</b> 81:23 <b>pay</b> 31:1 195:15, 16 <b>paying</b> 31:2 <b>payout</b> 334:8, 8, 9 <b>Payouts</b> 6:9 <b>PDD</b> 141:8 <b>PDD1701546226</b> 35:25 <b>PDD1701801141</b> 106:12 <b>PDD1701824723</b> 141:11 <b>PDD2952080643</b> 9 54:14 <b>PDD8801123847</b> 47:24	<b>PDD9520509356</b> 70:5 <b>PDD9520805292</b> 26:15 <b>PDD9520821306</b> 134:22 <b>PDD9521410329</b> 74:24 <b>PDD9524706426</b> 38:2 <b>peak</b> 239:7 252:11 281:15 290:19 291:6 <b>peaks</b> 243:4 244:15 281:8, 9, 16 289:5, 7, 13, 14, 20, 22, 23 290:16 291:9 <b>pending</b> 11:2 298:23 <b>people</b> 18:20 34:15 51:9 75:18 87:25 96:10, 22 98:5 103:17 115:6, 19, 19 118:25 120:1 130:22 146:8 155:11 172:4 176:25 184:6 187:13 188:9 195:2 198:25 207:4, 17 208:16 229:25 261:6 269:7 274:17 277:13 279:1 280:19, 21 281:24 282:1 283:5 294:8 295:1 296:12 297:8, 23 299:4 302:2 308:21 309:1 324:23 327:16, 17 331:22 334:21 336:12 <b>people's</b> 88:15 <b>perceive</b> 104:4, 10 152:11 153:14	<b>perceived</b> 86:10, 24 87:14 88:22, 24 95:6 96:19 <b>percent</b> 17:14 40:24 41:5 46:23 47:1, 9 56:20 85:24 164:10, 13, 15, 15, 22 165:4 185:25 186:1 213:8 238:7 255:25 259:17 273:22, 22, 22 315:10, 14 334:24 <b>percentage</b> 40:10 47:7, 16 74:4 89:6 168:8, 18 202:24 273:17 276:13 <b>percentages</b> 280:19 <b>perception</b> 87:3 91:17 93:3, 9 95:9 100:5 101:20 102:10, 24 210:10, 12 251:9 <b>Percocet</b> 70:10 71:2, 3, 3 74:12 87:18 89:4 92:8 94:6, 18 104:11, 14, 19, 22 107:10 119:13, 22 131:11 132:10, 13 133:17 138:17 152:12 153:14 <b>Percodan</b> 138:17 <b>perfect</b> 54:6, 7 289:11 <b>perfection</b> 54:10 <b>Perfectly</b> 234:22 <b>performance</b> 328:13 <b>performed</b> 285:13	<b>period</b> 2:18 11:18 16:2, 9 21:18 23:20 34:23 38:17 80:17 113:5 114:10, 16 124:2, 14 175:23 202:19 219:16 230:13 254:9 264:9, 20 266:2, 25 270:20 274:24 280:23 294:11 302:22 303:1 306:15 <b>periodically</b> 50:16 <b>periods</b> 255:16, 18, 23 257:22 261:15 281:16 <b>Periods,</b> 255:20 <b>periods.'</b> 256:1 <b>permitted</b> 253:25 <b>persisted</b> 203:4 <b>person</b> 26:6 112:9 118:16, 17 138:13 226:22 282:12, 13, 14 296:23 305:21 313:3 <b>personal</b> 116:5 149:21 174:25 <b>personality</b> 78:13, 14, 15 80:24 81:7, 16 82:18 83:4 93:17 107:8, 9, 11, 20 <b>personality'</b> 78:14 <b>personally</b> 34:8, 9 <b>person's</b> 263:3 <b>perspective</b> 53:1 210:6 <b>persuaded</b> 96:15	<b>pertaining</b> 255:12, 15 259:2 <b>pervasive</b> 315:23 <b>PF</b> 36:20, 20 221:13 326:25 327:3, 19 <b>Pfizer</b> 195:24 <b>PFRC</b> 3:17 110:20 <b>Ph.D.</b> 26:3 <b>PHARMA</b> 1:4 7:12, 12 9:15 13:1 14:18, 21, 24 15:8, 9 17:16 19:23 20:8, 10, 15, 22 21:3, 9, 19, 21, 25 22:3, 7, 16 23:7, 9, 19, 24 24:6 33:22 34:1 40:3, 11 41:2, 3, 12 42:4, 5 68:13, 20 69:15 75:19 100:19 101:2 126:23, 25 127:1, 3 140:8, 11 146:23 152:24 165:5, 11, 15, 22 166:2 168:7 169:9 170:1, 6 172:8, 21, 24 173:7 187:11, 14, 21, 23 188:1, 7 192:13 193:17 196:15 198:2, 5 219:4 221:15 225:10 226:23 241:21 248:15 252:20 253:3 263:23 264:12 270:18 275:6 279:19 284:16 287:16 293:17, 18 322:4, 5, 18 323:8, 13, 20 327:1
--	---	--	--	---



<b>pharmaceutical</b> 20:14 26:20 28:1, 11 185:1 188:23 190:12 191:13 196:6 214:6 217:10 <b>PHARMACEUTICALS</b> 7:13 322:6	130:3 146:18 160:15, 19 161:3 193:15 200:6, 6 215:19, 23, 24 234:2 238:15 278:13, 14 291:16, 23 295:9 309:16, 20	16 265:23 270:25 271:14, 21, 23 273:18 274:2 275:7 278:20, 24 295:5, 14, 17 296:7 309:7 315:10 316:1, 4, 6 327:13, 14, 23 328:2	<b>placebo-control</b> 113:13 <b>placebo-controlled</b> 112:3 <b>placed</b> 278:17 <b>places</b> 247:3 250:21 <b>plaguing</b> 294:17 <b>PLAINTIFF</b> 1:4, 4 7:1 <b>Plaintiff's</b> 45:22 47:25 74:18 86:5 103:7 <b>Plan</b> 4:19 84:19 109:17 121:22 136:7 153:5 181:3, 4 188:18 190:21 200:17 324:18 <b>planned</b> 124:20 131:12 <b>planning</b> 112:22 314:9 <b>Plans</b> 6:7 326:16 <b>plasma</b> 145:15 157:11 242:17 243:1, 3 289:7 <b>platform</b> 107:11 <b>play</b> 21:25 <b>played</b> 18:2 22:3 119:8 <b>plea</b> 34:24 60:14 165:14, 18, 25 166:1, 6, 12, 12 168:10, 20 169:24 222:18 224:11, 16, 19 226:25 227:24 228:2, 11, 24 230:17 232:9 251:13 269:25 295:23 296:8 300:14 312:16 318:23 <b>plead</b> 228:2 <b>please</b> 10:24 62:15 63:12 64:2 84:3	102:5, 14 122:23, 24 147:14 158:2 168:15 222:21 223:17 262:16 272:22 299:14 311:18 335:24 <b>pleased</b> 146:17 <b>pled</b> 33:6 60:15 224:12, 19 226:24 228:17 306:4 312:20 <b>PLLC</b> 7:18 <b>plus</b> 150:11 170:15 171:3 <b>pockets</b> 221:24 <b>Podiatric</b> 287:4 <b>Point</b> 7:5 9:3 20:7 22:16 23:8 90:13, 14 149:19 157:11 164:6 170:5 176:22 184:21 187:13 198:3 217:16 225:15 245:22 262:5 263:4 280:1 322:21 324:25 330:14 336:14 <b>pointed</b> 109:15 262:23 335:3 <b>pointing</b> 108:8 206:3 270:10 <b>points</b> 70:8 108:3, 22 126:6 223:2 260:19 270:2 287:25 313:16 <b>policy</b> 221:18 274:7 293:6 308:10 <b>polite</b> 66:9, 23 <b>political</b> 115:10, 11, 12 <b>Poll</b> 181:14, 25 182:1, 2 <b>polluted</b> 82:21 <b>popular</b> 18:14 116:22
<b>pharmacies</b> 184:7 190:1 <b>pharmacist</b> 189:23 252:1, 2, 5 <b>pharmacists</b> 188:24 189:2, 15 190:4, 13, 16 191:3, 7 213:21 278:25, 25 <b>pharmaco</b> 116:21 <b>Pharmacoeconomic</b> 131:11 177:24, 25  <b>pharmacokinetic</b> 320:23 <b>pharmacologist</b> 26:9 <b>pharmacopeia</b> 116:22 <b>pharmacy</b> 189:22 <b>Pharma's</b> 40:16 68:19 <b>Phase</b> 4:21 5:3 30:8 77:24 91:12 99:19 124:1 202:4 206:8 210:5 <b>Philip</b> 305:1 <b>phrase</b> 12:8 <b>physical</b> 68:15, 21, 25 69:12 257:14 <b>physically</b> 32:17 171:4 258:13 <b>physician</b> 82:12 89:20 114:13	<b>physicians</b> 18:11 31:7, 13, 23, 24 51:10, 15 74:11 76:22 77:2 78:6 81:8, 16 82:7, 24 83:9, 21 84:2, 9, 16 86:11, 25 87:4, 6, 9, 17, 20 88:22, 24 89:7, 13 90:5 91:3, 17, 22 92:7 93:2, 10 95:7, 9, 12, 16 98:13 99:9, 10 100:20 101:3, 20 102:25 104:4, 10 105:7 115:14 116:9 130:7, 10 136:21 143:3 152:11, 14 153:13, 13 175:15 182:20 184:7, 22 185:3, 4, 10 192:10 193:2, 2, 8, 12, 13, 19 194:1, 5, 23, 25 195:2 196:4 200:1, 1 202:14 203:20 206:5 209:4 210:1, 9, 12 213:18 214:3, 11, 18 215:12, 15, 22 216:11 220:22 234:1 237:5, 8 247:8, 12, 16, 17 248:8, 9 249:6 250:8, 11, 19 256:8, 10,	<b>physician's</b> 90:24 130:8 <b>physiologic</b> 283:2 <b>PI</b> 4:10 155:4 157:9, 12 <b>picking</b> 154:13 <b>pickup</b> 158:24 <b>picture</b> 17:12 122:17 315:20 <b>piece</b> 78:21 83:12 209:2 335:12 <b>pieces</b> 90:11 91:18 93:11, 15 101:21 103:1 210:13 <b>PIKE</b> 1:1 9:13 <b>Pikeville</b> 232:3 <b>pills</b> 246:11 314:1 <b>Pilot</b> 125:8 <b>pioneered</b> 284:21 <b>Pipeline</b> 3:13 221:22 <b>PKY</b> 43:5 <b>PKY1738172006</b> 43:8 <b>place</b> 98:22 152:13, 16 153:15 194:12 195:3 221:3 251:3 274:9 309:3 328:7 337:5 <b>placebo</b> 105:2 140:24, 25 141:2 142:10 150:16 151:10	<b>placebo-control</b> 113:13 <b>placebo-controlled</b> 112:3 <b>placed</b> 278:17 <b>places</b> 247:3 250:21 <b>plaguing</b> 294:17 <b>PLAINTIFF</b> 1:4, 4 7:1 <b>Plaintiff's</b> 45:22 47:25 74:18 86:5 103:7 <b>Plan</b> 4:19 84:19 109:17 121:22 136:7 153:5 181:3, 4 188:18 190:21 200:17 324:18 <b>planned</b> 124:20 131:12 <b>planning</b> 112:22 314:9 <b>Plans</b> 6:7 326:16 <b>plasma</b> 145:15 157:11 242:17 243:1, 3 289:7 <b>platform</b> 107:11 <b>play</b> 21:25 <b>played</b> 18:2 22:3 119:8 <b>plea</b> 34:24 60:14 165:14, 18, 25 166:1, 6, 12, 12 168:10, 20 169:24 222:18 224:11, 16, 19 226:25 227:24 228:2, 11, 24 230:17 232:9 251:13 269:25 295:23 296:8 300:14 312:16 318:23 <b>plead</b> 228:2 <b>please</b> 10:24 62:15 63:12 64:2 84:3	102:5, 14 122:23, 24 147:14 158:2 168:15 222:21 223:17 262:16 272:22 299:14 311:18 335:24 <b>pleased</b> 146:17 <b>pled</b> 33:6 60:15 224:12, 19 226:24 228:17 306:4 312:20 <b>PLLC</b> 7:18 <b>plus</b> 150:11 170:15 171:3 <b>pockets</b> 221:24 <b>Podiatric</b> 287:4 <b>Point</b> 7:5 9:3 20:7 22:16 23:8 90:13, 14 149:19 157:11 164:6 170:5 176:22 184:21 187:13 198:3 217:16 225:15 245:22 262:5 263:4 280:1 322:21 324:25 330:14 336:14 <b>pointed</b> 109:15 262:23 335:3 <b>pointing</b> 108:8 206:3 270:10 <b>points</b> 70:8 108:3, 22 126:6 223:2 260:19 270:2 287:25 313:16 <b>policy</b> 221:18 274:7 293:6 308:10 <b>polite</b> 66:9, 23 <b>political</b> 115:10, 11, 12 <b>Poll</b> 181:14, 25 182:1, 2 <b>polluted</b> 82:21 <b>popular</b> 18:14 116:22



<b>populations</b> 189:5 <b>Portenoy</b> 196:14 <b>portion</b> 12:6 27:12, 16 30:2 252:6 <b>portions</b> 11:9, 14 <b>pose</b> 132:16 318:21 322:3 <b>posed</b> 38:18 175:24 <b>position</b> 15:9 24:24, 25 25:1, 9, 11, 13 77:23 79:23 105:6 120:23 121:1 230:8 248:10 256:15 280:4 335:17 <b>positioned</b> 90:23 98:13 133:10 <b>positioning</b> 36:15 87:17 91:3 99:10 132:23 174:14 206:18 207:21 335:14 <b>positive</b> 31:7 87:6, 10 95:11 150:24 205:2 <b>possibilities</b> 139:8 <b>possibility</b> 52:25 139:8, 14 183:19 231:25 288:1 <b>possible</b> 49:4 67:21 76:25 105:5 125:11 136:15 152:16 190:2 231:17, 19 235:13 261:12, 15 285:13 <b>possibly</b> 43:12 162:1, 20 257:5 276:18 291:22	<b>post</b> 109:3 <b>Poster</b> 219:1 <b>post-marketing</b> 60:19, 24 114:20 131:10, 12 <b>post-meeting</b> 202:18  <b>post-neuropathic</b> 335:18 <b>Poston</b> 285:3, 5 <b>P-O-S-T-O-N</b> 285:5 <b>Postoperative</b> 177:19, 22 <b>post-surgical</b> 120:13 335:19 <b>potency</b> 73:22 84:3 131:15 144:13 208:17, 25, 25 249:10, 25 <b>potent</b> 73:22 83:10 85:4 87:24 88:5, 7, 9, 9 89:1, 2, 3, 10, 18, 25 90:2 96:25 98:6, 6 101:7, 8 106:24 209:1 247:12, 13, 17 248:23 249:6, 11, 20 250:6, 7, 20, 24 251:1 <b>potent,</b> 249:17 251:2 <b>potential</b> 31:2 50:21 56:22 91:2 99:9 118:2 119:11, 15, 21 121:22 134:7, 15 138:20 139:4, 6, 18 189:4 199:25 237:6 239:9 242:5, 5 252:13 254:5, 15 268:2, 3 269:17, 17	278:16 281:21 283:21 284:3 285:9 288:5, 14 306:1, 11 310:10 313:11, 11 314:1 316:7 325:8 326:4 <b>potentially</b> 36:5 238:23 246:24 291:14 <b>power</b> 90:24 99:2 131:6 212:10 <b>powerful</b> 73:11, 11, 13, 21 89:8 99:5, 15 104:19 123:10 206:25 207:3, 9, 16, 17 208:6, 9, 12, 13, 15, 19, 24 211:12 212:12 251:2, 7 <b>powerful,</b> 251:2 <b>PowerPoint</b> 195:12 <b>PPLP</b> 221:13 <b>PR</b> 221:9, 21, 23 <b>practical</b> 94:16 200:11 <b>practice</b> 89:2 94:8 145:9, 10 194:11 200:2 220:23 225:1 241:16 266:19 286:11 322:10, 11 327:7, 14, 15, 19 <b>practiced</b> 284:25 322:15 <b>practices</b> 245:13 271:15 <b>practicing</b> 194:12 <b>Pratt</b> 8:8 <b>preceded</b> 326:21 <b>precise</b> 133:13 168:14 <b>precisely</b> 178:12 182:3 194:13 195:25	198:10 211:18 230:24 <b>preclude</b> 316:17 317:17 <b>predict</b> 282:13 <b>prediction</b> 145:20 <b>predominantly</b> 91:13 99:20 185:17 <b>preface</b> 124:7 <b>preference</b> 204:3 <b>preferences</b> 115:13 <b>prejudices</b> 115:14 <b>preliminary</b> 140:22 <b>preparation</b> 30:20 166:16 181:20 277:5 <b>prepare</b> 321:6 <b>prepared</b> 262:6 <b>preparing</b> 226:8 <b>prescribe</b> 18:6 51:11, 14, 16 82:10 99:25 115:15 184:22 185:4 200:7 215:16 271:24 <b>prescribed</b> 116:8, 16, 20 199:11, 16 <b>prescribers</b> 185:7, 8 214:4 222:6 <b>prescribing</b> 17:17, 24 18:8, 11 31:15, 16 95:23 100:21 109:4 179:19 184:23 213:19 214:11 215:17 220:25 221:1 248:12, 13 271:15, 22 273:19 <b>Prescription</b> 5:5 6:8 135:23	203:3 204:8 213:8 248:11 291:20, 21 294:7, 16 332:3, 8 <b>prescriptions</b> 83:2 119:1 157:6 189:6, 16, 22 191:10, 10 194:17, 17 196:9 199:22 202:16, 20 203:2, 23, 24 204:6 209:21 213:6 215:1, 3 238:16, 17 291:16 294:9 327:15 <b>preselected</b> 316:19 317:19 <b>present</b> 115:25 130:18 141:15, 18, 20 162:2, 20 192:10 289:7 303:19 <b>presentation</b> 35:10, 14 108:23 132:19 133:6, 8 297:9 324:18 325:4, 21 326:2 <b>presentations</b> 195:11, 12 <b>presented</b> 36:14 135:23 202:22 244:3 291:11, 13 295:5 304:12 <b>presenting</b> 120:21 193:12, 16 <b>Presently</b> 40:12 220:22 <b>preserved</b> 11:25 <b>presidency</b> 323:7 <b>president</b> 69:15 228:21, 23 229:2 322:18,
---	---	--	---	--

