

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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In Re: CELEXA AND MDL No. 2067
LEXAPRO MARKETING AND Master Docket No.
SALES PRACTICES 09-MD-2067 (NMG)
LITIGATION Case No. 13 CV 13113
PAINTERS AND ALLIED TRADES
DISTRICT COUNCIL 82 HEALTH
CARE FUND, A THIRD-PARTY
HEALTHCARE PAYOR FUND
v. Plaintiffs
FOREST PHARMACEUTICALS, INC. and
FOREST LABORATORIES, INC.
Defendants.

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In Re: CELEXA AND MDL No. 2067
LEXAPRO MARKETING AND Master Docket No.
SALES PRACTICES 09-MD-2067 (NMG)
LITIGATION Case No. 14 CV 13848
DELANA S. KIOSSOVISKI and
RENEE RAMIREZ, on behalf
of themselves and all others
similarly situated,
Plaintiffs,
v.
FOREST PHARMACEUTICALS, INC. and
FOREST LABORATORIES, INC.
Defendants.

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VIDEOTAPED DEPOSITION OF
GERARD J. AZZARI
New York, New York
July 21, 2016

Reported by:
MARY F. BOWMAN, RPR, CRR

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July 21, 2016

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9:38 a.m.

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Deposition of GERARD J. AZZARI, held

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at the offices of Debevoise & Plimpton,

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LLP, 919 Third Avenue, New York, New York,

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before Mary F. Bowman, a Registered

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Professional Reporter, Certified Realtime

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Reporter, and Notary Public of the State of

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New Jersey.

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APPEARANCES:

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5 BY: J. ROBERT ABRAHAM, ESQ.

6 BY: NOELLE E. LYLE, ESQ.

7 919 Third Avenue

8 New York, New York 10022

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10 Representing the Defendants

11 Forest Pharmaceuticals, Inc.,

12 and Forest Laboratories, Inc.

13

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15 Also Present: Ingrid Rodriguez, Videographer

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1 THE VIDEOGRAPHER: We are now on
2 the record.

3 My name is Ingrid Rodriguez. I
4 am a videographer for Golkow
5 Technologies.

6 Today's date is July 21, 2016,
7 and the time is 9:38 a.m.

8 This video deposition is being
9 held at 919 Third Avenue, New York,
10 New York, in the matter of Celexa and
11 Lexapro Marketing and Sales Practices
12 Litigation, for the United States
13 District Court for the District of
14 Massachusetts.

15 The deponent is Gerard Azzari.

16 Counsel, please identify
17 yourselves.

18 MR. COFFIN: My name is Chris Coffin
19 on behalf of the plaintiffs.

20 MR. WISNER: Brent Wisner, Baum Hedlund
21 on behalf of the plaintiffs.

22 MS. KIEHN: Kristin Kiehn on behalf of
23 Mr. Azzari and the defendants.

24 MR. ABRAHAM: J.Robert Abraham on behalf

1 of Mr. Azzari and the defendants.

2 MS. LYLE: Noelle Lyle on behalf of Mr.
3 Azzari and the defendants.

4 MS. KIEHN: Chris, I feel as
5 though Mr. Azzari is in shadow. Do we
6 want to remedy that before we start?

7 THE VIDEOGRAPHER: He looks
8 perfect in the video.

9 MS. KIEHN: OK.

10 MR. COFFIN: One thing I did
11 just remember, I don't know whether we
12 are supposed to have anybody on the
13 phone. Do you know the answer to that?
14 Well, let's just go ahead and get
15 started, and we will deal with that
16 later.

17 THE VIDEOGRAPHER: The court
18 reporter is Mary Bowman and will now
19 swear in the witness.

20 GERARD J. AZZARI,
21 called as a witness by the plaintiffs,
22 having been duly sworn, testified as
23 follows:

24 EXAMINATION BY

1 MR. COFFIN:

2 Q. Good morning, sir. Can you
3 please state your full name?

4 A. Gerard J. Azzari.

5 Q. And what's your address, sir?

6 A. 14 Cobbling Rock Road, Katonah,
7 New York 10536.

8 Q. Who are you employed by
9 currently?

10 A. I have a consulting company
11 that's mine.

12 Q. In the past, you were employed by
13 Forest Laboratories, correct?

14 A. Yes.

15 Q. And you began work with Forest in
16 1987, correct?

17 A. Yes.

18 Q. And your work there ended in
19 2014, correct?

20 A. Yes.

21 Q. In the time that you were at
22 Forest, you were in various roles within
23 the sales department, correct?

24 A. Yes.

1 Q. You understand we are here to
2 take your deposition involving the time
3 period when you were working at Forest?

4 A. Yes.

5 Q. Now, Forest has become other
6 companies since the time that you began
7 working there, correct?

8 A. Yes.

9 Q. Including Actavis and Allergan,
10 right?

11 A. Yes.

12 Q. If I refer to Forest, you
13 understand that I am also including the
14 companies Actavis and Allergan within the
15 time period you were working there?

16 A. Yes.

17 Q. Do you understand that you are
18 under oath as if you were in a court of law
19 today?

20 A. I do.

21 Q. Is there any reason that you
22 can't give your best testimony today?

23 A. No.

24 MS. KIEHN: Can I clarify the

1 corporate structure? I don't think
2 Allergan was in the picture in 2014.
3 So I think it would just be Actavis,
4 just to be clear.

5 MR. COFFIN: That's fair enough.
6 Okay. Thank you.

7 Q. Mr. Azzari, if I ask you a
8 question and you do not understand my
9 question, please indicate to me that you
10 would like it restated. OK?

11 A. OK.

12 Q. If you don't ask me to restate
13 the question, I'm going to assume that you
14 understood the question. OK?

15 A. OK.

16 Q. Did you review any documents to
17 refresh your recollection about the events
18 that occurred while you worked at Forest?

19 A. Yes.

20 Q. What documents did you review?

21 MS. KIEHN: I will allow the
22 witness to testify generally to the
23 categories, but not to the specific
24 documents, on grounds of work product.

1 MR. COFFIN: I think we are
2 entitled to know exactly what he
3 reviewed, because he testified that he
4 reviewed them to refresh his
5 recollection about the events. So we
6 can argue about that later.

7 Q. But your counsel has asked you
8 only to identify the categories of
9 documents. If you choose to follow that
10 instruction, fine, but I would like you to
11 answer the question, please.

12 A. Sure. We reviewed the topic of
13 call panels, e-mail communications,
14 documents related to communication that has
15 been distributed internally regarding
16 sales-related issues.

17 That's what I can recall.

18 Q. If you recall any other
19 categories of documents or specific
20 documents during the course of the
21 deposition, will you let me know?

22 A. Yes.

23 MR. COFFIN: I'm going to mark
24 the notice to this deposition as

1 Exhibit 1.

2 (Exhibit 1, Notice of Deposition
3 marked for identification, as of this
4 date.)

5 Q. I've marked as Exhibit 1 the
6 notice to your deposition that brings us
7 here today. Have you seen this before?

8 A. It doesn't look familiar.

9 Q. OK. It indicates your name on
10 the front and the date of today at 9:30 is
11 when your deposition will be taken,
12 correct?

13 A. Yes.

14 Q. If you turn to the second page,
15 you will see there are some document
16 requests. Did you bring with you any
17 documents that you reviewed in preparation
18 for the deposition?

19 A. No.

20 MR. COFFIN: Counsel, do you have
21 any of those documents?

22 MS. KIEHN: No.

23 MR. COFFIN: Do you intend to
24 produce any of those documents?

1 MS. KIEHN: No.

2 MR. COFFIN: We will reserve our
3 right to come back and redepose
4 Mr. Azzari based on the production of
5 those documents.

6 Q. You did produce a copy of your
7 CV. I have that here, correct?

8 A. Yes.

9 Q. Do you have any of these
10 documents related to your employment at
11 Forest or related to Celexa or Lexapro?

12 A. No.

13 Q. Did you keep a file after you
14 left Forest for anything related to your
15 work at Forest?

16 A. No.

17 Q. So you don't have any of those
18 documents?

19 A. No.

20 Q. Did you discuss your deposition
21 with anyone other than your lawyers?

22 A. No.

23 Q. Did you tell anybody you were
24 coming here today?

1 A. Just my wife and kids.

2 Q. What did you tell them it was
3 about?

4 A. I just told them I was being de-
5 posed regarding some promotional practices.

6 Q. What did you mean by "promotional
7 practices"?

8 A. Just in general, promotional
9 practices. That's the way I left it.

10 Q. And you understand that this case
11 involves allegations that Forest
12 fraudulently promoted the drugs Celexa and
13 Lexapro for use in children?

14 A. I'm aware that this deposition is
15 pertaining to the promotional and marketing
16 practices for Celexa and Lexapro.

17 Q. Did you know that this case that
18 brings us here today involves allegations
19 that the company promoted the drugs for use
20 in children illegally?

21 A. I'm just looking at it from a
22 general scope about the overall promotional
23 practice of Celexa and Lexapro.

24 Q. So you didn't know it involved

1 promotion to children?

2 A. I was aware that it did, yeah.

3 Q. OK. That is all I am asking.

4 A. Oh, OK.

5 Q. Did you know that the case
6 allegations are involving Forest's
7 promotion for use in children of Celexa and
8 Lexapro?

9 A. Yes.

10 Q. OK. I'm going to show you what I
11 have marked as Exhibit Number 2.

12 (Exhibit 2, resume marked for
13 identification, as of this date.)

14 Q. And can you identify what I have
15 marked as Exhibit 2, please?

16 MS. KIEHN: Can we have a copy,
17 please.

18 MR. COFFIN: Oh, yes.

19 A. Exhibit 2 reflects my CV.

20 Q. Is this up to date?

21 A. Yes.

22 Q. If you turn it over, on the back,
23 this indicates that your first position
24 with Forest Pharmaceuticals was in December

1 of 1987, correct?

2 A. Yes.

3 Q. And you were a sales
4 representative, correct?

5 A. Yes.

6 Q. What are the duties of a sales
7 representative at Forest?

8 A. The duties of a sales
9 representative at that time at Forest was
10 to promote products to healthcare
11 professionals.

12 Q. And when you say "promote
13 products," you mean pharmaceutical
14 products, correct?

15 A. Yes.

16 Q. And during the time that you were
17 in the sales department at Forest, did the
18 role of sales representatives ever change?

19 A. No.

20 Q. Sales representatives who were
21 responsible for Celexa promoted those drugs
22 for various uses to healthcare
23 professionals, correct?

24 MS. KIEHN: Objection.

1 You can answer, if you understand
2 the question.

3 A. I understand the question.

4 Sales representatives that
5 promoted Celexa promoted Celexa for major
6 depressive disorder to healthcare
7 professionals.

8 Q. And what about sales
9 representatives who promoted Lexapro while
10 you were at the company, what was their
11 role?

12 A. In similar fashion, sales
13 representatives promoted Lexapro for major
14 depressive disorder to healthcare
15 professionals.

16 Q. And the purpose of sales reps
17 promoting the drugs to healthcare
18 professionals was to -- in hopes that they
19 would prescribe the drugs, correct?

20 MS. KIEHN: Objection.

21 A. The objective of the sales
22 representative would be to engage the
23 physician on the features and benefits of
24 Celexa and/or Lexapro and leave it to the

1 physician to make the decision to use the
2 product the way they see fit for their
3 various patients.

4 Q. And Forest hired sales reps to go
5 and actually visit physicians in their
6 offices, correct?

7 A. Yes.

8 Q. And that was true with regard to
9 Celexa and Lexapro, correct?

10 A. Yes.

11 Q. And Forest provided the sales
12 reps with materials to promote Celexa and
13 Lexapro to the physicians in their offices,
14 correct?

15 A. Yes.

16 Q. And at times, sales
17 representatives, when they were in the
18 physicians' offices, would bring them lunch
19 in order to gain time with physicians,
20 correct?

21 MS. KIEHN: Objection.

22 A. On occasion, physicians or office
23 staff will request from representatives to
24 bring in not just lunch, it could be donuts

1 or whatever, a snack, a coffee, to spend
2 more time with physicians.

3 Q. What was the purpose of bringing
4 in donuts or coffee or lunch?

5 A. Sometimes it's a common courtesy,
6 or it's just the ability to engage the
7 healthcare office more effectively.

8 Q. Sales representatives were taught
9 to develop relationships with healthcare
10 providers, correct?

11 A. I don't know about develop
12 relationships. They were taught to call on
13 a list of physicians that -- of their
14 responsibility in their geographies to
15 promote Forest products.

16 Q. How did sales reps know which
17 physicians to call on?

18 A. They were given a list of
19 physicians from the sales administration
20 department.

21 Q. And the list of physicians was
22 referred to as a call panel?

23 A. Yes.

24 Q. Also might be referred to as a

1 target list, correct?

2 A. Yes.

3 Q. And the sales administration
4 department put together the call panels or
5 target lists of physicians, correct?

6 A. Yes.

7 Q. You weren't in sales
8 administration at any time, were you?

9 A. No.

10 Q. How did your roles within Forest
11 in the sales department differ from -- let
12 me strike that.

13 How did the sales administration
14 department differ from the sales department
15 within Forest?

16 A. The sales administration function
17 was responsible for producing
18 performance-related reports, call panels,
19 also the development of incentive
20 compensation programs.

21 Q. So going back to your CV, you
22 moved from a territory sales representative
23 to the position of field sales management
24 in 1991, correct?

1 A. Yes.

2 Q. And in field sales management,
3 you were still within the sales department
4 of Forest, correct?

5 A. Yes.

6 Q. What was your role as a field
7 sales management person within Forest?

8 A. I was responsible for supervising
9 sales representatives.

10 Q. What was your responsibility in
11 supervising them?

12 A. To ensure that their knowledge
13 and skills were up to par, to ensure that
14 their communication to healthcare
15 physicians was accurate in an effort to get
16 those physicians to best understand the
17 products we were promoting.

18 Q. In 1997, you entered the role of
19 senior vice president of sales, correct?

20 A. That was my title up until 2010.
21 When I first started in 1997, I was a
22 national director of sales.

23 Q. I'm sorry, you said, "when I
24 first started in 1997" --

1 A. When I first started leading the
2 sales force, following the position of
3 sales management, in parens you see on the
4 resume, it says "division manager,
5 specialty manager and regional director."
6 That was a six-year period.

7 Following that, I was promoted in
8 December of 1997 to national director of
9 sales.

10 Q. So your title in December of 1997
11 became national director of sales, correct?

12 A. Yes.

13 Q. When did your title change to
14 senior vice president of sales?

15 A. In 2005.

16 Q. What was your -- strike that.
17 What were your responsibilities
18 as the national director of sales for
19 Forest?

20 A. The responsibilities were to
21 supervise regional directors who -- their
22 responsibilities were to lead division
23 managers and representatives.

24 Q. And when you were in this role,

1 were you responsible for supervising sales
2 personnel who were promoting Celexa and
3 Lexapro?

4 A. Yes.

5 Q. And that was true when you became
6 the senior vice president of sales as well,
7 correct?

8 A. Yes.

9 Q. Although when you became the
10 senior vice president of sales, that was
11 2005, right?

12 A. Correct.

13 Q. Therefore, you were only
14 promoting Lexapro, not Celexa, correct?

15 A. Yes.

16 Q. How did your role change, if at
17 all, when you moved from national director
18 of sales to senior vice president of sales?

19 A. There was a structural change in
20 2002 where we went from supervising
21 regional directors to area directors. So I
22 was supervising area directors in 2005.

23 Q. Were you -- you talk about
24 regional directors and area directors. Are

1 these positions just different levels of
2 supervision within the sales force?

3 A. Yes.

4 Q. And is it accurate to say that
5 you were at the top of all salespeople
6 within the Forest sales department when you
7 became the national director of sales?

8 A. At the time I became national
9 director of sales, I was one of three
10 national directors.

11 Q. OK. And who were the other two?

12 A. Mark Devlin and Cary Renner.

13 Q. That was in 1997, correct?

14 A. Yes.

15 Q. Did Jerry Lynch become a national
16 director of sales at any time?

17 A. Jerry Lynch became national
18 director of sales in 2001.

19 Q. And did he take Cary Renner's
20 place?

21 A. In 2001, there was an appointment
22 of -- Mark Devlin moved into the managed
23 care environment, and Jerry Lynch and I
24 shared responsibility for leading the sales

1 force.

2 Q. How were the responsibilities of
3 the national sales directors divided?

4 A. Purely by geography and
5 supervisory roles.

6 Q. Mark Devlin, Cary Renner and
7 Jerome -- no, Jerry Lynch, excuse me, the
8 three of them, did they supervise sales
9 personnel related to the promotion of
10 Celexa and Lexapro as well?

11 A. Yes.

12 Q. It was all based -- the division
13 of labor was all based on geography?

14 A. Yes.

15 Q. When you became the senior vice
16 president of sales in 2005, how did your
17 role change, if at all?

18 A. It didn't change. It was more --
19 still just supervisory role and monitoring
20 and evaluating performance for promoted
21 products.

22 Q. When you were in the role of
23 national sales -- excuse me, national
24 director of sales and senior vice

1 president, were you evaluating sales
2 representatives who were actually out in
3 the field?

4 A. No.

5 Q. Who were you evaluating?

6 A. The area directors and regional
7 directors.

8 Q. What's the difference between an
9 area director and a regional director?

10 A. An area director is a supervisory
11 role that oversees and is responsible for
12 promoted products in their geography and
13 the scope of approximately 500
14 representatives and perhaps 50 managers,
15 and probably six regional directors.

16 Q. That was an area director you
17 just described?

18 A. Yes.

19 Q. And then a regional director
20 would oversee approximately 50 managers and
21 500 sales reps?

22 A. No. They would oversee
23 approximately 10 managers and approximately
24 100 sales representatives.

1 Q. That makes sense. Thank you.

2 You stayed in the role of senior
3 vice president of sales until 2010,
4 correct?

5 A. Yes.

6 Q. And then in March of 2010, you
7 became the senior vice president of
8 institutional sales at Forest, correct?

9 A. Yes.

10 Q. How did your role change, if at
11 all, when you became the senior vice
12 president of institutional sales?

13 A. My role changed in -- we expanded
14 our institutional role, hospital, meaning
15 hospital representatives, in preparation
16 for the launch of a product called Teflaro,
17 which is an antibiotic.

18 Q. Then in 2013, you became the
19 senior vice president of sales excellence
20 and global integration, correct?

21 A. Yes. I maintained supervisory
22 responsibility for regional directors, as
23 well as some international responsibilities
24 in Canada and Europe.

1 Q. Why did you leave Forest?

2 A. There was a -- some structural
3 changes. The company downsized
4 approximately 600 individuals, and I was
5 one of those.

6 Q. Was that surprising to you?

7 A. Not necessarily.

8 Q. Because you have worked in sales
9 for a long time and you know that sometimes
10 structural changes occur?

11 A. Yes.

12 Q. Based on your longevity with the
13 company, was it a surprise to you?

14 A. No.

15 Q. Why didn't you -- well, let me
16 ask you this. You started -- strike that.

17 You started GJA Talent
18 Management & Communications in 2014;
19 correct?

20 A. Yes.

21 Q. And what did you do with GJA
22 Talent Management & Communications?

23 A. The objective of the company that
24 I lead is to help assess talent, help in

1 the selection process of managers and
2 representatives in the pharmaceutical
3 industry, as well as provide developmental
4 training platforms.

5 Q. Do you work with the
6 pharmaceutical industry?

7 A. Yes.

8 Q. What companies?

9 A. I've worked with a company called
10 Gemini Laboratories, as well as the Jed
11 Foundation -- I'm sorry, the Jed -- Jed
12 Therapeutics.

13 Q. Have you done any work with
14 Forest, Actavis or Allergan?

15 A. No.

16 Q. Do you keep in touch with any
17 colleagues who you worked with at Forest?

18 A. One colleague.

19 Q. Who is that?

20 A. Time to time, I'll touch base
21 with Jerry Lynch via text.

22 Q. Where is Jerry Lynch today?

23 A. His residence?

24 Q. Well, where does he work?

1 A. Jerry Lynch works at Allergan.

2 Q. He survived the cut?

3 A. Yes.

4 Q. Who else at your level was let go
5 from Forest at the same time you were?

6 A. In the sales roles?

7 Q. Yes, sir.

8 A. No one at my level.

9 Q. When you were the national sales
10 director -- excuse me, let me strike that.

11 When you were the national
12 director of sales, the senior vice
13 president of sales -- actually, I'm going
14 to strike that.

15 When you were the national
16 director of sales and the senior vice
17 president of sales, you had
18 responsibilities overseeing sales
19 operations related to Celexa and Lexapro,
20 correct?

21 A. Not sales operations, but the
22 sales organization -- the sales force was
23 my responsibility.

24 Q. And what specifically did you do

3 A. I supervised those area -- those
4 regional directors and -- those regional
5 directors that supervised managers and
6 representatives.

[illegible]

24 Q. Did Forest require its sales

1 representatives to only call on physicians
2 of a certain decile?

3 A. No. Forest required sales
4 representatives to call upon those
5 physicians on their call panel, which
6 included physicians across multiple
7 deciles.

8 Q. But the Forest sales
9 representatives could call on physicians
10 who were not on their call panel as well,
11 correct?

12 MS. KIEHN: Objection.

13 Q. Let me strike that question.
14 Could Forest sales
15 representatives call on physicians who were
16 not on their call panel?

17 A. That wasn't encouraged.

18 Q. It was permitted but not
19 encouraged?

20 A. The representatives had the
21 ability to do that, but it was strongly
22 suggested they stay rooted to their call
23 panels.

24 Q. If a sales representative went

1 through all of the physicians on the call
2 panel, they then could move off the call
3 panel and call on physicians who were not
4 on the call panel, correct?

5 MS. KIEHN: Objection.

6 A. No.

7 Q. Your testimony is that the
8 representatives at Forest had the ability
9 to call on physicians who were not on their
10 call panel, correct?

11 A. Yes.

12 Q. In what scenarios can you think
13 of, having been involved in Forest sales
14 for so many years, in which a sales
15 representative might call on a physician
16 who is not on a call panel?

17 A. In instances where, if there is a
18 physician that is within a group practice
19 that is on the target list, and there is
20 another physician that may have interest or
21 walks by during a presentation, it would be
22 permitted to provide information to that
23 physician based on their request.

24 Q. Did you have any input during --

1 strike that.

2 Throughout your time at Forest,
3 did you have any input into those
4 physicians that were included on call
5 panels?

6 A. No.

7 Q. Did you have any input into which
8 sales representatives called on specific
9 physicians?

10 A. No.

11 Q. Was that all done within sales
12 administration?

13 A. Yes.

14 Q. In preparation for your
15 deposition, you looked at some e-mail
16 communications, correct?

17 A. Yes.

18 Q. What were the substance of those,
19 to your recollection?

20 A. Internal communication between
21 functions, communication from supervisors
22 to managers and/or representatives.

23 Q. Do you remember any of the topics
24 of the communications?

1 A. One topic included examples of
2 needs-based selling.

3 Q. What's needs-based selling?

4 A. Needs-based selling is a sales
5 technique which is designed to assist the
6 representatives to engage physicians more
7 effectively.

8 Q. What's the purpose of it?

9 A. It's to ensure that what's being
10 communicated is relevant to help a doctor
11 make appropriate decisions when treating
12 their patients.

13 Q. Did Forest sales representatives
14 use needs-based selling when promoting
15 Celexa and Lexapro?

16 A. I don't recall the time frame
17 when we rolled out that specific approach.

18 Q. Do you have an approximate time
19 frame?

20 A. I don't.

21 Q. Well, you know it wasn't in 1996,
22 right?

23 A. No.

24 Q. It wasn't or you don't know?

1 A. It wasn't in 1996.

2 Q. So it was after '96. Was it
3 before 2014?

4 A. Yes.

5 Q. Was it before 2010?

6 A. That I don't remember.

7 Q. Do you know whether you used
8 needs-based selling with sales
9 representatives after 1998?

10 MS. KIEHN: Objection.

11 A. Yes.

12 Q. You did?

13 A. Yup.

14 Q. And Celexa was on the market as
15 of 1998, correct?

16 A. Yes.

17 Q. Do you know whether or not you
18 used needs-based selling with sales
19 representatives who promoted Celexa?

20 MS. KIEHN: Objection.

21 A. That's -- that's possible.

22 Q. Do you think it's likely?

23 A. I don't recall the exact time
24 frame.

1 Q. Do you know whether or not you
2 used needs-based selling for
3 representatives who were promoting Lexapro?

4 A. I don't have an exact time frame
5 when that specific workshop was unveiled.

6 Q. But you know it was in use in
7 1998?

8 A. Post-1998.

9 Q. And Celexa was being promoted by
10 Forest between 1998 and 2002, correct?

11 A. Yes.

12 Q. And Lexapro began being promoted
13 by Forest in 2002?

14 A. Yes.

15 Q. Do you have any reason to believe
16 that needs-based selling was not used by
17 Forest sales representatives to promote
18 Celexa and Lexapro?

19 A. No.

20 Q. Any other topics of e-mail
21 communications that you recall reviewing?

22 A. There was e-mail communications
23 regarding plan track data, which reflects
24 information of managed care companies.

1 Q. Were you responsible at any time
2 for reviewing plan track data related to
3 managed care companies?

4 A. No.

5 Q. Who was responsible for that?

6 A. Mark Devlin.

7 Q. What was the purpose for
8 reviewing plan track data related to
9 managed care organizations?

10 A. The purpose was to create
11 awareness of physicians and their -- the
12 plans that they accept relative to their
13 patient population.

14 Q. What do you mean by the plans
15 that they accept?

16 A. Patients going to see a physician
17 have third-party coverage. So it was
18 important to have representatives be aware
19 of what those third parties were so that
20 the patients would be reimbursed.

21 Q. Why was it important for Forest
22 to know that?

23 A. It was just to have greater
24 awareness of which plans were relevant,

1 because each plan has a formulary status of
2 different brands.

3 Q. And Forest wanted its drugs to be
4 on the formularies of third-party payers,
5 correct?

6 MS. KIEHN: Objection.

7 A. Yes.

8 Q. Did Forest engage in any
9 activities, to your knowledge, to encourage
10 third-party payers to add Celexa or Lexapro
11 to their formularies?

