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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: CELEXA AND LEXAPRO :MDL NO. 2067
MARKETING AND SALES PRACTICES :Master Docket No.
LITIGATION :09-MD-2067-(NMG)

DELANA S. KIOSSOVSKI and :Hon. Nathaniel M Gorton
RENEE RAMIREZ, on behalf of :
themselves and all others :Case No.
similarly situated, :14-CV-13848 (NMG)

Plaintiff,

v.

FOREST PHARMACEUTICALS, INC. :
and FOREST LABORATORIES, INC., :
Defendants. :

-- --
OCTOBER 6, 2016

-- --
Videotaped deposition of STEVEN L.

CLOSTER, held at DEBEVOISE & PLIMPTON, LLP, 919
Third Avenue, New York, New York, commencing at
9:27 a.m., before Margaret M. Reihl, a
Registered Professional Reporter, Certified
Realtime Reporter, and Notary Public.

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1 THE VIDEOGRAPHER: Good morning. We are
2 now on the record. My name is Kevin Pollard,
3 and I am a videographer for Golkow
4 Technologies. Today's date is October 6th,
5 2016, and the time its 9:27 a.m. This video
6 deposition is being held in New York, New York
7 in the matter of Delana S. Kissovski v. Forest
8 Laboratories, et al.

9 The deponent is Steve Closter. The
10 counsel will be noted on the stenographic
11 record. The court reporter is Peg Reihl and
12 will now swear in the witness.

13 ... STEVEN L. CLOSTER, having been duly
14 sworn as a witness, was examined and testified
15 as follows ...

16 BY MR. WISNER:

17 Q. Good morning. My name is Brent Wisner.
18 What's your name?

19 A. Steven Closter.

20 Q. Have you ever had your deposition taken
21 before?

22 A. I have.

23 MR. WISNER: Okay. Just back up. Has
24 everyone made their appearances on the record

1 yet? That's what I was --

2 MS. KIEHN: It's going to be recorded.

3 MS. THORNE: It's going to be on the --

4 MR. WISNER: Got you. That's what I was
5 confused with the start of this.

6 BY MR. WISNER:

7 Q. All right. Have you ever had your
8 deposition taken before?

9 A. I have.

10 Q. And how many times has that occurred?

11 A. I believe three times.

12 Q. And what was the context of those
13 depositions?

14 A. General cases, liability. I can't
15 remember exactly what the focus of the -- you know,
16 exactly what the cases were.

17 Q. Do you recall what courts they
18 transpired in?

19 A. No.

20 Q. One of them was in the securities case
21 involving Celexa and Lexapro.

22 You're familiar with that?

23 A. Yes.

24 Q. Do you recall what the other two were

1 about?

2 A. Not exactly, no.

3 Q. Do you recall generally when they
4 occurred?

5 A. Generally, in the last few years.

6 Q. What's the last few years mean to you?

7 A. Three, four years or so.

8 Q. Okay. So it's been in the last five
9 years; is that fair to say?

10 A. I believe so, but I would have to check.
11 I'm sure counsel would know for sure.

12 Q. Did either of those depositions relate
13 to Celexa or Lexapro?

14 A. I believe they did.

15 Q. Both of them?

16 A. Yes, I can't recall if it was both drugs
17 or one of the drugs, but it was certainly one or the
18 other or both.

19 Q. And is that different than any testimony
20 you may have provided to the Department of Justice in
21 2007?

22 MS. THORNE: Objection.

23 THE WITNESS: Is it different topics?

24 BY MR. WISNER:

1 Q. Mm-hmm.

2 A. I'm sure there was some overlap in
3 topics.

4 Q. Were those previous depositions
5 specifically related to pediatric use of Celexa and/or
6 Lexapro?

7 A. I don't recall.

8 Q. Okay. Do you recall what the
9 circumstances were of those depositions in any context?

10 A. You know, we reviewed documents, it
11 talked about my experiences at the company as it
12 relates to both of those products, along a range of --
13 a range of topics.

14 Q. And was it focused on any particular
15 type of theory or issue of liability that you're aware
16 of?

17 A. I really can't recall.

18 Q. Okay. Was there a focus on off-label
19 promotion, for example?

20 A. I don't recall.

21 Q. Okay. You're familiar with off-label
22 promotion?

23 A. Yes.

24 Q. All right. Were either of those

1 depositions related to birth defects associated with
2 Celexa and/or Lexapro?

3 A. I recall that was a topic, yes.

4 Q. Did any of them involve potential
5 suicidality associated with Celexa and/or Lexapro?

6 MS. THORNE: Objection.

7 THE WITNESS: Yeah, I don't recall.

8 BY MR. WISNER:

9 Q. Okay. Do you know what suicidality is?

10 A. Yes, I do.

11 Q. Okay. All right. Since you've had your
12 deposition taken before, I'm not going to go through
13 all the particulars once more.

14 A. Sure.

15 Q. The only one that I do stress, however,
16 is that if I ask you a question and you don't
17 understand it, please make sure to say I don't
18 understand your question, please repeat, okay?

19 A. Sure.

20 Q. I will rephrase it, repeat it until you
21 feel like you understand the question, okay?

22 A. Got it.

23 Q. With that caveat, however, if you
24 answer, I'm going to assume you understood my question.

1 Is that okay?

2 A. Sounds fair.

3 Q. And I guess the other rule I should
4 probably mention right now is that all answers should
5 be audible.

6 A. Good.

7 Q. So head nods, usually although they can
8 be taken down in the transcript, are usually not seen
9 by the court reporter, so she needs to hear audible
10 answers, okay?

11 A. Sounds fair.

12 Q. Okay, great.

13 (Document marked for identification as
14 ForestC Deposition Exhibit No. 1.)

15 BY MR. WISNER:

16 Q. I'm going to hand you what I've marked
17 as Exhibit 1 to your deposition.

18 Have you seen this document before?

19 A. I have.

20 Q. What is it?

21 A. I don't know exactly, you know, what
22 it's called. Looking for a title on it, but I believe
23 this is the request to -- you know, for me to
24 participate in a deposition in regards to the case that

1 I can see here on the paper.

2 Q. And if you look at the -- there's an
3 Exhibit A attached to the document on Page 3. You
4 skipped it.

5 A. Sorry.

6 Q. When I refer to page numbers throughout
7 this deposition, I put numbers in the top right corner
8 of every exhibit to help facilitate direction.

9 You see on Page 3 there?

10 A. Yes.

11 Q. You see that Exhibit A?

12 A. I do.

13 Q. And there's a bunch of definitions; you
14 see that?

15 A. Yes.

16 Q. And there's subject matters?

17 A. Yes.

18 Q. Have you gone over all the subject
19 matters in preparing for your deposition today?

20 A. Have I gone over? What do you mean?

21 Q. Have you prepared to testify about these
22 topics that are listed in this notice?

23 A. I have.

24 Q. Okay. And you've prepared -- how have

1 you prepared for them?

2 A. I met with counsel for two days
3 reviewing the topics and went over a number of
4 materials as it relates to the topics.

5 Q. And what days did you meet?

6 A. I met yesterday and the past Friday.

7 Q. How long were those meetings?

8 A. Most of the day.

9 Q. When does your day start?

10 A. When does my day start? When do I get
11 out of bed or --

12 Q. Let me ask you a better -- a clearer
13 question.

14 A. Okay.

15 Q. When did those days start?

16 A. Approximately 8:30, 9:00. They
17 differed. Perhaps Friday started at 8:30, yesterday
18 started at 9:15.

19 Q. Okay. And about when did they end?

20 A. Probably around 4:00.

21 Q. Okay. So they were essentially full
22 work days; is that right?

23 A. Yes.

24 Q. Okay. Who was present -- let's start

1 with the first meeting last Friday.

2 A. Uh-huh.

3 Q. Who was present at that meeting?

4 A. The three individuals that are here,
5 Danielle, Kristin and Darcelle.

6 Q. Were they the same individuals who were
7 present yesterday as well?

8 A. Yes.

9 Q. Okay. You said you reviewed materials.
10 Do you recall what materials you
11 reviewed?

12 A. I do.

13 Q. What materials were those?

14 A. Study reports, published papers, press
15 releases, other documents.

16 Q. Were the materials that you reviewed
17 specific in reference to the topics mentioned on this
18 notice?

19 A. Yes, they were.

20 Q. Okay. I want to get a little bit
21 background on your work history.

22 A. Sure.

23 (Document marked for identification as
24 ForestC Deposition Exhibit No. 2A.)

1 BY MR. WISNER:

2 Q. I'm going to enter in as Exhibit 2A, you
3 recognize this document?

4 A. Yes.

5 Q. What is this?

6 A. Looks like it's my LinkedIn page.

7 Q. Okay. And previously before the
8 deposition we requested a Curriculum Vitae, a resume.
9 I understand you do not have one; is that correct?

10 A. I do not have an updated CV.

11 Q. Okay. So this is the closest thing we
12 have to a resume or CV; is that right?

13 A. Correct.

14 Q. Okay. Let's start off with your
15 education. What is your educational background?

16 A. I attended college at Cornell
17 University, got a Bachelor's degree in business in
18 1991. I then continued on for my MBA at the Stern
19 School of Business graduating in 1999.

20 Q. And that was a graduate degree, an MBA?

21 A. Correct.

22 Q. Okay. And your undergrad was that a
23 Bachelor of Science or Bachelor of Arts?

24 A. Bachelor of Science.

1 Q. Okay. In the context of your
2 undergraduate degree, did you ever get any specific
3 training or education in the context of medicine or
4 clinical trials?

5 A. Meaning did I take any classes?

6 Q. Mm-hmm.

7 A. I took some life science classes,
8 biology, chemistry.

9 Q. The science aspect of your degree, did
10 that focus in on biology or medicine or applied
11 sciences?

12 A. My focus was a business major.

13 Q. Okay. So it was focused primarily on
14 the application of, I guess, math and economics to
15 business; is that fair?

16 A. If you would like to characterize it
17 that way, that's fine.

18 Q. Okay. And in your MBA context, did you
19 spend any time focusing on medicine?

20 A. No, not in my MBA coursework.

21 Q. Now, obviously, you have been working
22 for various pharmaceutical companies for a while?

23 A. Correct.

24 Q. It looks like for the bulk of your

1 professional career; is that right?

2 A. Yes, 22 years.

3 Q. Have you had any formal training in
4 medicine in that context?

5 A. I mean, are you asking what the training
6 was at these positions that I held at these companies?

7 Q. Well, I just want to know generally,
8 have you received medical training in your positions at
9 these pharmaceutical companies?

10 A. When you say "medical training,"
11 training like a doctor would have or --

12 Q. I'm trying to understand -- I'm trying
13 to understand what educational background you have in
14 science. That's what I'm trying to gather.

15 A. Sure.

16 Q. Can you give me sort of a general bird's
17 eye view understanding of what education or training
18 you may have received in the context of your positions
19 at these pharmaceutical companies?

20 A. Sure. Well, my first position was at
21 Dura Pharmaceuticals, where I began as a sales
22 representative. At the time we sold cough and cold
23 products, asthma products. There may have been some
24 other categories. I was trained as a sales

1 representative to sell them, so, you know, a fairly
2 comprehensive training background on whether it was
3 disease state or on the products themselves, on the
4 package insert and any sales material that we had, you
5 know, access to. That's something that would be
6 supplemented over time with sales training meetings.

7 I was then a divisional manager, where
8 there was similar ongoing training.

9 And then as I transitioned in 1999 to at
10 the time was Forest Laboratories, it was certainly some
11 immersion just by doing my job as it relates to the
12 disease state. You know, I began on the brand team for
13 Celexa and Lexapro so, certainly, some background on
14 depression and other mood disorders, you know, attended
15 scientific congresses, reviewed poster sessions, went
16 to CME sessions and interacted with thought leaders.
17 So that is a process that occurs over time as you're
18 immersed in the data.

19 Q. And I guess you've continued on at
20 Forest Laboratories as it was acquired by various
21 entities. I guess currently it's owned by Allergan; is
22 that right?

23 A. Forest was purchased by Actavis.

24 Q. Okay.

1 A. And then Actavis purchased Allergan and
2 then assumed the Allergan name, so that's the sequence
3 of events.

4 Q. And through all of those changes, you've
5 maintained an executive level position in the company;
6 is that fair to say?

7 A. If you're saying I'm a vice president,
8 if we want to call that executive, that's fine. You
9 know, when most of those changes occurred, I may have
10 been an assistant vice president and then, you know,
11 made a vice president at some point along the way.

12 Q. Okay. Now, when you were working at
13 Dura Pharmaceuticals, did you spend any time working on
14 antidepressants or SSRIs?

15 A. I did not.

16 Q. Okay. What sort of products did you
17 focus on?

18 A. As I mentioned, cough and cold products,
19 products for asthma, allergies. Those were the bulk of
20 the products that we had at the time.

21 Q. So it would be fair to say, then, when
22 you started working at Forest Pharmaceuticals in 1999,
23 that was your first exposure to the marketing or sales
24 related to antidepressants?

1 A. That's right.

2 Q. You understand one of the topics today
3 involves discussions of clinical trials that have been
4 conducted on both Celexa and Lexapro?

5 A. I'm aware of that.

6 Q. And you are prepared to testify on
7 behalf of Forest Pharmaceuticals about those clinical
8 trials?

9 A. To the extent my expertise can help,
10 sure.

11 MS. KIEHN: To the extent he agreed to
12 testify to high level details about the
13 studies.

14 BY MR. WISNER:

15 Q. You are -- you understand your role
16 today as a rule 30(b)(6) witness?

17 A. I do.

18 Q. What is your understanding of that role?

19 A. That I'll be representing the company.

20 Q. You understand that you'll be speaking
21 for the company, correct?

22 A. Correct.

23 Q. What is your understanding of the basic
24 allegations in this case?

1 MS. THORNE: Objection. Are you asking
2 him in his individual capacity, or are you
3 asking him now in his capacity as a 30(b)(6)
4 witness for the company?

5 MR. WISNER: I'm asking him in his
6 capacity as a 30(b)(6) witness for the company.

7 THE WITNESS: Sorry. Could you repeat
8 the question.

9 BY MR. WISNER:

10 Q. Sure. What is your understanding of the
11 basic allegations in this case?

12 A. The basic allegations are that there's
13 accusations, I believe, of off-label promotion of
14 Celexa for pediatric use.

15 Q. Do you understand that this case also
16 involves the drug Lexapro as well?

17 A. Yes.

18 Q. Okay. Have you reviewed the Complaint
19 filed in this matter?

20 A. Is this the Complaint?

21 Q. It is not.

22 A. I'm not aware if I've reviewed it. If I
23 saw it, I would probably tell you, but I don't know if
24 I'm -- we're thinking of the same thing so...

1 Q. Have you reviewed a document that is 115
2 pages long and repeats a bunch of legalese over and
3 over again?

4 A. I saw several documents like that, so
5 unless I saw it, I literally would need to see it, I
6 think, to confirm whether I've seen it or not.

7 Q. Fair enough. Have you reviewed any
8 pleadings?

9 I'm sorry. Strike that.

10 Have you reviewed any expert reports
11 that have been submitted by the plaintiffs in this
12 case?

13 A. Expert reports. Could you clarify what
14 those would be?

15 Q. Sure. Have you reviewed any document
16 purporting to offer opinions, expert opinions by people
17 that have been retained by the plaintiffs in this case?

18 MS. THORNE: Objection.

19 THE WITNESS: On any topic in
20 particular?

21 BY MR. WISNER:

22 Q. Yeah, have you looked at any of them?

23 A. I believe I've seen one.

24 Q. Do you recall which expert report that

1 was?

2 A. It was a report that was published
3 fairly recently on I believe it was the conduct of a
4 clinical trial and how it was disseminated.

5 Q. I got you.

6 You're talking about a publication?

7 A. Yes, appears to be a publication.

8 Q. By Jureidini, is that the name?

9 A. That is the one, yes.

10 Q. Okay. We'll get to that later.

11 A. Okay.

12 Q. I'm asking about something a little
13 different.

14 A. Okay.

15 Q. I'm asking about documents that are on
16 pleading paper like that, that have the Court case on
17 it and reflect expert opinions rendered for the
18 purposes of litigation; have you seen any documents
19 like that?

20 MS. THORNE: Objection.

21 THE WITNESS: Yeah, again, I think I
22 would need to see it to let you know if I've
23 seen it or not.

24 BY MR. WISNER:

1 Q. So your answer is you don't know?

2 A. I don't know.

3 Q. Okay. Have you seen any expert reports
4 generated by Forest's experts?

5 MS. THORNE: Objection.

6 THE WITNESS: Yeah, again, I would need
7 to see the documents to let you know whether
8 I've seen them or not.

9 BY MR. WISNER:

10 Q. All right. Let me just ask you the
11 question. Have you, for example, seen any declaration
12 written by Joseph Glenmullen?

13 A. Not that I'm aware of.

14 Q. Okay. I want to start the deposition
15 focusing on some events that transpired in 2010.

16 You understand that Forest -- Forest
17 Pharmaceuticals pled guilty to various counts under the
18 Food, Drug and Cosmetic Act in 2010?

19 MS. THORNE: Objection.

20 THE WITNESS: Yeah, I'm aware there is
21 an arrangement and an acknowledgment of -- to a
22 misdemeanor of off-label promotion of Celexa in
23 an agreement with the government.

24 BY MR. WISNER:

1 Q. And by "acknowledgment" you mean a plea
2 of guilty, correct?

3 A. Correct.

4 Q. Okay.

5 (Document marked for identification as
6 ForestC Deposition Exhibit No. 3.)

7 BY MR. WISNER:

8 Q. I'm handing you a document that I've
9 marked as Exhibit 3.

10 Have you seen this document before?

11 A. I don't believe I've seen this.

12 Q. This appears to be -- the first page is
13 a secretary's certificate signed by Lawrence S.
14 Olanoff.

15 Do you see that?

16 A. Yes.

17 Q. Do you know who Lawrence Olanoff is?

18 A. I do.

19 Q. Who is he?

20 A. He was at one point the chief medical
21 officer of Forest and ultimately the president of the
22 company.

23 Q. Okay. And then Annex A, which is
24 starting on Page 2, is a resolution of the Board of

1 Directors of Forest Pharmaceuticals, Inc. dated
2 September 14th, 2010.

3 A. Right.

4 Q. Do you see that?

5 A. I do.

6 Q. And you don't recall ever having seen
7 this document before?

8 A. I don't believe so.

9 Q. Okay. Well, if you go down to the
10 paragraph, third one from the bottom, do you see that?
11 Starts with "further resolved," the first one that says
12 "further resolved."

13 A. Yes.

14 Q. It says, "that the company is authorized
15 and directed to plead guilty to the charges specified
16 in the Information."

17 Do you see that?

18 A. I do.

19 Q. Do you understand what the Information
20 is referring to here?

21 A. I'm not clear.

22 Q. Okay. Have you reviewed the Criminal
23 Information that was filed against pharmaceutical in
24 preparation for your testimony today?

1 MS. THORNE: Objection.

2 THE WITNESS: So this would have been
3 the government allegations?

4 BY MR. WISNER:

5 Q. Mm-hmm.

6 A. I have reviewed that document.

7 Q. Okay. And do you understand that that
8 document is called the Criminal Information?

9 MS. THORNE: Objection.

10 THE WITNESS: I believe so. I would
11 need to see it to completely verify.

12 BY MR. WISNER:

13 Q. Okay. The next paragraph reads, it's
14 further resolved, "that the company is authorized and
15 directed to enter into the Settlement Agreement and
16 Release and settlement agreements with individual
17 states as contemplated by the Settlement Agreement and
18 Release and the State Settlement Agreement."

19 Do you see that?

20 A. I do.

21 Q. Are you familiar with the Settlement
22 Agreement and Release that was entered into by Forest
23 in 2010?

24 MS. THORNE: Objection.

1 THE WITNESS: I believe I've seen it,
2 but, again, I would need to verify.

3 BY MR. WISNER:

4 Q. And, in fact, that's actually one of the
5 topics that's on the list today; isn't that true?

6 MS. THORNE: Objection.

7 THE WITNESS: Yes.

8 BY MR. WISNER:

9 Q. Okay. The next paragraph is "Further
10 resolved, that the Officers of the Company, or their
11 authorized representatives (specifically including but
12 not limited to Herschel S. Weinstein, Esquire, Vice
13 President - General Counsel of FLI), are hereby
14 authorized and directed to take all actions and deliver
15 any agreements, certificates, and documents and
16 instruments with respect to or contemplated by the
17 Agreements," and there is a parenthetical that I'm
18 going to skip.

19 A. Yep.

20 Q. "And matters set forth above, including,
21 without limitation, the payment of all amounts, fees,
22 costs, and other expenses, necessary or appropriate to
23 effectuate the purpose and intent of the foregoing
24 resolutions and effectuate and implement the

1 resolutions contemplated hereby."

2 Did I read that generally correctly?

3 A. You read it, yes, verbatim, except for
4 the parenthetical.

5 Q. Is your understanding that Mr. Weinstein
6 was, in fact, authorized to enter a plea and resolve
7 allegations related to the Criminal Information
8 settlement?

9 MS. THORNE: Objection.

10 THE WITNESS: That's what it generally
11 says on the paper.

12 BY MR. WISNER:

13 Q. And resolutions by the Board of
14 Directors, that is an expression and authorization
15 issued by Forest, correct?

16 MS. THORNE: Objection.

17 THE WITNESS: I believe so.

18 (Document marked for identification as
19 ForestC Deposition Exhibit No. 4.)

20 BY MR. WISNER:

21 Q. I'm handing you a document, what I've
22 marked as Exhibit 4. It's going to be a lot of these
23 today, so you should probably find a way to keep them
24 orderly.

1 A. I have them in order face down.

2 Q. And, again, for the record, I apologize
3 that I read so quickly.

4 Okay. Have you seen this document
5 that's been marked as Exhibit 4?

6 A. Just give me a minute to look at it.
7 (Witness reviews document.) I believe I have seen this
8 document.

9 Q. This document is the plea agreement
10 entered into between Forest Pharmaceuticals and United
11 States Department of Justice.

12 A. Right.

13 Q. Turn to the last page on this
14 agreement -- pardon me -- second to last page, it's
15 Number 14 on the top right.

16 A. Yep.

17 Q. It's signed by Herschel Weinstein.
18 Do you see that?

19 A. I do.

20 Q. And he's the individual we saw in
21 Exhibit 3 that was authorized to enter into these
22 agreements on behalf of Forest, correct?

23 A. Yes.

24 Q. All right. Turn back to the first page.

1 MS. THORNE: Brent, sorry to interrupt,
2 do you happen to have a second copy with you?

3 MR. WISNER: I do not. I only made
4 three. I'm sorry.

5 MR. BAUM: You can have mine. Do you
6 need a plea agreement?

7 MR. WISNER: Yeah.

8 MS. THORNE: Thank you.

9 MR. WISNER: Very chivalrous of you,
10 Michael.

11 MS. KIEHN: A good example.

12 BY MR. WISNER:

13 Q. All right. So under the paragraph that
14 starts -- that's titled "Change of Plea."

15 Do you see that?

16 A. Yes.

17 Q. There's a sentence that reads, at the
18 earliest practical date Forest shall waive indictment
19 and plead guilty to the three-count Information
20 attached hereto as Exhibit A.

21 A. Right.

22 Q. Do you see that?

23 A. Yes.

24 Q. Was it your understanding that part of

1 this plea agreement was that Forest would agree to
2 waive any indictment and, in fact, plead guilty to the
3 Criminal Information that had been issued against it?

4 MS. THORNE: Objection.

5 THE WITNESS: And it says, yes, "plead
6 guilty to the three-count Information attached
7 hereto as Exhibit A." I don't have Exhibit A
8 to look at.

9 BY MR. WISNER:

10 Q. I didn't want to create unnecessary
11 documents so I'll show that information shortly. Don't
12 worry.

13 A. Okay.

14 Q. If you go to the sentence at the bottom
15 of Page 1, it's the second to last sentence, it starts
16 "Forest expressly."

17 Do you see that?

18 A. Yes I do.

19 Q. It reads, "Forest expressly and
20 unequivocally admits that it committed these offenses
21 and further admits, with respect to Count One, it acted
22 knowingly and corruptly. Defendant expressly and
23 unequivocally further admits that it is in fact guilty
24 of these offenses, and agrees that it will not make any

1 statements inconsistent with this explicit admission."

2 Do you see that?

3 A. I do.

4 Q. Is it your understanding that Forest
5 agreed to admit that it committed the offenses charged
6 in the Criminal Information?

7 A. Yes.

8 Q. Is it also your understanding that
9 Forest expressly and unequivocally admits that it is
10 guilty of those offenses?

11 MS. THORNE: Objection.

12 THE WITNESS: That's was written on the
13 page.

14 BY MR. WISNER:

15 Q. That's Forest's understanding, correct?

16 A. Yes.

17 Q. Okay. And you also understand that
18 Forest agreed that it will not make any statements
19 inconsistent with this explicit admission.

20 Do you understand that?

21 MS. THORNE: Objection.

22 THE WITNESS: Forest agrees, yes.

23 BY MR. WISNER:

24 Q. Okay. If you can just turn to Page 5

1 under Section 4a it reads, "a criminal fine."

2 Do you see that?

3 A. Yes.

4 Q. It reads "A criminal fine of
5 \$150,000,000 to be imposed as follows."

6 Do you see that?

7 A. Yes.

8 Q. And now Count Three, that's the one that
9 relates to Celexa, right?

10 MS. THORNE: Objection.

11 THE WITNESS: I believe so.

12 MR. WISNER: Sorry. Did I state it
13 incorrectly?

14 BY MR. WISNER:

15 Q. It reads, a criminal fine of
16 150 million, right? I think I might have said
17 something different.

18 A. It does say 150 million. I'm not sure
19 what you said previously.

20 Q. Okay. And then for Count Three the
21 criminal fine listed here in this plea agreement was
22 \$39,500,000; is that right?

23 A. Correct.

24 Q. Is it your understanding that that was

1 the fine imposed on Forest with regards to Count Three?

2 A. Yes.

3 Q. Okay. If you turn to Page 6, the first
4 full paragraph reads "The United States."

5 Do you see that?

6 A. Yes.

7 Q. And it says, "The United States may, at
8 its sole option, be released from its commitments under
9 this Agreement, including, but not limited to, its
10 agreement that this paragraph constitutes the
11 appropriate disposition of this case, if at any time
12 between Forest's execution of this Agreement and
13 sentencing Forest," and I'm going to read these first
14 four bullet points, okay?

15 A. Sure.

16 Q. Either fails to admit a complete factual
17 basis for the plea; fails to truthfully admit its
18 conduct in the offenses of conviction; falsely denies,
19 or frivolously contests, relevant conduct for which
20 Forest is accountable under U.S.S.G. Section 1B1.3; or
21 gives false, misleading testimony in any proceeding
22 related to the criminal conduct charged in this case
23 and any relevant conduct for which Forest is
24 accountable, under U.S.S.G 1B1.3.

1 Do you see that?

2 A. Yes.

3 Q. Is it your understanding that Forest was
4 obligated by this plea agreement to admit a complete
5 factual basis for the plea?

6 MS. THORNE: Objection. This --
7 Mr. Closter is not an attorney, and we
8 allowed -- we agreed to have Forest testify on
9 the factual information that is contained in
10 the plea. We did not agree to allow the
11 company to testify as to legal conclusions
12 drawn based on a legal document. So to the
13 extent that Mr. Closter can speak to this from
14 his own personal knowledge, he can, but he is
15 not going to testify on behalf of the company
16 on the legal meaning of the document.

17 MR. WISNER: Mr. Closter has been called
18 to testify on behalf of Forest. One of the
19 noticed topics, specifically Topic Number 36,
20 relates to this agreement. I asked him if it's
21 Forest's understanding that it had to admit a
22 complete factual basis for the plea. Please
23 answer that question, Mr. Closter.

24 MS. THORNE: I'm just going to state for

1 the record that the topic --

2 MR. WISNER: I believe the record has
3 been made. I don't have time for this.

4 MS. THORNE: I'm going to state for the
5 record that the topic that we agreed to in the
6 meet and confer was the factual -- we agreed to
7 allow Forest to speak to the factual statements
8 made within the plea agreements we did not
9 agree to allow Forest to testify to the legal
10 conclusions.

11 I will allow the witness to answer the
12 question, but I want the objection stated for
13 the record.

14 MR. WISNER: I appreciate the objection,
15 and I think this falls within the purview of
16 the factual predicates of the agreement.

17 BY MR. WISNER:

18 Q. So, Mr. Closter, I'll ask you again, is
19 it Forest's understanding that it is required to admit
20 a complete factual basis for the plea?

21 MS. THORNE: Objection.

22 MS. KIEHN: Was required.

23 THE WITNESS: Just ask me one more time.

24 MR. WISNER: We're going to go off the

1 record for a second.

2 THE VIDEOGRAPHER: We are now off the
3 record. The time is 9:55.

4 (Discussion off the record.)

5 THE VIDEOGRAPHER: We are now back on
6 the record. The time is 9:56.

7 BY MR. WISNER:

8 Q. Is it Forest's understanding that it
9 must admit to a complete factual basis for the plea?

10 MS. THORNE: Objection, misleading,
11 mischaracterizes the document, assumes facts
12 not in evidence, outside the scope.

13 THE WITNESS: It's, you know, my
14 understanding based on what I'm reading off the
15 page.

16 BY MR. WISNER:

17 Q. I'm sorry. Was that a yes?

18 A. Yes, based on my personal interpretation
19 of reading the document, yes.

20 Q. Okay. So, for example, today do you
21 believe Forest is obligated to admit a complete factual
22 basis for the plea?

23 MS. THORNE: Objection. Again, that is
24 outside the scope of the deposition notice.

1 The deposition did not ask --

2 MR. WISNER: That's it. Just stop. We
3 don't have time for the speaking objections.

4 MS. THORNE: No, no. This isn't a
5 speaking objection. This is a 30(b)(6)
6 deposition. You should look at the transcript
7 of your own 30(b)(6) deposition if you really
8 want to raise issues with speaking objections.
9 We agreed to let Mr. Closter speak on behalf of
10 the company with respect to the factual
11 contents of the plea agreement. We did not
12 agree to allow the company to interpret the
13 legal document in front of you. That is for
14 counsel.

15 MR. WISNER: I understand you've made
16 this objection already. Can you just say
17 outside the scope and instruct him either to
18 answer it or not.

19 MS. THORNE: It is outside the scope.
20 To the extent that Mr. Closter can answer the
21 question based on his own personal knowledge,
22 he can do so. I am going to instruct him not
23 to answer on behalf of the company. So any
24 testimony that you get on this question is

1 based on Mr. Closter's personal knowledge and
2 is not on behalf of Forest.

3 BY MR. WISNER:

4 Q. Mr. Closter, would you like me to repeat
5 the question?

6 A. Yes.

7 Q. All right. Is it Forest's understanding
8 that today it is not obligated to admit a complete
9 factual basis for the plea?

10 MS. THORNE: Objection. I'm going to
11 instruct the witness not to answer on behalf of
12 the company. If you have an understanding
13 based on your own personal knowledge, you may
14 answer the question.

15 THE WITNESS: On my own, you know,
16 personal reading of this document, it would
17 appear, I'm not sure on the time frame, I'm not
18 a lawyer to really interpret the document, but
19 it would seem to, you know -- that we would be
20 required to admit a complete factual basis for
21 the plea.

22 BY MR. WISNER:

23 Q. Because that's the truth, right; the
24 truth is important?

1 MS. THORNE: Objection.

2 THE WITNESS: I'm simply reading off the
3 page.

4 MR. WISNER: I know, but you obviously
5 want to tell the truth, right?

6 MS. THORNE: Objection.

7 THE WITNESS: Of course.

8 BY MR. WISNER:

9 Q. Okay. And so regardless of whether or
10 not this agreement required that you admit a complete
11 factual basis pursuant to the agreement, you, speaking
12 for Forest, obviously want to tell the truth of what
13 actually happened, right?

14 A. Sure.

15 Q. Okay. Turn to Page 8. Under a section
16 that says "Cooperation," do you see that?

17 A. Yes.

18 Q. All right. I'm just going to read the
19 first sentence. It says, "Forest shall cooperate
20 completely and truthfully in any trial or other
21 proceeding arising out of any ongoing civil, criminal
22 or administrative investigation of its current and
23 former officers, agents, employees, and customers in
24 connection with the matters described in the

1 Information."

2 Did I read that correctly?

3 A. Yes.

4 Q. This is a section of the agreement that
5 you have previously reviewed, correct?

6 A. I have reviewed this before.

7 Q. Okay. If you go down to the last
8 paragraph on Page 8.

9 A. Yes.

10 Q. It again reads, "Forest expressly and
11 unequivocally further admits that it committed the
12 offenses charged in the Information and is in fact
13 guilty of those offenses. Forest agrees that it will
14 not make any statements inconsistent with this explicit
15 admission of guilt to these offenses. This agreement
16 concerning inconsistent statements is not intended to
17 apply to any statement made by any individual in the
18 course of any criminal, regulatory or civil matter
19 against such individual, unless such individual is
20 speaking on behalf of Forest."

21 Do you see that?

22 A. Yes.

23 Q. And isn't it true you, in fact, are
24 speaking on behalf of Forest today?

1 A. Today I am.

2 Q. Okay. Turn to Page 11, Section 14,
3 "Breach of Agreement."

4 Do you see that?

5 A. Yes.

6 Q. I'll just read the first sentence, "If
7 the United States determines that Forest has failed to
8 comply with any material provision of this Agreement,
9 or has committed any crime following its execution of
10 this Agreement, the United States may, at its sole
11 option, be released from its commitments under this
12 Agreement in its entirety by notifying Forest, through
13 counsel or otherwise, in writing. The United States
14 may also pursue all remedies available under the law,
15 even if it elects not to be released from its
16 agreements under this Agreement."

17 Did I read that correctly.

18 MS. THORNE: Objection. I'm going to
19 state that this is, again, outside the scope of
20 the notice of the deposition as negotiated
21 between the parties. You identified sections
22 of this document that you would address with
23 the witness. We agreed to let the witness
24 testify on behalf of Forest only to those

1 sections. This is not a section that you
2 identified. This is outside the scope.

3 MR. WISNER: Again, this is a very long
4 speaking objection, just listen to my question.

5 MS. THORNE: No, this is not a speaking
6 objection.

7 MR. WISNER: My question was did you
8 read it correctly -- did I read that it
9 correctly?

10 MS. THORNE: Again, you're not even
11 allowed to ask him.

12 MR. WISNER: That's not correct.

13 MS. THORNE: You're not even allowed to
14 ask him about --

15 MR. WISNER: Listen to my questions and
16 make the objection --

17 MS. THORNE: -- something outside the
18 scope of --

19 MR. WISNER: -- when it's appropriate.
20 You are wasting my time and his time.

21 MS. THORNE: I'm not wasting your time.

22 BY MR. WISNER:

23 Q. Mr. Closter, did I read that correctly?

24 MS. THORNE: My objection stands.

1 MR. WISNER: I understand. I'm going to
2 press forward with the question.

3 MS. THORNE: If -- you can answer.

4 You're not answering on behalf of --

5 MR. WISNER: Are you instructing him not
6 to answer if I read it correctly?

7 MS. THORNE: He's not answering on
8 behalf of the company.

9 MR. WISNER: Okay.

10 MS. THORNE: As a person, he can tell
11 you whether you read the document.

12 BY MR. WISNER:

13 Q. Did I read that correctly, Mr. Closter,
14 personally?

15 A. Personally, you read it correctly.

16 Q. And would that somehow differ if you
17 were speaking for the company?

18 MS. THORNE: Objection.

19 BY MR. WISNER:

20 Q. Does the English language change when
21 you're speaking for Forest as opposed to when you're
22 speaking for yourself?

23 MS. THORNE: Objection.

24 THE WITNESS: I'm not sure it matters.

1 MR. WISNER: Talk about frivolous
2 objections.

3 MS. THORNE: Talk about frivolous
4 questions.

5 BY MR. WISNER:

6 Q. My only question to you about this is
7 did you read those two sentences in preparation for
8 your testimony today?

9 A. I reviewed the document, yes.

10 Q. So you did read them?

11 A. Yes, I did.

12 Q. Okay, thank you. That's literally all I
13 wanted to ask.

14 (Document marked for identification as
15 ForestC Deposition Exhibit No. 5.)

16 BY MR. WISNER:

17 Q. I'm going to hand you another document.
18 This is Exhibit 5 to your deposition.

19 All right. Are you familiar with this
20 document, Mr. Closter?

21 A. I believe I've seen this document
22 before.

23 Q. This is, in fact, a side letter
24 agreement between Forest Laboratories and the US

1 Department of Justice?

2 A. Right.

3 Q. And this was signed contemporaneously
4 with the plea agreement that was Exhibit 4?

5 A. Okay.

6 Q. That's a yes?

7 A. If you're telling me that, yes.

8 Q. I mean, look at the dates, if you'd
9 like.

10 A. So I'm comparing this to the plea
11 agreement, which we've just looked at?

12 Q. Yeah.

13 A. Yes, the dates are exactly the same.

14 Q. Okay. So then it was signed
15 contemporaneously with the plea agreement?

16 A. Yes.

17 MS. THORNE: Objection. The document
18 speaks for itself.

19 MR. WISNER: Really?

20 MS. THORNE: Really.

21 BY MR. WISNER:

22 Q. All right. Turn to Page 2. I guess
23 it's the fourth paragraph down, starting with "it is
24 understood."

1 A. Okay.

2 Q. Okay. And it reads, it is understood
3 among the parties to this Side Letter Agreement that
4 the United States' promise not to prosecute Forest
5 Laboratories -- sorry, let me state that again -- that
6 the United States' promise not to prosecute Forest
7 Laboratories is dependent upon and subject to Forest
8 Pharmaceuticals fulfilling its material obligations in
9 the Plea Agreement and Forest Laboratories fulfilling
10 its material obligations herein and in this related
11 Civil Settlement Agreement attached hereto as Exhibit
12 Two.

13 Do you see that?

14 A. Yes.

15 Q. Is it your understanding that
16 satisfaction of the Settlement Agreement and Forest
17 Pharmaceuticals' satisfaction of the plea agreement
18 were a material condition to this side letter
19 agreement?

20 MS. THORNE: Objection. That calls for
21 a legal conclusion. Again, that is outside the
22 scope of the 30(b)(6) deposition notice. We
23 agreed to let the witness testify to the
24 factual information contained within the

1 document. We did not agree to allow the
2 company to testify as to legal conclusions that
3 require counsel. So to the extent that
4 Mr. Closter can interpret the document from a
5 legal perspective in his own personal capacity,
6 he can feel free to do so, but he is not going
7 to testify on behalf of the company to legal
8 conclusions.

9 MR. WISNER: So you're instructing him
10 not to answer the question?

11 MS. THORNE: I am instructing him not to
12 answer the question on behalf of the company,
13 that is accurate.

14 BY MR. WISNER:

15 Q. Okay. Mr. Closter, are you going to
16 follow your counsel's instruction not to answer my
17 question?

18 A. I'm going to, yes.

19 Q. Okay. So you refuse to answer my
20 question on behalf of Forest; is that right?

21 A. Yes.

22 MS. THORNE: Objection.

23 THE WITNESS: That's correct.

24 MR. WISNER: Objection to what? What's

1 the grounds of your objection?

2 MS. THORNE: Seriously, Brent?

3 MR. WISNER: Yeah, I'd like to know the
4 actual grounds for your objection. You just
5 objected to me asking if he's going to follow
6 your instruction. I'd like to know the grounds
7 for that objection.

8 MS. THORNE: You're mischaracterizing
9 his testimony. That's the grounds for my
10 objection.

11 BY MR. WISNER:

12 Q. Mr. Closter, I'm asking you a question,
13 I'm not characterizing your testimony.

14 A. Okay.

15 Q. Are you going to follow your counsel's
16 instructions not to answer my question regarding that
17 sentence and whether or not those were material
18 preconditions to the side letter agreement on behalf of
19 Forest?

20 A. I'm taking counsel's advice.

21 Q. Okay. Would you be willing to answer
22 them on a personal level?

23 A. I'd prefer not to.

24 Q. Why is that?

1 A. I'm not a lawyer. These are legal
2 documents that are beyond the scope of what I am
3 trained to do and understand.

4 Q. Okay. So based on the sentence I just
5 read to you, you don't feel comfortable answering
6 whether or not the satisfaction of the plea agreement
7 signed by Forest Pharmaceuticals and the Settlement
8 Agreement signed by Forest Laboratories were a material
9 condition to the side letter agreement; is that right?

10 A. That's right.

11 MS. KIEHN: He can confirm what's stated
12 on the page, if that's what you're looking for.

13 MR. WISNER: I got his testimony. It's
14 fine.

15 MS. KIEHN: He can't draw -- okay.

16 MR. WISNER: He doesn't feel comfortable
17 answering the question I get it. I understand
18 English can be very scary.

19 BY MR. WISNER:

20 Q. All right. "Cooperation of Forest
21 Laboratories," Section 2, do you see that?

22 A. Yes.

23 Q. All right. It says, "Forest
24 Laboratories shall cooperate completely and truthfully

1 in any trial or other proceeding arising out of any
2 ongoing civil, criminal or administrative investigation
3 of its current and former officers, agents, and
4 employees and customers in connection with matters
5 described above in Paragraph One."