22 323:3 331:19 <b>Press</b> 5:8 53:25 61:21 220:4 221:2 262:4 263:2 264:18 265:14 <b>pressure</b> 150:8 <b>presumes</b> 291:9 <b>presumptive</b> 282:15 <b>pretty</b> 299:19 307:12 <b>prevalence</b> 181:16 183:6 <b>prevent</b> 17:23 145:8 <b>prevented</b> 18:10 <b>previous</b> 125:2 259:7 <b>previously</b> 120:9 148:22 159:4, 6, 19 169:5 204:24 316:21, 22, 22 317:21 <b>price</b> 162:24 163:7 164:9, 17, 20 165:1, 4 <b>priced</b> 79:4, 5 137:3 <b>prices</b> 165:2 <b>pricing</b> 79:2 <b>primarily</b> 17:9, 12 <b>primary</b> 109:1 120:4 174:14 213:17 214:3 <b>principal</b> 25:17, 17, 17 119:3 131:2 199:25 291:7 <b>principally</b> 16:15 107:23 122:15 143:7 146:6 192:6 <b>print</b> 171:5 181:11 <b>printed</b> 130:3 266:7	<b>prior</b> 69:13 129:20 222:18 224:6, 11, 18 231:11 244:23 282:4 285:9, 13 305:20 337:7 <b>priority</b> 335:4 <b>private</b> 30:9, 13 314:16 <b>privilege</b> 298:6 <b>probably</b> 94:12 99:13 128:11, 13 141:20 150:18 153:19 266:6 277:1 296:12 308:11 323:6 330:4 332:6 334:22 <b>Problem</b> 5:6 32:24 34:21 35:3 38:10 130:24 146:24 156:23 161:9, 16, 19, 20, 22, 24 162:18 181:21 198:4 212:16 221:22 258:10, 14 274:5 303:15 328:15 333:4 <b>problems</b> 38:11 181:16 183:6 198:22 232:3 234:7 287:23 294:17 <b>Procedure</b> 9:7 65:3, 13 287:6 <b>proceed</b> 57:10 <b>proceeds</b> 254:23 <b>process</b> 126:21 <b>processes</b> 166:10 271:1 <b>produce</b> 25:18 80:13 280:11 327:6 <b>produced</b> 54:12 55:11, 13, 20 113:10 117:20, 22 201:6, 10, 12, 14 271:24	288:20, 21, 21, 23 <b>produces</b> 316:5 <b>Product</b> 3:13 4:17, 17 17:25 19:24 20:1 24:14 25:18, 23 32:4, 6 37:1 45:1, 14 52:22 67:20 68:8 71:4 76:21 78:22 79:3 81:5, 7, 15 83:19 87:18 88:8 90:23 91:3 94:24 97:20 98:12 99:10 108:16, 19 112:24 118:25 121:13 123:4 124:24 125:1, 5 127:24 130:17 138:16 140:19 142:9, 10 143:15, 25 148:4, 6 149:7, 10 150:22 160:3 169:19 176:22, 24 177:3, 11, 15 178:10, 19, 20 181:22 185:22 188:23 189:19 190:24, 25 191:9 199:24 213:7 217:8 220:13 222:3 233:22 236:4 278:19 286:9 304:12 <b>production</b> 14:2 15:13 21:2, 15 22:1 <b>products</b> 20:16, 18, 18 44:2 45:3 52:11 58:5, 15 68:16, 22, 25 69:13 92:8 125:3 130:12 136:15	148:25 149:4 159:8 160:23 222:11 247:6 325:4, 5, 8, 16, 17 326:3, 5 332:8 <b>product's</b> 151:7 <b>Prof</b> 5:23 <b>professionals</b> 18:15 175:2 181:10 182:11 <b>Professor</b> 287:23 <b>profile</b> 145:19 <b>Profit</b> 2:20 43:9, 16, 21, 24, 24 44:7, 9, 11 45:16 190:16 <b>profits</b> 40:25 189:2 <b>program</b> 34:13 59:14 62:7 76:15 140:16 153:5 182:10 183:4 187:3 191:12 193:21 194:22 205:15 329:11 334:19, 20 <b>programming</b> 191:13 <b>programs</b> 189:10, 13 202:15 207:22 <b>progresses</b> 133:18 <b>prohibited</b> 115:20 300:12 304:6 <b>Project</b> 3:3, 3, 5, 19, 19 4:3, 3, 5, 6 22:4 26:7, 7 52:25 70:3 74:22 117:13 128:21, 25 132:6 135:6, 17, 20 159:12, 12, 13 160:19 <b>projected</b> 64:6, 17	<b>projection</b> 63:12 64:3 220:14 <b>promise</b> 302:11 <b>promised</b> 302:8 <b>promote</b> 37:14, 20 184:10 267:21 268:17 <b>promoted</b> 37:8 74:7 136:12 155:24 184:3 185:15 186:21 199:20, 21 214:18 237:20 281:20 312:7 <b>promoting</b> 16:11 21:14 85:3 199:10, 15 206:20 213:14 215:12 267:23 269:12 294:15 <b>Promotion</b> 4:24 5:9 15:14 29:7 44:17, 19 76:22 83:20 90:9 119:9 127:17, 18, 20 204:18 214:24 220:4 235:19 248:13, 14, 19, 19 265:7 <b>promotional</b> 74:2 78:17 83:12 90:11, 16 91:18 93:11, 15 98:7 101:21 103:1 118:14 130:18 163:10 188:20 189:3 190:23 210:13 217:6 243:20 256:12 <b>prompt</b> 61:24 156:18 <b>prompted</b> 109:5, 8 <b>promulgated</b> 97:21 245:14 <b>prone</b> 292:10, 11 325:7, 16
---	--	---	---	---



326:4	269:13 313:5	19:6, 6, 9, 13, 20,	217:5 218:12	323:8, 12, 13, 19,
<b>proof</b> 225:1	<b>provides</b> 146:3	22, 22, 25 20:5,	219:4 221:14,	20 327:1
<b>proper</b> 92:9	<b>providing</b>	7, 9, 10, 11, 15,	14 222:19	336:11
109:3 190:10	188:13 214:5	21, 22 21:3, 5, 9,	223:4, 16 224:1,	<b>Purdue</b> , 19:9,
192:7 206:21	231:3	10, 13, 19, 19, 20,	10, 17 225:3, 7,	16 33:15
274:14	<b>provisions</b>	21, 25, 25 22:3,	9, 11 226:22, 23	<b>Purdue's</b> 19:5
<b>properly</b> 55:9	11:14	7, 7, 15, 15, 15,	227:3, 11, 15	213:7, 17
97:23 268:14	<b>prudent</b> 145:9	20 23:7, 7, 7, 9,	228:24 229:6,	214:23 217:17,
269:4 274:17	<b>psyche</b> 281:13	9, 18, 19, 24, 24	11, 12 230:23	20 219:10
295:11 304:12	<b>psychological</b>	24:5, 5, 6 29:8	231:5 232:8, 12,	228:20 238:5
<b>proportion</b>	281:14	33:6, 10, 12, 16,	21 233:7 237:4,	239:6 242:15
202:24	<b>Public</b> 181:6, 7	17, 21, 22 34:1	16, 18, 25 238:1,	252:19 253:24
<b>proportional</b>	182:7 183:18	35:11, 11, 15	1, 11, 21, 25	254:1 260:15
148:2	197:4 246:7	36:21 40:2, 3,	239:24 241:15,	261:6 262:17
<b>proposal</b> 57:8	337:3, 17, 24	10, 16, 17 41:2,	15, 17, 18, 19, 20,	263:19 265:6
61:25	<b>publication</b>	3, 12 42:4, 5, 7	21, 25 242:1, 22	266:1 267:20
<b>proposed</b> 57:10	122:12 140:2	43:9, 13 55:13	244:14 245:19	271:9 294:14,
121:17 181:15	<b>publications</b>	59:11 60:14	248:15 249:3	21, 25 311:22
242:24 243:16	256:13	68:13, 18, 20	251:20 252:2, 5,	315:8 319:5
<b>proposition</b>	<b>Publications</b> ,	69:15 75:18, 19	15, 20, 24, 24	<b>PurdueUS</b> 2:11,
160:25 213:23	139:1	100:19 101:2	253:3, 4, 7, 14,	13
<b>proscribed</b>	<b>publicity</b> 182:6	109:2 110:21	14, 17, 18	<b>purport</b> 309:23
115:20	<b>publicized</b>	112:22 119:19	254:10, 23	<b>purported</b>
<b>prospects</b> 31:2	181:18	126:22, 24	255:1, 11 256:6,	168:3
<b>protection</b> 50:3	<b>published</b>	127:1, 3 132:6	25, 25 258:16	<b>purpose</b> 76:12
<b>protective</b> 11:20	120:10 153:25	139:5, 23 140:5,	260:5 261:3, 23,	77:22 92:25
<b>protocol</b> 112:3	219:5 231:21	8, 11 145:14	23 262:9	238:4 265:21
113:12 114:3, 6,	258:19	146:23 152:24	263:12, 23	<b>purposely</b>
22, 23 129:18	<b>publishing</b>	165:5, 10, 11, 14,	264:12, 25	278:22
<b>proud</b> 73:23	258:21	15, 22, 22 166:2,	265:3, 9, 19	<b>purposes</b>
<b>prove</b> 236:16	<b>pull</b> 106:21	2 167:5, 11, 19,	266:14 267:1,	119:23 157:16
<b>proved</b> 89:3	147:20	25 168:4, 6, 7, 7,	19, 22 268:7, 11,	<b>pursuant</b> 9:6
<b>provide</b> 229:10,	<b>pulled</b> 167:13	17 169:8, 9, 16,	16 269:1, 11	11:10 33:11
17 233:8	168:3 275:21	17, 22 170:1, 2,	270:2, 11, 18, 23,	<b>pursue</b> 61:24
288:13 295:14	<b>pump</b> 109:1	6, 7 172:7, 8, 20,	25 273:10, 25	65:17 147:14
315:19 320:14	<b>purchase</b>	22, 23 173:7, 7	275:5 279:19	<b>put</b> 47:20
<b>provided</b> 56:21	327:21	182:9, 14 183:7,	281:20 282:17,	60:22 69:21
67:22 78:21	<b>purchasers</b>	10, 19 184:14	24 283:6, 20	82:10 101:16
219:3, 8 220:1	41:23	187:6, 10, 11, 14,	284:2, 9, 16, 22	106:23 132:2
243:1, 4 256:25	<b>PURDUE</b> 1:4	15, 21, 22 188:1,	287:16 293:3,	137:6 151:9
267:15 268:13	3:22 5:13 7:12,	2, 4, 5, 7, 22	13, 14, 17, 18, 18	162:9 166:19
295:16 298:8,	12, 12, 13, 13	192:11, 13	295:13, 16	173:12 180:20
11	8:2 9:15 10:2,	193:17 194:24	297:9 305:24	193:20, 22
<b>providers</b> 238:3,	4, 6, 8 11:2	195:15, 17	306:4, 9, 10	198:15 210:6
23 239:1, 16, 22,	12:4, 7, 9, 12, 13,	196:15, 25	312:6, 20	212:17 253:9
25 240:5, 14, 22	20, 21, 25 13:1,	198:1, 2, 5, 24	314:13 315:8	271:17 274:9
242:3, 10	3, 14, 18 14:7,	201:20 209:23	316:12, 16	282:5, 7 294:8
254:13 265:8	12, 17, 21, 24	213:14 214:2	317:9, 16	307:8 325:20
267:3, 24	15:8, 9, 15	215:11, 13, 18,	318:24 322:4, 4,	326:7
	16:12, 15 17:15	22 216:5, 18	5, 5, 18, 22, 25	



**putting** 61:7  
82:15 119:6  
194:15 245:19  
246:13

**< Q >**

**q.i.d** 127:15  
148:22

**QQL** 131:10

**qualifications**  
193:24

**quality** 72:18,  
20, 22, 25  
132:14 133:15  
142:15

**Quarter** 6:9  
200:14 332:13,  
22 333:14  
334:7 335:23

**quartile** 327:8

**quartiles** 327:24

**question** 2:18  
11:25 15:18  
20:24 25:4, 5  
31:21 33:24  
38:17 39:25  
41:1 42:3, 12  
50:24, 25 55:22,  
23 63:11 68:5  
70:19 73:21  
91:25 97:5  
100:22, 24  
132:12 137:13,  
19 138:2, 3  
147:9 152:5  
153:3, 4 156:17,  
21 160:24  
161:2, 10 165:7,  
17, 19 166:4  
169:1, 25  
170:15 171:15  
172:3, 12, 14  
175:5, 23  
178:22 180:7  
190:11 196:3  
197:9, 17, 19  
210:18, 21  
211:10 216:14  
219:14 224:15  
236:8 239:21

246:16 252:23  
262:14, 15  
264:1 270:17  
271:4, 18  
272:12 275:5, 5  
283:14 284:5, 5  
290:11, 23  
294:1 297:14  
298:19, 23  
299:20 303:8, 8  
306:8 317:1  
318:21 319:1, 8,  
22 320:7 325:3,  
19 328:1, 12  
331:7

**questioning**  
309:22

**questions** 12:9  
72:18, 20, 23  
115:7 125:13  
126:3 137:17  
147:9, 14 169:4  
170:19 298:5,  
14, 17 301:2, 11,  
14 310:3, 5  
335:22 336:17,  
20