12 A. Not to my knowledge.

13 Q. You do know that Forest did have
14 sales representatives call on
15 representatives from third-party payers to
16 encourage them to add Celexa and Lexapro to
17 their formularies, right?

18 MS. KIEHN: Objection.

19 A. To my knowledge, they weren't
20 called sales representatives.

21 Q. OK. What were they called?

22 A. They were managers of specialty
23 markets.

24 Q. You do know that managers of

1 specialty markets with Forest called on
2 third-party payers to encourage those
3 third-party payers to add Celexa and
4 Lexapro to their formularies, correct?

5 MS. KIEHN: Objection.

6 A. The managers of specialty markets
7 were -- called on third-party payer
8 personnel to present those, our promoted
9 products.

10 Q. Forest's managers of specialty
11 markets called on third-party payer
12 personnel to present Celexa and Lexapro to
13 them in order to encourage them to place
14 those drugs on the formulary, correct?

15 MS. KIEHN: Objection.

16 A. To basically just give them the
17 features and benefits of the products in
18 the same fashion a representative would to
19 a healthcare provider.

20 Q. What was the purpose of doing
21 that?

22 A. To just make them aware of those
23 brands, for them to make their own
24 decisions on how they would utilize them.

1 Q. Are you testifying that Forest
2 did not encourage third-party payers to add
3 Forest products to their formulary?

4 MS. KIEHN: Objection.

5 A. I'm testifying that the managers
6 of specialty markets' role was to engage
7 personnel within those third parties to
8 present our -- Celexa and Lexapro for them
9 to make a decision on whether they wanted
10 to add Celexa or Lexapro to their
11 formularies.

12 Q. Was it a goal of Forest's
13 managers of specialty markets to obtain
14 formulary status for Celexa or Lexapro?

15 A. Yes.

16 Q. And how did they attempt to
17 attain that goal?

18 A. I didn't supervise those
19 individuals. That wasn't my
20 responsibility. But the best of my
21 knowledge, they would, in similar fashion
22 as a representative, promote the features
23 and benefits to those -- to the personnel
24 within those third-party plans.

1 Q. And the purpose of that promotion
2 was to achieve their goal, correct?

3 MS. KIEHN: Objection.

4 A. Yes.

5 Q. Similarly, the goal of a sales
6 representative was to encourage physicians
7 to prescribe Forest drugs, correct?

8 MS. KIEHN: Objection.

9 A. No. The purpose of the sales
10 representative is to present promoted
11 products, the features and benefits of
12 those products, to help physicians make
13 decisions regarding treatment for their
14 patients.

15 Q. You do know that Forest set goals
16 for its sales representatives to achieve,
17 correct?

18 MS. KIEHN: Objection.

19 A. Yes.

20 Q. Those goals included increases in
21 prescriptions written by physicians the
22 sales representatives called on, correct?

23 MS. KIEHN: Objection.

24 A. Yes.

1 Q. And if a sales representative
2 attained that goal, the sales
3 representative would be compensated for
4 doing so, correct?

5 MS. KIEHN: Objection.

6 A. Yes.

7 Q. Part of the compensation package
8 at Forest for its sales representatives was
9 to pay the representatives if they reached
10 certain goals with their physicians related
11 to prescriptions, correct?

12 MS. KIEHN: Objection.

13 A. That was part of the goal. There
14 was a goal to hit market share, which is an
15 aggregate of physicians in total, and then
16 there was another component, which was
17 general growth of all of the physicians in
18 aggregate.

19 Q. How were those goals measured by
20 Forest?

21 A. Looking at the percent of
22 attainment of their market share, as well
23 as growth within -- for each promoted
24 product.

1 Q. How did you define "market
2 share"?

3 A. Growing a brand from a baseline
4 to either a lower level or a higher level.

5 Q. Did you ever want your sales
6 representatives to obtain less market share
7 for Forest promoted products?

8 MS. KIEHN: Objection.

9 A. No.

10 Q. You always wanted them to
11 increase market share for Forest-promoted
12 products, correct?

13 MS. KIEHN: Objection.

14 A. Yes.

15 Q. That's the goal of promoting
16 products to physicians, correct?

17 MS. KIEHN: Objection.

18 Q. Let me strike that actually.
19 One of the goals of promoting
20 Forest products to physicians was to
21 increase market share for the drugs,
22 correct?

23 MS. KIEHN: Objection.

24 A. One of the goals of the

1 representative was to inform physicians
2 about making appropriate decisions on using
3 Celexa and/or Lexapro where they see
4 appropriate.

5 Q. You testified a few minutes ago
6 that sales representatives had goals that
7 the company set for them, correct?

8 A. Yes.

9 Q. One of the aspects of the goals
10 that Forest sales representatives had was
11 to increase market share for the product it
12 was promoting, the sales representatives
13 were promoting?

14 MS. KIEHN: Objection.

15 A. Yes.

16 Q. What are other aspects of the
17 goals that Forest set for its sales
18 representatives?

19 A. Just market share growth from the
20 physicians they call on.

21 Q. There are two components, I think
22 you have testified to. One is market share
23 growth for the physicians they call on, and
24 the second is market share within their

1 territory, correct?

2 A. Market share growth within their
3 territory would be one and the same.

4 Q. OK, I don't understand, I'm
5 sorry. So is it accurate that the goals
6 that Forest set for its sales
7 representatives were based solely on the
8 percentage of market share that the sales
9 representative obtained through their
10 promotion to physicians they called on?

11 A. Yes.

12 Q. There was no other aspect to the
13 goals that Forest set for sales
14 representatives?

15 A. There was a growth component. In
16 other words, market share growth. You have
17 a territory which consisted of physicians,
18 and you were responsible to grow share from
19 the aggregate of those physicians you
20 called on.

21 Q. Sales representatives were
22 responsible for growing the share, the
23 market share from the aggregate of the
24 physicians they called on, correct?

1 A. Yes.

2 Q. And they were also responsible
3 for growing the market share with each
4 specific physician, correct?

5 A. Yes, that would be an objective.

6 Q. So there were two components to
7 the goals that Forest set for their sales
8 representatives?

9 A. No.

10 Q. You just think of them as one?
11 It's all about market share?

12 A. If there is 200 doctors on a
13 representative's call panel, they're
14 responsible for growing market share
15 regardless of which physician is generating
16 that growth. That's what I mean when I say
17 in an aggregate.

18 Q. And the goals that you have
19 testified about related to market share,
20 those same goals applied to sales
21 representatives who promoted Celexa and
22 Lexapro, correct?

23 A. Yes.

24 Q. And the sales representatives who

1 promoted Celexa and Lexapro were also
2 compensated in part based on whether or not
3 they attained their goals, correct?

4 A. Their compensation was dependent
5 upon their achievement of hitting a goal
6 for either Celexa or Lexapro.

7 Q. And the goals being those that
8 you testified about related to market
9 share?

10 A. Yes.

11 Q. What did Forest do to help its
12 sales representatives achieve their goals?

13 MS. KIEHN: Objection.

14 A. I'm not understanding your
15 question.

16 Q. Let me strike that. Let me
17 strike that.

18 Did Forest provide the sales
19 representatives with any instruction in
20 order to help them achieve market share
21 within their territory?

22 A. All representatives are trained
23 on the features and benefits of the
24 product. They are given sales aids to

1 help engage physicians. And every
2 representatives -- every representative is
3 equipped with the same resources to
4 communicate to physicians.

5 Q. What resources is that?

6 A. One of which I've referenced is a
7 sales aid.

8 Q. They also went to training
9 seminars, correct?

10 MS. KIEHN: Objection.

11 A. They weren't seminars. It was a
12 training orientation. If you are a new
13 representative, you went to be trained on
14 the products.

15 Q. New sales representatives at
16 Forest went to orientation training?

17 A. Yes.

18 Q. In addition to orientation
19 training, did Forest provide any other
20 instruction during the time a sales
21 representative would have been employed at
22 Forest?

23 A. Yes.

24 Q. What other instruction?

1 A. They have quarterly, or every
2 four months, POA programs.

3 Q. What is a POA program?

4 A. It's a plan of action meeting
5 where new marketing materials may be
6 provided, such as a sales aid, a new sales
7 aid might have been updated, so there is a
8 workshop to ensure that representatives are
9 versed on that information. Role plays.

10 Q. Any other trainings after
11 orientation training that you're aware of
12 for sales representatives other than POA
13 programs?

14 A. No.

15 Q. Forest provided literature to its
16 sales representatives to help in their
17 promotion of Forest products, correct?

18 A. I'm not sure of the
19 characterization of "literature."

20 Q. How do you define "literature"?

21 A. I would define it as sales aids
22 reflecting the features and benefits of the
23 products or a clinical reprint that may be
24 introduced.

1 Q. And a clinical reprint is a piece
2 of literature that the company provides to
3 sales representatives in order to promote
4 the drug to physicians, right?

5 MS. KIEHN: Objection.

6 A. It's a -- a clinical reprint is a
7 scientific study which reflects the outcome
8 of that study.

9 Q. What's the purpose of providing
10 it to sales representatives?

11 A. So that the -- so that the
12 representatives can inform healthcare
13 providers.

14 Q. Other than sales aids and
15 clinical reprints, are there any other
16 pieces of material that you're aware of
17 that Forest sales representatives have used
18 to promote Celexa and Lexapro?

19 A. There are file cards which
20 representatives are required to leave after
21 each presentation, which provides
22 indications, dosage.

23 Q. Any other materials that you're
24 aware of that Forest sales representatives

1 have used to promote Celexa and Lexapro?

2 A. No.

3 Q. You're familiar with the term
4 "tokens"?

5 A. Yes.

6 Q. What are tokens?

7 A. Tokens are items that could be
8 left with healthcare providers and/or their
9 staff, such as notepads or a pen.

10 Q. Or a mug?

11 A. Or a mug.

12 Q. Or a clock?

13 MS. KIEHN: Objection.

14 A. I don't recall a clock.

15 Q. You don't remember the Lexapro
16 clocks that sometimes doctors would get
17 from representatives and hang in their
18 office?

19 MS. KIEHN: Objection.

20 A. I don't remember those.

21 Q. Never saw one?

22 How about Kleenex boxes? Tissue
23 boxes, I should say?

24 A. Tissue boxes I remember.

1 Q. What's the purpose of Forest
2 sales representatives providing physicians
3 with tokens?

4 MS. KIEHN: Objection.

5 A. From my impression, the purpose
6 would be more of a courtesy.

7 Q. Why didn't Forest just provide
8 tissue boxes that did not have a Forest
9 drug logo on it if it was just for a
10 courtesy?

11 MS. KIEHN: Objection.

12 A. I'm not sure.

13 Q. Wasn't it to remind the physician
14 about Forest products?

15 MS. KIEHN: Objection.

16 A. I'm not sure what the exact
17 intention would be.

18 Q. You were the national director of
19 sales and a senior vice president of sales
20 for Forest for many years, right?

21 A. Yes.

22 Q. You don't know what the purpose
23 of providing healthcare providers with
24 tokens is; is that right?

1 MS. KIEHN: Objection.

2 A. As I've stated, it's to
3 establish -- it's a courtesy to provide,
4 you know -- as an opportunity for
5 representatives to work with the office
6 staff.

7 Q. Do you know why Forest places the
8 names of its drugs on tokens that it
9 provides to physicians?

10 MS. KIEHN: Objection.

11 Q. Let me strike that.

12 You do know that the tokens that
13 you have testified about, notepads, pens,
14 mugs -- you didn't testify about mugs. Let
15 me strike that.

16 You do know that the tokens that
17 you have testified about, pens and
18 notepads, for example, contain names of
19 Forest drugs, right?

20 A. Yes.

21 Q. What's the purpose of putting the
22 names of Forest drugs on tokens that sales
23 representatives provide to physicians?

24 A. To establish goodwill with the

1 office staff and healthcare providers.

2 Q. What's the purpose of putting the
3 name of the drug on there?

4 A. Not -- I guess -- as a reminder
5 of the representative that's engaging the
6 healthcare provider.

7 Q. OK. Are you telling the jury
8 that you think that the only reason that
9 Forest puts the name of the drug on pens
10 and pads is as a courtesy and to remind
11 them of the courtesy from the sales
12 representative?

13 MS. KIEHN: Objection.

14 A. To remind the office and the
15 healthcare provider who's left that item,
16 and if they remember the brand name, that's
17 great.

18 Q. The purpose is so that the office
19 staff and the physician will be
20 consistently reminded of the drug that
21 Forest has promoted, isn't it?

22 MS. KIEHN: Objection.

23 A. That's -- that's your view of it.

24 Q. I'm asking you. Is that your --

1 is that correct or not?

2 A. No. My view of it is, the
3 objective of a representative is to engage
4 healthcare providers using the resources
5 that I've defined prior. Any distribution
6 of tokens is of goodwill.

7 Q. It has nothing to do with
8 reminding the healthcare provider of Forest
9 drugs?

10 MS. KIEHN: Objection.

11 A. I would hope that the
12 presentations would suffice and they would
13 be effective enough to engage those
14 healthcare providers.

15 Q. Forest spent money to produce
16 tokens, correct?

17 MS. KIEHN: Objection.

18 A. Yes.

19 Q. You saw budgets for tokens within
20 Forest, right?

21 MS. KIEHN: Objection.

22 A. I did not.

23 Q. You never saw any of those?

24 A. I did not see budgets for tokens.

1 Q. How do you know the company spent
2 money on tokens?

3 A. Because there's people that are
4 responsible in the marketing department
5 that would provide budgets for all items,
6 including resources.

7 Q. To your knowledge, why did Forest
8 spend money to produce tokens?

9 A. I'm not sure. You'd have to ask
10 people in the marketing department what the
11 purpose was.

12 Q. Forest spent money on sales
13 representatives, right?

14 A. Yes.

15 Q. You were in the sales department
16 for over 20 years, correct?

17 A. Yes.

18 Q. What was the purpose of Forest
19 spending money on sales representatives?

20 A. The purpose of a sales
21 representative is to inform physicians
22 about promoted products so that physicians
23 could make decisions on where they see
24 appropriate usage for their patient

1 population.

2 Q. I'm going to move to strike your
3 response.

4 My question was, what was the
5 purpose of Forest spending money on sales
6 representatives?

7 A. Forest spent money on sales
8 representatives to create a sales force.

9 Q. And what was the purpose of the
10 sales force?

11 A. The purpose of the sales force,
12 which consists of sales representatives and
13 managers, is to train and inform
14 representatives on promoted products so
15 they can engage their target audience.

16 Q. What's the purpose of engaging
17 the target audience?

18 A. To create awareness of the
19 products that they are promoting.

20 Q. What's the purpose of creating
21 awareness of the products they are
22 promoting?

23 A. Creating awareness to physicians
24 to keep them informed for them to best

1 treat their patients the way they see fit
2 based on need.

3 Q. What was Forest's purpose for
4 informing physicians about Forest drugs?

5 MS. KIEHN: Objection.

6 A. Forest, in absolute terms, is
7 just a company that employs sales
8 personnel. It's the sales representatives
9 that makes those presentations to
10 healthcare providers.

11 Q. Why did sales representatives
12 make presentations to healthcare providers?

13 A. So that they could make informed
14 decisions on their treatment usage for
15 patients that present with various
16 diseases.

17 Q. And the sales representatives who
18 worked under you while you were at Forest
19 wanted to attain their goals, correct?

20 MS. KIEHN: Objection.

21 A. Yes.

22 Q. They wanted to attain their goals
23 because there was compensation related to
24 their goal attainment, correct?

1 MS. KIEHN: Objection.

2 A. Yes.

3 Q. Were you ever involved in any
4 discussions about money that would be
5 budgeted for the sales force?

6 A. Only as it relates to
7 compensation, meaning salary increases.

8 Q. Was that one of your
9 responsibilities, to give input related to
10 the budget for salaries?

11 A. Yes. I worked in collaboration
12 with human resources.

13 Q. Did you have input into any other
14 budget issues related to the sales
15 department at Forest?

16 A. Not that I can recall.

17 Q. Who was responsible within Forest
18 for determining the number of sales
19 representatives within the sales force?

20 A. That would be a collaboration
21 between the heads of marketing -- primarily
22 the heads of marketing.

23 Q. Did you have a budget when you
24 were the national director of sales?

1 A. I was provided a budget.

2 Q. And what was that budget based
3 on?

4 A. The budget was based on the
5 number of personnel within the geography
6 that I supervise.

7 Q. Personnel including -- let me
8 strike that.

9 Personnel including sales
10 representatives and area directors and
11 regional directors?

12 A. Yes.

13 Q. Based on the budget you were
14 given when you were a national director of
15 sales, did that determine, in part, the
16 salaries that you could pay the sales
17 force?

18 A. No.

19 Q. How were the salaries determined?

20 A. The salaries were determined
21 based on performance achievement throughout
22 the year.

23 Q. What do you mean by that?

24 A. Each quarter, as we have

1 established prior, representatives would
2 have product goals, and based on their
3 percentage attainment of those goals, each
4 quarter, accumulated through -- at the end
5 of the year, based on their performance,
6 they would receive a merit increase.

7 Q. How did you determine what that
8 merit increase would be in actual dollars?

9 A. Sales administration working in
10 collaboration with human resources would
11 establish that.

12 Q. Do you know whether or not Forest
13 ever engaged in any return on investment
14 analysis related to the compensation being
15 paid to sales representatives versus the
16 increase in market share?

17 A. No, I'm not aware of that.

18 MR. COFFIN: Let's go off the
19 record.

20 THE VIDEOGRAPHER: The time now
21 is 10:40 a.m. and we are off the
22 record.

23 (Recess)

24 THE VIDEOGRAPHER: This marks the

1 beginning of tape number 2. The time
2 now is 10:51 a.m. and we are back on
3 the record.

4 BY MR. COFFIN:

5 Q. Mr. Azzari, when you departed
6 from Forest, did you sign any
7 confidentiality agreements?

8 A. Yes.

9 Q. What did the confidentiality
10 agreement entail?

11 A. I don't recall the legalese of
12 everything that's contained in that
13 agreement.

14 Q. Well, what's your understanding
15 as to what the confidentiality agreement
16 you signed entails?

17 A. There is one element that I do
18 recall, which has to do with why I am here
19 today.

20 Q. OK. What element is that?

21 A. That if I was called to be
22 deposed or serve in some legal capacity
23 such as this, that I would have to make
24 myself available.

1 Q. Are you paying for your counsel
2 who is representing you today?

3 A. No.

4 Q. Who is paying for the counsel
5 here?

6 A. I would guess the Forest umbrella
7 of whoever it is today, whether it's
8 Allergan or -- I'm not a hundred percent
9 sure who's paying.

10 Q. But you're not paying?

11 A. No.

12 Q. Are you being compensated for
13 your time to be here today?

14 A. I would hope so.

15 Q. You haven't worked that out yet?

16 A. Not yet.

17 Q. I would be happy to represent you
18 if you need counsel for that.

19 A. I am. I am.

20 Q. You are being compensated?

21 A. Yes.

22 Q. How are you being compensated for
23 your time today?

24 A. Based on the number of days that

1 I'm here, not able to provide -- to provide
2 consulting services.

3 Q. And how much are you being
4 compensated?

5 A. I didn't have those conversations
6 with my counsel yet.

7 Q. How do you know you're being
8 compensated for being here today?

9 A. Because it was outlined in the
10 agreement that I signed.

11 Q. In the confidentiality agreement?

12 A. No. In the -- yes. I'm confused
13 as confidentiality agreement. There was a
14 confidentiality agreement that I signed
15 when I departed that -- Forest, which you
16 referenced. And there is an agreement that
17 I signed with counsel here.

18 Q. Separate and apart from your
19 departure --

20 A. Yes.

21 Q. -- from Forest?

22 A. Yes.

23 Q. I am sorry. OK.

24 A. OK?

1 Q. And in the agreement that you
2 signed related to this deposition, there is
3 some provision that provides that you will
4 be compensated for being here today?

5 MS. KIEHN: I am going to
6 instruct the witness not to answer.
7 That's our engagement letter.

8 MR. WISNER: I am sorry, is he an
9 expert?

10 MS. KIEHN: I am sorry, I don't
11 think you're allowed to speak.

12 MR. COFFIN: He can -- he can
13 speak.

14 MR. WISNER: I am an attorney of
15 record. I can speak all I want.

16 MS. KIEHN: No, please don't.

17 MR. COFFIN: Wait, wait, wait.
18 What do you want to ask? Let's make
19 this easy.

20 MR. WISNER: Is he a retained
21 expert? If there's an engagement
22 letter, I don't understand --

23 Q. Mr. Azzari, have you been
24 retained by counsel here today to provide

1 some type of service for them?

2 A. I'm not understanding the word
3 "retained."

4 Q. Did you enter into an agreement
5 with counsel to provide your testimony here
6 today?

7 A. It was requested that I would
8 have to be here to be deposed by you. And
9 that in the agreement or engagement letter,
10 there is a segment that says that I would
11 be compensated for my time.

12 Q. Do you know what that
13 compensation is?

14 A. I haven't discussed that yet with
15 counsel.

16 Q. It's not set out in your letter?

17 A. No.

18 Q. The agreement that you signed
19 when you left Forest, what else was in that
20 agreement other than your agreement to
21 cooperate in this particular case?

22 A. I remember there was -- I don't
23 know how it was put in the language, but it
24 says that I couldn't talk in a negative

1 way, the way I recall, about the company
2 and my experience with the company.

3 Q. Have you abided by that provision
4 of the agreement not to talk negatively
5 about the company?

6 A. Absolutely.

7 Q. And are you abiding by that
8 today?

9 A. Absolutely.

10 Q. Have you produced that agreement
11 to your counsel who is here today in
12 connection with this litigation?

13 A. No.

14 Q. Do you still have a copy of that
15 agreement?

16 A. I do.

17 Q. I would ask that it be produced
18 to your counsel so that they can produce it
19 to us.

20 A. OK.

21 Q. Thank you.

22 MS. KIEHN: We will take it under
23 advisement.

24 Q. What is your understanding as to

1 the agreement that you entered into with
2 counsel regarding being here today?

3 MS. KIEHN: I am going to object.
4 He is not going to answer any questions
5 about our engagement letter. He is not
6 a retained expert, in response to your
7 question.

8 MR. WISNER: What's the objection
9 grounds? Privilege?

10 MS. KIEHN: Yes.

11 Q. Did you retain counsel for the
12 purpose of being here today?

13 A. I was informed by my counsel that
14 I -- it was requested that I appear today.

15 Q. Did you retain the lawyers who
16 are here today to represent you in this
17 deposition?

18 MS. KIEHN: Listen, he is not a
19 lawyer, I don't think he understands
20 these legal terms. I think you know
21 very well we are representing him
22 today.

23 Q. Have you consulted with any other
24 lawyers other than those who are sitting in

1 this room about this case?

2 A. No.

3 Q. Did you receive a severance
4 package when you departed from Forest?

5 A. Yes.

6 Q. Were there any other agreements
7 you signed other than the confidentiality
8 agreement you have already testified about?

9 A. Not that I recall.

10 Q. Within the agreement, you
11 testified that there was language
12 indicating that you were agreeing not to
13 talk negatively about Forest, correct?

14 A. Yes.

15 Q. If you do talk negatively about
16 Forest, according to the agreement, what
17 are the consequences, if any?

18 A. I have no idea.

19 Q. You don't remember?

20 A. I don't recall what was written
21 as a consequence.

22 Q. When you were supervising area
23 directors and regional directors, did you
24 evaluate their performance?

1 A. I was responsible for evaluating
2 the performance of the area directors, yes.

3 Q. And how did you go about
4 evaluating their performance?

5 A. I looked at their sales
6 performance.

7 Q. What do you mean by that?

8 A. There's reports which reflect
9 sales performance for those area directors.

10 Q. And what are the names of those
11 reports?

12 A. Sales performance reports.
13 That's what I can remember off the top of
14 my head.

15 Q. What's contained within a sales
16 performance report?

17 A. The sales performance reports
18 would reflect percent attainment of goal
19 for the promoted products within that area.

20 Q. And when you say "percent
21 attainment of goal," are you referring to
22 percent attainment of market share?

23 A. Yes.

24 Q. Is that the same market share you

1 testified about earlier regarding the
2 market share for the products within the
3 specific class of drug?

4 A. Yes.

5 Q. Were there any other metrics that
6 you used to determine whether or not an
7 area director was adequately performing
8 their job?

9 MS. KIEHN: Objection.

10 Q. Let me strike that.

11 In evaluating the performance of
12 area directors, what else did you evaluate,
13 if anything, other than percentage of their
14 market share goal attained?

15 A. That was a primary indicator.

16 Q. What were area directors expected
17 to do to achieve their goal?

18 A. Area directors in similar fashion
19 would also look at the sales performance of
20 their regional directors that they
21 supervised, as well as the division
22 managers and sales representatives.

23 Q. Did the regional directors,
24 division managers -- well, let me strike

1 that.

2 Did the regional directors and
3 division managers within Forest also have
4 goals that were based on percentage of
5 market share?

6 A. Yes.

7 Q. And was their performance also --
8 let me strike that.

9 Were the performance evaluations
10 of division managers and regional directors
11 also based on whether or not they achieved
12 their market share goals?

13 A. Yes.

14 Q. How would you determine whether
15 an area director had achieved its -- his or
16 her market share goals?

17 A. Relative to an expectation of
18 100 percent of market share goal attained.

19 Q. Can you explain that?

20 A. An attainment of a goal at
21 100 percent would be what would be
22 expected.

23 Q. Who set the market share goals?

24 A. Sales administration.

1 Q. Were you involved in setting
2 those goals at all?

3 A. No.

4 Q. Did you ever question the level
5 of the goals that were set by sales
6 administration?

7 A. No.

8 Q. Can you explain how that process
9 practically occurred? How would you
10 actually receive the goals that were to be
11 attained?

12 A. There was a summary report that
13 sales administration provided which
14 reflected what the market share goal was
15 for area 1, 2, 3, 4, 5, 6. As far as the
16 process, that wasn't my purview.

17 Q. Did you receive a summary report
18 regarding market share goals on a quarterly
19 basis?

20 A. Yes.

21 Q. Did you receive summary reports
22 for market share goals for Celexa and
23 Lexapro?

24 A. Yes.

1 Q. And the market share goals that
2 were provided by sales administration were
3 per drug, correct?

4 A. Yes.

5 Q. Were the market share goals that
6 you received from sales administration for
7 Celexa and Lexapro ever broken down by
8 physician specialty?

