

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE:)
) CA No. 04-10981-PBS
NEURONTIN MARKETING, SALES PRACTICES,) MDL No. 1629
AND PRODUCTS LIABILITY LITIGATION) Pages 1 - 142
-----)
This document relates to:)
EGILMAN V. PFIZER, et al, 07-11426-PBS)

JURY TRIAL - DAY TWO
BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts
July 28, 2009, 9:00 a.m.

DEBRA M. JOYCE and LEE A. MARZILLI
OFFICIAL COURT REPORTERS
United States District Court
1 Courthouse Way, Room 7200
Boston, MA 02210
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PROCEEDINGS

1 THE CLERK: In Re: Neurontin Marketing, Sales
 2 Practices, and Products Liability Litigation, Civil Action
 3 No. 04-10981, will now be heard before this Court. Will
 4 counsel please identify themselves for the record.
 5
 6 THE COURT: Are we ready for opening statements?
 7 I need to deal with the juror issue, as you remember.
 8 MR. LANIER: Yes, your Honor. We also have three
 9 housekeeping issues, if we could deal with the Court quickly
 10 on them.
 11 THE COURT: Does it have to do with the opening
 12 statements?
 13 MR. LANIER: One of them does, your Honor;
 14 specifically, whether I'm allowed to use the DDMAC letters
 15 that you took under advisement yesterday and whether or not
 16 I'm allowed to --
 17 THE COURT: Why don't you not use them in the
 18 opening, and I'll deal with them later.
 19 MR. LANIER: Am I allowed to at least reference
 20 them if I don't show them, your honor?
 21 THE COURT: I'd rather not take the time to argue
 22 now. It's not necessary for the opening statement.
 23 Anything else?
 24 MR. OHLEMEYER: The only other thing was just,
 25 Mr. Lanier had indicated they basically cut out all the

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1 exhibits except for a few, which he gave them like five or
 2 so, including a deck of cards that he said he may or may not
 3 use. We'd object to that. And the operating plan, I think
 4 we would just ask the Court -- I mean, it's literally about
 5 a hundred pages. I know the Court doesn't want to take the
 6 time right now.
 7 THE COURT: What do you mean, the operating plan?
 8 MR. OHLEMEYER: There's an operating plan that he
 9 referenced, and it's just got a lot of information that --
 10 THE COURT: Who's operating plan?
 11 MR. OHLEMEYER: It's a Pfizer in 2001 --
 12 THE COURT: Well, if it's your document, don't you
 13 have to live with it?
 14 MR. OHLEMEYER: Well, it goes well beyond the
 15 issues in this case, your Honor. I mean, we could talk
 16 about many of them, but there's third-party payor issues,
 17 there's relevance, there's proprietary, things that --
 18 THE COURT: Well, maybe, but we can delete it
 19 later, delete out the irrelevant pieces later. I'm not
 20 going to micromanage this for the opening statements.
 21 MR. LANIER: One page, your Honor.
 22 THE COURT: One page, all right? So let me just
 23 say this. Stay away -- the issue is, I did read those
 24 letters last night, and the problem I have is, there was one
 25 I thought was admissible, and there was one that thought

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1 wasn't, and I don't want to take the time to go through it
2 right now. It's just opening statement. I didn't know what
3 a Slim Jim or a Slim Jack was. They were not
4 self-explanatory letters, and I don't think it's worth the
5 time right now to go through them.

6 So I need to deal with this juror issue. Do you
7 each want to pick one person to deal with this?

8 MR. LANIER: I will, your Honor.

9 THE COURT: Okay, so why don't we bring her in,
10 please.

11 MR. LANIER: And while she's coming, your Honor,
12 before we put on Mr. Franklin, there are several
13 housekeeping matters we need to deal with, but we can do
14 that whenever you want to during the break.

15 THE COURT: Okay. This is about the first
16 witness. Let's bring her in and let's go.

17 (Side-bar conference with juror.)
18 (Juror dismissed.)

19 THE COURT: You're going first? Do you need the
20 podium?

21 MR. LANIER: No, your Honor. With the Court's
22 permission, I'll just stand right there. I've turned the
23 microphone around.

24 THE COURT: What about the charts? Where are you
25 putting them?

7

1 MR. LANIER: Your Honor, I don't have any.

2 THE COURT: You don't have any, okay.

3 MR. LANIER: No. I'm not going to use any
4 PowerPoints. I'm not going to use any charts. I've got a
5 couple of documents. Half of them are now gone, but the
6 others I'll just use on the Elmo, if I could speak from
7 there.

8 THE COURT: Yes, okay.

9 MR. OHLEMEYER: My plan, your Honor, was to put an
10 easel over there and then one here.

11 THE COURT: Okay, yes.
12 (Jury enters the courtroom.)

13 THE COURT: Good morning. I want to thank you all
14 for coming on time, and as I've said I would, I want to ask
15 you all, did you speak about the case with anyone or see
16 anything in the press about it? I find the jury has
17 complied.

18 Now, you may notice that one of the chairs is
19 empty. One of the jurors told us she had trouble
20 understanding English, and she asked to be excused, which I
21 have done. So because there are some very complicated
22 concepts here, that was agreed upon. So at some point maybe
23 the two of you will move down, if you want to, so we can
24 just have one solid core here. That's great.

25 All right, so now we're going to hear the opening

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1 statements. You all have notebooks, and essentially, if you
2 take notes, remember this is not evidence. And each one
3 will take an hour. It's 9:15. At about 10:10, if he's not
4 done, I'll give a five-minute warning, then the hook, okay,
5 and then we'll do that for the next one, and then we'll have
6 our break afterwards.

7 OPENING STATEMENT BY MR. LANIER:

8 MR. LANIER: May it please the Court, good
9 morning, ladies and gentlemen. My name is Mark Lanier.
10 It's my honor today and throughout this trial to some
11 degree, at least, to be able to represent Regina Bulger.

12 Regina, would you stand up so they know who you
13 are, please. She's that sweet little ten-year-old right
14 there, who's just finished fourth grade and is starting
15 fifth grade in the fall. She's in the summer. She's lives
16 with her grandmother, Grandma Pat. Would you stand up,
17 please, and let them know who you are. And they won't be
18 here for very much of the trial. In fact, I'm going to ask
19 them to leave, if you don't mind, at this point now that the
20 jury has seen you, and thank you all for coming down here
21 this morning.

22 You'll get to know more about them and you'll get
23 to know more about why they leave as -- this gentleman who's
24 standing up now is Dr. David Egilman. He teaches at Brown
25 and is a doctor nearby, and is the legal representative for

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1 purposes of this lawsuit of the young lady that you've just
2 seen, Regina. Thank you, Dr. Egilman.

3 This is a simple case, but it's a very serious
4 case. It's a very serious case because it involves some
5 delicate issues, but it involves some important policy
6 issues as well. And those at this point, eight of you --
7 no, nine of you, one, two, three, four, five, six, seven,
8 eight, nine of you that are left on this jury at this point
9 are actually doing something that's extremely important as
10 you make your way through this case. And what I get to do
11 over the next 57 minutes at this point before I get the hook
12 is, I get to tell you what I anticipate the evidence is
13 going to be.

14 It's a case that evolves ultimately around that
15 young girl from here on out, but she's not the main
16 character in the past part of the story. The past part of
17 this story involves her mother, Susan Bulger. Susan
18 committed suicide, and it will be five years ago next week
19 on August 4. Regina and her father, Ron, Sr., are who found
20 the mom dangling at the end of a wire in the basement.

21 It's a tough, tough thing when you're dealing with
22 suicide. Suicide is not a simple matter. And we're going
23 to have to probe in this case, what is it that allows a
24 person to kill themselves? It's not something that's common
25 in the United States. Oh, it happens, and I think most of

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1 us, the older we get, we can find where we've brushed up
2 with awareness of it somewhere in our life, but what is it
3 that happens?
4 You know, the way we're made, the doctors will
5 explain, we've got within us kind of a wall of
6 self-preservation. There's this will that says, "I don't
7 want to stick my hand in fire. You know, it's going to
8 burn, it's going to hurt. I don't want to do damage and
9 destruction to my body."
10 Now, some people have, some doctors call it the
11 will to live. Some people have a really strong will to
12 live. You probably heard stories about people the doctors
13 thought were going to die in the hospital, but they just
14 seemed to hang on. And doctors might say they have a strong
15 will to live or they need to let go or something like that,
16 but there is this wall of self-preservation that we have.
17 And I think the evidence is going to indicate some people
18 have a bigger wall than others, some people have a really
19 strong will to live. Some folks, their will to live is not
20 as strong. Some people have a very low wall, and those
21 people are people who are susceptible to, in danger of
22 something that might hurt themselves, some type of a
23 suicide.
24 The evidence in this case is going to show you
25 that Susan Bulger, Regina's mom, had a very low wall. She

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1 had a very, very tough life. She had a tough childhood.
2 She grew up in an abusive home. Her parents abused her
3 verbally. They may have abused her physically. I don't
4 know. But early in her life she got hooked up with a fellow
5 named Ron Bulger. He wasn't the kind of guy that most
6 parents want their daughters to hook up with, a tough
7 husband. And so she's in a marriage where her husband is a
8 drug user. He used illegal drugs, cocaine, heroin, a number
9 of different illegal drugs.
10 Susan Bulger herself lived a very tough life, did
11 many of the same things as her husband. She found herself
12 addicted at one point in life to cocaine. She found herself
13 addicted at one point in life to heroin. She tried to,
14 maybe -- I mean, this is some degree of speculation, but she
15 clearly tried to at least hurt herself and gain attention,
16 if not actually try to commit suicide, multiple times in her
17 life from a very early age, four, five, six times maybe,
18 depending on how you take certain events.
19 She and her husband Ron, they had a son, Ron, Jr.,
20 and you'll hear about Ron, Jr. Ron, Jr. is now in his early
21 twenties. I don't have him down here. You'll understand
22 why more and more as we go through the trial. You'll
23 understand my concern, and what you're going to hear my
24 evidence point to is what we need to do for this young lady
25 and not really for the husband --

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1 MR. OHLEMEYER: Objection, your Honor.
2 THE COURT: Overruled.
3 MR. LANIER: Not for the husband, and not even for
4 Ron, Jr., the older brother. So the evidence is going to be
5 targeted around the young lady, around Regina, and what I
6 believe have been her damages and what we need to do to take
7 care of her and keep her on a road to a good life that she's
8 on right now.
9 As we look at this, though, you're going to see
10 that the mom, Susan, and the dad, Ron, Sr., they had a son,
11 this older brother. Susan tried hard to be a good mom. I'm
12 sure Ron, Sr. tried hard to be a good dad. There were
13 limits to how good they were. They were young for that
14 child, and they had struggles. They lost custody of the
15 child for a while because of the drug abuse in their home.
16 It's a sad situation to sit and learn from. If
17 you take that social sadness, add to it -- let me add
18 another layer now. There's not just social sadness in her
19 life. There are lots of other physical problems she had.
20 Susan Bulger, the mom, had rheumatoid arthritis, painful
21 advanced rheumatoid arthritis. She had fifteen, sixteen,
22 seventeen surgeries in her life. She lost all but four of
23 her teeth. She had just had an elbow surgery within a few
24 years of her suicide. She had aches and pains that required
25 her to be on more medicines, I'd almost say more than Pfizer

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1 makes, but that's not true. I mean, just lots of medicines.
2 I could give you big charts with 80 gazillion types of
3 medicines she'd been on all of her life.
4 At the time she committed suicide, she's on maybe
5 five or six medicines, but over her life she'd been on a ton
6 of them to try and deal with the pain. She was on methadone
7 at the time of her suicide simply for pain relief. I think
8 she was out of tablets at the time, so she was clearly
9 hurting actually.
10 But this is a woman who had physical pain. She
11 had emotional difficulties from childhood. This is a woman
12 who had a tough marriage. She'd been talking to some people
13 about leaving her husband. But she had a bright spot in her
14 life, and the bright spot was that little girl she named
15 Regina. It's Latin for "queen."
16 I think the evidence is going to show you that in
17 some way, with the pregnancy of Regina, Susan Bulger tried
18 to turn her life around. She went onto methadone and some
19 other drugs while she was pregnant so she wouldn't be using
20 heroin. She did what she could do to try and make sure she
21 didn't lose this child the way she'd lost her son. You
22 don't -- you know, there's the old expression, "You don't
23 turn a battle ship on a dime." Well, you don't turn your
24 life around generally -- I know historically there have been
25 a few roads to Damascus, but you don't generally turn a life

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1 around on a dime. But you'll clearly see that there were
2 efforts made. There weren't suicide attempts anymore.
3 There weren't issues of abject drug usage, illegal drugs,
4 cocaine, heroin, that kind of stuff.

5 You've got a woman who's trying to do her best
6 who's a good mother to the child, who loves the child. And
7 my hope will be the Judge will let us put Regina on the
8 stand, and you'll get to see what a wonderful young lady she
9 is. And that's going to be your task. The stand is back
10 here in the courtroom. I pointed the wrong way. But you'll
11 get to judge that credibility, and I want you to. I want
12 you to hear from her, and I want you to see what kind of
13 girl you sit in judgment on.

14 And that's the kind of evidence that we've got, so
15 what happens? Why are we here? Suicide is an unfortunate
16 thing, but you can rightly say to me, "Lanier, what does
17 that have to do with Pfizer? It sounds like it's got to do
18 with everything unfortunate in this woman's life, but how
19 does Pfizer enter into the picture?"

20 Let me explain that to you. You're not asked as
21 jurors to decide what the cause was of Susan Bulger's
22 suicide. The issue that you're going to have before you is
23 whether or not the conduct from Pfizer and its predecessor
24 company, conduct was outside the boundaries of what's right
25 and wrong based on what the Court tells you. You make that

15

1 decision, and then you decide whether or not it was a
2 significant contributing cause.

3 There's a difference between something being the
4 cause and a significant contributing cause. If you're
5 baking bread even, you know, it rises in the oven --

6 MR. OHLEMEYER: Your Honor --

7 THE COURT: Overruled.

8 MR. LANIER: -- it rises in the oven because of
9 yeast, but it needs more than just the yeast. It needs the
10 moisture and the food for the yeast. There are contributing
11 causes beyond just one sole cause in many events in life.
12 And so you'll hear the evidence and a chance to decide
13 whether or not this drug was a significant contributing
14 cause. And when you start reading that evidence or hearing
15 the evidence -- you'll get to read it because there are
16 documents, as well as hear it from the witnesses, and maybe
17 from some videotapes that might play of witnesses that are
18 unavailable -- you're going to hear an interesting, sordid
19 tale.

20 I've told you a sordid tale about the Bulger life.
21 Let me tell you the tale as it stems from this drug. It's
22 the drug Neurontin. Some of you may have some familiarity
23 with it, some of you may not, but it's a fascinating story.
24 The story starts with a drug company called Parke-Davis,
25 which is actually the oldest pharmaceutical company in

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1 America. It was started in the 1800s right after the Civil
2 War. But Parke-Davis at the time that we're interested in
3 is owned by Warner-Lambert, Warner-Lambert, the makers of
4 things like Listerine and other things like that.
5 Warner-Lambert buys Parke-Davis in 1970, I believe. And so
6 Warner-Lambert is the company.

7 Now, in this case we're suing Pfizer because in
8 the year 1999, effective, I think, January 1 of 2000, Pfizer
9 bought Warner-Lambert and bought the right to Parke-Davis.
10 So all of the issues that were part of Warner-Lambert are
11 now going to be part of Pfizer, and we'll look at that. And
12 Pfizer, I think the Court will tell you, will ultimately
13 have the responsibility for the actions before as well as
14 the actions after that merger, and we'll look at both of
15 them seamlessly. I sometimes will refer to it as Pfizer.
16 That's just my shorthand way of not getting us all jumbled
17 up, but I'll try to be as deliberate and careful as I can.
18 It doesn't really make a legal difference, I guess is what
19 I'm driving at.

20 So you've got a company called Parke-Davis, a
21 division of Warner-Lambert. They discover a drug in the
22 early '90s that they call Neurontin. It's got a plain
23 scientific name called gabapentin. And if you buy now a
24 generic version, for example, the pharmacist will sell you
25 gabapentin, and you'll save some bucks. But Neurontin was

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1 the real name, and for the first, oh, ten years or so the
2 drug was sold there were no generics, so it was really just
3 Neurontin. As long as the patent existed on the drug,
4 nobody could make a generic.

5 And so you've got Neurontin. And before a company
6 can start selling a drug they invent, the company has to go
7 to the Food and Drug Administration, the FDA. They have to
8 say, "FDA, we'd like to sell this drug," and the FDA says,
9 "Well, show us what you want to do." And there's an
10 elaborate, six-, seven-, eight-, ten-year process of
11 shepherding a drug through the FDA. And what the company
12 has to do is say, "Here's what the drug is." You walk
13 through animal testing, and then you walk through human
14 testing, and ultimately the FDA will either approve the drug
15 and approve it for certain uses, the label, or the FDA won't
16 approve the drug.

17 Now, the FDA might say, "We'll approve the drug,
18 but you'd like the drug to work for all four of these
19 things. We're only going to say it's approved for one."
20 It's all a question of what the FDA chooses to do.

21 The FDA did an evaluation of this drug, and as the
22 FDA did an evaluation of the drug, they said, ultimately,
23 "We're going to approve the drug, but we're going to approve
24 the drug as a second-line epileptic drug." A second line,
25 what does that mean? It means doctors shouldn't use it as

<p style="text-align: right;">18</p> <p>1 the primary drug. It shouldn't be the first go-to drug 2 because it doesn't seem to work as well as the other drugs 3 on the market for epilepsy. But there may be circumstances 4 where the better-working drug doesn't work for a particular 5 individual, and in that situation, or maybe the best working 6 drug would work better in tandem with Neurontin, it's a 7 second-line drug. It's a drug that can work along with, and 8 it's approved for that in the epileptic market for epilepsy, 9 for the convulsant type of seizures, a certain kind that are 10 epileptic seizures. That's how the drug was approved. 11 Before the actual approval goes out, the FDA 12 submits -- and you're going to get a lot of exhibits. I 13 don't have many to show you during my opening because I want 14 you to focus on the story. The documents you'll get from 15 the witnesses, and we'll go through the documents in great 16 detail. I think the documents are critically important. 17 The problem is, anytime someone starts to show you a 18 document in the opening, you don't get the whole thing. You 19 get the snippets. See, I'm going to show you some snippets 20 from this document, and ultimately you need the whole 21 document, you need witnesses so you can find out what's on 22 the pages I didn't show you to see if I was being fair and 23 up front about it. So I'm careful about using documents 24 with you, but I do want to show you a couple of snippets 25 from this document.</p>	<p style="text-align: right;">20</p> <p>1 The snippets I want to show you from the review by 2 McCormack that was originally received January 31 of 1992, 3 the snippets that I want to show you deal with the issue of 4 suicide. Ultimately the question becomes, one of the 5 questions you've got to deal with is, does Lanier have any 6 evidence that Pfizer had a warning or had reason to warn, or 7 reason to study, or reason to investigate, any reason at all 8 they might suspect this drug could have problems related to 9 suicide? And so we look at this document, and we're going 10 to see -- let's see if I can figure out how to make it a 11 little bigger. These are a summary of the serious adverse 12 events that occurred in the gabapentin, which is Neurontin, 13 treated patients. These are ones that are considered 14 possibly or probably drug-related by the investigator. 15 So they want to look and see what they are. They 16 separated them out. There's a category of "neurological." 17 That's the epilepsy itself. Maybe this causes epilepsy or 18 enhances it. They want to know. 19 They look, though, at an area called 20 "psychiatric." Psychiatric means -- well, this is the area 21 we want to go to to question the issue of depression and 22 suicide and things like that. You'll see that they've got 23 the number of each patient. They're going to have the age 24 and the gender, the dosage the patient is on and how long 25 the patient was on the drugs. They break all of that out.</p>
<p style="text-align: right;">19</p> <p>1 MR. LANIER: Your Honor, with your permission, if 2 I could use the Elmo? 3 THE COURT: Yes. Now, for those of you sitting in 4 the back row, pull up -- it's like an airline tray table 5 right in between there. Pull it up. You all get screens. 6 This is a high-tech courtroom. Pull it all up. And you'll 7 be using these a lot. I think for the public, is it working 8 back there? 9 MR. LANIER: Yes, your Honor, this screen is on. 10 THE COURT: That screen is on? Good, so everyone 11 can see? 12 MR. LANIER: Now, let's see if it's working. 13 We'll ask it this way by putting something up. 14 THE COURT: Is everyone seeing? Yes, all right. 15 MR. LANIER: So, for example, this is a document 16 that -- 17 THE COURT: I just want to make sure, everybody's 18 screen is up? Good, all right. 19 MR. LANIER: This document you'll see is from the 20 Division of Neuropharmacological Drug Products. This is a 21 combined review that deals with the medical and the 22 statistical materials that Pfizer gave the FDA. It deals 23 with NDA, that means a new drug application, and it gives 24 it. It's that drug Neurontin which has the name gabapentin. 25 You're able to see that, I hope.</p>	<p style="text-align: right;">21</p> <p>1 But then they give information about the event. 2 And so if we go over to the events, you'll see 3 that there was this one person who was depressed and 4 attempted suicide. You'll see here's another person who was 5 depressed. The depression resolved when they reduced the 6 dose. 7 This was not treatment-emergent because they want 8 to note that the plaintiff had had depression in the past, 9 so this wasn't the first time this patient was depressed. 10 That's important. You don't know if the drug is causing it, 11 or if the drug is bringing it back out, or if it's just 12 there and the drug is a coincidence. 13 There's another person who was depressed with 14 suicide ideation. That means they actually thought about 15 killing themselves. They improved on tapering. That means 16 as the drug was being removed from their system, they got 17 better. And they didn't have -- or the DC, and 18 discontinuation. So their condition improved, but then the 19 depression with suicide ideation recurred on rechallenge. 20 What that means is, you've got this person. They're taking 21 the drug. They're depressed. They've got suicide ideation. 22 They're thinking about suicide. The doctor tapers them off 23 the drug, and as he does so, it goes away. And then he puts 24 them back on the drug, and it comes back. 25 You're going to hear evidence from some people</p>

22

1 that that is an absolute key test and a huge warning sign
2 that the literature even writes up because it's very serious
3 when you have someone having a reaction they've never had
4 before when they're on the drug. They take them off the
5 drug; the reaction leaves. They put them back on the drug;
6 the reaction comes back. They've got folks who tried to
7 drug overdose. They've got people with depression and
8 attempted suicide. They've got drug overdose. All of this
9 is happening before the drug has ever been approved.