6 Do you see that?

7 A. Yes.

8 Q. Do you understand that Forest is
9 required to cooperate -- was required -- was required
10 to cooperate completely and truthfully as part of the
11 side letter agreement?

12 MS. THORNE: Objection, calls for a
13 legal conclusion. Mr. Closter is not a
14 lawyer --

15 MR. WISNER: We know the objection. I
16 understand it.

17 MS. THORNE: Yeah, we do know the
18 objection.

19 MR. WISNER: Are you instructing him to
20 answer the question or not?

21 MS. THORNE: So I'm going to instruct
22 him not to answer the question to the extent
23 that it calls for a legal conclusion, which it
24 does. The document speaks for itself. If you

1 want him to confirm what's on the page, he can
2 confirm what's on the page.

3 THE WITNESS: I can confirm what's on
4 the page.

5 BY MR. WISNER:

6 Q. I'm sorry. That wasn't my question. My
7 question was --

8 A. What is your question?

9 Q. -- was it your understanding that Forest
10 was required to cooperate completely and truthfully?

11 A. That is my personal opinion, yes.

12 Q. Okay. Is that the opinion of Forest
13 Pharmaceuticals?

14 MS. THORNE: Objection.

15 THE WITNESS: I mean, I'm not speaking
16 on behalf of the company in regards to the
17 question.

18 BY MR. WISNER:

19 Q. So you refuse to answer the question of
20 whether or not Forest believes it had to act
21 truthfully?

22 MS. THORNE: Objection, mischaracterizes
23 the testimony.

24 THE WITNESS: That's right.

1 BY MR. WISNER:

2 Q. Okay. Turn to Page 3. The first -- the
3 third paragraph down starting with "Forest Laboratories
4 acknowledges," do you see that?

5 A. Hang on one second. Forest Laboratories
6 -- I'm sorry. This is --

7 Q. Page 3.

8 A. Page 3.

9 Q. And I guess it's the fourth paragraph
10 down.

11 A. Okay, I got you. Okay, I got it.
12 "Forest Laboratories acknowledges," yeah.

13 Q. There was a hanging paragraph.

14 A. Yep.

15 Q. Okay. "Forest Laboratories acknowledges
16 that Forest Pharmaceuticals expressly and unequivocally
17 admits that it committed the offenses charged in the
18 information, that, with respect to Count One, Forest
19 Pharmaceuticals acted knowingly and corruptly, and that
20 Forest Pharmaceuticals is in fact guilty of those
21 offenses. Forest Laboratories agrees that it will not
22 make any statements inconsistent with this explicit
23 admission of guilt by Forest Pharmaceuticals to these
24 offenses."

1 Did I read that correctly?

2 A. Yes.

3 Q. Okay. Forest Laboratories, in fact,
4 acknowledges that Forest Pharmaceuticals was expressly
5 and unequivocally guilty of the offenses charged in the
6 information, correct?

7 MS. THORNE: Objection, calls for a
8 legal conclusion. I'm going to instruct the
9 witness not to answer. We agreed to allow the
10 witness to testify as to the factual subject
11 matter in these documents. We did not agree to
12 allow the witness to draw legal conclusions for
13 you based on the document. The document speaks
14 for itself. Mr. Closter can confirm what's on
15 the page.

16 MR. WISNER: Ms. Thorne, is it your
17 position that whether or not someone is guilty
18 of an offense is not a factual question.

19 MS. KIEHN: He already answered that
20 question.

21 MS. THORNE: He's already answered that
22 factual question.

23 MR. WISNER: So your objection is asked
24 and answered; is that right?

1 MS. THORNE: No, because at this point
2 you're asking him to interpret the document.

3 MR. WISNER: I asked you whether or not
4 Forest Pharmaceuticals is guilty --

5 MS. THORNE: First of all, I'm not the
6 one testifying here, so you don't get to
7 announce your questions to me that way. If you
8 have question for the basis of my objection,
9 I'm giving it to you. You already asked him
10 the factual question.

11 MR. WISNER: I'm asking you is the
12 question of whether or not Forest
13 Pharmaceuticals is guilty, is it your position
14 that that's not a factual question?

15 MS. THORNE: That's not the question you
16 just asked.

17 BY MR. WISNER:

18 Q. All right. Let me ask the question to
19 you, Mr. Closter. Is Pharmaceuticals unequivocally and
20 expressly guilty of the offenses charged in the
21 Criminal Information?

22 MS. THORNE: Objection, asked and
23 answered.

24 THE WITNESS: From what I can read on

1 the document, yes.

2 BY MR. WISNER:

3 Q. In fact, on behalf of Forest, that's
4 factually true, correct?

5 MS. THORNE: Objection, asked and
6 answered.

7 THE WITNESS: Yes.

8 BY MR. WISNER:

9 Q. Okay. All right. I'm handing you a
10 document which I've marked as Exhibit 6 to your
11 deposition.

12 (Document marked for identification as
13 ForestC Deposition Exhibit No. 6.)

14 BY MR. WISNER:

15 Q. Do you recognize this document?

16 A. I do.

17 Q. What is it?

18 A. I believe this was the arraignment with
19 the government, also known as the allocution.

20 Q. Okay. And this arraignment occurred on
21 November 19th, 2010, correct?

22 A. Correct.

23 Q. And it was before the Honorable Nancy
24 Gertner?

1 A. Yes.

2 Q. And this was in the United States
3 District Court for the District of Massachusetts,
4 correct?

5 A. Yes.

6 Q. All right. If you turn to Page 3, I'm
7 going to start on Line 17.

8 A. Okay.

9 Q. The Court asks, all right. Then I
10 suppose Mr. Weinstein should stand first. Please
11 before you take the plea, Mr. Weinstein, tell me again
12 and put on the record what your position is and how you
13 bind the company.

14 He responds, I am vice president,
15 general counselor of Forest Pharmaceuticals and its
16 parent, Forest Laboratories.

17 The Court asks, do you have the
18 authority to bind the company to this plea agreement
19 and this plea?

20 Mr. Weinstein says, yes, I do.

21 Did I read that correctly?

22 A. You read a couple words that were --

23 MS. THORNE: There were one or two that
24 were off, for the record.

1 THE WITNESS: You had a please before in
2 the Court in Line 2, and then I think the last
3 line, Line 24, instead of so you have, you said
4 do you have.

5 MR. WISNER: I'm sorry. Thank you for
6 correcting my words.

7 BY MR. WISNER:

8 Q. With those corrections, did I read them
9 correctly?

10 A. Yes.

11 Q. Was it your understanding that
12 Mr. Weinstein was, in fact, empowered to enter a plea
13 on behalf of Forest Pharmaceuticals at this
14 arraignment?

15 A. That is true.

16 Q. Okay. Turn down to Line 13 and 14.
17 Do you see that?

18 MS. THORNE: On which page, Brent?

19 MR. WISNER: On Page 4, sorry.

20 THE WITNESS: Yes.

21 BY MR. WISNER:

22 Q. It says, "Forest Laboratories, Inc.
23 through Herschel Weinstein was sworn."

24 Do you see that?

1 A. Yes.

2 Q. So Mr. Weinstein was, in fact, placed
3 under oath speaking on behalf of Forest Laboratories?

4 A. It appears --

5 MS. THORNE: Objection.

6 THE WITNESS: It appears that way.

7 BY MR. WISNER:

8 Q. Okay. Then as you see from Lines 15
9 through 22, the clerk reads the offenses in the
10 Information and Mr. Weinstein pleads guilty, correct?

11 MS. THORNE: Objection.

12 THE WITNESS: Yes, on Line 23.

13 BY MR. WISNER:

14 Q. Exactly. All right. And then if you
15 look at Line 25 going on the next page, the Court says,
16 "Why don't you take the stand, Mr. Weinstein."

17 Do you see that?

18 A. Yes.

19 Q. Is it your understanding that
20 Mr. Weinstein, in fact, not only was under oath but
21 that he actually took the stand during this
22 arraignment?

23 MS. THORNE: Objection.

24 THE WITNESS: It appears that way from

1 the document.

2 BY MR. WISNER:

3 Q. Now, if you turn to Page 6 on Line 5.

4 A. Okay.

5 Q. The Court says, counsel, will you give
6 me a description of the charges and what the facts are.

7 Do you see that?

8 A. Yes.

9 Q. And in response to that question,
10 Mr. Arnold begins speaking.

11 Do you see that?

12 A. Yes.

13 Q. And then if you look at the line -- the
14 end of his -- starting on Page 14, Mr. Arnold says,
15 "I'm also going to give you Count 2 because I'm going
16 to be discussing certain facts pertaining to both
17 Counts 1 and 2 together."

18 Do you see that?

19 A. Line 14, right.

20 Q. Yeah, sorry, 14 through 16; is that
21 right?

22 A. Yes.

23 Q. And the Court says okay, right?

24 MS. THORNE: Brent, what page are we on

1 at this point? I'm sorry.

2 MR. WISNER: Page 6.

3 THE WITNESS: He said Page 14. He meant
4 Line 14.

5 BY MR. WISNER:

6 Q. Page 6, Line 17 at this point.

7 A. Seventeen.

8 Q. The Court says okay, right?

9 A. Yes.

10 Q. And then Mr. Arnold then proceeds for
11 several pages all the way until Page 14, Line 13.

12 Do you see that?

13 A. Yes.

14 Q. And then at the very end on Line 12,
15 Mr. Arnold says, "With respect to Count 3, I'm going to
16 ask that Mr. Steger provide that to the Court."

17 Do you see that?

18 A. Yes.

19 Q. The Court says, "that's fine. Go on."
20 And then Mr. Steger begins speaking, do
21 you see that?

22 A. I do.

23 Q. And then Mr. Steger then proceeds to
24 discuss the allegations and facts related to Count 3?

1 MS. THORNE: Objection.

2 THE WITNESS: Yeah, I mean, I have to
3 read forward if it refers to allegations and
4 facts, then --

5 BY MR. WISNER:

6 Q. You haven't read this?

7 A. I have.

8 Q. Okay. And you've read in anticipation
9 of testifying today, right?

10 A. I did.

11 Q. Okay. And so you've -- I assume you've
12 read, starting on Line 15 through to Page 18, Line 19;
13 is that fair?

14 A. I have. I mean, I haven't memorized it.

15 Q. Sure.

16 A. I am familiar with the information.

17 Q. And, generally, a bunch of allegations
18 and facts are relayed in those pages, correct?

19 MS. THORNE: Objection.

20 THE WITNESS: I believe so. I'd prefer
21 to read it and give you a firm conclusion, but
22 I believe you're characterizing the
23 information.

24 BY MR. WISNER:

1 Q. Sure. We'll get into the facts in a
2 minute. I just wanted to sort of get to the next part
3 before that.

4 A. Sure.

5 Q. All right. Then in response on Page 18,
6 Line 22, the Court says, so there are two questions
7 that I will ask with respect to that --

8 A. One second, so Page 18, Line 22.

9 Q. Yeah.

10 A. Okay.

11 Q. The Court says, "So there are two
12 questions that I will ask with respect to that
13 presentation."

14 Do you see that?

15 A. Yes.

16 Q. And then there is a discussion here
17 about -- don't worry about that. Turn to Page 20, Line
18 18.

19 A. Okay.

20 Q. Line 18, the Court then asks, "Then
21 likewise the allegations that were made by both
22 counsel, are these facts true?"

23 Did I read that correctly?

24 A. You did.

1 Q. And Mr. Weinstein responds, "they're
2 consistent with what I believe the facts to be,"
3 correct?

4 A. Correct.

5 Q. Mr. Weinstein at that point was speaking
6 on behalf of Forest Laboratories?

7 MS. THORNE: Objection. He was speaking
8 on behalf of Forest Pharmaceuticals.

9 THE WITNESS: Repeat the question.

10 BY MR. WISNER:

11 Q. No. Actually, my question is Forest
12 Laboratories. He was speaking on behalf of Forest
13 Laboratories?

14 MS. THORNE: Objection, mischaracterizes
15 the document, assumes facts not in evidence.

16 BY MR. WISNER:

17 Q. I draw your attention to Page 4, Line 13
18 through 14 states that Mr. Weinstein was sworn in on
19 behalf of Forest Laboratories, right?

20 That's what it says, right?

21 A. That is what it says.

22 Q. Okay. So I'll ask the question again.

23 When Mr. Weinstein said -- let's go back
24 to Page 20 -- the Court asks, "Then likewise the

1 allegations that were made by both counsel, are these
2 facts true?" Mr. Weinstein responds, "they're
3 consistent with what I believe the facts to be."

4 Do you see that?

5 A. Yes.

6 Q. At that point, based on these
7 transcripts, Mr. Weinstein was speaking on behalf of
8 Forest Pharmaceuticals -- I'm sorry -- Forest
9 Laboratories?

10 MS. KIEHN: Objection. The plea was
11 being entered by Forest Pharmaceuticals.

12 MR. WISNER: I understand. My question
13 still stands.

14 THE WITNESS: Based on the transcript,
15 it appears that way.

16 BY MR. WISNER:

17 Q. Okay. But it's your understanding that
18 Mr. Weinstein was actually supposed to be speaking on
19 behalf of Forest Pharmaceuticals; is that right?

20 MS. KIEHN: Objection.

21 MS. THORNE: Objection.

22 THE WITNESS: I'm not -- you know, based
23 on my -- you know, general knowledge, I
24 couldn't say for sure whether he was speaking

1 on behalf of Forest Pharmaceuticals or
2 Laboratories, that's just beyond the scope of
3 what I would know.

4 BY MR. WISNER:

5 Q. We saw the resolution by the company,
6 right?

7 MS. THORNE: Objection.

8 BY MR. WISNER:

9 Q. Do you want to go back and look at it?

10 MS. KIEHN: He testified he doesn't
11 know. Move on.

12 BY MR. WISNER:

13 Q. Okay. Let's go back to Exhibit --

14 MS. KIEHN: He's not going to interpret
15 this document with your questions about titles,
16 et cetera. Everyone knows the plea was entered
17 by FPI. You're trying to trick him into
18 saying --

19 MR. WISNER: I asked --

20 MS. KIEHN: -- that FLI entered the
21 plea. I'm not going allow it. It's what I'm
22 concerned about.

23 MR. WISNER: I asked him his
24 understanding was in fact that Forest

1 Pharmaceuticals -- he was speaking on behalf of
2 Forest Pharmaceuticals.

3 MS. KIEHN: He doesn't have an
4 understanding about that. He said he doesn't
5 know.

6 MS. THORNE: The document is --

7 MR. WISNER: I was trying to clarify the
8 record for you.

9 MS. THORNE: The document speaks for
10 itself.

11 MS. KIEHN: All of these documents speak
12 for themselves.

13 BY MR. WISNER:

14 Q. Okay, okay. So my question to you is
15 you said a second ago that the document appears to say
16 that Mr. Weinstein was speaking on behalf of Forest
17 Laboratories, right?

18 A. Based on what the document says.

19 Q. But it's your understanding that
20 Mr. Weinstein was entering an allocution plea on behalf
21 of Forest Pharmaceuticals, correct?

22 MS. THORNE: Objection.

23 MS. KIEHN: You're asking him legal
24 questions, but to the extent you can answer, go

1 ahead and answer.

2 MR. WISNER: That's a factual question
3 about what happened.

4 MS. KIEHN: No, it's not, no, who's
5 speaking on behalf of who now?

6 MR. WISNER: Enough speaking objections.

7 BY MR. WISNER:

8 Q. Are you going to answer my question?

9 A. I don't know the answer.

10 Q. Okay. You don't know who Mr. Weinstein
11 was speaking on behalf of?

12 A. It's not clear to me.

13 Q. Okay. Then the Court asks, okay --

14 A. I'm sorry. Which page are we on?

15 Q. Oh, we're still on Page 20. Now we're
16 on Line 22.

17 A. Okay.

18 Q. The Court then asks, "Okay. So
19 essentially the corporation is pleading guilty to these
20 charges because it is guilty and for no other reason?"

21 And Mr. Weinstein says, "that's
22 correct."

23 Do you see that?

24 A. I do.

1 Q. Okay. All right. I want to go back to
2 the facts that were presented that Mr. Weinstein
3 admitted were true, okay?

4 A. Okay.

5 Q. Let's start on Page 15, Lines 4 -- Line
6 4. Let me know when you're there.

7 A. I'm there.

8 Q. Okay. Now, just for context, if you
9 want to look at Page 14 to get oriented, this is during
10 Mr. Steger's presentation.

11 Do you see that?

12 A. Yes.

13 Q. Okay. So on Page 15, Line 4 it says,
14 "In 1998, FDA approved Celexa for the treatment of
15 adult depression."

16 Do you see that?

17 A. Yes.

18 Q. That's true?

19 A. That is true.

20 Q. Okay. "The FDA never approved Celexa
21 for the treatment of any condition other than adult
22 depression or for any use in children or adolescents."

23 That's true, right?

24 MS. THORNE: Objection. Was that true?

1 MR. WISNER: Whether that's true today.

2 BY MR. WISNER:

3 Q. Is that true?

4 A. All right. So your question is is it
5 true today that Celexa was never approved for the
6 treatment of any condition other than adult depression
7 or for any use in children or adolescents?

8 Q. Yeah.

9 A. I believe that's true.

10 Q. Okay. The next sentence reads,

11 "Following FDA approval, Forest began promoting,
12 distributing and selling Celexa through the United
13 States, including the District of Massachusetts."

14 Is that true?

15 A. I believe it is.

16 Q. Okay. Great.

17 The next sentence reads, "The United
18 States would have shown that Forest was aware that the
19 FDA had not approved Celexa for treatment of any
20 condition other than adult depression."

21 Is that true?

22 MS. THORNE: Objection.

23 MS. KIEHN: Objection. He's not going
24 to testify as to what the United States would

1 have shown. If you're asking him if Forest was
2 aware, he can answer that question.

3 BY MR. WISNER:

4 Q. Was Forest aware that the FDA had not
5 approved Celexa for the treatment of any condition
6 other than adult depression?

7 A. That is true.

8 Q. Okay. "In or about April 2002, Forest
9 Labs in an attempt to obtain, among other things, a
10 pediatric indication for Celexa submitted data to the
11 FDA from two double-blind placebo controlled study
12 involving the use of Celexa in children."

13 Is that statement true?

14 A. That is true.

15 Q. Okay. "One of these studies, the Forest
16 study, was sponsored by Forest Labs."

17 Is that true?

18 A. Yes.

19 Q. Okay. "The Forest study indicated that
20 Celexa was more effective than placebo in treating
21 pediatric patients suffering from depression."

22 Is that true?

23 A. Yes.

24 Q. "The other study, the European study,

1 had been conducted in Europe and sponsored by the
2 Danish company that had developed and owned the rights
3 to Celexa."

4 Is that true?

5 A. That's true.

6 Q. All right. "The European study had
7 negative results, that is, the study did not show
8 Celexa to be any more effective than placebo in
9 treating pediatric depression."

10 That is true, right?

11 A. That is true.

12 Q. Okay. "On or about September 23rd,
13 2002, the FDA denied Forest Labs' request for a
14 pediatric indication for Celexa."

15 That is true, correct?

16 A. I believe that's true.

17 Q. All right. Now, I'm just going to ask
18 you if you read the next sentence, it ends with "Forest
19 was aware that promoting a drug product for indications
20 other than those approved by the FDA was illegal."

21 Is that something that Forest was aware
22 of?

23 A. We were aware of that.

24 Q. Okay. Then it reads beginning in -- I'm

1 skipping the United States, whatever they're
2 demonstrating because I'm not interested in what the
3 United States would or would not have done. I'm
4 interested in what is true.

5 Beginning in 1998 and continuing
6 thereafter through at least September 2002, Forest
7 promoted Celexa for use in treating depression in
8 adolescents suffering from depression, even though
9 Celexa was not FDA approved for pediatric use.

10 Is that true?

11 MS. THORNE: Brent, you misread that one
12 a little bit.

13 MR. WISNER: I'll read it again.

14 MS. THORNE: Yeah, sorry.

15 MR. WISNER: Sorry. Didn't get all my
16 coffee this morning.

17 BY MR. WISNER:

18 Q. "Beginning in 1998 and continuing
19 thereafter through at least September 2002, Forest
20 promoted Celexa for use in treating children and
21 adolescents suffering from depression, even though
22 Celexa was not FDA approved for pediatric use."

23 Is that true?

24 A. I mean, are you asking as a corporate

1 entity Forest, or there were some representatives
2 within the company that were doing it in a fashion that
3 wasn't consistent with how we promoted our products?

4 Q. I'm asking if the sentence that was
5 alleged here by the United States against Forest during
6 the arraignment was true?

7 A. I believe we agreed to this.

8 Q. Okay. It continues, Forest's off-label
9 promotion consisted of various sales techniques
10 including directing Forest sales representatives who
11 promoted Celexa to make sales calls to physicians who
12 treated children and adolescents promoting Celexa by
13 various Forest's sales representatives for use in
14 children and adolescents, hiring outside speakers to
15 talk to pediatricians, child psychiatrists and other
16 medical practitioners who specialized in children and
17 adolescents about the benefits of prescribing Celexa to
18 that patient population and for publicizing and
19 circulating the positive results of the double-blind
20 placebo controlled Forest study on the use of Celexa in
21 adolescents while at the same time failing to disclose
22 the negative results of the second double-blind placebo
23 controlled European study on the use of Celexa in
24 adolescents.

1 MS. THORNE: Brent, you said disclosed
2 but it should have been discuss.

3 MR. WISNER: Thank you.

4 BY MR. WISNER:

5 Q. Changing that word to discuss as opposed
6 to disclosed, is that true?

7 A. This is true.

8 Q. Okay. With respect to the speaking
9 engagements, for example, the United States would have
10 introduced evidence -- with respect to the speaking
11 engagements, for example, four sales representatives
12 and division managers identified speakers from lists
13 maintained and approved by Forest to organize
14 promotional lunches and dinners as part of which
15 speakers were paid to give a talk about Celexa.

16 MS. THORNE: You said four, not Forest,
17 right?

18 MR. WISNER: Yes.

19 BY MR. WISNER:

20 Q. Is that true?

21 A. You're saying would the United States
22 have introduced that evidence, or is there evidence?

23 Q. I'm asking is there evidence
24 establishing that four sales representatives --

1 MS. KIEHN: Well, I wouldn't ask if
2 there's evidence establishing, just does he
3 agree with that statement.

4 MR. WISNER: Fine.

5 BY MR. WISNER:

6 Q. Do you agree that that statement is
7 true?

8 A. I agree the statement is true.

9 Q. Okay. "Certain of Forest approved
10 speakers were medical practitioners who specialized in
11 treating children and adolescents suffering from
12 depression, and Forest paid these practitioners to give
13 promotional talks on the use of Celexa in children and
14 adolescents."

15 Is that true?

16 A. This is true.

17 Q. Okay. "In or about mid-2001, Forest
18 learned of the positive results from the Forest study
19 and the negative results from the European study, and
20 Forest Labs shared these results with the FDA."

21 Is that true?

22 A. That is true.

23 Q. "Forest treated the studies
24 differently." I'm just going to -- because I think --

1 I'm going to read the next sentence as well because I
2 think that sentence by itself is a bit ambiguous.

3 A. Okay.

4 Q. "Forest treated the studies differently.
5 Forest publicized and promoted the results from the
6 positive Forest study while at the same time Forest did
7 not publicize or disclose the results of the negative
8 study to persons outside the FDA or the Danish company
9 which sponsored the negative study."

10 Is that true?

11 A. This is true.

12 Q. "Forest did this in various ways
13 including via certain discussions that Forest sales
14 representatives had with medical practitioners about
15 the use of Celexa in treating children, via certain
16 promotional speeches made by pediatric specialists who
17 were hired by Forest to talk about the use of Celexa in
18 treating children and adolescents and via letters sent
19 by Forest Professional Affairs Department to medical
20 practitioners who had requested from Forest all
21 available information and data concerning the use of
22 Celexa in treating children and adolescents."

23 Is that true?

24 A. This is true.

1 Q. Okay. And is it also true that this
2 violation occurred beginning as early as 1998 and
3 continued through in or about December 2002 and that
4 during this time period Forest delivered for
5 introduction into interstate commerce and caused the
6 delivery for introduction into interstate commerce into
7 Massachusetts and elsewhere various quantities of
8 Celexa for unapproved use in pediatric and adolescent
9 patients which was misbranded in that Celexa's labeling
10 lacked adequate direction for use. Is that true?

11 A. Yes.

12 Q. All right.

13 (Document marked for identification as
14 ForestC Deposition Exhibit No. 7.)

15 BY MR. WISNER:

16 Q. All right. I'm going to hand you a
17 document that's been marked Exhibit 7.

18 Are you familiar with this document?

19 A. I am.

20 Q. You, in fact, reviewed this document in
21 preparation for your testimony today?

22 A. I did.

23 Q. This is the Information that was filed
24 against Forest Pharmaceuticals, correct?

1 A. I believe so.

2 Q. And this was filed by the US Department
3 of Justice?

4 A. United States -- I assume so. It says
5 the United States of America.

6 Q. Fair enough. It was filed by the United
7 States of America?

8 A. Yes.

9 Q. All right. I'm just going to draw your
10 attention to Page 22 of -- sorry 21 of the Information.

11 A. Okay.

12 Q. And starting on Page 21 and continuing
13 through to Page 28, Paragraphs 35 through 71?

14 A. I'm sorry, Paragraphs?

15 Q. Fifty-five through 71 reflect Count
16 Three of the Information, correct?

17 MS. THORNE: Objection, calls for a
18 legal conclusion.

19 THE WITNESS: Appears that way.

20 BY MR. WISNER:

21 Q. Okay. And you have reviewed the various
22 allegations made in these paragraphs in preparation for
23 your testimony today?

24 A. I have.

1 Q. Can you please identify which one of
2 these allegations are untrue?

3 A. So you want me to look through this
4 entire document?

5 Q. I assume you already have.

6 MS. KIEHN: You're going have to go line
7 by line --

8 THE WITNESS: Well, I'd have --

9 MS. KIEHN: -- if you want to do that.

10 THE WITNESS: Yeah, I would need to read
11 through it.

12 BY MR. WISNER:

13 Q. Okay. So you're telling me you can't
14 identify which ones are untrue in this --

15 A. If you'd like me to read through it, I
16 can do that.

17 Q. Okay. Great. We'll go off the record.

18 A. It's going to take some time.

19 MR. WISNER: We'll go off the record.

20 THE VIDEOGRAPHER: We are now off the
21 record. The time is 10:31.

22 (Brief recess.)

23 THE VIDEOGRAPHER: We are now back on
24 the record. The time is 11:05.

1 BY MR. WISNER:

2 Q. Mr. Closter, did you have a chance to
3 review the Criminal Information regarding the
4 allegations in Count Three?

5 A. I have.

6 Q. Are you prepared to specify which ones
7 Forest believes are incorrectly stated or untrue?

8 A. Yes.

9 Q. All right. Which ones are those?

10 A. So we can begin on Page 23.

11 Q. Okay.

12 A. This would be Number 60.

13 Q. All right. Is it under the block quote?

14 A. Yeah. I mean, I think the part of it
15 that we would object to is "Forest Pharmaceuticals did
16 not adopt this draft document, nor did it for several
17 years thereafter require sales representatives to sign
18 a document that discussed the prohibition against
19 off-label marketing."

20 Q. What is incorrect about that allegation?

21 A. I guess the fact that it's true, we did
22 not adopt the draft of the document, but that's only
23 because we had a policy in place that was well
24 characterized that was well known by the sales force

1 and reiterated many, many times over the years. So it
2 was felt that we didn't -- we didn't need to adopt that
3 document for the purposes as described.

4 Q. Would it be fair to say that it's
5 Forest's position that they had a policy or -- a policy
6 in place that was essentially the same prohibiting
7 off-label promotion?

8 A. Yes.

9 Q. Okay. What other paragraphs do you
10 disagree with?

11 A. So we can move to Page 24, so this would
12 be -- I guess Number 63.

13 Q. Okay.

14 A. So reading down, there's a
15 characterization of "thousands of child psychiatrists,"
16 it's about the fifth or sixth line down in that
17 paragraph.

18 Q. Yes, it says, these -- I'll just read it
19 into the record. "These Celexa 'call panels' included,
20 among others, thousands of child psychiatrists and
21 pediatricians who specialized in treating children and
22 adolescents."

23 A. Yes, so the use of the word thousands,
24 I'm not -- I don't know what that's referring to. Is

1 that tens of thousands, hundreds, thousand? So I don't
2 believe that's an accurate characterization.

3 Q. What would be an accurate
4 characterization? Would it be under 10,000?

5 A. Absolutely, much below 2,000 all in.

6 Q. So it would be fair to say between 1 and
7 2,000?

8 A. Yes.

9 Q. So it is over 1,000, but it's not above
10 2,000; is that a fair characterization?

11 A. That's right.

12 Q. Okay. Is there the next issue?

13 A. The next one is really the line after
14 that, "Forest Pharmaceuticals also directed its Celexa
15 sales representatives to call on physicians on worked
16 in the pediatric wards of hospitals."

17 Q. Okay. Is that incorrect?

18 A. I believe that's incorrect.

19 Q. So it's your testimony that Forest
20 Pharmaceuticals did not direct Celexa sales
21 representatives to call on physicians who worked in the
22 pediatric wards of hospitals?

23 A. That's right.

24 Q. Did Forest direct its sales

1 representatives to call on physicians that worked at
2 pediatric hospitals?

3 A. I would have to double check to see if
4 those physicians were on the call panel that worked at
5 pediatric hospitals, so I don't know.

6 Q. And how do you know that that allegation
7 is incorrect? Have you reviewed the call panels to see
8 whether or not there was any physicians within a
9 pediatric ward within the hospitals that were called?

10 MS. KIEHN: Objection. He prepared for
11 this deposition through reviewing documents as
12 well as conversations with counsel, but he's
13 not going to testify as to what he may have
14 learned through counsel.

15 MR. WISNER: Absolutely.

16 BY MR. WISNER:

17 Q. If your answer to that question would
18 involve conversations you had with counsel, I'm not
19 interested.

20 A. Right.

21 Q. I'm just asking, did you look -- is it
22 your understanding that why that sentence is wrong
23 based on conversations you've had with counsel?

24 A. I haven't seen any information whereby

1 we directed representatives to call on pediatric wards
2 of hospitals.

3 Q. Okay. And independent of any
4 conversations you had with counsel regarding the truth
5 or accuracy of that sentence --

6 A. Right.

7 Q. -- do you have any independent knowledge
8 about whether or not Forest directed sales
9 representatives to call on physicians at pediatric
10 hospitals, slightly different than this sentence there?

11 A. Yeah, I'm not aware of any.

12 Q. Okay. But you are aware that Forest did
13 direct sales representatives to call upon pediatric
14 psychiatrists as well as pediatricians, correct?

15 MS. THORNE: Objection, leading.

16 THE WITNESS: There were physicians on
17 the panel that IMS had designated, probably
18 based on their academic training, that they
19 were -- had some sort of child specialty, and
20 they were on the overall call panel, along with
21 tens of other types of physicians, including
22 psychiatrists and primary care physicians.

23 MR. WISNER: Okay. I just want to
24 respond to your objection of leading. I'm

1 declaring this witness a hostile witness
2 pursuant to Federal Rule of Evidence 611(c)(2),
3 as he is testifying on behalf of an adverse
4 party, so I do believe I am entitled to lead?

5 MS. THORNE: We would disagree with
6 that, but that's fine.

7 MR. WISNER: Okay. All right. If you
8 want to keep making leading objections, you're
9 welcome to, but you can say that objection is
10 standing. I just would like to avoid, but it's
11 your call.

12 BY MR. WISNER:

13 Q. All right. What other paragraphs or
14 sentences do you disagree with in these sections?

15 A. Sure. So 64, which is immediately after
16 what we just talked about, during sales calls, various
17 Forest Pharmaceuticals sales representatives, acted at
18 times with the knowledge and encouragement of their
19 Division Managers and Regional Directors.

20 I don't know what it means by "various."
21 Any use of, you know, the plural sales representatives,
22 you know, I believe we're aware of a couple division
23 managers and perhaps one regional director was
24 involved. This makes it appear that there are many

1 more than that.

2 Q. How many divisional managers were
3 involved?

4 A. We're aware of two.

5 Q. Okay. And how many regional directors
6 were involved?

7 A. One.

8 Q. Just one, okay.

9 So Forest -- so you're saying that
10 Forest admits that at least two division managers and
11 at least one regional director were involved, but
12 you're not willing to admit that there was any
13 additional ones; is that fair?

14 MS. THORNE: Objection.

15 THE WITNESS: That's fair.

16 BY MR. WISNER:

17 Q. Okay. What else?

18 A. Further down on that page at the bottom,
19 "Forest Pharmaceuticals sales representatives often
20 documented these details through 'call notes,'
21 thousands of which reflected off-label promotional
22 activity directed at the use of Celexa in children and
23 adolescents.

24 You know, I don't know what evidence

1 that, you know, the government had in this regard. You
2 know, we talk about, you know, call notes. They
3 weren't mandatory. There was no acceptable format.
4 The call notes, if you looked at them, were very
5 different from representative to representative. We
6 don't know if those were things that actually happened.
7 We don't know the context. It also reflects thousands,
8 but understand that's against the panel of upwards of
9 50 million call notes. So in the end whatever those
10 notes would have suggested, there's not very many of
11 them as it relates to the whole body of call notes that
12 exists for all their activity that happened to be
13 recorded through call notes.

14 Q. So just to clarify, it's Forest's
15 position that it cannot endorse the veracity of any
16 statements made in a particular call note because
17 Forest was not there; is that right?

18 A. That's correct. There's no actual
19 recording other than what the representative may have
20 recorded.

21 Q. Okay. Now, when a call note is made,
22 though, it is made generally at around the time that
23 the call on the physician occurred, right?

24 MS. THORNE: Objection.

1 THE WITNESS: Yeah, we don't know that.

2 BY MR. WISNER:

3 Q. Okay. That was the training -- sales
4 representatives were trained to input their call notes
5 shortly thereafter a call on a physician?

6 MS. THORNE: Objection.

7 THE WITNESS: I mean, I haven't seen any
8 training on call notes, personally.

9 BY MR. WISNER:

10 Q. I mean, you worked in marketing for a
11 long time, right?

12 A. Yes, I have.

13 Q. And, in fact, you helped develop
14 tactical plans related to sales of Celexa -- I'm
15 sorry -- of Lexapro, right?

16 MS. THORNE: Objection. Are you asking
17 Mr. Closter in his personal capacity at this
18 point, or are you asking him as a company
19 representative?

20 MR. WISNER: Obviously, I'm asking in
21 his personal capacity.

22 MS. THORNE: Just to make the record
23 clear.

24 MR. WISNER: Sure.

1 THE WITNESS: Yes.

2 BY MR. WISNER:

3 Q. Okay. And during the time in your
4 involvement in those planning and strategy sessions,
5 was it understood amongst people within sales as well
6 as in marketing that sales representatives were
7 supposed to document their sales calls in call notes
8 contemporaneously with their calling upon that
9 physician?

10 MS. THORNE: Objection. Again, are you
11 asking Mr. Closter in his personal capacity at
12 this point, or are you asking him as a Forest
13 30(b)(6) witness?

14 MR. WISNER: Both.

15 MS. THORNE: Okay.

16 THE WITNESS: Personally, I'm on the
17 marketing and not on the sales end, but I'm not
18 aware of any formal or written training on call
19 notes.

20 BY MR. WISNER:

21 Q. Okay. But my question was was it
22 generally understood within Forest that sales notes or
23 call notes were to be made contemporaneously with
24 visits on those calls?

1 MS. THORNE: Objection.

2 THE WITNESS: I don't know if there was
3 a direction as to when to record those call
4 notes, which means they could have occurred
5 after the call, immediately after, they could
6 have occurred at the end of the day, the end of
7 the week or even the end of the month, and part
8 of that depended on the local level, you know,
9 what was the expectation of the divisional
10 manager, and for some representatives it was,
11 you know, merely to appease their manager. So,
12 you know, you could question what was in those
13 call notes if they were merely doing it so
14 their boss could see that they had some record
15 of activity.

16 BY MR. WISNER:

17 Q. Again, I guess my question is was it
18 generally understood, though, that sales
19 representatives would make call notes contemporaneously
20 with their calls?

21 MS. THORNE: Objection, asked and
22 answered. Mr. Closter has already answered the
23 question.

24 BY MR. WISNER:

1 Q. My question is pending, Mr. Closter.

2 A. Yeah, I don't think it's generally
3 accepted. I don't -- I think it was too variable.

4 Q. And the variation was either at that
5 same day or within a month?

6 MS. THORNE: Objection.

7 THE WITNESS: Or longer. I couldn't --
8 I wasn't in that capacity. You have to
9 interview a series of sales reps to see what
10 their behavior was.

11 BY MR. WISNER:

12 Q. Have you ever heard of a sales rep who
13 entered in his call note six months after the fact?

14 MS. THORNE: Objection, objection. I'm
15 going to object because that's, at this point,
16 outside the scope of the 30(b)(6) notice. You
17 are clearly Mr. Closter a question based on his
18 own personal knowledge, so to the extent
19 Mr. Closter can answer based on his own
20 personal knowledge, he can answer, but I'm not
21 going to ask him to testify as to whether the
22 company has ever heard of a sales rep who
23 entered in his call note six months after the
24 fact.

1 THE WITNESS: Yeah, I don't know the
2 answer to the question.

3 BY MR. WISNER:

4 Q. You don't know if you know whether or
5 not you've ever heard of a sales rep who entered in
6 call notes six months after the fact?

7 MS. THORNE: Objection.

8 THE WITNESS: Like I said, I'm not close
9 enough to it to know the range in which a
10 representative --

11 BY MR. WISNER:

12 Q. My question to you is have you ever
13 heard of that happening? That was my question.

14 MS. THORNE: Objection. Again, I'd like
15 to make clear for the record that any answer
16 Mr. Closter gives to this question is in his
17 own personal capacity.

18 THE WITNESS: Right. I don't believe
19 I've asked anyone when they recorded their call
20 notes, whether it was that day, a month later
21 or six months later.

22 BY MR. WISNER:

23 Q. Mr. Closter, that wasn't my question.
24 Just listen to my question.

1 Have you ever heard of a sales rep
2 entering his call notes six months after the fact?
3 Have you ever heard of that before?

4 MS. THORNE: Objection.

5 MR. WISNER: I understand it's pursuant
6 in your individual capacity.

7 MS. THORNE: Yeah.

8 THE WITNESS: That's fine. I've never
9 heard them -- whether or not they've entered
10 them a month later either.

11 BY MR. WISNER:

12 Q. Okay. So your testimony, then, about
13 whether or not sales notes, call notes are made
14 contemporaneously with the sales visits is not based on
15 any conversations you've ever had with sales
16 representatives?

17 MS. THORNE: Objection. For the record,
18 are you asking whether Mr. Closter's testimony
19 in his --

20 MR. WISNER: My question stands.

21 MS. THORNE: No, and I'm clarifying it
22 for the record. Is your question whether
23 Mr. Closter's testimony on behalf of the
24 company or on behalf of himself is based on his

1 personal knowledge?

2 MR. WISNER: Both. Call notes were a
3 topic of the 30(b)(6), so, please, Mr. Closter.

4 MS. THORNE: No, the general process,
5 the general process or the general --

6 MR. WISNER: Danielle, please stop
7 coaching the witness. I asked a question.

8 MS. THORNE: I'm not coaching the
9 witness.

10 MR. WISNER: Your objection is noted.

11 MS. THORNE: No, I'm not coaching the
12 witness.

13 MR. WISNER: Please answer the question.

14 MS. THORNE: You're not putting the
15 topics in front of Mr. Closter and asking him
16 to speak to the specific topics. We negotiated
17 topics, so I'm making clear on the record what
18 the topic we agreed to is. That is not
19 coaching the witness.

20 MR. WISNER: I understand your
21 objection. Can you please answer my question,
22 Mr. Closter.

23 THE WITNESS: I'm trying to remember the
24 question, but I did not talk to anybody in

1 regards to call notes and when they were
2 recorded.

3 BY MR. WISNER:

4 Q. Now, call notes have dates on them,
5 right?

6 MS. THORNE: Objection, assumes facts
7 not in evidence.

8 THE WITNESS: Yeah, I mean, I'd have to
9 look at the output of the call notes to know
10 whether or not they were dated.

11 BY MR. WISNER:

12 Q. Did you look at call notes in
13 preparation for your testimony today?

14 A. I have seen call notes in the past.

15 Q. They have a date on them, don't they?

16 MS. THORNE: Objection, assumes facts
17 not in evidence.

18 THE WITNESS: Again, I'd have to look at
19 what was logged and captured, but, yes, I
20 believe there'd be a date on the call note.

21 BY MR. WISNER:

22 Q. Okay, all right. So my question, I
23 don't know if I got a clear answer, and I apologize if
24 you've already answered this, there have been a lot of

1 objections, your testimony earlier that you don't know
2 how contemporaneously call notes were made relative to
3 the call is not based on conversations you have
4 personally had with sales representatives?

5 A. That's right.

6 Q. Okay. What is the basis of that
7 testimony?

8 A. Just general knowledge of talking to
9 managers, understanding the business, being involved in
10 it for the last 22 years.

11 Q. Have you ever conducted an audit to see
12 how frequently sales call notes are not
13 contemporaneously done with the call?