9 A. That I -- I don't recall that.

10 Q. Do you recall any market share
11 goals that you were provided that were
12 broken down by physician specialty for any
13 products?

14 A. I don't recall that.

15 Q. You don't recall or it didn't
16 happen?

17 A. I just don't remember seeing what
18 you described.

19 Q. Do you know what I mean when I
20 say "broken down by physician specialty"?

21 A. I do.

22 Q. What do I mean?

23 A. I believe you referenced looking
24 at a market share goal for each physician.

1 Q. Did you ever see any market share
2 goals that were specific to pediatric
3 subspecialty physicians?

4 A. I don't recall seeing that.

5 Q. To your knowledge, did Forest
6 create market share goals for Celexa and
7 Lexapro that included all physician types?

8 A. I'm not aware of that.

9 Q. You know that -- well, you're not
10 aware that there was any distinction ever
11 made between various physician specialty
12 types when creating market share goals; is
13 that correct?

14 A. Yes.

15 Q. In other words, to your
16 knowledge, Forest created market share
17 goals that encompassed every physician
18 type, regardless of specialty; is that
19 right?

20 A. I'm aware of goals being provided
21 for territory based on the aggregate of all
22 the physicians within that territory.

23 Q. Regardless of physician
24 specialty?

1 A. Yes.

2 Q. Did Forest ever devote resources
3 within the sales force based on a specific
4 physician specialty?

5 A. Sorry, can you repeat the
6 question.

7 Q. Did Forest ever allocate
8 resources within the sales force for a
9 specific physician specialty group?

10 A. Not to my knowledge.

11 Q. Did you ever see any budgets
12 within the sales department that were
13 broken down by physician specialty group?

14 A. No.

15 Q. When you received a budget for
16 the sales force -- let me strike that.

17 You did receive budgets for the
18 sales force operations, correct?

19 MS. KIEHN: Objection.

20 A. Yes.

21 Q. Let me ask that a different way,
22 since opposing counsel has made an
23 objection.

24 Did you receive budgets for sales

1 force operations?

2 A. Yes.

3 Q. What did those budgets encompass?

4 A. The budgets we received were
5 allocated for speaker programs or what we
6 called "lunch and learns," which could have
7 meant bringing in coffee or donuts to an
8 office, as discussed earlier.

9 Q. Did the budgets that you received
10 for the sales force operations contain
11 anything other than speakers programs and
12 lunch and learns?

13 A. No.

14 Q. It didn't include tokens,
15 correct?

16 A. No.

17 Q. That came from marketing?

18 A. Yes.

19 Q. It didn't include salaries for
20 sales representatives?

21 A. No.

22 Q. Where did the salaries for sales
23 representatives come from, which budget?

24 A. It came under the umbrella of

1 sales, but sales administration, as
2 provided in earlier commentary, was
3 responsible for the percentage that would
4 be given out for salaries.

5 Q. How did you determine which
6 portions of the budget for sales operations
7 would be allocated to speakers programs and
8 which would be allocated to lunch and
9 learns?

10 MS. KIEHN: Objection.

11 A. There was a dollar amount that
12 was provided for speaker programs as well
13 as lunch and learns.

14 Q. And when you were the national
15 director of sales and the senior vice
16 president of sales, were you involved in
17 determining how much money would be
18 budgeted for speaker programs and how much
19 would be budgeted for lunch and learns?

20 A. No.

21 Q. Who did that?

22 A. That was marketing's
23 responsibility.

24 Q. What was your responsibility, if

1 any, with regard to the budget for the
2 sales force?

3 A. My responsibility was to allocate
4 the budget to those regional directors or
5 area directors.

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10 Q. Do you know whether Forest
11 allocated resources to those areas with a
12 higher potential for market share -- let me
13 strike that.

14 You testified that as the
15 national sales director and senior vice
16 president of sales, the resources you were
17 allocating would be allocated based on
18 where the largest market share was,
19 correct?

20 A. Where the largest SSRI category
21 sales potential was.

22 Q. Do you know whether or not Forest
23 allocated other resources that you weren't
24 responsible for in the same manner?

1 A. I'm not sure about that.

2 Q. You must have known when sales
3 teams grew in certain areas, right?

4 MS. KIEHN: Objection.

5 A. Yes, you will always have areas
6 that are outperforming others.

7 Q. Well, my question wasn't very
8 clear.

9 During the time period that you
10 worked at Forest, the sales force grew,
11 correct?

12 A. Yes.

13 Q. In 1998, when Celexa was first
14 launched, approximately how many sales
15 representatives did the company have
16 promoting Celexa?

17 A. Approximately 500. I can't
18 recall the exact number. I'll say
19 approximately 500.

20 Q. When the company began promoting
21 Lexapro in 2002, approximately how many
22 sales representatives did the company have?

23 A. Approximately 1,000.

24 Q. In 2007, five years after the

1 launch of Lexapro, approximately how many
2 sales representatives did the company have
3 promoting Lexapro?

4 A. Again, I can't recall the exact
5 number, but approximately 1500 to 2,000.

6 Q. So the number of sales
7 representatives continued to grow over the
8 time period that you were in sales at
9 Forest?

10 A. Yes.

11 Q. Do you know how the company
12 determined which areas it would add sales
13 representatives to, to promote Lexapro?

14 A. No.

15 Q. Who did that?

16 A. Sales administration.

17 Q. Do you know how they did it?

18 Based on what?

19 A. I'm not sure of the exact
20 mechanics or process, but I have a general
21 idea.

22 Q. Do you have a way of determining
23 whether or not your allocation of funds for
24 speakers programs and lunch and learns

1 resulted in increased market share within
2 any area?

3 A. No.

4 Q. Did you have any way of
5 determining the number of physicians who
6 were attending either speakers programs or
7 lunch and learns?

8 A. To the best of my knowledge, I
9 believe there was a speaker program
10 attendee form that had to be completed.

11 Q. How about lunch and learns, did
12 you have any idea how many physicians were
13 at lunch and learns?

14 A. No.

15 Q. What does needs-based selling
16 involve on behalf of the sales
17 representative?

18 A. Needs-based selling is a sales
19 approach which requires a representative to
20 understand what are those treatment
21 challenges that a physician encounters when
22 prescribing products to patients for a
23 certain medical condition.

24 Q. What's the purpose of needs-based

1 selling versus some other type of selling?

2 A. As you can imagine, a doctor's
3 time is very -- with a salesperson is very
4 narrow, and to go through a visual aid that
5 I described earlier from page 1 through 7
6 would be very cumbersome and not very
7 engaging with the physician.

8 But if I could understand, based
9 on previous discussions, exactly what your
10 treatment challenges that are most
11 pronounced, and I could align that with my
12 presentation, I would be more apt to have
13 the doctor understand what the value of my
14 product is and how it could assist him or
15 her in treating their patients more
16 effectively.

17 Q. Other than needs-based selling,
18 did Forest sales representatives receive
19 training on any other type of selling?

20 A. Not to my knowledge.

21 Q. Was needs-based selling the
22 primary method that Forest sales
23 representatives used to promote Forest
24 drugs?

1 A. That was one method.

2 Q. What were the other methods?

3 A. The other method was, as
4 mentioned earlier, was in general
5 orientation training. The trainers would
6 teach and coach the representatives a
7 specific process on which to present to
8 physicians the features and benefits of a
9 given product.

10 Q. Do you know who produced the plan
11 track data that you testified about
12 earlier?

13 A. Sales administration.

14 Q. Were there plan track data
15 reports?

16 A. Yes.

17 Q. What did they contain?

18 A. The plan track data would reflect
19 the percentage of third-party information
20 as -- as well as the pharmacy benefit
21 managers. So if a patient -- it gives a
22 description of those third-party plans as
23 well as pharmacy benefit managers for each
24 physician.

1 Q. And for what purpose did Forest
2 use those plan track data reports?

3 A. It's to educate the
4 representative, to have awareness of those
5 third-party plans and pharmacy benefit
6 managers so that they're aware of the
7 profile of that physician.

8 Q. Do you know why Forest would
9 expend resources to educate sales
10 representatives with information related to
11 third-party payers?

12 A. Yes.

13 Q. Why?

14 A. Physicians are most inclined to
15 prescribe products within a therapeutic
16 category that is on a third party's
17 formulary.

18 Q. OK. And so Forest wanted its
19 drugs to be on formularies?

20 MS. KIEHN: Objection.

21 A. Yes.

22 Q. They wanted their drugs to be on
23 formularies because then physicians would
24 be more inclined to prescribe them; is that

1 accurate?

2 MS. KIEHN: Objection.

3 A. They wanted the products to be on
4 formulary so physicians could make
5 decisions best in their interest to
6 prescribe them.

7 Q. They wanted them on formularies
8 so the physicians would have a choice of
9 that drug to prescribe, correct?

10 MS. KIEHN: Objection.

11 A. They have a choice to prescribe
12 any product, whether it's on formulary or
13 not.

14 Q. But Forest knew that consumers
15 most often want to stay with drugs that are
16 on their insurance company's formulary,
17 correct?

18 MS. KIEHN: Objection.

19 A. Yes.

20 Q. That's to save money for the
21 consumer, correct?

22 MS. KIEHN: Objection.

23 A. I'm not sure about the actual
24 reason, but --

1 Q. The reason that Forest wanted to
2 have its drugs on formularies is because
3 the company believed that physicians were
4 more likely to prescribe drugs that were on
5 third-party payer formularies, correct?

6 MS. KIEHN: Objection.

7 A. Yes.

8 Q. Do you know who was responsible
9 for overseeing sales representatives who
10 called on third-party payers?

11 MS. KIEHN: Objection.

12 A. Yes.

13 Q. Who?

14 A. Mark Devlin.

15 Q. Do you know whether or not sales
16 representatives who called on third-party
17 payers were trained any differently than
18 sales representatives who called on
19 physicians?

20 MS. KIEHN: Objection.

21 A. No.

22 Q. You don't know?

23 A. I don't.

24 Q. Did Mark Devlin oversee sales

1 representatives who called on third-party
2 payers between 1998 and 2009?

3 MS. KIEHN: Objection.

4 A. Mark Devlin supervised the
5 managed care sales organization, to the
6 best of my recollection, starting in 2002.

7 Q. Between 2002 and 2009, was Mark
8 Devlin the person who supervised the Forest
9 managed care sales force?

10 A. Yes.

11 Q. Forest had a separate sales force
12 for physicians and a separate sales force
13 for third-party payers?

14 MS. KIEHN: Objection.

15 A. Yes.

16 Q. And you personally didn't oversee
17 any of the operations of the sales force
18 related to third-party payers?

19 MS. KIEHN: Objection.

20 A. No.

21 Q. Do you know how the goals of the
22 third-party payer sales force were
23 determined?

24 MS. KIEHN: Objection.

1 A. I do not.

2 Q. Who would know that?

3 A. Mark Devlin.

4 Q. Do you know where Mark Devlin is
5 now?

6 A. I do.

7 Q. Where is he?

8 A. He is employed at Allergan.

9 Q. Do you know what he does?

10 A. I'm not a hundred percent certain
11 if his role has changed at all.

12 Q. Do you know whether or not the
13 sales force that called on third-party
14 payers received any different information
15 to use in their sales presentations
16 compared to the sales representatives who
17 called on physicians?

18 MS. KIEHN: Objection.

19 A. I do not.

20 Q. Was there any overlap between the
21 sales force who called on physicians and
22 the sales force who called on third-party
23 payers?

24 MS. KIEHN: Objection.

1 A. Not to my knowledge.

2 Q. Prior to 2002, do you know
3 whether or not Forest had a sales force
4 that was dedicated to promoting to
5 third-party payers?

6 A. I believe there was.

7 Q. Do you know who oversaw that
8 sales force prior to Mark Devlin?

9 A. I don't recall.

10 Q. Did you have any involvement with
11 the sales force that called on third-party
12 payers during the entire time you were at
13 Forest?

14 A. No.

15 Q. You referred to specialty market
16 managers; is that correct?

17 A. Yes.

18 Q. Is that the term you used for the
19 salespeople who --

20 A. You used the expression the sales
21 representatives calling on third-party
22 payers. Those were the -- synonymous with
23 managers of specialty markets.

24 Q. Oh, managers of specialty

1 markets.

2 A. Or MSMs.

3 Q. Is it accurate that managers of
4 specialty markets are synonymous with sales
5 representatives?

6 A. For their responsibilities in
7 that categorization, I would say yes.

8 Q. Within Forest, you would refer to
9 managers of specialty markets when
10 referring to those individuals who called
11 on third-party payers; is that right?

12 A. Yes.

13 Q. And within Forest, you would
14 refer to sales representatives when
15 referring to those people who called on
16 physicians?

17 A. Yes.

18 Q. But the managers of specialty
19 markets and sales representatives had the
20 same function in the field? They just
21 called on different entities?

22 A. That's accurate.

23 Q. And they were separate in the
24 sales force?

1 A. Yes.

2 Q. Mark Devlin oversaw the managers
3 of specialty markets, and you oversaw the
4 sales representatives?

5 A. Yes.

6 MS. KIEHN: Objection.

7 Q. Well, you technically oversaw
8 area directors and regional directors who
9 then saw -- oversaw division managers who
10 oversaw sales representatives, right?

11 A. At what period of time?

12 Q. I'm sorry, when you were the
13 national director of sales and when you
14 were the senior vice president of sales.

15 A. The national director of sales, I
16 supervised regional directors. In two
17 thousand -- as senior vice president of
18 sales, I oversaw area directors.

19 Q. OK, thank you.

20 A. You're welcome.

21 Q. When you were let go from Forest,
22 do you know of anyone else who was let go
23 at the same time, whether in sales or in
24 some other division?

1 A. Yes.

2 Q. Who?

3 A. Individuals that worked in the
4 leadership development department.

5 Q. What's the leadership development
6 department?

7 A. It's a part of the training
8 function, sales training.

9 Q. And who do you know within that
10 department who was let go?

11 A. Paul Giannini.

12 Q. OK.

13 A. John Behrens.

14 Q. OK.

15 A. Those are the two that --

16 Q. Do you remember their titles?

17 A. Paul Giannini was the director
18 of leadership development, and I can't a
19 hundred percent certainly say that John
20 Behrens was the associate director.

21 Q. Is it accurate that the
22 department of leadership development was
23 responsible for training sales
24 representatives and managers of specialty

1 markets?

2 A. That's not accurate.

3 Q. What were the -- what was -- let
4 me strike that.

5 What was the leadership
6 development department responsible for?

7 A. They were responsible for
8 training newly promoted division sales
9 managers as well as providing incremental
10 manager training.

11 Q. Which department was responsible
12 for training sales representatives and
13 managers of specialty markets?

14 A. The sales representative training
15 would have been led by Debra
16 Baxter-Schmitt.

17 Q. During what time period?

18 A. She -- to the best of my
19 knowledge, she was promoted to director of
20 sales training in 2005-'6 time frame.

21 Q. And who was in that role before
22 her?

23 A. Dennis Pearsall.

24 Q. Do you know where Dennis is

1 today?

2 A. Dennis was retired in 2004.

3 Q. And how about Debra, do you know
4 where she is today?

5 A. I believe Debra, if not at the
6 same time Paul was severed from Forest --
7 it may have been at the same time. And I
8 think she is now employed in New York City.
9 I don't know exactly doing what.

10 Q. Which department within Forest
11 would be responsible for training of the
12 managers of specialty markets?

13 A. There were area -- there was a
14 national -- I'm sorry, excuse me.

15 There was an area director that
16 was responsible for initial training and
17 secondary training for the managers of
18 specialty markets.

19 Q. And who was that?

20 A. That was -- trying to remember.
21 It was Troy Sheldon.

22 Q. During what time period was Troy
23 Sheldon the area director responsible for
24 training managers of specialty markets?

1 A. I don't recall the exact time
2 frame.

3 Q. Do you know who was there before
4 him in that role?

5 A. I think prior to Troy, the sales
6 trainers that trained representatives also
7 trained -- sorry, that's not accurate.

8 I don't know who trained the MSMs
9 prior to Troy.

10 Q. Do you know when Troy started in
11 that role?

12 A. To the best of my knowledge, it
13 would have to be the 2009 time frame.

14 Q. You are aware that the Department
15 of Justice conducted an investigation into
16 Forest's promotion of Celexa and Lexapro,
17 correct?

18 A. I'm aware of that.

19 Q. How did you become aware of that?

20 A. I was deposed by the Department
21 of Justice.

22 Q. You were interviewed by the
23 Department of Justice?

24 A. I was.

1 Q. When was that?

2 A. I don't recall the time frame.

3 Q. It was after 2007, correct?

4 A. I don't recall exactly when.

5 Q. Do you recall that you gave your
6 deposition in a case involving allegations
7 related to -- let me strike that.

8 Do you recall that you gave your
9 deposition in June of 2007 in a securities
10 action against Forest?

11 A. Yes.

12 Q. I'll represent to you that as of
13 June 7, 2007, when you gave that
14 deposition, you indicated that you had not
15 been interviewed by the U.S. Attorney's
16 Office. Did you -- do you know whether or
17 not you were correlating the U.S.
18 Attorney's Office with the Department of
19 Justice?

20 A. It's possible. I don't recall.

21 Q. Do you know whether or not you
22 were interviewed by the Department of
23 Justice before or after you were deposed on
24 June 7, 2007?

1 A. I know I was deposed twice prior
2 to this deposition. One was by the
3 Department of Justice in Massachusetts.
4 What that was -- I believe that was related
5 to marketing, sales and marketing practices
6 for Celexa and Lexapro.

7 As far as the time frame of the
8 other deposition, I don't recall exactly.

9 Q. Were you ever interviewed by the
10 U.S. Attorney's Office in Massachusetts?

11 A. Yes.

12 Q. Do you correlate the U.S.
13 Attorney's Office with -- strike that.

14 Do you consider the U.S.
15 Attorney's Office and the Department of
16 Justice one and the same?

17 A. I do.

18 Q. OK, we are on the same page.

19 In your testimony that you gave
20 on June 7, 2007, in the securities case,
21 was your testimony true and accurate at
22 that time?

23 A. Yes.

24 Q. If you testified that you had not

1 been interviewed by the U.S. Attorney's
2 Office as of that time, would that be
3 accurate?

4 A. I'm not familiar with the -- I
5 don't know if that's a legal issue.

6 Q. Well, if you testified to it,
7 this would be accurate, wouldn't it? You
8 wouldn't --

9 MS. KIEHN: Why don't you just
10 ask him he has no reason to believe
11 that what he said was incorrect.

12 MR. COFFIN: That's basically
13 what I'm asking him. He just didn't
14 understand the question.

15 A. Yes, I had. However I testified
16 to relative to the document you are
17 reviewing was to the best of my knowledge.

18 Q. Was your -- let me strike that.

19 You said that you were deposed by
20 the U.S. Attorney's Office, correct?

21 A. I was deposed in Massachusetts.
22 I thought it was -- on the door it said
23 "Department of Justice."

24 Q. OK.

1 A. If that's one and the same with
2 the U.S. Attorneys, then that's where I
3 was.

4 Q. OK, thank you.

5 Was there a court reporter
6 present when you were deposed by the
7 Department of Justice?

8 A. I can't recall.

9 Q. Do you know if your statements
10 were recorded at all?

11 A. I don't remember.

12 Q. What was the substance of your
13 testimony to the Department of Justice?

14 A. I believe it was related to
15 promotional practices for Celexa and
16 Lexapro.

17 Q. Promotional practices of those
18 two drugs for use in the pediatric
19 population?

20 MS. KIEHN: Objection.

21 A. No, just general promotional
22 practices.

23 Q. The interviews that you were
24 involved in with the Department of Justice

1 related to Celexa and Lexapro were not
2 specific to Forest's promotion of the drugs
3 in the pediatric population?

4 MS. KIEHN: Objection.

5 A. I don't recall that.

6 Q. Were you asked any questions
7 about whether or not Forest had promoted
8 Celexa or Lexapro to physicians for use in
9 the pediatric population?

10 A. Yes.

11 Q. What kind of questions were you
12 asked?

13 A. I don't recall the questions.
14 That's some time ago.

15 Q. Do you recall anything about the
16 substance of the questions?

17 A. No.

18 Q. Nothing?

19 A. I don't recall specific questions
20 that were asked to me.

21 Q. Do you recall any general topics
22 related to the promotion of Celexa and
23 Lexapro to physicians for use in the
24 pediatric population?

1 A. One general topic that I can
2 recall had to do with speaker programs for
3 Celexa.

4 Q. Did you testify to the Department
5 of Justice that Forest had engaged speakers
6 to speak on the topic of the use of Celexa
7 in the pediatric population?

8 MS. KIEHN: Objection.

9 A. No. It was more of the promotion
10 of Celexa in general for major depressive
11 disorder.

12 Q. And they just asked you questions
13 about the speaker program in relation to
14 promoting the drug?

15 A. Yes.

16 Q. When did you first become aware
17 of the Department of Justice investigation?

18 A. When I was informed that I was
19 going to be deposed by the Department of
20 Justice. I don't recall who exactly
21 informed me of that or when.

22 Q. Do you know if any of your
23 colleagues in Forest were interviewed by
24 the Department of Justice?

1 A. I do.

2 Q. Who?

3 A. Jerry Lynch.

4 Q. Anybody else?

5 A. That is all I know of.

6 Q. Were you asked to provide any
7 documents to the Department of Justice?

8 A. No.

9 Q. Were you asked to provide any
10 documents that would be provided to the
11 Department of Justice?

12 A. Could you repeat the question.

13 Q. Were you asked to provide any
14 documents to anyone who would then provide
15 them to the Department of Justice?

16 A. No.

17 Q. Did you provide any written
18 statements to the Department of Justice?

19 A. No.

20 Q. Are you aware that Forest pled
21 guilty to the crime of misbranding of
22 Celexa?

23 A. I am aware that there was a
24 settlement with Forest with the Department

1 of Justice.

2 Q. Were you aware that Forest pled
3 guilty in a criminal context to the
4 promotion of Celexa in the pediatric
5 population?

6 A. I don't recall exactly that
7 terminology. I just recall there being a
8 settlement with Forest and the government.
9 In relation to what, I don't recall the
10 specifics.

11 Q. Were you aware that Forest
12 entered into a civil settlement related to
13 allegations that the company had promoted
14 Celexa and Lexapro for use in children when
15 the drugs were not approved for such use?

16 A. No. I don't recall that.

17 Q. Did you ever ask anybody after
18 your interview what the outcome of the
19 Department of Justice's investigation was?

20 MS. KIEHN: I would just counsel
21 the witness not to answer to the extent
22 it requires you to reveal conversations
23 with attorneys.

24 Otherwise, if you have another

1 basis for knowing, you can answer.

2 A. I don't recall any of those
3 conversations.

4 Q. Other than your lawyers, did you
5 ever ask anyone what the outcome of the
6 Department of Justice investigation was?

7 A. No. I never asked anyone.

8 Q. Did you find it out of the
9 ordinary that the Department of Justice
10 from the United States was investigating a
11 company that you were working for?

12 MS. KIEHN: Objection.

13 A. No.

14 Q. Had you ever worked for a company
15 that had been investigated by the United
16 States Department of Justice?

17 A. No.

18 Q. But you didn't find that unusual?

19 A. I didn't find it unusual. Reason
20 being, at the time there were many
21 pharmaceuticals that were being
22 investigated.

23 Q. Many pharmaceuticals,
24 pharmaceutical companies you mean?

1 A. Yes.

2 Q. How do you know that?

3 A. Just general news.

4 Q. Do you know why Forest was being
5 investigated by the Department of Justice?

6 A. Yes.

7 Q. Why?

8 A. Because there was questions about
9 the promotion, or marketing and promotional
10 practices of Celexa and Lexapro.

11 Q. What was your understanding as to
12 what those questions were?

13 MS. KIEHN: Again, to the extent
14 it would require you to reveal your
15 conversations with attorneys, you
16 shouldn't answer. If you have another
17 basis for knowing, you can answer.

18 A. OK. That's privileged
19 information. I would have to speak to
20 counsel.

21 Q. Did you ever speak with Jerry
22 Lynch about the Department of Justice
23 investigation?

24 A. No.

1 Q. Never?

2 A. No.

3 Q. Did you ever speak with any of
4 your colleagues at Forest about your
5 interview that you had with the Department
6 of Justice?

7 A. No.

8 Q. Why not?

9 A. Just didn't.

10 Q. Did you go to Boston for your
11 interview?

12 A. I did.

13 Q. You lived in New York at the
14 time?

15 A. Yes.

16 Q. Did you have to take off work to
17 go be interviewed by the United States
18 Department of Justice?

19 A. Yes.

20 Q. You didn't tell anyone you were
21 going to be interviewed by the Department
22 of Justice?

23 A. The same people that told me, who
24 I don't even remember who told me, they

1 knew that I was required to speak to the
2 Department of Justice.

3 Q. You never talked to anybody about
4 it after that?

5 A. No.

6 Q. It wasn't unusual to you?

7 MS. KIEHN: Objection.

8 A. No.

9 Q. Regular old routine business,
10 your company is investigated by the United
11 States Department of Justice?

12 MS. KIEHN: Objection.

13 A. I'd have to speak to counsel
14 regarding this privileged information.

15 Q. I'm just asking you whether or
16 not you thought it was out of the ordinary
17 for the company that you had worked for,
18 for over 15 years or so at that point, was
19 being investigated by the United States
20 Government.

21 MS. KIEHN: He already answered
22 that question.

23 Q. And you don't think it was
24 unusual?

1 MS. KIEHN: He already answered.

2 Q. Is that still your answer?

3 A. Any questions related to that
4 topic I would say is privileged
5 information.

6 Q. But not whether or not you
7 thought it was unusual. Let's be clear on
8 that. You have a privilege with your
9 lawyers about anything you were
10 communicating with. I'm not asking you
11 about that.

12 I'm asking you about your
13 thoughts at that time.

14 MS. KIEHN: Asked and answered.

15 Q. It was not part of your usual
16 course of business to go be investigated by
17 the Department of Justice when you were at
18 Forest, was it?