10 Pfizer -- well, Warner-Lambert is what they were
11 called at the time -- gets this information to the FDA
12 because they're required under law to submit the NDA, the
13 new drug application. It's reams and reams and hundreds of
14 boxes' worth of material. They give all of this to the FDA,
15 and the FDA works through it.

16 The FDA ultimately has what they call a section in
17 here entitled "Discussion of selected serious safety
18 findings." Discussion of selected serious safety findings,
19 and these are certain adverse events that emerged as both
20 serious and frequent. So we've got serious and we've got
21 frequent adverse events. Due to the nature of the reporting
22 process, it was initially difficult to determine the
23 magnitude of these; therefore, how much of a safety issue
24 they represent. These include, the serious and frequent
25 ones include seizures and status, depression/suicide/

23

1 overdose, and cancers. And so the medical statistical
2 analysis by the FDA gives us this indication, gives it out
3 and gives it out early before the drug was even approved.

4 As we continue, they actually break out those
5 serious events in sections. So there is a section for the
6 depression, the suicide ideation, which is idea, thinking
7 about or contemplating, and the actual attempted suicide.

8 It says, in the total exposed population -- that means out
9 of everybody who's taken this drug in the study group -- 78
10 of them, over 5 percent, 5.3 percent to be precise, of the
11 patients reported depression as an adverse event. This
12 included one subject in a phase one study. There were seven
13 reports of depression as serious adverse events, and nine
14 patients who withdrew from the study because of depression.

15 Now, they also go on to say that there may be some
16 underrepresentation of certain categories. It may not have
17 as many people as there actually were. It goes on. For
18 example, in some cases depression was reported as a serious
19 adverse event, particularly if it resulted in
20 hospitalization or was associated with suicide. You know,
21 you go to the hospital because you're that depressed, they
22 reported it, or suicide ideation.

23 But, however, numerous examples were identified
24 among the CRFs -- those are the case reports -- where a
25 patient developed treatment-emergent depression. That means

24

1 depression that was oncoming after they started taking the
2 drug where pharmacological intervention was required, drug
3 intervention, and a report of a serious adverse event was
4 not made. In other words, we got 5.3 percent suffering this
5 problem, but there may even be more.

6 If you get to the conclusions section of this
7 document as you work through it, or working toward the
8 conclusions -- you'll see it on Page 117. It's where the
9 section is on the drug. It's conclusions for the toxic
10 issues. It says it doesn't look like it's got hepatic --
11 that's blood -- or bone marrow toxicity. In other words,
12 it's not going to kill your bones or your bone marrow.

13 It says, "Less common but more serious events may
14 limit the drug's widespread usefulness." Now, these words
15 are critical in this case. One of these is, "Seizures may
16 become worse." It's what you're giving it for. A second is
17 malignancies. But look at the third.

18 A third is that "Depression, while it might not be
19 an infrequent occurrence in the epileptic population --" in
20 other words, epileptics probably are depressed anyway to
21 some degree "-- but it may become worse, and it may require
22 intervention, and it may lead to suicide, as it has resulted
23 in some suicide attempts."

24 So this is the information that the drug company
25 has that's issued by the FDA's review of their product back

25

1 in 1992 before it's ever approved. What does the FDA do?
2 Oh, they approved the product for epilepsy as a second-line
3 treatment. That's the key. They issue -- and they say,
4 "Okay, look, guys --" and it makes sense. You'll hear the
5 evidence about this. Epilepsy is a tough situation. There
6 are not a lot of good drugs out there for epileptics, so the
7 FDA is always tending to approve drugs that -- I think that
8 you'll see that they will approve a drug more readily if
9 there's a limited usefulness and there's not a lot of drug
10 availability. So, yes, they approved this drug. And
11 they've got all the standard language that it's safe and
12 appropriate for approved uses, blah-blah-blah, within the
13 caveats or the warnings or the exceptions that are provided.

14 What happens from here? Neurontin is approved for
15 epilepsy. Warner-Lambert does an internal study trying to
16 figure out how much money they're going to make off this
17 drug. So they do their market analysis, how big is the
18 market for epilepsy, and how much do you think we can make?
19 And they figure that they're looking at making maybe
20 \$50 million a year, maybe not; maybe not that much, maybe a
21 little more. I think that sounds like a lot of money to us.
22 If you take fifty of us, that gets us each \$1 million, you
23 know, \$50 million. But in the world of drugs, that's not a
24 big one. It's not what they call a blockbuster. You've got
25 to top the billion-dollar mark for a blockbuster.

26

1 I'd love to show you the difference in stacks of
2 money between \$50 million and a billion because it's a huge
3 difference. Okay, we just think in terms of the words and
4 they both sound like a lot of money, but, I mean, it's the
5 difference between a -- it's big. Do the math and you'll
6 just start -- it's lots of millions. It's a thousand
7 millions instead of fifty. It's the difference between
8 having \$50 and \$1,000.

9 They have a market of \$50 million, so they start
10 trying to figure out what they can do to expand the market.
11 The drug company makes a conscious decision to do something
12 that is illegal. The law says the drug company can only
13 market the drug for its approved purposes. That law doesn't
14 apply to doctors. Doctors can write prescriptions all the
15 time for whatever the doctor thinks is appropriate, but the
16 drug company can't go out there and market and sell the drug
17 for what's called "off-label." Important words, if you
18 don't mind me just writing them down for a minute.
19 "Off-label." Off-label marketing is "illegal."

20 Now, that may seem oversimplistic, and I'm not
21 trying to turn this into law school, but it's illegal. You
22 can't do it. The drug companies can't do it, and they know
23 it.

24 The thing is, the drug company figures out there's
25 a world of people paying big dollars for drugs for things

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1 that Neurontin has not been approved for, but Neurontin
2 falls into this class of drugs called antiepileptic drugs,
3 AED. Anti, against, epileptic, epilepsy, drugs. And some
4 doctors have used antiepileptic drugs before to help people
5 with pain. Well, that would be huge. The pain market is
6 big.

7 So what the drug company starts doing is making a
8 deliberate effort to illegally market this drug off-label.
9 I don't know what it is in your life, there's got to be
10 something in your life that relates this way to you. The
11 picture I always get in my brain is from cartoons growing
12 up. When I grew up, you remember we had the Bugs Bunny --
13 some of you may be too young to remember that -- but the
14 Bugs Bunny cartoons and all of that? Have you ever seen the
15 cartoon where they have the snowball that starts at the top
16 of the hill and it starts rolling down, and as it gathers
17 momentum, it just gets bigger and bigger; and then, you
18 know, you've got arms and legs of people in the way flying
19 out and all, and it's gets on down the hill.

20 What the drug company does is makes a
21 conscientious decision to market this off-label in a way
22 where it takes on a life of its own, and it becomes a
23 massive growing snowball that nothing really is going to get
24 in the way and stop. They enter into an elaborate
25 programmed plan to deliberately get doctors and people

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1 thinking that this drug is the wonder drug that will cure
2 anything that ails you. There's actually a joke that's made
3 by the drug company bosses telling their salespeople to go
4 out and sell the drug for a myriad of diseases. You know,
5 we saw that it looks like it may cause depression, you saw
6 that in the document. They got their salespeople out
7 telling the doctors it's a cure for depression. It may
8 cause different -- they've got them out there telling them
9 it works for -- "Oh, write it for this, that." In fact, the
10 drug company executives themselves say, "When you show this
11 next slide to the doctors as you're selling them on it,
12 you've got to warn them ahead of time, 'Hey, this looks like
13 a snake oil salesman approach,' off of the old snake oil
14 salesmen, you know, that had the snake oil that was a cure
15 for everything. They said, "Warn them. Otherwise, the
16 doctors when they see that we're claiming it might cure all
17 these things, they'll laugh you out of the room. But if you
18 warn them ahead of time and say, 'Hey, I look like a snake
19 oil salesman when I show you this next slide, but it's the
20 truth,' they won't laugh you out of the room."

21 Our first witness is a fellow named David
22 Franklin, and we'll start him with the Court's permission
23 before today is over, but it will take through tomorrow to
24 finish him up with all the questions that we've got and that
25 they've got. David Franklin is an interesting fellow. He

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1 graduated with an undergraduate degree in microbiology from
2 the University of Rhode Island. Then he gets his Ph.D. from
3 there, and he's working at Dana Farber as a cancer
4 researcher and doing cancer work over at Dana Farber.

5 He gets a job going to work for the drug company.
6 When he gets the job, he's being told -- now, he's not a
7 medical doctor. You'll hear all about this. He's just a
8 Ph.D. He doesn't wear a stethoscope, he can't write
9 prescriptions, but gets hired at triple his former salary so
10 that on behalf of the drug company he can go into the
11 doctors' offices where he's introduced as a doctor, never
12 being told, well, not really a medical doctor. And he sits
13 there and he's trained to teach these doctors and convince
14 these doctors to write prescriptions for Neurontin for
15 off-label reasons, to write prescriptions for Neurontin to
16 cure ADD in children, to write prescriptions for Neurontin
17 to do all sorts of different things. I'll ask him; you'll
18 get to hear him.

19 He'll tell you that that wasn't the only thing;
20 that the drug company also told him to go out there and to
21 convince the doctors to write what's called megadosing. You
22 see, it's not enough that the drug company is going to try
23 and expand their profit margins by selling it off-label.
24 The FDA only approves it in dosages up to, I think at the
25 time it was 1,800 milligrams, but the salespeople are told

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1 to go out there and to convince the doctors that they can do
2 not 1,800. "Give them 21, give them 25, give them 28, give
3 them 31, give them 4,000, give them 4,800 a day, more and
4 more and more pills. Get it up as high as you can."
5 There's a joking memo about one woman who's on the
6 drug who winds up trying to commit suicide, and she's taken
7 hundreds of them to try and do it, and the joke within the
8 drug company was, "That was the world's most expensive
9 suicide attempt." But they're pushing this drug in ways
10 outside the label and at dosages not approved.
11 Now, there are some restrictions on how they can
12 do this and what they can do with the doctors. You, for
13 example, if you're a drug company are not allowed to pay a
14 doctor to write a prescription, and aren't we glad?
15 Wouldn't you hate -- golden rule, excuse me, your Honor.
16 It's a good thing that drug companies don't have the power
17 to pay doctors behind our back to write prescriptions for
18 us. That's an important public health policy. But the drug
19 company found what they thought was a way around that. They
20 would go to the doctors, and they would say, "Doctor, I
21 can't pay you to write a prescription, but I'll tell you
22 what I can do. If you'll let me watch you write the
23 prescription, we'll say that I'm learning from you. I'm
24 learning how you sign your name. I'm learning how you write
25 a prescription. And I can pay you 350 bucks if you'll let

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1 me do that, watch you write the prescription. Be clear, I'm
2 not paying you for writing it. I'm paying for the honor of
3 learning how you do it."
4 Or, "Hey, Doctor, would you like to be a paid
5 consultant for our drug company? Here's what we're doing.
6 We're going to have a phone conference coming up, and you
7 can participate as a paid consultant. We'll pay you 750
8 bucks to be in on this phone conference. Now, if you want
9 to do it, though, the people on the conference are
10 consultants, and what that means is, you need to write a
11 couple of Neurontin prescriptions so that on the phone
12 conference you can say that 'Hey, I've written some
13 prescriptions,' and tell whether or not they're doing any
14 good. We'll pay you money to do that."
15 And then the drug company goes to these doctors.
16 Now, they're not doing this to every doctor. The drug
17 company has the information that enables them to know which
18 doctors are writing the biggest number of prescriptions for
19 pain, for depression, for all the different things they're
20 looking for. And they find those doctors, they target those
21 doctors, and then they monitor through the record service
22 that they have how many prescriptions that doctor is writing
23 for Neurontin versus other drugs. And so they keep very
24 clear tabs, and they target specific doctors.
25 Oh, they'll go to the doctors and say, "Doctors,

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1 we cannot pay you to write a prescription for Neurontin, but
2 would you like to come to a seminar? It will be an
3 all-expense-paid trip for you and your family." Let's say
4 the Olympics were in Atlanta in 1996. "Why don't you come
5 down to Atlanta. We'll get you into some Olympic games.
6 You can stay at the Chateau Elan," which is this wonderful
7 spa resort. I mean, it looks like a castle. "You can have
8 all the massages you want. Don't pay for a thing. Just
9 write 'Parke-Davis' on the ticket. We'll pick up the tab.
10 And then what you'll need to do is to sit in to an hour or
11 two or three of doctors' presentations on how wonderful the
12 drug Neurontin is for reasons it's never been approved for
13 off-label."
14 I've got a list of things they did. I hadn't
15 covered half of it. You're going to hear this from David
16 Franklin. It's the effort to get that snowball rolling down
17 the hill with some momentum.
18 Oh, here's one. Doctors listen to other doctors
19 to get ideas on medicines, so the sales force was trained to
20 go to one doctor and to say, you know, "Can I get you to do
21 it?" And when that doctor does it, then they'd go to the
22 next doctor, almost like a door-to-door book salesman, the
23 same technique, and say, "Hey, Dr. Smith, you know,
24 Dr. Jones down the hall, your buddy, he's writing these
25 Neurontin prescriptions, so excited about it. We want to

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1 give you a chance to get on the bandwagon too." And then
2 they'd go to Dr. McDonald: "Dr. McDonald, Dr. Smith and
3 Jones, you know those two guys, they're doing this, and,
4 man, this is the bandwagon you need." And they'd do this
5 like an intense spiderweb, you know, interweaving of all of
6 the different doctors together.
7 Then that not being enough, they -- doctors not
8 only listen to other doctors, but doctors, some, read the
9 literature. So they're thinking, "How do we get in the
10 literature, the medical journals, information that says our
11 drug is really good in all these areas where the FDA never
12 said it was good? We didn't have enough proof for the FDA
13 to get it approved for any of these areas, but how can we
14 get the doctors to think it's good for them anyway? We need
15 some people to write some articles."
16 So what the drug company did is, they hire a PR
17 firm, and they figure out how to write these articles, and
18 then they go find doctors and they pay doctors to put the
19 doctor's name on the article so it can be published under
20 the doctor's name, with no reference to the PR firm or to
21 the drug company that really authored it. So they're
22 seeding the literature with that.
23 Now, I say seeding. "Seeding" has a buzz word in
24 their industry because they also did what's called a
25 "seeding study," and they called it that internally. Please

<p style="text-align: right;">34</p> <p>1 understand, you're not going to have a lot of documents on 2 this stuff because you will hear David Franklin explain that 3 the people in his job, he was told, "Do not be putting much 4 of this stuff we're doing in writing." As one of the 5 coworkers said, "It just takes one phone call to turn us all 6 in." They're not allowed to leave the slide, the snake oil 7 salesman slide, they're not allowed to leave those 8 presentations with the doctors. They go to seminars where 9 they're taught how to do this, and they're handed tablets, 10 and across the tablets it says "Ladies and gentlemen of the 11 jury" to remind them what kind of trouble the company can 12 get in if people write stuff down. So any note that they 13 would take they would take understanding ultimately a jury 14 may get to see it one day. So a lot of what was done was 15 done by phone, it was done face-to-face. Or there was a 16 time where they were taught how to give a fair and balanced 17 presentation on a videotape. And so the videotape plays, 18 and as the videotape plays, the executives stop the 19 videotape, and they say to everybody, "Okay, now, ignore 20 everything you just heard, and let me tell you how we're 21 going to do it. We were required to show you that." 22 This is what happens, and as it happens -- oh, the 23 seeding study, I got distracted. Excuse me. The seeding 24 study, what they do -- we think of studies, I hope, as the 25 scientist writing and devising a very clear study with</p>	<p style="text-align: right;">36</p> <p>1 put ten, but put some people on Neurontin and keep up with 2 them for a period of time, and we'll pay you for each one of 3 those people in the study. If at the end of the study you 4 decide Neurontin is helping them and you're going to keep 5 them on Neurontin, we'll pay you a bonus." 6 This is what the drug company would consider a 7 study, but it's not a study. That's not a fair, rigorous 8 scientific study. Trust me, nobody signed a consent form 9 saying, "Yes, I'll take this drug knowing I'm a guinea pig 10 by the marketing department to see if they're going to be able 11 to sell more of these drugs by getting the doctors used to 12 writing the prescriptions and the patients used to taking 13 the drugs," but that's what we have. 14 Now, David Franklin figures this out and after 15 four months says "no" and quits. He's what's called a 16 whistleblower. And he went out and he sought legal help, 17 and he brought a complaint against at the time 18 Warner-Lambert. Pfizer buys them in the middle of this 19 mess, and so we can start using the term "Pfizer" now. And 20 ultimately Pfizer is fined and signs a guilty plea. But 21 their fine is 400 and some odd million dollars. Meanwhile, 22 this drug has started selling billions of dollars. Just 23 between the time Pfizer bought the company in 2000 and the 24 time that the drug goes off patent, Pfizer sells \$10 billion 25 of this drug, the drug that has a market of \$50 million.</p>
<p style="text-align: right;">35</p> <p>1 safety parameters. When somebody is in a study for a drug 2 an experimental study, we're supposed to have a full 3 disclosure of what that study is for, and what are the 4 possible consequences, and that we have read it and we 5 understand it and we're agreeing to be the guinea pig. And 6 the scientists are supposed to set it out with very clear 7 standards so that the results can be very clear and can be 8 adequately analyzed and calculated. That's the scientific 9 process that should be producing these drugs to our 10 benefits, or at least produce drugs that might benefit us 11 with a clear and fair warning so that we and our doctors can 12 make an adequate assessment of whether or not we want to 13 gamble and risk taking the drug. 14 No, they've got their marketing people devising 15 some of their studies. The marketing people devised the 16 step study. This is one that they internally called a 17 "seeding study" because it's like sewing seeds hoping for 18 that bumper crop. You know, the seeds off of one ear of 19 corn ought to be able to produce enough to feed a family. 20 They're going to seed, they're going to plant the seeds and 21 just watch it grow. 22 Here's what they did: They'd go find doctors and 23 say, "Doctors, would you like to participate in our step 24 study? You could be one of the doctors. Here's all you 25 need to do. Just put a couple of people, we'd like you to</p>	<p style="text-align: right;">37</p> <p>1 Oh, that market expanded. 2 A couple of the tests that Pfizer did, or 3 Warner-Lambert, showed that the drug might also have some 4 pain relief help for a condition we call "shingles." The 5 doctors call it "postherpetic neuropathy." Neuropathic pain 6 is a pain that's deemed to be part of the nerve system. 7 You're doing the hook at fifteen after? 8 THE COURT: Yes. 9 MR. LANIER: Okay. 10 You're going to hear tons about this at a later 11 time, but I will tell you, I want to take advantage of this 12 format to plug you into one more thing on that issue as I 13 get close to summing up, and that is, there is a whole area 14 of pain that's called "neuropathic pain." I'll abbreviate 15 it as "neuropain," and it even gets that abbreviation in the 16 industry. They'll call it NP sometimes, neuropathic pain. 17 One kind of neuropathic pain carries the 18 abbreviation PHN. It's post, meaning after, herpetic, it 19 comes from herpes because it's the herpes virus of sorts, 20 postherpetic neuropathy, or neuropain. 21 Now, that's one kind of neuropathic pain, and 22 ultimately the drug company is able to get approval for 23 using this drug Neurontin in that one area, that slim part 24 of neuropathic pain, as well as in epilepsy, seizures. Now, 25 that's it. That's all this drug ever gets approved for.</p>