14 MS. THORNE: Objection.

15 THE WITNESS: No, back then I don't
16 believe we did that on that.

17 BY MR. WISNER:

18 Q. Have you ever had a conversation with a
19 manager who expressed concern that sales
20 representatives were taking too long to enter in their
21 call notes?

22 MS. THORNE: Objection.

23 THE WITNESS: No.

24 BY MR. WISNER:

1 Q. Okay. All right. What is the next part
2 you have disagreement with?

3 A. Sure. The next is on Page 25, Number
4 65, and an objection to "in certain regions of the
5 country, including New England, various Forest
6 Pharmaceuticals Division Managers actively encouraged
7 off-label promotion of Celexa for use in children and
8 adolescents."

9 I'm not sure what the government meant
10 by "various." I don't know what the number is that
11 they were referring to, and I would disagree with the
12 term of actively encouraged.

13 Q. Okay. So it's your testimony to this
14 jury that you don't believe that there were various
15 pharmaceutical division managers that actively
16 encouraged off-label; is that right?

17 A. Right, and my specific -- my specific
18 issue is with, again, the plural division managers,
19 it's not known whether that's 2 or 20.

20 Q. Plural means two or more, right?

21 A. Correct.

22 MS. THORNE: Objection.

23 BY MR. WISNER:

24 Q. And that's a plural division managers,

1 right?

2 A. Yes.

3 Q. Okay. So it doesn't specify the number,
4 it just says two or more, right?

5 A. Right, but it may mischaracterize the
6 term.

7 MS. THORNE: Objection.

8 BY MR. WISNER:

9 Q. Okay. And then what's the problem with
10 the word "actively"?

11 A. You know, I think there's a difference
12 between actively encouraged and perhaps permitted
13 passively. I think there's different levels of focus
14 and effort.

15 Actively encouraged meaning this is a
16 primary objective, this should take up the bulk of your
17 time, lots of communication on it versus -- and this
18 is, you know, in reference to off-label promotion, it's
19 or allowing it to happen or, you know, seeing it in a
20 sales call but not correcting it, right. So to me
21 those are two different things, and I don't believe
22 what occurred was, you know, I would have characterized
23 or the company would characterize as actively
24 encouraged off-label promotion.

1 Q. Who are the two division managers that
2 you're referring to?

3 A. One of them is Chris Clermont. I'm not
4 sure of the name of the other one.

5 Q. And those two division managers, were
6 they terminated from Forest?

7 A. I'm not sure. I know they were
8 disciplined.

9 Q. Okay. Anything else in Paragraph 65?

10 A. No.

11 Q. Okay. The next paragraph that you have
12 a disagreement with?

13 A. Sure, this would be on Page 26, Number
14 67.

15 Q. Okay.

16 A. And it's a similar I think
17 mischaracterization that I've pointed out. At various
18 times in New England, certain Forest Pharmaceuticals
19 Regional Directors and Division Managers -- and, again,
20 not being comfortable with the plural, so I've already
21 discussed the division managers, and I'm he aware of
22 one regional director who was involved.

23 Q. So other than the potential plural
24 ambiguity here, everything else is fine?

1 A. Up to that point, yes. There are things
2 afterwards which I would point out.

3 Q. Okay. Please tell me.

4 A. The next one is various pharmaceuticals
5 divisional managers also directed sales representatives
6 to show off-label studies to physicians, but not leave
7 copies of those studies with the physicians so as to
8 avoid detection that would get the sales
9 representatives and Forest Pharmaceuticals in trouble.

10 Again, the use of word "various," plural
11 Division Managers. We're aware of one instance where
12 that occurred.

13 Q. So, again, your concern here is the
14 ambiguity of the plural?

15 MS. THORNE: Objection.

16 THE WITNESS: Correct.

17 BY MR. WISNER:

18 Q. Okay. Next dispute?

19 A. In Number 68, again, at the top it
20 refers to sales representatives and Division Managers
21 identified speakers from lists maintained and approved
22 by Forest Pharmaceuticals, and this is in regards to
23 the coordination of speaker programs of which division
24 managers did not coordinate those programs. That was

1 solely by the representatives.

2 Q. Mr. Closter, we're going to go through
3 the rest of these, but is your general disagreement
4 with the various elements of these dealing with the use
5 of the words various and the plurals of district
6 managers and regional managers?

7 A. I have to look forward to see if that's
8 the only part.

9 Q. Sure. Please tell me when you find one
10 that's beyond that issue.

11 A. Sure.

12 MS. THORNE: Objection.

13 MS. KIEHN: He should still note for the
14 record his views.

15 MR. WISNER: Sure, that's fine. I just
16 don't want to spend time going over the word
17 various over and over again.

18 THE WITNESS: The next part is within
19 68, where it starts, "and Forest
20 Pharmaceuticals paid these practitioners to
21 give promotional talks on the use of Celexa in
22 children and adolescents." So, you know, this
23 is a fee for service that we pay speakers
24 giving up their time to speak to audiences. We

1 didn't know -- we were not aware corporately
2 that these speakers were giving talks on Celexa
3 use in children and adolescents. You know, the
4 speakers themselves signed contracts that
5 would, you know, compel them to speak on label.
6 We also gave them content that was on label,
7 but despite that, those speakers, the
8 government alleges, spoke on topics related to
9 children and adolescents.

10 Q. I just want to be clear. It's your
11 testimony to this jury that Forest Pharmaceuticals or
12 Forest Laboratories did not know that members of the
13 speaker bureau were talking about the off-label use of
14 Celexa and Lexapro in children and adolescents?

15 A. I mean, in instances where it was
16 alleged to have occurred, we did not know.

17 Q. That really wasn't my question.
18 My question is is it your testimony to
19 this jury that Forest didn't know that members of its
20 speaker program were giving presentations about the use
21 of adolescents in children specifically with regard to
22 Celexa and Lexapro?

23 A. That's right.

24 Q. Is it your testimony to this jury that

1 Forest didn't know that Karen Wagner was giving a
2 continuing medical education program sponsored by
3 Forest Pharmaceuticals specifically about the use of
4 SSRIs, including citalopram, and their use in pediatric
5 depression?

6 MS. THORNE: Objection.

7 THE WITNESS: We were aware, but
8 understand that, you know, CME is not a
9 promotional venue --

10 BY MR. WISNER:

11 Q. So it's your testimony --

12 A. -- like speaker programs.

13 Q. Sorry, didn't mean to interrupt you.

14 A. It's all right.

15 Q. So it's your testimony to this jury that
16 CMEs are not a form of promotion?

17 A. That's right.

18 Q. Okay. So is there any -- another issue
19 beyond the various plural issue?

20 A. Yes, further down on the page on 26
21 there is a host of programs that the government alleges
22 had occurred or were conducted in some capacity. Other
23 than two of them, we're not aware of what these titles
24 mean or reference.

1 Q. That's good to know, because I haven't
2 been able to find them either.

3 Which two are you aware of?

4 A. The title "Adolescent Depression."

5 Q. Okay.

6 A. And Treatment Options in Depressive
7 Disorders in Adolescents -- I'm sorry, new treatment
8 options. So it's the first one --

9 Q. I got it.

10 A. -- we're aware of and then the one that,
11 you know, overlaps the second to last line to the last
12 line.

13 Q. Okay. So those were the only two that
14 Forest was aware of?

15 A. Yes.

16 Q. Okay. And so the rest of these, just to
17 be clear, you don't know what the government is talking
18 about?

19 A. We don't.

20 Q. Okay. The next substantive nonvarious
21 plural issue?

22 A. I mean, I'm going to point those out,
23 just for the record.

24 Q. Just point them.

1 A. In 69 there is some discussion about to
2 obtain funding support for these promotional programs,
3 Forest Pharmaceuticals sales representatives were
4 required to submit paperwork to the Division Managers,
5 so on and so on, it goes on to predict the expected
6 return on investment from the attendees.

7 I mean, this is something we don't -- we
8 just don't have record of corporately. You know, these
9 are field initiated programs and field approved
10 programs, so we're not aware of any forms that haven't
11 been able to locate any that speak to this.

12 Q. Putting aside whether or not you could
13 find any forms or documents related to these, is it
14 Forest's understanding that sales representatives did,
15 in fact, conduct return on investment analysis
16 regarding medical practitioners who were invited to
17 various programs?

18 A. I can't say -- I can't say that that's
19 true, and I don't believe it was required to be filled
20 out on the form to approve the program. We have to see
21 them.

22 Q. To be clear, are you saying it's not
23 true or you just don't know if it's true or not?

24 A. I don't know if it's true.

1 Q. Okay. The next one?

2 A. You know, it further goes on to say "and
3 others within Forest Pharmaceuticals consistently
4 approved these requests for funding," we won't -- we
5 don't know if they were approved or denied, since
6 that's something that resided with the field management
7 team.

8 Q. Okay.

9 A. The next one is I guess C.

10 Q. So the top Paragraph 70?

11 A. Yeah, communicating incomplete and
12 potentially misleading information concerning the
13 efficacy of Celexa in treating children and
14 adolescents. This is in regards to what follows, which
15 is the results of the two studies, one conducted by
16 Forest, I believe, and then the other conducted by our
17 partner based in Denmark. We do not believe that that
18 was misleading. That is an unfair characterization of
19 that.

20 Q. Okay. So to be clear, you do admit that
21 Forest publicized Study 18, which is the one that was
22 allegedly positive?

23 A. Was positive, not allegedly positive.

24 Q. I'm going to disagree with you on that.

1 A. That's fine.

2 Q. But that you would claim is positive,
3 right? They did promote --

4 A. The FDA claims is positive.

5 Q. Okay. My question to you is did Forest
6 promote Study 18?

7 A. No, we didn't promote it.

8 Q. Fair enough. Did Forest publicize Study
9 18?

10 A. Study 18 was presented in poster format
11 at a major scientific meeting.

12 Q. Forest issued a press release about it?

13 A. Yes, we issued a press release.

14 Q. They publicized Study 18?

15 A. We issued a press release. If you would
16 like to call that publication, you can. I wouldn't,
17 we'd call publicized by issuing the release.

18 Q. So a press release is not a form of
19 publicity?

20 A. For sake of argument, yes.

21 Q. Okay. But my question for you then is
22 Forest did not publicize or issue a press release about
23 Study 94404 when they originally got the results,
24 correct?

1 A. That's right. It was not our study.

2 Q. And you don't think that it was
3 misleading for Forest to publicize or disseminate in a
4 press release a positive result while failing to
5 mention or discuss the negative one?

6 MS. THORNE: Objection.

7 THE WITNESS: That's right.

8 BY MR. WISNER:

9 Q. That's -- okay.

10 Regarding the -- these CME programs, I
11 think they called them or the --

12 A. Do you want me to -- I can continue the
13 document, because there's further --

14 Q. I just want to -- I just want a
15 follow-up question before we move on?

16 A. Sure.

17 Q. On Number 68 all these programs you said
18 you're not familiar, you're only familiar with two of
19 them; is that what you said?

20 A. Right.

21 Q. Do you know who would be familiar with
22 these?

23 MS. THORNE: Objection.

24 THE WITNESS: I don't.

1 BY MR. WISNER:

2 Q. Okay. And on these return on
3 investments that you were discussing --

4 A. Yeah.

5 Q. -- that you haven't seen forms of --

6 A. Right.

7 Q. -- who would know?

8 MS. THORNE: Objection.

9 THE WITNESS: Perhaps someone in sales
10 administration. I believe you've talked to
11 some expert in that area, they may have some
12 further insight if you haven't gotten any from
13 them.

14 BY MR. WISNER:

15 Q. Now, you specified that they were in the
16 field, right?

17 A. Correct.

18 Q. Who would know where those field
19 documents would be?

20 A. Someone in document retention. I don't
21 know.

22 Q. All right. You want to continue with
23 that.

24 A. Yeah, so just the characterization of

1 the dissemination of the data aggressively publicized
2 and promoted, I would not say issuing a press release
3 is aggressively publicizing, and I would not agree that
4 we promoted the results from the positive Forest study.

5 Q. So to be clear, you understand that
6 Forest did more than issue a press release, right?

7 A. Like, what are you suggesting?

8 Q. Well, they drafted a poster
9 presentation, correct, for Karen Wagner?

10 A. Right, presented at --

11 MS. THORNE: Objection.

12 THE WITNESS: -- ACNP of that year.

13 BY MR. WISNER:

14 Q. Okay. They also prepared a presentation
15 that she delivered at the ACNP conference, right?

16 MS. THORNE: Objection.

17 THE WITNESS: I'm actually not aware of
18 that.

19 BY MR. WISNER:

20 Q. Okay. We'll get to that later.

21 Forest also sponsored CME education
22 events throughout the United States where Karen Wagner
23 presented the results of Study 18, correct?

24 MS. THORNE: Objection.

1 THE WITNESS: I'm aware of a series of
2 CME events.

3 BY MR. WISNER:

4 Q. And you're also aware that various sales
5 representatives used the Wagner study in promoting --
6 strike that, because you don't like the word various.

7 You are aware that at least one or two
8 sales representatives used the Wagner study to promote
9 the use of Celexa in children?

10 MS. THORNE: Objection.

11 THE WITNESS: We're aware of a handful
12 of representatives doing that.

13 BY MR. WISNER:

14 Q. Okay. And all of that activity, in your
15 opinion, doesn't qualify as aggressively publicizing or
16 promoting the results; is that right?

17 A. That's right.

18 Q. Do you have another issue, next issue?

19 A. Yeah, the next one is on the following
20 page, on 28, and it's a rather long, generalizing
21 statement begins with, "As a result, doctors and
22 psychiatrists received incomplete and misleading
23 information," and then it goes on to cite three
24 different things, and I don't know if the allegation is

1 applying incomplete and misleading to all of these, to
2 one of them, but I disagree with -- I disagree with the
3 paragraph.

4 Q. Okay. Putting aside the issue of
5 whether or not they were incomplete or misleading, the
6 facts alleged in 1, 2 and 3, are those correct?

7 MS. THORNE: Objection, compound.

8 THE WITNESS: One, we're aware of a
9 handful of instances where that occurred, and
10 Number 2, similar, we're aware of
11 representatives initiating promotional programs
12 with speakers who are alleged to have covered
13 these topics, and I can agree with the facts of
14 3.

15 BY MR. WISNER:

16 Q. Okay.

17 A. Although I'm not -- I'm not really
18 sure -- there's a request from Forest Pharmaceuticals
19 all available information and data concerning the use
20 of Celexa in treating children and adolescents, I don't
21 know, I haven't seen what the actual requests were. It
22 was for some information. Was it information on a
23 particular study or all of the information, which is
24 what the document alleges.

1 Q. But the actual letter that was used that
2 they're referring to here did not disclose the results
3 of 94404, correct?

4 MS. THORNE: Objection.

5 THE WITNESS: I understand that's true.

6 BY MR. WISNER:

7 Q. Is there any other issues you have with
8 the remainder of 71?

9 A. No.

10 Q. Okay. I see that some of the issues you
11 took with the Criminal Complaint -- sorry, the Criminal
12 Information -- related specifically to the
13 characterization of Forest's conduct as incomplete and
14 misleading; is that fair?

15 A. Yes.

16 Q. It's your belief that the off-label
17 promotion activity that is alleged in the Information
18 specifically related to a handful of sales
19 representatives; is that right?

20 A. That's right.

21 Q. And involved, as you said, one regional
22 manager; is that right?

23 A. One regional director.

24 Q. One regional director and two district

1 managers; is that right?

2 A. Right.

3 Q. And that very small group of people,
4 Forest ended up paying approximately \$40 million in
5 fines; is that right?

6 MS. THORNE: Objection.

7 THE WITNESS: I would have to look at
8 the exact doc -- you know, figures but that
9 sounds about right.

10 BY MR. WISNER:

11 Q. And not only did they pay \$40 million in
12 fines, but they also were required to enter into a
13 corporate integrity agreement, correct?

14 MS. THORNE: Objection.

15 THE WITNESS: That's true.

16 BY MR. WISNER:

17 Q. And, actually, a condition to the plea
18 agreement actually was entering into a civil Settlement
19 Agreement as well, correct?

20 MS. THORNE: Objection.

21 THE WITNESS: I believe that's true.

22 BY MR. WISNER:

23 Q. Ultimately, all said and done, with
24 fines and settlement amounts, Forest ended up paying

1 \$313 million, right?

2 MS. THORNE: Objection. Objection. For
3 the --

4 MR. WISNER: The objection is noted.

5 MS. THORNE: For the record I'd like to
6 state that that figure refers to all three
7 counts, two of which had nothing to do with
8 Celexa promotion.

9 MR. WISNER: I really appreciate you
10 coaching the witness. Please answer my
11 question, sir.

12 MS. KIEHN: She's making sure the record
13 is clear.

14 THE WITNESS: Right. I would have to
15 look at the numbers and verify the figure.

16 MR. WISNER: Okay.

17 (Document marked for identification as
18 ForestC Deposition Exhibit No. 8.)

19 BY MR. WISNER:

20 Q. I'm handing you a document, which is
21 Exhibit 8. To be clear, Mr. Closter, the criminal fine
22 was \$39,500,000 related to Count Three, correct?

23 A. Yep.

24 Q. The document I handed you is the

1 Settlement Agreement and Release, correct?

2 A. Yes.

3 Q. And this is related to allegations
4 that -- allegations that Forest caused false claims to
5 be submitted to various governmental programs for the
6 pediatric use of Celexa and Lexapro, correct?

7 A. Yes.

8 Q. And this covers a time frame between
9 1998 and 2005? Page 4, Paragraph 2.

10 A. Thank you, yes.

11 Q. If I draw your attention to Page 6,
12 Paragraph 1, related to this covered conduct involving
13 Celexa and Lexapro, Forest agrees to pay the United
14 States and Medicaid participating states, collectively,
15 the total amount of \$149,158,057.66; is that right?

16 A. Yes.

17 MS. THORNE: Objection. Again, for the
18 record, I'd like to point out that that does
19 not refer merely to conduct involving Celexa.
20 It also refers to conduct involving a drug that
21 is not at issue in this action.

22 (Document marked for identification as
23 ForestC Deposition Exhibit No. 9.)

24 BY MR. WISNER:

1 Q. I'm handing you a document marked as
2 Exhibit 9. This is the Corporate Integrity Agreement
3 that was entered into between Forest Laboratories and
4 the Office of Inspector General, US Department of
5 Health and Human Services?

6 A. Yes.

7 Q. This also was signed contemporaneously
8 both with the criminal plea, the settlement, correct?

9 A. Right.

10 Q. And if you look on the first paragraph
11 on Page 1, the last part of the sentence says, Forest
12 Laboratories' agreement to the CIA is a condition
13 precedent to those agreements.

14 Do you see that?

15 A. Yes.

16 Q. Okay. Now, this document involves
17 prospective regulation of Forest's conduct in promoting
18 drugs, correct?

19 MS. THORNE: Objection.

20 THE WITNESS: I mean, I'll take your
21 word for it. I have to read through it. I
22 haven't read this document in quite some time.

23 BY MR. WISNER:

24 Q. Okay. You did not review it in

1 preparation for your testimony today?

2 A. No.

3 Q. Okay. You understand, based upon your
4 position at the company, that this document governed
5 for a period of five years how the rules and policies
6 that Forest should implement in promoting all forms of
7 drugs starting in 2010?

8 MS. THORNE: Objection, mischaracterizes
9 the document.

10 THE WITNESS: Ask the question again.

11 BY MR. WISNER:

12 Q. Sure. You understand that this document
13 specifies the policies, procedures and activities to
14 regulate Forest's promotion of drugs for five years
15 following the entry of the agreement in 2010?

16 MS. THORNE: Objection. The document
17 speaks for itself, mischaracterizes the
18 document.

19 THE WITNESS: I'm sure it covers that
20 and a whole lot more.

21 BY MR. WISNER:

22 Q. Okay. In fact, while you were working
23 at Forest, you got trained on this, didn't you?

24 A. I did.

1 Q. And, in fact, you were required to abide
2 by the provisions of it as an employee at Forest,
3 correct?

4 MS. THORNE: Objection. Are you asking
5 Mr. Closter in his individual capacity for that
6 question?

7 MR. WISNER: I believe I said as an
8 employee at Forest.

9 MS. THORNE: Making the record clear.

10 BY MR. WISNER:

11 Q. That's a yes?

12 A. Yes.

13 Q. Okay. I'm handing you a document --
14 well, actually, we can put that away for now.

15 All right. I'd like to turn to the
16 issue of efficacy of Celexa and Lexapro, all right?

17 A. Okay.

18 Q. Are you familiar with something called a
19 clinical trial?

20 A. Yes.

21 Q. What is a clinical trial?

22 A. You know, it's a scientific study of,
23 you know, in a certain population with a, you know,
24 given disease state and an indication, and, you know,

1 there's a hypothesis of the active drug, typically
2 versus a placebo, and you want to demonstrate that
3 either the active drug works or it doesn't and whether
4 it's safe or not.

5 Q. You are familiar with, as you mentioned,
6 a placebo-controlled clinical trial?

7 A. Yes.

8 Q. Are you also familiar with an active
9 controlled clinical trial?

10 A. Yes.

11 Q. And you're also familiar with open label
12 clinical trials?

13 A. Yes.

14 Q. In the context of placebo-controlled
15 clinical trials, you would agree that those are the
16 sort of gold standards for evaluating the efficacy of a
17 particular medication?

18 MS. THORNE: Objection. This is outside
19 the scope of the 30(b)(6) deposition notice.

20 We agreed to put forth a witness to testify on
21 behalf of the company to specific enumerated
22 clinical trials, so Mr. Closter can continue to
23 testify in his personal capacity to the extent
24 that he knows, but he cannot testify on behalf

1 of the company in response to this question.

2 THE WITNESS: Are we talking about
3 depression trials or other trials?

4 BY MR. WISNER:

5 Q. My question was just placebo-controlled
6 clinical trials are the gold standard for determining
7 the efficacy of any drug?

8 MS. THORNE: Reiterating my objection.

9 THE WITNESS: I mean, it's not true. It
10 depends on the drug class, right. There's
11 certain classes that they do not do
12 placebo-controlled trials, for instance, for
13 the FDA to evaluate efficacy. They'll do
14 active control trials, and there are others
15 where they'll do placebo-controlled trials.

16 BY MR. WISNER:

17 Q. Thank you.

18 You would agree, though, that for in the
19 context of depression or antidepressants,
20 placebo-controlled trials are the -- generally
21 considered the gold standard for assessing the efficacy
22 of a compound?

23 MS. THORNE: Objection. I'm going to
24 reiterate my objection. To the extent

1 Mr. Closter can testify to this in his personal
2 capacity, he can feel free to answer the
3 question, but I'm going to instruct him to not
4 answer on behalf of the company, as this is
5 outside the notice.

6 THE WITNESS: My personal experience,
7 yes.

8 BY MR. WISNER:

9 Q. Okay. Are you familiar with something
10 called a protocol?

11 A. Yes.

12 Q. What is a protocol?

13 MS. THORNE: Objection. Again, to the
14 extent that Mr. Closter can testify on behalf
15 of his personal experience, he can go ahead and
16 testify.

17 MR. WISNER: Can you just say renew my
18 objection. This is wasting so much time.

19 MS. THORNE: Sure. I renew my objection
20 and I instruct the witness not to answer on
21 behalf of the company.

22 MR. WISNER: Let me reask the question.
23 I'll withdraw the question.

24 BY MR. WISNER:

1 Q. Are you familiar with the protocols for
2 Celexa Study 18, 94404, Lexapro Study 15 and 32?

3 A. I've looked at the protocol for MD-18.
4 I have not recently seen the protocols on the other
5 studies.

6 Q. What is a protocol?

7 A. A protocol is really how the study is
8 going to be conducted, right, how many patients, the
9 design of the trial, inclusion, exclusion criteria may
10 include -- it's going to include different variables
11 that may be assessed during the trial to assess whether
12 the drug works or not.

13 Q. And you would agree that protocols are
14 written before the trial begins, correct?

15 A. Yes.

16 Q. And they're, in fact, approved by the
17 FDA?

18 A. We do submit them for approval.

19 Q. And once the clinical trial begins, it
20 is supposed to adhere to the specifications outlined in
21 the protocol?

22 MS. THORNE: Objection. Again, this
23 question is outside the scope of the 30(b)(6)
24 deposition notice. I'm going to renew my

1 objection and instruct Mr. Closter not to
2 answer on behalf of the company. To the extent
3 that you have personal knowledge on the topic,
4 you can answer.

5 THE WITNESS: So I'm not a clinical
6 expert. I don't liaise directly with FDA, so I
7 don't profess to be an expert, but, to my
8 understanding, protocols can change over time
9 depending on the conduct of the study and
10 things that may arise, and often the dialogue
11 between FDA and a sponsor is fluid, meaning
12 things are corresponded before, during and
13 after trials.

14 BY MR. WISNER:

15 Q. And, in fact, if a change to a protocol
16 occurs, that change has to be specified as an amendment
17 to the protocol, correct?

18 MS. THORNE: Objection. I renew my
19 objection and instruct Mr. Closter to answer in
20 his personal capacity.

21 MR. WISNER: Strike the question.

22 BY MR. WISNER:

23 Q. With regards to Celexa Study 18, the
24 protocol was changed, it had to be reflected in the

1 amendment as an amendment to that protocol, correct?

2 MS. THORNE: Objection to extent the
3 question calls for a hypothetical. It is
4 outside the scope of the 30(b)(6) deposition
5 notice, and so, Mr. Closter, if you have the
6 ability in your personal capacity to answer the
7 hypothetical, you can do so, but your answer
8 will not be on behalf of the company.

9 THE WITNESS: Technically, I'm not sure.
10 While I have general knowledge of this topic, I
11 am not certain about protocol amendment
12 changes.

13 BY MR. WISNER:

14 Q. So you don't know how a protocol gets
15 amended; is that right?

16 MS. THORNE: Objection. Again, any
17 answer you give is not on behalf of the
18 company.

19 MR. WISNER: I'm asking what he knows.

20 MS. THORNE: Are you asking for his
21 personal knowledge?

22 MR. WISNER: Obviously.

23 MS. THORNE: Well, then say that in your
24 question and then it will be obvious on the

1 record.

2 THE WITNESS: My personal knowledge, I'm
3 not sure.

4 BY MR. WISNER:

5 Q. Okay. Do you happen to know in your
6 knowledge capacity as a person speaking for Forest?

7 A. No.

8 MR. WISNER: Let's go off the record.

9 THE VIDEOGRAPHER: We are now off the
10 record. The time is 11:47.

11 (Brief recess.)

12 THE VIDEOGRAPHER: We are now back on
13 the record. The time is 11:55.

14 BY MR. WISNER:

15 Q. Mr. Closter, there have been four
16 placebo-controlled clinical trials for Celexa and
17 Lexapro studying the efficacy of the medications, the
18 treatment of pediatric populations, correct?

19 MS. THORNE: Objection.

20 THE WITNESS: Correct.

21 BY MR. WISNER:

22 Q. Okay. And those four studies are I'm
23 going to call Celexa Study 94404, are you familiar with
24 that one?

1 A. Yes.

2 Q. Celexa Study 18?

3 A. MD-18, right.

4 Q. Okay. Would you prefer that I call it
5 MD-18; would that be easier for you?

6 A. It would, strange enough.

7 Q. Any time I refer to Study 18 or MD-18,
8 I'm referring to that one, okay?

9 A. Okay.

10 Q. You're familiar with Lexapro Study 15?

11 A. Yes.

12 Q. And is that MD15 for you?

13 A. Yes.

14 Q. Okay. And then are you familiar with an
15 MD32?

16 A. Yes.

17 Q. Okay. And that's for Lexapro as well?

18 A. Yes, and just to be clear, you mentioned
19 the four studies that were sponsored by the companies
20 that own the rights to citalopram and escitalopram, but
21 there may have, in fact, been other studies that have
22 been done on those drugs by other parties.

23 Q. Are you aware of any?

24 A. I mean, not specifically, but I'm sure

1 there is a body of evidence, case reports and things
2 like that.

3 Q. Okay. But I'm specifically referring to
4 placebo-controlled clinical trials. Are you aware of
5 any other placebo-controlled?

6 A. I mean, not specifically, but the drug
7 has been out for quite some time, it's possible some
8 academic center or someone else may have generated some
9 things.

10 Q. But you're not aware of any?

11 A. No, not specifically. I'm just making a
12 point.

13 (Document marked for identification as
14 ForestC Deposition Exhibit No. 10.)

15 BY MR. WISNER:

16 Q. All right. I'm handing you a document
17 it's marked as Exhibit 10 to your deposition. This is
18 a document entitled "Integrated Clinical Study Report."

19 Do you see that?

20 A. Yes.

21 Q. And this is referring to study 94404,
22 correct?

23 A. Correct.

24 Q. I just want to, for the record, indicate

1 that I've taken excerpts of the study report because
2 it's fairly lengthy, and I didn't feel I wanted to
3 clutter the record, okay?

4 A. Okay.

5 Q. And to help facilitate the situation,
6 I've actually put a Bates number on the top right of
7 each document -- of each page, so that you can
8 easily -- hopefully easily find out which pages we're
9 talking about, okay?

10 A. I don't see a Bates number. I see
11 numbers.

12 Q. Sorry, a number, that's what I meant, a
13 number on the top right hand.

14 A. Yep, yep.

15 Q. And it doesn't necessarily correspond
16 with the actual page numbers of the report, okay?

17 A. Got you.

18 Q. So when I say Page 1, I'm referring to
19 the one on the top right corner, all right?

20 A. All right.

21 Q. And that's going to be for all these
22 documents moving forward.

23 MS. THORNE: Just for the record, this
24 document does not have a Bates number for this

1 action, or does it?

2 MR. WISNER: I'm pretty confident you've
3 produced this document in about 55 versions,
4 but this one I did not get from our production,
5 I got elsewhere. So it's a publicly available
6 document.

7 THE WITNESS: And just to note, the
8 document indicates it's 345 pages in total.

9 BY MR. WISNER:

10 Q. Okay, looks right. All right. So this
11 was a clinical trial --

12 MS. KIEHN: We're handing his sheet.

13 THE WITNESS: The cheat sheet and --

14 MR. WISNER: Sure, let's actually put
15 that into the record as well.

16 MS. THORNE: Wait, there's -- yeah,
17 that's the version that he had.

18 (Document marked for identification as
19 ForestC Deposition Exhibit No. 2B.)

20 BY MR. WISNER:

21 Q. Marking this as Exhibit 2B, this is a
22 chart that was prepared prior to your testimony to help
23 you keep track of all the clinical trials; is that
24 right?

1 A. Yes.

2 Q. Okay. Did you personally prepare that
3 chart?

4 A. No.

5 Q. Okay. All right. So this study 94404
6 was sponsored by Lundbeck, correct?

7 A. Correct.

8 Q. Lundbeck was Forest's partner with
9 regards to Celexa and Lexapro, correct?

10 MS. THORNE: Objection.

11 THE WITNESS: That's correct.

12 BY MR. WISNER:

13 Q. This says the last patient visit was
14 April 23rd, 2001.

15 Do you see that?

16 A. Yes.

17 Q. And you would agree with me that this
18 study occurred primarily in Europe?

19 MS. THORNE: Objection.

20 THE WITNESS: Yeah, it looks like
21 exclusively in Europe, right, unless some of
22 these countries are not European, but I believe
23 they are.

24 BY MR. WISNER:

1 Q. I'm not sure about Astonia, but the rest
2 of them, I think are in Europe.

3 But you understand that this study did
4 not occur in the US, correct?

5 A. That is correct.

6 Q. Okay. And it was monitored and
7 controlled by Lundbeck, not Forest, correct?

8 A. That's correct.

9 Q. Now, Forest did play a role in helping
10 to develop the protocol as well as the final study
11 report for this study, correct?

12 MS. THORNE: Objection.

13 THE WITNESS: I'm not aware who was
14 involved in the study protocol or the final
15 report from the Forest side.

16 BY MR. WISNER:

17 Q. Okay. Do you know whether or not
18 Forest -- anybody at Forest was involved in preparing
19 the report at all?

20 A. I can't answer the question. I don't
21 know the answer.

22 Q. You don't know?

23 A. No.

24 Q. All right. Turn to Page 2. Let me ask

1 you, who would know if Forest was involved in
2 preparation of this study report?

3 A. I mean, certainly someone on the
4 clinical end.

5 Q. Okay. Do you have a name in mind that
6 would be someone who would know the answer to that
7 question?

8 A. Larry Olanoff, Charlie Flicker, these
9 are folks who were here, I believe, at that time.

10 Q. All right. So Study Objectives, Primary
11 Objective, the first says to study the efficacy and
12 tolerability of citalopram compared to placebo in
13 adolescent study -- adolescent patients suffering from
14 major depression.

15 I sort of said that right, right?

16 A. Yes.

17 Q. Okay. So the purpose of the study was
18 to study the potential efficacy and the tolerability of
19 Celexa in treating adolescent depression; is that fair?

20 A. Yes.

21 Q. This was exclusively related to
22 adolescents, not younger children, right?

23 A. Adolescents as, you know, defined by the
24 age population, which I'm assuming is in here

1 somewhere.

2 Q. Consult your chart. Do you know what
3 the age range was for this study?

4 A. Thirteen to 18.

5 Q. Okay. Now, you would agree with me that
6 this study was negative for efficacy?

7 A. There were negative results in the
8 study, yes.

9 Q. Okay. And isn't it true that you have
10 previously testified that when a prospectively defined
11 primary endpoint does not show statistical
12 significance, that means that a study is negative?

13 MS. THORNE: Objection. Are you asking
14 Mr. Closter in his capacity as 30(b)(6), when
15 you say that you have previously testified, are
16 you referring to prior testimony by Forest or
17 prior testimony by Mr. Closter?

18 MR. WISNER: By Mr. Closter.

19 MS. THORNE: Okay.

20 THE WITNESS: That's my understanding.

21 BY MR. WISNER:

22 Q. Okay. And the primary efficacy endpoint
23 here -- if you turn to Page 7 of the study report,
24 Section 6.7.1 Efficacy Parameters.

1 You see that?

2 A. Yes.

3 Q. Okay. And it lists out the primary
4 efficacy endpoint and the secondary efficacy endpoints,
5 right?

6 A. Yes.

7 Q. And it lists out all these different
8 endpoints that are going to be measured as part of the
9 study, correct?

10 A. Correct.

11 Q. And the first one says "change from
12 baseline in the Kiddie-SADS-P total score over time."

13 You see that?

14 A. Yes.

15 Q. Kiddie-SADS-P total score over time,
16 that's referring to a depression checklist specifically
17 designed to assess a child or adolescent's depression,
18 correct?

19 MS. THORNE: Objection.

20 THE WITNESS: Yeah, I'm not that
21 familiar with the Kiddie-SADS-P, so -- but
22 that's the basic goal.

23 BY MR. WISNER:

24 Q. If you just look on Page 6, the first

1 paragraph. Let's take a look there and see if that
2 will help you answer my question.

3 A. (Witness reviews document.)

4 Okay.

5 Q. So the Kiddie-SADS-P is just a rating
6 scale used to diagnose or assess a particular
7 adolescent's depression; is that fair to say?

8 A. Yeah, it says school-aged children in
9 the -- that is literally part of the scale.

10 Q. The acronym?

11 A. Yes.

12 Q. Okay.

13 A. Thank you.

14 Q. And then the secondary efficacy out
15 points -- efficacy endpoints there is a bunch of bullet
16 points here.

17 Do you see that?

18 A. Yes.

19 Q. And some of them refer to various
20 assessments on the Kiddie-SADS-P.

21 Do you see that?

22 A. Yes.

23 Q. And some of them refer to the MADRS
24 total score over time, for example?

1 A. Yes.

2 Q. And these are all various forms of
3 secondary efficacy assessments that are specifically to
4 assess whether or not there's any efficacy -- strike
5 that.

6 What is your understanding of a
7 secondary efficacy endpoint?

8 A. Secondary efficacy endpoint, I mean,
9 it's not part of your primary. Primary is going to
10 determine whether the study produced positive or
11 negative results, and the secondary endpoints are
12 basically supportive. They give you some interesting
13 information, but they're not designed with the same
14 sort of robustness and rigor that you would treat a
15 primary efficacy endpoint.

16 Q. Okay. The primary efficacy endpoint in
17 this clinical trial was negative, correct?

18 A. The result was negative, yes.

19 Q. Okay. And every other single secondary
20 efficacy endpoint was also negative, correct?

21 A. I'd have to just see the results to
22 confirm that.

23 MR. WISNER: Let's go off the record.

24 THE VIDEOGRAPHER: We are now off the

1 record. The time is 12:05.

2 (Brief recess.)

3 THE VIDEOGRAPHER: We are now back on

4 the record. The time is 12:07.

5 BY MR. WISNER:

6 Q. Mr. Closter, all of the secondary
7 endpoints specified on Page 7 were, in fact, negative,
8 based on the information in this report, correct?

9 A. Yeah, based on the analyses that are
10 presented here in mostly table form and some in graph
11 form, I would confirm that.

12 Q. Thank you.

13 (Document marked for identification as
14 ForestC Deposition Exhibit No. 11.)

15 BY MR. WISNER:

16 Q. Okay. I'm handing you a document that's
17 been marked as Exhibit 11.

18 Are you familiar with this document?

19 A. I am.

20 Q. What is this document?

21 A. It's a brief report that was published,
22 which includes the results of Lundbeck Study 94404.

23 Q. And this document was published in 2006,
24 correct?

1 A. Correct.

2 Q. The final study report was completed,
3 however, on March 21st, 2002, right?

4 MS. THORNE: Objection.

5 THE WITNESS: Study report -- I know the
6 study period ended in April 23rd of 2001.

7 BY MR. WISNER:

8 Q. Go back to the previous exhibit. If you
9 look at the bottom on the first page, report number and
10 date, March 21st, 2002.

11 Do you see that?

12 A. Yes.

13 Q. So the study report was completed on
14 March 21st, 2002, right?

15 MS. THORNE: Objection.

16 THE WITNESS: Yes.

17 BY MR. WISNER:

18 Q. Why did it take so long for the results
19 of this study to be published in a journal?

20 MS. THORNE: Objection. That's outside
21 the scope of the 30(b)(6) notice, so to the
22 extent that Mr. Closter can answer the question
23 based on his own personal knowledge and not on
24 the information given to him by counsel, he can

1 do so. To the extent that the only information
2 that he has on that topic he has from counsel,
3 he should not answer the question in either his
4 personal knowledge or his capacity as a
5 30(b)(6) witness, but I instruct you not to
6 answer this question on behalf of the company.

7 THE WITNESS: So the question.

8 BY MR. WISNER:

9 Q. The question is still pending, sir.

10 A. So, in my personal knowledge, I don't --
11 I don't know why it took so long. This study wasn't
12 conducted by Forest, so I'm not sure why it took them
13 so long to publish it.

14 Q. Isn't it true that actually Lundbeck
15 investigators were eager to publish this study back in
16 2002?

17 MS. THORNE: I renew my objection.

18 Again, testimony is in your personal capacity.

19 THE WITNESS: I don't know the answer to
20 that question.

21 (Document marked for identification as
22 ForestC Deposition Exhibit No. 12.)

23 BY MR. WISNER:

24 Q. Handing you a document I've labeled as

1 Exhibit 12.

2 Mr. Closter, have you seen this document
3 before?

4 A. I don't believe I've seen this exact
5 one, no.

6 Q. This appears to be an e-mail exchange
7 between William Heydorn and Kerstin Fredricson Overo.

8 Do you see that?

9 A. Yes.

10 Q. And if you look down at the bottom of
11 the page, you can see that Kerstin's e-mail address is
12 at Lundbeck.com.

13 Do you see that?

14 A. I do.

15 Q. All right. The beginning of -- this is
16 an e-mail string, so you have to read from the bottom
17 up, okay?

18 A. Sure.

19 Q. Okay. So the first e-mail reads "Bill,
20 hope this finds you well. I just wanted to check on
21 the status of the Wagner pediatric manuscript. Last I
22 heard Forest was discussing journals, but I assume it
23 has been submitted by now? The reason I ask is that
24 investigators in the Lundbeck sponsored study seem

1 eager to submit a manuscript of their -- on their
2 study. They are working on it. We have not yet seen
3 any draft, and I wanted to make sure that the positive
4 data are in the public domain before their negative
5 data get out.

6 Do you see that?

7 A. Yes.

8 Q. It appears that an individual from
9 Lundbeck has e-mailed Mr. Heydorn and has indicated
10 that the investigators at Lundbeck were eager to submit
11 an manuscript on Study 94404, correct?

12 MS. THORNE: Objection. This document
13 is outside the scope of the 30(b)(6), so to the
14 extent that Mr. Closter can answer the question
15 based on his personal knowledge, he may do so,
16 but he's not testifying on behalf of the
17 company.

18 THE WITNESS: And your question was
19 exactly?

20 MR. WISNER: Repeat the question.

21 (The court reporter read back the record
22 as requested.)

23 THE WITNESS: Yeah, that's correct,
24 that's what the -- how the e-mail reads.

1 BY MR. WISNER:

2 Q. Based on your personal knowledge at the
3 company, do you know why -- sorry.

4 Later on in the e-mail she says, I
5 wanted to make sure that the positive data are out in
6 the public domain before the negative data get out;
7 that's how it reads, right?

8 A. Yes.

9 Q. Isn't it true that Forest -- isn't it
10 true that Forest wanted to delay the publication of any
11 negative pediatric data for Celexa while simultaneously
12 promoting the positive data from MD-18?