19 A. I've never been deposed prior to
20 that.

21 Q. It was something different from
22 your duties as the senior vice president of
23 sales at Forest, right?

24 A. Yes.

1 Q. Have you ever been
2 investigated -- let me strike that.

3 Have you ever been interviewed by
4 the United States Government since your
5 interview related to Celexa and Lexapro?

6 A. No.

7 Q. Have you ever talked to anybody
8 from the Department of Justice since that
9 interview?

10 A. No.

11 Q. Were you aware that Forest
12 entered into a corporate integrity
13 agreement with the United States
14 Government?

15 A. I am.

16 Q. How are you aware of that?

17 MS. KIEHN: Again, I would --

18 Q. Just say it's with your lawyers.
19 Listen, if you --

20 MS. KIEHN: I'm just reminding
21 him.

22 MR. COFFIN: That's fine.

23 Q. Sir, I want to be very clear.
24 I'm not entitled to communications with

1 your lawyers, but if you had thoughts or
2 talked with somebody else that had not been
3 communications with your lawyers, I'm
4 entitled to that.

5 So you're aware of the corporate
6 integrity agreement, correct?

7 A. Yes.

8 Q. Did you become aware of that
9 because of your lawyers?

10 A. No.

11 Q. How did you become aware of that?

12 A. I don't recall exactly who or
13 where, but I had to certify that I have
14 knowledge that the company has entered into
15 the corporate integrity agreement.

16 Q. And you don't remember who
17 provided that to you?

18 MS. KIEHN: Objection.

19 A. I really don't.

20 Q. But you know it wasn't your
21 lawyers?

22 A. No.

23 Q. No, you know it wasn't, correct?

24 A. Yes.

1 Q. Do you remember when you were
2 provided with that corporate integrity
3 agreement?

4 A. I don't recall the exact date.

5 Q. Did you have any discussions with
6 anyone at Forest other than lawyers about
7 the corporate integrity agreement?

8 A. No. The only -- the extent that
9 I had any discussion is when it was
10 presented to me that I had to certify.
11 Again, I don't remember who gave it to me.
12 I had to read it and attest that I had
13 knowledge of it.

14 Q. What was your understanding as to
15 what the corporate integrity agreement
16 entailed?

17 A. That there were guidelines or
18 procedures that had to be put in place to
19 ensure promotional practices for any
20 product promoted was on par.

21 Q. In your role as the senior vice
22 president of sales, did you take any action
23 to ensure that the corporate integrity
24 agreement was adhered to?

1 MS. KIEHN: Objection.

2 A. No.

3 Q. Were you instructed by anyone
4 within Forest to ensure that you complied
5 with the corporate integrity agreement?

6 A. I would -- I informed the
7 individuals I supervised that the company
8 entered into a corporate integrity
9 agreement.

10 Q. You didn't make any changes
11 within your --

12 A. I didn't make any changes.

13 Q. OK. Do you know of anybody who
14 did within Forest?

15 A. I don't recall.

16 Q. Were you involved in the launch
17 of Celexa?

18 A. Yes.

19 Q. By "launch," do you understand
20 that I mean the beginning of marketing of
21 the product?

22 A. Yes.

23 Q. That was in 1998, correct?

24 A. Yes.

1 Q. Did you help to put together the
2 Celexa launch materials?

3 A. No.

4 Q. What was your role in the Celexa
5 launch?

6 A. I was the national sales
7 director, and I was responsible for
8 attending different breakouts and workshops
9 at the launch meeting or giving general
10 presentations to the sales force.

11 Q. What was your role in determining
12 sales strategies related to Celexa?

13 MS. KIEHN: Objection.

14 Q. Let me strike that.

15 Did you have any role in helping
16 with sales strategies related to Celexa?

17 A. No.

18 Q. Did you have any role in
19 determining how resources would be
20 allocated for the promotion of Celexa?

21 A. No.

22 Q. Who would have been responsible
23 for that?

24 A. The head of marketing.

[illegible]

[illegible]

[illegible]

[illegible]

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21         so does the detail time.
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22 Q. Were you ever involved in any
23 discussions about the analysis of market
24 share growth for Lexapro or Celexa in

1 conjunction with activity summary reports
2 related to detail time?

3 A. No.

4 Q. Those were all done by John
5 MacPhee and sales administration --

6 A. Yes.

7 Q. -- to your knowledge?

8 A. Yes.

9 Q. Did you ever, through reports,
10 see the effects of adjustment in detail
11 time?

12 A. I'm sorry, I'm not following the
13 question.

14 Q. Well, you just testified that you
15 would see that detail time had been
16 changed, that was common, correct?

17 A. It wasn't that common, but it did
18 change from time to time.

19 Q. When it changed, were you privy
20 to any of the effects of those changes,
21 related to market share?

22 A. No.

23 Q. That was John MacPhee and sales
24 administration as well?

1 A. They would look at that and make
2 decisions. I would simply look at the
3 actual attainment of detail and look at the
4 market share growth in the product. That
5 was my responsibility.

6 Q. Well, what happened -- well, let
7 me strike that.

8 What would you do if you saw some
9 change in market share?

10 A. That would be a result of what
11 would be expected. That's a good thing.

12 Q. What did you do with that
13 information?

14 A. Have general conversations with
15 the supervisor or the area director, here
16 is how much time you're putting out and the
17 detail time for your area. And let's look
18 at the market share changes.

19 Q. Why did you say that that's
20 something that would be expected?

21 A. What I meant by "expected," is if
22 a representative is putting in, as example,
23 50 percent of their time on Celexa or
24 60 percent, you would expect there, you

1 know, to be a positive effect of that.

2 Q. Meaning an increase in market
3 share growth?

4 A. Yes.

5 Q. Why would you expect there to be
6 a positive effect?

7 A. Because if the majority of your
8 time talking to a physician is based on one
9 brand or primarily one brand, you would
10 expect there to be a positive outcome of
11 that, based on my skill.

12 Q. You saw a correlation between
13 amount of time spent with a physician and
14 increase in market share in the reports
15 that you reviewed?

16 MS. KIEHN: Objection.

17 A. That's not always the case.

18 Q. I didn't ask you if it is always
19 the case. So strike your response.

20 Did you see a correlation between
21 the amount of time spent with a physician
22 and increase in market share in the reports
23 that you reviewed?

24 A. No.

1 Q. You never did?

2 A. It doesn't always work that way.

3 Q. You expected to see that?

4 A. I expected, but there was
5 variable responses.

6 Q. What other factors in your
7 opinion go into whether or not you will see
8 an increase in market share in the reports
9 you were reviewing?

10 A. I look at the increase in market
11 share based on the amount of time, and I
12 correlate that to the representative's
13 skill, and/or the coaching they are
14 receiving from their manager.

15 Q. Did you expect to see an increase
16 in market share for Celexa or Lexapro when
17 a representative spent time with the
18 physician and had exceptional skill?

19 MS. KIEHN: Objection.

20 A. I would.

21 Q. Why?

22 A. If a representative is spending
23 the majority of their time speaking about a
24 given brand and they have excellent skills,

1 above what average might be, I would expect
2 their performance to improve over time.

3 Q. Performance meaning increase in
4 market share?

5 A. Yes.

6 Q. Did you, in fact, observe that
7 with regard to Celexa and Lexapro at times?

8 MS. KIEHN: Objection.

9 A. I don't recall looking at
10 specific physicians, but I would have
11 expected to see growth in market share.
12 Yes.

13 Q. Why would you have expected that?

14 A. I would have expected that
15 because of the amount of requisite time was
16 allocated to that product by all
17 representatives within a given region or
18 area.

19 Q. Based on your knowledge and
20 experience in Forest sales, would it be
21 unusual for a sales representative with
22 exceptional skill who spent a majority of
23 their time promoting Lexapro to a specific
24 physician to see a decrease in market

1 share?

2 MS. KIEHN: Objection.

3 A. It's not uncommon. It happens.

4 Q. I'm sure it happens. Let me
5 strike your answer, because what I asked
6 you is, based on your knowledge and
7 experience in Forest sales, would it be
8 unusual for a sales representative with
9 exceptional skill who spent a majority of
10 their time promoting Lexapro to a specific
11 physician to see a decrease in market
12 share?

13 MS. KIEHN: Objection.

14 A. No, it wouldn't be unusual.

15 Q. How would you characterize it?

16 MS. KIEHN: Objection.

17 A. I would characterize it, to the
18 best of my knowledge, that it happens.
19 Sometimes reps have great skills and
20 they're not seeing the results they would
21 expect.

22 Q. During the entire time that you
23 were the national director of sales and the
24 senior vice president of sales, did you see

1 increased market share growth with Celexa
2 and Lexapro?

3 A. Yes.

4 Q. Did you ever suggest that any
5 changes be made to the time spent with
6 physicians or the methods your sales
7 representatives were using in order to
8 increase market share for Lexapro or
9 Celexa?

10 A. No.

11 Q. Why didn't you?

12 A. It wasn't my responsibility.

13 Q. That would have been John
14 MacPhee's responsibility?

15 MS. KIEHN: Objection.

16 Q. Let me strike that.

17 Whose responsibility would that
18 have been?

19 A. The head of a certain brand
20 working in collaboration with sales
21 administration.

22 Q. OK. To be clear, a sales
23 performance report -- well, let me strike
24 that.

1 What does a sales performance
2 report contain?

3 A. A sales performance report would
4 show market share growth for a given
5 product from one period to the next.

6 Q. And what period did Forest break
7 down the sales performance reports into?

8 A. There were weekly reports, there
9 were monthly reports and quarterly reports.

10 Q. If I refer to the weekly market
11 share performance report, is that a sales
12 performance report on a weekly basis?

13 A. Yes.

14 Q. And that shows a weekly snapshot
15 of the national market share for the
16 promoted products that it's reporting on?

17 A. Yes.

18 Q. Did you receive those reports for
19 Celexa and Lexapro?

20 A. I did.

21 Q. What was the purpose of you
22 receiving those reports?

23 A. So that I can have conversations
24 about performance with the area directors

1 that I supervise, or the regional
2 directors.

3 Q. What would cause you to have a
4 conversation with an area director or a
5 regional director based on information you
6 received in a weekly market share
7 performance report?

8 A. I speak -- if not every few days,
9 I would speak to area or regional directors
10 certainly once a week to discuss the
11 progression and performance of those
12 reports. That was commonplace.

13 Q. What was the purpose of that?

14 A. To review performance of the
15 sales representatives and the division
16 managers and the regions.

17 Q. How did you determine which area
18 directors or regional directors you would
19 contact based on the weekly market share
20 performance reports?

21 A. At the minimum every week, there
22 is direct phone conversation with all of
23 the individuals I supervised. One of the
24 topics was sales performance. That was one

1 cornerstone topic.

2 Q. And by "sales performance," you
3 mean market share in their specific area or
4 region?

5 A. Yes.

6 Q. What other topics did you discuss
7 with them on a weekly basis?

8 A. Personnel issues. A host of
9 issues.

10 Q. What is a weekly activity
11 summary?

12 A. A weekly activity summary gives a
13 description of what I referenced earlier
14 about percentage of detail time spent for a
15 given product, and also shows the number of
16 calls made within a given area, region,
17 division. It is a summary of that
18 activity.

19 Q. Did you review those on a weekly
20 basis?

21 A. Yes, I did.

22 Q. Did you review them related to
23 the promotion of Celexa and Lexapro?

24 A. Yes.

1 Q. On a weekly basis?

2 A. Yes.

3 Q. For what purpose?

4 A. To ensure that the percent of
5 time that was budgeted or allocated, and
6 looking at the progression and attainment
7 of those budgets.

8 Q. Why did you want to look at that?

9 A. Because it's an important
10 indication to ensure that the sales team
11 and the percent of time allocated to a
12 brand is reaching their expected time
13 that's been budgeted.

14 Q. Why is that important?

15 A. It's important because we want to
16 ensure that those representatives are able
17 to give the time it needs as allocated to
18 the physicians they're calling on.

19 Q. That's because you see a
20 correlation in your experience between time
21 spent with a physician and increase in
22 market share, correct?

23 MS. KIEHN: Objection.

24 A. No, that's not what I've

1 indicated.

2 Q. Do you not see a correlation
3 between that in general?

4 MS. KIEHN: Objection.

5 A. The correlation between detail
6 time and market share growth is varied.

7 Q. Right. I'm asking you generally.
8 Isn't it generally -- let me cut to the
9 chase. You contacted your regional and
10 area directors on a weekly basis, correct?

11 A. Yes.

12 Q. And you used various reports to
13 ensure that their people on the sales team
14 were attaining a certain amount of time
15 with physicians, correct?

16 A. Yes.

17 Q. And you wanted to do that because
18 it was important for the company that the
19 sales representatives spent time with
20 physicians, right?

21 MS. KIEHN: Objection.

22 A. Yes.

23 Q. And the reason that they wanted
24 to spend time with physicians is to promote

1 Forest products, right?

2 A. Yes.

3 Q. Including Celexa and Lexapro?

4 A. Um-hm. Yes.

5 Q. And the reason you wanted to do
6 that is because the company believed that
7 if the representatives spent time with
8 physicians, that was a factor that would
9 help to increase market share for the
10 products?

11 MS. KIEHN: Objection.

12 A. That was an objective.

13 Q. Right. Otherwise, the sales
14 representatives wouldn't go visit doctors,
15 right?

16 MS. KIEHN: Objection.

17 A. Yeah.

18 Q. And that's the whole point. You
19 knew that a sales representative spent time
20 with doctors, that was a factor in
21 increasing market share, right?

22 MS. KIEHN: Objection.

23 A. It would be an expectation that
24 if a representative was achieving their

1 allocated time for a brand, that you would
2 hope that you would see growth in market
3 share.

4 Q. And you, in fact, did see that
5 with Celexa and Lexapro, didn't you?

6 MS. KIEHN: Objection.

7 A. I saw that over time by division,
8 by region or an area. But that varied with
9 representatives.

10 Q. I understand that varies
11 because -- and the reason it varies -- let
12 me strike that.

13 The reason that market share
14 varies is because some representatives
15 spend more time with physicians than
16 others, right?

17 MS. KIEHN: Objection.

18 A. No.

19 Q. And the reason it varies is
20 because some representatives have more
21 exceptional selling skills than other
22 representatives, right?

23 MS. KIEHN: Objection.

24 A. That's a possibility.

1 Q. I mean it is one factor, isn't
2 it?

3 MS. KIEHN: Objection.

4 A. It's one factor.

5 Q. And another factor is time spent
6 with the physician, right?

7 MS. KIEHN: Objection.

8 A. That's one factor.

9 Q. And the factors of time spent
10 with a physician and skills in selling the
11 product are two factors that Forest
12 believed were important to increasing
13 market share for their products?

14 MS. KIEHN: Objection.

15 A. Those are two factors.

16 Q. Right. And there are probably
17 other factors, right?

18 A. Yes.

19 Q. What other factors?

20 A. I could -- I can't really think
21 of any right now, but I'm sure there are
22 other factors.

23 Q. Maybe the materials that they
24 use?

1 MS. KIEHN: Objection.

2 A. Possible. I'm not sure.

3 Q. Could be a factor, right?

4 MS. KIEHN: Objection.

5 A. I'm not sure.

6 Q. You're not sure if the materials
7 that a sales representative uses to promote
8 a product might help increase market share?

9 MS. KIEHN: Objection.

10 A. I'm not sure how the
11 representative is using the tools to drive
12 market share.

13 Q. Right. But that would be skill,
14 a skill issue, right?

15 A. Yes.

16 Q. We have already established that
17 the skill of the representative and time
18 spent with the physician are two factors
19 that increase market share.

20 MS. KIEHN: Objection.

21 A. Yes.

22 Q. And there are other factors, you
23 just can't think of any right now, right?

24 A. No.

1 Q. What's a productivity report?

2 A. I heard the term, but I can't
3 visualize what the report contained.

4 Q. Your testimony on June the 7th of
5 2007 was, "The productivity report shows a
6 breakdown of sales presentations delivered
7 to physicians. It's broken" down -- excuse
8 me. "It's broken out by deciles, and it
9 shows the presentations relative to a
10 budget, so percent attainment to physicians
11 of detail versus budget, and it will show
12 in an aggregate form the number of samples
13 left to those physicians."

14 Does that refresh your
15 recollection?

16 A. It does.

17 Q. So what is a productivity report?

18 A. A productivity report will show a
19 physician, it will show their decile
20 rating, and it gives profile data of
21 performance over time.

22 Q. Did you review productivity
23 reports for Celexa and Lexapro?

24 A. Yes.

1 Q. For what purpose?

2 A. To determine the performance in
3 an aggregate form by region, area.

4 Q. And you determined performance by
5 attainment of market share, correct?

6 A. Growth in market share.

7 Q. I am sorry, growth in market
8 share.

9 How did a productivity report
10 differ from a sales performance report?

11 A. Sales performance report is more
12 of a top-line summary of a brand's
13 performance from one period to the next.

14 A productivity report gives more
15 granular detail about activity and
16 performance over time.

17 Q. If you have a sales performance
18 report that you're reviewing on a weekly
19 basis, why do you need to review a
20 productivity report?

21 A. You would have to ask the people
22 in sales administration that question, why
23 all these wonderful reports were produced.

24 Q. But you used the productivity

1 report for the same purpose you used the
2 weekly performance reports?

3 A. Yes.

4 Q. Were the productivity reports
5 provided to you on a weekly basis?

6 A. I don't remember the time frame.
7 I don't recall.

8 MS. KIEHN: Can we break for
9 lunch soon?

10 MR. COFFIN: Yeah, we can. I
11 wanted to get through these reports,
12 and I am actually almost done.

13 Q. Did you also receive 1st Rx
14 reports?

15 A. Yes.

16 Q. What are 1st Rx reports?

17 A. 1st Rx is a weekly snapshot of
18 market share growth for a given brand.

19 Q. What was the purpose of you
20 receiving a 1st Rx report on a weekly
21 basis?

22 MS. KIEHN: Objection.

23 Q. Let me strike that.

24 Did you receive 1st Rx reports on

1 a weekly basis?

2 A. Yes.

3 Q. What was the purpose of you
4 receiving 1st Rx reports on a weekly basis?

5 A. To monitor the trends in
6 performance.

7 Q. When you say "monitor the trends
8 in performance," you mean the trends in
9 market share growth?

10 A. Yes.

11 Q. What's the difference between a
12 1st Rx report, a weekly sales performance
13 report, and the productivity report that we
14 discussed?

15 A. The 1st Rx report is simply a
16 snapshot of -- I don't understand the
17 mechanics. I'm not a sales administration
18 person. I would review the reports. But
19 it is a snapshot in time of how a product
20 market share growth is trending.

21 Q. What did you use that for?

22 A. Just to get an assessment of how
23 the brand was progressing. You would
24 certainly not want to see it stagnating.

1 You want to see a snapshot week to week.

2 Q. You have now explained 1st Rx
3 reports, weekly sales performance reports,
4 and productivity reports, correct?

5 A. Weekly activity summary reports.

6 Q. Weekly activity summary reports
7 in addition to those? Or did I misstate
8 something?

9 A. That's what I meant or -- weekly
10 activity. I think you described it as
11 weekly performance reports?

12 Q. I am sorry. There is such a
13 thing as a sales performance report, right?

14 A. Yes.

15 Q. That's different than a weekly
16 activity summary report?

17 A. Yes.

18 Q. Did you receive sales performance
19 reports on a weekly basis?

20 A. I don't recall the time frame,
21 but I did receive them.

22 Q. On a weekly basis, as the
23 national director of sales and as the
24 senior vice president of sales, you

1 received weekly activity reports, 1st Rx
2 reports, and weekly productivity reports;
3 is that correct?

4 A. I can recall receiving weekly
5 activity summary reports as well as 1st Rx
6 reports weekly.

7 Q. And the productivity reports, you
8 just don't remember --

9 A. I don't remember the time frame,
10 how often they were distributed.

11 Q. In addition to those, you
12 received some sales performance reports at
13 some time increment?

14 A. Yes.

15 Q. Were there any other reports,
16 other than those you have testified to,
17 that you recall receiving when you were the
18 national director of sales and the senior
19 vice president of sales?

20 A. No.

21 MR. COFFIN: Let's go off record.

22 THE VIDEOGRAPHER: The time now
23 is 12:45 p.m. We are off the record.

24 (Lunch recess.)

1 AFTERNOON SESSION

2 1:26 p.m.

3 THE VIDEOGRAPHER: This marks the
4 beginning of tape number 3. The time
5 now is 1:26 p.m., and we are back on
6 the record.

7 BY MR. COFFIN:

[illegible]

[illegible]

[illegible]

2 Q. And that was true for physicians
3 who were called on related to the promotion
4 of Celexa and Lexapro, correct?

5 MS. KIEHN: Objection.

6 A. Yes.

7 Q. Did sales administration make
8 those determinations regarding decile
9 ranking?

10 A. Yes.

11 Q. Did you have any input into that
12 at all?

13 A. No.

14 Q. Were you ever involved in any
15 discussions regarding whether or not Forest
16 was -- well, let me strike that.

17 Were you ever involved in any
18 conversations regarding the value that
19 Forest placed on a call to a physician?

20 A. No.

21 Q. Do you know the methods that
22 sales administration used to determine that
23 value?

24 MS. KIEHN: Objection.

1 A. I don't.

2 Q. Let me show you what we will mark
3 as Exhibit 3 to your deposition.

4 MS. KIEHN: No other copy?

5 MR. COFFIN: No. I am sorry.

6 One for you and one for the witness.

7 MS. KIEHN: OK.

8 MR. COFFIN: And one for me.

9 MS. KIEHN: All right.

10 (Exhibit 3, document Bates
11 stamped MDL-FOREM 13897 marked for
12 identification, as of this date.)

13 Q. Mr. Azzari, do you recognize this
14 document?

15 A. I don't recognize the document.

16 Q. Do you recognize the contents of
17 this document, starting at the bottom half
18 of page 1?

19 A. I see my name and it says
20 "Lexapro launch meeting," but I don't
21 recall this, the contents.

22 Q. You spoke at the Lexapro launch
23 meeting that occurred prior to Lexapro
24 being approved by the Food and Drug

1 Administration, correct?

2 MS. KIEHN: Objection.

3 A. I don't remember.

4 Q. You don't?

5 A. The time frame of the meeting.

6 Q. Let me just ask you this. Did
7 you participate in the Lexapro launch
8 meeting?

9 A. Yes.

10 Q. Did you give presentations at the
11 Lexapro launch meeting?

12 A. Yes.

13 Q. And those presentations you had
14 written out prior to giving them, correct?

15 A. Yes.

16 Q. Do you remember testifying about
17 those presentations in your June 7, 2007
18 testimony?

19 A. I do not.

20 Q. Did you write out your
21 presentation prior to giving it at the
22 Lexapro launch meeting?

23 A. Yes.

24 Q. Can you just look through this

1 and tell me whether or not this appears to
2 be the presentation that you gave?

3 A. You want me to read this entire
4 document?

5 Q. I'd prefer you don't, because we
6 will be here extremely late. I'm just
7 asking you whether or not you can affirm
8 for me that this is a presentation that you
9 recall giving at the Lexapro launch
10 meeting.

11 A. I know I gave a presentation at
12 the launch meeting. The actual words I
13 used back in 2002, I have no recollection
14 of at all.

15 Q. I understand that.

16 When you gave presentations at
17 the Lexapro launch meeting, what was the
18 purpose of those presentations?

19 A. It was a launch meeting. And
20 there were obviously our sales
21 representatives involved, and the goal is
22 to inspire, motivate, and encapsulate the
23 value of Lexapro, and the sales team should
24 be very motivated to have an opportunity to

1 promote that product to the healthcare
2 providers. That was the overall objective.

3 Q. In this presentation contained in
4 Exhibit 3, there is an indication that you
5 were the first speaker at the launch
6 meeting. Do you remember that?

7 A. I don't.

8 Q. If you go down to the third
9 paragraph that starts with, "Now, market
10 leadership is not a concept to be talked
11 about lightly." Do you see that?

12 A. I do.

13 Q. And this indicates that your
14 presentation stated that "market leadership
15 is the ultimate sales and marketing
16 achievement. It means demonstrating beyond
17 any shadow of doubt that your product is
18 the best."

19 Do you see that?

20 A. I do.

21 Q. Do you recall having that belief
22 back in 2002, when you were presenting at
23 the Lexapro launch meeting?

24 A. Yes.

1 Q. If you turn to the next page, do
2 you see the first full paragraph says, "Now
3 saying it is one thing, doing it is
4 something entirely different; you know
5 this. For us to be number 1, we will need
6 to tap into every ounce of skill, effort
7 and 'salesmanship' that we have." Correct?

8 A. Yes.

9 Q. What did you mean when you
10 referred to "salesmanship"?

11 MS. KIEHN: Objection.

12 A. "Salesmanship" is a general term
13 which encompasses their skill and their
14 knowledge when communicating a presentation
15 to a healthcare provider.

16 Q. The next sentence says, "Every
17 sales call, every opening, every
18 presentation and every close must be the
19 best it can be. It must be better than
20 your competitors."

21 Do you see that?

22 A. I do.

23 Q. Why were you conveying that
24 message?

1 MS. KIEHN: Objection.

2 A. Conveying that message because
3 when communicating features and benefits of
4 Lexapro, you want the value of Lexapro to
5 be one that stands out to those physicians,
6 because there are other competitive
7 companies trying to do the same.

8 Q. Is that a message that you
9 conveyed to your sales force related to the
10 promotion of Lexapro while you were at
11 Forest?

12 A. Yes.

13 Q. The next sentence says, "That is
14 what it will take to make Lexapro number 1,
15 nothing" else. Correct?

16 A. It says "nothing less."

17 Q. Oh, did I say "nothing else"?

18 A. I see "nothing less." You said
19 "nothing else."

20 Q. I misstated it? Let me try
21 again.

22 The next sentence says, "That is
23 what it will take to make Lexapro number 1,
24 nothing less." Correct?

1 A. Yes.

2 Q. And then it states, "Over the
3 next several days, we will introduce...
4 you" -- excuse me, let me strike that.

5 The next sentence states, "Over
6 the next several days, we will introduce to
7 you a sales and marketing program that will
8 help you accomplish this; a sales and
9 marketing program that has one clear goal
10 in mind, and that is to be number 1."
11 Correct?

12 A. Yes.

13 Q. How long was the Lexapro launch
14 meeting that occurred in 2002?

15 A. I don't recall the exact number
16 of days. However, generally speaking for
17 launch meetings, it's three to four days.

18 Q. This indicates that you were
19 going to introduce sales representative to
20 a sales and marketing program; is that
21 correct?