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<p>1 Boy, Pfizer takes it on the road. Look what 2 Pfizer does. This is from Pfizer's 2001 U.S. operating 3 plan. And, again, I'm nervous about showing you an exhibit 4 when you don't get to see the whole thing. I'll tell you 5 why in a minute in more detail, but I can only show you a 6 little bit right now. I'll ask the Court to let this whole 7 exhibit go back into evidence.</p> <p>8 The 2001 U.S. Operating Plan of Neurontin -- this 9 is by Pfizer at this point in time -- if we look on Page 503 10 by the Bates number, your Honor, for the record, here's what 11 we see: The medical strategic plan for Neurontin in 2001 is 12 a neuropathic pain filing. They want to ask the FDA to let 13 them use it for neuropathic pain, but here are the tactics 14 they're going to use. To get it for neuropathic pain, 15 they're going to develop a relationship with the American 16 Pain Society. They're going to publish and present new data 17 at key pain congresses. They're going to have a so-called 18 independent group working. They're going to develop and 19 publish diagnostic tools. They're going to do things that 20 try to push this drug for the whole neuropathic pain 21 category, not simply folks suffering from shingles.</p> <p>22 And the drug company continues to do it. They 23 continue to sell this to people who never had epilepsy, who 24 never had shingles. That's the minor part of their market. 25 The major part of the market is all this other stuff. They</p>	<p>1 no, the FDA, they were a bit dim-witted on that. They 2 didn't realize that these two drugs seemed to be the bad 3 guys and that we are innocent because ours wasn't." No, 4 we'll sort through all of that. That's why we don't put 5 documents up on a select basis. You've got to read the 6 whole document, and I'll put them in front of you, and we'll 7 sort through them with witnesses, but beware of anyone who 8 says that --</p> <p>9 MR. OHLEMEYER: I object to this, your Honor. 10 It's not proper. It's argument.</p> <p>11 THE COURT: Overruled. You have about five, seven 12 minutes.</p> <p>13 MR. LANIER: Thank you, Judge.</p> <p>14 And so Neurontin now, now, after the drug is off 15 patent, now that most people can buy it as gabapentin and 16 buy it outside, after they've made all of the big money that 17 they're going to make on the drug, now the label is changed. 18 And now Pfizer, now Pfizer, 2009, tells people that, "By the 19 way, we still don't know how the drug works," and they 20 don't, just seems to, but under "Warnings," their first very 21 big warning is "suicidal behavior and ideation." They said, 22 "Antiepileptic drugs, including Neurontin, increase the risk 23 of suicidal thoughts or behavior in patients taking these 24 drugs for any indication." 25 That warning should have been on there before.</p>
39	41
<p>1 make a lot of money; they do a lot of damage. I think we're 2 going to get into evidence some information where the FDA 3 continued to monitor some things, and we'll be able to show 4 you that Pfizer themselves are guilty of marketing it 5 off-label illegally.</p> <p>6 MR. OHLEMEYER: Objection, your Honor. There will 7 be no evidence of that.</p> <p>8 THE COURT: As I said, this is not a substitute 9 for evidence.</p> <p>10 MR. LANIER: And the Judge will throw me in jail 11 if I say it's evidence because it's not. I think that's 12 what the evidence will show. I think that's what you'll 13 see. You hold me accountable. You can write it down. If I 14 can't show it, I can't show it, but I think you'll see the 15 evidence of it.</p> <p>16 I think ultimately you're going to see the FDA 17 finally catches up and figures out what's going on because 18 the FDA finally reports, the FDA finally says, "All of these 19 antiepileptic drugs, these eleven that we looked at, all of 20 these seem to have some effect on depression and suicide 21 ideation and suicide." And the FDA ultimately will say, 22 "Antiepileptic drugs are associated with increased risk of 23 suicidality. The effect appears consistent among the group 24 of eleven drugs." 25 Oh, they're going to come in and say, "No, no, no,</p>	<p>1 You'll hear the doctors that wrote these prescriptions. 2 They had no idea. This was not being told. This is not 3 what's being published. This is not the insight and 4 information people are getting. It's not at all.</p> <p>5 So as you listen to me try and present this 6 evidence, you've got to integrate it with what you're going 7 to be hearing from these drug company lawyers because 8 they've got their perspective that they want to give you. I 9 think what you're going to hear and what I want you to sort 10 through is evidence that tries to put all of the blame on 11 this on Susan Bulger.</p> <p>12 I suspect you're not going to hear them accept one 13 ounce of responsibility. I suspect they're going to say, 14 "Hey, this woman was --" and they'll do it politely. They 15 won't say "loser," but they're going to say this woman had, 16 you know, such a horrible life, she was -- I'll tell you 17 what. Every time they point out something bad about Susan 18 Bulger or a difficulty in her life, what that tells me is, 19 this is the last person in the world who ought to be on a 20 drug that increases suicide ideation. This is the last 21 person in the world, especially, especially if one of the 22 reasons her doctor is prescribing it is for depression. 23 Mood disorder, affective mood disorder, that's one of the 24 reasons the doctor is giving her the drug. He's hoping this 25 drug will help treat the depression. Little does he know</p>

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1 he's been beguiled by this world, and the drug is not going
2 to help treat the depression; it's going to make it worse.
3 If the truth had been in the label, if the label
4 had said what it should have said back when Susan Bulger was
5 taking it, the doctor would not have said, "Hey, you're
6 depressed. I understand from this massive snowball rolling
7 down the hill that Neurontin is good for depression. Let me
8 give you some Neurontin. It will help." Instead maybe he'd
9 have given her some drugs that would have helped. I don't
10 know, but he shouldn't be adding fuel to the fire. She's
11 the last person in the world that ought to be taking this
12 drug.
13 I think you'll hear from the defense side that the
14 FDA approved the drug, so it must be safe. Well, they've
15 got -- and I almost brought a deck of cards, but I didn't
16 decide to use it, but if I took a deck of cards right here,
17 and I held up the 3 of diamonds, and you look at it and say,
18 "Hey, that's a diamond, isn't it?" and I put it down, and I
19 held up the jack of diamonds and said, "That's a jack of
20 diamonds," and then I set the whole deck of cards aside and
21 I said, "Well, now we know that deck is full of diamonds,
22 nothing else," you would laugh me out of the courtroom and
23 say, "Lanier, give me a break. You just showed us two of
24 the cards."
25 What they're going to do is parade certain

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1 studies -- it's like parading certain pages of exhibits and
2 leaving out other pages -- they're going to parade certain
3 studies in front of you that all seem to show this to be a
4 jack of diamonds drug.
5 THE COURT: You need to finish in about three
6 minutes.
7 MR. LANIER: Okay, thank you, Judge.
8 And all I can say is just hold on and wait because
9 it's my obligation and duty to show you the rest of the deck
10 so that you know what all the cards are on the table, and
11 that's what my job is, and that's what I'll do.
12 So the final thing I have to say in the last two
13 minutes is, when you analyze this, don't ever be persuaded
14 that you're trying to look for the cause of the suicide.
15 The question is, in the great wealth of the world, was this
16 drug a significant contributing cause? Was it a significant
17 contributing cause, not was it the cause? The cause is way
18 too complicated.
19 So those are what I anticipate the trial is going
20 to unfold, both the themes that the parties will have as
21 well as how we're going to approach it. We're going to do
22 it through witnesses. We'll try and do it as quickly as
23 possible. We've got a number of lawyers working on the
24 case, and we'll see how it all shakes out. But we
25 appreciate very much your time and attention, and I look

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1 forward to getting to know you, indirectly, over the next
2 couple of weeks.
3 Thank you, your Honor.
4 THE COURT: Thank you. Why don't we stand up and
5 stretch. You need to set up.
6 MR. OHLEMEYER: Just for a minute, your Honor.
7 Thank you.
8 (Pause.)
9 OPENING STATEMENT BY MR. OHLEMEYER:
10 MR. OHLEMEYER: May it please the Court,
11 counsel --
12 THE COURT: Why don't we wait till everyone -- all
13 set?
14 MR. OHLEMEYER: Thank you, your Honor.
15 THE COURT: I can barely see you surrounded by all
16 those.
17 MR. OHLEMEYER: Snippets.
18 Ten years before Mrs. Bulger died and before she
19 ever took Neurontin, she told her doctors that the disease
20 had made her depressed, that she was always depressed
21 because the disease had taken the life right out of her, a
22 life that had been active but now was one where she just
23 existed with no desire whatsoever, in which she was moody
24 each and every day.
25 THE COURT: A little bit louder.

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1 MR. OHLEMEYER: The evidence you're going to hear
2 in this case, as Mr. Lanier said, is that suicide can be
3 difficult to explain, and at other times it has a sense of
4 inevitability about it, unfortunately. But it's never far
5 from depression, pain, substance abuse, and the things that
6 make a life difficult. And the evidence you'll hear in this
7 case is that Mrs. Bulger had medical conditions that are
8 known causes of suicide, that increased her risk of
9 committing suicide, and actually caused her to attempt
10 suicide before she ever took Neurontin. The Neurontin
11 Mrs. Bulger was taking, you'll hear from the doctors, is
12 actually one of the few things in her life that was not
13 making it more difficult.
14 Now, I agree with Mr. Lanier that the life you're
15 going to hear about is a tragic life, and it raises a
16 question: What caused this woman to commit suicide? What
17 caused Susan Bulger to commit suicide? The plaintiffs say
18 it's Neurontin, and that's what they've alleged, and that's
19 what they believe. But beliefs and allegations aren't
20 evidence, and the evidence you're going to hear from the
21 witnesses who testify will have to prove those beliefs,
22 because at the end of the day, we're going to have to try to
23 answer my question, what caused Mrs. Bulger's suicide?
24 Good morning again. My name is Bill Ohlemeyer,
25 and with Charlie Goodell and Rick Barnes, we're going to

<p style="text-align: right;">46</p> <p>1 present Pfizer's evidence to you. And you're going to hear 2 about Pfizer and you're going to hear about Neurontin, but 3 you're going to hear a lot about Mrs. Bulger because it's 4 impossible to understand suicide without hearing the 5 personal history of the victim. We're not going to present 6 that evidence to you to judge Mrs. Bulger, we're not 7 presenting that evidence to you to blame Mrs. Bulger, but 8 it's impossible to understand how Mrs. Bulger died unless 9 you understand how she lived, so we're going to present the 10 story of her life to you so you can answer the questions 11 that have to be answered in this case with confidence. 12 The evidence I'm going to present involves four 13 major issues, and the first one will discuss the 14 circumstances in Mrs. Bulger's life that may explain why 15 people make this tragic choice and why specifically 16 Mrs. Bulger may have made it. You're going to hear evidence 17 about Neurontin and whether it or something else was a 18 substantial factor, or whether anyone can determine what the 19 substantial factor was in causing Mrs. Bulger's suicide. 20 Mr. Lanier described a company that you might 21 think sounds reckless, and we're going to present evidence 22 about Pfizer so that you can answer the question, is Pfizer 23 a reckless company? And we're going to tell you what the 24 evidence is that connects Neurontin to suicide and what the 25 data is when people actually try to do these tests and</p>	<p style="text-align: right;">48</p> <p>1 They're not snippets. You'll see the whole record. These 2 records are available to Mr. Lanier. He's actually seen 3 these records before this morning. 4 Mrs. Bulger told her doctors she had a lousy 5 childhood in which she was constantly physically abused. 6 She ended up in a foster home. She was diagnosed with 7 depression in the 1980s, and she suffered from it her entire 8 life. Mrs. Bulger had substance abuse problems as you've 9 heard, alcohol and cocaine, crack cocaine, and even heroin. 10 And unfortunately she suffered from a degenerative, 11 incurable autoimmune disease called rheumatoid arthritis, 12 and she was diagnosed with rheumatoid arthritis when she was 13 seventeen. 14 Rheumatoid arthritis is a disease that causes the 15 body to slowly fall apart. By the time she was thirty-nine, 16 Mrs. Bulger had more than a dozen surgeries, including two 17 complete elbow replacements, a wrist fusion, and an 18 amputation of one of her toes. Rheumatoid arthritis is the 19 disease she was talking about when she told the doctors at 20 Brigham and Women's in 1993 that she was always depressed 21 because the disease had changed her life. 22 And sometimes you'll see handwritten medical 23 records in this case. Sometimes it will be Mrs. Bulger's 24 writing. Sometimes it will be doctors who are taking 25 information down from her. And one of the challenges in</p>
<p style="text-align: right;">47</p> <p>1 answer these questions. 2 So you're going to hear that Neurontin is an 3 important medicine that actually helped people who weren't 4 being helped by other medicines. You're going to hear how 5 it was tested, how it was monitored, how it was labeled, and 6 you're going to hear how Pfizer helps doctors help their 7 patients. 8 I said it once and I'm going to say it again: 9 Mostly you're going to hear about Mrs. Bulger because this 10 is a case about Susan Bulger. The plaintiff in this case is 11 the estate of Susan Bulger. It's not Regina Bulger. It's 12 the estate of Susan Bulger. Mr. Lanier represents the 13 estate. Mr. Egilman who you met is the administrator of the 14 estate. And because it's a case about Mrs. Bulger, that's 15 what I want to start talking about this morning. 16 Susan Bulger lived a life filled with pain 17 beginning when she was about seventeen. The doctors that 18 you'll hear testify will tell you that healthy people don't 19 understand what it's like to live in constant pain; not just 20 muscle aches and backaches and headaches, as difficult as 21 that can be, but what doctors call neuropathic, which is 22 pain in the nerves, or chronic pain, pain you can't treat 23 with aspirin or Tylenol. 24 Mrs. Bulger's difficult life began when she was a 25 child. You'll see medical records. And these are excerpts.</p>	<p style="text-align: right;">49</p> <p>1 this case and one of the difficulties in this case is, 2 there's a lot of personal information we're going to have to 3 present to you, and it's difficult but it's important to 4 know it to understand the issues. And this information came 5 from medical records. It comes from conversations 6 Mrs. Bulger is having with her doctors, and we're going to 7 share that information with you so you can understand what 8 was going on in her life. 9 Mrs. Bulger also had serious and long-standing 10 problems with her husband. She had an abusive and 11 controlling husband. They had financial problems throughout 12 their marriage. They even lost custody of their son for a 13 while in the '90s. Mrs. Bulger also attempted to commit 14 suicide several times, long before she ever started taking 15 Neurontin. And you'll hear doctors, every doctor who 16 testifies in the case will tell you that people who attempt 17 to suicide are at a significantly greater risk of actually 18 committing suicide in the future. 19 And Mrs. Bulger also had a variety of serious 20 medical problems for which she was taking a variety of 21 prescription drugs. In the last five years of her life, she 22 took more than 30 different prescription drugs, including 23 antidepressants, pain pills, and pills that were designed to 24 help her with her anxiety disorder and some of her mood 25 problems. You'll hear and you'll see testimony about</p>

<p style="text-align: right;">50</p> <p>1 Mrs. Bulger and these medicines.</p> <p>2 At the time of her death, Mrs. Bulger had</p> <p>3 prescriptions for five prescription medicines. Including</p> <p>4 methadone, OxyContin, Effexor that she was taking in two</p> <p>5 different doses, Klonopin, and Neurontin. And the reason I</p> <p>6 said she was supposed to be taking some of these is because</p> <p>7 at the time of her death, the police asked Mr. Bulger to</p> <p>8 provide them with all of the prescription medicine that was</p> <p>9 in the house the night of her death. And based on records</p> <p>10 of her prescriptions, and you'll hear the doctors testify</p> <p>11 about this, there should have been 84 methadone tablets in a</p> <p>12 bottle in the home, but none were provided to the police.</p> <p>13 There should have been somewhere between 18 to 21 OxyContin</p> <p>14 tablets. None were provided. None appeared to be in the</p> <p>15 home.</p> <p>16 This is important medicine. She's taking</p> <p>17 methadone for substance abuse and pain. She's taking</p> <p>18 OxyContin for her pain. The Effexor is an antidepressant</p> <p>19 that the doctors were giving her in two different dosages.</p> <p>20 Klonopin is an anti-anxiety drug, and Neurontin of course</p> <p>21 you've heard about. The Effexor, there should have been 12</p> <p>22 of the 150-milligram pills. There were only six. And there</p> <p>23 should have been none of the 37.5-milligram pills, and there</p> <p>24 were six. So it appears that Mrs. Bulger was taking the</p> <p>25 methadone and OxyContin she was supposed to be taking and</p>	<p style="text-align: right;">52</p> <p>1 Dr. Goldman got a bachelor of science at Wesleyan,</p> <p>2 a master's in public health at UCLA, got his medical degree</p> <p>3 at BU, trained at Boston City, and also has a family</p> <p>4 practice. Unfortunately, Dr. Goldman died recently, so</p> <p>5 you'll hear his testimony through a videotape deposition.</p> <p>6 Dr. Crognale has moved to Africa where he's actually working</p> <p>7 in a village in Africa. He too will testify through a</p> <p>8 videotape deposition.</p> <p>9 You'll hear these doctors tell you that they treat</p> <p>10 people with chronic pain, with neuropathic pain. And</p> <p>11 everybody's different, so they use a variety of prescription</p> <p>12 and over-the-counter medicines to treat their patients. But</p> <p>13 Neurontin is one of the medicines they use for people like</p> <p>14 Mrs. Bulger who had problems that weren't being successfully</p> <p>15 treated by other medicines.</p> <p>16 Now, Neurontin is not something you can buy at the</p> <p>17 CVS without a prescription. Your doctor has to prescribe it</p> <p>18 to you. And to make a decision like that, these doctors had</p> <p>19 to decide that it was going to help Mrs. Bulger. They</p> <p>20 thought Neurontin made sense for Mrs. Bulger because it</p> <p>21 wouldn't interact with the other medicines she was taking,</p> <p>22 and it wasn't addictive, and she had a problem with</p> <p>23 substance abuse.</p> <p>24 Now, you're going to hear that companies like</p> <p>25 Pfizer, and Pfizer in particular, are in business to provide</p>
<p style="text-align: right;">51</p> <p>1 wasn't taking the Effexor, the antidepressant, as directed.</p> <p>2 Klonopin, there was nothing found, and nothing</p> <p>3 should have been found. If she took it as prescribed, she</p> <p>4 would have run out of the prescription on that day. And the</p> <p>5 Neurontin, there were 44 pills provided to the police that</p> <p>6 night. There should have been 24, which again tells you</p> <p>7 Mrs. Bulger was not taking Neurontin as directed. There was</p> <p>8 more medicine in the house than there should have been.</p> <p>9 Now, Mrs. Bulger also had a history of not taking</p> <p>10 medicine as directed. You'll see and you'll hear more than</p> <p>11 a dozen different times in the medical records she tells her</p> <p>12 doctors that she stopped taking medicine on her own,</p> <p>13 antidepressants, pain pills, other anti-anxiety medicines,</p> <p>14 and even Neurontin a couple times. You'll hear about that</p> <p>15 in a minute. She told the doctors that she didn't like the</p> <p>16 way it made her feel, or she didn't like the side effects,</p> <p>17 or she didn't think they were working, and you'll hear</p> <p>18 testimony about this throughout the trial.</p> <p>19 Let me tell you a little bit about the two doctors</p> <p>20 who actually prescribed Neurontin to Mrs. Bulger. These</p> <p>21 doctors treated Mrs. Bulger for nearly four years prior to</p> <p>22 her death. They were trying to help her manage a variety of</p> <p>23 medical conditions, including her pain. Dr. Crognale went</p> <p>24 to Salem State, got his M.D. at UMass, trained at Beverly</p> <p>25 Hospital, and he's an internist in family practice.</p>	<p style="text-align: right;">53</p> <p>1 doctors like these with tools they can use to help their</p> <p>2 patients. They do well by doing good. They're not perfect,</p> <p>3 and you're going to hear how they were called to account for</p> <p>4 the mistakes they made, but they do well by doing good.</p> <p>5 These doctors are trying to help Mrs. Bulger. They were</p> <p>6 well aware of her background, they were well aware of her</p> <p>7 medical conditions, they were well aware of her problems,</p> <p>8 but they thought Neurontin had the best chance of helping</p> <p>9 her, and the evidence you will hear is that it did.</p> <p>10 Now, Mrs. Bulger's pain is described in a letter</p> <p>11 she wrote in her handwriting to a Dr. Jacobs in 2002, and</p> <p>12 she told Dr. Jacobs that she was diagnosed in 1982 with</p> <p>13 rheumatoid arthritis, and she hasn't had a day go by without</p> <p>14 experiencing pain, pain she describes as excruciating, and</p> <p>15 she told the doctor every day was a pain-filled challenge</p> <p>16 for her. This doctor was talking to Mrs. Bulger about</p> <p>17 prescription medicines, particularly narcotics, and he</p> <p>18 wanted her to make sure she understood the risks and the</p> <p>19 benefits of those medicines, and she told him in this</p> <p>20 letter, "There are drawbacks to pain medication such as</p> <p>21 addiction, tolerance, and damage to organs. That goes for</p> <p>22 arthritis medicine too. I have been on medicine that's made</p> <p>23 my bones brittle, my hair fall out, made me gain a bit of</p> <p>24 weight, put stress on my arthritis, and the side effects can</p> <p>25 affect my liver. But to me any medication, be it narcotics</p>