13 MS. THORNE: Objection.

14 THE WITNESS: I can't agree with that
15 statement.

16 BY MR. WISNER:

17 Q. Isn't it also true that the positive
18 data being out in the marketplace before the negative
19 data would have helped increase Celexa sales?

20 MS. THORNE: Objection.

21 THE WITNESS: Yeah, I don't agree with
22 that statement either.

23 BY MR. WISNER:

24 Q. Why don't you agree with that statement?

1 A. I mean, the study, first of all, wasn't
2 going to be promoted. There's already use of all these
3 drugs, Celexa, ultimately Lexapro and other drugs in
4 the class in a variety of patients, including the
5 pediatric population, even in the absence when none of
6 the products had an indication, so I don't believe it
7 would have had any -- any impact.

8 Q. Are you familiar with Bill Heydorn?

9 A. I know Bill.

10 Q. Who is he?

11 A. He left the company some time ago. I
12 believe he was on the medical affairs team that
13 supported the antidepressants.

14 Q. Was he at Forest -- in 2002 were you
15 working at Forest?

16 A. Yes.

17 Q. In what capacity?

18 A. I was on the Lexapro marketing team.

19 Q. Okay. Did you have any interactions
20 with Mr. Heydorn regarding the publications of Study 18
21 or 94404?

22 MS. THORNE: Objection. I'm just making
23 clear for the record that when you say you in
24 this instance, I assume you're referring to

1 Mr. Closter.

2 MR. WISNER: Yes.

3 THE WITNESS: I did not.

4 BY MR. WISNER:

5 Q. You are -- are you familiar with Irvin
6 Gergel?

7 MS. THORNE: I'm renewing that
8 clarification until you indicate that you're
9 asking him questions on behalf of the company
10 again.

11 MR. WISNER: Sure.

12 THE WITNESS: I know Ivan Gergel.

13 BY MR. WISNER:

14 Q. Does Forest know Ivan Gergel?

15 A. Yes.

16 Q. Does Forest know Charlie Flicker?

17 A. Yes.

18 Q. And do you personally know Charlie
19 Flicker as well?

20 A. I do.

21 (Document marked for identification as
22 ForestC Deposition Exhibit No. 13.)

23 BY MR. WISNER:

24 Q. Okay. I'm handing you a document that

1 has been marked as Exhibit 13 to your deposition. This
2 is an excerpt of the deposition of Bill Heydorn, okay.
3 This was taken on August 29th, 2007, okay?

4 A. Okay.

5 Q. Now, if I can draw your attention to
6 Page 77 -- sorry -- it's Page 3 on the top right, but
7 it's 77 in the deposition itself.

8 A. Got it.

9 Q. On Line 23 I'm just going to read along
10 for a bit, and then I'm going to ask you some
11 questions. The question was were you aware of anyone
12 at Forest Labs who shared the view it would be best if
13 the positive data of CIT 18 was in the marketplace
14 before the negative data of 94404 was put in the
15 marketplace. Objection. Answer --

16 A. Where are you reading from? I just want
17 to --

18 Q. It goes from the top to the bottom, it's
19 kind of weird 77, 78, 79, 80?

20 A. All right. And you're starting on line?

21 Q. Starting on Line 23 on Page 77.

22 A. Okay, thank you.

23 Q. So I'll read that again.

24 Were you aware of anyone at Forest Labs

1 who shared the view that it would be best if the
2 positive data of CIT 18 was in the marketplace before
3 the negative data of 94404 was put in the marketplace?

4 Objection.

5 Answer, yes.

6 Question, and who did you understand to
7 share that view?

8 Objection to form.

9 Answer, I think most of the individuals
10 associated with the citalopram project held that view.

11 Question, would that include Dr. Gergel?

12 Yes.

13 Question, and Dr. Flicker?

14 Answer, yes.

15 And would that include yourself?

16 Answer, yes.

17 Question, and why was it that you would
18 have preferred at the time that the positive data be
19 put in the public domain before the negative data of
20 944 was put in that domain?

21 Answer, clearly from the company's
22 perspective, having the positive data published was a
23 positive move for the compound. At the same time
24 generating a publication and getting a publication on

1 negative data in the public domain is a bit
2 challenging. There are investigators who are not
3 interested in publishing negative data in many cases
4 and it's difficult to get journals to publish negative
5 data.

6 I'm going to skip down to Line 23 on
7 that page.

8 A. Okay.

9 Q. This question, and that -- okay, Line
10 22 -- sorry, Line 23. And that positive data put out
11 in the marketplace over negative data will do better
12 for the sales of Celexa?

13 Objection to form.

14 Answer, I certainly wasn't in sales and
15 the marketing department -- and marketing department,
16 but that would be my understanding, yes.

17 Do you see that?

18 A. Yes.

19 Q. Do you have any reason to believe that
20 Mr. Heydorn was lying under oath in his deposition?

21 MS. THORNE: Objection. That's outside
22 the scope of the 30(b)(6) deposition notice.

23 We agreed to put forth a witness to testify on
24 the contents of the publications, not the

1 circumstances surrounding their publication.
2 So to the extent that Mr. Closter has personal
3 knowledge as to whether Mr. Heydorn was lying
4 or any other circumstances surrounding the
5 publication, he can testify to those to the
6 extent that he has that knowledge, but he
7 cannot testify on behalf of the company.

8 So I'm going to instruct you not to
9 testify on behalf of the company.

10 BY MR. WISNER:

11 Q. Hard to remember the question after all
12 that, right?

13 A. So the question is was Mr. Heydorn
14 lying, right; was that your question?

15 Q. No. Do you have any reason to believe
16 that Mr. Heydorn was lying in his deposition?

17 A. I have no idea.

18 Q. Okay. Did you work closely with
19 Dr. Gergel or Dr. Flicker?

20 MS. THORNE: Objection. Again, this is
21 in Mr. Closter's individual capacity?

22 MR. WISNER: Yes.

23 THE WITNESS: At times.

24 BY MR. WISNER:

1 Q. And previously you testified on behalf
2 of Forest earlier in this deposition --

3 A. Right.

4 Q. -- that the existence of positive data
5 and the nonexistence of negative data would not have an
6 impact on sales.

7 Do you recall that testimony?

8 MS. THORNE: Objection. The testimony
9 speaks for itself.

10 THE WITNESS: Yes.

11 BY MR. WISNER:

12 Q. You would agree that Dr. Heydorn
13 disagrees with you in his testimony here, correct?

14 MS. THORNE: Objection.

15 THE WITNESS: I don't know. He's not
16 responding to my theory or my assertion
17 directly.

18 BY MR. WISNER:

19 Q. Well, the question was asked, and that
20 positive data being put out in the marketplace over
21 negative data would be better for the sales of Celexa?
22 And the answer is, I certainly wasn't in sales and
23 marketing department, but that would be my
24 understanding, yes.

1 Do you see that?

2 A. Yes.

3 Q. So he's saying that he does believe it
4 would have an impact on sales and marketing?

5 MS. THORNE: Objection.

6 BY MR. WISNER:

7 Q. And you testified a minute ago that you
8 do not believe it would have one, correct?

9 MS. THORNE: Objection, mischaracterizes
10 the testimony.

11 THE WITNESS: Yeah, I can't speak to the
12 testimony of Mr. Heydorn.

13 BY MR. WISNER:

14 Q. It's right in front of you, Mr. Closter.

15 A. I can't speak to his assertions or
16 really what he intended here.

17 Q. But you'd agree with me that his
18 testimony contradicts what you just testified on behalf
19 of Forest a few minutes ago?

20 MS. THORNE: Objection. The witness
21 already testified he can't answer the question.

22 THE WITNESS: I can't answer the
23 question.

24 BY MR. WISNER:

1 Q. You can't answer whether or not this
2 testimony in front of you contradicts what you said a
3 second ago?

4 MS. THORNE: Objection, asked and
5 answered.

6 BY MR. WISNER:

7 Q. Sorry, what's your answer, Mr. Closter?

8 A. I can't answer.

9 Q. You can't answer that question?

10 A. No.

11 Q. Okay. Now, isn't it true -- you can put
12 that testimony of Dr. Heydorn away.

13 A. Sure.

14 Q. Isn't it true that according to the
15 publication that I showed you, which I believe was
16 Exhibit --

17 MS. THORNE: Eleven.

18 BY MR. WISNER:

19 Q. -- eleven.

20 A. Should I pull it out?

21 Q. That was -- sure, if you need to to
22 answer the question. It was not even submitted for
23 publication until December 2004; isn't that right?

24 MS. THORNE: Objection. Again, we

1 agreed to put forth a witness to testify to the
2 contents of the publication, not the
3 circumstances surrounding their publication.
4 So to the extent Mr. Closter has personal
5 knowledge, he can speak to it.

6 I'm going to instruct you not to answer
7 on behalf of the company.

8 BY MR. WISNER:

9 Q. I direct you to the first page of the
10 document where it says when it was submitted, it's on
11 the face of the document, so I'll ask the question --

12 MS. KIEHN: It speaks for itself.

13 BY MR. WISNER:

14 Q. So I'll ask you the question again,
15 isn't it true that the document was not submitted until
16 December 21st, 2004?

17 A. That's when it says it was received.

18 Q. Okay. And that was approximately two
19 and a half years after the completion of the final
20 study report?

21 MS. THORNE: Objection. I reiterate my
22 objection.

23 THE WITNESS: Yeah, so the time frame is
24 from March '02 to December of '04 when it was

1 received, approximately two and a half years.

2 BY MR. WISNER:

3 Q. Okay. Isn't it true that the reason why
4 the manuscript was not submitted for publication until
5 December of 2004 is because Forest was deliberately
6 trying to conceal the results of Study 94404 from the
7 public domain?

8 MS. THORNE: Objection. I renew my
9 objection. Same instruction to the witness.

10 THE WITNESS: Yeah, my personal
11 experience, it's not true.

12 BY MR. WISNER:

13 Q. Okay. And you're testifying --

14 MR. WISNER: Your position is that he
15 cannot testify about whether or not Forest
16 deliberately tried to conceal the results of
17 94404 from the public domain?

18 MS. THORNE: My position is that we put
19 forth a witness to testify as to the contents
20 of the publications, not the circumstances
21 surrounding their publication. That's what you
22 agreed to, that's what we agreed to.

23 MR. WISNER: So you're instructing him
24 not to answer that question? Do you want me to

1 file another motion to compel?

2 MS. THORNE: We'll allow the witness to
3 answer this particular question.

4 BY MR. WISNER:

5 Q. Mr. Closter, isn't it true that Forest
6 deliberately attempted to conceal the distribution of
7 the contents of 94404 from the public domain?

8 A. Not that I'm aware of.

9 Q. Okay. Isn't it true, though, that it
10 wasn't until the New York Times issued an exposé of
11 Forest criticizing its failure to disclose the results
12 of 94404 that this manuscript was ever submitted for
13 publication?

14 MS. THORNE: Objection.

15 THE WITNESS: My understanding is that
16 as part of that article in the New York Times,
17 we did issue -- or at least disclosing the
18 information.

19 BY MR. WISNER:

20 Q. Fair enough, but my question was a
21 little more specific, and that was isn't it true that
22 Forest -- sorry, strike that.

23 Isn't it true that 944 was not submitted
24 for publication until after the New York Times issued

1 an exposé criticizing Forest for failing to disclose
2 94404 to the medical community?

3 MS. THORNE: Objection.

4 MR. WISNER: Just let me finish my
5 question, please.

6 MS. THORNE: I thought you were done.
7 It was a long question.

8 THE WITNESS: I'd have to look at the
9 timing of the events from the New York Times
10 article to when the article was -- or the brief
11 report was submitted to the journal by
12 Lundbeck.

13 (Document marked for identification as
14 ForestC Deposition Exhibit No. 14.)

15 BY MR. WISNER:

16 Q. Sure. I'm handing you a document that's
17 Exhibit 14 to your deposition. This is a copy of The
18 New York Times article, correct?

19 MS. THORNE: Objection, vague, outside
20 the scope.

21 THE WITNESS: It is a New York Times
22 article.

23 BY MR. WISNER:

24 Q. Okay. The one that we were just talking

1 about that was published in The New York Times related
2 to this issue, this is a copy of that article, correct?

3 MS. THORNE: Objection.

4 THE WITNESS: Okay.

5 BY MR. WISNER:

6 Q. That's correct, right; this is a copy of
7 it?

8 MS. THORNE: Objection.

9 MS. KIEHN: You need to look at it.

10 THE WITNESS: Appears to be.

11 MS. THORNE: And, also for the record,
12 the two of you were not just talking about it.
13 You were characterizing a New York Times
14 article in your question, so if you would like
15 to tell the witness that this is the article
16 you were referring to in your question, you can
17 do that.

18 BY MR. WISNER:

19 Q. So, Mr. Closter, this is dated
20 June 21st, 2004, correct?

21 A. Correct.

22 Q. All right. The submission of the
23 manuscript did not occur until December of 2004,
24 correct?

1 A. That's when Lundbeck submitted it, yes.

2 Q. So it would appear, based on the
3 documents in front of you, that the manuscript was not
4 submitted for publication until after the New York
5 Times article came out, correct?

6 MS. THORNE: Objection.

7 THE WITNESS: Yeah, the timing suggests
8 that.

9 BY MR. WISNER:

10 Q. And isn't it true that the only reason
11 Forest agreed to allow Lundbeck to publish the
12 manuscript 94404 was because the cat was out of the bag
13 because of The New York Times?

14 MS. THORNE: Objection.

15 THE WITNESS: Yeah, I don't believe
16 that's true.

17 BY MR. WISNER:

18 Q. Okay. Isn't it true that prior to the
19 publication of The New York Times article, Forest had
20 no plan or publication plan specifically designed to
21 have the results of 94404 published in a medical
22 journal?

23 MS. THORNE: Objection.

24 THE WITNESS: Two things. One is it's

1 not our study, it's a partner study. Second is
2 I'd have to look back at the plans that you
3 refer to and see what was mentioned, and I
4 haven't -- I have not seen those.

5 BY MR. WISNER:

6 Q. Well, we just looked at an e-mail
7 between Bill Heydorn and someone from that partner, the
8 Lundbeck company, correct?

9 A. Correct.

10 Q. And in that e-mail she is saying that
11 the investigators at Lundbeck are eager to get this
12 manuscript submitted, correct?

13 MS. THORNE: Objection.

14 THE WITNESS: That's what the e-mail
15 stated.

16 BY MR. WISNER:

17 Q. And that's back in 2002, right?

18 MS. THORNE: Objection. Would you like
19 the witness to look at the document?

20 MR. WISNER: If he needs to. He can
21 answer the question if he can answer the
22 question.

23 THE WITNESS: Yes, late November 2002.

24 BY MR. WISNER:

1 Q. So in late November 2002, Mr. Heydorn is
2 getting a request about an eagerness of the Lundbeck
3 researchers to submit this manuscript --

4 MS. THORNE: Objection.

5 MR. WISNER: I'm not done with my
6 question.

7 BY MR. WISNER:

8 Q. -- and it doesn't get submitted until
9 December of 2004, correct?

10 MS. THORNE: Objection, mischaracterizes
11 the document.

12 THE WITNESS: That's when the
13 publication was submitted for review, yes.

14 BY MR. WISNER:

15 Q. And you'd agree in testifying to this
16 jury that that e-mail from Mr. Heydorn suggests that
17 Forest had at least some control over the publication
18 schedule of Lundbeck?

19 MS. THORNE: Objection, mischaracterizes
20 the document, assumes facts not in evidence.

21 THE WITNESS: Yeah, there's a lot of
22 data that supports including multiple studies
23 across multiple indications, that then feed
24 into a publication plan. So when you say there

1 were no plans to disseminate it, you need to
2 see the plans, and I wouldn't characterize a
3 three line e-mail between colleagues from one
4 company to the other to give even a hint as to
5 what the plans are around the publication of a
6 study, let alone all the data that exists
7 supporting a drug.

8 BY MR. WISNER:

9 Q. Celexa Study 18 was issued in a press
10 release before the final study report was ever
11 completed; isn't that true?

12 MS. THORNE: Objection.

13 THE WITNESS: I'd have to see the
14 timing.

15 (Document marked for identification as
16 ForestC Deposition Exhibit No. 15.)

17 BY MR. WISNER:

18 Q. I'm handing you a document that's been
19 marked Exhibit 15.

20 Are you familiar with this document?
21 Let me clarify because it might be a little confusing
22 at first glance. This is the protocol for MD-18.

23 Do you see that?

24 MS. THORNE: Objection, that is

1 inaccurate. This is an excerpted form of the
2 protocol. It does not contain every page of
3 the protocol. It omits sections.

4 MR. WISNER: Okay. Sorry.

5 BY MR. WISNER:

6 Q. Mr. Closter, this is an excerpt of
7 MD-18's protocol, correct?

8 A. And if you say it is. I mean, I've seen
9 parts of this, but it doesn't say protocol, but I'll
10 take your word for it.

11 Q. Turn to the second page.

12 A. Okay.

13 Q. Final Protocol Authorization Sign-off
14 Sheet, you see there?

15 A. Yes.

16 Q. Bunch of signatures, right?

17 A. Yes.

18 Q. Paul Tiseo?

19 A. Paul Tiseo.

20 Q. Tiseo. Thank you.

21 MS. THORNE: Objection. This is outside
22 the scope of the 30(b)(6) deposition notice.

23 MR. WISNER: Let's go off the record.

24 THE VIDEOGRAPHER: We are now off the

1 record. The time is 12:29.

2 (Discussion off the record.)

3 THE VIDEOGRAPHER: We are now back on
4 the record. The time is 12:32.

5 BY MR. WISNER:

6 Q. So I believe the question I asked you
7 that was objected to and we hadn't gotten a response
8 was this was signed by Paul Tiseo in September 1st,
9 1999; is that right?

10 A. Yes.

11 Q. Okay. And that's because that's what it
12 says right here in this document, right?

13 A. Right.

14 Q. Okay. Now, it always says "Authorized
15 By."

16 Do you see that?

17 A. Yes.

18 Q. And there's a bunch of other names
19 listed here as well, right?

20 A. Correct.

21 Q. The first name is actually Charles
22 Flicker, Ph.D.

23 Do you see that?

24 A. Yes.

1 Q. Who is Charles Flicker?

2 A. At the time he was the medical director
3 on the CNS group.

4 Q. What would his responsibilities involve
5 to the best of your knowledge personally?

6 A. To the best of my knowledge, you know,
7 conducting clinical trials, making sure they were
8 proceeding as planned, reviewing some of the documents
9 that would, you know, be developed as a result of a
10 clinical trial.

11 Q. Like, for example, a final study report?

12 A. Yes.

13 Q. Okay. Lawrence Olanoff is also listed
14 here.

15 Do you see that?

16 A. Yes.

17 Q. And he was the executive vice president
18 of scientific affairs at that time?

19 A. Right.

20 Q. Do you generally know what his
21 responsibilities were personally?

22 A. I believe at the time he was head of all
23 the R&D activities at the company.

24 Q. Okay. And then Ivan Gergel, who is he?

1 A. Similar, from what I recall, he reported
2 to Larry and Charles Flicker reported to Ivan. So
3 Ivan, I believe, at the time oversaw all the programs,
4 including CNS and other programs that we had ongoing at
5 the company.

6 Q. Now, correct me if I'm wrong, I'm not
7 trying to mischaracterize your testimony, but would it
8 be fair to say that at the top of the pyramid for these
9 three people, it would be Dr. Gergel, then Dr. Olanoff
10 and then Dr. Flicker?

11 A. No. It would be Dr. Olanoff, Dr.
12 Gergel, Dr. Flicker.

13 Q. Okay. Sorry. Thank you.

14 And then who are these other two people,
15 Edward Lakatos?

16 A. I believe he was in the stats
17 department.

18 Q. Okay. Did you know him personally?

19 A. I can't recall. Yeah, I don't know.

20 Q. And Keith Rotenberg, do you know who
21 that is?

22 A. Only by what it says on the page, that
23 apparently he was in regulatory affairs, perhaps the
24 head of regulatory affairs, I don't know.

1 Q. Okay. And you don't know either Edward
2 or Keith personally, correct?

3 A. Keith I don't. Edward it was a long
4 time ago, perhaps I do, but it's too long to remember.

5 Q. All right. Do you know what
6 Mr. Flicker's responsibilities were with regards to
7 Study 18 at that time?

8 A. No, not specifically.

9 Q. But he was overseeing -- would be
10 overseeing the clinical trials related to
11 antidepressants, correct?

12 MS. THORNE: Objection.

13 THE WITNESS: I believe that's true.

14 BY MR. WISNER:

15 Q. All right. On Page 6 here, there's the
16 objective of the clinical trial -- sorry, Page 3. I
17 felt my own mistake there. Page 3, Section 5 it says
18 Objective.

19 Do you see that?

20 A. Yes.

21 Q. And would it be fair to say that the
22 objective of this clinical trial was to measure the
23 efficacy and safety of citalopram in treating both
24 children and adolescents with major depressive

1 disorder?

2 A. That's what it says on the page.

3 Q. Okay. That's, in fact, what the purpose
4 of the study was, correct?

5 A. That's the objective, the primary
6 objective.

7 Q. All right. It says Study Design and
8 Duration -- well, skip that. We'll move it on.

9 All right. Turn to Page 4.

10 A. Okay.

11 Q. Here there's a section that says
12 "Primary Efficacy Measure."

13 Do you see that?

14 A. I do.

15 Q. And then there's also groupings of
16 "Secondary Efficacy Measures."

17 Do you see that?

18 A. I do.

19 Q. Would it be fair to say that there is
20 one primary efficacy measure and four separate
21 secondary efficacy measures specified in this protocol?

22 A. One primary -- one, two, three -- yes.

23 Q. Okay. I want to draw your attention to
24 Page 5 under the Section 9.2 "Dosing Regimen."

1 Do you see that?

2 A. Yes.

3 Q. All right. It says, "Patients who meet
4 all of the eligibility criteria at the end of the
5 single-blind lead-in period (Baseline visit) will be
6 assigned a randomization number and dispensed the
7 corresponding bottle of study medication for Week 1 of
8 double-blind treatment."

9 And then the next paragraph reads, "At
10 the end of Week 1, patients will return to the clinic
11 bringing their unused study medication with them for
12 drug accountability. Henceforth, patients must return
13 their unused study medication at each clinic visit."

14 Tell me if I'm reading this correctly,
15 at Week 1 after they've had their baseline visit,
16 they're given a bottle of medication, are told to take
17 it a certain amount each day, and then at the end of
18 Week 1 they come back to the clinic and give them all
19 the medication they have left over; is that fair to
20 say?

21 MS. THORNE: Objection. To the extent
22 you're asking for a detail that is not
23 contained in the study report, I'm going to
24 object to this as outside the scope, but to the

1 extent you're asking him to confirm what's in
2 the study report, I will let the witness answer
3 the question.

4 THE WITNESS: Yeah, that's what I'm
5 reading.

6 BY MR. WISNER:

7 Q. It says at the end of week visit -- the
8 first -- at the end of Week 1 visit, patients will be
9 dispensed another bottle, this time containing ten
10 tablets of either placebo or active medication, and
11 they will continue to take one tablet daily during Week
12 2 of the study.

13 Do you see that?

14 A. Yes.

15 Q. So from my understanding of that, and
16 correct me if I'm wrong, after Week 1 they're given
17 another bottle containing ten tablets and they take
18 that and they come back at the end of Week 2?

19 MS. THORNE: Objection. I'm going to
20 renew my objection with the same instruction.

21 THE WITNESS: That's what I'm reading
22 off the paper.

23 BY MR. WISNER:

24 Q. And then at the end of Week 2 patients

1 will be dispensed two bottles of medication, each
2 containing ten tablets of either placebo or
3 20 milligrams citalopram and will be instructed to
4 continue taking one tablet daily during Weeks 3 and 4
5 of the study.

6 Do you see that?

7 A. Yes.

8 Q. And then it specifies what happens at
9 the end of Week 4 and Week 6, they would be getting
10 dispensed one bottle containing 40 tablets of either
11 placebo or active medication.

12 Do you see that?

13 A. Yes.

14 Q. So this dosing regimen part of the
15 protocol specifies at which point and at which visits
16 various patients will be dispensed either the drug or
17 the placebo pills, correct?

18 MS. THORNE: Renewing my objection with
19 the same instruction.

20 THE WITNESS: That's the way it reads.

21 BY MR. WISNER:

22 Q. All right. Now, if you turn to Page 7
23 under "Statistical Evaluation," there's the
24 "Objectives" section.

1 Do you see that?

2 A. Yes.

3 Q. And then primary objective the last
4 sentence reads, "The primary endpoint is change from
5 baseline and CDRS-R score at Week 8."

6 Do you see that?

7 A. I do.

8 Q. So isn't that saying that the primary
9 endpoint is how much change has happened on the CDRS
10 score from the baseline and at the end of Week 8?

11 MS. THORNE: Objection, renewing the
12 same objection with the same instruction.

13 THE WITNESS: That's the way it reads.

14 BY MR. WISNER:

15 Q. Okay. And then if you look at the
16 secondary objectives under 1 it has -- the second
17 sentence reads, the endpoints for the secondary
18 objectives are the CGI-Improvement score, the change of
19 baseline and CGI-Severity score, K-SADS-P (depression
20 module) score and CGAS score at Week 8.

21 You see that?

22 A. Yes.

23 Q. So, again, the secondary endpoints are
24 being measured at Week 8, correct?

1 MS. THORNE: Renewing my objection with
2 the same instruction.

3 THE WITNESS: Yes. I mean, there may be
4 other time points they were evaluated, but it
5 does specify Week 8.

6 BY MR. WISNER:

7 Q. Okay. If you turn the next page on Page
8 8 under the efficacy analysis, well, look at the
9 primary efficacy analysis. Again, it says the primary
10 efficacy parameters is change from baseline in CDRS-R
11 score at Week 8 will be used at the primary efficacy
12 parameter.

13 Do you see that?

14 A. I do.

15 Q. So it's saying that the actual parameter
16 is at Week 8 there, correct?

17 A. Yes.

18 Q. And then for the secondary efficacy
19 parameters it lists all the parameters there, and then
20 it says, "descriptive statistics will be calculated by
21 visit. Comparison between citalopram and placebo will
22 be performed using the same approach as for the primary
23 efficacy parameter."

24 You see that?

1 A. Yes.

2 Q. So, again, this is confirming that the
3 secondary efficacy parameters are going to be measured
4 at Week 8?

5 MS. THORNE: Objection to the extent
6 that you're asking the witness to draw
7 conclusions that are not in this document and
8 that get into further detail, I'm going to
9 instruct the witness not to answer on behalf of
10 the company as it's outside the scope, but to
11 the extent you're asking the witness to confirm
12 what's written in the report, he can go ahead
13 and do that.

14 THE WITNESS: I can confirm what's
15 written in the report.

16 BY MR. WISNER:

17 Q. And that's what's written in the report,
18 correct?

19 MS. THORNE: Objection, mischaracterizes
20 the document.

21 THE WITNESS: Right. It says "using the
22 same approach as for the primary efficacy
23 parameter." It doesn't necessarily -- you're
24 asking does it say Week 8? It doesn't say Week

1 8.

2 BY MR. WISNER:

3 Q. Okay. But it says the same efficacy
4 parameter, right?

5 A. It says the same approach.

6 Q. Okay. And the approach for the primary
7 efficacy analysis is -- will be used as the primary
8 efficacy parameter at Week 8, right?

9 MS. THORNE: Objection. Again, to the
10 extent you're are asking the witness to draw
11 conclusions, I'm going to instruct him not to
12 answer on behalf of the company, but he can
13 speak as to what's in the document.

14 THE WITNESS: It would appear that way,
15 but if you wanted to ask the person who wrote
16 the document, they'd be better than I would to
17 answer the question.

18 BY MR. WISNER:

19 Q. So it's your testimony that you can't
20 testify on behalf of Forest right now about what the
21 secondary outcomes in MD-18 were to be measured at Week
22 8?

23 MS. THORNE: Objection. That completely
24 mischaracterizes the witness' testimony.

1 MR. WISNER: I asked him a question.

2 MS. KIEHN: He already answered that
3 question.

4 MR. WISNER: And your objection is asked
5 and answered.

6 MS. THORNE: No, the objection is you
7 just mischaracterized the witness' testimony.
8 That's not what he said.

9 BY MR. WISNER:

10 Q. Okay. So I asked the question then; is
11 that true?

12 MS. KIEHN: Ask it again.

13 MR. WISNER: Can you read the question
14 back, please.

15 (The court reporter read back the record
16 as requested.)

17 MS. THORNE: Renew my objection.

18 THE WITNESS: Based on reading the
19 document, if the document suggests that the
20 same approach is for the primary efficacy
21 parameter is referring back to 12.5.1, which I
22 believe we're getting that information,
23 suggests that it would be at Week 8.

24 BY MR. WISNER:

1 Q. Okay. In preparing for to your
2 testimony today, did you look at the secondary
3 endpoints for Study 18?

4 A. In what way do you mean?

5 Q. Did you look at the results of the
6 secondary endpoints?

7 A. I looked at them at some point, either
8 in this abbreviated document or within the paper
9 itself.

10 Q. Okay. So you have actually looked at
11 the secondary endpoints, correct?

12 A. Yes.

13 Q. Okay. And, finally, on Page 9, "12.7
14 Sample Size Considerations," do you see that section?

15 A. I do.

16 Q. It states that "The primary efficacy
17 variable is the change from baseline CDRS-R score Week
18 8. Assuming an effect size (treatment group difference
19 relative to pooled standards deviation) of 0.5, a
20 sample size of 80 patients in each treatment group will
21 provide at least 85% power at an alpha level of 0.05
22 (two-sided)."

23 Do you see that?

24 A. Yes.

1 Q. Do you have any understanding of what
2 that paragraph means?

3 A. Not really.

4 Q. Okay. You do understand generally,
5 though, that a study has to be sufficiently powered,
6 correct?

7 MS. THORNE: Objection. Are you asking
8 Mr. Closter in his individual capacity or in
9 his capacity as 30(b)(6)?

10 BY MR. WISNER:

11 Q. You understand that Celexa Study 18 has
12 to be sufficiently powered, correct?

13 MS. THORNE: Objection. Are you asking
14 the witness in his individual capacity or in --

15 MR. WISNER: Yes, I'm asking him as a
16 representative of Forest.

17 MS. THORNE: Okay. Well, then I object
18 to this as outside the scope of the deposition
19 notice.

20 MR. WISNER: I specifically specified
21 powering as the topic.

22 MS. THORNE: That's not what we agreed
23 to.

24 MR. WISNER: Off the record. Can I see

1 the letter?

2 THE VIDEOGRAPHER: We are now off the
3 record. The time is 12:45.

4 (Luncheon recess.)

5 THE VIDEOGRAPHER: We are now back on
6 the record. The time is 1:29.

7 (Document marked for identification as
8 ForestC Deposition Exhibit No. 16.)

9 BY MR. WISNER:

10 Q. Handing you a document marked Exhibit 16
11 to your deposition. This appears to be a copy of
12 excerpts of the final study report for study MD-18,
13 correct?

14 A. It looks it. It doesn't say final on
15 it, but I'll take your word that it's final.

16 Q. This was completed -- the study was
17 completed in April of 2001, correct?

18 A. Yes.

19 Q. And this report was generated in April
20 of 2002?

21 A. Yes.

22 Q. All right. Turn to Page 7.

23 Are you there?

24 A. Yes.

1 Q. Under "Statistical Objectives," again,
2 this reads very similar to the protocol we looked at a
3 minute ago. You have the primary statistical objective
4 and the secondary statistical objectives.

5 Do you see that?

6 A. Yes.

7 Q. And, again, I want to focus first on the
8 secondary objectives, and then we'll go to the primary
9 ones, okay?

10 A. Okay.

11 Q. The secondary ones were listed in b, c,
12 d and e in this document, they are CGI-S, CGI-I,
13 K-SADS-P and CGAS.

14 You see that?

15 A. Yes.

16 MS. THORNE: For the record, there is
17 also an A that pertains to the secondary
18 objectives.

19 BY MR. WISNER:

20 Q. Sure, but that's not specifically an
21 objective, per se, right? That's just something that
22 characterizes the other four, correct?

23 MS. THORNE: Objection.

24 BY MR. WISNER:

1 Q. Mr. Closter?

2 A. I mean, I don't know who wrote the
3 document. It would appear that that would -- you know,
4 I wouldn't have indented it this way.

5 Q. Sure. There is a colon after A, right?

6 A. Yes, it would appear that those four
7 are, you know, secondary statistical objectives to
8 further compare the efficacy of citalopram and so on.

9 Q. All right. Why don't you turn to Page
10 30 in the document. Towards the latter half of the
11 document it becomes tables so --

12 A. Yes.

13 Q. -- it would be Page 30. Let me know
14 when you're there.

15 A. I'm there.

16 Q. This reads Table 3.2, correct?

17 A. Table 3.2.

18 Q. And this is -- has a date on it, it's
19 generated October 30th, 2001?

20 A. Yes.

21 Q. And this states it's the "Secondary
22 Efficacy, CGI Improvement after 8 Weeks."

23 You see that?

24 A. Yes.

1 Q. This is one of the secondary endpoints,
2 correct?

3 MS. THORNE: Objection.

4 THE WITNESS: As, you know, specified on
5 an earlier page, yes.

6 BY MR. WISNER:

7 Q. Okay. And here the P value for the
8 endpoint is 0.257?

9 A. That's what it says on the page.

10 Q. That is not statistically significant,
11 correct?

12 MS. THORNE: Objection.

13 THE WITNESS: I mean, it's not indicated
14 as such on the page.

15 BY MR. WISNER:

16 Q. Statistical significance is something
17 that's below .05, correct?

18 A. That's my understanding.

19 Q. That is not below .05, correct?

20 A. Right.

21 Q. All right. Turn to the next table on
22 the next page, Table 3.3. This is change of baseline
23 in CGI severity after 8 weeks.

24 You see that?

1 A. Yes.

2 Q. And if you look down again at Week 8
3 compared to baseline, the P value between citalopram
4 and placebo is .266.

5 You see that?

6 MS. THORNE: Objection.

7 THE WITNESS: Yes.

8 BY MR. WISNER:

9 Q. That is not statistically significant,
10 correct?

11 MS. THORNE: Objection.

12 THE WITNESS: It is not below .05,
13 right.

14 BY MR. WISNER:

15 Q. Turn to the next page, Page 32, Table
16 3.4.

17 You see this?

18 A. Yes.

19 Q. This is another secondary efficacy
20 endpoint, correct?

21 A. Correct.

22 Q. This is change of baseline in CGAS after
23 8 weeks.

24 You see that?

1 A. Yes.

2 Q. And that also has a P value of .309.

3 You see that?

4 MS. THORNE: Objection.

5 THE WITNESS: That's what it says on the
6 page.

7 BY MR. WISNER:

8 Q. Okay. And that is not statistically
9 significant, correct?

10 MS. THORNE: Objection.

11 THE WITNESS: Correct.

12 BY MR. WISNER:

13 Q. All right. The last one here, Table
14 3.5.

15 You see it?

16 A. Yes.

17 Q. All right. That is a secondary efficacy
18 as well endpoint?

19 A. Correct.

20 Q. And, again, that has a P value of 0.105,
21 correct?

22 A. Right.

23 Q. And that is also not statistically
24 significant?

1 MS. THORNE: Objection.

2 THE WITNESS: Right.

3 BY MR. WISNER:

4 Q. So based on the results in these tables,
5 none of the secondary endpoints reached statistical
6 significance, correct?

7 MS. THORNE: Objection.

8 THE WITNESS: At Week 8, correct.

9 BY MR. WISNER:

10 Q. And the secondary endpoint was the
11 difference between citalopram and placebo at Week 8,
12 correct?

13 MS. THORNE: Objection.

14 THE WITNESS: Right.

15 BY MR. WISNER:

16 Q. All right. So none of the secondary
17 endpoints as pre-defined in the protocol met
18 statistical significance?

19 MS. THORNE: Objection.

20 THE WITNESS: That's right.

21 BY MR. WISNER:

22 Q. Turn to Page 14, Section "10.5 Efficacy
23 Conclusions."

24 You see that?

1 A. I see it.

2 Q. All right. Go to the second paragraph
3 in there, I'm going to read it to you. It says,
4 significant differences, P value of less than 0.05,
5 indicative of greater improvement in citalopram
6 patients -- let me read that again.

7 Significant differences, P value less
8 than 0.05, indicative of greater improvement in
9 citalopram patients than placebo patients were also
10 observed in the CGI, CGS and CGAS.

11 Do you see that?

12 A. Yes.

13 Q. Now, is it true, actually, that all of
14 the endpoints at Week 8 were not statistically
15 significant?

16 MS. THORNE: Objection. This is outside
17 the scope of the 30(b)(6) notice. To the
18 extent that you're asking the witness to draw
19 conclusions comparing one portion of the study
20 report to another portion of the study report,
21 I'm going to object to him answering the
22 question.

23 THE WITNESS: Yeah, I mean, I'm not an
24 expert on the studies. I mean, you've shown me

1 a couple of pages in a study report of which I
2 didn't write or review in as much detail as it
3 would take to draw conclusions.

4 BY MR. WISNER:

5 Q. All of the secondary negative endpoints
6 were negative, correct?

7 MS. THORNE: Objection.

8 THE WITNESS: Based on what you showed
9 me in the document, those were negative.

10 BY MR. WISNER:

11 Q. Okay. This first sentence here suggests
12 that they're indicative of significant greater
13 improvement in citalopram relative to placebo patients,
14 doesn't it?

15 MS. THORNE: Objection, mischaracterizes
16 the document, and to the extent that you are
17 asking the witness to testify to your
18 characterization of the document, that is
19 outside the scope of the 30(b)(6) notice, I'm
20 going to instruct him not to answer on behalf
21 of the company. He can answer on behalf of his
22 personal knowledge, if he has a view.

23 THE WITNESS: You know, personally
24 speaking, I don't know what this is exactly

1 referring to. You know, it doesn't say Week 8.
2 It doesn't reference secondary efficacy
3 parameters even leading into these parameters
4 that were mentioned.

5 BY MR. WISNER:

6 Q. Secondary efficacy parameters are CGI-I,
7 CGI-S and CGAS, correct?

8 MS. THORNE: Objection.

9 THE WITNESS: You know, as indicated
10 earlier in the document, they are.

11 BY MR. WISNER:

12 Q. Okay. This sentence says that
13 significant differences indicative of greater
14 improvement in citalopram patients than placebo
15 patients were also observed on those various metrics.

16 You see that?

17 MS. THORNE: Objection. That's not what
18 the document says.

19 THE WITNESS: I can read what's in the
20 document.

21 BY MR. WISNER:

22 Q. That's what it says, right?

23 MS. THORNE: Objection.

24 THE WITNESS: Significant differences

1 indicative of greater improvement in citalopram
2 patients than placebo patients were also
3 observed on the following three measures.

4 BY MR. WISNER:

5 Q. Okay. Nowhere in that paragraph, and
6 you can feel free to read the rest of the paragraph,
7 does it ever state that all the secondary endpoints as
8 specified in the protocol were negative for efficacy?

9 MS. THORNE: Objection.

10 THE WITNESS: Yeah. I mean, I would
11 need to spend a moment to read the entire
12 paragraph if you're asking me to comment on it.

13 BY MR. WISNER:

14 Q. Please read the entire paragraph and let
15 me know when you're done.

16 A. (Witness reviews document.)

17 Q. Sorry, Mr. Closter, I see you flipping
18 through pages there. Are you through the paragraph?

19 MS. THORNE: Objection.

20 THE WITNESS: Well, I mean, there's
21 2,135 pages in this document.

22 BY MR. WISNER:

23 Q. I'm sorry. I asked you to read that
24 paragraph.

1 Did you read the paragraph?

2 A. That's fine. In order to --

3 MS. THORNE: Objection. Are you saying
4 the witness is not entitled to see the context
5 of the document before answering your question?

6 MR. WISNER: No. I asked him to let me
7 know when he was done reviewing the paragraph,
8 and I saw him flipping through pages, so I just
9 asked him if he's finished reviewing the
10 paragraph.

11 THE WITNESS: Right. So it helps me
12 when I'm going to review that paragraph, I need
13 to see what comes before and what comes after
14 it and then what the document is, because, as I
15 mentioned, there's over 2,100 pages in the
16 original document, yet what's here I'm going to
17 imagine is maybe, you know, 15% of that.

18 So I'm sure some of them are tables, but
19 even some of the written report, I'm assuming,
20 is missing in places. So without seeing the
21 entire document, it's going to be difficult to
22 understand where exactly this fits in.

23 BY MR. WISNER:

24 Q. Mr. Closter, my pending question to you

1 is have you finished reviewing that paragraph?

2 A. And I have not.

3 Q. Okay. So let me know when you're done
4 finishing reviewing that paragraph.

5 A. Absolutely. (Witness reviews document.)

6 Q. Mr. Closter, I'll just read you the
7 paragraph. I think that will be quicker.

8 The paragraph reads, significant
9 differences, P value less than 0.5 -- 0.05, indicative
10 of greater improvement in citalopram patients than
11 placebo patients, were observed on the CGI, CGIS and
12 CGAS. Statistically significant effects were not found
13 as consistently across study timepoints for the
14 secondary efficacy parameters as for the primary
15 efficacy parameter, but numerically greater improvement
16 in the citalopram group was observed on every efficacy
17 parameter at every clinic visit in both the LOCF and OC
18 analysis. Results from the LOCF and OC analysis were
19 similar.