22 A. Yes.

23 Q. Is that what happens at a launch
24 meeting?

1 A. Yes.

2 Q. And what did the sales and
3 marketing program that you introduced the
4 Lexapro sales reps to entail?

5 A. Over those days at a launch
6 meeting, we would introduce various
7 resources to aid representatives in
8 communicating the benefits and features of
9 Lexapro, elements of which include a visual
10 aid, clinical reprint material, and they
11 would workshop that information over
12 several days.

13 Q. Did you also engage the sales
14 representatives in role playing?

15 A. Yes.

16 Q. And what is role playing?

17 A. Role playing is an opportunity
18 for a representative to provide a mock
19 presentation to someone acting as a
20 physician.

21 Q. And what's the purpose of that?

22 A. The purpose of that is to ensure
23 that after having an opportunity to review
24 a clinical reprint and/or a master visual

1 aid, they can demonstrate their proficiency
2 in communicating those features, benefits
3 and the value of those resources to a
4 physician.

5 Q. In the sales and marketing
6 program for Lexapro that you introduced the
7 sales representatives to, did you teach
8 various sales methods?

9 A. I don't recall if there were any
10 specific sales methods introduced at that
11 meeting.

12 Q. How did you teach the
13 representatives to approach physicians?

14 A. I'm not understanding the
15 question.

16 Q. Sales representatives needed to
17 be instructed on how to engage in
18 salesmanship, right?

19 A. Yes.

20 Q. How did you do that?

21 A. One way, as I have described
22 earlier, is by way of orientation, and when
23 a representative first comes on board and
24 joins the company, in sales training we

1 teach them a fundamental sales process to
2 follow when they engage healthcare
3 professionals in a presentation.

4 Q. What is that fundamental sales
5 process?

6 A. The first part of the sales call
7 or presentation usually has an opening
8 statement, a general introduction about
9 what that person plans to speak about.

10 Then there are usually probes
11 which are associated with to determine what
12 the challenge is that a physician may be
13 encountering.

14 You have an open, a probe, then
15 there is an opportunity to introduce the
16 sales aids and/or clinical reprint to
17 describe the features and benefits.

18 Again, you would then ask the
19 doctor if -- you would probe the physician
20 again, see if there are any questions based
21 on the information that was presented.

22 Usually there is a dialog that
23 takes place. And usually at the end of the
24 presentation and probes, the representative

1 would answer any questions the doctor would
2 have.

3 And then there would be a close
4 to the presentation, and the close of the
5 presentation is usually a summary of what
6 was discussed and an opportunity to ask the
7 physician if they see -- based on the
8 features and benefits and what was
9 described, do they see this product, in
10 this case Lexapro, as a viable option to
11 use for patients that are either not
12 controlled or new patient starts for
13 patients that have major depressive
14 disorder.

15 Q. Did Forest use the same
16 fundamental sales process to educate
17 Lexapro sales representatives as it did for
18 Celexa sales representatives?

19 A. Yes.

20 Q. Did that sales process ever
21 change during the time period that you were
22 a national director of sales or a senior
23 vice president of sales at Forest?

24 A. What I just described to you as a

1 general sales presentation, the elements
2 contained within it, always remained.
3 However, as I mentioned or testified
4 earlier, there was a needs-based selling
5 application that was introduced, which
6 became part of the selling process.

7 Q. Why did Forest introduce the
8 needs-based selling as part of the process?

9 A. There was an individual that
10 worked in sales training, his name I don't
11 recall, that he thought it would be
12 valuable to enhance those core elements to
13 make the presentation more relevant to the
14 physician, as opposed to just spouting out
15 general information.

16 Q. And did Forest change the sales
17 process to incorporate need-based selling
18 for Lexapro sales representatives?

19 A. As I mentioned earlier, I don't
20 remember the exact timeline.

21 Q. The training that you provided to
22 the Lexapro sales representatives for --
23 let me strike that.

24 The training that you provided to

1 Lexapro sales representatives related to
2 the fundamental sales process, was that
3 part of increasing each representative's
4 salesmanship, as you referred to it?

5 A. That would just be a core
6 fundamental process that was taught. The
7 term "salesmanship" is a general term that
8 I use just to establish a framework on what
9 is expected.

10 Q. Part of that last sentence that I
11 read states that a sales and marketing
12 program -- well, let me strike that.

13 The last sentence indicates that
14 the sales and marketing program has one
15 clear goal in mind, and that is to be
16 number one. Correct?

17 A. Yes.

18 Q. That was the goal of Forest, to
19 have Lexapro be the number one selling
20 SSRI, correct?

21 MS. KIEHN: Objection.

22 A. Yes.

23 Q. Do you know whether or not Forest
24 attained that goal?

1 A. I don't recall how we ever ranked
2 within the category.

3 Q. Do you recall there was a goal
4 within Forest to have 2 billion dollars in
5 sales for Lexapro?

6 MS. KIEHN: Objection.

7 A. Yes.

8 Q. Do you know whether or not Forest
9 achieved the goal of attaining 2 billion
10 dollars in sales for Lexapro?

11 A. I believe we did.

12 Q. Were you at Forest when that goal
13 was achieved?

14 A. Yes.

15 Q. Do you attribute any of that goal
16 achievement in attaining 2 billion dollars
17 of sales to the work of the Lexapro sales
18 force?

19 A. Yes.

20 Q. Did you encourage your sales
21 force to reach that 2 billion dollar sales
22 goal?

23 MS. KIEHN: Objection.

24 A. I don't recall if I did.

1 Q. Do you recall encouraging the
2 sales force to reach monetary sales goals?

3 A. I don't recall.

4 Q. In the next paragraph, about five
5 lines down, it states, "Looking out at a
6 sea of more than 2,000 Forest sales
7 professionals is not only spectacular - it
8 is simply remarkable."

9 Do you see that?

10 A. I do.

11 Q. Does that refresh your
12 recollection as to the approximate number
13 of sales representatives who were promoting
14 Lexapro for Forest at its launch?

15 A. It does.

16 Q. Approximately how many sales
17 representatives were promoting Lexapro for
18 Forest at the drug's launch?

19 A. Approximately 2,000.

20 Q. Do you know if that number
21 increased or decreased over the time that
22 you were at Forest?

23 A. I -- I don't know to what extent,
24 but I believe the number did increase in

1 the wake of new product introductions.

2 Q. Looking at the sixth paragraph
3 down, it starts with, "There are a lot of
4 ways to grow a company."

5 Do you see that?

6 A. Yes.

7 Q. If you turn your attention to the
8 very -- excuse me, the second-to-last
9 sentence of that paragraph, the statement
10 is, "Our larger sales force has given us
11 added strength." Excuse me, that's the
12 third to the last. Let's start that again.

13 If you turn your attention to the
14 third-to-the-last sentence in paragraph 6,
15 it starts, "Our larger sales force has
16 given us added strength."

17 Do you see that?

18 A. I do.

19 Q. Had Forest increased its sales
20 force for the launch of Lexapro?

21 A. We increased our sales force for
22 the launch of Lexapro, but also for other
23 products that were on the immediate
24 horizon.

1 Q. The next sentence says, "It has
2 helped drive new prescriptions to record
3 levels."

4 Do you see that?

5 A. Yes.

6 Q. Was that a truthful statement?

7 A. Yes.

8 Q. The next statement says, "It has
9 helped us attain record corporate
10 earnings."

11 Is that a truthful statement?

12 A. Yes.

13 Q. Is it accurate that the increased
14 number of sales representatives at Forest
15 helped to attain record corporate earnings
16 at Forest?

17 A. Yes.

18 Q. It then says, "and has enabled us
19 to produce a solid return for our
20 shareholders."

21 Do you see that?

22 A. I do.

23 Q. Is that an accurate statement?

24 A. Yes.

1 Q. Is it accurate that increasing
2 the number of sales representatives at
3 Forest enabled the company to produce solid
4 returns for its shareholders?

5 A. Yes.

6 Q. If you turn to the next page, the
7 second full paragraph starts, "At a time
8 when getting quality face time with our
9 target audience has become more and more of
10 a challenge, we are relentless in our
11 pursuit, and we give each target a reason
12 to want to see us over and over again."

13 Did I read that correct?

14 A. Yes.

15 Q. Is that accurate?

16 A. Yes.

17 Q. Why was it getting more and more
18 difficult to get quality face time with
19 target physicians?

20 A. In 2002, while I don't know the
21 number, I'll just give you a reference
22 point. When I started in 1987, there were
23 15,000 sales representatives in multiple
24 companies in the pharmaceutical industry.

1 In 2002, there were -- I'm giving an
2 approximation -- maybe 80,000 target
3 physicians.

4 At any one day, a physician may
5 see seven or eight pharmaceutical reps. So
6 when you walk in an office, it's not as if
7 they are welcoming you with open arms. So
8 time is of a premium, and that is what I
9 meant by that statement, having given them
10 a reason to want to see you.

11 Q. What did you mean when you
12 stated, "we are relentless in our pursuit,
13 and we give each target a reason to want to
14 see us over and over again"?

15 A. I believe the next sentence
16 describes that, when I say "relentless,"
17 meaning the salesperson's professionalism,
18 their resourcefulness, listening,
19 understanding, being knowledgeable of the
20 information that they're communicating to
21 physicians, that will encapsulate and
22 differentiate you from any other
23 salesperson that that doctor is seeing in a
24 given day or at any given time.

1 Q. You also used lunch and learns to
2 obtain face time with physicians, correct?

3 MS. KIEHN: Objection.

4 A. I don't see where that is.

5 Q. I'm not talking about this
6 document. I apologize. Let me strike
7 that.

8 Forest used lunch and learn
9 activities as a way to gain face time with
10 physicians, correct?

11 MS. KIEHN: Objection.

12 A. Part of the promotional program
13 outside of just representatives face to
14 face, there was opportunities where
15 representatives would do lunch and learns
16 regardless of for face time or not. It was
17 just a common practice.

18 Q. Wasn't one of the purposes of
19 lunch and learns to gain face time with the
20 physician or his or her staff?

21 A. That wasn't the primary purpose.

22 Q. That wasn't my question, sir. I
23 said, wasn't one of the purposes of lunch
24 and learns to gain face time with the

1 physician and/or his or her staff?

2 A. No.

3 Q. That wasn't one of the purposes?

4 OK. Is that your testimony?

5 A. If you would like me to amplify
6 or clarify that, I can do that.

7 Q. I want you to answer my question,
8 which is, isn't it true that one of the
9 purposes of conducting lunch and learn
10 sessions was to gain face time with the
11 physician and/or his staff or her staff?

12 A. The purpose of lunch and learns
13 is to gain additional face time with a
14 physician and/or their staff, his or her
15 staff.

16 Q. So one of the purposes was to
17 gain face time?

18 A. I used the word "additional" in
19 response to your question, with the
20 assumption that they are getting face time.

21 Q. Oh, OK, I understand.

22 Is it accurate that one of the
23 purposes of lunch and learn sessions was
24 for Forest sales representatives to get

1 additional face time with the physician
2 and/or that physician's staff?

3 A. Yes.

4 Q. When you say "additional time,"
5 what are you referring to?

6 A. I'm referring to, as I described
7 earlier, that the amount of time that a
8 representative would be with a physician
9 was very limited. I don't know off the top
10 of my head, but there were reports that it
11 is less than three minutes. So in order to
12 promote sometimes three brands to a
13 physician in three minutes is very
14 cumbersome and difficult to do.

15 So one of the purposes of a lunch
16 and learn, while the expectation is still
17 to see the physician, and they would
18 anyway, it's to be able to generate enough
19 time to be able to give a presentation or
20 multiple presentations to a physician
21 and/or his or her staff.

22 Q. The second-to-last sentence in
23 the paragraph we were reading states, "No
24 sales professional in this room is rewarded

1 for making ten calls or scheduling three
2 programs per day."

3 Do you see that?

4 A. I do.

5 Q. What did you mean by that?

6 A. What I meant by that was, it was
7 a generic number, that it's not just making
8 absolute calls, to make ten face-to-face
9 calls with a physician, or doing a speaker
10 program or a lunch and learn in a day.

11 It's the essence of what I've
12 described earlier about the
13 professionalism, resourcefulness and
14 credibility that makes all the difference
15 in the world to best educate that physician
16 on the value of Lexapro.

17 Q. The next sentence says, "We look
18 at sales results, and we enthusiastically
19 reward new prescription market share gains
20 resulting from your daily sales activity."
21 Correct?

22 A. Yes.

23 Q. That's a true statement, right?

24 A. Yes.

1 Q. What did you mean by "we look at
2 sales results"?

3 A. If you keep looking at that
4 sentence, what I meant was the activity
5 that they provide and/or the programs, it's
6 within those calls or programs, their skill
7 and their knowledge, that will generate new
8 prescription market share, market share
9 gains from the physicians they're calling
10 on within their territory.

11 Q. What do you mean by "new
12 prescription market share gains"?

13 A. Technically there is new
14 prescriptions generated, and then there is
15 total prescriptions. Total usually are
16 refill prescriptions.

17 If you are calling on a physician
18 ten calls in a day, you would want those
19 doctors to generate new prescriptions.

20 Q. Were sales representatives who
21 were promoting Lexapro rewarded for repeat
22 prescriptions? Let me state that a
23 different way.

24 The sales representatives who

1 promoted Lexapro were financially rewarded
2 for new prescription market share, correct?

3 MS. KIEHN: Objection.

4 Q. Well -- is that correct or not?

5 A. Yes. That's what I indicated
6 here.

7 Q. Right, it's correct, isn't it?
8 It is a true statement, you just testified
9 it was a true statement?

10 A. Yes.

11 Q. Yeah. So were they rewarded for
12 any other types of prescriptions other than
13 new prescriptions?

14 A. I don't have direct knowledge of
15 the mechanics of the incentive compensation
16 program. That was the responsibility of
17 sales administration.

18 However, I can give you my
19 general categorization of how the
20 representatives were incentivized.

21 Q. What is your understanding as to
22 how sales representatives were
23 incentivized?

24 A. Sales representatives were

1 incentivized by looking at market share
2 growth of all the physicians within their
3 territory.

4 Now, market share growth includes
5 both new and total prescriptions.

6 Q. Therefore, their incentives were
7 not solely based on new prescriptions?

8 A. Just total prescriptions. Now, I
9 don't recall if it were at that time -- it
10 is possible, which I don't remember -- that
11 the incentive compensation design was
12 specific at a launch meeting. It is
13 sometimes common that they will only look
14 at new prescriptions until a baseline is
15 formed, as a point of clarification.

16 So I may have spoken in error
17 when referencing total prescriptions,
18 because usually that's done over time.
19 With the introduction of a new product, I
20 believe -- again, I'm not familiar with the
21 exact mechanics -- that it may just be
22 looking at new prescriptions until a
23 certain point in time post launch.

24 Q. Is that the same incentive

1 program that was used for Celexa and
2 Lexapro?

3 A. Yes.

4 Q. The last part of that sentence
5 says, "resulting from your daily sales
6 activity." what were you referring to when
7 you said "daily sales activity"?

8 A. The number of calls that they
9 make to target healthcare providers or any
10 other activity, such as lunch and learns
11 and/or speaker programs. That would come
12 under the category of activity.

13 Q. And that's what you referred to
14 as "daily sales activity," correct?

15 A. Yes.

16 Q. And those activities are for the
17 purpose of selling the drug, correct?

18 MS. KIEHN: Objection.

19 A. Those activities are associated
20 with getting in front of each of their
21 target physicians to give presentations.

22 Q. To sell the drug, right?

23 MS. KIEHN: Objection.

24 A. To provide the features and

1 benefits of Lexapro, and then let that
2 physician make the decision to use the
3 product where they see appropriate.

4 Q. It is accurate that the sales
5 activities that sales representatives
6 engaged in were for the purpose of selling
7 the drug, right?

8 MS. KIEHN: Objection.

9 A. Yes.

10 Q. That's why you call it sales
11 activity, right?

12 A. Correct.

13 Q. If you turn to the next page,
14 there is an indication at the top that John
15 MacPhee and Gerard Azzari, that's you, will
16 make presentations one after the other,
17 correct?

18 A. I don't know if this was -- I
19 think this was done in tandem.

20 Q. Do you remember doing that?

21 A. Vaguely.

22 Q. If you look under "GA" -- that's
23 your initials, right?

24 A. Yes.

1 Q. If you look under your section,
2 the fifth paragraph down starts, "We have
3 won awards, gotten the attention of Wall
4 Street, the media, and our competitors."
5 Correct?

6 A. Yes.

7 Q. The next sentence says, "What
8 we" -- let me strike that.

9 The next sentence says, "What we
10 did is the modern-day case study of
11 excellence in pharmaceutical sales and
12 marketing."

13 Do you see that?

14 A. I do.

15 Q. What were you referring to when
16 you stated, "What we did is the modern-day
17 case study of excellence in pharmaceutical
18 sales and marketing"?

19 MS. KIEHN: Objection.

20 A. When Celexa was -- I'm
21 referencing the achievements that we made
22 since launching Celexa up and to the
23 promotion of Lexapro.

24 Q. You are referring to Celexa

1 there, correct?

2 A. Yes.

3 Q. And did you believe that what the
4 sales force of Forest had done for Celexa
5 was a modern-day case study of excellence
6 in pharmaceutical sales and marketing?

7 A. Yes.

8 Q. Why did you believe that?

9 A. Because when Celexa was
10 introduced, I believe -- I'm not 100
11 percent certain -- but it was the seventh
12 entrant in the SSRI category. It was a
13 late entrant.

14 And as a result of Forest
15 representatives promoting the product and
16 its features and benefits and virtues, many
17 physicians saw that it was a product that
18 physicians felt was a valuable product to
19 put in their armamentaria, and they used it
20 consistently as a result of the efforts of
21 the sales force, to the extent that we
22 surpassed some of the previous products in
23 the same category and we have won awards
24 for that, and certainly had gotten the

1 attention of Wall Street and it surpassed
2 our competitors, which is why I referenced
3 it.

4 Q. Was Forest able to produce the
5 same results through using its Lexapro
6 sales force regarding Lexapro sales?

7 A. I believe it was the same sales
8 force that promoted Celexa that also
9 promoted Lexapro.

10 Q. Was the company able to achieve
11 similar results?

12 A. Yes.

13 Q. If you turn to the next page, you
14 will see your initials about a third of the
15 way down the page.

16 A. Yes.

17 Q. The third paragraph states, "As
18 you will learn later in the week, the
19 compensation program for Lexapro, which is
20 very lucrative, provides incentives to
21 capture market share from brands other than
22 Celexa." Correct?

23 A. Yes.

24 Q. What did you mean by that?

1 A. In order to grow market share or
2 to create uptake for Lexapro -- this was a
3 launch product -- we wanted to ensure that
4 to grow Lexapro share, we wanted to take it
5 from fluoxetine, Zoloft, Paxil or Effexor.
6 And I think it said that you referenced,
7 other than Celexa.

8 We wanted physicians to make the
9 decision to be able to determine which
10 brand would be appropriate for their
11 patient population. So the goal was to
12 syphon share from the competitive set.

13 Q. The next sentence reads, "This is
14 the major piece of the compensation
15 program, which will also provide
16 compensation for conversion from Celexa."
17 Correct?

18 A. Yes.

19 Q. Is that a true statement?

20 A. I guess it is, if it is written
21 down. I don't recall it.

22 Q. Do you recall Forest providing
23 compensation to its sales representatives
24 for converting physicians from writing

1 Celexa prescriptions to writing Lexapro
2 prescriptions?

3 A. I don't -- I don't recall the
4 mechanics, but I do remember generally that
5 there was an element of that in place.

6 Q. The efforts of the Lexapro sales
7 representatives were financially rewarded
8 for capturing market share from brands
9 other than Celexa, correct?

10 A. Yes.

11 Q. And the sales representatives
12 were also compensated for obtaining market
13 share from Celexa itself, correct?

14 MS. KIEHN: Objection.

15 A. I -- based on what is defined
16 here, that would be the case.

17 Q. Did you have any input into the
18 compensation program for sales
19 representatives?

20 A. No.

21 Q. Who did that?

22 A. The leaders of the sales
23 administration program. I believe there
24 was input or -- not so much input, but a

1 desire to have an understanding of the
2 compensation program from the marketing
3 level.

4 Q. Turn to page 8 of this document.
5 Again, you see your initials at the top?

6 A. Yes.

7 Q. Indicating this is your portion
8 of the presentation, correct?

9 A. Yes.

10 Q. In this first paragraph, it
11 states, "These data provide an unusually
12 strong launch platform for a new product."

13 Do you see that?

14 A. I do.

15 Q. Were you referring to data
16 related to Lexapro?

17 MS. KIEHN: Objection.

18 A. I'm not sure about the context,
19 unless I would go back in the document to
20 see if it is referenced.

21 Q. Yeah, go ahead and see what you
22 think.

23 A. OK.

24 Q. What is your understanding as to

1 what you were referring to when you say,
2 "These data provide an unusually strong
3 launch platform for a new product"?

4 A. The data is clinical information
5 or clinical data that was provided to the
6 representatives in comparison to Celexa.

7 Q. You say, "The key to success,
8 however, is to take these data and utilize
9 them to demonstrate the clear advantages of
10 Lexapro as they relate to all
11 antidepressants." Correct?

12 A. Yes.

13 Q. Here, you were instructing the
14 sales force that they were to use Lexapro
15 data in comparison to Celexa in order to
16 encourage physicians to use Lexapro as
17 opposed to any antidepressant, correct?

18 MS. KIEHN: Objection.

19 A. Yes.

20 Q. The next statement says, "To take
21 these data and convince physicians that
22 they demonstrate that Lexapro should be the
23 first-choice antidepressant for all
24 depressed patients." Correct?

1 A. Yes.

2 Q. You were instructing the sales
3 force that they needed to use the data you
4 are referring to, to convince physicians to
5 prescribe Lexapro for all of their
6 depressed patients, correct?

7 MS. KIEHN: Objection.

8 A. Yes.

9 Q. And did you believe that that was
10 important for the company to obtain market
11 share within the SSRI market?

12 MS. KIEHN: Objection.

13 A. I believed it was important to
14 show the clinical results and clinical
15 value of Lexapro not only versus Celexa but
16 any antidepressant. That would be a
17 foundation for making Lexapro the
18 first-choice antidepressant for depressed
19 patients.

20 Q. And the reason you wanted to do
21 that is to help the company obtain market
22 share?

23 MS. KIEHN: Objection.

24 A. The goal would be -- at a launch

1 meeting, is to drive market share growth.

2 Q. To obtain more market share?

3 MS. KIEHN: Objection.

4 A. Yes.

5 Q. The next sentence says, "This
6 will require effective selling skills and
7 especially strong and specific closing."

8 Is that right?

9 A. Yes.

10 Q. Did you believe that?

11 A. Yes.

12 Q. What did you mean by that?

13 A. As referenced earlier, making
14 calls or introducing programs unto itself
15 is not going to engage physicians to come
16 to be educated and versed on the clinical
17 advantages of Lexapro versus any of the
18 agents that they may be using for
19 depression.

20 And to ensure at the end of the
21 presentation that the information provided
22 was valuable and the physicians saw that
23 there was an opportunity to use it versus
24 what they were currently using, hence the

1 term "specific closing."

2 Q. The effective selling skills that
3 you are referring to in your presentation
4 to the Lexapro sales representatives, are
5 those effective selling skills that you
6 encouraged the sales representatives to use
7 with all physicians that they were
8 promoting to?

9 A. Yes.

10 Q. Regardless of subspecialty?

11 A. Yes.

12 Q. Including all of those physicians
13 on their call panels, correct?

14 A. Yes.

15 Q. Including call panels that
16 included pediatricians, child psychiatrists
17 and child neurologists, correct?

18 MS. KIEHN: Objection.

19 A. Yes.

20 Q. And you are aware that there
21 were call panels that Forest created that
22 contained child psychiatrists, child
23 neurologists and pediatricians to promote
24 Lexapro to, correct?

1 MS. KIEHN: Objection.

2 A. I am aware.

3 Q. How did you become aware of that?

4 A. Having had an opportunity to
5 review call panels, it was brought to my
6 attention that there were various
7 specialties, which included psychiatrists,
8 child psychiatrists, family practice
9 physicians, and the like.

10 Q. And pediatricians?

11 A. I don't remember pediatricians.

12 Q. Child psychiatrists?

13 A. Yes.

14 Q. Child neurologists?

15 A. Yes.

16 Q. When did you become aware that
17 child psychiatrists and child neurologists
18 were included on Lexapro call panels?

19 A. I don't remember the exact time
20 frame. I believe it was post the launch
21 meeting. I don't remember the exact time
22 frame.

23 Q. Are you aware that Celexa call
24 panels included child psychiatrists, child

1 neurologists, and pediatricians?

2 MS. KIEHN: Objection.

3 A. I don't recall that.

4 Q. When you became aware that there
5 were pediatric subspecialists contained
6 on Lexapro call panels, did you take any
7 action to change that?

8 A. I did not.

9 Q. Why didn't you?

10 A. It wasn't my responsibility to
11 address call panels. That would have been
12 the responsibility of sales administration
13 working with other functions.

14 Q. Are you familiar with the term
15 "off-label promotion"?

16 A. I am.

17 Q. What is your understanding as to
18 what off-label promotion is?

19 A. Off-label promotion is discussing
20 indications other than what the product was
21 approved for by the FDA.

22 Q. Are you aware that Forest sales
23 representatives engaged in off-label
24 promotion of Celexa for use in children?

1 MS. KIEHN: Objection.

2 A. As far as the term "off-label
3 promotion," I'm not a hundred percent sure
4 that that's what had taken place.

5 Q. Are you aware that Forest sales
6 representatives engaged in off-label
7 promotion of Lexapro promoting it for use
8 in children?

9 MS. KIEHN: Objection.

10 A. As far as off-label promotion,
11 I'm not aware of how sales personnel may
12 have used that to discuss the features and
13 benefits to specific physicians, no.

14 Q. Do you know that Forest sales
15 representatives promoted Lexapro to
16 pediatricians, child psychiatrists and
17 child neurologists?

18 MS. KIEHN: Objection.

19 A. Yes.

20 Q. How do you know that?

21 A. You asked me earlier about call
22 panels and them being on Forest
23 representatives' call panels. When I
24 became aware of the call panels, that there

1 were child psychiatrists or child
2 neurologists, that's how I was apprised.