<p style="text-align: right;">54</p> <p>1 or arthritis medication, has adverse effects, but I need the 2 medicine because of the pain." And you'll see and hear more 3 testimony about this from Dr. Jacobs.</p> <p>4 Not treating Mrs. Bulger's pain was not an option 5 for Drs. Crognale and Dr. Goldman. Pain is important. It 6 causes other problems. It actually can increase depression. 7 So they had to do something for her. Other medicine that 8 she was taking had side effects, it didn't work, or it was 9 addictive. Fortunately for Mrs. Bulger the Neurontin that 10 they prescribed to her for per pain worked, and you're going 11 to see here why.</p> <p>12 You'll see and you'll hear from doctors that 13 Mrs. Bulger had been treated with a variety of different 14 medications to treat her pain, none of them effectively. In 15 1996 her doctors noted that she was overusing Percocet 16 because it was the only way she could get pain relief. 17 Again, it's an addictive narcotic. You don't want your 18 patients overusing it, especially if there are other 19 alternatives.</p> <p>20 So in 1999 an arthritis specialist noted that 21 Mrs. Bulger had tried numerous disease-modifying 22 antirheumatic drugs, but that either had bad side effects or 23 they didn't work, lack of efficacy. "Efficacy" is the word 24 you'll hear a couple times. It means they didn't work. 25 Methotrexate caused her hair to fall out. That's what</p>	<p style="text-align: right;">56</p> <p>1 doses. It's not addictive, and it's a good option for 2 patients who are refractive. And the doctors you'll hear 3 testify will tell you that refractive means nothing is 4 working for them. So Neurontin, when you think about 5 Mrs. Bulger with a history of substance abuse, some possible 6 addiction problems, and prior suicide attempts, was the 7 choice that these doctors made.</p> <p>8 Now, the reason they made this choice is not 9 because of something a salesman told them. You heard a lot 10 of discussion from Mr. Lanier about evidence that he expects 11 to present about Pfizer and Warner-Lambert and doctors. The 12 two doctors who testify about Mrs. Bulger are going to tell 13 you that they made this decision based on their background, 14 their education, their experience, what they knew about 15 Neurontin because they'd used it with other patients, what 16 they'd heard about it from other doctors, but not because of 17 anything that Pfizer told them or Warner-Lambert told them. 18 They will tell you that they were never at the Chateau Elan 19 in Atlanta, they were never involved in any of these things 20 you've heard talked about. They prescribed Neurontin to 21 Mrs. Bulger because they were trying to help her and they 22 thought it would work, and the undisputed evidence is that 23 it did help her.</p> <p>24 You'll see and you'll hear about all the 25 references in the medical records to Neurontin. This is the</p>
<p style="text-align: right;">55</p> <p>1 alopecia is. Imuran didn't help, and gold shots helped her 2 once but not again.</p> <p>3 Then she sees Dr. Jacobs, as we just said, and in 4 that same letter she tells him, "The arthritis medicine I 5 was put on, such as gold shots, methotrexate, Imuran, took 6 weeks to work, and if and when they finally did, didn't seem 7 to last long or protect my joints. Therefore I've had all 8 these operations."</p> <p>9 She sees Dr. Goldman in 2003, and he notes that 10 she's been on everything for her pain; nothing has had any 11 long-term effect, but the Neurontin was helping her 12 significantly with both her affective disorder, with her 13 moods, and her pain.</p> <p>14 These doctors prescribed Neurontin to Mrs. Bulger 15 because it made sense to them, and they'll tell you that 16 Neurontin doesn't have many side effects. It's not 17 metabolized by the liver. It basically leaves your body 18 unchanged. It doesn't have toxicity risks. It doesn't 19 interact with other medicines you're taking. You can't 20 really overdose on it. And Mr. Lanier's joke was based in 21 science in a sense. You can't overdose on Neurontin, which 22 is important for a woman who's had a prior suicide attempt 23 by overdose, and you'll hear about that. It has a speedy 24 half-life of five to seven hours, which means that it 25 doesn't stay in your body very long. You can take multiple</p>	<p style="text-align: right;">57</p> <p>1 time line. This is every reference to Neurontin in 2 Mrs. Bulger's medical records. Dr. Crognale was not the 3 first doctor to prescribe it to her. Another doctor 4 prescribed it to her in 1999. She took it for about six 5 weeks, stopped taking it without telling that doctor. In 6 October then she starts to see Dr. Crognale, and in that 7 time period from January to October, her medical conditions 8 got worse. But she told Dr. Crognale the first time she saw 9 him, "I used to take Neurontin, but I stopped because it 10 made me feel out of it."</p> <p>11 She sees Dr. Crognale from January of 2000 to May 12 of 2002, and you're going to see some of those records, and 13 her medical conditions don't get any better. They continue 14 to get worse. He puts her back on Neurontin in 2002, May of 15 2002. She never says to him, "I don't want to take it." 16 She never says, "It made me feel depressed, it made me feel 17 suicidal." She told him that "Way back when I stopped 18 taking it once because it made me feel out of it."</p> <p>19 By August of 2002, the records that Dr. Crognale 20 is taking of each visit with Mrs. Bulger report that he's 21 getting good results with Neurontin for sleep. It's helping 22 her sleep, helping her pain so she can sleep better. By 23 November of 2002, Mrs. Bulger stops taking it again without 24 telling Dr. Crognale; and she later tells him, well, she 25 sees him a month later, she says, "It made me feel moody."</p>

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1 Now, the evidence in this case will be, there's
2 nothing unusual about a patient with the kind of medical
3 problems Mrs. Bulger suffered from feeling moody. In fact,
4 you'll remember when she talked to the doctors at Brigham
5 and Women's in 1993, she told them, "I'm usually very moody
6 most days because of the arthritis."
7 Dr. Crognale puts her right back on Neurontin in
8 December of 2002 and increases her dose to 1,800 milligrams
9 a day. So she's taking three pills in the morning, three
10 pills at night, and she does it for about a year at that
11 dose. That's a higher dose than she was taking at the time
12 of her death, or was supposed to be taking at the time of
13 her death.
14 In April of 2003 Dr. Crognale continues to see
15 Mrs. Bulger. He specifically notes she's not thinking about
16 suicide. This is while she's on Neurontin at a higher dose.
17 By May of 2003, Mrs. Bulger is complaining to Dr. Crognale
18 that her insurance company isn't paying for her Neurontin.
19 Now, she's never, once again, said it made her
20 feel out of it, never once again said it made her feel
21 moody, never said it made her feel depressed, never said it
22 made her feel suicidal; and in fact she's complaining
23 because she's not getting it as quickly and as cheaply as
24 she'd like to get it.
25 He also points out in that same visit that it's

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1 helping her with her mood stability, she's less depressed,
2 she's less anxious because in combination with another
3 medicine called Lexapro, she's feeling more even, and she's
4 having no side effects. Neurontin is helping her sleep
5 better. Unlike Klonopin -- remember, Klonopin was one of
6 the medicines she had a prescription for on the day of her
7 death, which she'd been taking but thought worsened her
8 depression.
9 By September of 2003 Mrs. Bulger starts to see
10 Dr. Goldman. He continues to prescribe Neurontin for her
11 pain. She sees him nearly every month in the year before
12 she dies. In January 2004 she asks him to fill out some
13 paperwork to get something called Prescription Advantage.
14 Again, it's a way for her to get Neurontin at a reduced
15 cost, which Dr. Goldman says took a load off her mind and a
16 load off her wallet.
17 By April of 2004, Dr. Goldman notes that the pain
18 medication is not working as well as it used to because
19 she's developing tolerance to the antidepressant and the
20 methadone. The entire time that Mrs. Bulger was taking
21 Neurontin after Dr. Crognale prescribed it to her in May of
22 2002, with one exception, she never stopped taking it, never
23 complained about taking it, never said, "I don't like the
24 way it makes me feel," never said, "It makes me feel
25 depressed," never said, "It makes me feel suicidal."

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1 And these doctors were paying attention to those
2 kinds of things. They were talking to her about depression
3 and about suicide at nearly every visit. They were keeping
4 track of her medicines, and they were asking her how her
5 medicines made her feel.
6 Dr. Goldman in March of 2004 points out that
7 Mrs. Bulger is doing pretty well, but she ran out of her
8 Effexor and she started to feel lousy. Effexor is the
9 antidepressant that he told her not to stop taking under any
10 circumstances, and, again, on the day of her death, it
11 doesn't appear she was taking it as directed. These doctors
12 knew what to look for, they knew what to talk about with
13 their patients, and they kept track of Mrs. Bulger because
14 they were trying to help her.
15 Now let me turn to a more difficult subject in a
16 way, and that's suicide itself. There are 30,000 suicides
17 in this country last year. It's about 84 every day, which
18 means three times an hour somebody makes that choice. And
19 people have studied it. The American Psychiatric
20 Association, the National Institute of Mental Health have
21 determined that there are known causes of suicide. People
22 who have depression, people who have anxiety disorders,
23 people who have pain are at increased risks for suicide.
24 It's not because of my medicines they're taking. It's
25 because of their underlying medical conditions. Those are

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1 the same kinds of people, though, who have to take medicine
2 to try to treat those conditions.
3 There are other risk factors for suicide that
4 you'll hear about, and they are things that people have
5 studied and published, and the doctors who will testify will
6 tell you about that. And you'll hear that some people, you
7 know, that some people have many risk factors for suicide
8 but don't commit suicide, and other people have very few or
9 no apparent risk factors and actually commit suicide. It's
10 very difficult to know why, but what the doctors who testify
11 will tell you is, 20 to 40 percent of the people who commit
12 suicide don't even have depression or anxiety disorder.
13 Their substance abuse and their pain is enough of an
14 explanation.
15 You're going to hear testimony and you're going to
16 hear evidence that Neurontin has been prescribed to millions
17 of people since 1993. Nearly 14 million people have taken
18 it, and in that time the suicide rate in the United States
19 has not gone up; it's actually gone down. There have been
20 hundreds and thousands of studies published and you're going
21 to see and hear about them where people have actually looked
22 at the questions Mr. Lanier raised, and the evidence you're
23 going to see, and I'm going to show you some of it in just a
24 few minutes, is going to show that Neurontin doesn't cause
25 people to commit suicide, it doesn't contribute to their

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1 suicides.

2 The one thing we do know about Mrs. Bulger,

3 though, is, before she ever took Neurontin, she was at an

4 increased risk of suicide. She had medical conditions that

5 are causes and known causes of suicide, and she had tried to

6 commit suicide.

7 The American Psychiatric Association has published

8 a guidebook for doctors, Practice Guidelines for Assessment

9 and Treatment of Patients With Suicide Ideation. And you're

10 going to hear a witness from Harvard, a witness from McLean

11 local doctors who will tell you that they treat people with

12 these problems, they do research in this area. You're even

13 going to hear from one of the doctors who was involved in

14 preparing this book for other doctors, and they will tell

15 you that the most significant risk factors for suicide are

16 anxiety disorders and depression, things like post-traumatic

17 stress disorder. Physical illness including chronic pain is

18 a risk factor for suicide. Psychosocial problems,

19 Mr. Lanier mentioned some of them; the lack of social

20 support, an unstable domestic situation, unemployment,

21 stressful life events, financial problems. Childhood

22 traumas, whether it's sexual or physical abuse, can be an

23 increased risk for suicide. And, of course, as I said,

24 people who think about and actually try to commit suicide

25 are at a significantly greater increased risk of actually

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1 committing suicide. And, unfortunately, when you see and

2 hear the evidence in this case, Mrs. Bulger's life never got

3 very far from that list, and let me show you in some time

4 sequence how some of these problems showed up in her life.

5 Mrs. Bulger was diagnosed with depression in 1986,

6 and every doctor you'll hear from and every medical record

7 you'll see was that depression was a constant theme

8 throughout Mrs. Bulger's life. She told Dr. Crognale the

9 first time she saw him that she was significantly depressed,

10 that she'd had severe depression in the past, and she was

11 feeling that way at that visit. Now, this is nearly a year

12 after she had stopped taking Neurontin. It's four years

13 before her suicide. She talks about the stress she has at

14 home, both financial and otherwise. And you're going to

15 hear unfortunately that parenting was an issue for

16 Mrs. Bulger, in part because of her physical problems. She

17 talked to her doctors frequently about her doubts about her

18 ability to be a parent with some of the physical and

19 psychological problems she had.

20 She told him that a doctor told her she might be

21 bipolar. There's going to be a little bit of testimony

22 about that, but there's really no doctor who's going to say

23 that Mrs. Bulger was actually suffering from that. She

24 tells her doctors that she was experiencing depression her

25 entire life. She tells Dr. Crognale that medicine like

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1 Prozac isn't helping her depression. She has a long history

2 of abuse, and he and she agree she has post-traumatic stress

3 disorder related to that. He encouraged Mrs. Bulger to seek

4 counseling. You know, and she did seek counseling for a

5 while right after the birth of her daughter, and

6 unfortunately when her daughter was born, her daughter had

7 to be detoxed. Mrs. Bulger was using illicit during her

8 pregnancy and --

9 MR. LANIER: Objection, your Honor. It wasn't

10 illicit drugs. It was methadone she was on.

11 THE COURT: Overruled. You'll hear the evidence.

12 Remember, this isn't a substitute for the evidence.

13 MR. OHLEMEYER: Thank you, your Honor.

14 You're going to hear that Mrs. Bulger was

15 encouraged to and actually did start going to counseling and

16 therapy after the birth of her daughter. That lasted until

17 August of 2003. And as part of that therapy, she had to get

18 urine tests and she had to keep the therapy treatments, and

19 you'll see some of those records. Unfortunately she stopped

20 doing that in August of 2003, the year before she died, and

21 that might have contributed to some of the problems that led

22 to her death, but she did seek counseling and she was being

23 counseled during the time she saw Dr. Crognale.

24 Dr. Crognale was talking with her about depression

25 and pointed out to her that if she had increasing signs of

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1 depression, she should talk to him about that. The

2 counseling records, the Center For Addictive Behaviors where

3 she was getting her counseling and therapy, discuss the

4 post-traumatic stress disorder, the anxiety, and her

5 problems with Mr. Bulger, all of which you'll see and you'll

6 hear about when the doctors come testify.

7 Pain was something we already talked about, and

8 Mrs. Bulger obviously had a significant amount of pain, and

9 she had a dozen surgeries before she died. So depression

10 and pain were always a part of Mrs. Bulger's life, even

11 before she ever started taking Neurontin. Dr. Goldman sees

12 her in December of 2003 and points out that even though

13 she's doing okay, she's never without pain.

14 Now, there are other issues that you'll hear about

15 that contribute to an increased risk of suicide, including

16 what are called psychosocial features. And you'll see and

17 you'll hear testimony about the Bulgers' marriage. You'll

18 see and hear testimony about their financial problems; they

19 have a couple of bankruptcies. But most importantly you'll

20 see and you'll hear testimony that Mrs. Bulger unfortunately

21 didn't have a lot of friends. She was very isolated. She

22 didn't have the kind of support system that people who are

23 at risk for committing suicide need as a protective factor

24 to help prevent these things from happening.

25 You've seen Mrs. Bulger's reference already to her

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1 childhood. The doctors who will testify about suicide will
2 tell you that childhood abuse and childhood trauma is enough
3 in and of itself to cause somebody to think about and commit
4 suicide later in life. It's unfortunately one of the most
5 difficult and hard things to overcome for people.

6 Substance abuse Mr. Lanier talked about and you'll
7 hear about. Again, it's one of the unfortunate things that
8 cause or contribute to cause suicide in people, and
9 Mrs. Bulger had a long history of substance abuse, again,
10 before she ever started taking Neurontin, which put her at
11 risk for suicide.

12 And you'll see and you'll hear that Mrs. Bulger
13 attempted to commit suicide multiple times, again, before
14 she ever took Neurontin. Remember, Mrs. Bulger only took
15 Neurontin from May of 2002 to 2004. She took it for a few
16 months back in 1999 right at the end of the year; but all of
17 these problems, these known causes of suicide, these medical
18 conditions that increase your risk of committing suicide,
19 that caused her to attempt to commit suicide, occurred
20 before she ever started taking Neurontin.

21 Mrs. Bulger's first suicide attempt occurred in
22 1978. She cut her wrists when she was fourteen. It
23 followed some problems she had at home with her mother. In
24 1982, she drove a car off a cliff with the intent to hurt
25 herself. And you'll see a pattern in these attempts. They

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1 almost always follow a domestic disturbance and a substance
2 abuse problem, overuse of substances or being high and out
3 of control, as her sister testifies.

4 In September of 1989, she goes to the emergency
5 room and tells them, "I'm afraid I'm going to try to hurt
6 myself." In 1990 she overdoses on Valium and cocaine and
7 cuts her wrists and has to be taken to the hospital. In
8 1993 Mrs. Bulger was in a coma for four days because she
9 overdosed on an antidepressant drug called Elavil following
10 a dispute with her husband and an effort to stop taking it.
11 She was not taking it on her own. She became more depressed
12 and overdosed and nearly died. The doctors will testify
13 that Mrs. Bulger was very fortunate to have survived four
14 days in a coma. There's another episode of cutting her
15 wrists in February of 1998, and then, unfortunately, as we
16 know, Mrs. Bulger committed suicide in September of 2004.

17 Now, there's no way to know for sure that
18 Mrs. Bulger took Neurontin on the day she died. You'll hear
19 testimony about this, but there was no eyewitness who
20 actually saw her take it. There was no autopsy conducted,
21 there was no blood test done, and there's evidence that she
22 wasn't taking Neurontin as directed. But if -- if you want
23 to assume she did take Neurontin the day she died, you have
24 to assume she took it the day before, the week before, the
25 month before, and for two years without it causing any

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1 problems for her. She took Neurontin for nearly 600 days,
2 which is more than 2,300 tablets, without ever complaining
3 about it, without ever not taking it, without ever telling
4 her doctors it was making her depressed or suicidal, which
5 are subjects she was talking about with them all the time.

6 Now, evidence comes in a lot of different forms.
7 You know, in a DWI case, you have a blood alcohol test. In
8 an asbestos case, you can look at an X ray to see the damage
9 that asbestos does to people's lungs. In this case, you're
10 not you're not going to see any evidence that says this has
11 to have been a suicide caused by Neurontin. There's no
12 signature or distinctive issue that shows us that this was
13 caused by Neurontin.

14 The evidence you're going to see and you're going
15 to hear is that Mrs. Bulger was taking Neurontin for nearly
16 two years before she died at a higher dose for a period of
17 that time than she was supposed to be taking at her death.
18 She never claimed it made her feel depressed, and her
19 doctors believed that it was helping her. They never said
20 in those medical records it isn't helping her.

21 At the same time Mrs. Bulger has other issues in
22 her life that have put her at risk for suicide before she
23 ever takes Neurontin. And pain increases somebody's risk of
24 suicide two to five times over the general population's
25 risk. Substance abuse increase it fourteen to twenty times.

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1 If you have major depression, you are twenty-one times more
2 likely to commit suicide than people who don't have that.

3 Now, as we know, Mrs. Bulger committed suicide on
4 August 4, 2004, and why she chose that moment to do that is
5 something that nobody is going to be able to answer for you
6 in this lawsuit. The best we can do is look at the events
7 that led up to it to try to see what was going on in her
8 life at that time. And we know that prior to August, 2004,
9 Mrs. Bulger had depression, pain, psychosocial problems,
10 childhood trauma, substance abuse, and prior suicide
11 attempts. They were preexisting risk factors for suicide.

12 At the same time, in the weeks and months leading
13 up to her death, you're going to hear evidence and testimony
14 that she really was isolated from her friends and family.
15 In fact she and her sister were making some plans for her to
16 leave Mr. Bulger that he got in the way of and prevented
17 from happening. They had a recent bankruptcy.