**quibble** 216:14  
241:3

**quibbling** 216:7

**quick** 126:4  
304:2

**quickly** 68:9  
281:1

**quite** 65:23  
96:14 102:12  
138:10 194:7  
208:12 284:23  
326:19

**quota** 332:24  
333:15 334:1

**quote** 193:20  
219:21

**quoted** 122:17

**quotes** 207:9  
208:12, 14  
212:9 303:18  
314:5

**quoting** 329:8

**< R >**

**R.B** 5:22

**R.P.R** 1:21

**R.S** 35:21  
111:7 141:15

**radio** 181:11

**rah-rah** 335:12

**raise** 236:8

**raised** 67:11  
68:6 77:23  
236:7

**raising** 66:21  
68:5

**Ramseyer** 2:19

**ran** 26:6

**random** 55:13

**Randy** 2:19

**range** 42:1  
55:12 148:7  
330:12

**rank** 248:9

**rapid** 286:12,  
17 288:6, 15  
289:2 328:16

**rate** 150:9  
203:25 328:16,  
23

**rates** 68:15, 22,  
25 69:13

**ratification**  
220:21

**ratifications**  
32:7

**ratio** 16:14  
29:9 79:9, 9, 10,  
13, 14

**Rationale** 26:12,  
16 27:12, 17

**Raymond** 3:12  
103:18

**reach** 54:9

**reached** 205:7

**reaches** 286:14

**read** 9:20, 21  
27:3 28:4, 9, 20  
30:2, 10, 16, 18  
37:11 39:2  
43:23 49:16, 18  
50:6 56:24

57:19, 23 59:5  
62:15 65:10  
72:4, 8 90:17  
92:2 93:25  
102:12, 18  
107:6 109:20  
111:22 113:21  
119:11 120:8  
121:7, 24  
125:12 129:1  
130:10 136:9  
137:18, 21  
138:3, 5 147:20  
156:16 157:21  
163:17 168:25  
170:16, 24  
171:15, 16, 17  
179:21, 23  
181:23 197:18,  
20 198:11  
203:7 207:1, 2,  
12, 25 210:23  
212:13 225:4  
229:22 230:3, 4  
239:23 241:22  
248:4 254:24  
255:4, 5, 5, 8  
256:2, 17, 18  
261:8 269:4  
270:12 273:13,  
13 288:8  
299:19 307:8  
312:2, 11  
318:18, 20, 21  
320:6, 8 329:18,  
19, 19 331:3, 17,  
20, 23 333:8, 12,  
20, 21, 22  
334:25

**reader** 113:19  
244:4

**reading** 26:24  
69:2 76:2  
88:18 91:25  
93:6 95:14  
98:3 102:14, 16,  
17 104:5  
105:10 119:14  
142:1, 3 156:22  
163:3 170:17

183:13 190:17,  
19 202:13  
207:7 210:22  
218:1 223:5, 9,  
13 239:21  
240:18 241:14  
256:3 258:24  
270:5, 15  
272:22 299:14  
309:23 310:8  
311:9, 11, 17  
314:14 333:4

**reads** 206:23  
212:10 261:21

**real** 98:2  
146:24 147:2

**realization**  
185:2

**realize** 249:15

**realized** 67:11  
164:20

**really** 62:19  
66:16 79:7  
80:18 81:25  
89:14 94:23  
98:18, 21 105:2  
115:19 118:1  
139:22 145:16  
149:11 156:20  
161:21 171:3,  
18 172:24  
211:19 216:7,  
12 219:9  
227:20 236:19  
240:15 269:3  
272:20 273:7  
275:4 280:20  
292:13 294:3  
298:5, 14  
301:25 303:9  
321:1 322:2

**reason** 22:23,  
25 28:10 53:17,  
18 55:11 94:7  
96:4 114:2  
116:7 124:8  
126:4 138:12  
156:13 176:21  
177:25 216:24  
217:2, 15

229:10 236:1 270:23 271:19 300:9 <b>reasonable</b> 51:13 71:21 126:2 204:4 234:21, 22 240:20 243:22 266:9, 11 <b>reasonably</b> 243:22 307:2 <b>reasoning</b> 250:18, 18 292:14 <b>reasons</b> 63:2 129:15 146:19 189:24 245:15 <b>rebate</b> 41:25 191:2, 6 <b>rebated</b> 41:23 <b>rebates</b> 164:21 <b>Rebates</b> , 44:10 <b>recall</b> 19:4 22:2 25:2, 15, 16 35:5 38:9, 13 60:16 66:5 105:4 109:7 113:9 127:6 141:3 146:23 151:1 158:25 175:10, 20 177:23 178:1, 2 185:13 188:10 193:17, 25 194:2, 24 198:3, 8, 10 205:9 206:7 208:8 210:25 211:3 214:20 216:23 219:10, 16, 21 222:13, 16 227:3, 6, 7, 9, 11, 14 230:24 231:8, 9, 14 232:1, 5 264:3, 7 279:24 296:24 321:16 323:6 327:18 334:25 335:1 <b>receive</b> 37:10	<b>received</b> 24:1 185:23 220:12 227:4 259:9 261:4 268:8 287:14 <b>receiving</b> 136:17 204:5 232:1 259:7 <b>reception</b> 31:7, 24 32:3 220:11 <b>RECESS</b> 46:7 106:3 128:17 154:9 171:11 209:13 278:2 292:21 324:2 <b>recipients</b> 249:16 <b>reclassified</b> 153:8 <b>recognize</b> 220:19 280:3 286:24 324:11, 12 <b>recognized</b> 88:8 89:3 94:15 150:18 209:3 279:17 <b>recollect</b> 111:6 119:7 213:1 227:22 292:8 <b>recollection</b> 112:17 113:8 138:15 147:12, 16 184:1 185:14 213:11 226:19 230:13 266:3 273:13 277:9 279:11 289:25 290:1, 3, 13 <b>recommend</b> 57:7 157:10 159:6, 19 221:9 243:24  <b>recommendation</b> 228:1 276:1 <b>Recommendatio</b> <b>ns</b> 4:12 74:9	<b>recommended</b> 90:2, 10 94:13 127:16 132:25 193:19, 22 <b>recommending</b> 57:15 157:9 <b>record</b> 9:11, 18 19:16 46:5, 9 105:25 106:1, 5 113:10 128:14, 15, 19 137:21 138:5 154:3, 7, 11 171:8, 9, 13 192:23 197:20 209:11, 15 245:9, 9 255:5, 8 277:25 278:4 292:18, 19, 23 301:4 320:8 323:24, 25 324:4 334:8, 9 336:22 337:12 <b>recorded</b> 256:1 257:5 308:1, 1 316:23 317:22 329:4 <b>records</b> 245:10 247:8 293:20 294:2 <b>recover</b> 266:19 <b>recruit</b> 131:18 <b>Reder</b> 2:25 3:5 5:17 6:3 72:19 111:24 114:21 121:2, 4, 8, 11, 14, 17, 21 124:16 129:16 131:11, 17 132:4, 25 140:16, 20 142:23, 24 154:25 221:6 324:21 <b>R-E-D-E-R</b> 155:1 <b>Reder's</b> 264:24 283:16 <b>reduce</b> 53:21 189:25 267:16 268:15 334:20	<b>reduced</b> 235:14 267:12, 17, 25 268:11 269:14 337:10 <b>reducing</b> 333:19 <b>reduction</b> 128:1, 6 235:21 <b>refer</b> 23:7 24:5 79:13 114:7 237:11 241:18 247:25 249:9 <b>reference</b> 65:24 130:9 286:21 315:19 <b>referenced</b> 165:13, 24 166:1 168:19 169:7, 23 170:1 172:4 178:15 192:2 232:12, 16 296:8 313:1 318:5 <b>references</b> 139:11 296:21 316:15, 18 317:11, 18 <b>referencing</b> 286:21 <b>referred</b> 115:13 275:13 281:9 328:5 <b>referring</b> 19:9 32:5 34:7, 8, 9, 24 37:16 41:2 102:8 123:6 135:22 153:12, 17 159:23 162:16 167:17 205:16 210:15 284:9, 10 329:22 334:15 <b>refers</b> 134:16 241:15 253:15 268:25 <b>reflected</b> 83:12 309:7 <b>reflects</b> 165:17 <b>refrain</b> 180:4 <b>refresh</b> 211:21 290:2	<b>regard</b> 66:22 76:9 267:11 330:15 <b>regarding</b> 68:15, 21, 24 69:12 106:11 229:11 258:18 261:24 287:24 289:16 297:12 335:22 <b>regardless</b> 163:8 204:1 240:22, 23 <b>regimens</b> 157:17 <b>regional</b> 280:1, 8 332:1 335:25 <b>registered</b> 285:16 <b>registration</b> 67:3 287:24 288:19 <b>regret</b> 125:21 <b>regrettably</b> 113:1 126:25 <b>regular</b> 160:8 184:23 <b>regulated</b> 49:10 152:19 <b>regulators</b> 58:17 <b>regulatory</b> 16:16 48:25 49:22 64:22, 24 121:19 129:23 130:22 131:2 147:17 236:23 <b>reinforced</b> 174:17 <b>reiterate</b> 183:6 <b>rel</b> 1:4 <b>relate</b> 116:14 <b>related</b> 150:18 211:17 214:18 234:16 257:6 261:19 335:12 337:14 <b>relating</b> 120:13 <b>relation</b> 19:6 197:4 <b>Relations</b> 181:6, 8 182:7 183:18
--	--	--	--	---



<b>relationship</b> 200:13	195:22 203:11 204:13 206:6	14, 16 260:22 261:14 274:11	188:1 204:4, 23 254:6, 10	<b>researched</b> 68:9 84:4 145:24
<b>relative</b> 131:15 249:9, 25	228:7 230:17 231:6 251:6	<b>REPORTER</b> 73:6 173:17 177:7 197:12	265:25 266:1, 10, 12 267:23	<b>researcher</b> 112:1
<b>relaunch</b> 81:11	305:15 313:19 326:7 334:8	<b>Reporter's</b> 2:1	268:16 271:25 274:6 275:6	<b>reserved</b> 82:7 116:9 207:5, 18
<b>relaxed</b> 49:4	<b>remind</b> 154:15 190:23 304:22	<b>Reporting</b> 1:21 49:11 262:11	277:8 295:21, 22 308:23	<b>residency</b> 322:16
<b>Release</b> 5:9 17:7, 8 117:19 144:8 181:17 187:6 220:4, 10, 17 221:2 226:10, 13, 14 285:9, 14 288:1 289:20 306:2, 12 325:9	305:18 308:19 <b>reminded</b> 177:4 188:24 190:13 207:21 304:2	<b>reports</b> 50:4, 12 61:20 175:9 236:3 260:20 268:8	309:5 <b>reputation</b> 115:19	<b>residual</b> 107:3 <b>resistance</b> 78:25 <b>resolved</b> 259:8 <b>resorts</b> 195:3
<b>released</b> 54:3, 5, 7 120:11	<b>removing</b> 55:19 157:11	<b>reposition</b> 251:7	<b>request</b> 314:17 <b>requested</b> 64:4 68:19 133:1 232:11 242:22 288:16	<b>resource</b> 184:14, 16, 18 <b>resources</b> 34:15, 21 184:19
<b>releases</b> 163:1, 2, 10	<b>Rena</b> 279:21, 23	<b>represent</b> 130:24 167:14 254:2	<b>Requesters</b> 5:5 <b>requesting</b> 288:18	<b>respect</b> 18:19 20:21, 21 21:1 30:14 33:20, 21 38:10 57:16 73:9 169:11 227:12, 16 281:8 289:2, 5, 8, 13 290:25
<b>relevant</b> 36:20 172:7	<b>rep</b> 23:21 266:6 300:17 301:18 304:11 305:9, 13, 18, 24 306:21 309:9, 16, 20 310:3, 16 313:21 320:13	<b>representative</b> 89:17 190:22 200:5 215:13, 23 216:1	<b>require</b> 53:16 <b>required</b> 69:17 150:20 162:5 257:7 307:21	<b>respected</b> 62:9, 10 <b>respite</b> 255:16, 18, 20, 23 256:1 257:22
<b>relied</b> 309:2	<b>repeat</b> 20:23 25:4 97:5 100:22 283:25 299:20	<b>representatives</b> 15:15 16:13 29:8 185:10 189:11 199:9, 14, 20, 21 203:19, 25 205:20 213:19 215:11, 19, 21 237:25 238:2, 12, 22 239:1 242:14 252:20, 21 253:2, 23, 25 265:6, 9, 17, 20, 22 267:1, 20 269:12 307:21 308:3 315:9 316:14, 18 317:11, 18	<b>requirement</b> 61:3 <b>requirements</b> 61:4 149:11 209:24 <b>requires</b> 224:25 <b>requiring</b> 37:23 <b>reread</b> 273:15	<b>respites</b> 259:13, 16, 17 260:23 <b>respond</b> 11:17 255:6 298:16 309:15
<b>relief</b> 74:15 120:13 146:3, 17 148:23 150:1 174:13 305:3, 6 329:23	<b>rephrase</b> 86:21 118:21 211:7	<b>reprint</b> 60:5, 11 260:16 265:5 267:1	<b>Rescue</b> 4:10 144:18, 22 146:24 147:5 154:20 155:7, 13, 24 157:1, 4 158:10, 14, 18 160:4, 10, 12 161:15 162:23 163:15, 20 291:21, 23	<b>responded</b> 262:5 <b>responding</b> 102:21 <b>response</b> 32:3 51:17 53:3 57:1 62:2 63:1 67:14, 19 221:6 314:15 315:5, 17 327:25
<b>reliever</b> 150:16 218:18	<b>replace</b> 70:11 <b>replaced</b> 176:23 <b>replied</b> 101:25 132:12	<b>reproducible</b> 150:12	<b>research</b> 16:13, 16 29:9 48:13 59:14 110:21 120:5 132:20 146:2 149:25 154:1 157:23 159:12 174:24 214:6 229:2 330:25	<b>responses</b> 99:17 170:11 <b>responsibilities</b> 16:15
<b>relinquished</b> 323:4	<b>reply</b> 205:13 314:14 315:5	<b>reps</b> 23:18, 18, 23 34:1 78:21 108:22 166:14 168:8, 18 186:11, 21		
<b>relive</b> 66:17	<b>Report</b> 5:5 50:15, 16 85:23 149:24 150:14 203:5, 10 245:2 255:15, 21 258:9, 9 274:12 293:2 300:4			
<b>reliving</b> 65:15	<b>reportable</b> 50:14			
<b>reluctant</b> 328:2	<b>reported</b> 59:21, 25 60:7 103:17 147:22 234:8 255:17, 22 257:18 259:12,			
<b>Remain</b> 335:14				
<b>remained</b> 261:20				
<b>remains</b> 283:4				
<b>remarkable</b> 290:15				
<b>remedial</b> 166:7				
<b>remember</b> 47:18 59:4, 5 60:4 66:17 69:14 113:7 147:18 156:18, 20 161:21 165:6, 7 178:12 180:3, 6 186:4 192:19 193:4				