20 Do you see that?

21 A. Yeah. I'm not going to be able to give
22 you commentary on this paragraph alone because the data
23 that precedes it is all relevant to my answer. So if
24 you'd like to expand my answer on the data that in this

1 section that is relevant to this paragraph, I'd be
2 happy to give you a read on from what I am reading, but
3 I am unable to give you an answer on just 10.5 because
4 it's incomplete.

5 Q. Okay. So my question for you,
6 Mr. Closter, is a relatively simple one, and that is in
7 that paragraph, does it state that every secondary
8 outcome specified in the protocol was negative for
9 efficacy?

10 MS. THORNE: Objection, misleading,
11 mischaracterizes the document.

12 THE WITNESS: Yeah, I mean, it
13 doesn't -- here's the challenge, and I
14 encourage you to read what precedes this,
15 because I think you will come to the right
16 conclusion, that these efficacy conclusions are
17 that, they are summarizing the body of the
18 efficacy results, and it's not just talking
19 about Week 8 because there were earlier time
20 points where all of these things were measured
21 at every study visit, and those are fully
22 described in the paragraphs leading up to this.

23 So this is merely a summary of what was
24 just presented, and I think you're going to

1 find that the data, from what I am reading,
2 this paragraph accurately characterizes that
3 data from my point of view, which is not of a
4 clinician, which is of someone who has worked
5 in the business for quite some time and has
6 read these reports from time to time, which is
7 why I went back to read them, because any
8 sentence or paragraph in and of themselves
9 aren't going to give you the full picture.

10 BY MR. WISNER:

11 Q. Mr. Closter, I appreciate your answer.
12 My question didn't ask for any of that.

13 A. Of course you didn't.

14 Q. My question simply asked whether or not
15 in that paragraph that I just read you it states that
16 the endpoints, the secondary endpoints at Week 8 were
17 negative for efficacy?

18 MS. THORNE: Objection, misleading,
19 asked and answered.

20 You can answer the question, but you can
21 feel free to give a complete answer.

22 THE WITNESS: Yeah, I mean, I'm not
23 going to answer the question because it's -- in
24 my mind, it's not an appropriate question to

1 ask.

2 BY MR. WISNER:

3 Q. So you're refusing to answer my question
4 about whether something is contained in that paragraph?

5 A. I can tell you if something is contained
6 or not, an actual sentence, but I'm not going to
7 interpret the sentence.

8 Q. Okay. So you refuse to answer my
9 question whether or not in that paragraph it states
10 that the secondary endpoints at Week 8 were negative
11 for efficacy?

12 MS. THORNE: Objection, misleading.
13 Your question is misleading.

14 THE WITNESS: Yeah, it does not
15 literally say that.

16 BY MR. WISNER:

17 Q. Okay. Does it literally say that
18 anywhere in the entire efficacy conclusions written
19 here in the narrative starting on Page 11 through page
20 15, and I have given you the entire narrative that
21 contained in the final study report?

22 A. Yeah, I've read what's on Page 13, and
23 it talks about at certain data points the study did not
24 show statistical significant.

1 Q. Please tell me what paragraph you're
2 referring to?

3 A. Okay. I'll start at 10.2.1.

4 Q. Okay, second paragraph?

5 A. I mean, okay, so it says significant
6 improvement on CGI-S, second paragraph. It was
7 significant at earlier time points 1, 2, 4 and 6 but
8 not the end of Week 8, okay. So that's pretty clear to
9 me that it was not significantly -- statistically
10 significantly better than placebo at Week 8.

11 Q. Okay. So let's stop right there. I
12 appreciate you saying that. Does it ever say that this
13 was an -- the secondary endpoint was negative for
14 efficacy?

15 MS. THORNE: Objection.

16 THE WITNESS: No, but it's not
17 informative. It doesn't have to say that. I
18 mean, one can read the line and understand it
19 was not significant at Week 8. It says that.

20 BY MR. WISNER:

21 Q. So you think a person reviewing this
22 couldn't get confused and think that the secondary
23 endpoints were, in fact, positive because it never once
24 says that the secondary endpoints are negative?

1 MS. THORNE: Objection.

2 THE WITNESS: Lucky enough, it's not
3 people like me or you that read these
4 documents, but it's people that are fully
5 trained in them, whether they're at a sponsor
6 company like Forest was at the time or at the
7 FDA. I mean, these are people that are very
8 smart, they have the right background, and they
9 are trained to understand and read documents
10 that are generated like this. This is the
11 format that the FDA wants them in.

12 BY MR. WISNER:

13 Q. So you'd agree with then that an FDA
14 reviewer won't get mixed up here in thinking that the
15 secondary endpoints were all positive?

16 MS. THORNE: Objection.

17 THE WITNESS: I don't believe -- in my
18 own experience, I do not believe they would be
19 confused by -- and this is generally speaking
20 by this document.

21 MR. WISNER: Thank you. One second.

22 Go off the record.

23 THE VIDEOGRAPHER: We are now off the
24 record. The time is 1:45.

1 (Pause.)

2 THE VIDEOGRAPHER: We are now back on
3 the record. The time is 1:46.

4 (Document marked for identification as
5 ForestC Deposition Exhibit No. 50.)

6 BY MR. WISNER:

7 Q. Mr. Closter, I'm handing you a
8 document -- unfortunately this is out of sequence, was
9 planning to get to this later, but it's Exhibit 50 for
10 this deposition.

11 A. Okay.

12 Q. This is a memorandum prepared by the
13 Food and Drug Administration, specifically by Thomas
14 Laughren.

15 Do you see that?

16 A. Yes.

17 Q. Okay. Now, if you just turn to Page 3
18 of the document. Page 3, if you go down, all the way
19 down just before the paragraph that reads "Comment."

20 Do you see that paragraph?

21 A. Yeah.

22 Q. It says, "Results also significantly
23 favored citalopram over placebo in most secondary
24 outcomes."

1 Do you see that?

2 A. Yes.

3 Q. This is an FDA reviewer who has stated
4 in his report that the results significantly favored
5 citalopram over placebo on most secondary outcomes,
6 when, in fact, every single secondary outcome was
7 negative pursuant to the protocol?

8 MS. THORNE: Objection. Are you asking
9 a question. Or are you testifying, counsel?
10 Was there a question? Because I didn't see a
11 question mark.

12 BY MR. WISNER:

13 Q. Mr. Closter, I believe I have a question
14 pending, if you could answer, please.

15 MS. THORNE: I actually don't think you
16 do have a question pending, so if you would
17 like to read back your statement and then ask
18 correct at the end of it, feel free to do so,
19 but there is not a question pending.

20 MR. WISNER: Ms. Thorne, I'd ask you to
21 stop interfering with my deposition. I have a
22 question pending. Can you please answer it.
23 If you could please repeat the question.

24 (The court reporter read back the record

1 as requested.)

2 MS. THORNE: So I don't see a question
3 there.

4 MR. WISNER: So isn't that true?

5 MS. THORNE: Okay. Now you want to
6 finish your question. So now I'll object to
7 your question as outside the scope of the
8 30(b)(6) deposition notice, because we didn't
9 put up a witness to testify as to what
10 Mr. Laughren believed or intended when he wrote
11 this document. So Mr. Closter can go ahead and
12 he can answer in his personal capacity, but
13 he's not going to answer this question on
14 behalf of the company.

15 THE WITNESS: You know, so in my own
16 opinion, I mean, you'd be best served asking
17 Dr. Laughren what he meant by that. Was he, in
18 fact, referring to the secondary endpoints at
19 Week 8? Was he referring to the study visits
20 over time, which were described usually as
21 descriptive statistics per the protocol? So I
22 don't know.

23 BY MR. WISNER:

24 Q. You would agree that it would be

1 incorrect to state that the secondary endpoints in
2 citalopram Study 18 were positive?

3 MS. THORNE: Objection.

4 THE WITNESS: Again, I'm not the expert,
5 I don't participate in the trial. I'm
6 obviously not a clinical expert, so it would be
7 difficult for me to say that or not say that.

8 BY MR. WISNER:

9 Q. I'm sorry, Mr. Closter, a second ago you
10 testified under oath that all the secondary endpoints
11 were negative, correct?

12 A. Based on the study report you showed me.

13 MS. THORNE: Objection.

14 MR. WISNER: I'm sorry. Are you done
15 with your objection?

16 MS. THORNE: Yes.

17 BY MR. WISNER:

18 Q. Okay. So it would be incorrect then to
19 say the opposite, i.e., that the secondary endpoints
20 were positive, correct?

21 MS. THORNE: Objection, misstates the
22 document to the extent you're referring to
23 Mr. Laughren's document, it doesn't make any
24 reference to the time point that he is

1 referring to, first of all.

2 Second of all, to the extent you are not
3 referring to the document and you are asking a
4 hypothetical, that hypothetical is outside the
5 scope of the deposition notice, and I'm going
6 to instruct the witness not to answer on behalf
7 of the company.

8 Mr. Closter, to the extent that you are
9 able to answer it in your personal capacity,
10 you can feel free to do so.

11 MS. KIEHN: Thirdly, the document makes
12 no reference to secondary endpoints.

13 THE WITNESS: Yeah, again, it's
14 difficult to know what he's referring to.

15 MR. WISNER: Please repeat my question.

16 (The court reporter read back the record
17 as requested.)

18 MS. THORNE: I'm going to renew my
19 objection, and I'm going to renew Ms. Kiehn's
20 objection, with the same instruction.

21 THE WITNESS: I really don't know how to
22 answer the question.

23 BY MR. WISNER:

24 Q. I'm sorry, Mr. Closter, let's try this

1 again.

2 A. Sure.

3 Q. You previously testified based on your
4 review of the final study report on behalf of Forest
5 that all the secondary outcomes were negative, correct?

6 MS. THORNE: Objection, asked and
7 answered, misstates the testimony.

8 THE WITNESS: Right. Based on what you
9 shared with me in the tables from the redacted
10 report that you shared with me, we went over
11 each of those endpoints at Week 8.

12 BY MR. WISNER:

13 Q. And they were all negative, correct?

14 MS. THORNE: Objection.

15 THE WITNESS: Again, based on what I saw
16 the P values were all greater than .05.

17 BY MR. WISNER:

18 Q. So it would be incorrect then to state
19 that those outcomes were positive, right?

20 A. Again, if that's what Dr. Laughren is
21 referring to, but we don't know unless you ask him.

22 Q. I'm not asking about Dr. Laughren right
23 now. I'm asking you, Mr. Closter.

24 A. And I'm saying I don't know.

1 Q. So you don't know if it's incorrect to
2 say all the secondary outcomes were positive?

3 MS. THORNE: Objection, again, going to
4 object to this as outside the scope to the
5 extent that you're asking for -- that you're
6 posing a hypothetical. If you want to ask him
7 the outcomes of the secondary endpoints, we
8 have put up a witness who can speak to what the
9 outcomes of the secondary endpoints are, but if
10 you want to phrase -- if you want to ask all of
11 these misphrased questions and hypotheticals,
12 that's outside the scope, Brent.

13 BY MR. WISNER:

14 Q. I believe I have a question pending,
15 Mr. Closter.

16 A. I told you three times now, I can't
17 answer the question.

18 Q. So you can't answer whether or not that
19 would be incorrect to say; that's your testimony,
20 correct?

21 A. Yes.

22 Q. I want to make sure I get your answer.

23 A. Yes.

24 MS. KIEHN: You keep switching between

1 outcomes and endpoints.

2 MR. WISNER: If you could please make an
3 objection or not, but please stop coaching the
4 witness.

5 MS. THORNE: Nobody is coaching the
6 witness.

7 MS. KIEHN: We want to make sure the
8 testimony is clear, which you are intent on
9 making sure it is not clear.

10 MR. WISNER: Please stop wasting my
11 time.

12 BY MR. WISNER:

13 Q. Can you please turn to Exhibit 16.

14 A. Okay.

15 Q. Okay. Isn't it true that Forest
16 contracted with a contract research organization
17 PharmaNet to help draft the initial draft of Celexa
18 Study 18 final study report?

19 MS. THORNE: Objection. I'm going to
20 object to that as outside the scope of the
21 30(b)(6) notice.

22 Mr. Closter, to the extent you have
23 personal knowledge on that topic you can
24 testify, but I'm going to instruct you not to

1 testify on behalf of the company.

2 THE WITNESS: I have no knowledge of
3 that.

4 MR. WISNER: Take a break.

5 THE VIDEOGRAPHER: We are now off the
6 record. The time is 1:53.

7 (Brief recess.)

8 THE VIDEOGRAPHER: We are now back on
9 the record. The time is 2:06.

10 BY MR. WISNER:

11 Q. Mr. Closter, did you prepare today to
12 testify on behalf of Forest regarding how the
13 protocol -- final study report for Study 18 was
14 drafted?

15 A. I don't know the steps by how it was
16 drafted, no.

17 Q. You don't know who Forest may or may not
18 have contracted with to generate the report?

19 A. I don't know.

20 Q. Do you know who had a hand in editing
21 the report?

22 A. I am sure it would be those on the
23 clinical team.

24 Q. Have you actually seen any of those

1 edits?

2 A. Have I seen any edits to the report, no.

3 Q. So you're not prepared to testify about
4 any of that today; is that fair?

5 A. Not regarding the edits or who we
6 contracted with to draft the report.

7 Q. Okay. You also understand that the
8 plaintiffs have alleged that the primary efficacy
9 endpoint in the study was not, in fact, positive
10 because we believe certain of those patients were
11 unblinded? Do you understand that, that's our
12 allegations?

13 MS. THORNE: Objection.

14 THE WITNESS: I'm aware that that is a
15 point of contention.

16 BY MR. WISNER:

17 Q. Are you prepared today to testify about
18 the unblinding that occurred in Study 18?

19 MS. THORNE: Objection. I'm going to
20 object to that as outside the scope of the
21 30(b)(6) to the extent that you referred to an
22 actual unblinding. If you would like to
23 recharacterize your question, Mr. Closter can
24 testify on behalf of the company to high level

1 details regarding a potential unblinding issue.

2 MR. WISNER: While I hear you on this
3 objection, and I apologize for questioning you
4 and putting you on the spot, and if you don't
5 feel comfortable doing so, please let me know,
6 but I want to clarify what you're going to
7 object to because I want to know if I need to
8 end this deposition or not so -- or not address
9 this topic and wait for a court order
10 compelling it.

11 MS. THORNE: To the extent that you
12 would like to ask the witness about a potential
13 unblinding that plaintiffs perceive occurred,
14 you can ask him about high levels detail on
15 that. I will let you know if you get into a
16 level of detail that goes beyond the witness'
17 preparation, but he is able to testify to that
18 at a high level.

19 MR. WISNER: And when you say "a high
20 level," what does that mean.

21 MS. THORNE: I mean I'm not going to
22 testify -- I'm not going to put the testimony
23 on the record right now.

24 MR. WISNER: I have 400 questions about

1 the unblinding issue. Are you going to object
2 to all of them beyond the first one is did an
3 unblinding occur?

4 MS. THORNE: No.

5 MS. KIEHN: We agreed to general high
6 level details about the study, so that's what
7 we agreed to.

8 MR. BAUM: So who would we get to
9 testify about the more granular details on the
10 unblinding issue?

11 MS. KIEHN: Aren't you deposing Dr. Jin
12 for that very reason?

13 MS. THORNE: Yeah, didn't you already
14 move to compel like several deponents on that
15 issue, in fact?

16 MR. WISNER: No, I think it was just --
17 Jin was for the statistics. I don't think he
18 has any information about the unblinding.

19 MR. BAUM: He has somewhat of an issue
20 with --

21 MS. KIEHN: It's the same issues that
22 related. Do we want to go off the record?

23 MS. THORNE: Can we go off the record.

24 THE VIDEOGRAPHER: We are now off the

1 record. The time is 2:10.

2 (Brief recess.)

3 THE VIDEOGRAPHER: We are now back on
4 the record. The time is 3:04.

5 BY MR. WISNER:

6 Q. All right. Sorry for that delay, Mr.
7 Closter.

8 A. No problem.

9 Q. All right. So I want to just ask you
10 some sort of general questions about Study 18, to the
11 best of your knowledge, that you're prepared to testify
12 today.

13 A. Yeah.

14 Q. You understand that there was a
15 potential -- there was a dispensing error that occurred
16 with nine patients in Study 18, correct?

17 MS. THORNE: Objection.

18 THE WITNESS: I'm aware of patients
19 getting, I guess, the wrong colored tablets.

20 BY MR. WISNER:

21 Q. And you know because you read that in
22 the study report, right?

23 A. Yes.

24 Q. So, to be clear, I just want to make

1 sure this is clarified, your understanding of what
2 happened with the unblinding is based on what's
3 contained in the study report; is that right?

4 MS. KIEHN: Objection.

5 THE WITNESS: I don't know if I'd
6 characterize it as unblinding. I think
7 patients just got the wrong color product.

8 BY MR. WISNER:

9 Q. Fair enough. I keep calling it
10 unblinding. Should I say potential unblinding; is that
11 better?

12 MS. KIEHN: Incorrect color coding.

13 THE WITNESS: Right, that's exact -- I
14 mean --

15 MR. BAUM: Or how about subject to a
16 dispensing error?

17 BY MR. WISNER:

18 Q. We'll just -- let's look at the language
19 from the study report. I don't want to fight about
20 this.

21 Just turn to Page 10.

22 A. This is within -- so Exhibit 16, right?

23 Q. Yeah.

24 A. Just to make sure, okay. Page 10.

1 Okay. I'm there.

2 Q. In the second paragraph it says, "nine
3 patients" and then it lists the patients' numbers.

4 You see that?

5 A. Yep, yep.

6 Q. "Were mistakenly dispensed 1 week of
7 medication with potentially unblinding information."

8 Do you see that?

9 A. Yes.

10 Q. So if I refer to this incident as
11 potentially unblinding information, is that okay?

12 A. Yeah, that's the way it's written, so
13 that's fine.

14 Q. Okay. Now, you understand that the
15 plaintiffs have alleged that this is not a potential
16 unblinding but that it was, in fact, an unblinding of
17 these patients.

18 Do you understand that?

19 MS. THORNE: Objection.

20 THE WITNESS: I understand that's the
21 assertion made.

22 BY MR. WISNER:

23 Q. Okay. And Forest disagrees with that
24 assertion, correct?

1 MS. THORNE: Objection.

2 THE WITNESS: That is correct.

3 BY MR. WISNER:

4 Q. All right. Just looking at here this
5 list of patient numbers on Page 10, do you know which
6 one of those patients got the wrong colored tablets?

7 MS. THORNE: Objection.

8 THE WITNESS: Do I know which of the
9 patients?

10 BY MR. WISNER:

11 Q. Yeah.

12 A. No, it just has a list of patients.

13 Q. Okay. Did all of them get them; do you
14 know?

15 MS. THORNE: Objection.

16 THE WITNESS: If we read nine patients
17 they list the -- I guess the nine, one, two,
18 three, four, five, six, seven, eight, nine,
19 were mistakenly dispensed 1 week of medication.
20 So it appears as though all nine were dispensed
21 the incorrectly colored tablets.

22 BY MR. WISNER:

23 Q. Okay. I'm just a little confused. I
24 just want to make sure I understand.

1 Some of these patients were actually in
2 the placebo arm, right?

3 MS. THORNE: Objection.

4 THE WITNESS: I don't know. I couldn't
5 say for certain.

6 BY MR. WISNER:

7 Q. Okay. We'll save this for the 30(b)(6)
8 deposition witness with Mr. Olanoff.

9 So when I refer to -- okay. So let's
10 move on.

11 Shortly after the results of Study MD-18
12 were made known within Forest, Forest made plans to
13 promote the results of the study; isn't that true?

14 MS. THORNE: Objection.

15 THE WITNESS: Yeah, there were no plans
16 to promote the study results. Should I be
17 looking at a document right now?

18 BY MR. WISNER:

19 Q. No, no. I'm just asking you some
20 general questions.

21 A. Okay. So I saw you read something.

22 So, no, there were no plans to promote
23 the results of the study.

24 MR. BAUM: Are we going to put something

1 on the record actually about what we're doing
2 with respect to these questions that are being
3 reserved for Olanoff or Jin or whatever?

4 MS. KIEHN: Brent, did you want to put
5 something on the record?

6 MR. WISNER: Yes, I would like to.

7 So my understanding is consistent to our
8 discussions during the previous break, please
9 correct me where I'm wrong, we agreed that
10 Forest would designate Lawrence Olanoff, whose
11 deposition is presently scheduled for
12 October 24th, to testify specifically in
13 regards to the details of the drafting of
14 study -- final study report of Study 18 and any
15 potential unblinding that occurred relating --
16 potential unblinding that occurred relating to
17 that study in detail.

18 MS. KIEHN: To the extent the company
19 knows the responses or the information is
20 reasonably accessible to the company, yes.

21 (Document marked for identification as
22 ForestC Deposition Exhibit No. 33.)

23 BY MR. WISNER:

24 Q. Handing you a document I marked as

1 Exhibit 33.

2 MS. THORNE: Sorry. For the record,
3 Brent, we're skipping --

4 MR. WISNER: A lot of documents.

5 MS. THORNE: -- a lot of exhibit
6 numbers, so just so the record is clear when we
7 look back at this transcript later, the last
8 exhibit in the record is Exhibit 16. We are
9 now on Exhibit 33.

10 MR. WISNER: That's correct.

11 BY MR. WISNER:

12 Q. So this is an e-mail exchange, appears
13 at the top of it's dated October 15th, 2001.

14 Do you see that?

15 A. Yes.

16 Q. And this is to Paul Tiseo and it's from
17 Jeffrey Lawrence.

18 You see that?

19 A. Yes.

20 Q. At least the top e-mail is?

21 A. Yep.

22 Q. Okay. All right. If you look at the
23 bottom, there is actually a series of e-mails and the
24 original starts at the last page on Page 2, that's from

1 Jeffrey Lawrence to M. Prescott and N. Mitchner.

2 Do you see that?

3 A. Yes.

4 Q. That's Mary Prescott and Natasha
5 Mitchner, right?

6 A. I believe so.

7 Q. Mr. Lawrence reads -- writes "Mary,
8 Natasha, I apologize, but I've forgotten some of the
9 details we've talked about with regards to the
10 pediatric data and Karen Wagner. First of all, did we
11 decide who would be writing the manuscript? Have you
12 been in contact with Karen Wagner at all? As you know,
13 we don't want to compromise the publication but we
14 would like to wrap some PR and CME around this data.
15 Let me know your thoughts when you get a chance,
16 thanks."

17 Did I read that correctly?

18 A. Yes.

19 Q. Who is Jeff Lawrence?

20 A. Jeff Lawrence worked at Forest on the
21 marketing team for Celexa.

22 Q. So he was in the marketing group
23 specifically on Celexa?

24 A. Correct.

1 Q. And here he's writing in this e-mail
2 that he would like to wrap some PR and CME around the
3 pediatric data, correct?

4 MS. THORNE: Objection, asked and
5 answered.

6 THE WITNESS: That's what it says. It
7 looks like that's what he's referring to.

8 BY MR. WISNER:

9 Q. Okay. So Mr. Lawrence then is actually
10 contemplating conducting some promotional activities
11 around the publication of the pediatric data?

12 MS. THORNE: Objection.

13 THE WITNESS: Yeah, I mean, we would not
14 consider those promotional activities.

15 BY MR. WISNER:

16 Q. What does PR stand for?

17 A. Public relations.

18 Q. And PR isn't a form of promotional
19 activities?

20 A. We do not consider it promotional.

21 Q. What is PR then to you?

22 A. We consider it data dissemination,
23 nonpromotional activities.

24 Q. So you put data dissemination under the

1 umbrella of public relations; is that right?

2 A. That's right.

3 Q. Okay. Continuing medical education
4 also, is that similar to PR?

5 MS. THORNE: Objection. In what way?

6 THE WITNESS: Yeah, I mean, I wouldn't
7 consider it similar to PR, no.

8 BY MR. WISNER:

9 Q. You would not?

10 A. No.

11 Q. So why would a man in the marketing
12 group be talking about wrapping PR and CME around this
13 data?

14 MS. THORNE: Objection.

15 THE WITNESS: Because at that time, I
16 mean, there were activities that the marketing
17 team was involved in that were not solely
18 related to promotion.

19 BY MR. WISNER:

20 Q. Okay. Would you consider PR and CMEs
21 marketing?

22 MS. THORNE: Objection.

23 THE WITNESS: Would I consider them
24 marketing?

1 BY MR. WISNER:

2 Q. Mm-hmm.

3 A. In what way?

4 Q. Well, being done by a guy who was in
5 marketing, correct?

6 MS. THORNE: Objection.

7 THE WITNESS: I mean, if you're saying
8 everything that a marketer does is considered
9 marketing, that's fine. I mean, it goes well
10 beyond developing promotional materials,
11 working on public relations, at that time
12 working on CME, working on training materials
13 for the fields, working with supply team,
14 developing forecasts. I mean, marketing does a
15 broad range of activities.

16 BY MR. WISNER:

17 Q. I understand, but would you consider
18 distributing PR about a particular study to be a form
19 of marketing?

20 MS. THORNE: Objection.

21 THE WITNESS: Not in a classic sense,
22 no.

23 BY MR. WISNER:

24 Q. It would be considered part of the

1 marketing budget, though, right?

2 MS. THORNE: Objection.

3 THE WITNESS: I think in a way the
4 company allocated funds, yes, it came out of
5 what was called the marketing budget, but it
6 was a range of activities that spanned from
7 promotional activities like developing sales
8 materials, funding promotional programs to
9 funding nonpromotional activities, like CME,
10 PR, publication efforts, and it was merely a
11 way to capture in the budget, as per finance,
12 the activities that were devoted against a
13 particular brand.

14 BY MR. WISNER:

15 Q. Okay. All right. Let's move on to the
16 next exhibit.

17 (Document marked for identification as
18 ForestC Deposition Exhibit No. 34.)

19 BY MR. WISNER:

20 Q. Handing you a document, Exhibit 34.
21 This is an e-mail exchange with the top date of
22 September 29th, 2001 -- sorry, September 25th, 2001.

23 Do you see that?

24 A. Yes.

1 Q. All right. If you turn to the second
2 page -- sorry -- the third page, you see there's an
3 e-mail from John MacPhee to two recipients starting on
4 Page 2 and ending on Page 3.

5 Do you see that?

6 A. I do.

7 Q. Who is John MacPhee?

8 A. At the time I don't know of John's exact
9 title, but, at a minimum, he was the head of the
10 marketing team for Celexa and Lexapro.

11 Q. Okay. And, typically -- I'm just
12 curious -- did the head of the marketing team for
13 Celexa or Lexapro oversee the creation of continuing
14 medical education programs?

15 MS. THORNE: Objection.

16 THE WITNESS: I mean, he's responsible
17 for whatever the marketing team does, right.
18 So is he directly involved in maybe some
19 activities and others not?

20 BY MR. WISNER:

21 Q. Let me ask you clear -- a simpler
22 question.

23 CMEs, continuing medical education,
24 they're in the marketing group for Forest; is that

1 right?

2 MS. THORNE: Objection. What time
3 period are you referring to, Brent?

4 BY MR. WISNER:

5 Q. In 2001 CMEs were over -- or supervised
6 or overseen in the marketing group; is that right?

7 MS. THORNE: Objection.

8 THE WITNESS: It was really a group
9 effort, so marketing was involved, but so was
10 the rest of the organization, medical affairs
11 and clinical, so it was a multi-disciplinary
12 sort of management of the CME activity.

13 BY MR. WISNER:

14 Q. And, again, it's your testimony that CME
15 programs were not designed to promote a product?

16 A. That was the company position, yes.

17 Q. Is that truth, though? Is that actually
18 what happened?

19 A. That's their position.

20 Q. I understand that's their position, but
21 isn't it true that CMEs were used by Forest to promote
22 drugs like Celexa for use in various indications,
23 including children?

24 MS. THORNE: Objection.

1 THE WITNESS: They were not -- they were
2 not used for promotional purposes.

3 BY MR. WISNER:

4 Q. Let me just read this e-mail. It says,
5 let me present issues re: presentation of ped data at
6 upcoming meetings and use of such data in CME programs.
7 I want to make sure my thoughts are understood.

8 1. I believe that ACNP does not allow
9 the referencing of presentations made at their meeting.
10 This would eliminate the ability to reference the
11 presentation in slides as used in a CME program. We
12 need to learn/confirm if this is true or not.

13 2. If it is true, we need to find
14 another venue to present the data so that it is
15 referencable. In doing this, we need to find a meeting
16 occurring soon that will present previously presented
17 materials. Sometimes, meetings will not accept data
18 presented at a previous meeting.

19 3. We then need to make sure that a CME
20 program/accrediting body would allow the inclusion of
21 data that is not yet published. In other words, make
22 sure that a poster presentation is fair game for an
23 inclusion in the program/presentation. In addition, we
24 would need to check the target journal (I believe JAMA)

1 for their rules regarding dissemination of data prior
2 to publication. We will probably be restricted to the
3 contents of the poster. This needs to be confirmed and
4 if true, the poster must be written with a CME program
5 in mind.

6 4. Once we have more facts a potential
7 CME program should be discussed with Karen Wagner to
8 see if she agrees and would chair it.

9 John MacPhee.

10 Did I read that correctly?

11 MS. THORNE: Objection. Just for the
12 record, Brent, you misspoke in Number 1, you
13 said "would" where it should be "could."

14 MR. WISNER: Thank you.

15 BY MR. WISNER:

16 Q. With that correction, did I appear to
17 have read it mostly correctly?

18 A. You did.

19 Q. Okay. Why was the guy who was in charge
20 of Celexa marketing so concerned about being able to
21 present the pediatric data in a CME as quickly as
22 possible?

23 MS. THORNE: Objection.

24 THE WITNESS: Yeah, I don't know what's

1 behind the e-mail. I mean, you'd have to ask
2 John what he intended by his e-mail.

3 BY MR. WISNER:

4 Q. And, to be clear, it's your testimony to
5 the jury that the urgency to get this data presented at
6 CME presentations was not to help promote the use of
7 Celexa for use in children?

8 MS. THORNE: Objection.

9 THE WITNESS: That's correct, the intent
10 was not to promote the data.

11 BY MR. WISNER:

12 Q. You just said you don't know what
13 Mr. MacPhee was referring to, so how do you know that
14 was not his intent?

15 MS. THORNE: Objection. Your question
16 didn't pertain to Mr. MacPhee's intent. Your
17 question was about Forest's intent.

18 THE WITNESS: That's true. Whatever she
19 said is true. The question was not in
20 regard --

21 BY MR. WISNER:

22 Q. Respectfully, I asked you a question.
23 If you can answer my question, I would appreciate that.

24 A. Do you want to ask the question again?

1 MR. WISNER: Sure. We'll have her read
2 it back.

3 (The court reporter read back the record
4 as requested.)

5 MS. THORNE: Objection.

6 THE WITNESS: I just said I don't know
7 Mr. MacPhee's intent.

8 BY MR. WISNER:

9 Q. Okay. So he could, in fact, have
10 intended to use the CME as a form of promotional
11 material?

12 MS. THORNE: Objection, calls for
13 speculation.

14 THE WITNESS: Again, you have to ask
15 John what he meant.

16 BY MR. WISNER:

17 Q. I didn't ask what he meant. I said he
18 could have meant that.

19 MS. THORNE: Objection, calls for
20 speculation.

21 THE WITNESS: He could have meant a lot
22 of things.

23 MR. WISNER: Move on to the next
24 exhibit.

1 (Document marked for identification as
2 ForestC Deposition Exhibit No. 35.)

3 BY MR. WISNER:

4 Q. This is Exhibit 35. Mr. Closter, I just
5 handed you a document that is Exhibit 35 to your
6 deposition, the first page of the document is an e-mail
7 from Natasha Mitchner to Christina Goetjen, Jeff
8 Lawrence and Bill Heydorn, and the subject is "Wagner
9 Hot Topics slides."

10 Do you see that?

11 A. Yes.

12 Q. And then attached to this e-mail is, in
13 fact, the hot topic slides.

14 Do you see that?

15 A. I do.

16 Q. And from what you can tell this is, in
17 fact, the presentation that Mrs. Wagner -- Dr. Wagner
18 gave at the ACNP convention?

19 MS. THORNE: Objection, assumes facts
20 not in evidence, lack of foundation.

21 THE WITNESS: Yeah, I mean, we know
22 these were sent on the date they were sent in
23 advance of the meeting. We don't -- we don't
24 have any confirmation, based on this, that says

1 these were the exact slides used.

2 BY MR. WISNER:

3 Q. So you don't know whether or not these
4 were the slides used at the ACNP presentation?

5 A. I do not.

6 MR. WISNER: Okay. Let's go off the
7 record.

8 THE VIDEOGRAPHER: We are now off the
9 record. The time is 3:23.

10 (Pause.)

11 THE VIDEOGRAPHER: We are now back on
12 the record. The time is 3:23.

13 BY MR. WISNER:

14 Q. Mr. Closter, do you have any reason to
15 dispute that these, in fact, are the slides that were
16 given by Karen Wagner at the ACNP convention?

17 MS. THORNE: Objection.

18 THE WITNESS: Based on the e-mail, these
19 appear they could be the final slides of the
20 presentation.

21 BY MR. WISNER:

22 Q. Okay. Turn to Page 6 of the slide.

23 Before I get into this, this slide was
24 presenting the results of Celexa Study 18, correct?

1 A. It appears to be true.

2 Q. All right. If you turn to Page 6.

3 A. Okay.

4 Q. This is the results of the primary
5 endpoint in Study 18, correct?

6 A. Looks to be.

7 Q. Okay. Nowhere on this slide does it
8 indicate that there was a potential unblinding issue
9 with the data, right?

10 MS. THORNE: Objection.

11 THE WITNESS: That is not indicated on
12 this slide, no.

13 BY MR. WISNER:

14 Q. Okay. In fact, nowhere is that
15 indicated in any of these slides?

16 MS. THORNE: Objection.

17 THE WITNESS: Do you want me to look
18 through the whole stack?

19 BY MR. WISNER:

20 Q. Sure. Why don't you look through. I'm
21 asking you questions about what's not in there.

22 A. Okay. (Witness reviews document.)

23 Okay.

24 Q. So nowhere in this slide does it mention

1 the information contained in the final study report
2 related to the potentially unblinding data underlying
3 the primary efficacy results?

4 MS. THORNE: Objection.

5 THE WITNESS: It's not included in the
6 deck.

7 BY MR. WISNER:

8 Q. It's not in the deck, correct?

9 A. Correct.

10 Q. Okay. Nowhere in this slide does it
11 indicate that all those secondary endpoints were
12 negative?

13 MS. THORNE: Objection.

14 THE WITNESS: It doesn't. I would note
15 this is a top line presentation of data.
16 There's a lot of aspects of the trial that
17 would not be included in a presentation like
18 this.

19 BY MR. WISNER:

20 Q. So it's not in the deck, correct?

21 A. No.

22 Q. Nowhere in the slide does it mention
23 that Dr. Wagner had any help preparing these slides,
24 does it?

1 MS. THORNE: Objection.

2 THE WITNESS: No.

3 BY MR. WISNER:

4 Q. In fact, these slides were prepared in
5 conjunction with Natasha Mitchner, correct?

6 MS. THORNE: Objection.

7 THE WITNESS: It's likely there was
8 support to present these, to prepare these
9 slides, that's, you know, very standard in
10 presentations like this.

11 BY MR. WISNER:

12 Q. But Natasha Mitchner is not mentioned
13 anywhere in any of these slides, is she?

14 MS. THORNE: Objection.

15 THE WITNESS: No, I'm not sure why she
16 would be.

17 BY MR. WISNER:

18 Q. Okay. Because she helped create them,
19 right; wouldn't that be why you put her name on?

20 MS. THORNE: Objection.

21 THE WITNESS: That's okay. I mean,
22 Dr. Wagner may have presented this on her own
23 study and gotten help from a fellow or a
24 trainee under her, and they likely wouldn't

1 have been noted in this either.

2 BY MR. WISNER:

3 Q. Back up. You know that Natasha Mitchner
4 did the first and almost the final draft of these
5 slides for Mrs. Wagner, right?

6 MS. THORNE: Objection, assumes facts
7 not in evidence.

8 THE WITNESS: Yeah, I couldn't test all
9 that, but, in general, there are support for
10 presentations like this, and the author, the
11 presenter is often involved in every step of
12 the way and, ultimately, has control over the
13 slides.

14 BY MR. WISNER:

15 Q. Nowhere in this presentation does it
16 discuss the effect size of the primary efficacy result?

17 A. The effect size of the primary efficacy
18 result.

19 MS. THORNE: Objection.

20 THE WITNESS: I mean, it shows the
21 primary variable over time, seems pretty
22 relevant.

23 BY MR. WISNER:

24 Q. Do you know what an effect size is,

1 Mr. Closter?

2 A. Generally speaking, yes.

3 Q. Do you know what a Cohen effect size is?

4 A. No, it's beyond my expertise.

5 Q. Okay. Nowhere in here does it specify

6 whether or not the difference between placebo and

7 citalopram were clinically significant, does it?

8 MS. THORNE: Objection.

9 THE WITNESS: No, and I'm not really

10 sure what, you know, the role of clinical

11 significance plays in a trial. I know

12 statistical significance. I'm not really

13 familiar with clinical significance in a trial.

14 BY MR. WISNER:

15 Q. You're not familiar with the concept of
16 clinical significance?

17 A. Concept, yes, but I don't know what role
18 it plays in a clinical trial.

19 Q. Well, clinical significance is whether
20 or not the difference between the treatment and the
21 placebo creates a meaningful effect in the patient's
22 life, right?

23 MS. THORNE: Objection.

24 THE WITNESS: Right. My understanding,

1 that's typically assessed on a
2 patient-to-patient level, difficult to assess
3 from the body of a trial where the patients are
4 rather heterogenous. As a whole they may
5 perform in one similar way, but each patient
6 individually is going to perform very
7 differently, just like they would in a
8 clinician's practice.

9 BY MR. WISNER:

10 Q. Isn't it standard medical practice to
11 look at the Cohen effect size in establishing whether
12 or not the results observed are, in fact, clinically
13 significant?

14 MS. THORNE: Objection.

15 THE WITNESS: Yeah, you're asking the
16 wrong guy. I'm not -- I don't have a technical
17 expertise to assess that.

18 BY MR. WISNER:

19 Q. Okay. What about the number needed to
20 treat, are you familiar with that metric?

21 A. Yes, in general.

22 Q. And you understand that that is a metric
23 that helps indicate the clinical significance of a
24 study result, right?

1 A. I'm not sure exactly --

2 MS. THORNE: Objection.

3 THE WITNESS: I'm not sure exactly what
4 it measures, but it is a term that clinicians
5 will use about the benefits of a particular
6 treatment and allow them to compare it to other
7 treatments.

8 BY MR. WISNER:

9 Q. There is no NNT result listed in this
10 presentation, is there?

11 MS. THORNE: Objection.

12 THE WITNESS: No, but I don't even
13 believe that was a parameter in the clinical
14 study.

15 BY MR. WISNER:

16 Q. There is -- I'm sorry. A parameter in a
17 clinical study, is that what you just said?

18 MS. THORNE: Objection.

19 THE WITNESS: Yes.

20 BY MR. WISNER:

21 Q. NNT is calculated -- do you know how an
22 NNT is calculated?

23 A. Not exactly.

24 MR. BAUM: To be clear, reserve these

1 things he can't answer.

2 MR. WISNER: That's fine. I don't think
3 that is going to be an issue.

4 MR. BAUM: I think you need to make
5 clear.

6 MR. WISNER: Okay. We reserve the right
7 to ask Dr. Olanoff about effect sizes and NNT
8 and clinical significance during his 30(b)(6)
9 deposition, based upon his answers.

10 MS. KIEHN: We understand your position,
11 and we'll take it under consideration.

12 BY MR. WISNER:

13 Q. Okay. Nowhere in this presentation does
14 it indicate the results of Study 94404, does it?

15 A. No.

16 Q. But the study results of 94404 had been
17 made known to Forest before this presentation occurred,
18 correct?

19 MS. THORNE: Objection.

20 THE WITNESS: Yes, we would have known
21 about them.

22 BY MR. WISNER:

23 Q. Do you think it's a bit misleading to
24 present data from a recently completed clinical trial

1 that purports to have a positive result but not present
2 date from a clinical trial that contemporaneously shows
3 there is no positive result?

4 MS. THORNE: Objection.

5 THE WITNESS: We don't believe it's
6 misleading.

7 BY MR. WISNER:

8 Q. So just cherry picking the data and
9 picking which clinical trial to show to physicians is
10 not a -- is not misleading, in your opinion?

11 MS. THORNE: Objection.

12 THE WITNESS: Yeah, I wouldn't
13 characterize it that way.

14 BY MR. WISNER:

15 Q. All right. I'm handing you a document.
16 (Document marked for identification as
17 ForestC Deposition Exhibit No. 36.)

18 BY MR. WISNER:

19 Q. I'm handing you a document Exhibit 36 to
20 your deposition. This is an e-mail from William
21 Heydorn to William Heydorn dated December 19th, 2001.

22 Do you see that?

23 A. I do.

24 Q. The subject is "ACNP posters - Wagner

1 (peds), Trivedi (SCT) and Rappaport (SCT)."