18 Mrs. Bulger was facing her fourteenth operation,
19 and it was one she knew was not going to solve her problems
20 or end her pain. She was having a bad flare-up of her
21 arthritis. Two days before her death she called her doctor
22 and says, "I'm out of methadone," which he thought was odd
23 because she should have had more, "and I'm having a bad
24 flare-up of arthritis. I need something for my pain." She
25 actually filled a prescription the day she died for

<p style="text-align: right;">70</p> <p>1 prescription-strength ibuprofen. She was out of methadone. 2 She was missing prescriptions. She might have been in 3 withdrawal because she wasn't taking the methadone, and 4 you're going to hear some disturbing testimony from a 5 neighbor of Mr. Bulger's that Mrs. Bulger might have been 6 actually abusing crack cocaine in the days and weeks leading 7 up to her death. You'll also hear that same kind of 8 testimony from her sister.</p> <p>9 So there are a lot of things, unfortunately, going 10 on in Mrs. Bulger's life in August of 2004 that are better 11 explanations for what happened than the Neurontin that she 12 might have been taking, the Neurontin that she was taking 13 that there is no evidence, and there will be no evidence, 14 was making any of these problems that she had any worse, and 15 in fact the evidence will be that it was actually helping 16 her.</p> <p>17 All right, let me shift gears for a minute now and 18 talk about Pfizer and Neurontin. As Mr. Lanier told you, 19 Pfizer didn't invent Neurontin. It wasn't the first company 20 to manufacture Neurontin. It was developed by a company 21 called Warner-Lambert. Pfizer merged with Warner-Lambert, 22 and Neurontin then became a Pfizer product.</p> <p>23 Neurontin was approved by the FDA, as Mr. Lanier 24 told you, to treat epileptic seizures. It's an 25 antiepileptic drug. It was also approved again in 2002 to</p>	<p style="text-align: right;">72</p> <p>1 So the reason the FDA requires you to submit these 2 trials, these tests, is to demonstrate that the medicine 3 does what it's supposed to do but doesn't cause any 4 unnecessary risk to the people who are taking it. And the 5 way you do that and the way the FDA requires you to do that 6 is to do a controlled study, a randomized placebo-controlled 7 clinical trial. It's a long way of saying that you measure 8 it instead of looking at it. Just because somebody who 9 takes Neurontin or any other medicine has a problem doesn't 10 mean that problem was caused by the medicine. It might be 11 something else, or it might be something that they're taking 12 the medicine for that is producing the problem. So you do a 13 study like this: You take a group of people who are 14 identical in every way. You divide them into two groups 15 randomly. You give one group the medicine; you give one 16 group something called a placebo, a sugar pill. Nobody 17 knows what they're taking. You give them the medicine, you 18 keep track of them, and you record how they react, positive 19 and negative. And then at the end of it all, you do some 20 statistical analysis to make sure what you are seeing is not 21 a coincidence or is not what you expect to find in that 22 group of people but is actually a difference caused by the 23 medicine.</p> <p>24 Those kinds of studies were done, and you're going 25 to see and you're going to hear a lot of testimony and a lot</p>
<p style="text-align: right;">71</p> <p>1 treat postherpetic neuralgia, the pain associated with 2 postherpetic neuralgia. And you're going to see and hear 3 that the development of Neurontin began a long time before 4 that. The development of a medicine like Neurontin begins 5 with a scientist who discovers something in the laboratory 6 that he or she thinks is going to help improve human health. 7 It's a compound at that point. And then it goes through 8 preclinical testing, usually with animals, and that took 9 seven years. Then you go into clinical trials, which are 10 studies in people, and you're going to hear a lot more about 11 that than the evidence Mr. Lanier talked with you about. 12 And then, finally, the FDA reviews that information and 13 approves the drug for specific uses.</p> <p>14 You're going to hear that Dr. McCormack, the 15 Dr. McCormack who was involved at the FDA, who was involved 16 in some of those things Mr. Lanier showed you where there 17 were some questions about depression and suicide in those 18 clinical trials, looked at the information, and a year and a 19 half later reported that, no, there is no evidence to 20 suggest that those problems were caused by the medicine. 21 And that's because the people who were in these trials and 22 the people who take these medicines have medical problems 23 that in and of themselves cause those kinds of problems. 24 There's a background rate of these kinds of medical problems 25 in the population of people who take Neurontin.</p>	<p style="text-align: right;">73</p> <p>1 of evidence about them. They're the most reliable and 2 scientific way to answer the question this lawsuit raises, 3 which is, can Neurontin cause suicide in anyone, before we 4 even start asking the question, what about Mrs. Bulger?</p> <p>5 These kinds of studies were conducted, and they 6 were submitted to the FDA multiple times. They were 7 reviewed by the FDA. All of the information you're going to 8 see comes from Pfizer or Warner-Lambert and was given to the 9 FDA, and it was analyzed for a variety of different reasons. 10 And never before Mrs. Bulger's death did anyone look at that 11 information and say, there should be more information in 12 this label that is given to doctors that tells them about 13 suicide and suicidal thinking, because there was no evidence 14 to suggest there was.</p> <p>15 When you go back and look at that data from the 16 controlled clinical trials for suicide and suicide attempts, 17 the evidence you'll see is that there was nobody in those 18 clinical trials, those controlled studies, who committed 19 suicide or attempted to commit suicide. In fact, suicidal 20 ideation, which is thinking about suicide, the people on the 21 medicine, on Neurontin, were essentially no different than 22 the people on the placebo. There were two out of 5,200 23 versus one out of 2,600. You see that statistically it's 24 about the same. So when you do the controlled study, you 25 don't see people thinking about suicide more often who are</p>

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1 taking Neurontin than people who are taking the placebo.
2 They looked a little closer at the issue of
3 depression. When you look at depression -- and this was
4 something that was submitted to the FDA and that the FDA
5 looked at back in 1992, and this is where Dr. McCormack, who
6 said before we should be careful about this, looked at it,
7 looked at the data, and then said later, "There's no
8 evidence here to suggest people who take this drug are more
9 depressed than we would expect them to be." 1.8 is more
10 than 1.1, but you'll hear that's a statistical tie, that
11 essentially that's no difference.
12 They looked a little harder at what are called
13 psychobiologic events. These are events like hostility,
14 anger, you know, things that change your behavior. And,
15 again, when you look in the epilepsy trials, people who have
16 medical problems who are being given Neurontin, that the
17 placebo patients actually had a higher incidence of adverse
18 psychobiologic events than the Neurontin patients.
19 In the postherpetic neuralgia application that
20 Mr. Lanier told you about, and these are the patients who
21 are closer to people like Mrs. Bulger, you'll see that the
22 placebo patients again had essentially the same or a little
23 bit higher incidence of depression than people on the pill,
24 which again tells you that the medicine is not causing new
25 or additional problems in the people who are taking it.

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1 Now, the FDA reviews all of this, and this label
2 that Mr. Lanier showed you and talked about is the label
3 that goes to doctors. It's the information the doctors get.
4 The FDA reviews this. They tell the company where to put
5 these results and how to describe them. And nowhere in this
6 label before 2004, before Mrs. Bulger died, did the FDA tell
7 Pfizer or anyone else that you have to tell people that
8 Neurontin causes suicide or suicidal thinking because the
9 evidence didn't suggest it did.
10 Now, Mr. Lanier also talked to you about this
11 challenge-rechallenge kind of test where you give somebody
12 the medicine, and you take it away, and you give it back.
13 You'll see and you'll hear that the people who were on
14 placebo had the same kind of phenomenon. You could see the
15 same kind of results when you give somebody the placebo.
16 They say, "Oh, I think it's making me feel more depressed."
17 You take the placebo away, they feel better; you give them
18 the placebo back, it makes them feel worse.
19 So there's going to be a lot of evidence about
20 scientific data, and the two things I think are important to
21 remember is that there are controlled studies that measure
22 things. We compare two groups of people in a controlled
23 setting to see whether there's really a difference. And
24 then there are observations, things that we observe in
25 people. And the fact that you observe something in someone

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1 doesn't mean it's a cause of what you're observing. There
2 might be other explanations, or there might be more
3 information that needs to be reviewed.
4 Now, the idea that you are going to use an
5 antiepileptic drug to treat pain is not something that
6 Pfizer thought up on its own. Doctors have been using
7 antiepileptic drugs to treat pain since the 1960s. It was
8 reported in the medical literature for a variety of reasons.
9 It seemed to help people with pain. That kind of
10 prescription, as Mr. Lanier told you, is called an off-label
11 use of a medicine. It is not illegal to prescribe medicine
12 off-label. There are strict rules, though, about how you
13 can promote medicine off-label, and you're going to hear
14 about the violation of those rules.
15 Off-label medicine is allowed because the FDA
16 doesn't regulate the practice of medicine. They want
17 doctors to be free to use their judgment to help their
18 patients. The FDA has said that off-label prescriptions are
19 accepted, rational, and of great value. They're not
20 illegal. But there are rules, again, about how you can
21 promote medicines for off-label.
22 Off-label helps patients who aren't being helped
23 by other medicines. It gives doctors the ability to treat
24 people with medicine and to take advantage of medical
25 developments that occur faster than the FDA process.

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1 It's very common. Using oral contraceptives to
2 treat acne is an off-label use of a medicine. Using blood
3 pressure medicine to treat migraines is an off-label use of
4 medicine. In fact the majority of prescriptions for
5 antiepileptic drugs are off-label prescriptions for the most
6 part to treat pain.
7 Now, as Mr. Lanier pointed out, there are rules
8 about how you can promote off-label use, and Warner-Lambert
9 violated those rules. And it's a strict liability
10 violation. Even if what you tell the doctor is absolutely
11 true, you're not allowed to do it, and they were held to
12 account for it. They paid a fine for it. But there was no
13 charge that they'd said anything false or misleading. There
14 was no claim of fraud. It was a violation of the rules. It
15 was a serious violation. They paid a serious fine.
16 None of that has anything to do with Mrs. Bulger.
17 It occurred before Mrs. Bulger ever took Neurontin. It
18 occurred before Warner-Lambert and Pfizer merged. It
19 occurred in 1995 and 1996 in a limited part of the country,
20 and the doctors who prescribed Neurontin to Mrs. Bulger,
21 Dr. Goldman and Dr. Crognale, will tell you that they
22 prescribed Neurontin to Mrs. Bulger because of their
23 judgment, not because of something anyone from Pfizer or
24 Warner-Lambert told them. In fact, they had a hard time
25 remembering specifically ever seeing anyone from Pfizer or

<p style="text-align: right;">78</p> <p>1 Warner-Lambert, and they specifically said they had no 2 recollection of anyone trying to promote Neurontin to them 3 for off-label uses.</p> <p>4 Neurontin was tested in controlled studies in 5 people who were part of a vulnerable population, people who 6 had medical problems that put them at risk for other 7 problems. The fact that Mrs. Bulger took Neurontin while 8 she had other problems or at the time she committed suicide 9 doesn't prove it was a substantial factor in causing her 10 disease. You have to look at controlled data. People who 11 studied this look at controlled data, and the data didn't 12 prove that Neurontin had anything to do with those problems.</p> <p>13 So without data, without results from these tests, 14 you're going to hear testimony from some witnesses that 15 Mr. Lanier is going to call about a theory that somehow 16 Neurontin might increase depression and therefore contribute 17 to suicide. You're going to hear that that's a theory, that 18 it's contradicted by what scientists and other doctors have 19 read and written about and researched, but it really doesn't 20 answer the question that has to be answered here. And in 21 fact you're going to see and you're going to hear testimony 22 that when you do a controlled study to see what happens when 23 people take Neurontin, that it does not increase the 24 chemicals in the brain that those doctors will tell you 25 contribute to depression and contribute to suicide.</p>	<p style="text-align: right;">80</p> <p>1 Topiramate, actually accounted for a large number of cases 2 of suicidal thinking. If you study the other drugs by 3 themselves, you don't see the same kinds of results. The 4 Neurontin data is different than the lamotrigine data. It's 5 different than the Topiramate today. The FDA, though, 6 says -- and this is what the FDA does, and you're going to 7 hear there's nothing wrong with this, but it's different 8 than the question we have to answer -- the FDA says, "We're 9 going to treat all eleven drugs the same. In fact, we're 10 going to treat all antiepileptic drugs the same, whether 11 they were in the study or not." So if you make an 12 antiepileptic drug, you have to put this label on it, and 13 the label is: It might cause someone to think about suicide 14 who wouldn't otherwise have done it. In fact, the 15 statistics are that one out of 530 people might have had a 16 suicidal thought who wouldn't otherwise have had one if 17 they'd taken an antiepileptic drug. That means 99 percent 18 of the people won't, but it doesn't change the fact that the 19 Neurontin data is inconsistent with that.</p> <p>20 If the question you have to answer is, from a 21 public policy or public health perspective, should 22 antiepileptic drugs all have the same label and should they 23 say you might have an extra suicidal thought, it's a 24 different question than did Neurontin have anything to do 25 with Mrs. Bulger's suicide?</p>
<p style="text-align: right;">79</p> <p>1 So the last thing we're left with are statistics, 2 and Mr. Lanier told you about the FDA's recent statistical 3 analysis of antiepileptic drugs. And what the FDA did is, 4 they asked the manufacturers of eleven different 5 antiepileptic drugs to "Send us your controlled data, send 6 us your clinical trials. We're going to analyze this 7 because we're concerned that this medicine might have 8 something to do with people thinking about suicide."</p> <p>9 Now, when they looked at that data, they saw some 10 things that have to be considered if you're going to answer 11 the question, what does this have to do with Mrs. Bulger? 12 The first thing that you have to understand is that 13 Neurontin, gabapentin, is a different chemical than the 14 other ten drugs that were looked at. They're all different 15 drugs. They're made differently. They do different things 16 in the brain. They have different chemical structures. 17 They're different chemical compounds.</p> <p>18 Well, why is that important? Because when you 19 look at the data from each of those eleven drugs, they don't 20 behave the same way. Remember I showed you earlier the 21 controlled clinical trial data from Neurontin as it related 22 to suicide and suicidal thinking, and there was really no 23 difference between the Neurontin and the placebo when those 24 tests were conducted. When you look at those other eleven 25 drugs, you'll see that two drugs, lamotrigine and</p>	<p style="text-align: right;">81</p> <p>1 The evidence you're going to hear about Pfizer and 2 the evidence you're going to hear about Neurontin is going 3 to prove at least this much, and you're going to hear more 4 and it will prove more: Neurontin really helps people with 5 pain. It was studied for years in thousands of patients. 6 There's no scientific evidence -- I shouldn't say 7 scientific. There's no controlled studies, there's no 8 reliable evidence that shows it causes suicide or makes 9 depression worse. I mean, the observations you're going to 10 hear about and the challenge-rechallenge, that's scientific. 11 It's just not controlled, and there's a difference. That's 12 an observation, not a measurement.</p> <p>13 Neurontin has always had FDA-approved language on 14 suicide and depression. The FDA has reviewed those labels. 15 They've asked the company to make minor changes in them, and 16 it wasn't until just recently that they said, "Make this 17 change that we're making in all antiepileptic drugs." And 18 even today after years of use with millions of patients and 19 close scrutiny, even the FDA statistical analysis doesn't 20 say antiepileptic drugs cause suicide. It says it may cause 21 suicidal thinking in a small number of people, again, all 22 based on data from two drugs, not eleven different drugs.</p> <p>23 So let me summarize and thank you for your time 24 and attention. I know it's warm up here. This is going to 25 be a difficult case, in that we're all going to learn more</p>

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1 over the next three weeks about suicide, I think, than we
2 probably want to know. And the reason we're going to do it,
3 again, is because we're trying to answer the question of
4 what caused Susan Bulger to make this decision, and the
5 evidence you're going to see and the evidence you're going
6 to hear is that she had risk factors for suicide. We know
7 that because she tried to commit suicide before she ever
8 took Neurontin.

9 If she had never taken Neurontin but committed
10 suicide, doctors will tell you that they could explain this
11 to the best of their ability as doctors. And, of course,
12 they will also tell you that you don't need Neurontin to
13 make sense of what happened to Mrs. Bulger. Neurontin
14 actually might have been helping Mrs. Bulger, and it
15 probably was helping her because there was never a reference
16 to suggest it wasn't.

17 Mrs. Bulger had a short, difficult life, and it
18 was full of a lot of difficult, challenging circumstances
19 that alone or in combination you'll hear are explanations
20 for what happened to her. There's going to be evidence to
21 answer the questions that are raised by this lawsuit, and
22 the answer to that question is going to be that Neurontin
23 was not a substantial factor in causing Mrs. Bulger's
24 suicide. Thank you.

25 Thank you, your Honor.

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1 THE COURT: Thank you. We'll stand in recess.
2 We'll be back in about a half an hour.

3 THE CLERK: All rise for the jury.
4 (Jury excused.)
5 (A recess was taken, 10:13 a.m.)
6 (After recess.)

7 JUDGE SARIS: Before we call the first witness,
8 someone was puffing out of his seat.

9 MR. LANIER: That would have been me, your Honor.

10 JUDGE SARIS: What's the issue here?

11 MR. LANIER: Your Honor, I had a couple of matters
12 that need to be dealt with on the record, one off the record
13 that's very important to me.

14 JUDGE SARIS: Let's go talk over here off the
15 record.
16 (Discussion off the record.)

17 MR. LANIER: Your Honor, this is Mark Lanier.
18 We're going to ask this jury for something in the range of
19 \$100,000 for this young lady. That's what this case is
20 about, because I'd like money to be on the side for the
21 Court to give her a shot at life. Please, your Honor, all
22 I'm saying to you, Judge, is if you look at how much both
23 sides are spending, I understand we need to try the first
24 case in here, and we need to try the first case in front of
25 you and it's very important to do so. I've learned a ton

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1 from you and the way you want your Court handled and what
2 witnesses and exhibits are coming in, and you've made a lot
3 of rulings that will assist us from here on out, for
4 instance, about the Shearer case. I will personally put
5 \$50,000 into a trust account. That is a thumbnail of what
6 we're going to be spending on this trial.

7 JUDGE SARIS: Okay. If this is about settlement,
8 we should probably talk about it later. But I'm about to
9 bring Dr. Franklin in, or you are.

10 MR. LANIER: Yes, your Honor.

11 JUDGE SARIS: Let's talk about settlement later.
12 I do understand --

13 MR. LANIER: It's not an offer of settlement. I'm
14 just saying before I put Dr. Franklin on --

15 JUDGE SARIS: No, we're not doing that. We're
16 putting Dr. Franklin on. This may be something to do this
17 afternoon, appropriate.

18 MR. OHLEMEYER: Then I have a couple of matters on
19 the record.

20 JUDGE SARIS: What? Let's do it now, quick.

21 MR. OHLEMEYER: Two big ones. Number one, we're
22 very concerned that the ruling you made on the plea has been
23 expanded upon in terms of talking about the amount of money
24 in the plea. We don't think that should have been raised in
25 the opening.

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1 THE COURT: Overruled. I found the brief that was
2 given to me yesterday was a rehash, except it added the due
3 process argument over the others. I actually thought it was
4 a fully appropriate opening statement, I wasn't sure what to
5 expect after yesterday, but it was fully appropriate. It
6 wasn't overblown, it was only mentioned in a line or two. I
7 have nothing wrong with it.

8 What's the next one?

9 MR. OHLEMEYER: In light of the opening
10 statements, I think you now know from what's been said that
11 Dr. Franklin's testimony is going to be about a time frame
12 in 1996 -- let me just make my point, your Honor, please --
13 that has no connection with the doctors in this case.

14 JUDGE SARIS: You have raised this point now three
15 times, and I've overruled it three times. It goes to the
16 corporate intent. Besides, a plea can be used to impeach
17 someone testifying, and that the corporation's agents are
18 testifying. I am not going to preclude Dr. Franklin from
19 testifying. It goes to corporate intent, corporate motive,
20 the scope of the understanding of where it was being sold,
21 so the scope of the duty. I am not excluding the testimony.

22 I understand you've now ramped it up by claiming
23 it's a due process violation. It's not a due process
24 violation. This isn't even 404(b). This is about this drug
25 and the efforts to market this drug and how it may or may

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1 not relate to corporate intent.
2 You both did -- I'm telling my law clerks -- two
3 of the best opening arguments I have heard in a very long
4 time. The interns were here, honored to hear it. Let's
5 just hear the evidence. Let's go.
6 MR. LANIER: Judge, one last point that I do need
7 to put on the record.
8 JUDGE SARIS: What?
9 MR. LANIER: David Franklin is going to testify
10 about yesterday a private investigator calling himself a
11 detective sent by Pfizer to his house would not leave his
12 house until the police were called with 911 because of his
13 persistence in trying to get Franklin to visit with the
14 Pfizer people before he testified today, specifically
15 blocking the driveway saying he would not leave, would not
16 let anybody --
17 JUDGE SARIS: All right.
18 MR. LANIER: I just want to on the record.
19 JUDGE SARIS: Was it Pfizer's person?
20 MR. LANIER: His name was James Danforth.
21 MR. GOODELL: James Danforth was asked to find --
22 JUDGE SARIS: Who's Danforth?
23 MR. GOODELL: He's an investigator. He was never
24 instructed to do that.
25 JUDGE SARIS: Well, then you're going to have to

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1 put him on the stand.
2 (End of discussion at sidebar.)
3 (Jury entered the courtroom.)
4 MR. LANIER: Your Honor, the plaintiffs at this
5 time would call Dr. Dave Franklin to the stand.
6 DAVID FRANKLIN, having been duly sworn by the
7 Clerk, was examined and testified as follows:
8 THE CLERK: And would you please state your name
9 and spell it for the record.
10 THE WITNESS: David Franklin, D-a-v-i-d,
11 F-r-a-n-k-l-i-n.
12 MR. LANIER: May it please the Court? Your Honor,
13 may I be free to write a few things on the tablet?
14 JUDGE SARIS: Of course.
15 Can you all see it?
16 Good.
17 DIRECT EXAMINATION
18 BY MR. LANIER:
19 Q. Mr. Franklin, would you please tell the jury -- you
20 just did it. Would you tell them your name, please,
21 introduce yourself to the jury.
22 A. David Franklin, my name is David Franklin.
23 Q. Do you go by Dave or David?
24 A. David is fine.
25 Q. What kind of doctor are you?

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1 A. I'm not a medical doctor at all. I have a PhD in
2 microbiology from the University of Rhode Island.
3 Q. And a PhD, a doctor of philosophy?
4 A. That's what it means, but it means essentially that I
5 studied the sciences. In my particular case microbiology,
6 which is the biology of microorganisms.
7 (Discussion off the record.)
8 Q. Are you a little nervous about being here today?
9 A. Little puts it mildly, yes.
10 Q. You had an interesting afternoon yesterday, didn't you?
11 A. Yes.
12 Q. Was yesterday the first time you and I ever had a
13 chance to visit?
14 A. Yes. Yeah, I met you yesterday.
15 Q. You met us after court yesterday and we had a chance to
16 visit?
17 A. Yes.
18 Q. Did you deal with this case a little bit yesterday
19 before you and I met?
20 A. Yes.
21 Q. Would you please tell us what you personally
22 experienced yesterday morning as you got ready to deal with
23 this case?
24 A. My wife and my daughter Sophie were home, relaxing. I
25 was anxious about this experience.