3 Q. Who told you?

4 A. I don't recall exactly how I was
5 informed. I'll give you a general -- I'll
6 speculate, either the leader of the sales
7 administration team and/or compliance.

8 Q. You are aware that Forest engaged
9 in a policy to remove some pediatric
10 specialists from call panels, correct?

11 MS. KIEHN: Objection.

12 A. I'm aware of that.

13 Q. Were you engaged in that process?

14 A. No.

15 Q. Were you involved in discussions
16 about that process?

17 A. I was not involved in the
18 discussions. I was involved in the actions
19 post those discussions.

20 Q. What actions were those?

21 A. I believe you referenced that
22 there was physicians that were removed.
23 There was a process where the physicians,
24 the specialties you referenced, were

1 removed. I was apprised of that taking
2 place.

3 Q. Were you involved -- strike that.
4 Are you aware that Forest
5 reinstated some child specialists back onto
6 call panels?

7 MS. KIEHN: Objection.

8 A. I have a general idea of that
9 taking place.

10 Q. You're aware that that did take
11 place, right?

12 A. Yes.

13 Q. Were you involved in any part of
14 the process that Forest engaged in to
15 reinstate child specialists onto the call
16 panels?

17 A. I was not involved in the
18 process, but I am generally aware that that
19 has taken place.

20 Q. How do you know about that?

21 MS. KIEHN: I would, you know,
22 instruct the witness to the extent that
23 would require you to reveal
24 attorney/client communications, don't

1 answer the question. If you have
2 another basis for knowing, you can
3 answer.

4 A. OK, I would say that that's
5 privileged conversation.

6 Q. OK. Let me show you what's
7 marked as Exhibit 4 to your deposition.

8 (Exhibit 4, document Bates
9 stamped MDL-FOREM 0002352 marked for
10 identification, as of this date.)

11 Q. Do you recognize that Exhibit 4
12 contains a memorandum addressed to all
13 field personnel from you and Jerry Lynch?

14 A. I recognize that my name is on
15 this, as is Jerry Lynch, regarding a
16 subject of "Changes in Call Panels." I
17 recognize that.

18 Q. And this document is dated
19 November 1, 2004, correct?

20 A. Yes.

21 Q. Do you recall whether or not you
22 were involved in creating a memo to the
23 field force related to changes in call
24 panels?

1 A. I do not.

2 Q. You don't know one way or another
3 whether you participated in this?

4 A. I don't believe I was involved in
5 any process discussions for changes in call
6 panels.

7 Q. Do you believe that you read
8 the memo that went out from you and Jerry
9 Lynch related to changes in call panels
10 before it went out?

11 MS. KIEHN: Objection.

12 A. I don't know if this is a draft,
13 if ever this document as I see it was
14 distributed. I have no knowledge of that.

15 Q. That's fair. I'll represent to
16 you this is a draft. I'm going to show you
17 the final version in just a minute.

18 A. OK.

19 Q. I'm just asking for your
20 recollection.

21 A. I don't recall.

22 Q. Would it have been unusual for a
23 document to be sent out in final form
24 indicating the document was from you if you

1 had not read it?

2 A. That would be unusual.

3 Q. You just don't know one way or
4 another whether you actually did read this
5 one?

6 A. Yes.

7 (Exhibit 5, Memorandum dated
8 January 1, 2005 marked for
9 identification, as of this date.)

10 Q. I'm showing you what I've marked
11 as Exhibit 5. You will want to keep
12 Exhibit 4 with you.

13 Can you identify Exhibit 5?

14 A. I identify Exhibit 5 as
15 communication that is related to changes in
16 call panels which has my name on it.

17 Q. And it's dated January 1, 2005,
18 correct?

19 A. Yes.

20 Q. Do you know whether or not you
21 read this memorandum related to changes in
22 call panels prior to it being sent to all
23 field force personnel?

24 MS. KIEHN: Objection.

1 A. I don't recall reading this
2 document. It is dated January 1, 2005, and
3 that's some time ago. Nor do I know, even
4 though it states my name and Jerry Lynch's,
5 whether this was ever distributed.

6 Q. You don't know one way or
7 another?

8 A. I don't.

9 Q. If you look back at Exhibit 4,
10 this initial draft of the memo related to
11 changes in call panels that indicates it is
12 from you, you will see that there is a
13 discussion in this memorandum about a
14 change in policy that Forest is going to
15 engage in related to call panels, correct?

16 MS. KIEHN: Objection.

17 A. The document Exhibit 4 you are
18 referencing is from me and Jerry Lynch, and
19 I didn't catch where you were just --

20 Q. I wasn't referencing any
21 particular part. The document that's
22 Exhibit 4 is a memo that's discussing
23 changes in physician call panels, right?

24 A. Yes.

1 Q. And there's an explanation in
2 this memorandum as to why Forest is
3 changing the call panels, right?

4 MS. KIEHN: Give him time to
5 look through the document.

6 A. I didn't look through it.

7 Q. OK, look through it.

8 A. Which one?

9 Q. 4.

10 How about this? The first line
11 reads, "The purpose of this memo is to
12 inform you of" some "changes to your
13 target lists and call panel."

14 Do you see that?

15 A. I do.

16 Q. Do you understand that the
17 purpose of this memo was to inform the
18 field force personnel of some changes to
19 their target lists and call panels?

20 MS. KIEHN: Objection.

21 A. Yes.

22 Q. Were you aware that Forest was
23 making changes to target lists and call
24 panels?

1 MS. KIEHN: Objection.

2 A. I was aware.

3 Q. When did you become aware of
4 that?

5 A. I don't remember exactly. I
6 think I just stated earlier, I don't
7 remember the exact time frame when I was
8 made aware of that.

9 Q. If you look at the third
10 paragraph, it states, "In a recent
11 analysis, Forest discovered some targets
12 whose current population could represent a
13 group of patients whose age and medical
14 condition may fall outside of the existing
15 indications and labeling of our products."

16 Did I read that correct?

17 A. Yes.

18 Q. Do you know what recent analysis
19 is being referred to here?

20 A. I don't.

21 Q. Do you know whether or not it's
22 true that Forest discovered some targets
23 whose population may fall out of the
24 labeling for the products?

1 A. I don't know what analysis took
2 place, who did the analysis, if the results
3 of the analysis were ever distributed. I
4 don't have knowledge of that, nor do I
5 recall it.

6 Q. The next line reads, "Upon review
7 of particular physicians, we have
8 determined that several specialties could
9 be populated on the target panels with
10 presumed apparent off-label use of our
11 products."

12 Do you see that?

13 A. I do.

14 Q. Do you recall that Forest
15 presumed that there was apparent off-label
16 use of some Forest products?

17 MS. KIEHN: Objection.

18 A. I don't.

19 Q. If you look at the -- skip the
20 next paragraph, look at the next paragraph.

21 It reads, "As a result, we have
22 chosen to remove a select number of"
23 specialists "who we believe could be
24 treating patients in ages or for conditions

1 using our products off-label."

2 Correct?

3 A. I see that.

4 Q. Did you know that Forest believed
5 that some specialists were treating
6 patients in ages or for conditions using
7 Forest products off-label?

8 MS. KIEHN: Objection.

9 A. I don't recall that. I believe
10 that may be referencing the analysis that
11 was done, which I have no recollection of
12 where that comes from.

13 Q. Do you have any recollection of
14 the reinstatement process that Forest
15 engaged in related to pediatric specialists
16 and call panels?

17 MS. KIEHN: Any independent
18 recollection.

19 A. I don't have any independent
20 recollection of that specific process.

21 Q. Were you involved in any
22 discussions other than with your lawyers
23 about the reinstatement process?

24 MS. KIEHN: Asked and answered.

1 A. No.

2 Q. When Forest removed child
3 specialists from the Lexapro call panels,
4 did you discuss that with anyone?

5 A. I don't recall if I had
6 discussions with individuals about removal
7 of targets from call panels.

8 Q. I will show you what I have
9 marked as Exhibit 6 to your deposition.

10 (Exhibit 6, document Bates
11 stamped MDL-FOREM 001770 marked for
12 identification, as of this date.)

13 Q. Mr. Azzari, do you recognize that
14 Exhibit 6 contains a series of e-mails in
15 which your name is listed?

16 A. I see my name listed on Exhibit
17 6, and the subject matter references "Child
18 Specialist Update." I do recognize that.

19 Q. If you look at the e-mail at the
20 bottom of the first page, you see that it
21 is from Joe Zimmerman, correct?

22 A. Yes.

23 Q. And Joe Zimmerman was the
24 director of compliance, correct?

1 A. I believe that was his title,
2 yes.

3 Q. And this e-mail is dated Friday,
4 January 21, 2005, correct?

5 A. Yes.

6 Q. And do you see that it is to a
7 number of recipients, including yourself?

8 A. Yes.

9 Q. You did receive e-mails while you
10 were working at Forest, correct?

11 A. I received numerous e-mails while
12 I was working at Forest.

13 Q. Did you send numerous e-mails as
14 well?

15 A. I try not to, no. I tried not to
16 send so many e-mails.

17 Q. Why?

18 A. I felt I only wanted to
19 communicate pertinent information to the
20 sales force.

21 Q. What did that have to do with the
22 number of e-mails?

23 A. I tried to limit the number of
24 e-mails that I sent out.

1 Q. The subject of this e-mail is
2 "Child Specialist Update," correct?

3 A. Yes.

4 Q. And you received this e-mail,
5 correct?

6 A. My name is listed, yes.

7 Q. And it says, "All, summary update
8 on the child specialist project as of
9 10 a.m. this morning. Included is, 1, a
10 summary of key data; 2, status update on
11 the project and agenda of key events in the
12 near future; and 3, conclusions."

13 Correct?

14 A. Yes.

15 Q. And it goes on to contain those
16 areas, correct?

17 A. Yes.

18 Q. Does this refresh your
19 recollection as to whether or not you
20 received information about the child
21 specialist issues related to call panels?

22 MS. KIEHN: Objection.

23 A. It does not.

24 Q. Why don't you take a look through

1 the document to see if any of this
2 information contained in Exhibit 6
3 refreshes your recollection as to any of
4 the events related to child specialists and
5 call panels.

6 A. In looking at this Exhibit 6
7 written from Joe Zimmerman, there is a lot
8 of data here relative to panel physicians,
9 child specialists on panels, those that are
10 theoretically eligible for reinstatement.
11 I really don't recall that process at all.

12 I guess you would have to ask Joe
13 Zimmerman, because this is not ringing a
14 bell.

15 Q. You see under the summary at the
16 bottom of the first page, this document
17 indicates the universe of all child
18 specialists is 63,751, correct?

19 A. That's what it says, yes.

20 Q. Do you understand that 63,751 to
21 be referring to all child specialists
22 within the IMS Xponent system?

23 MS. KIEHN: Objection.

24 A. I'm looking at the document which

1 reflects the universe of all child
2 specialists, says 63,751.

3 Q. Do you know what that refers to?

4 A. It refers to the number of child
5 specialists in the universe, which I'm
6 assuming is physicians practicing in the
7 United States.

8 Q. If you look at the next section,
9 it states, "Child specialists formerly on
10 Forest Call Panel: 5,187."

11 Do you see that?

12 A. I do.

13 Q. What is your understanding as to
14 what 5,187 represents?

15 MS. KIEHN: Objection.

16 A. Again, I didn't prepare this
17 communication. But if you would ask me --
18 if you are asking me to speculate on what
19 my impression of that is, I would be more
20 than happy to tell you.

21 Q. I'm not asking you to speculate.
22 However, I will ask you, based on your
23 knowledge and experience within the Forest
24 sales department, what do you believe the

1 number 5,187 is referring to in this
2 document?

3 A. It's referring to, of all the
4 physicians on the target panels for Forest
5 representatives, there were 5,187 child
6 specialists that were on the Forest call
7 panel.

8 Q. What does that mean?

9 A. That means, of all the
10 representatives who received call panels
11 across the country, all of the territory
12 representatives, there were almost or
13 approximately 5200 child specialists that
14 were on the Forest call panels.

15 Q. By being on a call panel, that
16 indicated to the sales representative that
17 the sales representative was expected to
18 call on that physician, correct?

19 MS. KIEHN: Objection.

20 A. My understanding is that
21 physicians on call panels, it is suggested
22 that they call on those target physicians.

23 Q. Is it accurate based on this
24 document that Forest expected its sales

1 representatives across the country -- let
2 me strike that.

3 Is it accurate based on this
4 document that Forest suggested that its
5 sales representatives across the country
6 call on approximately 5,187 child
7 specialists?

8 MS. KIEHN: Objection.

9 A. Again, I'm not the generator of
10 this communication. I'll give you my view
11 or interpretation of what this
12 communication reflects, which is that there
13 were 5,187 child specialists that were on
14 a -- on the Forest call panel in aggregate.

15 Q. And by being on a Forest call
16 panel, Forest was suggesting that the
17 sales representatives call on these child
18 specialists, correct?

19 MS. KIEHN: Objection.

20 A. Suggested.

21 Q. Is that correct?

22 A. Yes.

23 Q. Yes?

24 A. Yes.

1 Q. The next category says,
2 "Physicians called on at least once in
3 2004: 4,200." Correct?

4 A. Yes.

5 Q. Based on your knowledge and
6 experience within Forest sales, what is
7 that indicating?

8 A. That of all the physicians that
9 are on a Forest call panel nationally --
10 well, this doesn't say -- it says
11 "physicians." I don't know what's being
12 referred to here. It just says,
13 "Physicians called on at least once in
14 2004: 4,200." It's not clear to me what
15 Joe, who wrote this, was intending.

16 Q. Based on your knowledge and
17 experience and common sense, when you read
18 this in context, do you believe that 4,200
19 is referring to the number of child
20 specialists that Forest sales
21 representatives called on in the year 2004?

22 MS. KIEHN: Objection.

23 A. I was going to infer, based on
24 your categorization of what's written, I

1 would say yes.

2 Q. The next statement says,
3 "Therefore: For practical purposes, the
4 field has 4,200 physicians who are
5 theoretically eligible for reinstatement."
6 Do you see that?

7 A. I do.

8 Q. Based on your knowledge and
9 experience in Forest sales and based on
10 your understanding of this document, what
11 do you believe that line is indicating?

12 MS. KIEHN: Objection.

13 A. It's indicating that there are
14 theoretically physicians that can be added
15 back to Forest call panels.

16 Q. Do you know why Forest would add
17 child specialists back to call panels?

18 MS. KIEHN: Objection.

19 A. No.

20 Q. Can you think of any reason,
21 based on your knowledge and experience as a
22 salesperson within Forest, why Forest would
23 add pediatric physicians to Lexapro call
24 panels?

1 A. Yes.

2 MS. KIEHN: Objection.

3 Q. Why?

4 A. Yes.

5 Q. Why?

6 A. Because pediatric physicians may
7 see or do see patients 18 years of age and
8 older.

9 Q. Do you know whether or not that's
10 something that Forest did?

11 MS. KIEHN: Objection.

12 A. I have no idea. I don't recall
13 that.

14 Q. There is an indication about a
15 third of the way down this page that there
16 is a redaction for privilege. Do you see
17 that?

18 A. I do.

19 Q. Just based on the context of this
20 document, do you have any idea as to what
21 the subject matter of that redaction is?

22 MS. KIEHN: Objection. And I
23 instruct the witness not to answer.

24 A. I don't. I wouldn't be able to

1 comment on that.

2 MR. COFFIN: We'll just reserve
3 our right to come back and question
4 him about that after you have
5 determined that it is not in fact a
6 privileged communication.

7 Q. Mr. Azzari, will you please turn
8 back to the first page of this document.
9 You see that the second e-mail, which was
10 sent on January 24, 2005, is actually at
11 the top of the page, correct?

12 A. Yes.

13 Q. And that e-mail is from you to
14 Joe Zimmerman, correct?

15 A. Yes.

16 Q. And the subject is "Child
17 Specialist Update," correct?

18 A. Yes.

19 Q. And in the body of this e-mail,
20 you write, "Joe, well prepared and
21 specific. Nice job helping the sales team
22 navigate easily in dealing with this
23 challenging situation regarding child
24 psychs." Correct?

1 A. Yes.

2 Q. When you state "child psychs,"
3 you are referring to child psychiatrists?

4 A. Yes.

5 Q. What did you mean by "nice job
6 helping the sales team navigate easily in
7 dealing with this challenging situation
8 regarding child psychiatrists"?

9 A. I don't recall the specific
10 intention on January 24, 2005. But I can
11 give an overview relative to the context of
12 this.

13 We have recently reviewed data
14 related to child specialists. And clearly,
15 that was a topic related to Forest call
16 panels and certain specialties. So I
17 wanted to thank Joe for providing a summary
18 that is easy to understand relative to this
19 document, which again, I have no idea if it
20 was ever distributed. I don't recall. But
21 that's my impression of what I meant by
22 that.

23 (Exhibit 7, document Bates
24 stamped MDL-FOREM 0014655 marked for

1 identification, as of this date.)

2 Q. I will show you what I have
3 marked as Exhibit 7. Do you recognize that
4 Exhibit 7 contains an e-mail and an
5 attachment?

6 A. Yes.

7 Q. And the e-mail is from Joe
8 Zimmerman to a number of individuals and
9 copying a number of individuals, including
10 yourself, correct?

11 A. Yes.

12 Q. And that e-mail is dated
13 January 7, 2005, correct?

14 A. Yes.

15 Q. The subject is "Reinstatement
16 form attached," correct?

17 A. Yes.

18 Q. And if you look at the
19 attachment, you see a form attached,
20 correct?

21 A. I do.

22 Q. Do you recognize that as the
23 reinstatement form that Forest used with
24 regard to child specialists and call

1 panels?

2 MS. KIEHN: Objection.

3 A. I don't recall the form and -- it
4 shows that this may be a mock of a form. I
5 don't recall the form. But just looking at
6 some of the contents related to the subject
7 matter, it does say "Reinstatement Form."
8 But I don't remember that form.

9 Q. Do you remember instructing your
10 directors -- excuse me.

11 Do you remember instructing your
12 directors about how to go about using a
13 reinstatement form?

14 MS. KIEHN: Objection.

15 A. I don't remember instructing them
16 specifically on how to use that form. I do
17 not.

18 Q. What, if anything, do you recall
19 about the reinstatement form that Forest
20 used related to child specialists and call
21 panels?

22 MS. KIEHN: Objection.

23 A. Again, I remember that there was
24 a -- vaguely remember that there was a

1 process, but I clearly don't remember the
2 specifics that were involved in the
3 process.

4 While I was copied on this,
5 again, you're talking about 11 years ago,
6 and I wasn't the generator of this,
7 although copied. I just don't remember the
8 specifics involved in that reinstatement
9 process.

10 Q. What do you vaguely remember
11 about the process?

12 A. I vaguely remember that there
13 were physicians that we could add back to
14 call panels.

15 Q. Were you involved in that
16 decision-making at all?

17 MS. KIEHN: Asked and answered.

18 A. No.

19 Q. Do you know how Forest determined
20 whether or not physicians could be added
21 back to call panels?

22 A. I don't recall that specific --
23 who the decision makers were that came up
24 with that process.

1 Q. Once Forest added child
2 specialists back to call panels, were the
3 sales reps -- strike that.

4 Once Forest added child
5 specialists back to call panels, did Forest
6 suggest that the representatives call on
7 those physicians?

8 MS. KIEHN: Objection.

9 A. I don't recall Forest suggesting
10 any one group of physicians be called on.

11 Q. You do know that, as you have
12 testified, when a physician was on a call
13 panel, they were there because Forest was
14 suggesting that the sales representative
15 call on that individual, right?

16 A. I'm sorry, I guess I am getting
17 caught under the semantics. You mean sales
18 administration suggested that -- who was
19 responsible for call panel development,
20 suggested that --

21 Q. I'll ask it again.

22 Are you aware that there were
23 child specialists reinstated on call panels
24 at some point?

1 A. As mentioned, I vaguely remember
2 that process, yes.

3 Q. And those child specialists who
4 were reinstated were reinstated on Lexapro
5 call panels, correct?

6 MS. KIEHN: Objection.

7 A. Yes.

8 Q. And by virtue of the fact that
9 the child specialist was reinstated on the
10 call panel, Forest was suggesting that the
11 sales representative should call on that
12 child specialist, correct?

13 MS. KIEHN: Objection.

14 A. Suggesting that any physician on
15 a representative's call panel would be
16 called on.

17 Q. Including the child specialist
18 who is reinstated, correct?

19 MS. KIEHN: Objection.

20 A. You can say that.

21 Q. Well, that's true, isn't it?

22 MS. KIEHN: Objection.

23 A. Any physician on a call panel,
24 which would include the reinstated

1 physicians, would be available to be called
2 on.

3 Q. Including reinstated child
4 specialists?

5 A. Yes.

6 Q. Do you know approximately how
7 many child specialists were reinstated on
8 Lexapro call panels?

9 A. Off the top of my head, no. But
10 relative to the document that we looked at,
11 I believe it reflected 4100.

12 Q. If there were 4100 child
13 specialists reinstated on Lexapro call
14 panels, does that indicate to you, based on
15 your knowledge and experience, that the
16 sales representatives would have called on
17 4100 child specialists who were on those
18 call panels?

19 A. Again, based on the document that
20 I didn't generate, I reviewed, I believe it
21 indicated that of the 4100 child
22 specialists, they were called on at least
23 once.

24 Q. In 2006, do you recall child

1 specialists being on Lexapro call panels?

2 A. I don't recall the specifics of
3 that.

4 Q. Well, after 2005 --

5 A. Yes.

6 Q. -- do you recall child
7 specialists being on Lexapro call panels?

8 A. Yes.

9 Q. After 2006, do you recall child
10 specialists being on Lexapro call panels?

11 A. Yes.

12 Q. After 2007, do you recall child
13 specialists being on Lexapro call panels?

14 A. I don't recall from year to year
15 as you're defining it. I would say post
16 the reinstatement process of X number of
17 child psychiatrists, they would have been
18 placed on call panels based on the process
19 that has been defined, and would have
20 remained on those call panels.

21 MR. COFFIN: Let's go off the
22 record.

23 THE VIDEOGRAPHER: The time now
24 is 2:56 p.m., and we are off the

1 record.

2 (Recess)

3 THE VIDEOGRAPHER: This marks the
4 beginning of tape number 4. The time
5 now is 3:18 p.m., and we are back on
6 the record.

7 BY MR. COFFIN:

8 Q. Mr. Azzari, between 1998 and
9 2002, did Forest sales representatives
10 engage in off-label promotion of Celexa for
11 use in pediatric patients?

12 A. Not to my knowledge.

13 Q. Well, you're aware that Forest
14 pled guilty to the promotion of Celexa for
15 use in pediatric patients between 1998 and
16 2002, aren't you?

17 MS. KIEHN: Objection, asked and
18 answered.

19 A. Yes.

20 Q. So I will ask you again, between
21 1998 and 2002, did Forest sales
22 representatives engage in off-label
23 promotion of Celexa for use in pediatric
24 patients?

1 MS. KIEHN: He is asking for your
2 personal knowledge.

3 A. I am aware that there was a
4 settlement with Forest and the Department
5 of Justice based on sales and marketing
6 practices.

7 Q. Based on your knowledge and
8 experience, do you believe that between
9 1998 and 2002, Forest sales representatives
10 engaged in off-label promotion for Celexa
11 for use in pediatric patients?

12 MS. KIEHN: Objection.

13 A. Yes.

14 Q. Between 2002 and 2009, based on
15 your knowledge and experience, did Forest
16 sales representatives engage in off-label
17 promotion of Lexapro for use in pediatric
18 patients?

19 MS. KIEHN: Objection.

20 A. Not to my knowledge.

21 Q. You are aware that Forest
22 included pediatric specialists on call
23 panels for Lexapro, right?

24 A. Yes.

1 Q. So I am going to ask you again,
2 based on your knowledge and experience
3 between 2002 and 2009, did Forest sales
4 representatives engage in off-label
5 promotion of Lexapro for use in pediatric
6 patients?

7 MS. KIEHN: Objection.

8 A. Could I talk to counsel about
9 this question?

10 Q. Not while it's pending. I'm
11 asking you for your answer based on your
12 knowledge and experience.

13 MS. KIEHN: Right. If the only
14 basis for your knowledge is
15 communications with counsel, then you
16 shouldn't respond. But he is asking
17 based on your personal knowledge, do
18 you know whether.

19 Q. Let me state it again, because I
20 want you to understand what I am asking
21 you.

22 A. OK, yes, yes, yes.

23 Q. Based on your knowledge and
24 experience and your years at Forest,

1 between 2002 and 2009, did Forest sales
2 representatives engage in off-label
3 promotion of Lexapro for use in pediatric
4 patients?

5 A. I have knowledge that
6 representatives may have presented Celexa
7 or Lexapro inappropriately.

8 Q. Between 2002 and 2009?

9 A. Yes.

10 Q. And you know that, you have
11 knowledge of that related to Lexapro,
12 correct?

13 MS. KIEHN: Objection.

14 A. Yes.

15 Q. And that's based on your
16 knowledge that child specialists were on
17 Lexapro call panels between 2002 and 2009,
18 correct?

19 MS. KIEHN: Objection.

20 A. No. My commentary was that
21 individuals may have inappropriately
22 presented Celexa or Lexapro to physicians.

23 Q. Well, you know that there were
24 child specialists included on Lexapro call

1 panels between 2002 and 2009, right?

2 MS. KIEHN: Asked and answered.

3 A. Yes.

4 Q. What does that indicate to you?

5 MS. KIEHN: Objection.

6 A. That means that those child
7 psychiatrists were part of a specialty
8 group, like any other specialty group on
9 call panels, that representatives could
10 have called on.

11 Q. That Forest suggested they call
12 on, right?

13 A. They were available, there was
14 the potential for them to call on them,
15 yes.

16 Q. And you know that some
17 representatives in fact did call on those
18 child specialists between 2002 and 2009,
19 don't you?

20 MS. KIEHN: Objection.

21 A. Yes.

22 Q. And that was off-label promotion,
23 wasn't it?

24 MS. KIEHN: Objection.

1 A. They could have called on child
2 psychiatrists and present Celexa or
3 Lexapro.

4 Q. Right. And if they did so, with
5 the intent that the doctors prescribe the
6 drugs in the pediatric population, that was
7 off-label promotion, right?