2 Do you see that?

3 A. I do.

4 Q. And if you look below, the original
5 message was actually from Natasha Mitchner to Bill
6 Heydorn. The subject was "ACNP posters."

7 Do you see that?

8 A. Yes.

9 Q. And she writes, "Attached please find
10 pdfs of the Wagner, Trivedi and Rappaport posters.
11 Please do not hesitate to contact me with questions.
12 Thanks."

13 You see that?

14 A. Yes.

15 Q. If you turn the page, this is actually a
16 condensed version of that poster.

17 Do you see that?

18 A. Yes.

19 Q. I know the font is small, but I want to
20 see if you can read some of the things on here with me,
21 and this is, to the best of your knowledge, a copy of
22 the poster that was actually presented at the ACNP
23 conference in December of 2001?

24 MS. THORNE: Objection, lack of

1 foundation, assumes facts not in evidence.

2 THE WITNESS: This looks to be the
3 poster that may have been presented at the
4 meeting.

5 BY MR. WISNER:

6 Q. Okay. It's titled "Citalopram Treatment
7 of Pediatric Depression: Results of a
8 Placebo-Controlled Trial."

9 Do you see that?

10 A. I do.

11 Q. And that's referencing MD-18?

12 A. I would believe so, yes.

13 Q. All right. The lead author listed on
14 the poster is Karen Wagner.

15 Do you see that?

16 A. Yes.

17 Q. And then there's some other authors
18 listed there. There's Dr. Robb.

19 Do you see that?

20 A. Yes.

21 Q. And then Dr. Findling.

22 Do you see that?

23 A. Yes.

24 Q. And then Dr. Tiseo?

1 A. Tiseo.

2 Q. Tiseo. I keep saying wrong, Tiseo?

3 A. Yes.

4 Q. Do you see that?

5 A. I do.

6 Q. And of all the individuals listed as
7 authors here, Mr. Tiseo is the only person listed from
8 Forest Laboratories?

9 A. That is correct.

10 Q. Okay. Natasha Mitchner is not mentioned
11 anywhere in the authorship line here, is she?

12 MS. THORNE: Objection.

13 THE WITNESS: No.

14 BY MR. WISNER:

15 Q. Nor is Charlie Flicker?

16 MS. THORNE: Objection.

17 THE WITNESS: No, he's not.

18 BY MR. WISNER:

19 Q. We do know from the e-mail just before
20 that Natasha Mitchner had just sent those posters to
21 Mr. Heydorn.

22 Do you see that?

23 MS. THORNE: Objection.

24 THE WITNESS: She sent the e-mails, yes.

1 BY MR. WISNER:

2 Q. Don't you think it's a bit misleading to
3 not disclose the person who was primarily responsible
4 for creating the poster in the authorship line?

5 MS. THORNE: Objection, assumes facts
6 not in evidence, lacks foundation.

7 THE WITNESS: I don't think it's
8 misleading at all.

9 BY MR. WISNER:

10 Q. Ms. Mitchner created the poster, didn't
11 she?

12 MS. THORNE: Objection, assumes facts
13 not in evidence, lacks foundation.

14 THE WITNESS: My understanding is that
15 Natasha Mitchner worked at Weber Shandwick,
16 which was the medical education publication
17 support company, and their function would have
18 been -- we would have given them data, could
19 have been tables, graphs, copy, you name it,
20 they would have put that into a format like you
21 see here in the poster. They would have taken
22 edits from us, commentary and delivered to us
23 the final poster, as we had envisioned it.

24 BY MR. WISNER:

1 Q. In that role, her role in doing that at
2 Weber Shandwick is not disclosed anywhere on this
3 poster, correct?

4 MS. THORNE: Objection.

5 THE WITNESS: No, and I'm not sure it
6 needs to be or has to be.

7 BY MR. WISNER:

8 Q. Why is that?

9 A. Whatever the publication guidelines that
10 were in effect at the time would have guided this to be
11 done the exact way it was done.

12 Q. Don't you think physicians have a right
13 to know who is behind creating this piece of science
14 that they're being presented on?

15 MS. THORNE: Objection, assumes facts
16 not in evidence, lacks foundation and it's
17 outside the scope of the -- and calls for
18 speculation.

19 THE WITNESS: So if I was to speculate,
20 you know, what mattered to the individuals who
21 saw this would be the investigators that were
22 involved in the trial, of which Dr. Wagner is
23 one, and perhaps the company that sponsored the
24 study, which would be represented by Dr. Tiseo.

1 I don't believe there are any other individuals
2 that would be relevant to someone who was
3 viewing the poster.

4 MR. WISNER: I'm going to move to strike
5 the answer as nonresponsive. My question to
6 you --

7 MS. THORNE: We're going to object to
8 your motion to strike. The answer was
9 responsive.

10 BY MR. WISNER:

11 Q. Mr. Closter, isn't it misleading to
12 present a piece of science to physicians and not
13 disclose that a person who is not even an MD played a
14 primary role in creating this poster?

15 MS. THORNE: Objection, assumes facts
16 not in evidence, lacks foundation, calls for
17 speculation, asked and answered.

18 THE WITNESS: My answer stands as it is
19 not misleading, which is exactly how I answered
20 it before.

21 BY MR. WISNER:

22 Q. The poster here describes a couple of
23 things, if you look at the last sentence of the
24 abstract, it says, In conclusion, this population

1 of adolescents and children -- sorry -- "In conclusion,
2 in this population of adolescents and children,
3 citalopram reduced depressive symptoms to a
4 significantly greater extent than placebo treatment,
5 and was well tolerated."

6 Do you see that?

7 A. I see that.

8 Q. Okay. Nowhere in this abstract or, in
9 fact, anywhere on this poster does it indicate that all
10 of the secondary outcomes were, in fact, negative in
11 the trial?

12 MS. THORNE: Objection.

13 THE WITNESS: I mean, I can read it and
14 just verify that that is true.

15 BY MR. WISNER:

16 Q. Please do.

17 A. Okay. (Witness reviews document.)

18 Okay.

19 Q. So my question that was pending is
20 nowhere on this poster does it indicate that the
21 secondary outcomes for Study 18 were all negative?

22 MS. THORNE: Objection.

23 THE WITNESS: There is no assessment of
24 secondary outcome measures, efficacy endpoints

1 in the poster.

2 BY MR. WISNER:

3 Q. Doesn't mention it at all?

4 MS. THORNE: Objection.

5 THE WITNESS: As I said, it is not
6 included.

7 BY MR. WISNER:

8 Q. There is no discussion here of the
9 potentially unblinding issues that are discussed in the
10 final study report, is there?

11 MS. THORNE: Objection.

12 THE WITNESS: No. I mean, there's a lot
13 things that are not included here on a poster
14 that gives you limited space, you know, to
15 present your data. So, by nature, it's not
16 going to include everything.

17 BY MR. WISNER:

18 Q. So there's nothing -- there's no
19 discussion of the potentially unblinding data here,
20 correct?

21 MS. THORNE: Objection, asked and
22 answered.

23 THE WITNESS: No, it's not there.

24 BY MR. WISNER:

1 Q. Okay. There's actually no discussion of
2 clinical efficacy in here, is there?

3 MS. THORNE: Objection.

4 THE WITNESS: There is a graph that
5 shows by treatment visit the effect that the
6 placebo patients had and the citalopram treated
7 patients had and showing whether or not at
8 those time points the difference was
9 statistically significant. Citalopram versus
10 placebo all the way out, you know, through the
11 eight-week endpoint.

12 BY MR. WISNER:

13 Q. I appreciate your answer. My question
14 is there's actually no discussion of clinical
15 significance in here, is there?

16 MS. THORNE: Objection, asked and
17 answered.

18 THE WITNESS: There's no -- literally no
19 words that say clinical significance in the
20 poster.

21 BY MR. WISNER:

22 Q. There's no discussion of effect size,
23 correct?

24 MS. THORNE: Objection.

1 THE WITNESS: No.

2 BY MR. WISNER:

3 Q. There's no discussion of number needed
4 to treat, is there?

5 MS. THORNE: Objection.

6 THE WITNESS: No, there isn't.

7 BY MR. WISNER:

8 Q. There is no reference to study 94404 in
9 this poster, is there?

10 MS. THORNE: Objection.

11 THE WITNESS: There's not. There's
12 reference to two other drugs that have similar
13 data in the treatment of depression in the
14 poster.

15 BY MR. WISNER:

16 Q. Absolutely, but there is no reference to
17 a clinical trial specifically designed to study the
18 efficacy of citalopram in pediatric population that was
19 available to Forest at this time referenced in this
20 poster, correct?

21 MS. THORNE: Objection.

22 THE WITNESS: No, I believe at that time
23 that data was not made public in any form.

24 BY MR. WISNER:

1 Q. But it was available to Forest, correct?

2 MS. THORNE: Objection.

3 THE WITNESS: When you say "available to
4 Forest," what do you mean?

5 BY MR. WISNER:

6 Q. They had the result, top line results of
7 that, didn't they?

8 A. I believe we had some, yeah, some of the
9 results would have been accessible to the company.

10 Q. And they knew that the results were
11 negative?

12 A. Yes, we were aware that the results were
13 negative.

14 Q. But Forest did not include the fact that
15 another clinical trial involving pediatric patients was
16 negative in this poster, did it?

17 MS. THORNE: Objection.

18 THE WITNESS: Again, I'm not sure what
19 the obligation would be to include it.

20 BY MR. WISNER:

21 Q. I didn't ask you about the obligation,
22 Mr. Closter. I'm just saying they didn't do it, did
23 they?

24 MS. THORNE: Objection.

1 THE WITNESS: No.

2 BY MR. WISNER:

3 Q. And according to the testimony of
4 Mr. Heydorn, it was an intentional decision within
5 Forest, specifically with Mr. Flicker, Mr. Gergel and
6 Mr. Heydorn himself, to get the positive data out into
7 the public domain and conceal the data from 94404?

8 MS. THORNE: Objection. That question
9 is outside the scope of the 30(b)(6) notice.
10 Mr. Closter is not here to testify on behalf of
11 the company as to Mr. Heydorn's prior
12 testimony, so to the extent that Mr. Closter
13 can interpret Mr. Heydorn's prior testimony in
14 his individual capacity, he can do so, but he
15 is not going to testify on behalf of the
16 company on this question.

17 MS. KIEHN: The question also misstates
18 the testimony of Mr. Heydorn.

19 THE WITNESS: Yeah, I wouldn't
20 characterize it that way at all.

21 MR. WISNER: Can you please read back
22 the question.

23 (The court reporter read back the record
24 as requested.)

1 MS. THORNE: I renew my objection and my
2 instruction to the witness --

3 MR. WISNER: I wasn't reasking the
4 question. I was just asking for it to be read
5 back.

6 MS. THORNE: Usually when you read back
7 a question, you are reposing the question.

8 MR. WISNER: I didn't say ask the
9 question again. I asked her just to read it
10 back. I just wanted to hear his answer was
11 responsive, that's all. Thank you.

12 BY MR. WISNER:

13 Q. Did Forest take any effort around this
14 time to also get a poster presented on the results of
15 94404?

16 MS. THORNE: Objection.

17 THE WITNESS: I don't know.

18 BY MR. WISNER:

19 Q. At the time that these results were
20 being presented at ACNP by Dr. Wagner, Forest wanted to
21 publicize that fact in a press release, correct?

22 MS. THORNE: Objection.

23 THE WITNESS: I believe there was a
24 press release which I've seen which mentioned

1 that dataset as well as other datasets that
2 were being presented at that meeting.

3 BY MR. WISNER:

4 Q. So specifically with -- one second.

5 (Document marked for identification as
6 ForestC Deposition Exhibit No. 37.)

7 BY MR. WISNER:

8 Q. I'm handing you a document Exhibit 37 to
9 your deposition. This is an e-mail exchange, the top
10 of it is from Christina Goetjen to Claire Zinnes.

11 Did I say that right?

12 A. That's Christina Goetjen.

13 Q. Okay. Thank you.

14 A. And Claire Zinnes.

15 Q. Oh, boy, it's a good thing I'm not
16 deposing those people.

17 A. If you ever do, you should know that.

18 Q. I'm terrible with names, so but it's
19 dated September 26, 2001.

20 Do you see that?

21 A. Yes.

22 Q. And the subject looks to be a response
23 to "ACNP pediatrics abstract."

24 Do you see that?

1 A. That's the subject, yes.

2 Q. All right. Let's go to the first e-mail
3 in the chain. It's on Page 2.

4 A. Okay.

5 Q. This is from Natasha Mitchner, and she
6 says, "Attached please find a Word document of the
7 Wagner abstract submitted to ACNP. Please do not
8 hesitate to contact me with any questions."

9 You see that?

10 A. Yes.

11 Q. Then in response Christina Goetjen; I
12 said it right?

13 A. Yes.

14 Q. Says "FYI, the latest edition of the
15 pediatric data as it was submitted to ACNP for 'hot
16 topic' status."

17 You see that?

18 A. Yes.

19 Q. Then Claire Zinnes is in -- who is
20 Claire Zinnes?

21 A. She worked on the digital marketing
22 group at Forest back then.

23 Q. Okay. Does that mean she focused on
24 marketing efforts that were online?

1 A. Correct.

2 Q. Okay. She says, John wants CGI to start
3 working on a release and any other way they can spin
4 this data. Are doing that? Or should I? Right,
5 that's what she says?

6 A. Yes.

7 Q. Now --

8 MS. THORNE: Brent, for the record, it's
9 GCI, not CGI.

10 BY MR. WISNER:

11 Q. GCI. I was going to ask you, what is
12 GCI; do you know?

13 A. Division of Grey Advertising that
14 focused on public relations.

15 Q. And was it a customary practice within
16 Forest, to the best of your knowledge personally, to
17 consult with a company like GCI to draft press
18 releases?

19 MS. THORNE: Just to be clear, when you
20 say "personal," you're asking Mr. Closter now
21 as an individual?

22 MR. WISNER: That's why I used the word
23 personal.

24 MS. THORNE: No, I just want to make

1 sure we're on the same page.

2 THE WITNESS: Yes, we would work with
3 GCI to draft a press release.

4 BY MR. WISNER:

5 Q. Okay. Now, she says here, "any other
6 way we can spin this data."

7 Are you familiar with the word "spin"?

8 MS. THORNE: Objection.

9 THE WITNESS: In a general sense, yes.
10 I don't know what she means here.

11 BY MR. WISNER:

12 Q. Was it a customary practice within
13 Forest to spin scientific data?

14 MS. THORNE: Objection.

15 THE WITNESS: No. I mean, if you can
16 help me define spin, I'll let you know if that
17 was a corporate practice, but I don't believe
18 so.

19 BY MR. WISNER:

20 Q. Mr. Closter, you work in marketing,
21 right?

22 A. I do.

23 Q. You don't know what the word spin means?

24 MS. THORNE: Objection.

1 THE WITNESS: It can mean a lot of
2 things.

3 BY MR. WISNER:

4 Q. I understand it can mean a lot of
5 things, but I think you're kind of spinning the
6 definition here.

7 MS. THORNE: Objection.

8 BY MR. WISNER:

9 Q. What is your definition of spin?

10 A. You know, spin, my own personal
11 definition, you know, get it picked up, get it -- you
12 know, news outlets interested in wanting to disseminate
13 it.

14 Q. Like promote it?

15 MS. THORNE: Objection.

16 THE WITNESS: I wouldn't use the word
17 promote, because we don't really think of -- we
18 don't think of public relations as promoting.

19 BY MR. WISNER:

20 Q. Let me ask you, what is your definition
21 of promotion? You keep saying this. I just want to
22 make sure I understand what you're saying.

23 A. Sure. I mean, promotion would be things
24 that, you know, you put in the hands of the field force

1 that has claims, you know, that are based on your
2 package insert and you're sharing that information
3 generally with a clinician. It doesn't have to be a
4 clinician. It could be a consumer or other, usually in
5 the form of sales materials and ultimately sold by the
6 field force. It could be in the form of journal
7 advertising. It could be in the form of trained
8 speakers who we give promotional on-label content to
9 and perhaps they share that information with other
10 colleagues of theirs in promotional environments,
11 dinner meetings, things like that.

12 Q. And the purpose of promotion, right, is
13 to help increase sales of your company's product?

14 MS. THORNE: Objection.

15 THE WITNESS: I mean, the effort, in my
16 opinion, is really to educate and share both
17 the -- you know, the benefits and the risks of
18 the drug so the clinician can make up their own
19 mind if they want to use it or not in their
20 patients that they treat. In the end, yes,
21 that can result in increased sales if done
22 appropriately and well.

23 BY MR. WISNER:

24 Q. So it's your testimony to this jury that

1 the primary motivation in promotion is not to increase
2 sales?

3 MS. THORNE: Objection.

4 THE WITNESS: It's certainly part of it.

5 BY MR. WISNER:

6 Q. Forest is a for-profit company, or at
7 least was, right?

8 A. Right.

9 Q. And they make profits by selling drugs,
10 right?

11 MS. THORNE: Objection.

12 THE WITNESS: Correct.

13 BY MR. WISNER:

14 Q. So if they're going to spend money in
15 engaging in promotional activities, their shareholders
16 would require that it be geared towards increasing
17 profits, correct?

18 MS. THORNE: Objection. At this point
19 you're going outside the scope of the 30(b)(6)
20 deposition.

21 If you can answer in your personal
22 capacity, you can feel free to do so.

23 THE WITNESS: Yes, the intent is that
24 promotional efforts will lead to increased

1 sales.

2 BY MR. WISNER:

3 Q. Hand you a document, document 38 to your
4 deposition.

5 (Document marked for identification as
6 ForestC Deposition Exhibit No. 38.)

7 BY MR. WISNER:

8 Q. Have you seen this document before?

9 A. I have.

10 Q. What is this document?

11 A. This is a press release.

12 Q. And this is the press release generated
13 or at least published December 13th, 2001, correct?

14 A. We issued the release on that date, yes.

15 Q. And by "we" you're referring to Forest
16 Laboratories?

17 A. Correct.

18 Q. Do you know who drafted this press
19 release?

20 A. Not specifically, no.

21 Q. Would it be reasonable to assume, based
22 on the last e-mail, that the company GCI played a role
23 in helping draft this press release?

24 MS. THORNE: Objection, calls for

1 speculation.

2 THE WITNESS: Yes. As our vendor and
3 hired agency, they would have likely
4 participated in drafting it.

5 BY MR. WISNER:

6 Q. The title of the press release is
7 "Results of Escitalopram and Celexa Studies Presented
8 at Major Scientific Conference."

9 Do you see that?

10 A. I do.

11 Q. Now, I want to turn your attention to
12 Page 2, and there's a -- at the bottom of there is the
13 para -- is the section that says "Celexa in the
14 Treatment of Pediatric Depression."

15 Do you see that?

16 A. "Celexa in the Treatment of Pediatric
17 Depression."

18 Q. And this press release right here is
19 referring to the presentation that Dr. Wagner gave at
20 ACNP, correct?

21 MS. THORNE: Objection.

22 THE WITNESS: Yeah, or would be. This
23 is assuming the date was after -- the
24 presentation was after the release date or near

1 it, yes.

2 BY MR. WISNER:

3 Q. So it was at or around the time that
4 Dr. Wagner gave her presentation?

5 A. That's correct.

6 Q. Okay. Now, there is a paragraph, a
7 couple paragraphs describing this. You've previously
8 reviewed it. I want to ask you some questions about
9 what is or is not in there. Are you prepared to do
10 that, or do you need to review it again?

11 A. I think I can answer, depending on the
12 question.

13 Q. All right. The first question is --
14 well, let's turn to the second paragraph in the
15 section, starts off with quote.

16 Do you see that?

17 A. The second paragraph.

18 Q. It's on Page 3.

19 A. Page 3. Okay.

20 Q. It's a quote that says, "'This study is
21 significant because few studies involving any
22 antidepressant have shown efficacy compared to placebo
23 in the treatment of depression in children and
24 adolescents,' said Karen Dineen Wagner, M.D., Ph.D.,

1 Department of Psychiatry and Behavioral Sciences,
2 University of Texas Medical Branch at Galveston, and
3 the study's lead author. 'Citalopram is now one of the
4 few therapies for which we have data showing safety and
5 efficacy for this population'."

6 Do you see that?

7 A. I do.

8 Q. By putting that quote from Dr. Wagner
9 into a press release specifically having her state that
10 citalopram is now one of the few therapies for which we
11 have data showing safety and efficacy for this
12 population, isn't Forest promoting the use of
13 citalopram specifically for use in this population?

14 MS. THORNE: Objection.

15 THE WITNESS: Yeah, again, there's
16 nothing promotional in nature about the
17 document.

18 BY MR. WISNER:

19 Q. It's your testimony to this jury that
20 this press release where Dr. Wagner says citalopram is
21 now one of the few therapies for which we have data
22 showing safety and efficacy for this population is not
23 promotional in nature?

24 MS. THORNE: Objection.

1 THE WITNESS: That's correct.

2 BY MR. WISNER:

3 Q. The purpose of this press release is to
4 encourage physicians and parents who might be
5 considering citalopram for their child be more
6 comfortable using citalopram in treating pediatric
7 depression; isn't that true?

8 MS. THORNE: Objection, lacks
9 foundation, assumes facts not in evidence.

10 THE WITNESS: Yeah, this is for data
11 dissemination purposes only.

12 BY MR. WISNER:

13 Q. So it's your testimony to this jury that
14 Forest issued this press release just because they
15 wanted people to have more knowledge?

16 MS. THORNE: Objection.

17 THE WITNESS: They simply wanted to
18 release the data.

19 BY MR. WISNER:

20 Q. Mr. Closter, Forest has admitted, and,
21 in fact, you have earlier today, that during this
22 period of time, Forest promoted the use of pediatric
23 use of Celexa in children up until the end of 2002,
24 correct?

1 MS. THORNE: Objection, misstates the
2 prior testimony, misstates the document.

3 THE WITNESS: I mean, we can bring out
4 the allocution document, but that's what we
5 admitted to, a misdemeanor that a handful of
6 representatives sold the drug inappropriately
7 for off-label purposes.

8 BY MR. WISNER:

9 Q. Just to be clear, yes or no,
10 Mr. Closter, did Forest promote the use of Celexa in
11 children between 1998 and 2002?

12 MS. THORNE: Objection.

13 MS. KIEHN: Asked and answered.

14 MS. THORNE: Asked and answered.

15 THE WITNESS: What's that?

16 MS. KIEHN: I said asked and answered.
17 You can go ahead and answer, if you can.

18 THE WITNESS: Yeah, again, we
19 acknowledged and confirmed and the company
20 acknowledged to a misdemeanor for a handful of
21 representatives selling the drug in an
22 inappropriate and off-label fashion for
23 pediatric use. That's what we agreed, that's
24 what we admitted to.

1 BY MR. WISNER:

2 Q. Mr. Closter, the phrase handful of sales
3 representatives, that's nowhere in the Criminal
4 Information, right?

5 MS. THORNE: Objection. For the record,
6 the Criminal Information is not what the
7 company pled to. The company pled to the --
8 pled to what's in the --

9 MR. WISNER: Ms. Thorne, he can answer
10 the question. Your objection is noted. You're
11 literally just coaching right now.

12 MS. THORNE: I'm not coaching. I'm
13 making sure the record is clear, which you seem
14 intent on not doing.

15 MR. WISNER: The record is fine. I
16 asked him the question if Forest did it or not,
17 and then I asked him about whether or not that
18 handful of sales reps was in the Information.
19 It's a very simple question.

20 MS. KIEHN: No relevance.

21 MR. WISNER: Fine. Object to relevance.
22 Don't coach the witness. So you can please
23 make your objection, and can I have him answer
24 the question.

1 MS. THORNE: You can have him answer the
2 question. I'm stating my objection for the
3 record to make sure that the record is clear.

4 MR. WISNER: You are obstructing my
5 deposition, Ms. Thorne.

6 MS. THORNE: Brent, move on.

7 MR. WISNER: Answer my question, please.

8 THE WITNESS: Can you restate the
9 question again or read it.

10 MR. WISNER: Can you please have the
11 question read back.

12 (The court reporter read back the record
13 as requested.).

14 MS. THORNE: Renewing my objection.

15 THE WITNESS: I believe so. I mean, if
16 we want to pull out the allocution document, I
17 would feel more comfortable in agreeing to the
18 language that's in there.

19 BY MR. WISNER:

20 Q. Agreeing that it's not in there you
21 mean?

22 A. That it's not in there, whatever the
23 allocution document says.

24 Q. And earlier we went through the

1 transcripts of Mr. Weinstein's allocution in open
2 court.

3 You remember that?

4 A. Yes.

5 Q. When he testified under oath, you
6 remember that transcript?

7 A. Yes, yes.

8 Q. And in that -- and in that rendition of
9 the facts, the government stated that Forest promoted
10 the unlawful -- sorry -- promoted the use of Celexa for
11 use in children between 1998 and 2002, correct?

12 MS. THORNE: Objection. Would you like
13 to put the document in front of the witness?

14 BY MR. WISNER:

15 Q. I have a question pending, Mr. Closter,
16 if you could please answer it.

17 MS. THORNE: In Mr. Closter feels the
18 need to look at the document to refresh his
19 recollection --

20 MR. WISNER: He hasn't said anything.

21 MS. THORNE: -- he can do that.

22 MR. WISNER: He can testify he needs
23 help. You can stop coaching him.

24 MS. THORNE: I'm not coaching.

1 MR. WISNER: This is becoming silly.

2 MS. THORNE: No, you gestured at him --

3 MR. WISNER: Mr. Closter, please put the
4 document away. I haven't instructed you to
5 pull out the document.

6 THE WITNESS: Okay. I'll answer it when
7 I have the document.

8 MS. THORNE: So you're instructing him
9 not to look at the document.

10 MR. WISNER: No, I'm asking him can you
11 answer the question or not?

12 MS. THORNE: That wasn't the question
13 pending, first of all.

14 MR. WISNER: Oh, my God. Mrs. Thorne --
15 sorry, Ms. Thorne, you just not only coached
16 the witness, have now prevented him from
17 answering my question.

18 MS. THORNE: No, I haven't.

19 MR. WISNER: Let me ask my questions and
20 make your objections. Stop coaching.

21 MS. THORNE: Can you stick with the
22 question that's pending --

23 MR. WISNER: So thank you.

24 MS. THORNE: -- at a single time.

1 BY MR. WISNER:

2 Q. I asked you a question about whether or
3 not that was stated in the transcript.

4 Do you know the answer to that question,
5 Mr. Closter?

6 A. I'd have to look at the transcript.

7 Q. Okay. Well, let's show you the
8 transcript then.

9 A. Sounds good.

10 MR. WISNER: That's how it works.

11 MS. THORNE: Oh, you're going to teach
12 me how to take depositions?

13 MR. WISNER: No, I'm just explaining to
14 you why I'm just trying to get an answer to the
15 question.

16 BY MR. WISNER:

17 Q. All right. If I could draw your
18 attention, Mr. Closter, to it's Exhibit 6.

19 A. Okay.

20 Q. Okay. Did you find Exhibit 6?

21 A. Yes.

22 Q. Okay, great. Turn to Page 16, and if
23 you could just read to yourself quietly Lines 10
24 through 14, and let me know when you're done.

1 A. (Witness reviews document.) Okay.

2 Q. Does that refresh your recollection as
3 to whether or not you can now answer my question?

4 MS. THORNE: Objection. Does it refresh
5 his recollection as to whether he can answer
6 your question?

7 THE WITNESS: I believe I can, and
8 what's your question?

9 BY MR. WISNER:

10 Q. Okay, great. So my question to you was
11 Mr. Weinstein admitted that Forest promoted the use of
12 Celexa for use in children between 1998 and 2002,
13 correct?

14 MS. THORNE: Objection.

15 THE WITNESS: Correct.

16 BY MR. WISNER:

17 Q. Notwithstanding -- you can turn back to
18 Exhibit 38.

19 A. Okay.

20 Q. Notwithstanding that admission under
21 oath by a company representative, it's your testimony
22 to this jury that this press release where Dr. Wagner
23 says citalopram is not one of the few therapies -- is
24 now one of the few therapies for which we have data

1 showing safety and efficacy for this population does
2 not constitute promotion?

3 MS. THORNE: Objection, asked and
4 answered.

5 THE WITNESS: I've said I think a few
6 times now that is not considered promotion.

7 BY MR. WISNER:

8 Q. Nowhere in this press release does it
9 discuss the potential unblinding of patients?

10 MS. THORNE: Objection.

11 THE WITNESS: Does not include that.

12 BY MR. WISNER:

13 Q. Nowhere in this press release does it
14 discuss that all the secondary outcomes were negative?

15 MS. THORNE: Objection.

16 THE WITNESS: Doesn't include any
17 information on secondary outcomes.

18 BY MR. WISNER:

19 Q. It does provide information about, you
20 know, the disposition of the study, right?

21 A. The disposition of the study.

22 MS. THORNE: Objection.

23 THE WITNESS: What do you mean?

24 BY MR. WISNER:

1 Q. It talks about rates of discontinuation
2 due to adverse events.

3 You see that?

4 A. Yeah, that's a common parameter we
5 evaluate.

6 Q. Talks about the mean daily dose of
7 Celexa in the final week of the study?

8 A. Yes.

9 Q. But, again, it does not mention anything
10 whatsoever about secondary outcomes, correct?

11 MS. THORNE: Objection.

12 THE WITNESS: No.

13 BY MR. WISNER:

14 Q. You are aware that the observed cases
15 results for the primary endcome in Study 18 was also
16 negative?

17 MS. THORNE: Objection.

18 THE WITNESS: I would have to see the
19 results to confirm.

20 BY MR. WISNER:

21 Q. So you don't know that offhand?

22 A. No.

23 Q. Just to be clear that there's no
24 reference to the observed cases' results in this press

1 release?

2 MS. THORNE: Objection.

3 THE WITNESS: No, I'm not sure why they
4 would be in here.

5 BY MR. WISNER:

6 Q. Okay. There's no discussion of effect
7 size in here, correct?

8 MS. THORNE: Objection.

9 THE WITNESS: No.

10 BY MR. WISNER:

11 Q. There's no discussion of the number
12 needed to treat, correct?

13 MS. THORNE: Objection.

14 THE WITNESS: That's correct.

15 BY MR. WISNER:

16 Q. There's no discussion in here about
17 clinical efficacy at all?

18 MS. THORNE: Objection.

19 THE WITNESS: I mean, we can read this
20 again, but there is mention of the outcome on
21 the primary.

22 BY MR. WISNER:

23 Q. But it doesn't disclose whether or not
24 the difference observed between placebo and citalopram

1 was clinically significant, does it?

2 MS. THORNE: Objection, lack of
3 foundation, assumes facts not in evidence,
4 calls for speculation.

5 THE WITNESS: No. As stated in the
6 beginning, it's shown to reduce symptoms of
7 depression, right, and then describes the
8 primary outcome.

9 BY MR. WISNER:

10 Q. But it doesn't actually tell you whether
11 or not that statistical difference was clinically
12 meaningful?

13 A. No, it doesn't say that.

14 Q. Okay. There's also no discussion of
15 Study 94404 in here, is there?

16 A. No, there isn't.

17 Q. And at this time when this press release
18 was issued, Forest knew that Study 94404 was negative
19 for efficacy?

20 MS. THORNE: Objection.

21 THE WITNESS: We were aware of the
22 results.

23 BY MR. WISNER:

24 Q. And those results were negative?

1 A. The results were negative.

2 Q. And, again, sorry belaboring all these
3 questions, but I want to talk about each one of these
4 documents separately, isn't it misleading to people who
5 are reading this press release that specifically
6 discloses the results of a positive clinical trial but
7 does not disclose the results of a negative clinical
8 trial that was in possession of Forest at the time?

9 MS. THORNE: Objection.

10 THE WITNESS: It's not misleading.

11 BY MR. WISNER:

12 Q. Is it deceptive?

13 MS. THORNE: Objection.

14 THE WITNESS: Not deceptive either.

15 BY MR. WISNER:

16 Q. Is it unethical?

17 MS. THORNE: Objection.

18 THE WITNESS: It's not unethical.

19 BY MR. WISNER:

20 Q. I'm handing you a document Exhibit 39 to
21 your deposition.

22 (Document marked for identification as
23 ForestC Deposition Exhibit No. 39.)

24 BY MR. WISNER:

1 Q. Do you recognize this document?

2 A. Not specifically. I mean, I can guess
3 what it is.

4 MS. THORNE: For the record, does this
5 have a Bates number?

6 MS. KIEHN: It does, but it's cut off.

7 MR. WISNER: Unfortunately, it does
8 appear to be cutoff. Looks like it was printed
9 without proper margins. Would you like me to
10 look at the Bates number?

11 MR. BAUM: I'll find it.

12 MS. THORNE: We can locate it. Not --
13 you don't have to delay the deposition to
14 locate it.

15 MS. KIEHN: Describe the front page.

16 BY MR. WISNER:

17 Q. This is a document that's titled "A
18 Closer Look at Identifying Depression in Children and
19 Adolescents," right, Mr. Closter?

20 A. Yes.

21 Q. At the bottom it says "Supported by an
22 unrestricted educational grant from Forest
23 Pharmaceuticals, Inc. "

24 Do you see that?

1 A. Yes, I do.

2 Q. And it also says "sponsored by CME Inc."
3 Do you see that?

4 A. Yes.

5 Q. Do you know what CME Inc. is?

6 A. It's a company.

7 Q. Was it a company that Forest contracted
8 with to develop CME programs?

9 A. Yes.

10 MS. THORNE: Objection.

11 BY MR. WISNER:

12 Q. If you turn to Page 2. This document,
13 in fact, reflects portions of the CME program that
14 Dr. Wagner was giving that involved data involving
15 Study 18?

16 MS. THORNE: Objection.

17 THE WITNESS: Okay.

18 BY MR. WISNER:

19 Q. Is that true?

20 A. I mean, you're asking me if it included
21 MD-18?

22 Q. I'm asking you if that's what this
23 document is, or do you not know?

24 MS. THORNE: Objection.

1 THE WITNESS: I don't know if there is a
2 question there. You just said it included it,
3 so I was simply --

4 BY MR. WISNER:

5 Q. I'm trying to ask if this document does
6 include -- I'm sorry -- this document reflects the CME
7 presentation given by Dr. Wagner related to Study 18
8 and others studies as well?

9 MS. THORNE: Objection, assumes facts
10 not in evidence, lacks foundation.

11 THE WITNESS: I mean amongst the many
12 slides, there is one slide or a series of
13 slides that reference a citalopram study.

14 BY MR. WISNER:

15 Q. Okay. Well, let's -- I mean, let's
16 start at the beginning.

17 So turn to Page 4.

18 A. Okay.

19 Q. Has that the series chair is Karen,
20 Dr. Wagner.

21 Do you see that?

22 A. I do.

23 Q. Okay. And if you turn to Page 2 it
24 says, "Join your colleagues at this complimentary

1 breakfast meeting designed to give you the tools you
2 need to help your child and adolescent patients
3 overcome the devastating effects of depression."

4 Do you see that?

5 A. I do.

6 Q. It goes on to read, your esteemed panel
7 of experts will examine the prevalence of depression in
8 the child/adolescent population, as well as the proper
9 diagnosis of depression and co-morbid conditions.
10 You'll explore the treatment options available to
11 improve the quality of life with this special group of
12 patients. Plus, you'll enjoy a continental breakfast,
13 receive a comprehensive syllabus and earn 4 hours of
14 CME credit - all at no charge.

15 Do you see that?

16 A. Yes.

17 Q. So this appears to then be a CME program
18 that was chaired by Dr. Wagner?

19 MS. THORNE: Objection.

20 THE WITNESS: It's what it appears to
21 be.

22 BY MR. WISNER:

23 Q. And it was sponsored by Forest
24 Pharmaceuticals?

1 MS. THORNE: Objection, misstates the
2 document, misstates the prior testimony,
3 assumes facts not in evidence, lacks
4 foundation.

5 THE WITNESS: Yes.

6 BY MR. WISNER:

7 Q. And it involved treating pediatric and
8 adolescent depression?

9 MS. THORNE: Objection.

10 THE WITNESS: They label as child and
11 adolescent patients.

12 BY MR. WISNER:

13 Q. Now, if you look here on Page 4, there
14 is a faculty disclosure statement.

15 Do you see that?

16 A. I do.

17 Q. And it lists for each one of the faculty
18 members their various financial relationships with
19 various pharmaceutical companies, right?

20 A. Yes.

21 Q. And for Karen Wagner it lists all of her
22 various financial associations.

23 Do you see that?

24 A. Yes.

1 Q. One of those includes receives grants
2 and research support and is a consultant and member of
3 the advisory board for Forest Pharmaceuticals?

4 A. Forest is one of the many, yes.

5 Q. Yes.

6 Now, if you turn to Page 5, this is the
7 abstract of the presentation "How to Treat Depression
8 in Children and Maximize Their Quality of Life."

9 Do you see that?

10 A. Yes.

11 Q. And if you look down here, the outline
12 specifies first psychotherapy?

13 A. Yes.

14 Q. And then it says pharmacotherapy?

15 A. Yes.

16 Q. Okay. Now, if you turn to Page 12 in
17 this slide deck of the presentation. Starting at the
18 bottom of the page, you see "Citalopram Treatment for
19 Depression in Children and Adolescents."

20 You see that?

21 A. I do.

22 Q. And it spans through the end of Page 14.

23 Do you see that?

24 A. Yes.

1 Q. Okay. If you need a moment to look
2 through, it's fine, but these slides appear to be
3 presenting the data from Celexa Study 18.

4 A. They do.

5 Q. Okay. Now, if you look on Page 12, on
6 the bottom slide, I know it's hard to read, but it has
7 a reference at the bottom of the slide, it says Wagner
8 KD, Robb, Findling, Tiseo, somewhere in Hawaii in 2001.

9 You see that?

10 A. Waikoloa.

11 Q. And that's the ACNP conference?

12 Do you see that?

13 A. That's right.

14 Q. So they're referencing the ACNP
15 presentation that we were just discussing a minute ago?

16 MS. THORNE: Objection.

17 THE WITNESS: Yes.

18 BY MR. WISNER:

19 Q. Okay. Look through the slides, but I
20 just want to ask you some questions about what's in
21 there.

22 A. Sure.

23 Q. Now, again, there's no discussion in any
24 of these slides regarding citalopram that suggests that

1 there was any issues with potential unblinding?

2 MS. THORNE: Objection.

3 THE WITNESS: That is not included.

4 BY MR. WISNER:

5 Q. There is no discussion of the fact that
6 all the secondary outcomes were negative?

7 MS. THORNE: Objection.

8 THE WITNESS: No. I think you'd find
9 this presentation is consistent with the prior
10 drugs that are also presented, other
11 treatments.

12 MR. WISNER: I appreciate your answer.
13 I move to strike it after the word "no."

14 THE WITNESS: Sure.

15 MS. THORNE: Objection. We object to
16 your motion to strike.

17 BY MR. WISNER:

18 Q. Nowhere in this presentation does it
19 discuss the clinical efficacy of Celexa in treating
20 pediatric depression?

21 MS. THORNE: Objection.

22 THE WITNESS: Again, it shows what's
23 relevant to most clinicians, which is the
24 primary endpoint effect.

1 BY MR. WISNER:

2 Q. Doesn't discuss effect size?

3 MS. THORNE: Objection.

4 THE WITNESS: No.

5 BY MR. WISNER:

6 Q. Doesn't discuss number needed to treat?

7 MS. THORNE: Objection.

8 THE WITNESS: No, nor does it for the
9 other compounds that are included here.

10 BY MR. WISNER:

11 Q. I understand, but for citalopram it
12 doesn't discuss that, correct?

13 MS. THORNE: Objection, asked and
14 answered.

15 THE WITNESS: Sure, it does not discuss
16 it.

17 BY MR. WISNER:

18 Q. And a second ago you said it only
19 presents what's relevant for clinicians.

20 Is it your testimony or belief that the
21 clinical efficacy of a compound is not something that's
22 relevant to clinicians?

23 MS. THORNE: Objection. First of all,
24 misstates the prior testimony, that's not what

1 he testified to.

2 THE WITNESS: Right. I said what is
3 most relevant is the primary efficacy outcome,
4 which is in the slides.

5 BY MR. WISNER:

6 Q. And so then you would -- extrapolating
7 from that testimony then, it is less relevant, the
8 issue of clinical efficacy?

9 MS. THORNE: Objection.

10 THE WITNESS: My understanding is that
11 the FDA considers the outcome, primary efficacy
12 outcome the most important thing in the study.

13 BY MR. WISNER:

14 Q. I'm sorry. My question to you was the
15 clinical efficacy of the results to you is less
16 important, in your opinion, to physicians than the
17 results of the primary outcome?

18 MS. THORNE: Objection. At this point
19 we're going outside the scope of the 30(b)(6)
20 testimony. To the extent that Mr. Closter has
21 a personal opinion as to whether the clinical
22 results are less important to physicians than
23 the primary outcome, he can testify as to his
24 personal opinion.

1 THE WITNESS: Yeah, I mean, I'm not a
2 clinician, I don't treat patients. I believe
3 the primary is the most important to
4 clinicians, and there may be other parameters
5 which are important but not as important.