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1 Q. How old is Sophie?
2 A. Eight. She's eight years old.
3 Q. Okay.
4 A. So horsing around with Sophie, playing with Sophie when
5 my wife noticed she had a voicemail. It was from someone
6 who said he was a detective working on a federal case, and
7 he was searching for someone who lived in Massachusetts that
8 he believed she knew, and that he needed to contact this
9 person immediately and needed to hear back from her
10 immediately. This came --
11 Q. Did you have a chance to hear the message yourself?
12 A. Yes, I did.
13 Q. What did you observe next in regards to this message?
14 What happened next?
15 A. She called back. We -- the only federal case that
16 investigators have ever contacted me about was involved with
17 my experience working at Warner-Lambert, so we assumed it
18 had something to do with that. The fact that the call came
19 in on my wife's cell phone was unusual in that everybody
20 else, when they try could contact me, contacts my attorney.
21 Q. Your wife -- did she used to work for Pfizer?
22 A. She did.
23 Q. What -- did you ever find out who this fellow was?
24 A. Yes, he called back again, called back, I was standing
25 there with my wife and he called back and told him -- told

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1 my wife -- this time -- well, actually, let me correct that.
2 My wife called him and -- returning the call, and he
3 reiterated that he was a detective working on a federal
4 case, the federal case was Bulger v. Pfizer, and my wife is
5 an attorney, she doesn't practice any longer, but she did go
6 to law school, and recognized that wasn't the way a federal
7 agent would identify themselves. So she asked the person,
8 Well, who -- you know, what agency do you work for? He said
9 he didn't work for an agency. She said, Well, who do you
10 work for? He said, A large group of law firms. And she
11 goes, Who ultimately do you work for? He said, I work for
12 Pfizer.
13 Q. Did this gentleman at any point in time come out to
14 your house yesterday?
15 A. Yes. At that point my wife said I'm sorry, I don't
16 have anything to say to you, and hung up on him. He called
17 back about 30 minutes later and insisted that he speak to
18 her and that he had an urgent message to deliver to me and
19 needed to see me face to face, and that he wasn't going to
20 accept no from her if she didn't put us in contact, he
21 would -- he would not let it go, he would come to what he
22 believed to be her home. He would -- this was -- the quote
23 was, you will see me, this isn't going to end.
24 So at that point my wife is now a combination of
25 agitated and terrified, and hangs up on him again.

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1 Getting to your question, later on in the
2 afternoon, my daughter was getting ready for karate, she has
3 karate on Mondays and Fridays in the afternoon, it was time
4 to leave. I was changing to meet you for the first time and
5 noticed that there was an individual with his truck parked
6 at the top of our driveway, and he was standing at the top
7 of the driveway pacing back and forth, speaking on the
8 telephone. Now, in the context of the two earlier
9 conversations, we were alarmed that it was him.
10 Q. What did he look like?
11 A. Big guy. Granted, I'm a short guy, so everybody seemed
12 big to me, but he was a large individual. He had said to my
13 wife in that second conversation that he was a police --
14 that he had been -- he was a retired police detective, but
15 he was a big strapping guy. He wore black -- those black
16 kind of aviator sunglasses that obscured much of his face.
17 So he was at the top of the driveway, apparently
18 it looked like he was waiting for us, pacing back and forth.
19 Q. What did you do next?
20 A. Well, at that point my wife was -- we were all, quite
21 frankly, terrified. I left Pfizer 13 years ago tomorrow,
22 and when I was leaving, I -- we received threats that there
23 was no way the company was going to just let this go, so
24 after 13 years, having a Pfizer representative standing at
25 our driveway scared the hell out of us. Couldn't believe

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1 that it was happening after 13 years.
2 Q. So what did you do? By the way, you said you left
3 Pfizer 13 years ago --
4 A. I'm sorry, I left Warner-Lambert. I left
5 Warner-Lambert, yes.
6 Well, while we were trying to figure out what to
7 do, I took Sophie upstairs immediately, we didn't want her
8 exposed to any of this at all, and he disappeared. What he
9 had actually done was came down our driveway so he was so
10 close to the house we couldn't see him anymore, and so
11 I from the second floor yelled down to my wife that the car
12 is still there, he must be coming to the house, and my wife
13 went to the front door and found him -- we have -- I'm
14 sorry -- our front door and on either side of our front door
15 we have a stack of windows on either side, and he was
16 looking into the windows, saw my wife and was waving his
17 business card at her, smiling that -- he didn't say this,
18 but he was clearly signalling that he was indeed following
19 through with the threat that he would show up at the house
20 earlier.
21 We called 911 at that point, called the police,
22 said that there was this person doing this. My wife
23 explained to them that I was -- in 24 hours I was scheduled
24 to testify here and we were scared. The police showed up.
25 So my wife had 911 on the phone and actually pressed the

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1 phone -- because he was barking things at her, she held the
2 phone up to the pane of glass that he was looking through to
3 demonstrate to the dispatcher on the other side that this
4 was real, you know what I mean, this guy was angry.
5 So she yelled at the guy -- the dispatcher --
6 yelled at the guy that she had called the police, this was
7 the police, the police were on their way and he needed to
8 leave. And he walked up the driveway, got in his car, drove
9 away, and the police stopped him -- I didn't see this, but
10 the police came to our house --
11 Q. We're not allowed to get into hearsay of what the
12 police told you, so I'm going to set that aside.
13 A. Okay.
14 Q. Did you have anymore intrusions into your life from
15 this gentleman or is that the end of your direct involvement
16 with him?
17 A. That was the end of -- he did not come back.
18 Q. And this is right before you and I met for the first
19 time yesterday afternoon to discuss what you had to say to
20 the jury today?
21 A. Yeah, literally -- I noticed that he was there was I
22 was pulling my pants up in my bedroom. So, yeah -- we would
23 have --
24 Q. You weren't doing that in front of that window pane,
25 were you?

<p style="text-align: right;">94</p> <p>1 A. No, but he -- he was blocking the driveway, so in just 2 a matter of moments my daughter going to karate -- my 3 daughter would have encountered first, she was on her way to 4 karate, they would have encountered first.</p> <p>5 Q. At some point in time did you hear your wife say to him 6 something to the effect of how do you even know who I am or 7 something like that?</p> <p>8 A. He was saying that he -- he described to her when he -- 9 when he called the second time, that there was -- that he 10 knew everything there was to know about her, but seemed to 11 be confused about whether or not we were actually married. 12 And so he was asking questions about whether or not she was 13 married to me. But he then rattled off my wife's -- lots of 14 details about my wife, about her business, that she was -- 15 had gone to law school, that -- so he -- he demonstrated 16 that he did know a great deal about my wife, but he was 17 confused about whether or not we were married.</p> <p>18 Q. In light of all of this, as I asked you yesterday 19 afternoon, I'll ask you today in front of the jury in court, 20 are you still willing to testify and tell the jury what 21 happened about your time at Warner-Lambert?</p> <p>22 A. Yes -- I've been subpoenaed, but, yes, I am. My 23 daughter's afraid of the guy at the door, so we didn't get 24 much sleep last night, but absolutely, no, I need to do 25 this, yes.</p>	<p style="text-align: right;">96</p> <p>1 A. No, no, again, I have a PhD. So I was trained as a 2 scientist, not at all as a clinician, I am trained as a 3 scientist. So what I -- my job there was to help -- was to 4 do the research, do my little bit of this larger scale of 5 research that eventually could develop new treatments for 6 kids with cancer.</p> <p>7 Q. What kind of hours were you working? What kind of 8 money were you making? Tell us a little more about the job.</p> <p>9 A. Dana-Farber is a fantastic research institution, but it 10 does require a lot of hours. On a typical day I would work 11 12 hours, start at 9:00 and end at 9:00 is a typical 12 workday. And I made -- my income was based on what grants 13 was able to -- grants or awards, academic scholarships or 14 post-doctoral scholarships and grants from the National 15 Institutes of Health, organizations like that dictated my 16 salary. But the salary for the most part was around 17 \$18,000.</p> <p>18 Q. \$18,000. Did you have -- you had a child at this point 19 in time?</p> <p>20 A. Yes, Hillary, my oldest.</p> <p>21 Q. She's the girl at Hofstra?</p> <p>22 A. That's right.</p> <p>23 Q. And \$18,000, a PhD, I'm assuming you had some student 24 loans?</p> <p>25 A. Yeah, yeah -- well, I worked through school, I</p>
<p style="text-align: right;">95</p> <p>1 Q. Very good. Then, sir, with that I want to ask you some 2 questions. Let's start with your background.</p> <p>3 Why don't you tell the jury a little bit about you 4 and who you are.</p> <p>5 A. I'm 47 years old, I've got a 19-year-old daughter that 6 attends Hofstra University, she starts her junior year, and 7 an eight-year-old that starts third grade in September. I 8 grew up in Rhode Island, in Warren, Rhode Island. Went to 9 the University of Rhode Island both for my undergraduate 10 degree and for my graduate degree. I worked throughout 11 undergraduate and undergraduate degree, so by staying at the 12 same school for undergraduate and graduate it allowed me to 13 keep working throughout school.</p> <p>14 From there I went to the Dana-Farber Cancer 15 Institute, which is right here in Boston. I spent three 16 years there working on single transduction host disease in 17 children.</p> <p>18 Q. Time-out. For those of us who don't use those words 19 every day, what kind of work were you doing at Dana-Farber?</p> <p>20 A. Dana-Farber, I worked in the unit at Dana-Farber called 21 pediatric oncology. Dana-Farber treats people with both -- 22 both adults and children but has a unit focused specifically 23 on children with cancer. So I was in the department of 24 pediatric oncology.</p> <p>25 Q. Were you treating children as a medical doctor?</p>	<p style="text-align: right;">97</p> <p>1 bull-raked quahogs.</p> <p>2 Q. You did what?</p> <p>3 A. I bull-raked quahogs. You guys are from New England. 4 They're hard shelled clams. When I was in high school, I 5 actually bought an 18-foot skiff. So I would go out on 6 Narragansett Bay, when I grew up in Warren, and you 7 essentially drop this rake into the mud in deep water and 8 rake up quahogs.</p> <p>9 Q. Rake up what?</p> <p>10 A. Hard shell clams.</p> <p>11 Q. Okay. That's okay, I'm just --</p> <p>12 A. It's not your fault.</p> <p>13 Q. Okay. So I think we got off into this because I was 14 asking you about --</p> <p>15 A. I'm sorry.</p> <p>16 Q. -- student loans. Where were you economically at this 17 time?</p> <p>18 A. So when I went to graduate school and the latter years 19 when I was moving towards getting my bachelor's degree, the 20 amount of money I made doing that didn't pay for all of 21 graduate school, so I had to take student loans, both as an 22 undergraduate and as a graduate student, and so, yes -- I'm 23 sorry for the long answer, but the short answer is yes, I 24 had lots of student loans.</p> <p>25 Q. I think what's useful for us all is did you reach a</p>

<p style="text-align: right;">98</p> <p>1 point in time where you decided it would be helpful to make 2 more than the \$18,000 a year you were making? 3 A. Yeah, useful, it was necessary. So \$18,000 a year 4 wasn't -- was barely enough just to cover -- if my only 5 expense were the student loans, the \$18,000 would just 6 about -- after taxes and all of that would just about cover 7 the student loans. So it had become actually necessary for 8 me to earn more -- have more stable income. 9 Q. So what did you do? How did you find another job? 10 A. For scientists, somebody with a PhD, either -- there 11 are scientific journals, Science is probably the most 12 prominent one, in the back of Science -- it's a magazine -- 13 they'll have lots of scientific articles in there, it's 14 actually a very prestigious magazine, but in the back of it 15 they'll have job classifieds, just like every other industry 16 has. So there would be job classifieds there, and I would 17 apply for those jobs. 18 To be straight with you, though, that's a 19 prestigious magazine, they're pretty hard -- the jobs -- 20 there are two different types of jobs there, they're 21 good-paying jobs, but are very hard to get. They're kind of 22 very prestigious jobs, or they're good jobs that still pay 23 about 18 to 20 thousand dollars a year. So I needed to be 24 creative about what job I took because of -- I did need more 25 than the 18 or even 25 thousand dollars a year.</p>	<p style="text-align: right;">100</p> <p>1 move from a sales position into some other clinical or 2 scientific position. 3 Q. So was your goal when you went to work for 4 Warner-Lambert to be a sales rep or was your goal to get 5 into your field somehow more directly inside that drug 6 company? 7 A. Yeah, ultimately it was to get back to my field, but I 8 recognized that the initial job that I was applying for was 9 a sales job, and it was quite a leap to go from a sales job 10 to that. It was admittedly an unconventional approach. 11 Q. Did -- when you applied for the job, how did you go 12 about applying for it? Is this just send in a resume? Is 13 it make a phone call? What do you do? 14 A. It was send in a resume'. It was literally how 15 everybody else applies for a job that they see in the Globe. 16 Q. What happened after you sent in your resume? 17 A. I got a phone call from Parke-Davis. 18 Q. Parke-Davis is a part of Warner-Lambert? 19 A. Yes, yes, right. 20 Q. Okay. 21 A. So I got a phone call from Parke-Davis saying that they 22 were interested in me, not only from a sales point of view, 23 but they had another position called a medical liaison, that 24 they had a group of medical liaisons that were going to meet 25 here in Boston, that the medical liaisons that were actually</p>
<p style="text-align: right;">99</p> <p>1 Q. Did you have any luck at getting one of the good, 2 high-paying, quality jobs out of the back of the magazine? 3 A. Straight scientific job, no, I did not. 4 Q. So what did you do instead? 5 A. I applied for a job at Warner-Lambert as a sales 6 representative. 7 Q. Where did you come across information Warner-Lambert 8 was looking to hire someone? 9 A. I had -- every Sunday I would go through Science, and 10 then I would move on to the Boston Globe, and I was 11 literally flipping through the Boston Globe looking for 12 jobs. We have a pretty good biotech industry here in 13 Massachusetts, so those biotech companies would hire for 14 jobs. And I would look through those and eventually found 15 this position. 16 Q. But how does a -- or why does a PhD microbiologist, 17 cancer researcher at Dana-Farber apply for a job as a sales 18 rep at Warner-Lambert? 19 A. It was a foot in the door. It was -- I never -- I 20 didn't think -- I didn't see my career being permanently a 21 sales position, but I did see it -- this is an opportunity 22 to land a position with a pharmaceutical company that I 23 could prove myself through my own skills and experience, and 24 then once inside the company I'd have access to other 25 opportunities within the company, and therefore, be able to</p>	<p style="text-align: right;">101</p> <p>1 dedicated to Boston were going to meet and that they wanted 2 to -- and very quickly set up an impromptu meeting where I 3 could actually get to meet these people on the spot. It was 4 essentially a casual meet and greet sort of interview. It 5 wasn't really the true job interview. 6 Q. I want to digress just for a moment and make sure that 7 I understand you clearly. 8 You were talking to people at a company that was 9 Parke-Davis? 10 A. Right. 11 Q. But you've always used the name Warner-Lambert? 12 A. Right, I'm sorry -- 13 Q. Are those one and the same, in essence? 14 A. Right. Parke-Davis was the pharmaceutical division of 15 Warner-Lambert. So at the time Warner-Lambert made things 16 like Listerine, but it also owned this company -- a division 17 of the company was called Parke-Davis that had a whole 18 portfolio of drugs. 19 Q. So you understood Parke-Davis to be the drug part of 20 Warner-Lambert? 21 A. Right. 22 Q. Okay. The second thing you said that I want to make 23 sure I'm clear on is that you applied for a job as -- in 24 sales? 25 A. Right.</p>

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1 Q. But you wound up taking a job as a medical liaison?
2 A. Right.
3 Q. Did I get those words right?
4 A. That's right. I think technically my business card
5 said medical and scientific liaison?
6 Q. Medical and scientific. There.
7 I want you to explain the difference --
8 JUDGE SARIS: So what year was this?
9 THE WITNESS: 1996.
10 MR. LANIER: Thank you, Judge.
11 BY MR. LANIER:
12 Q. 1996.
13 Would you please explain the difference between
14 what it meant to be a salesperson and what it meant to be a
15 medical and scientific liaison?
16 A. It's more -- if you could have some patience with me,
17 it's more complicated than it may seem because there were
18 two different descriptions. The sales job --
19 Q. Keep talking loud, please.
20 A. The sales job is what everybody thinks of as a sales
21 job, is you go out there, a sales representative selling any
22 other product, representing the company's product, telling
23 the customers about the features and benefits of the product
24 and selling it. The medical liaison position, there were
25 really two different descriptions of it. The one -- the

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1 official description, if you would, was that I was there to
2 answer the physician's questions about Parke-Davis drugs and
3 help them to offer the best possible clinical practice to
4 their patients.
5 So, for example, if a new drug is launched, the
6 FDA approves a drug, launches it, how does a physician learn
7 about that drug? Typically they -- when it's an approved
8 drug, they learn it through the sales force. So the sales
9 force will detail, actually meet with physicians and explain
10 the features and benefits of the new drug. But there are
11 times when a physician will need to use the drug in a way
12 that the directions that come with it -- sometimes you've
13 seen these directions when you get something from the
14 pharmacy, they used to be this long, thin sheets with lots
15 of chemical formulas on it. Sometimes physicians will have
16 questions about those approved uses, everything from
17 potential side effects to other ways of using the drug, and
18 they'll have those questions. That exceeds what a sales rep
19 typically is trained to do, so that's where a medical
20 liaison can get involved.
21 The other element of a medical liaison -- or the
22 official description is sometimes physicians are interested
23 in running clinical trials, particularly here in the
24 Massachusetts area, and the medical liaison was somebody
25 that could act -- that's what the liaison was, gave

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1 reference to, act as a conduit between the physician and the
2 clinical development department at the company that could
3 help facilitate that clinician actually running a medical
4 trial. The purpose of a clinical trial would be, again, to
5 benefit patients ultimately.
6 Q. Mr. Franklin, when you first took the job, did you
7 think you were applying for a job as a salesperson?
8 A. Yes, yes, I -- yes.
9 Q. As you were moving -- hoping to move into a scientific
10 role, what was the effect when you found out they were
11 interested in you instead as a medical and scientific
12 liaison?
13 A. I was thrilled about it. So as I had mentioned
14 earlier, I was applying for a sales job, ultimately wanted
15 to move into a clinical -- or scientific position. As naive
16 as I was at that point, I knew that was going to be a very
17 difficult leap. However, the medical and scientific liaison
18 position seemed to solve that problem, or I believed at
19 least during those interviews that I would be working
20 closely with the medical -- the clinical development
21 department and directly with physicians. It was actually
22 quite thrilling, because I -- at Dana-Farber I worked side
23 by side with physicians every day, so it seemed like a very
24 nice transition, actually.
25 Q. All right. Once you got the call back asking about an

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1 interest in scientific medical liaison, how did the ball
2 move forward in getting that going?
3 A. So I had the casual meet and greet at Parke-Davis
4 asking me to attend, it was held right here in Boston at the
5 Ritz Carlton Hotel. The medic liaisons in the area, as well
6 as the person that I would ultimately be working for, were
7 here running what they called a consulting meeting. During
8 one of the breaks during the consulting meeting, they would
9 be able to meet with me. And so I showed up, they were
10 already -- when I got there, they were already sitting in
11 the lounge, the break had taken place, and we sat in the
12 lounge at the Ritz Carlton Hotel, and we literally discussed
13 life. It was clearly just do you like me, do I like you
14 sort of session.
15 Q. After that session, did you actually get called back or
16 something for interviews within the company itself?
17 A. Yes, yes.
18 Q. Would you tell the jury briefly about those -- what
19 happened when you got called back for interviews?
20 A. So I got called back --
21 Q. You had to buy a suit, didn't you?
22 A. Yeah, I did have to buy a suit. So I got called
23 back -- I wasn't quite sure how that meet and greet had
24 gone, but I did get a call back a few days later from
25 Parke-Davis saying that they wanted me to spend a full day