8 MS. KIEHN: Objection.

9 A. It was -- the intent was to
10 promote the features and benefits of Celexa
11 or Lexapro for patients 18 years of age and
12 older.

13 Q. Is it your testimony to the jury
14 that the intent of Forest by including
15 child specialists on call panels was so
16 that Forest representatives would call on
17 those child specialists only to promote the
18 drug in people 18 and over?

19 MS. KIEHN: Objection.

20 A. That's what the product was
21 indicated for.

22 Q. I'm asking you if that's your
23 testimony as to what happened, not whether
24 that's what the product was indicated for.

1 MS. KIEHN: Asked and answered.

2 A. I don't recall specifically what
3 happened, but that was the objective, was
4 to call on that population or specialty
5 group for patients that were qualified to
6 receive Celexa or Lexapro.

7 Q. Based on your knowledge and
8 experience, do you believe that Forest
9 sales representatives who had child
10 specialists on their call panels limited
11 those calls to promoting the use of Lexapro
12 in the adult population?

13 MS. KIEHN: Objection.

14 A. That was the objective. That was
15 the objective, for them to call on child
16 psychiatrists with the intention that they
17 would prescribe Lexapro or Celexa.

18 Q. Move to strike.

19 Here is my question. Based on
20 your knowledge and experience, do you
21 believe that Forest sales representatives
22 who had child specialists on their call
23 panels limited those calls to promoting the
24 use of Lexapro in the adult population

1 only?

2 MS. KIEHN: Objection, asked and
3 answered.

4 A. I can't speculate on their
5 thought process when going there.

6 Q. You do know that there were
7 prescriptions written by physicians for the
8 pediatric population related to Lexapro and
9 Celexa, right?

10 MS. KIEHN: Objection.

11 A. Yes.

12 Q. You have seen data indicating
13 that, right?

14 MS. KIEHN: Objection.

15 A. I don't recall seeing data.

16 Q. Did you ever look at any of the
17 IMS data that Forest obtained that tracked
18 whether or not prescriptions were written
19 to certain age groups?

20 MS. KIEHN: Objection, assumes
21 facts not in evidence?

22 A. No, I haven't.

23 MS. KIEHN: Give me time to
24 object.

1 THE WITNESS: Sorry.

2 Q. Is it your testimony that
3 pediatricians who were called on were
4 called on specifically and only to promote
5 Lexapro to their adult population?

6 MS. KIEHN: Objection.

7 A. I can't recall or have no idea
8 what the intention was.

9 Q. Well, based on your knowledge and
10 experience, when a pediatrician was listed
11 on an Lexapro call panel, is it your
12 testimony that you believe that the sales
13 representatives were only promoting that
14 Lexapro for the pediatrician's 18-year-old
15 patients and older?

16 MS. KIEHN: Objection, you have
17 asked and this has been answered
18 several times now.

19 MR. COFFIN: This is a different
20 question.

21 MS. KIEHN: No, it is not.

22 MR. COFFIN: Absolutely.

23 Q. Can you answer the question, sir?

24 A. It was my understanding that a

1 representative would call on a pediatric
2 psychiatrist or child -- however you
3 character -- pediatrician, did you say?

4 Q. Sure.

5 A. That they would call on them with
6 the intention of promoting Celexa or
7 Lexapro for those patients that had major
8 depressive disorder for above the age of
9 18. That was the responsibility of the
10 rep.

11 Q. Do you believe that that
12 happened?

13 MS. KIEHN: Objection.

14 A. I can't say exactly what
15 happened. I could only say that that was
16 the objective.

17 Q. Let me show you what has been
18 marked as Exhibit 8 to your deposition.

19 (Exhibit 8, document Bates
20 stamped MDL-FOREM 0032921 marked for
21 identification, as of this date.)

22 Q. Sir, do you recognize that this
23 document contains a series of e-mails?

24 A. Yes.

1 Q. The first page of this document
2 contains an e-mail from Jerry Lynch dated
3 November 24, 2009, correct?

4 A. Yes.

5 Q. And you're included as one of the
6 recipients, correct?

7 A. Yes.

8 Q. The subject is "WAS Summary
9 Report," right?

10 A. Yes.

11 Q. What is a WAS summary report?

12 A. As referenced earlier, the WAS
13 summary report is the weekly activity
14 summary report.

15 Q. That's the same report you
16 testified about earlier?

17 A. Yes.

18 Q. This e-mail starts out, "All,
19 since the POA meetings, these call activity
20 numbers are fantastic."

21 Do you see that?

22 A. Yes.

23 Q. What is a POA meeting?

24 MS. KIEHN: Asked and answered.

1 Q. I forget. Can you please explain
2 what a POA meeting is again?

3 A. It is a plan of action meeting.

4 Q. Thank you, sir.

5 It says, "Check out the three
6 weeks post the meetings. Some highlights
7 of things you emphasized include the
8 following," and there is a list there,
9 correct?

10 A. Yes.

11 Q. Number 1 says, "Calls per day
12 over ten every week after the meeting."

13 What's that referring to?

14 A. The number of calls per day that
15 representatives have averaged every week
16 post the meeting that Jerry is referencing.

17 Q. Incidentally, turn to the second
18 page of this e-mail. You will see that you
19 actually signed this e-mail as well, right?

20 A. I see my name along there, yes.

21 Q. Did you and Jerry often
22 communicate about e-mail correspondence
23 that you would send out to the sales team?

24 A. Because Jerry and I shared

1 responsibility for the sales force, on
2 occasion, depending upon the topic, we
3 would put our group -- our joint signature.

4 Q. Going back to the list, after
5 number 2, it states, "Savella first
6 portions over 100 percent for three
7 straight weeks."

8 What's that referring to?

9 MS. KIEHN: "Savella first
10 positions."

11 Q. I apologize. "Savella first
12 positions over 100 percent."

13 What does that refer to?

14 A. "Savella first positions over
15 100 percent" indicates -- Savella was a
16 product that we had launched during that
17 time frame, I believe, and for certain
18 field forces, it was designated to receive
19 a first position detail when speaking to
20 physicians.

21 And based on the budget of having
22 it presented in the first position, we
23 achieved over 100 percent each week, post
24 whatever meeting Jerry is referencing.

1 Q. Is this similar to the testimony
2 you gave earlier about the budgeted amount
3 of time for each position that a sales
4 representative received?

5 A. Yes.

6 Q. Number 3 says, "Namenda first
7 positions over 100 percent for the same
8 time period," correct?

9 A. Yes.

10 Q. And the fourth one says, "In
11 fact, every product, every position over
12 100 percent," correct?

13 A. Yes.

14 Q. Number 4, is that also referring
15 to Lexapro?

16 A. I'm not sure exactly what number
17 4 is referring to. It could be all
18 products that were promoted during that
19 time frame, depending upon the sales force.

20 Q. If you turn to the second page,
21 you will see that you and Jerry write a
22 paragraph here that states, "You should
23 each feel very encouraged by these results
24 and the impact of your sales meetings."

1 Correct?

2 MS. KIEHN: Objection.

3 A. Yes.

4 Q. Did you find that sales meetings
5 resulted in increased sales activity by
6 your sales team?

7 A. In this instance, that's what we
8 recognized. I can't say for certain that
9 happened --

10 Q. Did you conduct --

11 A. -- meeting after meeting.

12 Q. I'm sorry.

13 A. I can't say that that happened
14 following every POA meeting, which I
15 believe we made reference to there.

16 Q. Did you conduct POA meetings
17 related to Lexapro?

18 A. Yes.

19 Q. Approximately how many POA
20 meetings a year would occur with regard to
21 Lexapro?

22 A. A POA meeting wouldn't encompass
23 a stand-alone product. It would have all
24 products that would be discussed at a POA

1 meeting, not exclusive to any one brand.

2 As far as how frequently, I can't
3 remember during that time period.
4 That's -- I would say at least two per
5 year, approximately.

6 Q. What was the purpose of
7 conducting POAs for Lexapro?

8 A. As referenced earlier in my
9 testimony, following a launch meeting, we
10 felt that it was helpful to bring the sales
11 organization back to refresh and review
12 material, to ensure that they're
13 maintaining this level of knowledge and
14 skill required, and that could have been
15 done four or five, four months, five months
16 after a launch meeting, and then subsequent
17 it would just continue on a periodic basis.

18 Q. The second sentence in this
19 paragraph states, "These time-tested
20 activity parameters are clearly driving
21 business, and we need you focused on
22 managing this type of high-level
23 performance as we move into the fourth
24 quarter."

1 Did I read that correct?

2 A. Yes.

3 Q. What is the meaning of
4 "time-tested activity parameters"?

5 A. Time-tested activity parameters
6 in this context means there is an expected
7 level of activity, budgeted level of
8 promotional activity required and budgeted,
9 as discussed earlier, for each promoted
10 product. And when we -- when individuals
11 are encouraged and we actually see
12 attainment of those budgets of activity,
13 coupled with an appropriate and engaging
14 message, you feel encouraged by that.

15 That's what "time-tested activity
16 parameters" specifically means.

17 Q. And does -- strike that.

18 What is meant by "clearly driving
19 business"?

20 A. When you couple activity with the
21 type of a message that we discussed
22 earlier, which has to do with high level of
23 credibility, professionalism and
24 understanding of the brand and how it

1 should be promoted effectively, you would
2 hope to see a favorable outcome.

3 Q. The next sentence states, "Lots
4 of activity combined with a crisp
5 educational message are the hallmarks of
6 our sales force and culture."

7 Do you see that?

8 A. I do.

9 Q. Was that a true statement?

10 A. Yes.

11 Q. Was that a true statement during
12 the entire time that you were working at
13 Forest?

14 A. Yes.

[REDACTED]

[illegible]

[illegible]

[illegible]

1 (Exhibit 9, document Bates
2 stamped MDL-FOREM 0012045 marked for
3 identification, as of this date.)

4 Q. I will show you what I have
5 marked as Exhibit 9 to your deposition.

6 Mr. Azzari, do you recognize that
7 Exhibit 9 contains a series of e-mails?

8 A. Yes.

9 Q. The first e-mail is on page 5 of
10 this document. It is an e-mail from
11 Richard LaVoie --

12 A. Yes.

13 Q. -- dated February 23, 2006,
14 correct?

15 A. Yes.

16 Q. Do you know who Richard LaVoie
17 is?

18 A. Rich LaVoie was a division
19 manager under the supervision of Shawn
20 Peter.

21 Q. Was Mr. LaVoie responsible for
22 Lexapro in any way?

23 A. He was a division manager that
24 supervised representatives, some of which

1 were responsible for promoting Lexapro.

2 Q. And he is writing to Shawn Peter,
3 correct?

4 A. Yes.

5 Q. And the subject is "FDA
6 Investigation on Lexapro Promotion,"
7 correct?

8 A. Yes.

9 Q. And Rich writes, "Shawn, I
10 received a call today from Mike Faucher, my
11 representative in the Andover,
12 Massachusetts territory. One of his
13 physicians, Dr. Chang, pulled Mike aside
14 and told him he was visited by two FDA
15 agents asking about Forest promotions of
16 Lexapro, and in particular, asked about a
17 lunch from two years ago where we brought a
18 speaker in to talk about Lexapro. The
19 speaker that was brought in was Dr. Bostic
20 (I may not have the name correct on the
21 speaker), a child psychiatrist."

22 Do you see that?

23 A. I do.

24 Q. He then goes on to indicate that

1 "agents were questioning the office about
2 the program and the content of the talk and
3 not about our marketing efforts. I am
4 guessing this is because of the speaker's
5 specialty and the questions it may raise.
6 This is also a speaker that has not been
7 active for some time."

8 Do you see that?

9 A. I do.

10 Q. Do you recall this incident?

11 A. I do not.

12 Q. Well, if you look at the e-mail
13 above Rich's, it's from Shawn to you and
14 others, dated February 24, 2006, correct?

15 A. Yes.

16 Q. So you received this e-mail,
17 correct?

18 A. Yes.

19 Q. And then there is an e-mail above
20 that on page 4, from Joe Zimmerman to Shawn
21 Peter, you and Jeff Wolfe, correct?

22 A. Yes.

23 Q. And it says, "Thank you, Shawn,"
24 and it is redacted for privilege, correct?

1 A. Yes.

2 Q. Are any of the people listed on
3 the "to" line attorneys in Forest?

4 A. No.

5 Q. Is Mr. Zimmerman legal counsel
6 for Forest?

7 A. No.

8 Q. Do you have any idea what the
9 substance that was redacted was?

10 A. I do not.

11 Q. The e-mail above that is from
12 Jeffrey Wolfe to Joe Zimmerman on
13 February 24, 2006, correct?

14 A. Yes.

15 Q. And he states, "Joe, I think we
16 really do need to have some sort of
17 directive going out from you, Joe Sciandra
18 or Gerard and Jerry informing the field and
19 managed care personnel on how to handle
20 these types of situations (whether
21 approached personally or are informed of it
22 by a medical practitioner or account on
23 what to say in either event to the agent or
24 customer)."

1 Do you see that?

2 A. I do.

3 Q. And he then goes on to say,
4 "These occurrences are becoming more
5 common, and the chances of damaging
6 information or accidental misinformation
7 being communicated is increasing."

8 Do you see that?

9 A. I do.

10 Q. Do you know what he is referring
11 to when he says, "These occurrences are
12 becoming more common"?

13 A. I don't know. Obviously, you
14 would have to ask Mr. Wolfe as the
15 generator of this communication.

16 But my general impression is that
17 Jeff is referring to these agents, and just
18 to apprise individuals that they may come
19 encounter with agents from time to time.

20 Q. In the 2006 time period, were you
21 aware of any instances in which federal
22 agents met with Forest employees to discuss
23 promotional activities related to Celexa or
24 Lexapro?

1 A. I don't recall that.

2 Q. And you don't recall this
3 specific incident?

4 A. No.

5 Q. The e-mail above Jeff's is from
6 you, dated March 6, 2006, correct?

7 A. Yes.

8 Q. And you say, "How do we plan on
9 addressing this?" Correct?

10 A. Yes.

11 Q. Do you recall addressing this
12 issue at all?

13 A. I don't recall this e-mail
14 communication. It is ten years old. But I
15 can give you my general idea as to what my
16 sentence is, which is related to how do we
17 apprise sales reps that they may encounter
18 agents from the FDA, as not to be startled.

19 Q. And do you remember apprising
20 sales representatives of how to react?

21 A. I do not.

22 Q. Joe Zimmerman writes to you and
23 Jeffrey Wolfe on March 6, 2006, and gives
24 his thoughts, correct?

1 A. I'm trying to find that. Oh,
2 yes, on page 2.

3 Q. Do you see that?

4 A. I do.

5 Q. He lists a couple of thoughts and
6 then there is a redaction, correct?

7 A. Yes.

8 Q. And again, none of the people
9 involved in this e-mail are counsel for
10 Forest, correct?

11 A. No.

12 Q. If you look at the e-mail on the
13 very first page, it is from you to Joe
14 Zimmerman and Jeff Wolfe, dated March 6,
15 2006, correct?

16 A. Yes.

17 Q. And you say, "I agree with your
18 plan, Joe. Looking forward to reviewing
19 the draft," at the very bottom.

20 A. OK, yes, I see that.

21 Q. Do you know what you are
22 referring to when you say, "I agree with
23 your plan, Joe"?

24 A. I don't recall what the inference

1 there was.

2 Q. Do you know what you are
3 referring to when you say, "I'm looking
4 forward to reviewing the draft"?

5 A. It was related to the topic which
6 had to do with FDA agents inquiring about
7 Lexapro promotion.

8 Q. Turn to page 4 of this document.

9 A. OK.

10 Q. The last sentence that I read in
11 the e-mail at the top of the page, it says,
12 "These occurrences are becoming more
13 common, and the chances of damaging
14 information or accidental misinformation
15 being communicated is increasing."

16 Do you see that?

17 A. I do.

18 Q. Do you have an understanding as
19 to what's meant by "damaging information"?

20 A. I have no idea what Jeff Wolfe
21 meant or what his thought process was when
22 he put this e-mail response back. I
23 couldn't -- I couldn't even speculate.

24 Q. Do you think he was referring to

1 Forest's off-label promotion of Lexapro for
2 use in children?

3 A. Again, I would say you would have
4 to speak to Jeff Wolfe, but I can give you
5 my general impression of what I think he is
6 meaning.

7 I think he is referencing just
8 making sure that sales force is aware that
9 there are agents that are coming to the
10 offices or target panel physicians'
11 offices, just to apprise them. Other than
12 that, I have no idea what he is referencing
13 when he says chances of accident --
14 damaging information or accident -- I have
15 no idea what he is making reference to
16 there.

17 Q. Are you aware that federal agents
18 did visit with target panel physicians?

19 MS. KIEHN: Objection.

20 A. I have a vague recollection of
21 that, yes.

22 Q. What do you recall?

23 A. That there were agents that made
24 random visits across the country to target

1 panel physicians.

2 Q. What was your understanding of
3 the purpose of those visits?

4 A. I don't have a knowledge of their
5 purpose.

6 Q. Well, you do understand it
7 involved an investigation into Forest's
8 promotional activities of Lexapro and
9 Celexa, right?

10 A. Yes. I could ascertain that from
11 these documents, yes.

12 Q. Well, you knew that anyway,
13 right?

14 MS. KIEHN: Objection.

15 A. I have a -- I had a vague
16 recollection of it, as I said. Yes.

17 Q. During your time at Forest, was
18 there any point in time other than these
19 visits from federal investigators around
20 2006, that you remember federal
21 investigators visiting target panel
22 physicians?

23 A. No, not that I can recall.

24 Q. It was not a common occurrence

1 while you worked at Forest for federal
2 agents to be visiting with physicians on
3 Forest's call panels?

4 A. Not that I can recall.

5 Q. What was your reaction when you
6 first learned that physicians on Forest
7 call panels were being visited by federal
8 agents?

9 A. I can't recall what my first
10 reaction was or general reaction. I
11 couldn't -- I couldn't tell you what that
12 was.

13 Q. Did it have any impact on you
14 whatsoever to learn that federal agents
15 were visiting with physicians who were
16 contained on Forest call panels?

17 MS. KIEHN: Objection.

18 A. It wasn't a common occurrence.
19 It was certainly a new event, and we just
20 wanted to make representatives aware that
21 that may happen.

22 Q. It was just a new event, didn't
23 impact you one way or the other?

24 MS. KIEHN: Objection.

1 A. No, it didn't impact me one way
2 or the other.

3 Q. You were the head of the sales
4 force in 2006, right?

5 A. I was.

6 Q. Did it concern you that federal
7 agents were investigating the company for
8 which you were the head of sales?

9 A. I don't know if I would say
10 "concern." Again, I have vague
11 recollection of the whole incident, ten
12 years ago, but it wasn't a common
13 occurrence.

14 I thought it may be something
15 that just happened now, that they're
16 looking into talk -- getting feedback from
17 physicians. And my goal is just to -- my
18 goal would have been just to apprise the
19 sales force that this may happen. That's
20 the extent of it.

21 Q. Did you ever have any meetings
22 with other people in Forest about the fact
23 that federal agents were visiting with
24 physicians on Forest call panels?

1 A. Not that I can recall, no.

2 Q. Did you ever have any meetings
3 with anybody in Forest about the Department
4 of Justice investigation?

5 A. I believe I mentioned that
6 earlier, I don't recall having any of those
7 conversations.

8 Q. Do you ever recall any
9 investigations by the Drug Enforcement
10 Administration while you were at Forest?

11 A. I don't have any recollection of
12 that.

13 (Exhibit 10, interoffice
14 memorandum dated November 24, 1998
15 marked for identification, as of this
16 date.)

17 Q. Showing you what I have marked as
18 Exhibit 10 to your deposition. Do you
19 recognize this as an interoffice memorandum
20 dated November 24, 1998?

21 A. I do.

22 Q. And you are one of the
23 individuals who's copied on this
24 memorandum, correct?

1 A. Yes.

2 Q. What was your position as of
3 November 24, 1998?

4 A. National director of sales.

5 Q. At this point, Celexa had just
6 been launched, correct? Or maybe it was
7 December?

8 A. I can't remember the exact launch
9 date for Celexa.

10 Q. I think it was December of 1998.

11 A. I don't remember. I know it was
12 in 1998, though.

13 Q. The subject of this memorandum is
14 "MSL Panel Topline Report," correct?

15 A. Yes.

16 Q. What is an MSL panel top-line
17 report?

18 A. An MSL is a medical science
19 liaison. I don't know what the top-line
20 report is.

21 Q. This is a memorandum from
22 Marjorie L. Nicholls, correct?

23 A. Yes.

24 Q. Do you remember Marjorie?

1 A. As you handed this to me, I
2 looked at who it was from, and I remember
3 the name, but I can't really remember the
4 position she had, nor can I picture who she
5 was.

6 Q. This memorandum begins, "A
7 telefocus panel was held with two Forest
8 medical science liaisons and two
9 Parke-Davis medical liaisons on
10 November 23rd," correct?

11 A. Yes.

12 Q. In 1998, Forest and Parke-Davis
13 had a co-promotion agreement to promote
14 Celexa, correct?

15 A. Yes.

16 Q. Some of Parke-Davis' sales
17 representatives were used to promote
18 Celexa, right?

19 MS. KIEHN: Objection.

20 A. Yes.

21 Q. Let me withdraw that question,
22 sir, because it is subject to an objection.

23 To your knowledge, were
24 Parke-Davis sales representatives used to

1 promote Celexa?

2 A. Yes.

3 Q. How do you know that?

4 A. I was part of the team or
5 committee that worked with other senior
6 leaders at Parke-Davis.

7 Q. Who did you work with at
8 Parke-Davis?

9 A. I worked -- my counterpart at
10 Parke-Davis was two individuals. One was
11 Tim George, and the other was John
12 Woychick.

13 Q. Do you know how to spell
14 Woychick?

15 A. W-O-Y-C-H-I-C-K. Now, either
16 Woychick or Woychuck, I can't remember, but
17 that's close.

18 Q. What roles did Tim George and
19 John Woychick have at Parke-Davis?

20 A. I believe Tim George -- I don't
21 recall his title, but I believe he was one
22 of the senior sales individuals. I don't
23 know if his title was senior or VP of
24 sales.

1 John Woychick was a senior
2 salesperson also that had responsibility
3 for national -- the national sales force at
4 Parke-Davis.

5 Q. Did you work with Tim George and
6 John Woychick in preparing to launch
7 Celexa?

8 A. Yes.

9 Q. And in what way did you work with
10 them?

11 A. We had, as I said, myself -- I
12 believe I referenced this earlier. During
13 that time frame, it was myself, Cary
14 Renner, Mark Devlin, were national
15 directors of sales, and we represented the
16 Forest sales team, and we held meetings at
17 either Forest headquarters or Parke-Davis
18 with the senior leaders of both sales and
19 marketing, and we would discuss plans for
20 the launch.

21 Q. What type of things would you
22 discuss with your counterparts at
23 Parke-Davis?

24 A. The number of sales

1 representatives that would be assigned.
2 Whether there would be -- I'm trying to
3 recall these issues. Whether there would
4 be any overlap or there would be
5 independent calls made to physicians. I
6 can't recall.

7 And then subsequent meetings had
8 to do with reviewing sales performance.

9 Q. Did Parke-Davis sales
10 representatives ultimately call upon target
11 physicians to promote Celexa?

12 A. Yes.

13 Q. How did the Parke-Davis sales
14 representatives determine which physicians
15 to call on when promoting Celexa?

16 A. I don't recall the exact
17 mechanism, but I will say that there was
18 collaboration between our sales
19 administration department as well as
20 Parke-Davis.

21 Q. For what purpose?

22 A. To identify which physicians
23 would be called upon.

24 Q. Did the Parke-Davis sales force

1 use information from Forest to create call
2 panels to call on physicians for Celexa?

3 A. I can't recall information about
4 which system was used or whether it was
5 independent.

6 Q. Did you oversee any of the
7 Parke-Davis sales representatives?

8 A. No.

9 Q. You just communicated with your
10 counterpart at Parke-Davis?

11 A. Yes.

12 Q. How did you ensure that Forest
13 sales representatives were not calling on
14 the same physicians that Parke-Davis
15 representatives were calling on?

16 MS. KIEHN: Objection.

17 Q. Let me strike that. Let me
18 remove that question.

19 Did you have any method to ensure
20 that Forest sales representatives were not
21 calling on the same physicians that
22 Parke-Davis representatives were calling
23 on?

24 A. I don't recall any specific

1 mechanism.

2 Q. Do you know whether or not that
3 Parke-Davis and Forest called on the same
4 physicians?

5 A. I don't recall, again, what that
6 process was. I don't know if there was
7 overlap or not.

8 Q. Were Parke-Davis sales
9 representatives trained on the promotion of
10 Celexa?

11 A. They were trained just as the
12 Forest representatives were trained on the
13 promotion of Celexa.

14 Q. Were they all trained together?

15 A. Yes.

16 Q. Was there any distinction between
17 the way that a Parke-Davis representative
18 was instructed to promote Celexa versus the
19 way a Forest representative was instructed
20 to promote Celexa?

21 A. I don't have knowledge of that,
22 because I didn't oversee their sales force.

23 Q. Do you know whether or not --
24 well, strike that.

1 What was the role of medical
2 science liaisons at Forest?

3 A. The medical science liaisons was
4 a separate arm within Forest that would
5 talk broadly to physicians more related
6 to -- hence the name -- on the scientific
7 data, more in-depth discussions about the
8 clinical -- the clinicals that were being
9 presented.

10 It was more of a high-level
11 conversation, and they would also field
12 questions from key physicians.

13 Q. This indicates that there was a
14 meeting between Forest medical science
15 liaisons and Parke-Davis medical liaisons
16 on November 23rd, correct?

17 A. Yes.

18 Q. Do you recall being in attendance
19 at any meetings that included Forest
20 medical science liaisons and a Parke-Davis
21 medical liaison?

22 A. I don't recall being at any
23 meeting associated with medical science
24 liaisons.

1 Q. Were Parke-Davis medical liaisons
2 used to educate physicians about Celexa?

3 A. I'm not versed, nor do I recall
4 how Parke-Davis used their MSLs at that
5 time period.

6 Q. Well, do you know whether or not
7 Parke-Davis provided medical liaisons to
8 promote Celexa?

9 A. I'm not sure of that, but I can
10 just give characterization and a broad
11 general viewpoint based on what is written
12 here.