6 BY MR. WISNER:

7 Q. And in those parameters would be
8 clinical efficacy?

9 MS. THORNE: Objection, lack of
10 foundation --

11 THE WITNESS: Again, I'm not --

12 MS. THORNE: -- assumes facts not in
13 evidence.

14 THE WITNESS: The term clinical efficacy
15 to me is a bit amorphous.

16 BY MR. WISNER:

17 Q. Okay. Let me ask you another silly
18 question, but clinical efficacy isn't the second most
19 important thing for physicians, right?

20 MS. THORNE: Objection. If we're going
21 to keep using the term clinical efficacy, to
22 make the record clear, I would urge you to
23 define the term as you understand it because
24 the record is unclear.

1 MR. WISNER: Sure, I will do, will do,
2 but before I do that, I want to finish this
3 document.

4 BY MR. WISNER:

5 Q. Nowhere in this presentation regarding
6 citalopram does it disclose the results of Study 94404?

7 MS. THORNE: Objection.

8 THE WITNESS: It does not, nor does it
9 include the results of the other failed
10 negative studies that exist in this class.

11 BY MR. WISNER:

12 Q. Are you aware of any?

13 A. I'm pretty sure there's at least a dozen
14 of them.

15 Q. Are you aware of any right now?

16 A. I can do a lit search and find them for
17 you.

18 Q. Fair enough, but you're just shooting
19 from the hip here; you don't actually know --

20 A. Not really, no. I'm aware and I know
21 there's been commentary written in general when they
22 talk about studies on depression that there are more
23 failed and negative studies than there are positive
24 studies.

1 Q. I'm sorry, back up.

2 Are you talking about pediatric studies
3 for Celexa?

4 A. I'm saying on SSRIs.

5 Q. Oh, fair enough.

6 I'm not talking about SSRIs. I'm
7 talking about Celexa here.

8 A. That's fine.

9 Q. And for Celexa there's only been two
10 pediatric placebo-controlled clinical trials, right?

11 A. That the sponsors have conducted, yes.

12 Q. And at this point that this presentation
13 was given, they were both completed?

14 A. Yes.

15 Q. One of them, the positive one was
16 presented?

17 A. Right, not the failed one.

18 Q. The negative one was not, correct?

19 A. Okay.

20 Q. Correct?

21 A. You can call it negative.

22 Q. You've called it negative, right?

23 A. I have, and I've called failed too.

24 Q. Okay. You would agree with me that this

1 CME presentation, which was supported by an
2 unrestricted grant from Forest Pharmaceuticals, was
3 designed to promote the use of Celexa?

4 MS. THORNE: Objection.

5 THE WITNESS: Consistent with my many
6 previous answers on the topic, this is not
7 considered promotion.

8 BY MR. WISNER:

9 Q. Turn to the page 4 -- turn to the last
10 page of the document. Unfortunately, it's not numbered
11 on the top. It would be -- it should be numbered 16,
12 the last page.

13 A. Yeah.

14 Q. The self-assessment questions.

15 You see that?

16 A. I do.

17 Q. And it only has four questions, right?

18 A. Yes.

19 Q. And the third question says, "Which of
20 the following medication has been shown to be more
21 effective than placebo in the treatment of depression
22 in children and adolescents?"

23 You see that?

24 A. Yes.

1 Q. And it lists out a bunch of
2 antidepressants.

3 Do you see that?

4 MS. THORNE: Objection.

5 THE WITNESS: Yes.

6 BY MR. WISNER:

7 Q. The correct answer as noted just below
8 is C, citalopram, correct?

9 A. Correct.

10 Q. There's no discussion of Prozac?

11 MS. THORNE: Objection.

12 THE WITNESS: It's not one of the
13 answers.

14 BY MR. WISNER:

15 Q. They don't make an offer of sertraline?

16 A. No.

17 Q. They don't do -- the only answer that is
18 correct to the question of which of the following has
19 shown to be more effective than placebo in the
20 treatment of depression in children and adolescents is
21 Celexa?

22 MS. THORNE: Objection.

23 THE WITNESS: Okay.

24 BY MR. WISNER:

1 Q. It's your testimony to the jury that
2 that's not promotion?

3 MS. THORNE: Objection.

4 THE WITNESS: This entire presentation
5 is not promotion.

6 BY MR. WISNER:

7 Q. What about that question?

8 A. If you want to parse out individual
9 parts of it, every part of it is not promotion.

10 Q. So that question which guides physicians
11 to come to the conclusion that citalopram is safe and
12 effective for treating depression in children and
13 adolescents is not a form of promotion?

14 MS. THORNE: Objection, misstates the
15 document, first of all. Second of all -- yeah,
16 misstates the document.

17 THE WITNESS: I mean, the question is
18 "which of the following medications has been
19 shown to be more effective than placebo in the
20 treatment of depression in children and
21 adolescents" and doesn't mention safety.

22 BY MR. WISNER:

23 Q. Mr. Closter, you can put that document
24 away for now. We're going to get into clinical

1 efficacy definition in a second. I haven't forgotten
2 about that.

3 You stated -- we've discussed this
4 potential unblinding that occurred in Celexa Study 18,
5 correct?

6 A. Right, right.

7 Q. Briefly, we didn't get into details, but
8 we discussed it briefly, right?

9 A. Yes.

10 Q. You understand that when those patients
11 who were the subject of that dispensing error are
12 removed from the primary efficacy results --

13 A. Right.

14 Q. -- the study is no longer statistically
15 significant, correct?

16 MS. THORNE: Objection.

17 THE WITNESS: I'm aware of that.

18 BY MR. WISNER:

19 Q. Okay. So if, in fact, the patients had
20 been removed from the study, the primary efficacy
21 endpoint would have ultimately been negative, right?

22 MS. THORNE: Objection calls for

23 speculation. That's outside the scope of the

24 30(b)(6) notice. It calls for a hypothetical.

1 To the extent that you have a personal opinion
2 on that topic, you can feel free to answer.

3 You're not answering on behalf of the company.

4 THE WITNESS: So the question is?

5 BY MR. WISNER:

6 Q. Well, Ms. Thorne is trying to instruct
7 you that it's a hypothetical, but it's not a
8 hypothetical, because they did conduct an analysis of
9 the primary efficacy endpoint, excluding those nine
10 patients that were subject to the dispensing error,
11 correct?

12 MS. THORNE: Objection.

13 MS. KIEHN: You had said they were
14 removed from the study.

15 MR. WISNER: Fair enough.

16 BY MR. WISNER:

17 Q. Can you answer that question I just
18 asked you?

19 A. If they were removed from the study, I
20 understand that the result would have been negative.

21 Q. Okay. And, in fact, when the dispensing
22 error occurred, Forest sent a letter to the Food and
23 Drug Administration; you're aware of that?

24 MS. THORNE: Objection, assumes facts

1 not in evidence.

2 THE WITNESS: Yeah, I would have to
3 see --

4 MS. THORNE: Lacks foundation.

5 THE WITNESS: I would have to see the
6 letter.

7 BY MR. WISNER:

8 Q. You haven't seen the letter that was
9 sent?

10 A. I may have, but I would need to confirm.

11 MS. KIEHN: Why don't you describe it a
12 little bit more so he knows you're talking
13 about the same thing.

14 BY MR. WISNER:

15 Q. Isn't it true that in March of 2007,
16 Tracy Varner sent a letter to Dr. Katz at the FDA
17 indicating that there had been a dispensing error?

18 A. I believe that's true.

19 Q. And in that letter, Forest indicated
20 that they would exclude those patients who were the
21 subject of the dispensing error from the primary
22 efficacy analysis?

23 MS. THORNE: Objection, misstates the
24 letter, assumes facts not in evidence, lacks

1 foundation. If you're going to encourage
2 Mr. Closter to speak to a document and if
3 you're going to characterize the document, I
4 would encourage you to put the document in
5 front of him.

6 THE WITNESS: I'd like to see it, if I
7 can.

8 MR. WISNER: Okay. Let's take a break.

9 THE VIDEOGRAPHER: We are now off the
10 record. The time is 4:22.

11 (Brief recess.)

12 THE VIDEOGRAPHER: We are now back on
13 the record. The time is 4:40.

14 (Document marked for identification as
15 ForestC Deposition Exhibit No. 20.)

16 BY MR. WISNER:

17 Q. I'm handing you a document that has been
18 marked as Exhibit 20, so we're going back south again
19 in the exhibit numbers.

20 Do you recognize this document,
21 Mr. Closter?

22 A. I do.

23 Q. This is that letter that was sent to the
24 FDA regarding the dispensing error?

1 A. Right.

2 Q. Okay. And in this letter -- this is
3 dated March 21st, 20th or 21st, 2000?

4 A. March 20, 2000, yep.

5 Q. It looks like it was received on
6 March 21st; you see the stamp?

7 A. Yes.

8 Q. Okay. And if you read through the
9 letter, it says -- it mentions that there is a supply
10 packaging error.

11 And then the third paragraph reads, "For
12 reporting purposes, the primary efficacy analysis will
13 exclude the eight potentially unblinded patients, with
14 a secondary analysis including also to be conducted."

15 You see that?

16 A. I do.

17 Q. So in the initial -- this happened
18 contemporaneously or about the time that the unblinding
19 error was discovered?

20 A. Right, the potential unblinding.

21 MS. THORNE: Objection.

22 BY MR. WISNER:

23 Q. And by "contemporaneously," I'm
24 referring to within a few weeks of.

1 A. Okay.

2 Q. And according to this letter, Forest is
3 telling the FDA that it's going to, for its primary
4 analysis, exclude those patients that were the subject
5 of a dispensing error, correct?

6 MS. THORNE: Objection, misstates the
7 document, lack of foundation, assumes facts not
8 in evidence.

9 THE WITNESS: That's what it says on the
10 paper.

11 BY MR. WISNER:

12 Q. And, in fact, Forest states in this
13 letter that as a secondary analysis including them will
14 also be conducted, correct?

15 MS. THORNE: Objection, assumes facts
16 not in evidence, lack of foundation, misstates
17 the document.

18 THE WITNESS: I mean, that's what the
19 author wrote, Tracy Varner wrote in the letter.

20 BY MR. WISNER:

21 Q. Tracy Varner speaking on behalf of
22 Forest?

23 MS. THORNE: Objection, lack of
24 foundation, assumes facts not in evidence.

1 THE WITNESS: I mean, she works at
2 Forest.

3 BY MR. WISNER:

4 Q. She was manager of regulatory affairs,
5 correct?

6 A. Right, one of the people in regulatory
7 affairs.

8 Q. And responsible for representing Forest
9 to the FDA?

10 MS. THORNE: Objection, lack of
11 foundation, assumes facts not in evidence.

12 THE WITNESS: Yeah, I'm not certain who
13 was copied on this communication. I don't know
14 who went into drafting it, other than Tracy,
15 whose name is here.

16 BY MR. WISNER:

17 Q. I'm sorry. That wasn't my question.

18 A. Okay.

19 Q. Ms. Varner was responsible -- Tracy is a
20 female, correct? Let's get that clarified.

21 A. Yes.

22 Q. Ms. Varner was, in fact, responsible for
23 representing communications to the FDA on behalf of
24 Forest, correct?

1 MS. THORNE: Objection, assumes facts
2 not in evidence, lack of foundation.

3 THE WITNESS: Yeah, I don't know her
4 exact responsibilities.

5 BY MR. WISNER:

6 Q. Well, she was a manager of regulatory
7 affairs, correct?

8 MS. THORNE: Objection, asked and
9 answered.

10 THE WITNESS: Correct.

11 BY MR. WISNER:

12 Q. And regulatory affairs is responsible
13 for communicating to the FDA on behalf of Forest,
14 correct?

15 MS. THORNE: Objection, assumes facts
16 not in evidence, lack of foundation.

17 THE WITNESS: Yeah, I don't know if she
18 was the sole person responsible or part of a
19 team that would have communicated with the FDA
20 through the regulatory affairs group.

21 BY MR. WISNER:

22 Q. Okay. And communicating a letter to
23 Dr. Katz at the FDA, she was communicating on behalf of
24 Forest, yes or no?

1 MS. THORNE: Objection.

2 THE WITNESS: Again, she is an employee
3 at Forest communicating with the FDA.

4 BY MR. WISNER:

5 Q. So you can't state whether or not she is
6 speaking for Forest or not in this letter?

7 MS. THORNE: Objection.

8 THE WITNESS: I can't. I wasn't in this
9 group at the time or ever.

10 BY MR. WISNER:

11 Q. So you can't; that's your answer?

12 A. Right.

13 Q. Okay. Do you know who within this group
14 Mrs. Varner would have coordinated with?

15 MS. THORNE: Objection.

16 THE WITNESS: At that time, I'm not sure
17 who was in the group at that time.

18 BY MR. WISNER:

19 Q. Okay. Now, in the final study report
20 that was ultimately submitted to the FDA -- well,
21 strike that.

22 The final study report for Celexa Study
23 18 was ultimately submitted to the FDA, correct?

24 A. Right.

1 Q. And in that final study report, the
2 primary efficacy analysis included the data from the
3 patients that were the subject of the dispensing error,
4 correct?

5 MS. THORNE: Objection.

6 THE WITNESS: Yeah, I think that was as
7 defined in the protocol that all the patients
8 in the ITT population would be included in the
9 efficacy analysis.

10 BY MR. WISNER:

11 Q. And, in fact, all the patients -- and,
12 in fact, a secondary analysis excluding the patients
13 was conducted in the final study report, correct?

14 MS. THORNE: Objection.

15 THE WITNESS: I believe that's true.

16 BY MR. WISNER:

17 Q. So, in fact, the final study report did
18 the exact opposite of what Mrs. Varner says they're
19 going to do in the study as of March 20th, 2000?

20 MS. THORNE: Objection.

21 THE WITNESS: I believe so.

22 BY MR. WISNER:

23 Q. Okay. So back to my point that got us
24 here initially is I was just trying to establish that,

1 in fact, Forest had sent the letter in March of 2000
2 that indicated to the FDA that the patients that were
3 the subject of the dispensing error would not be
4 included in the primary efficacy analysis, correct?

5 MS. THORNE: Objection, lack of
6 foundation.

7 THE WITNESS: That's what the letter
8 states.

9 (Document marked for identification as
10 ForestC Deposition Exhibit No. 31.)

11 BY MR. WISNER:

12 Q. Okay. All right. Handing you a
13 document that's going to be marked as Exhibit 31 in
14 response to your counsel's request that we help define
15 the definition of clinical significance. This is a
16 document that's titled "Navigating the Maze,
17 Understanding Methods, Results and Risk in Psychiatric
18 Research."

19 Do you see that, Mr. Closter?

20 A. Yes.

21 Q. And it looks like it's dated May 20th,
22 2006?

23 A. Yes.

24 Q. And if you look down here, it is a

1 program that was sponsored by the American Psychiatric
2 Association and supported by an educational grant from
3 Forest Pharmaceuticals.

4 You see that?

5 A. Yes, I do.

6 Q. And if you turn the page, Page 2,
7 there's a table of contents.

8 Do you see that?

9 A. Yep.

10 Q. And in the second presentation it says,
11 "Assessing Statistical and Clinical Significance in
12 Medical Research."

13 Do you see that?

14 A. Yes.

15 Q. And it has a physician listed there
16 David Kupfer.

17 Do you see that?

18 A. Yes.

19 Q. Do you know David Kupfer?

20 A. I do.

21 Q. How do you know him?

22 A. I don't know him personally all that
23 well. I know that's someone that Forest would have
24 worked with in an advisory capacity in the time frame

1 that we're talking about.

2 Q. Do you know what kind of physician he
3 is?

4 A. I believe he's a psychiatrist.

5 Q. Is he a pediatric psychiatrist or just a
6 regular psychiatrist?

7 A. I don't know.

8 Q. Okay. Was Mr. Kupfer considered a key
9 opinion leader within Forest?

10 MS. THORNE: Objection.

11 THE WITNESS: Dr. Kupfer was a key
12 opinion leader, yes.

13 BY MR. WISNER:

14 Q. Sorry, Dr. Kupfer.

15 A. It's all right.

16 Q. If you turn to Page 6 there is a
17 "Conflict of Interest Disclosure Statement."

18 Do you see that?

19 A. Yes.

20 Q. And then down here we have David Kupfer
21 listed?

22 A. Yes.

23 Q. And it states that he was an advisory
24 board member for Eli Lilly and Company, Forest

1 Laboratories, Inc., Pfizer Inc. and Solvay
2 Pharmaceuticals.

3 You see that?

4 A. Yes.

5 Q. And that's the second there you said he
6 worked in an advisory capacity for Forest
7 Pharmaceuticals. Was it your understanding that he was
8 an advisory board member?

9 A. Yes.

10 Q. Okay. And also on this lineup of
11 physicians, we have Jeffrey Bostic.

12 Do you see that?

13 A. Yes.

14 Q. He was also a key opinion leader for
15 Forest?

16 MS. THORNE: Objection.

17 THE WITNESS: He's a key opinion leader,
18 yes.

19 BY MR. WISNER:

20 Q. He was a member of Forest speakers
21 bureau?

22 A. Yes.

23 Q. And he actually gave presentations
24 specifically on the treatment of pediatric depression?

1 MS. THORNE: Objection, assumes facts
2 not in evidence, lacks foundation.

3 THE WITNESS: He was part of the
4 speakers bureau where he agreed to give
5 on-label presentations and was provided content
6 in which to do that.

7 BY MR. WISNER:

8 Q. And you said he was instructed to give
9 on-label content. He specifically would address
10 adolescent and pediatric treatment of depression,
11 right?

12 MS. THORNE: Objection, lacks
13 foundation, assumes facts not in evidence.

14 THE WITNESS: My understanding is there
15 was, again, a handful of representatives that
16 would use him in that capacity.

17 BY MR. WISNER:

18 Q. Over the course of Dr. Bostic's
19 experience with Forest, he was paid over \$750,000
20 correct?

21 MS. THORNE: Objection. First of all,
22 that's outside the scope of the 30(b)(6)
23 deposition notice.

24 MR. WISNER: Are you instructing him not

1 to answer?

2 THE WITNESS: I mean, I can't confirm
3 that.

4 MR. WISNER: Let's go off the record.

5 THE VIDEOGRAPHER: We are now off the
6 record. The time is 4:50.

7 (Discussion off the record.)

8 THE VIDEOGRAPHER: We are now back on
9 the record. The time is 4:51.

10 BY MR. WISNER:

11 Q. It's your understanding that Dr. Bostic
12 received payments in excess of \$750,000 for his work
13 consulting for Forest, correct?

14 A. I can't confirm that amount.

15 Q. You don't know offhand if that number is
16 true?

17 A. No.

18 Q. And that's both in your representative
19 capacity on Forest, but also in your personal capacity?

20 A. That's right.

21 Q. Okay. Have you ever heard that he was
22 paid \$750,000?

23 A. I was not.

24 Q. Would you have any reason to dispute

1 that fact?

2 MS. THORNE: Objection.

3 THE WITNESS: Again, I would have to see

4 it.

5 BY MR. WISNER:

6 Q. Okay. Still on this exhibit, let's turn
7 to page -- let's turn to Page 12. We're in the throes
8 of Dr. Kupfer's presentation.

9 Do you see that?

10 A. Yes.

11 Q. All right. On the first slide here it
12 says "Basic Criteria for Randomized Clinical Trial."
13 The first bullet point is "Control group (placebo or
14 active treatment)." The second, "Participants randomly
15 assigned into the treatment or control groups," and the
16 third one says, "Participants and researchers 'blinded'
17 as to who was in which group." And then it has a
18 subbullet point that says, "Most important, persons who
19 evaluate the outcomes 'blinded' as to who is in which
20 group."

21 Do you see that?

22 A. Yes.

23 Q. Now, you would agree that in a
24 double-blind placebo-controlled trial, it's important

1 that both the participant in the clinical trial, as
2 well as the clinical investigator, be blinded as to
3 whether or not they're in the placebo or treatment
4 group, correct?

5 MS. THORNE: Objection.

6 THE WITNESS: You know, again, not as an
7 expert, based on my understanding of trials,
8 yes, that's true.

9 BY MR. WISNER:

10 Q. And, specifically in regards to
11 assessing the results of an antidepressant, since the
12 physician is making the assessment of the improvement
13 over time of the patient, it would be very important
14 that the physician who is making that assessment or
15 clinician does not know whether or not the person
16 they're assessing is receiving placebo or citalopram or
17 Lexapro?

18 MS. THORNE: Objection.

19 THE WITNESS: Yeah, I don't know if I
20 have the expertise to answer. I don't know if
21 it's any different in -- as you mentioned, in
22 mood disorders, like a depression or other
23 disease states.

24 BY MR. WISNER:

1 Q. Okay. But you will agree, just
2 generally, with the principle that it's important for
3 the clinician and the patient to be blinded as to
4 whether or not they're in the placebo or treatment
5 group?

6 MS. THORNE: Objection.

7 THE WITNESS: Agree.

8 BY MR. WISNER:

9 Q. Okay. So the next slide says
10 "Limitations of Statistical Significance." It says,
11 "treatment is statistically significant better than
12 control is the same as our data indicate that something
13 non-random differentiates treatment and control."

14 Do you see that?

15 A. Yes.

16 Q. Is that also your understanding of what
17 statistical significance means?

18 MS. THORNE: Objection. That's outside
19 the scope of the deposition notice. I'm going
20 to instruct the witness not to answer on behalf
21 of your company.

22 Mr. Closter, to the extent that you have
23 individual understanding, you can answer.

24 THE WITNESS: Yeah, I mean, I'm not an

1 expert on this matter, so I'm not sure how I
2 would interpret that.

3 BY MR. WISNER:

4 Q. So you don't know if that's what
5 statistical significance means on a personal level?

6 A. No.

7 Q. Okay. It goes on to read P values
8 indicate only how convincing the data are (i.e., the
9 results are not a chance occurrence). Mainly
10 significant better treatments -- many "significantly
11 better" treatments offered no clinically significant
12 advantage.

13 Do you see that?

14 A. Yes.

15 Q. Do you understand the difference between
16 clinically significant -- statistically significant
17 improvement versus a clinically significant
18 improvement?

19 A. From the slide?

20 Q. Just as a general matter.

21 A. No, I don't.

22 Q. Okay. Does this slide help you
23 understand that concept any better?

24 A. No.

1 Q. Do you understand that they are
2 different, though, according to this slide?

3 A. The slide says they're different. I
4 don't understand why.

5 Q. Okay.

6 MS. THORNE: I'm renewing my objection
7 to this line of questioning.

8 MR. BAUM: Just to be clear, are we
9 reserving discussions of this sort to Olanoff?

10 MS. KIEHN: We'll take it under
11 advisement. I mean, you know, again, you're
12 entitled to this territory of expert testimony
13 about clinical studies, as opposed to the
14 company's facts or opinions, so -- but Olanoff
15 certainly would be the more appropriate witness
16 for this one.

17 MR. BAUM: So, also, I think we had
18 discussed that Mr. Closter is prepared to talk
19 about the editorials; is that correct?

20 MS. KIEHN: The letters to the editor.

21 MR. BAUM: Yes, letters to editor. And
22 Forest's response?

23 MS. KIEHN: Yes, he's reviewed those
24 materials.

1 MR. BAUM: And the subject of clinical
2 efficacy is pretty extensively discussed in
3 those, and so I'm just wondering how is that
4 beyond the scope and definitions of that beyond
5 the scope? He has to know the difference in
6 order to answer that section of our 30(b)(6).

7 MS. KIEHN: I think maybe looking --
8 asking those questions in the context of the
9 document you're interested in might be better
10 than asking these kind of theoretical questions
11 about this slide. I mean, you're asking about
12 scientific principles.

13 MR. BAUM: You're going to use the
14 definitions --

15 MR. WISNER: Michael, can I just -- I'm
16 running out of time.

17 MR. BAUM: -- of the terms.

18 MR. WISNER: Let's just go through this
19 deposition.

20 MS. KIEHN: He's telling you what he
21 knows.

22 MR. BAUM: So what I'd like to be clear
23 is we're reserving then going over that with
24 somebody who does.

1 MS. KIEHN: I understand.

2 MS. THORNE: To the extent -- you can
3 reserve it and we'll it under advisement, as
4 Mrs. Kiehn already stated.

5 BY MR. WISNER:

6 Q. All right. I'm going to continue on
7 with the slide.

8 The next slide says "Medical Decision
9 Making Requires More." It reads, "Beyond statistical
10 significance, need to know if the relationship is
11 meaningful, i.e. clinically significant. Providing
12 information about the strength of the relationship
13 further informs clinical significance, i.e. the effect
14 size."

15 Do you see that?

16 A. I do.

17 Q. And throughout this deposition I've been
18 asking you questions about whether or not Dr. Wagner
19 was disclosing the effect size of the relationships
20 observed between citalopram treatment and depression --
21 improvement of depression.

22 Based on the slide, do you see how
23 effect size could be related to clinical significance?

24 MS. THORNE: Objection. This is outside

1 the scope of the 30(b)(6) deposition notice.
2 To the extent Mr. Closter has an individual
3 understanding, he can testify, but he won't
4 testify on behalf of the company. If you would
5 like to ask about clinical significance in the
6 context of something on which Mr. Closter was
7 prepared to testify on behalf of the company,
8 we're not going to object on those grounds, but
9 asking these broad questions, that is outside
10 the scope of this notice.

11 MR. WISNER: Ms. Thorne, I do believe
12 you asked me to define clinical significance.

13 MS. THORNE: Yes, I asked you to define
14 for the witness what you mean when you say
15 clinical significance.

16 MS. KIEHN: And it was actually clinical
17 efficacy that you said not clinical
18 significance. That's adding to the confusion.

19 MS. THORNE: So that when you're using a
20 term, you and the witness are on the same page
21 and the record is clear. I was not asking you
22 to run through a document and have the witness
23 opine on your -- on whether your opinion of
24 clinical significance is accurate. I just want

1 you to explain to the witness what you mean
2 when you say it so that he can answer your
3 questions in a way that everyone is on the same
4 page.

5 MR. WISNER: Is your objection done?

6 MS. THORNE: First of all, that wasn't
7 an objection. You asked me a question and I
8 answered your question, so I was answering your
9 question.

10 MR. WISNER: Okay. Are you done?
11 Because I'd like to actually continue with the
12 deposition.

13 MS. THORNE: Sure. I think I answered
14 your question hopefully to your satisfaction.

15 BY MR. WISNER:

16 Q. Okay. So my question pending, I
17 believe -- I don't remember the question, it's been a
18 while, but let me ask another question to see if we can
19 get going with this.

20 A. Okay.

21 Q. You understand that the effect size
22 observed in a relationship is indicative of clinical
23 significance, yes or no?

24 MS. THORNE: Objection, that's outside

1 the scope of the 30(b)(6) notice. I'm going to
2 renew my objection and instruct the witness to
3 answer in his personal capacity only to the
4 extent he is able.

5 THE WITNESS: The slide suggests that.

6 BY MR. WISNER:

7 Q. Dr. Kupfer is suggesting that, correct?

8 A. Yes, he's the one presenting the slides.

9 Q. And he's one of Forest's members of the
10 advisory board?

11 A. Right. He also in his slides doesn't
12 literally define what clinically significance -- what
13 clinically significant advantage means.

14 Q. Mr. Closter, we'll get there.

15 A. Okay. Just so you're clear, in my mind
16 it does not define any of these things.

17 Q. But he does suggest that the effect size
18 is one way of assessing clinical significance, correct?

19 MS. THORNE: Objection, renewing my
20 objection and the same instruction.

21 THE WITNESS: Yes, that's what he states
22 in his slide.

23 BY MR. WISNER:

24 Q. Okay. And if we keep going here, on

1 Page 13 there is a slide that says use of effect size.

2 Do you see that?

3 I'm sorry, the first slide. "Threshold
4 of Clinical Significance."

5 A. Okay.

6 Q. Do you see that?

7 A. Yes, yes.

8 Q. And he says, "Establishing it requires
9 defining it."

10 A. Okay.

11 Q. Suggestion, the effect size would be --
12 would motivate about half of well-informed clinicians
13 to use treatment rather than control in this
14 population.

15 Do you see that?

16 A. Yes.

17 Q. Have you ever seen that definition of
18 clinical significance before?

19 MS. THORNE: Objection, misstates the
20 document, and I'm renewing my same objection to
21 this being outside the scope and instructing
22 the witness to answer in his personal capacity
23 only.

24 THE WITNESS: Have I seen this before?

1 BY MR. WISNER:

2 Q. Have you ever seen that definition for
3 clinical significance?

4 A. Not that I can recall, no.

5 MS. THORNE: Objection, misstates the
6 document.

7 BY MR. WISNER:

8 Q. I'm sorry. I couldn't hear the witness
9 testify.

10 What was your answer, sir?

11 A. Not that I'm aware of.

12 Q. Okay. Turn to the next page, on Page
13 14, there's some slides there about effect size, I'm
14 not going to belabor it, but here there's a middle
15 slide that says "Some Risk Terminology."

16 Do you see that?

17 A. Yes.

18 Q. And the bottom one says "NNT: number
19 needed to treat."

20 Do you see that?

21 A. Yes.

22 Q. It says, the number of subjects who need
23 to be treated to expect one or more success than if all
24 had received control.

1 Do you see that?

2 A. Yes.

3 Q. Is that your understanding of the
4 definition of number needed to treat?

5 A. Yes.

6 MS. THORNE: I'm going to renew my
7 objection and the same instruction.

8 BY MR. WISNER:

9 Q. Okay. And if you look down at the next
10 thing it says Interpretation of the Strength (Effect
11 Size) of a Positive Relationship. And then if you look
12 down here, there's a chart that's created.

13 Do you see that?

14 A. I see the chart.

15 Q. Okay. And all the way on the right you
16 see it has "NNT"?

17 A. Yes.

18 Q. And then it has a bunch of numbers. So
19 under "much larger than typical," it's NNT less than or
20 equal to 1.9.

21 Do you see that?

22 A. Yes.

23 Q. And all the way at the bottom it says
24 "small or smaller than typical," and then an NNT of

1 8.9.

2 A. Yes.

3 Q. Okay. Now, if you look at the next
4 paragraph, on Page 15, the first slide has the "NNT:
5 Number Needed to Treat."

6 You see that?

7 A. Yes.

8 Q. And it says, "NNT: Number of subjects
9 who need to be treated to expect to have one more
10 success than if all had received control." It says,
11 "designed for success/failure outcomes," and then it
12 has something about NNT equaling 1 over -- I think it's
13 an equation there.

14 Do you see that?

15 A. I see the equation.

16 Q. All right. And at the bottom it says
17 "Highly recommended."

18 You see that?

19 A. Yes.

20 Q. In any of your interactions with Dr. --
21 the physician, Dr. --

22 A. Kupfer.

23 Q. -- Kupfer, had you ever discussed
24 clinical significance?

1 MS. THORNE: Objection. Again, I'm
2 objecting to this being outside the scope. I'm
3 renewing the same standing instruction to the
4 witness.

5 THE WITNESS: I'm not aware we've
6 discussed this or I've been in the presence of
7 the discussion.

8 BY MR. WISNER:

9 Q. Okay. Isn't it true on behalf of Forest
10 that the use of effect size in an NN treat number is a
11 commonly used metric to assess clinical significance of
12 a study result?

13 MS. THORNE: Objection, outside the
14 scope, same instruction to the witness.

15 THE WITNESS: And the question is is it
16 -- I'm sorry.

17 MS. KIEHN: That's okay. We'll reserve
18 it for Dr. Olanoff.

19 MR. WISNER: I will withdraw the
20 question, that's fine. I'll reserve it for
21 Dr. Olanoff.

22 BY MR. WISNER:

23 Q. I'm going to hand you a document --
24 well, actually, before I do that, are you familiar --

1 you can put the document away.

2 Are you familiar with the various
3 interactions that happened internally within Forest
4 regarding the selection of which journal to have the
5 pediatric data from Study 18 published in?

6 A. I was not involved in the discussions.

7 Q. Okay. Have you reviewed any of those
8 correspondence, internal correspondence in preparation
9 for your testimony today?

10 A. I think I've seen a couple of e-mails.

11 Q. Okay.

12 (Document marked for identification as
13 ForestC Deposition Exhibit No. 40.)

14 BY MR. WISNER:

15 Q. I'm handing you a document, Number 40.

16 Is this one of the e-mail correspondence
17 that you reviewed before?

18 A. I feel like I've seen parts of it. I'm
19 happy to read through it, if you like.

20 Q. I'll read through it with you.

21 A. Okay.

22 Q. So if you look on Page 3.

23 A. Okay.

24 Q. You see this e-mail from John MacPhee?

1 A. Yes, we saw this earlier.

2 Q. Exactly. This is the e-mail we saw
3 previously, correct?

4 A. Yes, it looks to be.

5 Q. All right. Now, if you look in response
6 to that e-mail, there is a response from Christina
7 Goetjen.

8 Do you see that?

9 A. Yes.

10 Q. And it's to John MacPhee, Nefertiti
11 Greene and Jeffrey Lawrence.

12 Do you see that?

13 A. Yes.

14 Q. It says "FYI, we spoke with Karen Wagner
15 today about the current state of affairs regarding the
16 pediatric data. We discussed Forest's decision to go
17 with a publication other than JAMA as it fits our
18 corporate objectives."

19 Do you see that?

20 A. Yes.

21 Q. Do you understand why not publishing the
22 data in JAMA fit Forest's corporate objectives?

23 MS. THORNE: Objection.

24 THE WITNESS: I mean, I can't say for

1 sure. You know, if I was going to speculate
2 about it, you know, JAMA is highly selective.
3 They reject more than they accept, so in the
4 efforts to, you know, get it published, they
5 would have selected another journal perhaps one
6 that is focused on psychiatry.

7 BY MR. WISNER:

8 Q. Okay.

9 A. But that's me speculating.

10 Q. Nefertiti Greene and John Mac -- what
11 was Nefertiti Greene's role at Forest?

12 A. She was likely head of the Celexa brand
13 team at the time.

14 Q. The brand team?

15 A. Marketing team.

16 Q. Okay.

17 A. She reported to John.

18 Q. Okay. So they both worked in marketing?

19 A. Yes.

20 Q. And Jeffrey Lawrence, who was he?

21 A. He worked on the marketing team as well.

22 Q. So these are all three marketing people;
23 is that right?

24 A. Correct, including Christina.

1 Q. Okay. Including Christina.

2 She goes on to read, "She agreed with
3 the logic, yet reminded us that if we want to appeal to
4 the PCP and pediatric audiences, we need to publish in
5 a place that provided the appropriate readership
6 (something JAMA would've done). She also said that the
7 lack of data regarding the use of Celexa for pediatrics
8 is limiting it to the 'last choice' amongst physicians
9 - she just wanted to make sure we understood the
10 marketing advantages of the data. I assured her we got
11 it."

12 Did I read that correctly?

13 A. Yes.

14 Q. Okay. It appears here that Christina
15 Goetjen -- Goetjen.

16 A. Goetjen.

17 Q. Okay. Christina Goetjen is relaying a
18 conversation she had with Dr. Wagner to other people
19 within the marketing group concerning Dr. Wagner's
20 concerns about the marketing advantages of publishing
21 the data in a sufficiently respectable journal; is that
22 right?

23 MS. THORNE: Objection, calls for
24 speculation, lack of foundation, assumes facts

1 not in evidence.

2 THE WITNESS: I mean, that's what she
3 wrote. You know, the conversation that
4 Christina would have had with Dr. Wagner, we'll
5 never really know.

6 BY MR. WISNER:

7 Q. Okay. Well, the next paragraph says,
8 "She is excited about our Pediatric Regional CME series
9 and will be a fundamental part of speaker selection.
10 She knows that she and Jeff will be working closely as
11 I will be on maternity leave."

12 Do you see that?

13 A. Yes.

14 Q. It goes to say, "She is extremely savvy
15 about PR and is working well with GCI for surrounding
16 PR opportunities. We may want to give her a chance to
17 familiarize herself with some media training."

18 Do you see that?

19 A. Yes.

20 Q. So it appears that a person from
21 marketing is having a conversation with the principal
22 investigator in a pediatric trial --

23 A. Right.

24 Q. -- about the potential marketing

1 advantages of how the pediatric data is disclosed to
2 the public?

3 MS. THORNE: Objection, calls for
4 speculation.

5 THE WITNESS: That's leaving out a fair
6 amount of details within this. You can
7 characterize the conversation any way you'd
8 like.

9 BY MR. WISNER:

10 Q. It appears that Dr. Wagner is concerned
11 with reaching PCPs and pediatric audiences, correct?

12 MS. THORNE: Objection, calls for
13 speculation.

14 THE WITNESS: Yeah. Again, according to
15 this e-mail, absent hearing the conversation
16 that Christina would have had with Dr. Wagner.

17 BY MR. WISNER:

18 Q. Based on this e-mail it sure looks like
19 Dr. Wagner is thinking about the dissemination of the
20 pediatric data in the context of promotion?

21 MS. THORNE: Objection.

22 THE WITNESS: I wouldn't say any of this
23 is promotion.

24 BY MR. WISNER:

1 Q. Discussing marketing advantages, getting
2 an appropriate readership that gets the PCPs and
3 pediatric audiences, that's not promotion to you,
4 Mr. Closter?

5 MS. THORNE: Objection.

6 THE WITNESS: Yeah, it's not. I don't
7 know what -- again, the discussion of marketing
8 advantages, was that Dr. Wagner's words, were
9 those Christina's interpretation? Did they
10 talk about claims data? We have no idea what
11 the conversation was. So the fact that it says
12 marketing advantages --

13 BY MR. WISNER:

14 Q. So it's your testi --

15 A. -- I can't put much weight to it.

16 Q. Sorry to interrupt you.

17 So it's your testimony to this jury that
18 it does not appear that Dr. Wagner was intending to use
19 the pediatric data to promote the use of Celexa in
20 children?

21 MS. THORNE: Objection.

22 THE WITNESS: No.

23 MR. WISNER: All right. Let's look at
24 the next document.

1 (Document marked for identification as
2 ForestC Deposition Exhibit No. 41.)

3 BY MR. WISNER:

4 Q. All right. I'm handing you a document
5 which is marked as Exhibit 41.

6 Is this one of the e-mails that you may
7 have seen regarding the publication of the citalopram
8 pediatric manuscript?

9 A. I'm sorry, did you ask if I've seen
10 this?

11 Q. Yes.

12 A. I don't think I've seen this one.

13 Q. All right. This is an e-mail from
14 William Heydorn.

15 You see that?

16 A. Yes.

17 Q. It's directed to Lawrence Olanoff and a
18 bunch of other individuals within Forest.

19 Do you see that?

20 A. Yes, and someone from Lundbeck.

21 Q. I was going to say and, in fact, there's
22 somebody there from Lundbeck as well?

23 A. Kerstin, I believe.

24 Q. And is that the same Kerstin --

1 A. Kerstin Overo, who was on an earlier
2 e-mail that we saw.

3 Q. Okay. And subject of this is second
4 draft of citalopram pediatric manuscript, right?

5 A. Right.

6 Q. All right. And it reads, during our --
7 your review, please note the following: 1) the
8 publications committee discussed targeting -- discussed
9 target journals and recommended the paper be submitted
10 to the American Journal of Psychiatry as a brief
11 report. The rationale for this was the following: 1)
12 we'd like to see the paper published quickly and in a
13 top tier journal; 2) Jack Gorman (editor) has seen the
14 results on the primary endpoint and was impressed; 3)
15 this is the third report of a positive effect of an
16 SSRI in young patients; and 4) as a brief report, we
17 feel we can avoid mentioning the lack of statistically
18 significant positive effects at Week 8 or study
19 termination for secondary endpoints.

20 Do you see that?

21 A. Yes.

22 Q. According to this e-mail from
23 Mr. Heydorn, the publications committee decided to
24 submit the original pediatric manuscript as a brief

1 report, so they could avoid mentioning the lack of
2 statistically significant positive effects at Week 8 or
3 study termination for secondary endpoints, correct?

4 MS. THORNE: Objection.

5 THE WITNESS: That's the fourth bullet
6 on the page.

7 BY MR. WISNER:

8 Q. All right. Isn't it true that
9 deliberately trying to avoid the disclosure of the
10 negative results of the secondary endpoints is
11 misleading?

12 MS. THORNE: Objection.

13 THE WITNESS: I mean, I think what's
14 more important is ultimately what was included
15 in the publication.

16 BY MR. WISNER:

17 Q. Mr. Closter, that wasn't my question.
18 My question is deliberately trying to
19 avoid disclosing the lack of a statistically
20 significant positive effect at Week 8 or study
21 termination for the secondary endpoints, that activity,
22 is that misleading?

23 MS. THORNE: Objection.

24 THE WITNESS: I believe there's a lot of

1 information that could be included in a brief
2 report. You know, the discussion and the
3 decision of what to include, what not to
4 include, I don't believe is misleading.

5 BY MR. WISNER:

6 Q. Mr. Closter, they specifically are
7 deciding to use a brief report so they don't have to
8 disclose the negative outcomes of the secondary
9 endpoints, isn't that fundamentally dishonest?

10 MS. THORNE: Objection, misstates the
11 document, assumes facts not in evidence, lacks
12 foundation, calls for speculation.

13 THE WITNESS: I mean, I'd speculate, I
14 mean, because it's the fourth reason here, I
15 assume these are in some sort of proper -- you
16 know, priority order, but the choice of
17 choosing a brief report was, you know,
18 multifold, according to what I'm reading in
19 this. So it would include getting out quickly
20 in a top tier journal, the fact that the editor
21 was impressed by the results, you know, the
22 third study showing a positive effect in young
23 patients, which I think speaks to its
24 importance, the fact that there's not very many

1 in a population that used antidepressants at
2 the time.