<p style="text-align: right;">106</p> <p>1 in the Northeast CBU headquarters in New York -- Parsippany, 2 I'm sorry, and to fly down there and interview all day long. 3 As he just pointed out, I wasn't actually prepared for that. 4 At Dana-Farber it was a hyper casual sort of environment. 5 So I did need to scramble and go out and buy a suit and that 6 sort of thing. But did fly down there and was picked up by 7 a limousine and driven to the headquarters in Parsippany. 8 Q. One of the reasons I asked about a suit, I want to 9 know, did you get exposed to a different culture and a 10 different approach to things as you were going to 11 Warner-Lambert versus what you were exposed to when you were 12 working at Dana-Farber? 13 A. Yeah. Yeah, so -- so I was sitting on the plane 14 preparing -- typically how a scientist interviews for a job 15 is they talk about their scientific credentials. They 16 actually present prior work. So it's a series of 17 PowerPoints and publications, very complicated scientific 18 discussion. Typically you're talking to somebody's that's 19 outside of your field, so it can be a challenging 20 conversation, but you essentially try to prove yourself by 21 the innovative ideas behind your science. 22 And so I was prepared for that type of very 23 technical scientific conversation, even though I knew that I 24 was applying for -- I had initially applied for a -- excuse 25 me, a sales job. At this point I knew that I was actually</p>	<p style="text-align: right;">108</p> <p>1 But they -- I got there and it was not -- there was no 2 discussion of my science, the science that I had worked at 3 Dana-Farber at all. 4 Q. What did they discuss with you? 5 A. You know, the -- more of that meet and greet, feeling 6 out my personality. Before I had gone down, the person 7 from -- her name was Zona Hodge from HR. 8 Q. HR being human resources? 9 A. I'm sorry, human resources. Her advice to me was that 10 in this meet and greet at the Ritz Carlton I wasn't 11 aggressive enough, I wasn't selling myself. She was 12 coaching me I had to sell myself on this. I needed to be 13 much more out -- not outgoing, but I needed to demonstrate 14 why they needed to give me the job. And so when I had 15 gotten that input, I recognized that I needed to figure out 16 how to actually do that. I had never applied for a job that 17 wasn't based on your credentials, the other scientific jobs 18 that I had applied for but I had been turned down were 19 really based -- they were scientific interviews. 20 So when I got down there, the conversations were 21 much more, in retrospect, sales oriented. The primary theme 22 of the -- the theme that stood out was -- everybody that I 23 interviewed with was -- either asked me or prepared me to 24 answer questions about times when I've had to bend the 25 rules. Give me examples of when you found yourself in</p>
<p style="text-align: right;">107</p> <p>1 applying for the medical and scientific liaison position. 2 So I expected a science sort of discussion. 3 The problem -- I bought the suit too late and that 4 sort of thing, so I had to tailor it myself with that tape 5 which everybody seems to get a charge out of, but I 6 recognized when I was sitting in -- I got there and there 7 was a guy standing at the gate -- back then you could still 8 stand at the gate and pick up people, there was a guy there 9 with Dr. Franklin on his tag and I got in the limousine. 10 The difference in terms of the culture in the pharmaceutical 11 industry and the culture in at Dana-Farber are -- could not 12 be any more different. They are -- they're dramatically 13 different. 14 Q. When you got off -- out of the limo they sent and you 15 got there, how did the interviews go? Was it the scientific 16 interview you expected? 17 A. No, not at all. No, no, there was no -- so I had my 18 briefcase and all that sort of stuff. I was prepared -- I 19 sweated bullets on that plane going down there, because I 20 was really prepared for a scientific discussion, and I had 21 even bought one of those how to interview books and so I was 22 studying up on that sort of. I was so self-conscious at 23 this point I actually left the how to interview book on the 24 airplane because I was afraid somebody would see it on the 25 briefcase when I was taking out my scientific presentations.</p>	<p style="text-align: right;">109</p> <p>1 conflict or you found yourself in a place where you were 2 working in a gray area, how did you handle that? And boy, 3 that wasn't in the how to interview book, and I really -- I 4 had a difficult time. I struggled with coming up with an 5 example of a case of where I had been in a gray area or I 6 had to bend the rules. 7 Q. And did this come up once? You called it a theme. How 8 often were you talking -- asked about or discussed with in 9 this interview process bending rules or gray areas? 10 A. Three separate times. 11 Q. What did you tell them? 12 A. I -- the most difficult conversation was with Mike 13 Valentino is the person who actually I had been told was -- 14 he was the vice president -- he was responsible for the 15 Northeast CBU. 16 Q. Time-out, one second. Mike Valentino, e-n or i-n? 17 A. e. 18 Q. You said he was in charge of what? 19 A. The Northeast CBU. So that's the Northeast customer 20 business unit. 21 Q. C is customer? 22 A. Yeah. 23 Q. Business unit? 24 A. Yes. 25 Q. So when we hear you or someone else talk about the</p>

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1 Northeast CBU, talking about the customer business unit.
2 And Mike Valentino headed that up?
3 A. That's right.
4 Q. Okay. Would you please continue now the conversation
5 you were having with Mike Valentino that you thought was the
6 most unusual, or difficult?
7 A. So what Mike was -- he asked me directly to give him an
8 example of where I needed to bend the rules or work in the
9 gray area, and I struggled with it. I did one of those
10 awkward sort of sweating trying to come up with the -- an
11 example. And the example I had come up with, I had as a
12 graduate student I had designed an exam and made the
13 rules -- I structured the question and instructed the
14 grading of the exam so that the student -- one of the
15 students -- this was a microbiology class, actually figured
16 out -- found a loophole in the way I had structured the exam
17 so that if you didn't answer any questions, he actually
18 got -- he would get an A. And so he handed in a blank exam
19 and then pointed out to me that the way I had structured the
20 exam there was no way I could fail him, and he was correct.
21 He was right on that.
22 Q. Did you become most popular professor on campus at that
23 point?
24 A. I corrected that error quickly, and he was the only one
25 who figured it out. So I attempted -- I explained that,

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1 where I had created the problem and had somebody that was
2 taking advantage of a mistake that I had made that was
3 clearly not within the spirit of exam taking, but it clearly
4 did not -- that kind -- that conversation of how I dealt
5 with the student, talked to the student about him not
6 appreciating the point of taking an exam, he might
7 clearly -- that was not my -- what my response did not
8 answer his question.
9 Q. Ultimately did you get the job?
10 A. Yes, Mike gave me the job offer in the same
11 conversation.
12 Q. In that conversation?
13 A. Yes.
14 Q. How -- what did he offer you?
15 A. \$55,000 a year and the job as medical liaison in the
16 Northeast CBU, and I would start at \$55,000 a year.
17 Q. Okay. This is 1996, right?
18 A. Mm-hmm.
19 Q. And in 1996 -- I'm abbreviating your last name -- in
20 1996 you had been working at Dana-Farber doing work 12 hours
21 a day, you said, how many days a week?
22 A. Six.
23 Q. And you were making how much?
24 A. About 18 -- it varied, but about \$18,000 a year.
25 Q. And didn't own a suit?

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1 A. It seems to bother you.
2 Q. Occupational hazard to me.
3 A. Just so you understand at Dana-Farber.
4 JUDGE SARIS: No, I don't think we need to --
5 THE WITNESS: Okay.
6 BY MR. LANIER:
7 Q. But that was rigorous scientific environment for you,
8 wasn't it?
9 A. Arguably one of the most scientific environments in the
10 country.
11 Q. You went to work at Warner-Lambert Parke-Davis. What
12 did your hours wind up being?
13 A. They were short. I believe that technically it was an
14 eight-hour day, but Lisa Kellet, the person I worked with
15 most of the time pointed out to me that it was rare you had
16 to work past 2:00, if you planned your day correctly.
17 Q. Okay. So somewhere less than eight hours in general?
18 A. Significantly less than eight hours in general.
19 Q. Did you work six days a week?
20 A. No.
21 Q. How many?
22 A. Five.
23 Q. And how much were they willing to pay you?
24 A. \$55,000.
25 Q. Did you get any perks you didn't have at Dana-Farber?

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1 A. I got a car. I got a car, gas, that sort of thing.
2 Q. Did you take the job?
3 A. Yes. Yes, I did.
4 Q. How long did you think about it?
5 A. I accepted it right away.
6 Q. Did you find the same type of scientific invigorating
7 environment in your job as the medical liaison at
8 Warner-Lambert Parke-Davis as you had at Dana-Farber?
9 A. No, not at all. I did recognize that my job at
10 Warner-Lambert was different, it was clearly different, I
11 knew I was applying for a job that was different than it was
12 at Dana-Farber. So, no, they weren't remotely comparable.
13 Again, at Dana-Farber I was doing bench top science, at
14 Warner-Lambert I was not.
15 Q. By the way, you told me yesterday afternoon when I was
16 visiting with you about this, you got another perk that you
17 didn't know you were going to get. You got a subscription
18 to a magazine, what was that?
19 A. Yeah, it was -- I got a subscription to Selling Power
20 magazine.
21 Q. Was that a surprise to you?
22 A. Yeah -- it was. I had earlier given you the
23 description of -- there was an official job description that
24 I was not a sales representative, that I was there really to
25 serve -- to act as a liaison, that's what the job title

<p style="text-align: right;">114</p> <p>1 said. A connection between Warner-Lambert Parke-Davis and 2 its scientists, its clinical development, its R&D, it's a 3 management team and physicians who actually practice 4 medicine on a day-to-day basis, that was my official job 5 description. But in actual practice I was a sales rep 6 through and through. So Selling Power -- in the context of 7 in the day-to-day practice of my job, Selling Power made 8 perfect sense, but --</p> <p>9 Q. In the context of your thinking process when you had 10 thought that you'd already in a sense bumped past sales and 11 were moving into the scientific area, was it kind of a bit 12 of a letdown when you realized that maybe you had a 13 different title but you were still expected to do sales? 14 You got the selling magazine?</p> <p>15 A. No -- I think the question -- that doesn't capture -- 16 how do I put it? It wasn't a letdown. I knew I was 17 applying -- I had applied for a sales job. Eventually I 18 realized that I was in a sales position. If I had taken the 19 sales job and found myself, you know, four months later in a 20 sales position, I would have gotten what I expected, where 21 the disappointment or the letdown was that the sales 22 position -- the sales that I was responsible for were sales 23 that were prohibited by the -- by law. And so my letdown, 24 if you will, was that I was selling products illegally. So 25 it -- how do I put it -- that -- I guess I've answered it</p>	<p style="text-align: right;">116</p> <p>1 Q. All right. You've used some names. I would like you 2 to help us, please, put those names into a context so that 3 we can remember them as they recur during the trial and we 4 have something we can go back to.</p> <p>5 You are a medical liaison. Was Lisa also a 6 liaison?</p> <p>7 A. Yes.</p> <p>8 Q. All right. So the liaisons would have been Lisa -- 9 what was her last name?</p> <p>10 A. Kellet.</p> <p>11 Q. K-e --</p> <p>12 A. -- l-l-e-t.</p> <p>13 Q. And you, Dave Franklin.</p> <p>14 A. And another, Mike Davies.</p> <p>15 Q. And a third, Mike Davies?</p> <p>16 A. Yes.</p> <p>17 Q. And who did you three report --</p> <p>18 A. These were just the three that were located here in the 19 Massachusetts area.</p> <p>20 Q. All right. So this was the Massachusetts area 21 liaisons?</p> <p>22 A. Right, yes.</p> <p>23 Q. And who did you three report to?</p> <p>24 A. Phil Magistro.</p> <p>25 Q. Phil, can you spell his last name, please?</p>
<p style="text-align: right;">115</p> <p>1 with a long answer, is the letdown, because I applied for a 2 sales job, I found myself in a sales job would be -- letdown 3 wouldn't actually capture that. That would be what I 4 actually expected. What the letdown actually was, was that 5 I was in a sales job where my responsibility was to sell 6 products illegally.</p> <p>7 Q. How did you find out that you were expected to sale 8 products illegally?</p> <p>9 A. I was trained on it from day one I was trained on it.</p> <p>10 Q. Let's start out with day one then. Tell us a little 11 bit of how you were trained when you got this amazing paid 12 new job?</p> <p>13 A. I followed -- I worked directly with the individual -- 14 the other medical liaisons in the Northeast CBU, so I 15 followed around primarily an individual named Lisa Kellet, 16 whose job responsibility was for me to go side by side with 17 her to visit doctors and see how -- and she showed me how 18 she would sell doctors on the off-label use of drugs, 19 particularly Neurontin, and then I was -- we had official 20 training sessions where Phil Magistro, the person that Lisa 21 Kellet and I reported to, he would train us, he would give 22 us new information and show us how to use the slides that he 23 would give us. And then we actually had official -- all the 24 medical liaisons in the entire country got together in Ann 25 Arbor at one point for national training.</p>	<p style="text-align: right;">117</p> <p>1 A. M-a-g-i-s-t-r-o.</p> <p>2 Q. What was his job title?</p> <p>3 A. He was director of medical affairs, I believe.</p> <p>4 Q. Did you have regular interaction with anyone else?</p> <p>5 A. Many other people.</p> <p>6 Q. Where would they fit on this parameter, or on this 7 diagram, paradigm?</p> <p>8 A. Again, just as I had an official and unofficial job 9 description, there were two different org charts, also. So 10 I technically -- Phil Magistro -- so the medical liaisons 11 were part of an organization called medical affairs. Phil 12 Magistro reported into someone named Bill Sigmund, who was a 13 physician and who I believe was vice president of medical 14 affairs.</p> <p>15 Q. Bill Sigmund?</p> <p>16 A. Right, MD.</p> <p>17 Q. And he's an MD?</p> <p>18 A. Yes.</p> <p>19 Q. And he's a vice president of medical affairs?</p> <p>20 A. I believe -- I believe that was his title, yes.</p> <p>21 Q. Okay. So you said there were two organization charts, 22 org charts?</p> <p>23 A. Right.</p> <p>24 Q. This one -- explain how there are two.</p> <p>25 A. So on a day-to-day practice point of view, and what I</p>

<p style="text-align: right;">118</p> <p>1 was actually told -- what Phil Magistro explained to me in 2 that all-day interview session was that while he technically 3 reported to Bill Sigmund, in all practice he reported in to 4 Mike Valentino, the vice president of the Northeast CBU. 5 And so it was Mike Valentino who would actually decide 6 whether I would get the job. In fact, that's what it turned 7 out, that Mike Valentino offered me the job. 8 Q. Now, what was Mike Valentino's job in medical affairs? 9 A. He didn't work in medical affairs. He was -- he was 10 part of the -- separate organization org structure. The way 11 that Parke-Davis was set up was that it had regional 12 business units. So I was obviously in the Northeast, but 13 there was a southeast, there was a western, and so there 14 were different geographic regions, and they would run 15 somewhat independently. So Mike Valentino was responsible 16 for all sales, marketing, that type of operational stuff in 17 the Northeast. So he ran it more or less as a business. 18 But he was -- all the sales and marketing guys reported in 19 through Mike Valentino. 20 Q. So even though by the main org chart you seemed to go 21 through medical affairs up to the medical doctor vice 22 president, in actual practice, was it the head of sales who 23 was running your liaison area? 24 A. Yes, yes. And so when -- when we would have conference 25 calls and training periods, it was actually the sales</p>	<p style="text-align: right;">120</p> <p>1 patient is still experiencing symptoms can be very -- it's 2 troubling. Physicians want to cure, and they hate to see 3 their patients suffering. So when you see someone named 4 Dr. David Franklin coming into your office saying, look, 5 we've got clinical data that shows this drug is effective in 6 treating bipolar disease, those docs are actually quite 7 motivated to benefit their patients. And so it actually is 8 easier -- it's actually quite easy to convince a physician 9 to use a drug off-label. Why I say it was illegal in this 10 case was that we did not -- the problem with that is because 11 the drug has never been actually tested and evaluated by the 12 Food and Drug Administration to see if it is generally safe 13 and efficacious. That physician is experimenting on that 14 patient. And when you do that sort of thing, you're going 15 to have -- the physician needs to have a very heightened 16 awareness of the things that can go wrong for that patient. 17 That's why the FDA says while the physician has the right to 18 do that, a company cannot promote for it. And my job was to 19 promote, to encourage, and to actually greatly encourage, to 20 motivate in a number of different ways physicians to 21 experiment like that. 22 Q. All right. I want to segment out some of the things 23 you've put into that answer because first of all, you say 24 when I was introduced as Dr. David Franklin, what -- what do 25 you mean by that? Explain the importance of that to the</p>
<p style="text-align: right;">119</p> <p>1 people, the directors of sales that actually -- the sales 2 and marketing that would actually run the meetings, John 3 Krukar and John Ford. 4 Q. You said a little bit earlier that you were told to 5 sell a product, in essence, illegally. Really? And were 6 they that blunt about it? 7 A. Yeah, so the -- I know that's an inflammatory term, but 8 the -- what I was responsible for doing -- so any given -- I 9 was responsible for selling Neurontin off-label. I had a 10 list of 13 indications of we would call the snake oil list. 11 It was a list of 13 indications that I was supposed to go 12 out and tell physicians that they should use this drug in 13 their patients, that we had a large and growing body of data 14 that showed that this drug was safe and efficacious in those 15 patients, and that I should encourage those physicians to 16 actually use the drug in patients. 17 So that may sound ludicrous, but it's -- you have 18 to think of it from a doctor's point of view. A doctor has 19 a patient that he's been seeing, in some cases, for years, 20 and he's struggling. Let's say that person is suffering 21 from pain. It's very frustrating for a physician to time 22 after time again try to treat a patient who is suffering 23 from pain and they come back every month still having -- in 24 some cases debilitating pain. Other people with bipolar 25 disease who are -- he's treating with lithium and the</p>	<p style="text-align: right;">121</p> <p>1 jury, what was really going on? 2 A. So part -- part of the Hippocratic oath says that a 3 good doctor -- 4 Q. Hippocratic oath being what doctors take? 5 A. The Hippocratic oath that doctors take -- 6 Q. Medical doctors? 7 A. Medical doctors take when they graduate from med 8 school. Really it's just a body of medical ethics, what 9 makes a good doctor, what makes a good person, a good 10 physician. And an important part of that is a physician 11 recognizing his own limitations, recognizing that I don't 12 actually know how to treat this patient, and therefore, 13 reach out to their other physician friends. So the modded 14 version of the Hippocratic oath actually specifically states 15 that a physician should be able to reach out to his other 16 physician friends, his peers. 17 So by a sales rep introducing me as Dr. Franklin, 18 it right away would give the physician the impression that 19 he was dealing with a peer. It was inaccurate, but it would 20 appear -- 21 Q. When they introduced you as Dr. Franklin, was it 22 under -- did you feel an impression was being left that you 23 were actually a medical doctor? 24 A. Yeah, at the very least a medical doctor, someone that 25 was bound by that same oath, or, and at the far other end of</p>

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1 that, I was at the very least an expert at what I was
2 conveying to him. So my business card would say PhD on it,
3 it did not say MD on it. Most physicians did not get my
4 business card, but if they did, they would see PhD and at
5 the very least I was an expert in neurology. One of the
6 issues came up is that we would cold call physicians --
7 Q. Cold call?
8 A. Cold call, so we would go to a medical building --
9 Q. I'm sorry to interrupt. How would you pick the doctor
10 that you are going to cold call?
11 A. I had lists, something called decile lists, so a list
12 of every physician in the state. They're actually in some
13 cases the entire Northeast.
14 Q. Decile, d-e-c --
15 A. -- i-l-e.
16 Q. And who gave you the decile list?
17 A. The marketing team.
18 Q. What is a decile list?
19 A. When you get a prescription and bring to any CVS,
20 Walgreens, any of those pharmacies, those pharmacies take
21 that prescription data and sell it to a company, in this
22 case it was IMS, there are a number of different companies
23 that handle them, but they actually sell your doctor's
24 prescribing behavior through prescriptions you have filled,
25 sell it to another company. That company then -- or the

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1 pharmaceutical company, in my case, Warner-Lambert, then
2 buys that data from this third company. That data has,
3 like, the doctor's name, his address, and his actual
4 prescribing behavior for any particular drugs that you want
5 to buy. So if you're interested in his prescribing of
6 antiepileptic drugs, you can see exactly how many
7 antiepileptic prescriptions that physician wrote over any
8 time period.
9 So I was getting to your question, I would choose
10 the doctors based on their decile, which was the volume of
11 prescriptions they wrote.
12 MR. LANIER: Your Honor, at this point in time
13 we'd move into evidence Plaintiff's Exhibit 2020 F, which is
14 one of the decile lists of this witness.
15 MR. GOODELL: Your Honor, no objection, other than
16 those that we've already raised with you.
17 THE COURT: All right.
18 (Exhibit 2020 F received into evidence.)
19 BY MR. LANIER:
20 Q. Sir, you've got a little screen in front of you, the
21 jury has some screens.
22 MR. LANIER: Mr. Alba, if I can impose on you to
23 give me some Elmo.
24 JUDGE SARIS: It's basically the document camera,
25 not a creature from Sesame Street.