<b>responsibility</b> 21:9 120:4 295:10	296:16 <b>retrospect</b> 89:23 <b>retrospective</b> 236:13 283:9, 10, 13 <b>return</b> 203:21, 24 257:24 258:5 <b>revealed</b> 315:10 <b>reversal</b> 53:10 <b>Review</b> 3:24 90:12 91:19 93:11, 16 101:21 103:1 120:15 126:19 129:11, 14, 18 139:4, 16 155:21 166:18 212:18 235:3 244:21 257:9 261:4, 9, 24 273:12 277:11 289:6, 10, 15 312:14, 18 321:6 <b>reviewed</b> 112:24 121:19, 21 128:23 129:1 140:22 167:23 168:22 212:15 241:9 275:20 296:11 308:7 312:25 313:2 321:10, 15, 19 <b>reviewer</b> 112:12 <b>reviewers</b> 129:18 <b>reviewing</b> 112:10 243:16 261:7 276:6 <b>reviews</b> 233:16 243:20 <b>revise</b> 114:22 <b>rewarded</b> 187:2 <b>rework</b> 76:12 <b>rewriting</b> 114:3 269:9 <b>RICHARD</b> 1:4 2:9, 11, 13, 22,	25 3:7, 9, 13, 15 4:12, 23 5:8, 20 6:2 8:2 9:1, 16 10:5, 17, 25 15:7 25:24 62:12 63:21 67:2 77:12 103:19 115:2 203:18 204:17 205:12 220:5 286:1 287:20 324:10 326:16 <b>richard.silbert@</b> <b>pharma.com</b> 8:4 <b>Richard's</b> 77:25 <b>Richards,</b> 78:1 <b>Richest</b> 40:7 <b>rid</b> 305:3 <b>rifle</b> 108:4 <b>right</b> 13:23 14:1 18:5, 23 20:3 22:13 24:9 28:20 33:12 34:23 35:16 38:15 39:7, 17 41:12 42:6 44:5, 18, 22 45:2, 4, 10 46:11 57:18 63:24 64:21 70:2 72:17 77:10 78:4 79:17 99:22 101:13 103:6 109:24 111:9 113:11 119:5 122:20 123:25 124:12 126:13 128:9 132:9 135:15 139:1 144:6 147:24 151:13 152:4 154:13 156:2 158:1 160:6 163:22 166:11 172:1 178:7 180:15, 18, 22 181:2 187:24 191:25 204:9	205:6 208:4 210:18 216:16 223:19, 23 232:9 233:19 247:3 250:1 251:13 258:25 269:4, 22 270:16 276:2 286:2 291:17 301:12 312:22 314:19 318:2 321:2, 5, 20 323:18 324:6, 13 328:11 331:5 332:19, 21 333:22 335:6 <b>rights</b> 20:8 <b>rigorous</b> 245:8 <b>rise</b> 329:9, 21, 23 <b>risk</b> 20:17, 17 57:11 164:13, 14 <b>risks</b> 57:9 <b>RK</b> 64:23 <b>Robert</b> 2:8, 24, 25 5:17, 17 6:3, 3 25:25 57:2 62:2, 5 63:1 72:19 111:24 121:2, 4, 8, 11, 14, 17, 21 124:16 129:16 131:11, 17 132:4, 25 140:16, 20 154:25 158:1, 2 159:2, 4, 9 160:18 221:6 264:22, 24 283:16, 17 324:21 <b>ROI</b> 203:20 <b>role</b> 12:4, 25 21:25 22:3 26:5 28:22 103:14 119:8 158:5 230:11	249:2 264:24 283:16 <b>room</b> 150:6 <b>Roth</b> 60:5, 10 <b>Round</b> 158:2 <b>route</b> 161:17, 25 162:19, 23 <b>Roxane</b> 13:18, 19, 21 161:17, 19 162:1, 3, 4, 7, 20 <b>Roxane's</b> 156:11, 14 162:15 <b>RR</b> 111:23, 23 324:19 325:12 <b>rubric</b> 88:2, 4 <b>rule</b> 11:19 <b>Rules</b> 9:7 <b>ruling</b> 298:25 <b>run</b> 50:20 <b>running</b> 146:23 259:11 <b>rush</b> 255:2 <b>Russ</b> 6:9 331:24, 25 <b>Russell</b> 196:14  < S > <b>SACKLER</b> 1:4 2:9, 11, 13, 22, 25 3:7, 9, 12, 12, 13, 15 4:12, 23 5:8, 20, 23 6:2, 6 9:1, 16 10:17, 25 12:16 13:8, 24 15:7 16:21 23:1 25:25 35:21 39:22 41:9 42:15 46:11 55:1 56:12 62:12 77:13 103:18, 19, 19 110:17 111:7 115:2, 8, 9 141:15 152:4 154:13 202:3 204:18 205:12 220:5 286:1 287:20 324:10
---	---	--	---	---

326:16 327:3 336:17 <b>safe</b> 119:25 124:10 232:24 245:23 <b>safer</b> 100:13 233:5, 21 258:9 <b>safest</b> 145:10 <b>safety</b> 32:2 60:2 105:15 133:11 152:9 178:6, 10, 14, 21, 23 179:2, 11, 14, 19 234:16 <b>said,</b> 308:13, 13 <b>said:</b> 202:10 <b>salary</b> 185:23 186:1 <b>sale</b> 19:21 39:23 40:3, 21 42:16 <b>Sales</b> 6:8, 8 15:15 16:12, 17 21:3, 14 23:18, 18, 21, 23 29:8 31:25 34:1 35:9 40:11, 16, 17 41:16, 17, 20, 22 42:1, 9 44:9, 10, 17, 19, 24 45:4 51:12 61:17, 22 63:6, 9 77:18 83:2 85:16, 25 86:2 87:11 90:5 92:3, 9 95:18, 21 97:11 103:15 108:23 109:16 118:11, 18, 25 123:5 125:22 135:22 155:6, 21 158:6, 7 165:12 176:22, 24, 24 184:3, 24 185:1, 10, 16, 24 186:6, 17 187:7, 9 188:13 189:10, 14 190:21, 21 191:2 199:9, 14,	20, 21 200:5 205:3, 17, 20, 21 206:16 208:5 213:5, 8, 19 215:10, 13, 14, 18, 22, 25 216:6, 19 220:14, 16 221:23 226:9 237:25 238:2, 12, 22, 25 239:6, 12 242:14 251:21 252:20, 21 253:2, 25 254:6 260:15, 18 262:12, 25 265:6, 9, 17, 20, 22, 25 266:1, 6, 10, 12, 18 267:1, 20, 23 268:16 269:12 271:25 272:10, 16 273:17 274:1, 6, 13 279:24, 25 280:6 295:21, 22 301:18 305:24 308:2, 23 309:9, 16, 20 310:3, 16 313:21 315:9, 14 316:14, 18 317:11, 18 319:6 320:13 327:7, 9 328:13 331:12, 17, 22 332:3, 14, 23 333:13, 15 334:1, 4, 5, 16, 17 335:7, 12 <b>salesman</b> 89:19 185:21, 24 220:16 310:9 <b>salesmen</b> 188:16 216:25 332:7 <b>salesmen's</b> 327:13 <b>salespeople</b> 119:2 122:16 168:4 185:20 193:19 209:18,	24 233:25 278:15 296:6 307:21 <b>salesperson</b> 29:18 209:20 234:2 280:5 <b>San</b> 3:15 106:11 <b>sanction</b> 166:8, 9 <b>sanctioned</b> 274:19 <b>sat</b> 108:9 <b>satisfy</b> 169:21 <b>Saturday</b> 108:25 <b>save</b> 171:14 255:8 <b>saw</b> 35:14 59:6 65:5, 16 166:17 232:8 276:20, 22 <b>SAYERS</b> 8:6 9:24, 24 <b>saying</b> 31:23 52:12 53:5 58:10 63:2 66:10 87:8, 20 93:14 95:13 96:1, 22 97:7 98:19 144:9 150:10 157:14 158:11 159:4, 14, 16 160:3, 21, 22 179:18 190:23 211:6, 6 245:18 249:14 250:10 253:20 281:25 288:18 291:8 296:22 303:4, 4, 13 <b>says</b> 15:7, 11, 12 16:8 26:12, 16 27:12, 23 28:10 29:25 30:2, 3, 5 38:7, 16 39:9 44:6 45:6, 19, 20 46:15, 21 48:23 49:2, 20 52:22	56:9, 17 57:5, 24 58:4, 14, 20 59:7 60:17 61:12 62:18 63:20 64:19, 21 65:10 67:19 68:1 70:9 71:8, 8, 24 72:11, 17 75:2, 21 76:9 77:7, 12, 21 79:2 80:4, 22 82:18 84:15 85:12 86:9, 20 87:3, 14 90:20 91:11, 16 95:5 96:18 98:9 99:1, 7 101:18 102:23 103:22 106:11, 25 108:14 111:1, 16 112:2 115:1, 8 117:17 120:25 123:1, 9, 17 127:24 131:10 132:7, 17 133:9 134:2, 7 135:9, 10 136:13 138:19 139:18 140:15 141:17 142:21, 25 143:23 144:6, 17 147:22 152:10 153:11, 13 155:3, 19 156:10, 23 157:3, 22, 25 158:8, 16 159:3 161:14 162:18 163:5, 5 164:8 168:10 172:12 173:23 174:12, 23 175:12 177:14 178:3 181:7 182:5, 5, 15 183:5, 17 188:19 189:23 190:12 191:1 202:9, 13 203:17 204:17,	20 205:11, 13 206:15 213:16 214:10 217:4, 23 220:3, 9 221:20 224:25 232:21 233:3, 4, 13 235:2 237:12, 24 238:21 239:5, 15 240:14 241:25 242:14, 21 243:9 244:13, 18 248:6, 7, 18, 22 251:6, 20, 25 252:18 253:1, 13, 24 254:9, 21 256:5 259:20 260:5, 14 261:2, 9 262:19, 22 263:5 265:2, 18, 19 266:24 267:13, 22 268:6 269:10 270:15 287:21, 23 288:4 298:20 299:5, 25 300:15 301:21 302:11 304:2 310:3, 17 311:7 312:22 313:5, 23 314:13 315:18 316:12 317:16 319:25, 25 324:16, 18 327:5 329:9, 21 332:12 333:25 334:6 335:3, 13 <b>Scale</b> 150:2 175:16 243:2 <b>scanned</b> 331:20 <b>scary</b> 103:5 <b>scenario</b> 37:5 162:22 <b>Schedule</b> 51:14, 15 66:6 121:10 124:18 133:13 214:14
---	---	---	--	--



<b>scheduled</b> 64:25 259:13, 15, 17 260:23	56:20 62:21, 22 71:10 77:19 81:4 108:18 110:10 119:14 122:17 123:13, 20 133:8 135:13 163:9 171:1, 2, 3 188:18 195:13, 24 199:6 208:18 211:20 217:12 221:18 223:19 248:25 250:19 251:11, 12 262:7, 8 276:24 287:23 289:7 290:2 296:6 297:6, 8 300:18 302:7 307:1 318:8 322:12 332:15 333:7	<b>selected</b> 138:23 203:20 204:1, 3 276:21 <b>selecting</b> 26:9 138:21 <b>selectively</b> 274:25 <b>sell</b> 14:8 18:23 20:3, 8 24:11 25:13 40:17 51:9 65:19 78:22 97:9 112:16 118:11 184:8, 9, 14 186:13 199:5 204:12 205:8 270:18 288:11 335:4, 4, 4, 11 <b>seller</b> 218:18 <b>sellers</b> 187:1 <b>selling</b> 19:23 20:1 31:14 41:7 123:10 186:14 190:24, 25 204:24 332:7, 10 <b>Send</b> 5:20 287:3 <b>Sender</b> 205:12 <b>sending</b> 139:5 185:9 <b>senior</b> 16:15 19:5 29:20, 22 88:21 112:1 121:5 132:5 140:18, 18 245:7 265:1 283:17 323:3 324:22 331:19 <b>sensation</b> 280:24 <b>sense</b> 34:18 92:20 130:4 134:4 148:18 234:9 250:6 272:6 274:13 275:3 280:20 322:11 <b>sent</b> 48:17 67:23 71:14	106:11 129:2 135:14 139:3, 15 255:11 260:6, 9 324:14 326:18 331:18 <b>sentence</b> 27:18 49:9, 20 71:23 72:5, 11 75:20 76:4 82:13 104:7 105:13 120:8, 25 127:23 159:22 163:3, 5 173:24 212:10 213:16 214:1, 10 309:14 333:25 <b>sentences</b> 92:1, 2 213:4 214:23 <b>separate</b> 23:15 <b>September</b> 181:3 219:6 <b>series</b> 69:22 170:19 <b>serious</b> 26:18 27:24 78:9, 12, 12 82:8 <b>service</b> 214:5 <b>set</b> 16:9 19:1 78:11 118:16 124:16 125:9 171:18 186:6 193:18 306:15 319:6 337:6 <b>setting</b> 182:22, 24 183:4 <b>settlement</b> 34:14 229:25 <b>Seventy</b> 150:3 <b>severe</b> 37:2, 22 80:12, 14 82:8 87:5 91:5 95:10 99:11 100:9, 9, 17 207:5, 19 261:18 329:16 330:15 <b>shame</b> 100:15 <b>shaped</b> 107:8 240:19	<b>Shapiro</b> 166:19 169:2 272:13 275:21, 25 <b>Shapiro's</b> 168:22 277:11 <b>share</b> 25:10, 12 85:8 97:9 136:24 137:3, 9, 11 138:7 164:22 272:22 331:11 <b>shared</b> 18:15 <b>shed</b> 57:21 <b>sheet</b> 191:2 <b>shell</b> 20:13 <b>Shepherd</b> 7:4 9:2 <b>Shield</b> 314:16 315:6 <b>Shionogi</b> 2:16 35:18 36:1 37:17 <b>shipping</b> 44:13 <b>shoot</b> 71:13, 15 <b>short</b> 71:4 113:5 221:8 277:22 <b>short-acting</b> 239:10 252:13 254:3, 15 299:7, 12 <b>shorten</b> 254:24 <b>shortest</b> 125:11 <b>shortly</b> 142:17 <b>shots</b> 108:4 <b>show</b> 16:20 26:24 29:12 47:23 54:11 69:2 147:13, 14, 25 206:24 207:15 212:11 234:24 247:8 265:22 271:9 278:6 291:18 299:14 313:24 315:22 325:15, 18 333:2 <b>showed</b> 105:18 145:15, 19 146:2 148:4
--	--	---	---	--