13 Q. OK. What's your viewpoint?

14 A. My viewpoint is that based on a
15 tele-focus panel that was held with two
16 Forest MSLs and two Parke-Davis MSLs, the
17 objective was to determine the roles that
18 they would play in the launch of Celexa.

19 So based on what's written, my
20 impression -- again, I don't know what the
21 intention of Marjorie was, I didn't write
22 this -- but there would be a discussion on
23 the role of the Forest and Parke-Davis MSLs
24 relative to how they would play a role in

1 the Celexa launch.

2 Q. If you look at the third
3 paragraph in this memorandum, it states,
4 "With regards to Celexa, the Parke-Davis
5 medical liaisons' duties are more geared to
6 supporting the sales force by answering
7 questions that the field force can't
8 handle (mostly about off-label use) and
9 making presentations at dinner programs and
10 lunch and learns."

11 Did I read that correct?

12 A. Yes.

13 Q. Were you aware that Parke-Davis
14 medical liaisons engaged in answering
15 questions about off-label uses of drugs?

16 A. I was not.

17 Q. Do you know whether or not
18 Forest's medical science liaisons fielded
19 questions related to off-label uses of
20 Forest products?

21 A. I do not.

22 Q. Who oversaw the medical science
23 liaisons while you were at Forest?

24 A. I can't recall who was the

1 supervisor of the MSLs at that time. I
2 have no recollection.

3 Q. If you turn to page 2, the second
4 full paragraph says, "The most common
5 questions the liaisons receive relate to
6 off-label use, including pediatrics, OCD,
7 panic, PMS and chronic pain." Correct?

8 A. Yes.

9 Q. Were you aware that medical
10 science liaisons receive, as the most
11 common questions, questions related to
12 off-label uses, including pediatrics?

13 A. I was not.

14 Q. The next sentence says, "They
15 felt that the physicians asking these
16 questions are already using Celexa for
17 these off-label indications and are looking
18 for some clinical data to support their
19 decisions."

20 Do you see that?

21 A. I do.

22 Q. Do you know whether or not
23 Forest's medical science liaisons
24 interacted with pediatricians related to

1 the use of Celexa?

2 A. I do not.

3 Q. If you look at the very last
4 paragraph on page 2, it states, "The two
5 Forest MSLs communicate often with their
6 Parke-Davis counterparts to exchange
7 information and arrange for coverage when
8 they cannot make all of their engagements."

9 Do you see that?

10 A. I do.

11 Q. Does this indicate to you that
12 there was cooperation between Forest's
13 medical science liaisons and Parke-Davis'
14 medical liaisons related to Celexa?

15 MS. KIEHN: Objection.

16 A. No. My impression of what's
17 written is that the two MSLs at Forest and
18 at Parke-Davis, they communicate often.
19 And it's not specific to me as to what
20 they communicate about.

21 Q. As of 1998, was Forest in a
22 co-promotion agreement with Parke-Davis
23 related to any other drug other than
24 Celexa?

1 A. No.

2 Q. Can you think of any other reason
3 that a Parke-Davis medical liaison would be
4 communicating with a Forest medical science
5 liaison other than to discuss Celexa?

6 A. No.

7 Q. That's the most likely scenario,
8 considering a co-promotion agreement
9 existed between the two companies related
10 to Celexa, isn't it?

11 MS. KIEHN: Objection.

12 A. Again, I don't know what Marjorie
13 was -- her intention, and I could speculate
14 that there was communication about Celexa,
15 considering there were two -- it stated
16 earlier that there were two MSLs for Forest
17 and Parke-Davis, and the purpose of that
18 discussion was to determine the roles that
19 they play in the Celexa launch. So I could
20 infer that it would be related to Celexa.

21 Q. That's a reasonable inference
22 based on the information you have, right?

23 A. Yes.

24 Q. What kind of coordination did you

1 have as the national director of sales with
2 Parke-Davis related to Celexa?

3 MS. KIEHN: Objection.

4 Q. Were you the national director of
5 sales at this time? Let me withdraw that
6 question.

7 A. Yes.

8 Q. Did you coordinate at all with
9 Parke-Davis related to Celexa?

10 A. Could you define "coordinate"?

11 Q. Let me strike the question. Let
12 me make it easier.

13 Did you communicate with
14 Parke-Davis in any manner related to the
15 promotion of Celexa?

16 A. Yes.

17 Q. For what purpose?

18 A. As I mentioned earlier, we would
19 meet from time to time, and then subsequent
20 to the formal meetings, I would speak to my
21 counterparts from time to time, Tim George
22 and John Woychick, purely for the purposes
23 of monitoring sales performance post the
24 launch of Celexa.

1 Q. What was the purpose of
2 communicating with them to monitor sales
3 performance?

4 A. They were our co-promotion
5 partners. They had a vested interest in
6 the growth of Celexa. And one of the
7 standards of having a co-promotion partner
8 is to maintain consistent communication.

9 Q. And did you do that with
10 Parke-Davis related to Celexa?

11 A. Yes.

12 Q. Did you ever see the co-promotion
13 agreement that exists -- excuse me, strike
14 that.

15 Did you ever see the co-promotion
16 agreement that existed between Forest and
17 Parke-Davis related to Celexa?

18 A. I don't recall that.

19 Q. Do you know how long the
20 co-promotion agreement existed?

21 A. I don't recall the exact
22 duration, but I do recall from 1998, up
23 until I believe 2000. I believe the
24 termination was somewhere in the area of

1 2000. The reason why I say that is because
2 I remember, which I believe I stated
3 earlier, we went from 500 representatives
4 to a thousand. And I think that was the
5 reason, because the Parke-Davis sales force
6 was no longer in the picture. I believe
7 that's the case.

8 Q. Do you know why the co-promotion
9 agreement between Forest and Parke-Davis
10 ended?

11 A. I do not.

12 Q. Who told you that it ended?

13 A. My supervisor.

14 Q. Who was that?

15 A. My supervisor at that time was
16 Phil Satow.

17 Q. Did the end of the co-promotion
18 agreement between Forest and Parke-Davis
19 change anything within your Forest sales
20 force?

21 A. The only thing that would have
22 changed would be more personnel to
23 supervise. More regional directors in that
24 instance.

1 Q. Did you interact with anyone at
2 Parke-Davis other than Tim George and John
3 Woychick related to promotion of Celexa?

4 A. No.

5 Q. Are you familiar with the
6 financial reporting system used by Forest?

7 A. Vague recollection.

8 Q. Did you use -- did you use that
9 system at all?

10 A. I did not.

11 Q. Do you know what the purpose of
12 it was?

13 A. I don't recall a specific usage,
14 what it was designated for.

15 Q. Do you know whether or not there
16 were expenses maintained on that system?

17 A. I don't recall specifically what
18 the elements contained in the financial
19 reporting system were.

20 Q. Did you ever have to access it
21 for budgeting?

22 A. I didn't, no.

23 Q. Are you familiar with what a
24 Jornada is?

1 A. I am.

2 Q. Jornada, J-O-R-N-A-D-A.

3 A. Yes.

4 Q. Can you explain what a Jornada
5 is?

6 A. A Jornada, to the best of my
7 recollection, was a handheld device that
8 was technology that was utilized -- prior
9 to the Jornada, there were paper reports.
10 And the Jornada was a handheld device that
11 representatives were provided in order to
12 document calls made to physicians and
13 samples that were left to physicians, and
14 if a physician requested samples, they
15 would sign and attest that they received
16 the quantity that was notated on the
17 Jornada.

18 Q. Were Forest sales representatives
19 required to record call notes in their
20 Jornadas?

21 A. As far as at that time, I don't
22 know if it was required. I know it was
23 suggested as good practice. I can't
24 recall. I know that there was an

1 opportunity for them to record notes in
2 their Jornada.

3 Q. What was the purpose of
4 suggesting that sales representatives
5 record call notes in their Jornadas?

6 MS. KIEHN: Objection.

7 A. One of the elements that I
8 indicated earlier about the sales process
9 was opening a sales call in order to engage
10 the physician most effectively. And it was
11 encouraged that following a sales
12 presentation, there would be notes that
13 representatives would make giving a
14 synopsis of their impression of what
15 transpired in the call.

16 This way the subsequent calls
17 that were made would be more relevant to
18 what took place in the past, as opposed to
19 rehashing the same discussion over and over
20 again.

21 Q. Was it the responsibility of the
22 sales representatives to go back and review
23 their call notes that they had recorded in
24 the Jornada?

1 A. That was the intention. It was
2 encouraged.

3 Q. And sampling was also recorded on
4 Jornadas, correct?

5 A. I believe so, yes.

6 Q. What's the purpose of sampling?

7 A. The purpose of a sample is -- the
8 purpose of having samples available is
9 following a presentation to a physician on
10 a given product, as I mentioned earlier,
11 when at the end of the presentation and
12 you're closing, a doctor may say, I'd like
13 to try the product, or I would like to
14 utilize it for patients that qualify in my
15 practice. Can you leave me some samples.

16 And I guess the -- upon giving
17 the doctor the samples, the doctor would
18 have to attest to the quantity that was
19 left.

20 Q. Did Forest keep track of samples
21 of Celexa and Lexapro that its sales
22 representatives left with physicians?

23 A. Yes.

24 Q. For what purpose?

1 A. For inventory purposes. We
2 wanted to account where the samples were
3 being distributed. It was -- it was
4 required that representatives would be able
5 to account for the samples, disbursements.

6 Q. Were sales representatives
7 instructed to provide samples to
8 physicians?

9 A. They weren't instructed to
10 provide a specific number. It was based on
11 physician request, that should there be
12 interest in a given product and the doctor
13 requests samples for usage for their
14 patients, we would be able -- the reps
15 would be able to meet that request.

16 Q. You know that if a physician is
17 provided samples, that it is more likely
18 that that physician will then prescribe the
19 drug in the future, correct?

20 MS. KIEHN: Objection.

21 A. I'm not aware of that.

22 Q. No?

23 Why did Forest provide physicians
24 with samples other than -- well, let me

1 strike that.

2 Did Forest provide samples to
3 physicians when they weren't requested?

4 A. If the doctor asked or if the rep
5 would indicate to the healthcare provider,
6 do you need any more samples for your
7 practice, and the physician said yes, then
8 it would be acknowledged and the samples
9 would be left.

10 Q. Forest wanted physicians to use
11 samples, right?

12 MS. KIEHN: Objection.

13 A. Forest wanted to meet the
14 requests that healthcare providers had.

15 Q. Why?

16 A. Because if a physician who heard
17 a presentation, as I mentioned, sees that
18 there is a clear opportunity to use Celexa
19 or Lexapro for their patient population, we
20 wanted to be able to ensure that they were
21 able to do that.

22 Q. Didn't -- go ahead, I'm sorry.

23 A. Doctors want to be able to -- if
24 they see a patient that has symptoms of

1 depression that they want to try the
2 product on, it is common for doctors to use
3 samples before writing a prescription so
4 that they could evaluate the outcome of the
5 patient. That's commonplace, which is
6 primarily one of the fundamental reasons
7 why doctors wanted samples in the first
8 place.

9 Q. Didn't Forest want to provide
10 physicians with samples of Celexa and
11 Lexapro so that the doctors would get used
12 to using it and then the patients would
13 then request those drugs?

14 MS. KIEHN: Objection.

15 A. I don't see that as an accurate
16 characterization at all.

17 Q. Did you consider samples in any
18 way to help gain market share in the SSRI
19 market?

20 A. No.

21 Q. You didn't see any way that
22 providing samples might help to increase
23 the number of prescriptions that physicians
24 were writing for Celexa or Lexapro?

1 MS. KIEHN: Objection.

2 A. No. I saw the distribution of
3 samples purely based on the requests that a
4 healthcare provider had based on their
5 patient load, patient population, so that
6 they can get a clinical view by way of
7 using those samples on how the patient's
8 depression was being maintained or
9 controlled.

10 Q. And the hope by Forest was that
11 the physician would then write
12 prescriptions for the drug, right?

13 MS. KIEHN: Objection.

14 A. That would be at the discretion
15 of the physician.

16 Q. My question was, the hope of
17 Forest was that then the physician would
18 write prescriptions for the drug, right?

19 MS. KIEHN: Objection.

20 A. Yes.

21 Q. Therefore, the reason that Forest
22 provided samples ultimately was to
23 encourage the physician to write
24 prescriptions for the drug, right?

1 MS. KIEHN: Objection.

2 A. No. As indicated, the primary
3 reason is to give the physician an
4 opportunity to evaluate the clinical
5 effectiveness of the drug, in this case
6 Celexa or Lexapro, and then make the
7 determination as to whether they see it's
8 valuable to write a prescription.

9 Q. Who paid for samples of Celexa
10 and Lexapro that were provided to
11 physicians?

12 A. Forest provided -- paid for the
13 samples that were distributed.

14 Q. And Forest paid for those samples
15 just because they wanted physicians to be
16 aware of how the drug worked, right?

17 MS. KIEHN: Objection.

18 A. Yes.

19 Q. Not because they wanted to see
20 increased numbers of prescriptions from
21 physicians; is that right?

22 MS. KIEHN: Objection.

23 Q. Is that your testimony?

24 MS. KIEHN: Objection.

1 A. My testimony is we provided
2 samples to physicians so that they could
3 evaluate the clinical effectiveness of the
4 product that they've distributed to their
5 patients, and then the physician would make
6 the determination as to whether they wanted
7 to write a prescription.

8 The primary purpose was to get a
9 clinical view on the product's
10 effectiveness for that specific patient.

11 Q. In hopes that the physician would
12 continue writing for more Lexapro and
13 Celexa?

14 MS. KIEHN: Objection.

15 A. That's your characterization.

16 Q. Isn't that the goal of sales,
17 sir?

18 MS. KIEHN: Objection.

19 A. And the way I know it in
20 pharmaceutical sales, the goal is to give
21 the doctor an opportunity to make the most
22 appropriate decision based on their patient
23 population.

24 Q. And you want to encourage them to

1 make the decision to write the drug that
2 Forest manufactures, right?

3 MS. KIEHN: Objection.

4 A. I wouldn't use the word
5 "encourage." I would use the word, we want
6 to educate them on the clinical profile of
7 the product, and let them make the
8 determination as to whether they wanted to
9 prescribe the product. That's the
10 responsibility of a sales rep.

11 Q. And you believe that part of that
12 education is providing samples?

13 A. I would look at the samples as
14 separate and distinct from the educational
15 process.

16 Q. Why?

17 A. Samples is, in my view, a
18 separate -- if a doctor understands the
19 clinical merits of the product and the
20 doctor then requests samples, that's
21 secondary to the fact that they would want
22 to use the product for their patients.

23 Q. When -- excuse me, strike
24 that.

1 When sales representatives
2 recorded information in the Jornada, where
3 did that information go?

4 A. There was a -- I forget the
5 title. It may have been a call reporting
6 department or a repository that was
7 electronically communicated by the rep to
8 this department, which kept track of the
9 calls and the samples.

10 Q. When you say "electronically
11 communicated," what do you mean?

12 A. I believe the representative --
13 I'm trying to go off the best of my
14 recollection. The representative would
15 have to download the information to the
16 call reporting department.

17 Q. And did that happen over
18 computer?

19 A. I believe so, unless the Jornada
20 was equipped unto itself to transmit --
21 yes, it would be transmitted
22 electronically.

23 Q. Why did Forest make a decision to
24 remove child specialists from its call

1 panels?

2 MS. KIEHN: Objection.

3 A. I'm drawing a blank here, because
4 I think we -- I may have answered that
5 prior.

6 Q. I don't think you did.

7 A. No?

8 I don't recall the exact
9 rationale, unless we could review more
10 communication. I just -- my mind is a
11 blank right now. I just don't recall the
12 rationale.

13 Q. Do you have a general
14 understanding as to why Forest made a
15 decision to remove child specialists from
16 call panels?

17 A. I don't.

18 Q. Do you know whether or not it was
19 because the Department of Justice had
20 started an investigation?

21 MS. KIEHN: Objection.

22 A. I don't know if that was the
23 rationale for it.

24 Q. Do you have any idea as to why

1 that happened?

2 MS. KIEHN: Objection.

3 A. I don't recall.

4 Q. No idea?

5 A. Not as I sit here right now. I
6 just can't recall.

7 Q. Who do you think would know that?

8 A. Whoever was responsible for
9 removing any specialty from a call panel.

10 Q. Who would be?

11 A. Whoever was responsible, as I
12 testified earlier, was the individuals who
13 headed up marketing or sales
14 administration.

15 Q. Have you ever read any research
16 articles related to sales efforts in the
17 pharmaceutical industry?

18 A. Just to clarify, what type of
19 sales efforts?

20 Q. Promotional sales.

21 A. I don't recall any, but I may
22 have read some promotional articles.

23 Q. Do you subscribe to any -- let me
24 strike that.

1 When you were at Forest, did you
2 subscribe to any particular journals that
3 related to the pharmaceutical industry?

4 A. Yes.

5 Q. What did you subscribe to?

6 A. Pharmaceutical Executive.

7 Q. Any others?

8 A. Harvard Business Review.

9 Q. Any others?

10 A. Selling.

11 Q. Any others?

12 A. Not that I can recall.

13 Q. Did you subscribe to
14 Pharmaceutical Executive, Harvard Business
15 Review, and Selling between 1998 and 2009?

16 A. Yes.

17 Q. What was the purpose of you
18 reading the publications Pharmaceutical
19 Executive, Harvard Business Review, and
20 Selling?

21 A. To gain additional insight into
22 what was various viewpoints within the
23 pharmaceutical industry, to stay versed if
24 there was any novel selling approaches, or

1 to look at different case reviews across
2 all businesses in Harvard Business Review,
3 to understand different approaches and
4 strategies and outcomes.

5 It was more to stay current on
6 relevant issues.

7 Q. Do you ever recall if you read
8 any articles that informed you in your work
9 in sales at Forest?

10 A. I don't recall any specific
11 article in any specific journal I've
12 identified, but I'm sure I became
13 interested in some articles.

14 Q. Did you ever rely on articles to
15 make changes in the way that you instructed
16 your sales force?

17 A. Not that I can recall, no.

18 Q. Did you ever go to any seminars
19 to provide you with information about
20 selling issues in the pharmaceutical
21 industry?

22 A. Yes.

23 Q. What type of seminars?

24 A. One group that I can recall was

1 called the Hay Group, and the Hay Group
2 would provide overviews of a host of
3 different approaches and strategies. One
4 may include co-promotion standards.

5 I can't remember any others off
6 the top of my head outside of the Hay
7 Group.

8 Q. Did you consider the Hay Group to
9 be a reliable source for information
10 related to pharmaceutical sales?

11 A. The Hay Group at the time was one
12 company that many pharmaceutical company
13 leaders attended depending upon the topics
14 that were being presented. They were one
15 of the groups that there was broad
16 representation of other companies there.

17 Q. What did the publication Selling
18 discuss in particular?

19 A. The Selling Magazine talked about
20 the fundamentals of the selling process
21 that I described, and sometimes highlighted
22 approaches from sales representatives
23 across multiple industries, and sometimes
24 there may have been a pearl or something

1 that was informative that I would embrace.

2 Q. How did you learn about
3 pharmaceutical sales before you entered the
4 pharmaceutical industry?

5 A. I didn't really know much about
6 pharmaceutical sales before I entered the
7 industry itself.

8 Q. You just learned on the job?

9 A. Yes.

10 Q. Did you ever receive any
11 education in seminars or workshops
12 specifically related to pharmaceutical
13 promotion and sales?

14 A. No.

15 Q. Were these seminars that the Hay
16 Group put on focused on pharmaceutical
17 promotion and sales?

18 A. I don't recall the exact topics
19 of the programs that I did attend at the
20 Hay Group. I don't know if they were
21 related to selling processes. I don't
22 recall exactly the topics.

23 Q. Any other seminars other than the
24 Hay Group seminars that you just discussed

1 that you recall attending between 1998 and
2 2009?

3 A. None that I can recall.

4 MR. COFFIN: Let's take a break.

5 THE VIDEOGRAPHER: The time now
6 is 4:43 p.m., and we are off the
7 record.

8 (Recess)

9 THE VIDEOGRAPHER: The time now
10 is 4:46 p.m., and we are back on the
11 record.

12 BY MR. COFFIN:

13 Q. Mr. Azzari, when Forest and
14 Parke-Davis were engaged in the
15 co-promotion agreement related to Celexa,
16 did you have any influence in the decisions
17 that were made by Parke-Davis' sales force?

18 A. No.

19 Q. Was that the responsibility of
20 your counterparts at Parke-Davis?

21 A. Yes.

22 Q. Did Parke-Davis' sales force act
23 independently from Forest's sales force?

24 A. Yes. They were under the domain

1 of the supervisors at Parke-Davis.

2 MR. COFFIN: I don't have
3 anything further.

4 MS. KIEHN: Just a couple of
5 questions.

6 EXAMINATION BY

7 MS. KIEHN:

8 Q. Mr. Azzari, you testified earlier
9 about a confidentiality agreement you
10 signed with Forest at the time of your
11 departure. Do you recall that testimony?

12 A. Yes.

13 Q. You indicated that the agreement
14 contained a provision in which you agreed
15 not to speak in a negative way about
16 Forest; is that correct?

17 A. Yes.

18 Q. Notwithstanding that provision,
19 has your testimony today been completely
20 truthful?

21 A. Yes.

22 Q. Did you change your testimony in
23 any way as a result of that provision?

24 A. No.

1 Q. OK. Can you turn to Exhibit 6,
2 please.

3 You testified that based on this
4 document, it appeared that 4,100 child
5 specialists were reinstated to the Lexapro
6 call panel. Do you recall that testimony?

7 A. Yes.

8 Q. I want you to take another look
9 at the document. If you look at the bottom
10 of page 1, "Summary: Universe of All
11 'Child' Specialists."

12 A. Yes.

13 Q. And then the top of page 2,
14 "Child Specialists Formerly on Forest Call
15 Panel," and then "Physicians called on at
16 least once in 2004: 4,200." I think that's
17 the figure that you were referring to in
18 your testimony.

19 Does this clarify for you whether
20 or not that figure refers to physicians who
21 were actually reinstated to the call panel?

22 A. Yes.

23 Q. Does that reflect physicians who
24 were actually reinstated?

1 A. It reflects those that were
2 theoretically eligible for reinstatement.

3 Q. And if you look a little farther
4 down, you see that the requests for
5 reinstatement, in fact, there were only 369
6 as of this date, right?

7 A. Yes.

8 MS. KIEHN: Thank you. No
9 further questions.

10 MR. COFFIN: I don't have
11 anything further. Thank you.

12 THE WITNESS: Thank you.

13 THE VIDEOGRAPHER: The time now
14 is 4:49 p.m., and we are off the
15 record.

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Exhibit 1

Notice of Deposition

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Exhibit 2

resume

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Exhibit 3

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MDL-FOREM 13897

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Exhibit 4

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Exhibit 5

Memorandum dated January 1,

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Exhibit 6

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1 CERTIFICATE

2 STATE OF NEW JERSEY)

3)ss:

4 COUNTY OF UNION)

5 I, MARY F. BOWMAN, a Registered
6 Professional Reporter, Certified
7 Realtime Reporter, and Notary Public
8 within and for the State of New Jersey,
9 do hereby certify:

10 That GERARD J. AZZARI, the witness
11 whose deposition is hereinbefore set
12 forth, was duly sworn by me and that
13 such deposition is a true record of the
14 testimony given by such witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage and that I
18 am in no way interested in the outcome
19 of this matter.

20 In witness whereof, I have
21 hereunto set my hand this 1st day of
22 August, 2016.

23

24

ACKNOWLEDGMENT OF DEPONENT

I, GERARD AZZARI, do
hereby certify that I have read the
foregoing pages, and that the same is
a correct transcription of the answers
given by me to the questions therein
propounded, except for the corrections or
changes in form or substance, if any,
noted in the attached Errata Sheet.

Gerard Azzari

9/1/16

GERARD J. AZZARI

DATE

Subscribed and sworn

to before me this

1st day of September, 2016.

My commission expires: 11/29/2020

Patricia A. Gunzel

Notary Public

PATRICIA A. GUNZEL
Notary Public, State of New York
No. 01GU6119561
Qualified in Westchester County 20
Commission Expires November 29, 2020

In Re: Celexa and Lexapro Marketing and Sales Practices Litigation, MDL No. 2067,
No. 09-MD-2067 (NMG) (D. Mass. 2009)

Errata Sheet to the Deposition of Gerard J. Azzari
Deposition Date: July 21, 2016

Page	Line(s)	Now Reads	Should Read	Reason
37	23	plan track data	PlanTrak data	Product name
38	2	plan track data	PlanTrak data	Product name
38	8	plan track data	PlanTrak data	Product name
95	10-11	plan track data	PlanTrak data	Product name
95	14	plan track data	PlanTrak data	Product name
95	18	plan track data	PlanTrak data	Product name
96	2	plan track data	PlanTrak data	Product name
254	11-12			

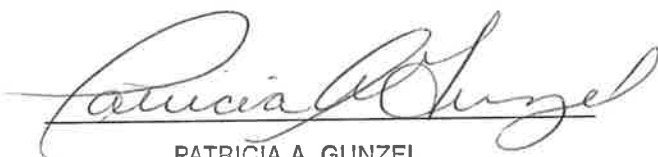
I, the undersigned, declare under penalty of perjury that I have read the deposition transcript; that I have made any corrections, additions, or deletions that I was desirous of making in the errata sheet above; and that the deposition transcript is otherwise a true and correct transcript of my testimony contained therein.


(Signature)

9/1/16
(Date)

Subscribed and sworn before me this

1st day of September, 201~~2~~⁶



PATRICIA A. GUNZEL
Notary Public, State of New York
No. 01GU6119561
Qualified in Westchester County
Commission Expires November 29, 2020

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E R R A T A

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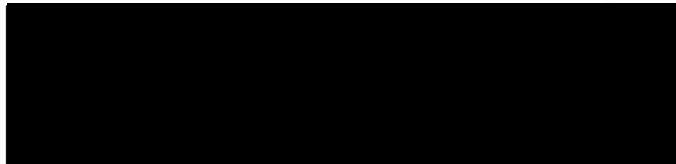
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PAGE LINE CHANGE

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187 15total usually include now and

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