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1 (Discussion off the record.)
2 BY MR. LANIER:
3 Q. Okay. I just randomly -- and the jury is going to have
4 the whole exhibit so they can look it -- but just randomly
5 grabbing a sheet of paper out --
6 THE COURT: This is something you received?
7 THE WITNESS: Yes, yes. This was an integral part
8 of my job. This list that he's showing here actually is how
9 I would decide who would I go see. So if you --
10 BY MR. LANIER:
11 Q. Okay. So let's just start with a column on this list
12 and we'll work our way across to understand what it is. The
13 territory seems to have numbers.
14 A. Right, so that makes reference to a particular sales
15 territory. That's how the company would track commissions
16 back to sales reps, keep -- it's --
17 Q. Sales reps are getting commissions off of these sales
18 you're generating?
19 A. That is how the sales reps were compensated.
20 MR. GOODELL: Could you give me a page?
21 MR. LANIER: Yes, I'm on, it looks like,
22 11426-PBS. Here's the Bates number down at the bottom,
23 11426 -PBS.
24 BY MR. LANIER:
25 Q. All right. So you've got a territory to get the

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1 bonuses to the sales reps, and then last name is the next
2 column. What does that mean?
3 A. It's the physician's last name.
4 Q. All right. So we could find a Dr. Holzer, I we'll
5 throw in the first name at the same time, a Dr. Donald
6 Holzer in that area?
7 A. That's right, in that sales area. His zip code is a
8 couple of columns over. So geographically he would be in
9 11772, and I have no idea where that is.
10 Q. All right. So the specialty is an N. What does that
11 tell us about him?
12 A. Neurology.
13 Q. AED decile 7. Do you remember what that is?
14 A. Antiepileptic drug decile. So this is a measure of how
15 large his prescribing base is. So if you can imagine a
16 physician with a relatively small practice -- a good way of
17 looking at this would be a physician with a small practice
18 that has 150, 200 patients, that would more or less cap how
19 many potential prescriptions for antiepileptic drugs that
20 physician could write. However, a physician with a much
21 larger practice or a practice that's solely focused on --
22 let's say general practitioner has 200 patients and eight of
23 them have a need for an antiepileptic drug, so they have
24 epilepsy. That would be a very low need prescription,
25 because the number of prescriptions that doc writes each

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1 month for antiepileptic drug is very small.
2 However, if you took a same -- a neurologist now,
3 who had still just 200 patients but they were all epilepsy
4 patients, he would be a much higher decile physician,
5 because he would write many, many more prescriptions for
6 antiepileptic drugs.
7 So this is a measure of not just the doctor's
8 practice, but their focus in clinical areas that we're
9 interested in.
10 Q. Were you trying to find doctors that had a lot of
11 potential to write prescriptions?
12 A. Yes. So this decile is on a 1 to 10 scale, so you can
13 see where the decile is, they're all 7s, 8s, you can see
14 Dr. -- his first name is Stanley, is a decile 10, so that
15 would be one of the largest practices. This isn't
16 necessarily a linear scale. Dr. Stanley's practice is
17 significantly larger than Dr. Donald's practice, given that
18 he's a decile ten. When I say practice measure, the real
19 measure I was taught to be interested in is how many
20 prescriptions they write, not how many patients they have.
21 Q. I don't want to get bogged down in this. If we look at
22 the entire paper we see some other doctors that are GP, CHN,
23 CHP, what are they?
24 A. Different types of physicians, general practitioners,
25 psychiatrists.

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1 Q. Why would you be interested in what a psychiatrist is
2 doing?
3 Time-out. At this point in time, what is this
4 product approved for on the label?
5 A. Adjunctive therapy of seizures. So adjunctive therapy
6 is if a person has a seizure disorder, epilepsy, and they
7 have incomplete control using another drug, the Neurontin
8 was approved that you could add that -- add Neurontin to
9 those people. So it was not a mono -- so monotherapy is
10 when you take a drug to treat a disease. Neurontin was
11 approved for adjunctive therapy, which meant there had to be
12 some other therapy in place, then you could add Neurontin to
13 it.
14 Q. Is that the length and breadth and depth and height of
15 what it had been approved for when you were working?
16 A. Post-herpetic neuralgia was an indication also that it
17 was eventually approved for.
18 JUDGE SARIS: What's that in common language?
19 THE WITNESS: I'm sorry. When you have diabetes
20 for long periods of time, the diabetes slowly works on your
21 nerves throughout your body, and oftentimes your feet and
22 your hands start to tingle. It's almost -- you can think of
23 it as a painful tingling, like when your arm falls asleep,
24 your leg falls asleep, that's that unpleasant -- it's a very
25 unpleasant experience. It's not simply, oh, my leg fell

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1 asleep. You have to imagine, oh, my leg fell asleep and it
2 doesn't go away and it hurts when I step on it.
3 BY MR. LANIER:
4 Q. A psychiatrist, did you ever meet any psychiatrists
5 that were effectively dealing with issues of epilepsy and
6 how to treat epileptic conditions or how to treat the
7 neuropathy condition you're talking about?
8 A. No, psychiatrists would be what I just called the
9 illegal component of my job. There was no reason why we
10 should be calling on psychiatrists whatsoever in any kind of
11 legal format.
12 Psychiatrists were on that list, and you don't --
13 I don't know -- I'm sure you have it somewhere, but there is
14 a list that's dedicated just to psychiatrists.
15 Q. It's at the very beginning of the exhibit for the
16 jury's sake, they'll get to see it, but if we go to page 1
17 of the exhibit, it actually starts out talking about
18 psychiatrists in NE CBU?
19 A. Right, that's the Northeast CBU. So this is a list of
20 all the physicians -- all the psychiatrists in the Northeast
21 CBU. You can see this is set up a little bit differently
22 where we've got their names and addresses. So --
23 Q. And then if we look at the columns themselves, both of
24 the psychiatrists on that sheet -- and I go back to these
25 other doctors similarly because it's a little more readable

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1 were you charting how much they would write Neurontin on a
2 monthly basis?
3 A. Oh, yeah. Yeah. So what we could do is using this,
4 you could actually -- I'm sorry, if you could slide it over
5 a little bit so we lose the zip code -- there you go.
6 JUDGE SARIS: If you touch the screen, they'll be
7 able to see where you're touching. Just touch it. At least
8 theoretically. There you go, you can see it.
9 A. So here we are tracking -- this is a physician -- so
10 this line moving across this way across the page is --
11 represents a single physician's prescribing behavior. You
12 can see in September this was a measure of how many
13 prescriptions he wrote. Actually, I believe in this case
14 it's new months of therapy. In October he dropped off, went
15 back up in November and went way up in December.
16 Excuse me, just for -- you can see then farther
17 down the page is -- are the other anti- -- Dilantin and
18 Depakote and those sorts of things are the other
19 antiepileptic drugs that physicians would be using.
20 If you look at this row that I already drew this
21 line through, this physician is writing a lot of -- he has a
22 lot of antiepileptic prescriptions here and here, but no
23 Neurontin. So the issue would then be to come -- to decide
24 we already know this is a high-decile physician, so this
25 would be somebody that I would need to target. I'd have to

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1 get him to stop using these other two drugs and start using
 2 Neurontin.
 3 Q. Okay. Now, you have -- you have some tape recordings
 4 of some of the instructions and messages and things from
 5 your superiors on how to do this process; is that right?
 6 A. Yes.
 7 MR. LANIER: Your Honor, we've got one we'd
 8 introduce into evidence right now and play to question the
 9 witness about, it's Exhibit 5655 entitled "The Neurontin
 10 Push." If we could have the Court's permission to play it,
 11 move it into evidence as well.
 12 MR. GOODELL: Could we just get a little
 13 foundation, please?
 14 JUDGE SARIS: Yes.
 15 BY MR. LANIER:
 16 Q. Sir, you're familiar with the phone conversation from
 17 Phil Magistro entitled -- that we've been calling the
 18 Neurontin push do you remember that conversation?
 19 A. Yes.
 20 Q. Did you tape that phone conversation yourself?
 21 A. Yes.
 22 Q. Did you provide that tape to your lawyers who
 23 ultimately have given it to us?
 24 A. I --
 25 Q. You don't know?

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1 A. I gave it to my lawyers, I have no ideas how you got
 2 it. I thought you got it from the government.
 3 Q. Fair enough.
 4 The Phil in that conversation, was it Phil
 5 Magistro?
 6 A. Yes.
 7 Q. Was he working for the company at the time?
 8 A. Yes.
 9 MR. LANIER: Your Honor, with that, I move it into
 10 evidence.
 11 JUDGE SARIS: Sure. Just -- how long is it going
 12 to be?
 13 MR. LANIER: Fifty-six seconds.
 14 JUDGE SARIS: All right.
 15 MR. GOODELL: Your Honor, no objection, other than
 16 the one we've previously raised.
 17 MR. LANIER: With the Court's permission I've got
 18 a transcript, can I put that up as well?
 19 JUDGE SARIS: Sure.
 20 MR. LANIER: It's a little scratchy as well.
 21 THE WITNESS: So do I press clear to get those
 22 lines off?
 23 THE CLERK: Bottom right.
 24 MR. LANIER: Yes.
 25 Mr. Alba, is there some magic to making the audio

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1 play?
 2 (Played tape.)
 3 JUDGE SARIS: I think -- you couldn't see the
 4 transcript on there. I had trouble hearing some of it, so I
 5 think you need to put that on.
 6 BY MR. LANIER:
 7 Q. Let's take a moment, sir, and look through this with
 8 the transcript of it up as a reference.
 9 Mr. Alba, if I could go back to the Elmo, please.
 10 I think I can come close to getting it all on
 11 there where it's still readable if we take out the date and
 12 time signal.
 13 Medical liaisons, this is Phil. Is that your boss
 14 Phil Magistro?
 15 A. Yes.
 16 JUDGE SARIS: We can all read. What exhibit
 17 number is this?
 18 MR. LANIER: Your Honor, it's 5655.
 19 JUDGE SARIS: All right.
 20 (Pause.)
 21 BY MR. LANIER:
 22 Q. Sir, when you were receiving this message, were you
 23 understanding that you were to be going out there and
 24 pushing Neurontin for these illegal, off-label matters you
 25 discussed earlier?

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1 A. Yes, this is an admonishment to actually -- to take
 2 responsibility for driving off-label, illegal sales.
 3 JUDGE SARIS: Do you remember exactly --
 4 approximately when this message took place?
 5 THE WITNESS: I could find it, your Honor, but --
 6 MR. LANIER: I believe there was a time insignia
 7 on the tape that we listened to said that May 23rd.
 8 JUDGE SARIS: May 23rd --
 9 MR. LANIER: 1996.
 10 THE WITNESS: I'm sorry.
 11 MR. LANIER: Your Honor, recognizing if I could,
 12 recognizing I have two more minutes before I get the hook --
 13 if I could move into evidence as well Exhibit 2020 J, which
 14 are the slides that he had for presentation.
 15 JUDGE SARIS: All right.
 16 MR. GOODELL: Your Honor, other than the normal
 17 objection, I don't know that he's actually identified these
 18 yet.
 19 JUDGE SARIS: No, he has not.
 20 MR. GOODELL: It may well be, I just don't know.
 21 BY MR. LANIER:
 22 Q. Sir, I'm going to hand you a document that's marked
 23 2020 J and ask you if these are the slides that you talked
 24 about when you were referencing the snake oil slides?
 25 A. Yes.

134	<p>1 Q. You can't show them to the jury yet.</p> <p>2 A. This is the snake oil slides.</p> <p>3 MR. LANIER: With that predicate, your Honor, I</p> <p>4 move into evidence 2020 J.</p> <p>5 MR. GOODELL: No further objection.</p> <p>6 JUDGE SARIS: All right.</p> <p>7 (Exhibit 2020 J received into evidence.)</p> <p>8 BY MR. LANIER:</p> <p>9 Q. Sir, when you in for opening statements this morning?</p> <p>10 A. No, I wasn't.</p> <p>11 Q. The jury had a chance to hear some discussion about the</p> <p>12 difference between an observation that may be made and valid</p> <p>13 clinical science. Do you know the difference between those</p> <p>14 terms?</p> <p>15 A. Yes. Yes, I do.</p> <p>16 Q. The drug company lawyer spent some time talking about</p> <p>17 those. Did you have experience with those terms when you</p> <p>18 were working at the drug company?</p> <p>19 MR. GOODELL: Your Honor, I object. This is not</p> <p>20 appropriate examination.</p> <p>21 JUDGE SARIS: Yes, why don't you ask it a</p> <p>22 different way.</p> <p>23 BY MR. LANIER:</p> <p>24 Q. Sir, were you taught by the drug company -- were you</p> <p>25 instructed by the drug company to use anecdotal stories as</p>	136	<p>1 the specific date that Pfizer -- Warner-Lambert did get</p> <p>2 approval for post-herpetic neuralgia.</p> <p>3 A. Essential tremor, that was off-label. Restless leg --</p> <p>4 Q. You can go through these quicker than I can. Go</p> <p>5 through each one and tell us --</p> <p>6 A. Restless leg syndrome, off-label; attention deficit</p> <p>7 disorder, off-label; limb movement disorder, migraine,</p> <p>8 bipolar, ALS is what most of us think of as Lou Gehrig's</p> <p>9 disease, and alcohol and drug control seizures, all of those</p> <p>10 were off-label and had no clinical data -- no scientific</p> <p>11 valid data to support use by a physician. A physician using</p> <p>12 these drugs for those things was effectively experimenting</p> <p>13 on their patient.</p> <p>14 JUDGE SARIS: Is this a good place to break?</p> <p>15 MR. LANIER: Yes, your Honor.</p> <p>16 JUDGE SARIS: See you tomorrow morning at 9:00.</p> <p>17 do note that there are one or two people here from the</p> <p>18 media, which is totally appropriate and legal for them, but</p> <p>19 I don't want you reading anything that shows up in the media</p> <p>20 tomorrow.</p> <p>21 Remember 9:00 to 1:00 all this week, and next week</p> <p>22 I may start going into afternoons, but I will certainly give</p> <p>23 you plenty of heads up.</p> <p>24 Thank you.</p> <p>25 THE CLERK: All rise for the jury.</p>
135	<p>1 opposed to science when you were selling the drug?</p> <p>2 A. I was actually taught how to use anecdotal science,</p> <p>3 make them look -- anecdotal stories, make them look like a</p> <p>4 scientific data base supporting clinical use.</p> <p>5 Q. So this slide that is entitled, "Anecdotal Uses of</p> <p>6 Neurontin," was this an new slide prepared by your drug</p> <p>7 company and given to you to use with doctors?</p> <p>8 A. Yes.</p> <p>9 Q. Reflex sympathetic dystrophy. Was that on-label or</p> <p>10 off?</p> <p>11 A. Off.</p> <p>12 Q. Was that something you thought you could legally sell?</p> <p>13 A. No.</p> <p>14 Q. Peripheral neuropathy, on-label or off?</p> <p>15 A. Off-label.</p> <p>16 Q. Diabetic neuropathy, on-label or off?</p> <p>17 A. At some point it became approved for diabetic</p> <p>18 neuropathy.</p> <p>19 Q. Trigeminal neuralgia?</p> <p>20 A. Off-label.</p> <p>21 Q. Post-herpetic neuralgia?</p> <p>22 A. Post-herpetic neuralgia, yes.</p> <p>23 JUDGE SARIS: That means it was on-label, that</p> <p>24 means it was legal.</p> <p>25 THE WITNESS: At some point, yes. I don't recall</p>	137	<p>1 (Jury left the courtroom.)</p> <p>2 JUDGE SARIS: I'll see counsel at sidebar on the</p> <p>3 record for one minute and then we'll go off.</p> <p>4 (At sidebar on the record.)</p> <p>5 THE COURT: One of the jurors told Robert she had</p> <p>6 a daughter that was epileptic. Of course that's something</p> <p>7 we didn't ask about. The child or the person was not on</p> <p>8 Neurontin. So I wanted to report that to you.</p> <p>9 MR. OHLEMEYER: Thank you, Judge.</p> <p>10 MR. LANIER: Okay.</p> <p>11 JUDGE SARIS: The second is, as far as I'm</p> <p>12 concerned, this procedure worked fairly well, but I do know</p> <p>13 that there are two exhibits that may come up at some point</p> <p>14 tomorrow which are those two --</p> <p>15 MR. OHLEMEYER: DDMAC letters.</p> <p>16 JUDGE SARIS: I know I cut you short this morning.</p> <p>17 Are those likely to come in tomorrow?</p> <p>18 MR. LANIER: No, ma'am.</p> <p>19 JUDGE SARIS: When are they going to come in?</p> <p>20 MR. LANIER: Day after tomorrow.</p> <p>21 JUDGE SARIS: They're not self-explanatory.</p> <p>22 MR. LANIER: Okay.</p> <p>23 JUDGE SARIS: There's one that talks about</p> <p>24 mechanism of action, and it did seem to be on point. It was</p> <p>25 2001 notice to Pfizer. The other one I had no idea what he</p>

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1 was talking about, Slim Jims, I just didn't understand
2 quality of life and why it was or wasn't relevant. I just
3 didn't get it.
4 MR. LANIER: I'll have a witness that can either
5 explain it or I won't use it.
6 JUDGE SARIS: Well, I don't want to get into it
7 until I understand it better.
8 MR. LANIER: I understand.
9 JUDGE SARIS: So the one seemed relevant, it was
10 mechanism of action, it says we don't understand it, it
11 increases GABA, seemed to be an agency statement. I don't
12 know why that wouldn't be --
13 MR. OHLEMEYER: Obviously, the Seroquel case
14 speaks directly to this, tied to the doctor from this case,
15 it's something from years ago about a generalized --
16 JUDGE SARIS: Help me on that if the date is 2000.
17 MR. OHLEMEYER: What the judge said, unless there
18 was some evidence the doctor had seen the offending
19 marketing material, it's absolutely irrelevant to talk about
20 the fact there may have been some newspaper clipping or -- I
21 don't want to demean it, there may be some marketing, but
22 unless the doctor actually saw it, heard it, or relied on
23 it --
24 THE COURT: That's overruled. But the Slim Jim I
25 don't understand. I don't get it. I tried to read it

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1 myself, it was very thick, I don't get it. So let me just
2 now go off the record. Actually, stay on one more minute.
3 Have I gotten a deposition --
4 MR. LANIER: No, your Honor --
5 JUDGE SARIS: Then we can go off the record.
6 (Discussion off the record.)
7 JUDGE SARIS: Who sent out the private eye?
8 MR. OHLEMEYER: I'll say this, your Honor: I
9 don't know the details of what happened, but it's not
10 unusual, obviously, to try and find fact witnesses to talk
11 to them.
12 JUDGE SARIS: This guy --
13 MR. OHLEMEYER: There's a right way do it, there's
14 a wrong way do it. The way it was done here sounds like it
15 was done wrong, and if it was done the way he described it,
16 we owe him an apology and we'll deliver it.
17 THE COURT: At this point, let me just say no one
18 should be going after Dr. David Franklin anymore.
19 MR. OHLEMEYER: Understood.
20 JUDGE SARIS: There was that feel, that old
21 movie --
22 MR. OHLEMEYER: Understood.
23 JUDGE SARIS: There was that feel that was really
24 wrong.
25 MR. OHLEMEYER: Understood.

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1 JUDGE SARIS: Franklin is known. Everyone's
2 known -- I've never seen him before, but I've known him
3 since 1995. He must have been deposed more than anybody --
4 MR. LANIER: 1,100 pages.
5 JUDGE SARIS: So there's no need to go out and see
6 him. He's not some brand new fact witness like those women
7 you found. No one should be going to him. In fact, I think
8 at this point no one should be going to any witness that's
9 been deposed, somebody that's been around. I think we know
10 what they're going to say.
11 Do you need something else on the record?
12 MR. OHLEMEYER: You could make the argument that
13 standing with the marker writing down words that the witness
14 says is argumentative and highlighting things for the jury,
15 some judges think it's fine, some don't, I just want to
16 know --
17 THE COURT: I think it's very effective.
18 MR. OHLEMEYER: We'll all be guided by it.
19 JUDGE SARIS: I think that's the way people learn,
20 particularly when we hit the science -- when you wrote
21 down -- but when it comes to the scientific terms, I think
22 it's helpful to actually see what they look like. And the
23 names, to see an organization chart. I encourage both sides
24 to do this. These aren't going into the jury.
25 MR. OHLEMEYER: All right. Very good. Thanks,

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1 Judge.
2 MR. LANIER: Then the last matter that we had
3 addressed earlier that -- I just want the Court to know that
4 it is my request that we be allowed, we being the
5 plaintiffs' lawyers, to put aside money for this girl and
6 set this case aside, non-suit this case, and move on and try
7 the next case up here in front of you before we go to the
8 defense --
9 JUDGE SARIS: That was a very different -- you can
10 dismiss this case whenever you want.
11 MR. LANIER: Well, I don't want to be in a
12 position where the lawyers for the other side say we're
13 going to incur expenses for their expenses --
14 THE COURT: If you want to settle it, settle it.
15 MR. OHLEMEYER: I think he's saying something
16 else. I think what he's saying, if he wants to set money
17 aside for Regina Bulger, will we waive costs. That's a
18 conversation I'd be willing to have with my client, but I
19 have to do that.
20 MR. LANIER: I mean, that's absolutely what I'm
21 saying.
22 This girl has got a shot at getting some money,
23 I've got a shot at winning this case.
24 JUDGE SARIS: By the way, what you just said is
25 different from what you just said two hours ago. You said

1 you come up with 50 and they come up from 50.
2 MR. LANIER: That's what I said. I'm asking the
3 jury for a hundred, and I'm sitting here saying I'm spending
4 half a million dollars putting this case on and these
5 experts.

6 THE COURT: Let me go off the record for this.
7 (Discussion off the record.)
8 (Court adjourned at 1:15 p.m.)
9

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11 CERTIFICATION

12 We certify that the foregoing is a correct
13 transcript of the record of proceedings in the
14 above-entitled matter to the best of our skill and ability.
15

16
17 /s/Debra M. Joyce July 28, 2009
Debra M. Joyce, RMR, CRR Date
18 Official Court Reporter
19

20
21
22 /s/Lee A. Marzilli July 28, 2009
Lee A. Marzilli, RPR, CRR Date
23 Official Court Reporter
24
25