150:21 166:16 175:14 202:14 238:5 277:2 286:19 <b>showing</b> 232:23 243:1 266:10 309:24, 24 317:1 326:3 <b>shown</b> 127:24, 25 128:5, 8 235:19, 21 244:10 263:9 266:12 275:24, 25 276:21 277:4, 7 321:9 <b>shows</b> 192:23 <b>shut</b> 66:23 <b>sic</b> 203:13 <b>side</b> 53:21, 22 143:10 144:19 <b>sift</b> 292:25 <b>sign</b> 151:22 <b>signal</b> 221:21 222:2 <b>signed</b> 169:16 230:7 <b>Significant</b> 3:22 12:8 19:15 38:9 106:15 128:1, 6 142:8 185:6 203:2 235:21 258:5 328:19, 22 <b>significantly</b> 140:25 142:9 215:11 216:20 223:14, 24 252:10 334:13 <b>signifying</b> 88:1 <b>SILBERT</b> 8:2 10:5, 6 <b>similar</b> 5:9 13:14 140:23 141:2 220:4 235:6 254:11 289:24 327:23 <b>similarity</b> 330:11 <b>simple</b> 129:21	<b>simply</b> 146:18 257:24 <b>simultaneous</b> 323:7 <b>single</b> 238:7 <b>single-dose</b> 120:10 <b>sir</b> 110:2 212:3 216:14 270:6 <b>sit</b> 13:2, 6 19:7 230:4 245:3 273:16 336:2 <b>Sitting</b> 294:13, 19 305:22 <b>situation</b> 116:13 278:17, 17 <b>six</b> 144:1 147:2, 6 148:6 156:8 158:9, 13 160:4, 10 163:11 217:7, 9 227:7 233:1, 2 276:25 277:1, 1 289:21, 22 296:25 305:20 308:20 321:19 <b>size</b> 187:6 <b>skeptics</b> 89:25 90:1 <b>sketched</b> 308:19 <b>sketchy</b> 276:20 <b>skip</b> 55:12 <b>skipped</b> 92:1 332:20 <b>slides</b> 195:11 <b>slotted</b> 78:24 <b>slow</b> 113:19 <b>slowed</b> 123:5 <b>Small</b> 44:8 59:13 119:16 330:13 333:7 334:4, 23 <b>smaller</b> 91:1 99:3, 6 115:9 176:25 <b>smart</b> 113:4 <b>smash</b> 106:22	<b>smoother</b> 320:14, 16, 22, 22, 25, 25 <b>so-called</b> 185:3 192:12 193:20 <b>societies</b> 192:12 <b>Society</b> 192:13, 15, 21 <b>sold</b> 81:5 112:15 175:4 185:18 186:7, 22 270:3, 11 278:15 295:10 <b>solicitous</b> 66:9 <b>solution</b> 181:21 238:9 <b>solve</b> 158:22 <b>somebody</b> 112:21, 24 151:19 187:23 194:4 196:1 222:22 262:23 276:2 281:11 290:17, 23 320:24 <b>somewhat</b> 74:15 106:14 <b>son</b> 75:17 <b>soon</b> 35:2 136:15 158:23 159:3, 18 <b>sorry</b> 10:5 17:8 20:23 23:16 25:8 43:7 44:23 46:18 48:21 54:21 60:9 64:23 70:17 72:6 74:23 75:5, 10, 11 76:1 77:11 107:25 109:8 110:15 111:14 113:19 119:16 122:23 141:9, 25 143:16 148:10, 11 152:8 155:17, 18 171:22 174:1 175:5	176:10 197:10, 14 211:7 218:1 223:7, 8, 21 226:11 233:2 243:8, 11 254:19 261:18 270:5 285:23 289:11 297:22 310:11 311:20 312:1 318:10 331:14 333:7 <b>sort</b> 17:15 36:4 54:19 80:8 159:23 234:8 243:25 293:6 <b>sound</b> 219:2 <b>sounds</b> 38:6 205:13 <b>source</b> 39:9 327:21 <b>sources</b> 58:24 <b>South</b> 7:22 <b>Southern</b> 15:2 <b>span</b> 276:14 <b>speak</b> 31:24 139:13 194:23 <b>speakers</b> 193:18, 20, 23 194:1, 5, 8, 16 196:15 <b>speaking</b> 195:25 <b>special</b> 204:5 <b>specialties</b> 214:12 <b>specific</b> 200:13 215:14 241:1 287:25 <b>specifically</b> 78:18 117:24 136:3 169:4 208:15 275:7 <b>specify</b> 12:9 14:4 <b>spectrum</b> 36:25 37:9, 15, 20 <b>speech</b> 122:11 123:18, 19 <b>Speed</b> 278:9 280:2	<b>spend</b> 221:23 271:20 <b>spent</b> 34:20 217:5, 8, 10 <b>spirit</b> 31:3 213:25 <b>spoke</b> 112:21 195:1 196:1, 15 <b>spoken</b> 304:23 <b>sponsored</b> 183:22 195:24, 24 239:5 251:21 <b>sponsoring</b> 183:20 <b>spontaneously</b> 236:5 316:23 317:22 <b>spoon</b> 71:9, 13, 15 <b>stabilized</b> 148:22 <b>Stables</b> 6:6 <b>staff</b> 222:15 <b>stage</b> 81:6, 15 <b>Stamford</b> 8:3, 4 <b>stamp</b> 47:24 55:15 <b>stamps</b> 26:15 <b>stand</b> 243:19 303:11 <b>standard</b> 79:6 104:22 125:10 175:13 191:12, 24 210:2 245:12 <b>standards</b> 216:11 245:13 246:4 <b>standing</b> 22:22 <b>stands</b> 50:13 156:6 180:23 <b>Stanski</b> 139:3 140:4 <b>start</b> 54:14 91:3 92:21 98:1 99:10 121:22 133:16, 20, 22, 23 152:13, 16
---	--	---	--	--

153:15 171:15 206:20 247:14 330:16 335:15 <b>started</b> 11:8 25:19 81:20 85:11 166:10 187:18, 21 194:22 195:17 336:12 <b>starting</b> 320:5 <b>state</b> 9:17 10:10, 12, 24 11:3 145:5 169:19 233:19 242:17 306:6 337:1, 3 <b>stated</b> 64:2 72:19 113:15, 23 114:19 115:4 120:12 121:1, 8, 21 129:16 131:17 132:10, 15 140:20 214:2 218:12 252:10 254:13 256:7 260:16 261:5, 11 267:3, 14 337:5 <b>Statement</b> 5:12 33:11 47:4 65:10 69:9 70:24 125:16 169:3, 6, 8, 17 180:3 225:17, 20 226:2 227:24 228:5, 8 229:14 232:13, 17, 20 236:1, 15 239:14 240:10 241:14 243:3 244:15, 17 251:19 252:9 254:12 255:16, 25 256:20 258:12 261:25 263:15 264:11 267:8, 18, 21, 25 268:12, 17, 18 269:14, 15	273:7, 11 275:13 283:24, 25 300:13, 13 302:10, 16, 22 303:5, 15, 21 304:5, 6, 15 305:12, 14 306:3, 4, 13, 21 307:8, 13, 16, 17, 18 311:10, 12 315:21 318:6, 13, 15 319:24, 25 320:1, 15, 18 321:1, 10 <b>statements</b> 230:2 235:3 236:20 242:9 259:2, 21 263:18, 22 269:20 273:18 275:12, 12, 17 306:18 315:11, 24 316:16, 21 317:12, 21 318:5, 9, 22 319:3, 4, 10, 20 322:3 <b>state-of-the</b> 284:24 <b>States</b> 5:12 42:14 78:23 80:15 81:10 85:21 117:6 314:13, 15 315:5, 8 316:1, 4, 6 327:11 335:16 <b>stating</b> 108:23 236:24 <b>statistical</b> 315:19 328:19, 22 <b>statistically</b> 142:8 <b>status</b> 49:4 56:21 61:18, 21, 25 67:20 140:15 <b>stay</b> 92:10 98:1 133:17, 20,	22, 24 206:21 208:16 330:17 335:15 <b>steady</b> 242:17 <b>stenographer</b> 197:12 <b>stenographic</b> 337:9, 13 <b>step</b> 97:25, 25 136:19, 20, 20 <b>stepladder</b> 97:21 <b>steps</b> 256:12 <b>Stewart</b> 6:6 326:21, 23 329:3 <b>stigma</b> 17:16 18:7, 10, 12, 14 46:22 88:12 143:2, 5 211:17 <b>stigmatize</b> 82:3 <b>stigmatized</b> 82:4 83:5 97:2 116:8 247:10 251:5 <b>Stimulate</b> 220:18 <b>stirring</b> 238:8 <b>Stites</b> 7:18 <b>stock</b> 190:1, 5, 6 191:9 <b>stop</b> 25:20 137:20 154:15, 18 239:16, 25 240:5 <b>stopped</b> 260:21 <b>stopping</b> 94:4 <b>story</b> 263:21 <b>straight</b> 100:25 <b>strategies</b> 121:23 <b>Strategy</b> 3:13 118:13 120:5 135:24 137:24 174:20 176:9, 11 181:21 221:15 330:24 <b>STRAUBER</b> 7:13 10:3, 3 11:7, 23 12:2, 5	15:17, 21 19:11 22:19, 25 25:3 26:23 27:3, 7, 10 31:20 32:12, 14, 18, 21, 25 33:3, 10, 14 34:5 39:19 41:1, 8 42:3, 11 48:5, 8 55:8 56:2, 6 60:8 65:9 69:1, 20, 25 70:18 76:1, 5 77:9, 11 86:19 91:24 103:12 110:8 135:4 137:12 139:24 147:8 153:2 154:3 165:16 167:15 170:14, 19 171:2, 19, 22, 25 172:2 176:18 183:12 200:18, 23 201:7, 13, 21 202:1 207:6, 11 209:7 210:14, 20 211:9 212:2, 7 226:5 239:20 241:13 243:6 246:15 247:22 251:18 252:23 253:6, 11, 16 262:13 263:25 265:19 270:14 271:3, 7 272:21 273:1 277:22 284:4 293:23 297:13 298:4, 13, 22 299:13, 16 300:21 301:1, 8, 13 303:7 309:21 310:7, 13 311:9, 14, 24 312:3 314:9, 24 315:2 316:25 317:24 319:1, 21 320:3, 10 333:3 336:20 <b>stream</b> 66:1, 15	<b>Street</b> 1:22 7:18 8:8 278:21 <b>streets</b> 278:25 <b>strength</b> 74:9 107:22 174:9, 10 250:3 <b>strengths</b> 50:1 190:1 <b>stress</b> 90:24 99:1 <b>strictly</b> 79:12 236:24 <b>strong</b> 31:7 57:25 73:19 74:5 77:3 83:1, 21, 23, 23, 25 84:1 86:12, 17 87:1, 9 88:23 89:9 90:6 91:22 93:2 94:1 95:8, 15, 15, 18, 20, 24 96:3 97:12 98:7, 8 108:17 113:15, 23 206:5 210:10 211:6, 15 237:9 247:9 250:6, 9, 11 328:13 334:22 <b>stronger</b> 81:8, 17 82:25 83:6 88:4, 6, 16 96:13, 14 97:14 98:5 250:5 256:11 271:11 <b>stronger,</b> 208:13 <b>Stuart</b> 4:23 <b>stuck</b> 119:20 130:4 <b>student</b> 18:4, 13 <b>studied</b> 18:1 151:4 <b>studies</b> 47:10, 15, 19 51:18, 22 52:5, 23 59:15 68:14, 21, 22, 24 69:10, 12 72:19, 21, 24 73:2, 24,
---	---	---	---	--



25 89:5, 12 90:12 91:19 93:12, 16 101:22 103:2 104:25 105:14, 18 115:7 118:2 119:11, 15, 21 120:1, 17, 23 121:16, 18, 23 124:9 131:10, 12, 18, 22 132:18, 24 133:1 139:2 145:14, 19 147:23 149:17, 19 150:21, 24, 25 151:7 153:25 155:12 162:2, 21 163:16 177:19, 21, 25 178:13, 14, 15 179:5, 10 180:3, 11 233:8 234:6, 24 236:13, 13 242:15 244:21, 23, 25 245:4, 15, 18 246:13 282:18, 22 283:8 284:18, 21 285:8, 12, 17 288:24 289:17 291:18 313:24 <b>studies</b> , 177:18 <b>Study</b> 71:9, 14, 15, 18, 22, 24, 25 72:2, 9 111:10 112:3 113:13, 17, 25 114:20 119:13, 23 120:7, 8, 10, 12 121:14 131:14, 14, 15 132:11 140:21 148:20, 24 149:3, 6, 14 150:17, 18, 23 151:1, 2 166:3 179:2, 3, 12 180:1 207:23 238:5 245:7	255:1, 12, 14 257:1, 2, 4, 5, 7, 9, 21 258:18, 21 259:3, 6, 11 260:7, 17 261:5, 14, 17, 20 262:2, 24 263:22 265:5, 13, 16 282:25 283:3, 9, 10, 13 284:6, 7, 16 286:20 290:21 292:1, 7, 8, 12 311:1 313:18 329:1 <b>stuff</b> 89:18 196:20 241:10 <b>Stumbo</b> 5:10 222:15 223:1 225:7 <b>subcategories</b> 178:5 <b>subcategory</b> 179:8 <b>subject</b> 37:6 51:2 77:25 204:18 220:4 233:10 237:21 245:8 246:25 312:8 <b>subjects</b> 114:11 148:2 154:4 288:2 <b>submission</b> 112:10 167:12, 19 <b>submissions</b> 159:24 <b>submit</b> 140:2, 2 <b>submitted</b> 52:11, 15 124:17, 24 140:2 167:22, 24 232:21 268:23 317:2 <b>submitting</b> 265:21 <b>suboptimize</b> 275:18 <b>subparagraph</b>	313:4 <b>subparts</b> 169:14 <b>subsequently</b> 25:19 52:2 53:14 127:2 136:2 <b>substances</b> 107:2 <b>substantial</b> 36:22 89:14, 14 204:22 276:13 <b>substantially</b> 63:5, 9 <b>subtext</b> 134:4 <b>subtract</b> 43:25 <b>subtracted</b> 45:17 <b>succeed</b> 124:21 <b>success</b> 30:6, 25 107:19 151:8 188:21 220:11, 20 260:18 329:17 <b>successful</b> 39:1 68:8 80:5 176:7, 16 185:19, 19 219:11, 17, 21 <b>successfully</b> 143:1 <b>suddenly</b> 145:1 <b>suffer</b> 36:22 <b>suffered</b> 61:22 <b>suffering</b> 183:9 <b>sufficient</b> 169:19 190:6 <b>sufficiently</b> 57:25 <b>suggest</b> 157:18 244:2 <b>suggested</b> 114:2 115:9 121:9 259:22 292:8 <b>suggesting</b> 120:3 164:21 <b>suggestion</b> 157:3 160:17 244:8 <b>suggests</b> 235:4 <b>suit</b> 224:25	<b>Suite</b> 1:22 7:9, 19 8:8 <b>suits</b> 222:4 <b>sulfate</b> 17:5 144:4 175:6 <b>summarized</b> 259:21 <b>Summary</b> 3:24 60:2, 3 143:14, 23 255:21 <b>summer</b> 75:14 <b>superior</b> 233:20 236:9 <b>supervision</b> 337:10 <b>supervisor</b> 261:24 262:4 263:3 265:12 <b>supervisors</b> 237:18 239:6, 12 242:1 255:11 256:6, 23, 25 260:6, 8 261:3 265:4 267:19 268:7, 11 276:13 311:22 312:6 <b>supervisory</b> 16:1, 5 <b>supplemental</b> 170:11 <b>supply</b> 190:3, 6 198:25 205:15 <b>support</b> 120:13, 17 131:19 152:23, 25 153:12 177:19, 22 178:14 236:14 <b>supported</b> 121:18 <b>supporting</b> 121:9 <b>supportive</b> 149:18 <b>supposed</b> 118:24 208:21 321:12 329:13 <b>sure</b> 14:19 22:12 23:13	25:4 27:1 38:19 41:14 49:18 55:8 56:3 57:9 61:3 66:19 78:20 90:4 92:5 95:3 97:7 99:1, 14 109:14, 17 113:3 118:22 127:19 131:7, 23 137:14 138:24 139:7 142:14 146:1 148:14 156:18, 19 165:21 166:13 170:18 171:14 172:15 173:8, 21 175:25 180:9 185:5 186:3, 25 187:17 200:11 211:2 219:16 223:5 227:18 253:19 255:7 262:17 268:20 271:6 280:19 284:8 290:2 293:17, 25 306:9, 25 307:7 319:11 320:18 333:12, 18, 20 335:2 <b>surely</b> 88:8 129:15 178:16 <b>surfaced</b> 296:17 <b>surfacing</b> 155:20 <b>surge</b> 205:15, 16, 20 <b>surgeons</b> 109:3 <b>surgery</b> 109:3 287:5 <b>surgical</b> 287:6 <b>surprise</b> 192:18, 24 194:3 229:24 231:5 237:8 285:14, 16, 19
---	---	--	--	---



<b>surprised</b> 106:14 138:10 229:20	6, 7 259:3, 5, 6, 8, 11, 12 260:20 261:13, 15 267:6	13, 14 160:3, 4 184:11 195:3 209:5, 8 245:15, 16 256:12 277:20, 22 282:8 292:3 309:3 334:20	<b>taught</b> 92:18 239:6 <b>TDM</b> 64:8 <b>teach</b> 92:3, 9 93:1 <b>teaching</b> 239:11 <b>Team</b> 3:3, 3, 5, 10, 19, 19 4:3, 3, 5, 6, 14, 14, 17, 17, 21 5:3 38:3 70:3 74:22 76:6 77:24 86:9 91:12 99:19 117:13 125:5, 6, 19 128:21, 25 132:21 135:6, 17, 20 173:10 177:3, 11, 15 178:19 202:4 206:9 207:21 208:5 210:5 <b>Teamlink</b> 3:21 <b>team's</b> 180:10 <b>teamwork</b> 125:5 <b>teeth</b> 222:5 <b>telephone</b> 51:16 174:25 <b>tell</b> 9:22 12:24 14:15 24:4 27:14 32:18 43:10, 12 49:18 60:25 61:9 100:3 117:3 149:13 170:23 195:23 238:22 239:1 255:7 263:13, 17 270:6, 12 280:4, 18 281:23 284:8 299:10 301:23 303:12 306:21 307:12 <b>telling</b> 82:9, 14 90:5 146:20 190:20 253:16 281:17 296:7 300:1, 10, 11 <b>tells</b> 265:12 310:15 335:25	<b>temporarily</b> 61:16 204:25 <b>tenfold</b> 215:4 <b>Tennessee</b> 314:16 <b>tension</b> 190:3 <b>tenure</b> 112:21 <b>term</b> 22:15 81:1 83:6 97:14, 15 100:14 178:15 249:9 294:3, 4 320:23, 23, 24 329:2 <b>terminology</b> 321:3 <b>terms</b> 23:4 59:19, 23 144:12 151:15 201:18 331:10 <b>terrible</b> 66:10 <b>terribly</b> 150:12 <b>territories</b> 280:9 <b>territory</b> 215:14 <b>tertiary</b> 28:7 <b>test</b> 22:11 106:23 <b>testified</b> 10:18 73:18 97:13 167:8 272:13, 15, 23 283:20, 22, 23 284:2 285:12 300:18 <b>testify</b> 45:19 <b>testimony</b> 11:2 85:8 172:9 337:7, 9 <b>testing</b> 175:14, 18 <b>tests</b> 23:15 <b>text</b> 27:22, 23 242:25 244:2 260:6, 9 <b>textbook</b> 191:24 <b>textual</b> 307:3 <b>Thank</b> 12:2 27:10 48:8, 21 62:25 69:25 71:12 72:6 76:5 104:8
<b>surprising</b> 69:18 257:12	<b>syndrome</b> 255:17 257:8 259:3 260:22 <b>syndromes</b> 78:9 <b>syringe</b> 238:10 279:3 <b>system</b> 36:18 60:19, 24 61:8 255:20 276:3 285:1 308:9 316:17 317:17	<b>taken</b> 9:2, 5 20:20 54:6 55:18 66:22 127:16 154:14 166:7 235:18 241:23 289:19, 21 337:5, 9, 13 <b>takes</b> 124:4, 8 152:1 <b>talc</b> 279:3 <b>talk</b> 12:11 19:18 22:14 41:16 67:10 95:3 119:10 185:10 197:15 211:21 225:17 236:18 298:19 303:14 311:3 <b>talked</b> 77:1 150:19 165:22 180:2 196:21 210:17 301:21 <b>talking</b> 12:9 36:3 41:9 63:7 87:11 89:10 91:7, 20 110:9 116:14 154:19 164:17 165:10 206:2 209:18 211:4, 24 226:6 250:3 253:3, 7 264:4 285:21 313:19 331:10 <b>talks</b> 191:16 <b>tamper</b> 81:7, 15 <b>tapering</b> 260:25 <b>target</b> 136:3, 7, 16 193:1 <b>targeted</b> 135:25 136:9, 14 188:14 189:5 <b>targeting</b> 188:12 327:9	<b>testament</b> 12:2 125:5, 6, 19 128:21, 25 132:21 135:6, 17, 20 173:10 177:3, 11, 15 178:19 202:4 206:9 207:21 208:5 210:5 <b>Teamlink</b> 3:21 <b>team's</b> 180:10 <b>teamwork</b> 125:5 <b>teeth</b> 222:5 <b>telephone</b> 51:16 174:25 <b>tell</b> 9:22 12:24 14:15 24:4 27:14 32:18 43:10, 12 49:18 60:25 61:9 100:3 117:3 149:13 170:23 195:23 238:22 239:1 255:7 263:13, 17 270:6, 12 280:4, 18 281:23 284:8 299:10 301:23 303:12 306:21 307:12 <b>telling</b> 82:9, 14 90:5 146:20 190:20 253:16 281:17 296:7 300:1, 10, 11 <b>tells</b> 265:12 310:15 335:25	<b>temporarily</b> 61:16 204:25 <b>tenfold</b> 215:4 <b>Tennessee</b> 314:16 <b>tension</b> 190:3 <b>tenure</b> 112:21 <b>term</b> 22:15 81:1 83:6 97:14, 15 100:14 178:15 249:9 294:3, 4 320:23, 23, 24 329:2 <b>terminology</b> 321:3 <b>terms</b> 23:4 59:19, 23 144:12 151:15 201:18 331:10 <b>terrible</b> 66:10 <b>terribly</b> 150:12 <b>territories</b> 280:9 <b>territory</b> 215:14 <b>tertiary</b> 28:7 <b>test</b> 22:11 106:23 <b>testified</b> 10:18 73:18 97:13 167:8 272:13, 15, 23 283:20, 22, 23 284:2 285:12 300:18 <b>testify</b> 45:19 <b>testimony</b> 11:2 85:8 172:9 337:7, 9 <b>testing</b> 175:14, 18 <b>tests</b> 23:15 <b>text</b> 27:22, 23 242:25 244:2 260:6, 9 <b>textbook</b> 191:24 <b>textual</b> 307:3 <b>Thank</b> 12:2 27:10 48:8, 21 62:25 69:25 71:12 72:6 76:5 104:8
<b>survey</b> 89:22, 23 181:14, 15, 18 183:7 185:13	<b>system</b> 36:18 60:19, 24 61:8 255:20 276:3 285:1 308:9 316:17 317:17	<b>talc</b> 279:3 <b>talk</b> 12:11 19:18 22:14 41:16 67:10 95:3 119:10 185:10 197:15 211:21 225:17 236:18 298:19 303:14 311:3 <b>talked</b> 77:1 150:19 165:22 180:2 196:21 210:17 301:21 <b>talking</b> 12:9 36:3 41:9 63:7 87:11 89:10 91:7, 20 110:9 116:14 154:19 164:17 165:10 206:2 209:18 211:4, 24 226:6 250:3 253:3, 7 264:4 285:21 313:19 331:10 <b>talks</b> 191:16 <b>tamper</b> 81:7, 15 <b>tapering</b> 260:25 <b>target</b> 136:3, 7, 16 193:1 <b>targeted</b> 135:25 136:9, 14 188:14 189:5 <b>targeting</b> 188:12 327:9	<b>testament</b> 12:2 125:5, 6, 19 128:21, 25 132:21 135:6, 17, 20 173:10 177:3, 11, 15 178:19 202:4 206:9 207:21 208:5 210:5 <b>Teamlink</b> 3:21 <b>team's</b> 180:10 <b>teamwork</b> 125:5 <b>teeth</b> 222:5 <b>telephone</b> 51:16 174:25 <b>tell</b> 9:22 12:24 14:15 24:4 27:14 32:18 43:10, 12 49:18 60:25 61:9 100:3 117:3 149:13 170:23 195:23 238:22 239:1 255:7 263:13, 17 270:6, 12 280:4, 18 281:23 284:8 299:10 301:23 303:12 306:21 307:12 <b>telling</b> 82:9, 14 90:5 146:20 190:20 253:16 281:17 296:7 300:1, 10, 11 <b>tells</b> 265:12 310:15 335:25	<b>temporarily</b> 61:16 204:25 <b>tenfold</b> 215:4 <b>Tennessee</b> 314:16 <b>tension</b> 190:3 <b>tenure</b> 112:21 <b>term</b> 22:15 81:1 83:6 97:14, 15 100:14 178:15 249:9 294:3, 4 320:23, 23, 24 329:2 <b>terminology</b> 321:3 <b>terms</b> 23:4 59:19, 23 144:12 151:15 201:18 331:10 <b>terrible</b> 66:10 <b>terribly</b> 150:12 <b>territories</b> 280:9 <b>territory</b> 215:14 <b>tertiary</b> 28:7 <b>test</b> 22:11 106:23 <b>testified</b> 10:18 73:18 97:13 167:8 272:13, 15, 23 283:20, 22, 23 284:2 285:12 300:18 <b>testify</b> 45:19 <b>testimony</b> 11:2 85:8 172:9 337:7, 9 <b>testing</b> 175:14, 18 <b>tests</b> 23:15 <b>text</b> 27:22, 23 242:25 244:2 260:6, 9 <b>textbook</b> 191:24 <b>textual</b> 307:3 <b>Thank</b> 12:2 27:10 48:8, 21 62:25 69:25 71:12 72:6 76:5 104:8
<b>survivors</b> 274:24	<b>syndrome</b> 255:17 257:8 259:3 260:22 <b>syndromes</b> 78:9 <b>syringe</b> 238:10 279:3 <b>system</b> 36:18 60:19, 24 61:8 255:20 276:3 285:1 308:9 316:17 317:17	<b>taken</b> 9:2, 5 20:20 54:6 55:18 66:22 127:16 154:14 166:7 235:18 241:23 289:19, 21 337:5, 9, 13 <b>takes</b> 124:4, 8 152:1 <b>talc</b> 279:3 <b>talk</b> 12:11 19:18 22:14 41:16 67:10 95:3 119:10 185:10 197:15 211:21 225:17 236:18 298:19 303:14 311:3 <b>talked</b> 77:1 150:19 165:22 180:2 196:21 210:17 301:21 <b>talking</b> 12:9 36:3 41:9 63:7 87:11 89:10 91:7, 20 110:9 116:14 154:19 164:17 165:10 206:2 209:18 211:4, 24 226:6 250:3 253:3, 7 264:4 285:21 313:19 331:10 <b>talks</b> 191:16 <b>tamper</b> 81:7, 15 <b>tapering</b> 260:25 <b>target</b> 136:3, 7, 16 193:1 <b>targeted</b> 135:25 136:9, 14 188:14 189:5 <b>targeting</b> 188:12 327:9	<b>testament</b> 12:2 125:5, 6, 19 128:21, 25 132:21 135:6, 17, 20 173:10 177:3, 11, 15 178:19 202:4 206:9 207:21 208:5 210:5 <b>Teamlink</b> 3:21 <b>team's</b> 180:10 <b>teamwork</b> 125:5 <b>teeth</b> 222:5 <b>telephone</b> 51:16 174:25 <b>tell</b> 9:22 12:24 14:15 24:4 27:14 32:18 43:10, 12 49:18 60:25 61:9 100:3 117:3 149:13 170:23 195:23 238:22 239:1 255:7 263:13, 17 270:6, 12 280:4, 18 281:23 284:8 299:10 301:23 303:12 306:21 307:12 <b>telling</b> 82:9, 14 90:5 146:20 190:20 253:16 281:17 296:7 300:1, 10, 11 <b>tells</b> 265:12 310:15 335:25	<b>temporarily</b> 61:16 204:25 <b>tenfold</b> 215:4 <b>Tennessee</b> 314:16 <b>tension</b> 190:3 <b>tenure</b> 112:21 <b>term</b> 22:15 81:1 83:6 97:14, 15 100:14 178:15 249:9 294:3, 4 320:23, 23, 24 329:2 <b>terminology</b> 321:3 <b>terms</b> 23:4 59:19, 23 144:12 151:15 201:18 331:10 <b>terrible</b> 66:10 <b>terribly</b> 150:12 <b>territories</b> 280:9 <b>territory</b> 215:14 <b>tertiary</b> 28:7 <b>test</b> 22:11 106:23 <b>testified</b> 10:18 73:18 97:13 167:8 272:13, 15, 23 283:20, 22, 23 284:2 285:12 300:18 <b>testify</b> 45:19 <b>testimony</b> 11:2 85:8 172:9 337:7, 9 <b>testing</b> 175:14, 18 <b>tests</b> 23:15 <b>text</b> 27:22, 23 242:25 244:2 260:6, 9 <b>textbook</b> 191:24 <b>textual</b> 307:3 <b>Thank</b> 12:2 27:10 48:8, 21 62:25 69:25 71:12 72:6 76:5 104:8
<b>suspect</b> 59:19, 23 150:5 240:19	<b>system</b> 36:18 60:19, 24 61:8 255:20 276:3 285:1 308:9 316:17 317:17	<b>taken</b> 9:2, 5 20:20 54:6 55:18 66:22 127:16 154:14 166:7 235:18 241:23 289:19, 21 337:5, 9, 13 <b>takes</b> 124:4, 8 152:1 <b>talc</b> 279:3 <b>talk</b> 12:11 19:18 22:14 41:16 67:10 95:3 119:10 185:10 197:15 211:21 225:17 236:18 298:19 303:14 311:3 <b>talked</b> 77:1 150:19 165:22 180:2 196:21 210:17 301:21 <b>talking</b> 12:9 36:3 41:9 63:7 87:11 89:10 91:7, 20 110:9 116:14 154:19 164:17 165:10 206:2 209:18 211:4, 24 226:6 250:3 253:3, 7 264:4 285:21 313:19 331:10 <b>talks</b> 191:16 <b>tamper</b> 81:7, 15 <b>tapering</b> 260:25 <b>target</b> 136:3, 7, 16 193:1 <b>targeted</b> 135:25 136:9, 14 188:14 189:5 <b>targeting</b> 188:12 327:9	<b>testament</b> 12:2 125:5, 6, 19 128:21, 25 132:21 135:6, 17, 20 173:10 177:3, 11, 15 178:19 202:4 206:9 207:21 208:5 210:5 <b>Teamlink</b> 3:21 <b>team's</b> 180:10 <b>teamwork</b> 125:5 <b>teeth</b> 222:5 <b>telephone</b> 51:16 174:25 <b>tell</b> 9:22 12:24 14:15 24:4 27:14 32:18 43:10, 12 49:18 60:25 61:9 100:3 117:3 149:13 170:23 195:23 238:22 239:1 255:7 263:13, 17 270:6, 12 280:4, 18 281:23 284:8 299:10 301:23 303:12 306:21 307:12 <b>telling</b> 82:9, 14 90:5 146:20 190:20 253:16 281:17 296:7 300:1, 10, 11 <b>tells</b> 265:12 310:15 335:25	<b>temporarily</b> 61:16 204:25 <b>tenfold</b> 215:4 <b>Tennessee</b> 314:16 <b>tension</b> 190:3 <b>tenure</b> 112:21 <b>term</b> 22:15 81:1 83:6 97:14, 15 100:14 178:15 249:9 294:3, 4 320:23, 23, 24 329:2 <b>terminology</b> 321:3 <b>terms</b> 23:4 59:19, 23 144:12 151:15 201:18 331:10 <b>terrible</b> 66:10 <b>terribly</b> 150:12 <b>territories</b> 280:9 <b>territory</b> 215:14 <b>tertiary</b> 28:7 <b>test</b> 22:11 106:23 <b>testified</b> 10:18 73:18 97:13 167:8 272:13, 15, 23 283:20, 22, 23 284:2 285:12 300:18 <b>testify</b> 45:19 <b>testimony</b> 11:2 85:8 172:9 337:7, 9 <b>testing</b> 175:14, 18 <b>tests</b> 23:15 <b>text</b> 27:22, 23 242:25 244:2 260:6, 9 <b>textbook</b> 191:24 <b>textual</b> 307:3 <b>Thank</b> 12:2 27:10 48:8, 21 62:25 69:25 71:12 72:6 76:5 104:8
<b>suspected</b> 257:17, 23	<b>syndrome</b> 255:17 257:8 259:3 260:22 <b>syndromes</b> 78:9 <b>syringe</b> 238:10 279:3 <b>system</b> 36:18 60:19, 24 61:8 255:20 276:3 285:1 308:9 316:17 317:17	<b>taken</b> 9:2, 5 20:20 54:6 55:18 66:22 127:16 154:14 166:7 235:18 241:23 289:19, 21 337:5, 9, 13 <b>takes</b> 124:4, 8 152:1 <b>talc</b> 279:3 <b>talk</b> 12:11 19:18 22:14 41:16 67:10 95:3 119:10 185:10 197:15 211:21 225:17 236:18 298:19 303:14 311:3 <b>talked</b> 77:1 150:19 165:22 180:2 196:21 210:17 301:21 <b>talking</b> 12:9 36:3 41:9 63:7 87:11 89:10 91:7, 20 110:9 116:14 154:19 164:17 165:10 206:2 209:18 211:4, 24 226:6 250:3 253:3, 7 264:4 285:21 313:19 331:10 <b>talks</b> 191:16 <b>tamper</b> 81:7, 15 <b>tapering</b> 260:25 <b>target</b> 136:3, 7, 16 193:1 <b>targeted</b> 135:25 136:9, 14 188:14 189:5 <b>targeting</b> 188:12 327:9	<b>testament</b> 12:2 125:5, 6, 19 128:21, 25 132:21 135:6, 17, 20 173:10 177:3, 11, 15 178:19 202:4 206:9 207:21 208:5 210:5 <b>Teamlink</b> 3:21 <b>team's</b> 180:10 <b>teamwork</b> 125:5 <b>teeth</b> 222:5 <b>telephone</b> 51:16 174:25 <b>tell</b> 9:22 12:24 14:15 24:4 27:14 32:18 43:10, 12 49:18 60:25 61:9 100:3 117:3 149:13 170:23 195:23 238:22 239:1 255:7 263:13, 17 270:6, 12 280:4, 18 281:23 284:8 299:10 301:23 303:12 306:21 307:12 <b>telling</b> 82:9, 14 90:5 146:20 190:20 253:16 281:17 296:7 300:1, 10, 11 <b>tells</b> 265:12 310:15 335:25	<b>temporarily</b> 61:16 204:25 <b>tenfold</b> 215:4 <b>Tennessee</b> 314:16 <b>tension</b> 190:3 <b>tenure</b> 112:21 <b>term</b> 22:15 81:1 83:6 97:14, 15 100:14 178:15 249:9 294:3, 4 320:23, 23, 24 329:2 <b>terminology</b> 321:3 <b>terms</b> 23:4 59:19, 23 144:12 151:15 201:18 331:10 <b>terrible</b> 66:10 <b>terribly</b> 150:12 <b>territories</b> 280:9 <b>territory</b> 215:14 <b>tertiary</b> 28:7 <b>test</b> 22:11 106:23 <b>testified</b> 10:18 73:18 97:13 167:8 272:13, 15, 23 283:20, 22, 23 284:2 285:12 300:18 <b>testify</b> 45:19 <b>testimony</b> 11:2 85:8 172:9 337:7, 9 <b>testing</b> 175:14, 18 <b>tests</b> 23:15 <b>text</b> 27:22, 23 242:25 244:2 260:6, 9 <b>textbook</b> 191:24 <b>textual</b> 307:3 <b>Thank</b> 12:2 27:10 48:8, 21 62:25 69:25 71:12 72:6 76:5 104:8
<b>suspects</b> 158:3	<b>syndrome</b> 255:17 257:8 259:3 260:22 <b>syndromes</b> 78:9 <b>syringe</b> 238:10 279:3 <b>system</b> 36:18 60:19, 24 61:8 255:20 276:3 285:1 308:9 316:17 317:17	<b>taken</b> 9:2, 5 20:20 54:6 55:18 66:22 127:16 154:14 166:7 235:18 241:23 289:19, 21 337:5, 9, 13 <b>takes</b> 124:4, 8 152:1 <b>talc</b> 279:3 <b>talk</b> 12:11 19:18 22:14 41:16 67:10 95:3 119:10 185:10 197:15 211:21 225:17 236:18 298:19 303:14 311:3 <b>talked</b> 77:1 150:19 165:22 180:2 196:21 210:17 301:21 <b>talking</b> 12:9 36:3 41:9 63:7 87:11 89:10 91:7, 20 110:9 116:14 154:19 164:17 165:10 206:2 209:18 211:4, 24 226:6 250:3 253:3, 7 264:4 285:21 313:19 331:10 <b>talks</b> 191:16 <b>tamper</b> 81:7, 15 <b>tapering</b> 260:25 <b>target</b> 136:3, 7, 16 193:1 <b>targeted</b> 135:25 136:9, 14 188:14 189:5 <b>targeting</b> 188:12 327:9	<b>testament</b> 12:2 125:5, 6, 19 128:21, 25 132:21 135:6, 17, 20 173:10 177:3, 11, 15 178:19 202:4 206:9 207:21 208:5 210:5 <b>Teamlink</b> 3:21 <b>team's</b> 180:10 <b>teamwork</b> 125:5 <b>teeth&lt;/</b>	

142:5 143:17, 24 154:17 202:1 209:23 218:8 223:24 243:14 336:17 <b>that</b> , 189:24 <b>theme</b> 78:17 98:1, 7 <b>themes</b> 118:16 <b>therapeutic</b> 143:18 144:2 <b>therapy</b> 37:2 79:21 127:25 235:20 239:16, 25 240:5 <b>thing</b> 46:12 92:19 97:19 107:6 234:8, 10, 25 246:23 299:9 333:20 <b>things</b> 23:2 24:22 120:3 126:9 180:9 199:3 234:19, 23 236:24 241:8 243:24 263:14 273:14 300:12 311:6 313:16 <b>think</b> 17:12 18:12 32:16 38:20 41:14, 21 42:23 43:15 44:5 45:22 47:7 51:9 52:23, 24 57:19, 21 61:6 62:19, 24 70:25 73:14, 18 81:8, 16, 25 82:24 83:25 84:2, 7 86:16 87:9, 21 93:25 95:14, 17, 24 96:23 97:11 100:18 101:1 102:2, 19 115:18 116:13 120:20 122:15 125:22 126:2 127:23 130:9, 17 137:24 138:15 145:9 146:5 151:11, 21 153:10 157:13 158:23 161:4, 22 162:14 165:17 166:5, 21 170:12 171:1 176:1 178:8, 22 182:17, 19 183:12, 25 185:5, 24 188:17 189:17 191:21 192:5 193:7 194:4, 8, 15, 19 195:8 199:17, 23 205:13 207:4, 17 208:20, 22 210:9 213:24, 25 220:9 222:20 225:9 227:18 232:7 244:7, 8 245:6 247:16 248:7, 17 250:8, 9 256:3, 10 262:1 271:2, 8 274:23 276:25 278:20 279:17 280:1 281:6 283:3, 12 284:23 286:22 290:3, 19, 21 291:4, 5, 7 292:10, 11 293:9, 23 295:13 298:4, 14, 20 300:1, 2, 3, 5 303:11 305:10 308:5, 7, 16 309:25 312:12 317:15 319:10 320:4 322:23 324:24 325:11 326:6 328:15 329:12 330:3 333:18 336:16	<b>thinking</b> 57:5 121:22 161:23 219:12 <b>thinks</b> 82:13 208:20 <b>third</b> 36:11 65:15 97:25 111:13 122:24 141:22 142:21 143:20, 22 196:21 223:10 236:4 287:22 290:16 315:7 <b>third-party</b> 192:1 <b>third-party's</b> 314:16 <b>Thompson</b> 2:1 7:1, 4 9:2, 19, 22 10:9, 9, 23 11:7, 11, 16, 21, 24 12:3 19:11 22:19, 23 25:6 26:23 27:1, 6 28:25 32:9 33:13 37:24 39:20 41:3, 10 42:5 45:21 46:1, 10 69:1, 4, 20, 24 73:4, 7 74:17 76:2, 3 77:10 86:21 91:25 92:5 105:23 106:6 109:11, 24 122:7 126:11 128:13 134:17 137:14, 18 141:9 154:6, 12 163:25 170:14, 18, 21 171:7 177:5 183:15 197:18 200:20, 23 201:24 202:2 204:14 207:10, 12 209:9, 16 210:14, 17, 23 212:5 218:22 225:21, 25	247:20 251:17 253:1, 8, 13, 19 270:16 273:3 277:20, 24 278:5 292:17, 24 293:25 298:18 299:17 300:23 301:5, 10, 15 310:2 311:11 312:1 314:11 315:1, 4 317:6 318:2 320:2, 6 323:23 324:5 336:16 <b>thoroughly</b> 230:1 <b>thought</b> 26:20 28:1 31:2, 10 66:12, 19 67:12 74:4 75:10 82:25 85:16 96:4, 11, 12 97:4 136:18 157:8 161:20 183:15 184:17 199:23 211:13 234:9 244:5 315:4 325:22 <b>thousand</b> 276:10 <b>thread</b> 81:19 <b>threat</b> 38:18, 24 132:16 175:24 176:5 <b>threatening</b> 80:24 83:7 88:1 <b>three</b> 103:17 113:9 124:18 127:5 136:20 146:15, 15 147:1, 5 155:9 156:1 158:14, 18 160:5, 11 166:17 182:7 185:12 190:1 191:4 215:25 228:16 250:24 259:1, 8, 21	292:15 305:19 330:2, 3, 5 <b>three-month</b> 202:18 <b>three-quarters</b> 275:1 <b>three-year</b> 221:10 <b>thrown</b> 293:10 <b>thrust</b> 93:21 165:20 <b>tied</b> 216:19 <b>tiger</b> 222:5 <b>time</b> 15:22 16:2, 9 21:18 22:18 23:20 24:17, 18 28:6 30:13 31:17 34:11 35:9 36:3 48:13 49:1 53:24 56:16 57:8 58:11 59:1 61:3 62:13 63:3 66:5 68:9 72:14 80:17 84:8 87:24 88:7 97:20 103:25 109:18 111:25 112:9 113:6 114:17 117:6 123:3 124:1, 3, 14 125:2, 8, 11 126:25 129:18, 22 130:1 137:5 144:23 154:4, 15 155:20 161:12 162:8 165:3, 9 167:7 170:5 171:14 179:5 185:11 186:5 188:10 195:17 197:16 205:1 209:8, 10 219:10, 16 226:10, 11, 17, 17, 25 228:24 230:7, 12, 14, 16 231:16, 24
--	--	---	--



237:14 245:25 255:8 262:16 264:4, 8, 9, 20 266:2 270:20 271:17 276:2, 4, 5 280:23 284:10 286:12, 16 290:14 294:11 298:1 302:22 303:1 306:15, 15 307:6 321:22, 24 322:14 334:9, 19 337:5 <b>time</b> , 15:24 <b>timely</b> 38:22 39:13 176:3, 13 <b>times</b> 19:14 23:2 84:1 89:25 102:15 104:23 146:15 149:10 172:7 189:21 200:5 208:12 211:4 217:6 250:24 274:17 289:21 292:15 296:12 <b>tiny</b> 130:3 <b>tip</b> 260:15, 16, 18 <b>tissue</b> 58:20 80:21 <b>title</b> 36:17 190:21 198:17 322:24 323:2, 5 <b>titled</b> 3:21 5:5 <b>titrate</b> 92:10, 19, 21 94:20 144:24 <b>titrating</b> 96:7 <b>titration</b> 133:14 144:15 206:22 <b>today</b> 11:1 100:12 144:23 188:10 206:2 209:2 229:16 230:4 245:3 273:17 284:24 294:13, 19	306:22 310:22 321:6 336:3 <b>told</b> 32:5 67:7, 8 82:12 101:8, 9 189:14 195:20, 22 238:2, 21, 25 239:15, 24 240:5, 22 242:2 244:14 263:9 264:17 267:24 269:13 281:25 291:22 297:1, 2 298:12 300:5 313:5 320:13 <b>tolerance</b> 105:20 143:10 231:10 233:11 237:22 239:19 240:3, 8 267:7 312:9 <b>Tolerance</b> , 254:23 <b>tomorrow</b> 161:8 <b>tone</b> 125:19, 25 126:2 <b>Tony</b> 170:22 201:24 <b>top</b> 34:11 44:6 57:2 67:18, 25 84:23 102:19 110:20 123:18 133:6 142:1 143:21, 22 158:20 177:12 181:7 187:1 205:11 324:7 <b>topic</b> 278:14 <b>topics</b> 177:16 <b>Toppers</b> 187:3 <b>top-telling</b> 218:17 <b>tore</b> 54:22 <b>tossed</b> 303:23 <b>total</b> 64:9 148:3 193:12 213:8 215:10, 19, 21 216:17, 18	<b>totality</b> 313:15 314:8 <b>totally</b> 55:13 140:3 205:1 <b>toxic</b> 94:10 <b>toxicities</b> 245:25 <b>Toxicity</b> 71:9 <b>traditional</b> 221:13 <b>traditionally</b> 87:19 <b>trail</b> 66:16 <b>Train</b> 194:22 196:2 274:6 <b>trained</b> 195:9 196:4 214:19 237:24 238:1, 11 274:17 <b>Trainer</b> 196:2 <b>Trainers</b> 194:22 195:1 <b>training</b> 15:14 16:12, 17 24:2, 3 29:7, 17 118:15 239:6 251:21 252:6, 15 253:25 254:1 273:10, 14 274:15, 15 296:15 316:13 317:10 <b>trajectory</b> 331:12 <b>Tramadol</b> 132:15 <b>transcript</b> 11:9 272:22 273:2, 4 314:5 337:12 <b>transcripts</b> 304:18, 19 <b>transferred</b> 21:9 <b>trauma</b> 145:4 174:16 <b>treat</b> 71:2, 4 78:11 92:17 272:1 329:16 <b>treatable</b> 80:16 <b>treated</b> 46:24 47:2, 8, 17 83:14 114:12	116:4 143:1 146:14 192:9, 9 258:8 272:8 <b>treating</b> 70:22 92:20 100:14 102:10 116:2 145:22 151:8, 11, 16 271:1 272:3 <b>treatment</b> 36:25 114:24 189:1 190:15 213:15 214:24 257:7 259:23 271:13, 16 279:18 <b>tremendous</b> 199:24 220:11, 20 <b>trend</b> 137:5 <b>trial</b> 50:20 60:2 114:10, 11 141:4 159:24 329:2, 7 <b>trials</b> 76:14 114:9, 18 144:1 232:23 246:3 257:13 <b>tried</b> 249:25 251:7 273:25 <b>tries</b> 118:11 189:25 <b>trip</b> 222:14 <b>trips</b> 187:2 <b>trough</b> 239:7 252:11 290:6 <b>troughs</b> 289:24 <b>Trover</b> 303:25 <b>true</b> 31:5 58:18 124:22 165:3 186:14 224:4 230:2 233:23 236:20 237:2 244:19 266:4 280:7, 11 283:22 302:7 308:5 320:21 337:12 <b>truly</b> 100:8 <b>trusts</b> 14:22	<b>truthful</b> 295:14, 18 297:11 <b>try</b> 25:1 34:21 46:1 70:5 156:17 223:17 232:10 254:24 291:24 <b>trying</b> 21:16 56:3 65:25 66:9 69:5 97:9 119:24 120:16 123:13 125:21 126:6 146:25 152:24 153:22 201:22 211:11 216:14 219:22 272:2 283:7 284:20 306:17 325:14, 15, 18 <b>tthompson@kytr</b> <b>ial.com</b> 7:6 <b>Tuesday</b> 117:13 278:9 <b>tumor</b> 80:21 <b>turn</b> 28:8 35:24 38:7 71:7 101:11 117:25 122:22, 23 123:17 130:21 131:7 140:14 142:16 157:21 189:2 190:16 213:3, 13 222:24 243:11 <b>turned</b> 65:19 169:20 231:5 <b>turnover</b> 64:13 <b>TV</b> 181:11 <b>twice</b> 32:23, 25 73:19, 22 77:2 83:1, 9, 21, 22, 25 85:4 89:9 90:2, 6 93:2 98:8 101:8 104:21 146:16 208:9, 25 282:8 289:19 291:24, 25
--	--	--	---	--

<b>twice-a-day</b> 146:20	<b>typically</b> 80:11 179:5 215:24 216:2	<b>uncovered</b> 183:6	<b>unique</b> 107:20 116:14 256:15	91:13 92:7
<b>twisted</b> 303:3		<b>underscoring</b> 330:11	<b>United</b> 5:12 42:14 117:5	94:24 95:12
<b>two</b> 14:22	< U >	<b>understand</b> 39:25 49:21	256:24 314:14	97:16 99:15, 21
22:20 23:1, 3,	<b>U.S.</b> 20:2 34:24	51:6 59:18	315:5 327:11	101:9 104:12
15 26:15 36:14	36:20 37:19	70:19 79:13	<b>University</b> 150:3	107:10, 21
48:21 52:20, 21	40:7 50:9 58:4,	82:1 93:24	<b>unknown</b> 49:7	108:1 115:3, 20
55:13 84:10	16 66:2 166:20,	100:12 112:8	<b>unlawful</b> 225:3,	119:3 121:10
92:1, 2 103:12	24 167:19, 22,	116:12 130:15	8 315:20	129:25 136:18
104:16 112:4	24 193:4	148:16 157:10	<b>unmistakably</b> 272:11, 18	137:8 152:13,
113:9, 13 124:2,	220:18, 19	161:1 170:13	<b>unnecessarily</b> 204:8	15, 16, 23, 25
14 136:20	221:1 228:3	209:19 234:11	<b>unnecessary</b> 294:22	153:12, 15
137:16 138:4	230:22, 25	271:1, 10, 21	<b>unparalleled</b> 125:5	156:10 157:1, 2,
139:7 146:9, 11	237:15 241:9	272:12, 20	<b>unprecedented</b> 191:16, 22, 22	6 160:8, 10
147:6 156:25	264:10 270:11	273:6, 7 275:19	<b>unreasonable</b> 158:8	163:6, 7 188:25
157:10, 15, 16	272:5 297:10,	292:14 294:3	<b>unschedule</b> 50:22	190:14 192:3, 7
158:18 160:8	12, 18 312:15,	295:9	<b>unspecific</b> 81:1	195:10 196:9
179:10 182:7	19 315:18	<b>understanding</b> 11:5 18:6, 15	<b>unsurmountable</b> 225:2	200:2 207:24
186:18 191:10	329:10	33:19, 23 46:25	<b>Untitled</b> 2:17	208:23 216:13
212:8 213:4	<b>U.S.</b> 68:2	64:12 73:20	<b>untrue</b> 34:4	217:25 220:10,
214:23 260:20	270:19	88:11, 11, 15, 16	304:16	24 221:21
273:14 276:10	<b>Udell</b> 2:24	235:15, 23, 25	<b>unusual</b> 141:4	234:18 235:4
286:15 289:20	5:11 170:5	328:20	186:25 236:7	238:15 242:13
291:15 296:25	172:25 222:13,	<b>understood</b> 25:5 74:8	<b>upbeat</b> 125:19	245:22 247:18
304:14 305:19	25 225:6 226:6	88:17 94:2, 2	<b>Update</b> 206:16	249:25 250:7
307:8 308:20	228:17, 20	95:1 98:5, 23	<b>upward</b> 92:24	254:22 255:12
<b>twofold</b> 148:5	231:2	148:14, 17	<b>upwards</b> 12:15	260:17 262:12
<b>two-fold</b> 148:10	<b>Uh-huh</b> 64:5	209:4 229:24	<b>urgent</b> 161:7	265:6 266:6
<b>two-tenths</b> 315:14	72:7 171:16, 17,	240:19 249:16	326:9	267:12, 21
<b>two-thirds</b> 40:14	20 172:3	269:8 271:14,	<b>urinary</b> 151:15	268:16 272:10,
<b>two-to-one</b> 79:9,	314:20	15	<b>urokinase</b> 204:24	16 279:15
9, 13 96:11	<b>UK</b> 116:23	<b>undertake</b> 168:17	<b>usage</b> 175:15	291:12, 23
<b>Tylenol</b> 87:18	<b>ultimately</b> 112:18 131:6	<b>undertaken</b> 147:25 148:20	<b>use</b> 4:10 9:6	308:11 313:25
92:8 94:10, 14	138:23 140:8	<b>undertook</b> 26:6	17:11, 13, 25	327:15 328:2
146:8	226:22	<b>unexpected</b> 69:19	22:14 37:8	335:17, 21
<b>TYLER</b> 7:1	<b>Ultram</b> 180:13,	<b>unfairly</b> 97:2	50:5, 9 78:10	<b>useful</b> 66:14
10:9 251:15	16	<b>unfortunate</b> 88:10, 14 97:14	80:22 81:9	119:23 325:22
<b>type</b> 44:8	<b>umbrella</b> 20:22	<b>unfortunately</b> 49:24 54:4	82:11 84:4	<b>usefulness</b> 83:6
168:9 234:1	21:4	<b>Union</b> 63:14	87:7 89:21, 21	<b>uses</b> 156:7
304:5 306:2, 13	<b>uncalled</b> 303:9			<b>usual</b> 157:2
<b>types</b> 80:9	<b>uncertainty</b> 80:5			158:2
310:3 323:9	<b>uncle</b> 20:12			<b>usually</b> 124:4
<b>typewritten</b> 337:11, 11	<b>unclear</b> 296:21			234:2 331:23
<b>typical</b> 76:23	<b>uncontrolled</b> 57:7, 15 61:13,			<b>Utah</b> 286:2
184:25 305:16	17, 19, 25 63:8			287:1
	65:6			<b>utilization</b> 108:15
				<b>utilize</b> 189:10
				<b>utilized</b> 271:16
				<b>utilizing</b> 334:10



< V >	328:17 330:9, 9, 10	214:8 216:8	266:5 282:25	98:6 100:21
vague 147:12	vetted 193:23	VS 1:4	283:11 284:13, 14 296:24	101:3 211:16
184:1	194:4, 9, 13, 14	vulnerability	wanting 300:9	256:9
vaguely 197:25	vice 228:21	38:24 176:5	wants 120:16	weaker, 87:23
validate 156:11, 14 161:17	229:2 323:3	< W >	warehousing	208:13
162:1, 19	331:19	Wait 54:19	44:13	weapons 106:24
validating	Vicodin 92:8	91:4 99:11	warning 208:23	Wednesday
161:19 162:3	133:17	110:10 135:11, 11 161:8	227:4, 7, 11	35:18
194:10	VIDEO 1:4	waiting 81:10	warranted	weed 242:7
validation	9:1 12:1	walk 48:15	259:25	268:4 269:19
245:8, 16	197:11 198:16, 21	Walter 56:9, 14	warrants 261:1	313:13 316:3
valleys 243:4	VIDEOGRAPH	63:5 65:17	Washington's	weeded 274:25
244:15 281:8, 9	ER 8:11 9:11, 21 46:5, 8	67:19	177:13	week 215:24
289:6, 7, 14, 14	106:1, 4 128:15, 18 154:7, 10	want 9:19	water 238:9	216:2
290:16, 25	171:9, 12	16:20 18:6	Watkins 2:15	weekend
291:1, 4, 6	209:11, 14	29:12 46:11	35:19	202:15, 19
valuable 68:12	277:25 278:3	65:3, 13 70:5	wavered 85:4	weeks 35:5
184:14, 16, 19	292:19, 22	76:18 79:12	way 55:11	114:11 179:5
value 108:25	323:25 324:3	82:17, 21 85:11	62:19 65:7	215:25 216:3
162:25	336:21	95:19 97:16	67:5 78:20, 20	296:25 305:20
Vancouver	videos 198:15	100:24 101:11	79:5, 16 82:3	308:20, 20
220:12	view 78:6	105:6 107:24, 25 113:19	83:7 84:4, 4	week's 198:25
variation 281:7	84:15 221:20	114:15 118:1	88:24 98:4	weight 22:4
282:12	256:8	134:24 141:10	104:16 105:7	welcome 66:13
varied 16:7	violation 225:2	152:5 156:14	107:24, 25	Well 12:11
variety 99:16	Virginia 15:2	170:24 173:12, 20 174:17	119:19 130:10	19:18 20:17
130:8 192:12	166:20, 25	206:18, 25	134:5, 5 146:6	22:13 24:4, 14
various 10:4	230:22 297:11	207:16 208:6	147:4 148:18	41:21 44:4
11:2 127:21	virtually 83:11	209:5 212:12, 23 220:21	149:23 161:14	57:23 65:11, 19, 21 66:25 78:5
169:13 181:11	visits 184:23	221:21, 23	176:14 179:21	80:11 84:14, 15
268:6 270:3	315:9	222:2 234:5, 10	184:2 185:6	86:21 88:11
vast 246:7	Visual 150:1	250:10 255:4	186:6 195:16	90:18 92:22, 25
Venable 8:8	163:11, 12	256:9 272:7, 15, 23 277:20	199:24 201:6, 10, 11 221:10	93:6 94:18, 21, 25 101:15, 15
verify 167:6	volume 266:1	283:19 301:6, 10, 16 306:9	222:7 227:12	102:3, 20
318:3	332:14, 23	310:6 314:22	241:2 244:5	113:11, 21
version 219:13, 19	333:15 334:1	331:6	272:9, 16 298:9	117:25 124:6
versus 9:15	voluminous	wanted 67:16	305:16 308:6	129:6, 24
23:24 36:19	245:5	79:7 80:18	325:1 329:13, 16 330:6, 7	136:17 139:18
90:25 99:2	voluntarily	85:9 110:3	way, 298:10	146:21 156:20, 22 158:11
112:3 113:13	229:8 231:4	111:2 117:21, 24 125:15	ways 139:11	170:3 185:17
119:13, 22	volunteered	129:14, 22	147:7 279:1	188:9 191:15
131:13 147:5	236:5	147:13 206:1	weak 102:10	206:10 210:20
148:21 165:11	voted 227:25		211:15	211:5, 14
180:11 187:11	228:5		weaker 78:7	222:10 225:19
288:5, 14	vouch 172:10		84:16 87:15, 21	235:9 239:23
299:24 306:18			88:2, 5, 16	241:4 249:13, 14, 22 250:15
			96:19, 24 97:14	

254:24 256:7 269:1 277:15 281:3 291:15 298:12, 18 299:25 301:5 302:21 303:12 312:1 317:24 325:18 332:9, 23 333:15 334:1 335:2 <b>well-controlled</b> 115:6 <b>well-developed</b> 246:1 <b>well-received</b> 37:22 <b>went</b> 112:25 113:3, 5 132:25 133:2 163:19 264:8 274:18, 22 297:21, 25 309:9, 16, 20 310:9 313:17 327:17 332:4, 6 <b>we're</b> 19:16 38:19 49:17 56:2, 3 63:22 75:8 79:23 84:14 88:18 116:14 119:20 141:14 142:18 147:3, 3 154:21 175:25 211:6, 6, 11, 20 241:10, 14 243:11 248:2 318:14 319:22 <b>West</b> 7:18 15:2 <b>Western</b> 230:22 297:10 <b>we've</b> 45:22, 24 80:5 82:11 86:9 94:22 95:5 102:15 126:5 154:14 157:14, 15, 16 165:21 169:11 196:20 197:11 199:3 208:11 210:17 232:11,	15 241:9, 16 249:8 281:17 284:18 <b>whilst</b> 37:1 <b>Wholesale</b> 188:23 190:12 <b>wholesaler</b> 189:10, 13 <b>wholesalers</b> 41:24 188:14, 15 189:9 190:4 <b>Wide</b> 217:24 <b>widely</b> 71:4 73:25 138:17, 18 150:17 <b>wider</b> 214:12 <b>William</b> 313:22 <b>Wimmer</b> 5:23 56:9, 14 67:19 <b>Windell</b> 279:21, 23 280:7 <b>Winter</b> 3:21 122:19 279:10, 11 <b>wish</b> 81:4 89:22 133:25 177:17 179:15, 25 180:10 244:1 <b>wished</b> 94:25 231:3 <b>withdraw</b> 270:17 <b>withdrawal</b> 60:6 105:20 233:11 235:12 237:22 239:17 240:1, 6 254:22 255:17 257:6, 8, 15, 17, 23, 25 258:6, 7, 15 259:2, 3, 4, 6, 10, 12, 14, 24 260:20, 22 261:4, 13, 15, 19, 24 262:1, 24 264:18 265:13 267:6 312:10 <b>withdrawn</b> 204:25	<b>withdrew</b> 261:17 <b>witness</b> 26:25 32:14 46:4 55:2, 21 69:3 128:11 135:3, 5 137:20 138:3 170:15 171:21, 24 172:1 176:19 209:5 210:16 212:4, 6 294:14, 20 298:14 299:14 301:7 306:7 309:25 317:1, 3 319:24 320:9 336:18 337:8 <b>witness's</b> 23:4 <b>wonder</b> 203:18 <b>wondering</b> 49:9 65:6 232:8 <b>Woops</b> 135:16 <b>word</b> 87:23 88:4, 5, 6, 16 118:24 119:3 207:8 208:15, 23 211:15 239:21 249:17, 20, 20, 21, 23 250:7 311:25 <b>words</b> 87:2 88:25 92:23 96:2 99:16, 16 104:24 150:22 207:2, 3, 17 208:13 212:8 256:18 <b>work</b> 29:17 54:1 65:23 76:24 113:6 124:1 146:22 169:19 172:18 189:9 279:19 287:16 <b>worked</b> 72:13 75:18 126:24 169:8 172:20, 22 173:1, 4, 6 330:2, 5	<b>workers</b> 124:20 182:21 <b>working</b> 31:8, 10 36:17 56:3 76:17 <b>works</b> 126:22 281:2 <b>world</b> 14:5 97:20 116:5 222:3 236:24 <b>Worldwide</b> 61:21 229:2 <b>worse</b> 82:15 96:8 189:24 <b>worth</b> 262:2 <b>wound</b> 198:21 336:13 <b>Wright</b> 112:5, 6 113:15 114:2 126:19 285:3, 8 <b>write</b> 83:2 109:6, 8 119:1 158:20 161:6 194:16 196:8 222:1 238:15, 16 262:5 263:1, 4 264:18 265:12 286:8 327:15, 16 <b>writes</b> 51:1 63:20 67:1 86:7 106:25 158:7 159:2 161:24 203:13 <b>writing</b> 77:22 138:13 139:13 158:25 201:10 225:9 262:2 <b>written</b> 77:20 99:25 114:1 125:23 139:15 158:22 161:14 176:14 189:6 199:22 241:3 263:6 264:5 296:23 308:6 317:2 320:1 329:20 330:4 <b>wrong</b> 65:11, 20 222:22	223:9 224:3 227:16, 19 258:6 304:13 321:2 <b>wrongdoing</b> 296:17 <b>wrote</b> 53:4 64:20 67:9 84:20, 23 85:25 86:4 101:23, 24 108:3, 6 126:9 148:17 159:1, 21 165:8 202:15 221:17 251:11, 12 269:7 303:18 305:21 328:21  < Y > <b>Yates</b> 313:22 <b>Yeah</b> 11:13 20:25 27:14 33:2 54:21 55:8 63:10 91:10 95:3 99:8 111:20 126:13 129:6 144:9 172:17 199:13 224:1 225:21 226:7 249:1 253:1, 8, 13 255:3 264:24 275:4 276:8 284:4 <b>Yeang</b> 141:24 142:7 <b>year</b> 41:7, 13, 18 42:1 52:19 64:7, 15, 16, 16 76:10 142:19 179:7 186:23 189:7 206:10, 11, 13 220:15 245:17 279:12 <b>years</b> 19:23 30:17 34:13 35:5 45:11, 12 52:21 84:10 100:12 107:10 112:19 113:9, 9
---	---	---	---	---



116:6 124:2, 15,  
21, 25 125:3  
127:5 129:20  
150:3 164:6  
166:6 186:19  
187:5, 10 192:9  
217:7, 9 245:22  
246:8 248:2, 5,  
20, 21 298:2, 2,  
3  
**year's** 220:14  
**yellow** 201:14  
**Yep** 55:6  
324:15  
**yesterday** 209:2  
**York** 7:16, 16  
**you,** 34:7 41:9  
82:11 238:1  
**you-all** 11:17  
17:4, 20 18:22  
35:1 36:3  
47:20 53:12  
59:15 60:22  
104:25 112:15,  
18 113:6  
124:13 136:24  
148:8 156:13  
166:19, 23  
167:2 186:11  
191:6, 16, 20, 25  
204:10 271:19  
307:20  
**your-all's** 35:12  
59:22 112:10  
174:19  
  
<Z>  
**Zealand** 58:23