3 So I would need to know more context
4 whether or not this was misleading or not, and,
5 ultimately, it would have to -- I'd rather look
6 at the final paper and the other publications
7 around this because there is not any one report
8 that shows the full impact of the study from
9 the publication to publications that may be
10 related review articles, all the posters that
11 are presented as part of the data set. I think
12 you have to look at the body of evidence that
13 was ultimately published and disseminated.

14 BY MR. WISNER:

15 Q. Mr. Closter, is it your testimony that
16 you can't determine whether or not the desire or
17 actually effort to avoid disclosing the lack of a
18 statistically significant positive effect at Week 8 or
19 at study termination for secondary endpoints was
20 misleading?

21 MS. THORNE: Objection, asked and
22 answered, renewing my prior objections to this
23 question.

24 THE WITNESS: Yeah, with just this

1 alone, I can't make that determination.

2 BY MR. WISNER:

3 Q. If, in fact, the publication committee
4 had elected to publish these results in a format that
5 would allow them to conceal the negative results, you
6 would agree that would be a miscarriage of science,
7 correct?

8 MS. THORNE: Objection. That calls for
9 speculation, is outside the scope of the
10 notice.

11 THE WITNESS: Again, I think you'd have
12 to look at the body of published data in its
13 entirety over some period of time.

14 BY MR. WISNER:

15 Q. And, to be clear, at this point in time
16 the body of published data as it relates to Celexa
17 Study 18 only included the positive results from the
18 primary efficacy endpoint, correct?

19 MS. THORNE: Objection, lack of
20 foundation.

21 THE WITNESS: I mean, if you're
22 referring to the poster, it's not uncommon that
23 the first presentation of a dataset may include
24 only the primary variables.

1 BY MR. WISNER:

2 Q. Mr. Closter, I'm not talking about the
3 poster. I'm talking about the poster, the
4 presentation, the CME, the press release, none of that,
5 not a single one of them included any disclosure of the
6 negative outcomes in the secondary endpoints for Study
7 18, right?

8 MS. THORNE: Objection, asked and
9 answered.

10 THE WITNESS: Yeah, again, you'd have to
11 look at the body of what came out post this
12 time period. There's not a drug that all the
13 data is released all at once. It doesn't
14 happen.

15 BY MR. WISNER:

16 Q. Isn't it true, Mr. Closter, that if
17 those results had been positive, they would have been
18 included in all those different outlets?

19 MS. THORNE: Objection, calls for
20 speculation.

21 THE WITNESS: Yeah, my speculation is
22 that it doesn't mean that they would have been
23 in there or not, regardless of outcome.

24 BY MR. WISNER:

1 Q. Isn't it true that the reason why they
2 weren't in there is because Forest didn't want negative
3 data out there in the public domain that would reduce
4 or suppress the pediatric sales of Celexa?

5 MS. THORNE: Objection.

6 THE WITNESS: I mean, the pediatric
7 sales of Celexa were not a focus. There was no
8 promotional effort against it. I think it was
9 a matter of the forms that the data was
10 released in, the data that we had relative to
11 other products that may have been included in
12 those CME -- those CME events.

13 BY MR. WISNER:

14 Q. So you do not believe, speaking on
15 behalf of Forest, that Forest did anything wrong in
16 failing to disclose in the posters, the CME
17 presentations, the press releases, the ACNP
18 presentation or any other publication prior to the
19 publication of the manuscript that all the secondary
20 negative outcomes were negative?

21 MS. THORNE: Objection.

22 THE WITNESS: So when you say negative
23 secondary outcomes, it's important to look at
24 even the data over time. So I think on the

1 balance of it, if you looked at those data
2 presentations by study visit, you'd probably
3 find at least from even what I read today,
4 there were more time points where there was a
5 statistically significant difference on active
6 drug versus placebo than time points when they
7 weren't.

8 BY MR. WISNER:

9 Q. Mr. Closter, that wasn't the secondary
10 endpoint, though, was it?

11 MS. THORNE: Objection.

12 THE WITNESS: You talked of secondary
13 outcomes, which are different to me than a
14 secondary endpoint. An endpoint is a point in
15 time. Outcomes could be anything. You know,
16 it could be over time, by visit, it could be
17 responder analyses. I mean, there's a host
18 of -- a broad range of topics, and the
19 suggestion that if we wanted to provide the
20 secondary outcomes, it's -- you know, it's a
21 more positive picture than a negative one.

22 BY MR. WISNER:

23 Q. Mr. Closter, you previously testified
24 numerous occasions that the secondary outcomes for

1 Study 18 were all negative.

2 Are you changing your testimony now?

3 MS. THORNE: Objection.

4 MS. KIEHN: Endpoint.

5 THE WITNESS: I believe my testimony was
6 to the secondary endpoint.

7 MR. WISNER: Okay.

8 THE WITNESS: And if it wasn't, that is
9 my position.

10 BY MR. WISNER:

11 Q. I think the record speaks for itself.

12 During your last break, did counsel
13 instruct you to not use the word secondary outcomes?

14 MS. KIEHN: Don't answer that question.

15 He's not going to answer that question.

16 MR. WISNER: What's the grounds?

17 MS. KIEHN: He is not going to answer
18 it, attorney-client privilege.

19 MR. WISNER: Okay. It's privilege?

20 MS. KIEHN: Yes.

21 BY MR. WISNER:

22 Q. Okay. Are you going to abide by your
23 counsel's instruction not to answer a question about
24 whether or not she might have obstructed a witness who

1 was in the process of being deposed?

2 A. I would take the advice of counsel.

3 Q. Okay. So let me ask the question again
4 then using the endpoint language that you now require.

5 Isn't it true that Forest acted
6 unethically or in a misleading way when it did not
7 disclose that all of the secondary endpoints were
8 negative in the posters, ACNP presentations, CME and
9 initially in its efforts to get this published as a
10 brief report for the pediatric manuscript?

11 MS. THORNE: Objection.

12 THE WITNESS: My previous answer stands,
13 it's not unethical, not misleading.

14 BY MR. WISNER:

15 Q. Okay. To be clear, that's not unethical
16 or not misleading based on the standards employed at
17 Forest, correct?

18 MS. THORNE: Objection.

19 MS. KIEHN: I don't understand the
20 question.

21 BY MR. WISNER:

22 Q. Mr. Closter, I asked you a question.

23 A. Explain the question.

24 Q. Do you not understand the question?

1 A. No.

2 Q. Because I heard her say that, I didn't
3 hear you say anything.

4 A. Yeah, I don't understand the question.

5 Q. So your opinion that what Forest did was
6 not misleading or unethical is based on the standards
7 that are used and exercised at Forest, correct?

8 MS. THORNE: Objection.

9 THE WITNESS: Are you referring to
10 today, back in the time period that we should
11 be focused on?

12 BY MR. WISNER:

13 Q. Does it make a difference, Mr. Closter?

14 MS. THORNE: Objection.

15 THE WITNESS: You tell me.

16 BY MR. WISNER:

17 Q. Does the ethics of what's right or wrong
18 change between today or what happened in 2001?

19 MS. THORNE: Objection.

20 THE WITNESS: It's my understanding that
21 the focus was on a given time period of things
22 that have happened in the past.

23 BY MR. WISNER:

24 Q. Okay. So my question to you is the

1 standard by which you have testified that Forest's
2 conduct was neither misleading or unethical is based on
3 the standards used within Forest, correct?

4 MS. THORNE: Objection.

5 THE WITNESS: Yes.

6 MS. KIEHN: Could we go off the record
7 for one second.

8 MR. WISNER: Sure.

9 THE VIDEOGRAPHER: We are now off the
10 record. The time is 5:23.

11 (Brief recess.)

12 THE VIDEOGRAPHER: We are now back on
13 the record. The time is 5:27.

14 BY MR. WISNER:

15 Q. Okay. Mr. Closter, isn't it true that
16 Forest was in a rush to get the results of the
17 pediatric trial Study 18 out to the public domain as
18 fast as possible?

19 MS. THORNE: Objection.

20 THE WITNESS: Yeah, it was a, you know,
21 study relevant to clinicians, so the goal was
22 to disseminate it.

23 BY MR. WISNER:

24 Q. Why?

1 A. Well, it was topical. I mean, I think
2 the treatment of kids in depression, if you think about
3 the significance of depression in kids, it's, you know,
4 while beyond the age range of kids, but up to the age
5 of 34 it's the second leading cause of death, suicide
6 is, so it's considered an underserved population.

7 There haven't been very many studies
8 that were positive. Either they were well done and had
9 a negative result or some of the studies were just not
10 designed well, which I would argue that 94404 is not a
11 well designed study and probably never could have shown
12 that citalopram worked over placebo, just based on its
13 design.

14 But the fact is it's an underserved
15 population. Clinicians use these products extensively,
16 meaning SSRIs and other antidepressants in that age
17 range, so there's certainly a need, so it was topical,
18 and the company felt it was important to provide the
19 data to clinicians.

20 Q. Mr. Closter, you just testified that you
21 thought Study 94404 was poorly designed; is that right?

22 A. From what I've read, expert opinion,
23 even in the published paper it cites some of the
24 deficiencies in the design.

1 Q. You've actually never looked at the
2 protocol for 94404, have you?

3 A. I've read the published paper.

4 Q. That's not my question.

5 Have you actually read the study
6 protocol for 94404?

7 A. I don't recall.

8 Q. Earlier when I asked you about the
9 primary efficacy result, you didn't know if that was a
10 checklist or not, did you?

11 MS. THORNE: Objection, misstates the
12 testimony.

13 THE WITNESS: You're talking about the
14 primary efficacy variables used in that trial?

15 BY MR. WISNER:

16 Q. That's correct.

17 A. I asked -- I mean, I don't even remember
18 what I asked about it, but we looked at the name of it
19 and the acronym.

20 Q. And you had to actually look at the
21 protocol to understand -- or sorry, look at the study
22 report to understand what that checklist was, right?

23 MS. THORNE: Objection.

24 THE WITNESS: Yeah, I'm not familiar

1 with every efficacy, you know, measure that's
2 used in all the trials.

3 BY MR. WISNER:

4 Q. But you are able to testify under oath
5 before this jury that study 94404 was, in fact,
6 improperly designed; is that right?

7 MS. THORNE: Objection, misstates the
8 testimony.

9 THE WITNESS: Right. I can read the
10 published paper and other expert opinion just
11 like anyone else can.

12 BY MR. WISNER:

13 Q. Why was it improperly designed?

14 MS. KIEHN: Misstates the testimony.

15 MS. THORNE: Yeah, objection, misstates
16 the testimony.

17 BY MR. WISNER:

18 Q. I'm sorry. I'll reask the question.

19 Mr. Closter, you said it was so
20 improperly designed that you don't think it ever could
21 have shown any efficacy.

22 Do you remember saying something to that
23 effect?

24 MS. THORNE: Objection, misstates the

1 testimony.

2 THE WITNESS: I believe there was some
3 deficiencies in the study that made it
4 difficult to interpret the results.

5 BY MR. WISNER:

6 Q. What are those deficiencies?

7 A. It would be helpful if I had the paper
8 out, but the trial was done over a very long period of
9 time. It was done in I believe seven countries. You
10 know, I think given depression and there's, you know,
11 certainly cultural bias in even the recognition or
12 awareness of the depression as a medical condition,
13 that that may introduce some bias, given that the study
14 was conducted across multiple countries.

15 I believe patients were allowed to be on
16 concomitant meds, other psychotropics. I believe there
17 were patients that were hospitalized in the trial and
18 some that weren't and even some that had previous
19 histories of suicidality.

20 So like with any clinical trial, you
21 know, the goal, my understanding is to test whether the
22 active drug works versus placebo, and the more
23 variables you introduce, the more difficult it is to
24 ascertain that and to assess whether the drug works or

1 not. So from my understanding and perhaps other
2 experts that have commented on the study, there was too
3 much variability introduced into the study over time,
4 which may have confounded the result.

5 Q. You mentioned one of the problems is
6 that it took place in a series of European countries;
7 is that right?

8 A. Right, seven.

9 Q. Do you not believe that antidepressants
10 work with children in Europe?

11 MS. THORNE: Objection.

12 THE WITNESS: I mean, my understanding
13 is a properly designed study, well-controlled,
14 controlling for a variety of factors will work
15 across multiple countries. I think the point I
16 made about the countries is that you had that
17 fact, plus many other variables that were
18 introduced into the study, making it difficult
19 to assess the results.

20 BY MR. WISNER:

21 Q. I'm just curious, how does the fact that
22 it was conducted in seven European countries have any
23 impact whatsoever on whether or not citalopram would be
24 able to outperform placebo in treating adolescent

1 depression?

2 MS. THORNE: Objection.

3 THE WITNESS: So as I explained, there
4 may be cultural bias in those countries that
5 may favor or disfavor the active drug versus
6 placebo.

7 BY MR. WISNER:

8 Q. Have you looked into the cultural
9 proclivities of Astonia?

10 MS. THORNE: Objection.

11 THE WITNESS: No, but what I'm providing
12 to is information that I've either read or
13 heard of as it relates to that study.

14 BY MR. WISNER:

15 Q. This is information you read and heard
16 of while you worked at Forest, correct?

17 MS. THORNE: Objection.

18 THE WITNESS: I've worked at Forest for
19 17 years.

20 MR. WISNER: I'm sorry. That didn't
21 answer my question.

22 BY MR. WISNER:

23 Q. This is information that you read and
24 heard of while working at Forest, correct?

1 A. Of course.

2 Q. So to be clear then, your
3 understanding -- I'll move on. I'm handing you a
4 document which is Exhibit 43.

5 (Document marked for identification as
6 ForestC Deposition Exhibit No. 43.)

7 BY MR. WISNER:

8 Q. Do you recognize this document?

9 A. I do.

10 Q. What is this document?

11 A. This looks to be the publication, the
12 initial publication of MD-18.

13 Q. At the beginning of this document it
14 lists all the authors.

15 Do you see that?

16 A. Yes.

17 Q. And listed here is Dr. Wagner, Dr. Robb,
18 Dr. Findling, Dr. Jin, Dr. Gutierrez and Dr. Heydorn.

19 Do you see that?

20 A. Yes.

21 Q. There is no mention of Natasha Mitchner,
22 is there?

23 A. No.

24 Q. There is no mention of Mary Prescott?

1 A. No.

2 Q. There is no mention of any role that
3 BSMG or Weber Shandwick may have played in helping
4 draft or create this manuscript, correct?

5 A. That's correct.

6 Q. And you agree that that's something
7 called ghostwriting?

8 MS. THORNE: Objection.

9 THE WITNESS: I mean, I don't. I mean,
10 what's your definition of ghostwriting?

11 BY MR. WISNER:

12 Q. You're not familiar with the term
13 ghostwriting?

14 A. I am. What's your definition of it?
15 Just so I'm clear and when you're asking me it's
16 ghostwriting --

17 Q. Let me ask you --

18 A. -- I'm using your definition.

19 Q. Sure. Let's use yours. What is your
20 definition of ghostwriting?

21 A. Someone who puts their name on something
22 that had absolutely nothing to do with the publication
23 at any stage.

24 Q. Okay. And when you say "absolutely

1 nothing to do," does that mean they didn't put their
2 name on it at the end?

3 A. No, they put their name on it, but they
4 didn't do anything to provide any of the either
5 editing, fact checking, the discussion section, you
6 know, commentary. They literally had no involvement in
7 the paper.

8 Q. Okay. And what would you call not
9 disclosing somebody who did play a substantial role in
10 creating the manuscript; what would you call that
11 activity?

12 MS. THORNE: Objection.

13 THE WITNESS: I'd call that customary.
14 I mean, when you look at papers such as this,
15 and I'm not a publication expert, so let's just
16 be clear on that, it was not common to put the
17 vendor that you used to help you put the paper
18 together, you know, the vendor which you gave
19 them the tables and the graphs and many of the
20 sections and they literally format it and took
21 the data from you. I don't think it's common
22 that you would include the agency or the person
23 who happened to be working for you in doing
24 that.

1 Just like I don't believe if Dr. Wagner
2 decided to publish an academic paper at her
3 institution, you know, she may, in fact, have
4 fellows, students, residents that may have
5 worked on her behalf to put a paper together,
6 supported, you know, putting the paper
7 together, they may not be mentioned either.

8 Q. So the failure to disclose an author who
9 had a primary role in drafting a manuscript is, in your
10 words, a customary thing?

11 MS. THORNE: Objection, misstates the
12 testimony, lack of foundation, assumes facts
13 not in evidence. There's been no testimony
14 that an author of this paper was not disclosed.

15 THE WITNESS: Right. I would not
16 consider the person or the agency you're
17 referring to as an author.

18 BY MR. WISNER:

19 Q. Okay. That wasn't my question.

20 A. Sure it was.

21 Q. When I asked you what would you call it,
22 the word you said is I'd call it customary; that's what
23 you said, correct?

24 MS. THORNE: Objection.

1 MS. KIEHN: Objection.

2 THE WITNESS: You're going to need to be
3 more clear in what you're asking me.

4 BY MR. WISNER:

5 Q. Okay. Let's go back and read the
6 question and answer, at least the first part.

7 MS. KIEHN: Which question and answer?

8 MR. WISNER: The question that's
9 pending.

10 MS. THORNE: There are like --

11 MS. KIEHN: That's the one that doesn't
12 make sense.

13 MS. THORNE: The question pending
14 doesn't make sense. If you want to go back to
15 the one I think you guys are arguing about,
16 it's several questions back. So you really
17 will need to specify for the court reporter the
18 question and answer you're looking for. We're
19 not trying to be difficult here.

20 MR. WISNER: Then please stop, and we'll
21 do it. Can go back up a couple questions where
22 he said customary.

23 MS. THORNE: And the question that
24 preceded that answer.

1 (The court reporter read back the record
2 as requested.)

3 BY MR. WISNER:

4 Q. So a second ago when I asked you what
5 you would call the activity of not disclosing an author
6 who had a primary role in developing --

7 MS. THORNE: Objection, misstates.

8 MR. WISNER: I need to finish my
9 question, please. That is outrageous.

10 MS. KIEHN: You're misquoting yourself.

11 MR. WISNER: I'm asking a new question.

12 MS. KIEHN: Then don't characterize
13 yourself as saying when I asked "X," which was
14 something different.

15 MR. WISNER: Okay. Please stop
16 interrupting. At this point you clearly are
17 well -- can one of you pick the objections at
18 this point because this is becoming a tag team
19 and inappropriate.

20 MS. THORNE: First of all, no one is
21 tag-teaming you. Kristin still doesn't have a
22 voice, for the record. The audio will reflect
23 that. Don't do that. That's not right and you
24 know it.

1 Second of all, we're not tag-teaming.

2 MR. WISNER: Are you kidding me? She
3 literally tags your arm and interrupts you with
4 objections.

5 MS. KIEHN: Just keep going. What is
6 the question?

7 BY MR. WISNER:

8 Q. Mr. Closter, earlier I asked you what
9 would you call the practice of not disclosing an author
10 who had a primary role in --

11 MS. THORNE: Objection.

12 BY MR. WISNER:

13 Q. -- drafting the manuscript --

14 MR. WISNER: Please let me ask my
15 question. This is becoming harassment. Can
16 you please let me ask my question, Danielle.
17 Thank you.

18 BY MR. WISNER:

19 Q. So let me see if I can get my question
20 out before she interrupts me.

21 Mr. Closter, earlier when I asked you
22 what would you call the practice of not disclosing a
23 primary author who had a primary role in drafting the
24 manuscript in the final publication, what would you

1 call that, let's just ask you that now, what would you
2 call that?

3 MS. THORNE: Objection. Misstates the
4 prior question. To the extent you're asking a
5 new question, the witness can answer.

6 THE WITNESS: All right. Before you
7 didn't say author. You said someone who had
8 some role in putting the paper together, right,
9 that was the question.

10 BY MR. WISNER:

11 Q. Fair enough. So let's get the question.
12 What do you understand the question to be?

13 A. All right. So there is no author that
14 isn't listed here. If you're referring to the med
15 agency as an author, that is incorrect. They're not
16 considered authors.

17 Q. Mr. Closter, Natasha Mitchner wrote
18 almost all of the words in this initial draft, didn't
19 she?

20 MS. THORNE: Objection, lack of
21 foundation, assumes facts not in evidence.

22 THE WITNESS: I couldn't possibly verify
23 that.

24 BY MR. WISNER:

1 Q. So your testimony to this jury is you
2 don't know if Natasha Mitchner drafted the first draft
3 with almost all of the words on this manuscript
4 initially; is that your testimony?

5 MS. THORNE: Objection, misstates the
6 testimony. That wasn't the initial question,
7 assumes facts not in evidence, lacks
8 foundation.

9 THE WITNESS: Yeah, I can't verify the
10 work she did, the work Dr. Heydorn did,
11 Dr. Gutierrez did, Dr. Jin did and the other
12 outside authors that are listed on the paper.
13 I know that they were investigators, and,
14 certainly, Dr. Wagner would have had
15 substantive review of this paper, writing it
16 herself, editing it or formatting it.

17 The role of Natasha Mitchner or whomever
18 else would have been working at -- I guess it
19 was Weber Shandwick I guess was the name of the
20 company that Mary Prescott was helping manage,
21 they would have had some involvement in
22 literally formatting, putting together and
23 perhaps writing some of the drafts of the
24 content that's in here, but without seeing all

1 of the documentation, the back and forth, you
2 wouldn't know.

3 And even after all of that
4 investigation, she still wouldn't qualify as an
5 author on this paper.

6 BY MR. WISNER:

7 Q. Mr. Closter, I don't mean to fight with
8 you, but I asked a very simple question, and now I'll
9 just ask an open-ended question, do you know what role
10 Natasha Mitchner played in putting together this
11 manuscript?

12 A. No, I don't have any direct knowledge of
13 how -- what was her role was in the paper.

14 Q. So how could you know one way or the
15 other whether or not she did not draft the first draft
16 of this manuscript?

17 MS. THORNE: Objection, misstates the
18 testimony, misstates the question. That was
19 not the initial question. The witness can
20 answer.

21 MS. KIEHN: That's not what he
22 testified.

23 THE WITNESS: Yeah, I'm speaking to you
24 as someone who has, you know, been in this line

1 of work for some time and understanding the
2 roles of a publication support group.

3 BY MR. WISNER:

4 Q. You actually don't know what role
5 Natasha Mitchner played putting together this
6 manuscript, do you?

7 A. She could have done very, very little.
8 She could have done a little more than that.

9 Q. Is it possible that she could have
10 written the whole thing?

11 A. I doubt it.

12 MS. THORNE: Objection.

13 BY MR. WISNER:

14 Q. You doubt it?

15 A. This information here she wouldn't even
16 have had access to. Some of the documents are
17 handed -- most of the documents are handed to her from
18 Forest, and then, obviously, Karen Wagner has quite a
19 bit of input to it, so she'd be incapable of writing it
20 on her own.

21 Q. I'm going to hand you a document, it's a
22 bit out of sequence, Exhibit 46.

23 MS. THORNE: For the record, the topic
24 that Mr. Closter was prepared for was to

1 testify to the general -- the general process
2 by which defendants engaged third parties to
3 assist with manuscript development for Celexa
4 and Lexapro prior to 2013.

5 MR. WISNER: And he has testified to his
6 representations on behalf of the company that
7 Natasha Mitchner could not possibly have
8 written the primary first draft of this
9 article.

10 BY MR. WISNER:

11 Q. I'm handing you a document --

12 A. I didn't say that.

13 MS. KIEHN: No, no, the topic --

14 MR. WISNER: The record speaks for
15 itself. We don't need to talk over.

16 MS. KIEHN: The topic speaks for itself.

17 (Document marked for identification as
18 ForestC Deposition Exhibit No. 46.)

19 BY MR. WISNER:

20 Q. I'm handing you a document that is
21 Exhibit 46 to your deposition.

22 Have you ever seen this document before?

23 A. I have.

24 Q. This is an editor's note that was

1 published in August of 2009, correct?

2 A. That's what it says in the paper.

3 Q. And this was an editor's note published
4 by the American --

5 A. Journal of Psychiatry.

6 Q. Let's try to get it right. The American
7 Journal of Psychiatry, right?

8 A. Apparently, it's a page number and
9 there's a citation to a website.

10 Q. It says on the bottom right American
11 Journal of Psychiatry, right?

12 A. Right, and then there's a URL address to
13 the left of it.

14 Q. So this was published in the American
15 Journal of Psychiatry, right?

16 A. Or published online.

17 MS. THORNE: Objection, asked and
18 answered.

19 BY MR. WISNER:

20 Q. Okay. All right. Turn to the second
21 page. Second to last paragraph it says, we are
22 satisfied that the named contributors of this study --
23 of this article satisfy the criteria for authorship as
24 set forth in the "Uniform Requirements for Manuscripts

1 Submitted to Biomedical Journals" from International
2 Committee of Medical Journal Editors. However, the
3 Journal's instructions to authors in 2004 and our
4 policy today do not allow contributions by unnamed
5 writers to the preparation of a paper. Thus, the
6 editorial contributions of Prescott Medical
7 Communications Group should have been acknowledged in
8 the published article as required at the time the
9 article was published.

10 Do you see that?

11 A. So just to be clear, this is being
12 published in 2009 on an article that was published in
13 2004.

14 Q. Did I read that correctly, Mr. Closter?

15 A. Yeah I'm just making sure it's put into
16 context.

17 Q. And I appreciate you bringing the
18 context that this journal felt compelled to make this
19 disclosure five years after it had been published,
20 didn't they?

21 MS. THORNE: Objection, calls for
22 speculation.

23 THE WITNESS: Yeah, I can't speak to the
24 journal's intent.

1 BY MR. WISNER:

2 Q. And the journal says specifically that
3 the failure to disclose Prescott Medical Communications
4 as an author violated its policies as they existed in
5 2004; isn't that true?

6 MS. THORNE: Objection, misstates the
7 document.

8 THE WITNESS: Whatever is written in
9 this document.

10 BY MR. WISNER:

11 Q. So, Mr. Closter, a second ago when you
12 testified that you don't think Natasha Mitchner
13 qualified as an author, the journal that published the
14 article doesn't agree with you, does it?

15 MS. THORNE: Objection, misstates the
16 document, calls for speculation.

17 THE WITNESS: I can't speak on behalf of
18 the journal.

19 BY MR. WISNER:

20 Q. Natasha Mitchner, to your understanding,
21 worked with Mary Prescott at Prescott Medical
22 Communications Group, right?

23 MS. THORNE: Objection, assumes facts
24 not in evidence, lacks foundation.

1 THE WITNESS: I don't know what the name
2 of the company was back then or the time period
3 they're -- you know, you're referring to.

4 BY MR. WISNER:

5 Q. But you know that she worked with Mary
6 Prescott?

7 MS. THORNE: Objection.

8 THE WITNESS: Back at the correspondence
9 we've reviewed earlier.

10 BY MR. WISNER:

11 Q. All right. Now, it says up here also in
12 this editorial if you go up to the top of the page,
13 there's a sentence that says Drs. Wagner.

14 Do you see that?

15 A. Yes.

16 Q. It says, "Drs. Wagner, Robb and Findling
17 report that they contributed with Dr. Heydorn to the
18 resubmission and that they were not aware that
19 Dr. Heydorn was working with a commercial writer."

20 Do you see that?

21 A. Yes.

22 Q. Now, we had seen several e-mails
23 indicating that, in fact, Dr. Wagner had direct
24 communications with both Natasha Mitchner and Mary

1 Prescott; isn't that true?

2 MS. THORNE: Objection.

3 THE WITNESS: I don't think we saw
4 direct -- I mean, I don't believe we saw
5 e-mails between the parties.

6 BY MR. WISNER:

7 Q. Okay. In all of your reviewing of the
8 various documents preparing for your testimony today,
9 have you not seen any direct communications between
10 either Mary Prescott or Natasha Mitchner with Karen
11 Wagner?

12 MS. THORNE: Objection.

13 THE WITNESS: I haven't seen any.

14 BY MR. WISNER:

15 Q. I'm sorry. What?

16 A. I have not seen any.

17 Q. Okay. Fair enough. Took it out of the
18 exhibits.

19 Mr. Closter, if, in fact, there had been
20 direct communications between Karen Wagner and Mary
21 Prescott or Natasha Mitchner in the context of
22 preparing this manuscript, that representation to the
23 journal article would have been false, correct?

24 MS. THORNE: Objection, calls for

1 speculation. That's also outside the scope of
2 the 30(b)(6) notice.

3 THE WITNESS: Can you ask the question
4 again.

5 BY MR. WISNER:

6 Q. If, in fact, Dr. Wagner had direct
7 communications with Mary Prescott and/or Natasha
8 Mitchner in drafting this manuscript, that would make
9 the statements that were made to this journal as
10 reflected in Exhibit 46 false?

11 MS. THORNE: Objection, calls for
12 speculation, falls outside the scope of the
13 30(b)(6) notice.

14 THE WITNESS: Yeah, I don't know the
15 answer.

16 BY MR. WISNER:

17 Q. Okay. Well, it says right here that
18 "Drs. Wagner, Robb and Findling report that they
19 contributed with Dr. Heydorn to the resubmission and
20 that they were not aware that Dr. Heydorn was working
21 with a commercial writer.

22 Do you see that?

23 A. I see that.

24 Q. If, in fact, there is evidence that

1 Dr. Wagner was working directly with a commercial
2 writer, that would indicate that Dr. Wagner's
3 representations to the journal were false, correct?

4 MS. THORNE: Objection.

5 THE WITNESS: I'm sorry. When you say
6 "representations" of what?

7 BY MR. WISNER:

8 Q. I'm sorry, what?

9 A. What is she representing to the journal?
10 You referred to representations to the journal would be
11 false, so what representations are you talking about?

12 Q. It says right here, it says,
13 "Drs. Wagner, Robb and Findling report that they
14 contributed with Dr. Heydorn to the resubmission and
15 that they were not aware that Dr. Heydorn was working
16 with a commercial writer."

17 Do you see that?

18 A. So you're saying Dr. Wagner would be
19 false if she had had communications with --

20 Q. A commercial writer.

21 A. Okay.

22 Q. Yes?

23 A. Sure.

24 MS. THORNE: Objection.

1 BY MR. WISNER:

2 Q. All right. Turning your attention back
3 to Exhibit 43. This is the publication. You got the
4 exhibit?

5 A. Yep.

6 Q. Let me draw your attention back to
7 Exhibit 35.

8 MS. KIEHN: Michael, can I have my
9 exhibits back?

10 MR. BAUM: These are mine.

11 MS. KIEHN: Well, we need them to follow
12 along with the question.

13 MS. THORNE: We at least need 35.

14 MR. BAUM: You have it.

15 MS. THORNE: All of them were in one --

16 MR. BAUM: We gave you two.

17 MS. KIEHN: That's our official stack.

18 Sorry.

19 MR. BAUM: You can have these back.

20 Give me the unofficial stack. Can I have the
21 unofficial stack back.

22 MS. KIEHN: They're in order.

23 BY MR. WISNER:

24 Q. Mr. Closter.

1 A. Yes.

2 Q. You're back on Exhibit 35?

3 A. Yes.

4 Q. Okay. I believe this first paragraph
5 here it says, "Attached please find the final slides
6 submitted to ACNP on behalf of Dr. Wagner."

7 Do you see that?

8 A. Yes.

9 Q. We discussed the slides earlier; do you
10 recall?

11 A. Yes.

12 Q. And then it goes, "Working with
13 Dr. Wagner and Charlie Flicker, we finalized the slides
14 yesterday."

15 Do you see that?

16 A. Yes.

17 Q. And that was an e-mail from Natasha
18 Mitchner?

19 A. Yes.

20 Q. And so she's indicating that she's
21 working with Dr. Wagner, isn't she?

22 MS. THORNE: Objection.

23 THE WITNESS: It reads what it says, we
24 finalized the slides yesterday in reference to

1 working with Dr. Wagner and Charlie Flicker.

2 BY MR. WISNER:

3 Q. Okay, great. Let's turn to Exhibit 43.
4 Sorry I keep making you jump around the exhibits like
5 this.

6 A. That's all right. I have them in order
7 now, okay.

8 Q. Okay. If you turn to Page 2 in the
9 study report -- I'm sorry, the manuscript.

10 A. Yeah.

11 Q. And there's a section that says "Study
12 Design."

13 Do you see that?

14 A. Yes.

15 Q. All right. It goes, "Following an
16 initial screening visit in a 1-week, single-blind
17 placebo lead-in period, patients returned for a
18 baseline visit to determine whether they remained
19 eligible to participate. Eligible patients were then
20 randomly assigned in double-blind fashion to 8 weeks of
21 citalopram or placebo treatment."

22 Do you see that?

23 A. Yes.

24 Q. Nowhere in the remainder of that

1 paragraph or anywhere in the study design does it
2 mention that there was a potential unblinding issue
3 with at least eight or nine of the patients who were
4 participating in Study 18?

5 A. Okay.

6 MS. THORNE: Objection.

7 BY MR. WISNER:

8 Q. That's correct, right?

9 A. Correct.

10 Q. In fact, this issue about potential
11 unblinding is not disclosed in any capacity anywhere in
12 this publication, correct?

13 MS. THORNE: Objection.

14 THE WITNESS: No.

15 BY MR. WISNER:

16 Q. Okay. Now, if you turn to Page 3, we're
17 here now in the "Results" section of the paper.

18 Do you see that?

19 A. Yep.

20 Q. Okay. And there's a paragraph, it's the
21 first full paragraph in the second column, it starts
22 off with citalopram treatment.

23 You see that?

24 A. Yes.

1 Q. It says that citalopram treatment showed
2 statistically significant improvement compared with
3 placebo on the Children's Depression Rating Scale -
4 Revised as early as week 1, which persisted throughout
5 the study (Figure 1).

6 Do you see that?

7 A. Yes.

8 Q. At Week 8, the effect size on the
9 primary outcome measure, Children's Depression Rating
10 Scale - Revised was 2.9.

11 Do you see that?

12 A. Yes.

13 Q. Do you know what that means, 2.9?

14 A. I mean, it may be referring to the
15 difference between citalopram and placebo, but that's
16 just an educated guess.

17 Q. Okay. Would Dr. Olanoff be someone who
18 would probably be better able to answer a question like
19 that?

20 A. Yes.

21 Q. Okay. And then keep going, skip the
22 next sentence, it says -- the next sentence reads, the
23 portion of patients.

24 Do you see that?

1 MS. THORNE: It says proportion.

2 BY MR. WISNER:

3 Q. Sorry, the proportion of patients.

4 Do you see that, with a CGI improvement
5 rating?

6 A. Yes, the proportion of patients.

7 Q. With a CGI improvement rating --

8 A. Yes.

9 Q. -- less than or equal to 2 at Week 8 was
10 48% for the citalopram group and 45% for the placebo
11 group, last option carried forward values.

12 Do you see that?

13 A. Yes.

14 Q. So it's actually reporting the
15 percentage of values for that secondary endpoint from
16 the study, right?

17 A. Right.

18 Q. But it doesn't actually disclose what
19 the P value is, does it?

20 A. No, it does not.

21 Q. So it actually doesn't indicate that
22 that difference was not statistically significant?

23 A. No, it just provides the values.

24 Q. Okay. And then for the next secondary

1 outpoint for this CGI severity rating, baseline values
2 were 4.4 for the citalopram group and 4.3 for the
3 placebo group and endpoint values (last observation
4 carried forward) were 3.1 for citalopram group and 3.3
5 for the placebo group.

6 Do you see that?

7 A. Yes.

8 Q. Again, it does not provide a P value
9 there, does it?

10 A. There's no P value on the paper.

11 Q. With regards to that endpoint, correct?

12 A. Yes.

13 Q. Okay. And so reading that, how would a
14 physician know that those, in fact, were not
15 statistically significant differences?

16 MS. THORNE: Objection, calls for
17 speculation.

18 THE WITNESS: I mean, you have to ask
19 physicians how they would interpret that.

20 BY MR. WISNER:

21 Q. Okay. Now, interestingly enough, in
22 reporting the primary outcome, which according to the
23 final study report was positive, they do report the P
24 value, don't they?

1 A. Yes.

2 MS. THORNE: Objection.

3 BY MR. WISNER:

4 Q. But when it comes to these two secondary
5 negative -- secondary negative endpoints, they do not
6 report the P value, do they?

7 MS. THORNE: Objection.

8 THE WITNESS: No, because the most
9 relevant one is the primary. That's why it's
10 called the primary.

11 BY MR. WISNER:

12 Q. So the reason why they didn't report the
13 P value for the negative outcomes is because it wasn't
14 as relevant?

15 A. I don't know the reason. You'd have to
16 talk to the study authors or those who were more
17 involved in the publication to understand why they
18 included what they did.

19 Q. Okay. So you do not know then why the
20 authors of this manuscript did not disclose the P value
21 for the secondary outcomes?

22 A. I do not know.

23 Q. Do you know if they were instructed by
24 Forest to hide the negative secondary outcomes?

1 MS. THORNE: Objection.

2 THE WITNESS: I'm fairly certain they
3 were not.

4 BY MR. WISNER:

5 Q. Well, we do know that when this
6 manuscript was originally submitted, it was submitted
7 as a brief report, correct?

8 MS. THORNE: Objection.

9 THE WITNESS: There was some language in
10 a e-mail that we saw that suggested it might
11 have been, but I don't know if it was or not.

12 BY MR. WISNER:

13 Q. So you don't know whether or not this
14 manuscript was originally submitted as a brief report
15 to the American Journal of Psychiatry?

16 A. No, nor do I know if it was submitted to
17 any other journal prior to this publication.

18 Q. And do you know whether or not the
19 American Journal of Psychiatry actually rejected the
20 manuscript as a brief report?

21 MS. THORNE: Objection, misstate -- lack
22 of foundation, assumes facts not in evidence.

23 THE WITNESS: I can't say for sure.

24 BY MR. WISNER:

1 Q. So you don't know that one way or the
2 other?

3 A. I don't.

4 Q. Okay. Now, in the publication it does
5 mention the effect size, correct?

6 A. I believe in a section we just read, it
7 references the effect size.

8 Q. And do you know whether or not that
9 effect size represents clinical efficacy?

10 A. I don't know.

11 Q. Okay.

12 A. It's not defined in the paper.

13 Q. Now, at this point in 2004, the data
14 from Study 94404 had been available to Forest for
15 nearly three years, correct?

16 MS. THORNE: Objection.

17 THE WITNESS: Yeah, the time point would
18 have been some point in 2001 to now 2004.

19 BY MR. WISNER:

20 Q. So it's approximately three years?

21 A. Yes.

22 Q. And, in fact, the final study report had
23 been completed for over two years at this point,
24 correct?

1 MS. THORNE: Objection.

2 THE WITNESS: Yeah, I don't know the
3 date when the final study report was published.

4 BY MR. WISNER:

5 Q. Okay. Nowhere in this journal article
6 does it reference the results of Study 94404, does it?

7 A. No.

8 Q. On here are listed author William
9 Heydorn, do you see that? William Heydorn was an
10 author on this manuscript?

11 A. Yes.

12 Q. And he sure knew about the results from
13 Study 94404, correct?

14 MS. THORNE: Objection.

15 THE WITNESS: He would have known about
16 them.

17 BY MR. WISNER:

18 Q. And isn't it true that Forest publicized
19 and promoted the results from the positive Forest
20 study, while at the same time Forest did not publicize
21 or disclose the results of the negative study to
22 persons outside of the FDA or the Danish company which
23 sponsored the negative study?

24 A. That's true.

1 Q. At this point Forest had actually
2 applied for a pediatric indication for Celexa, correct?

3 A. I believe we made a submission as upon
4 FDA request to get a pediatric exclusivity of a period
5 of six months and the guidance from FDA was to submit
6 for the indication, and that's how they would review
7 the data on whether or not to give us the six months of
8 exclusivity.

9 Q. To be clear, Forest did submit an
10 application to the FDA requesting a pediatric
11 indication for Celexa, correct?

12 A. That would have been the submission,
13 yes.

14 Q. And that application was rejected,
15 correct?

16 MS. THORNE: Objection.

17 THE WITNESS: The six months of
18 exclusivity was granted. The indication was
19 not included in the label.

20 BY MR. WISNER:

21 Q. So the FDA determined that it was
22 inappropriate to allow for a pediatric indication for
23 Celexa, correct?

24 MS. THORNE: Objection.

1 THE WITNESS: It's my understanding they
2 would have required a second positive study.

3 BY MR. WISNER:

4 Q. At this point all you had was Study 18,
5 correct?

6 MS. THORNE: Objection.

7 THE WITNESS: I'm sorry. What time
8 period is this?

9 BY MR. WISNER:

10 Q. Well, the next study would be Study 15,
11 but that wasn't positive either?

12 A. Right, so I'm just making sure.

13 Q. So the only positive study you had at
14 this point was Study 18?

15 A. That's right.

16 Q. And by positive you mean only the
17 primary efficacy endpoint was positive and all the
18 secondary outcomes -- secondary endpoints were
19 negative, correct?

20 MS. THORNE: Objection.

21 THE WITNESS: I believe FDA's
22 interpretation would be positive based on the
23 primary because that's the most important
24 parameter they're looking at.

1 BY MR. WISNER:

2 Q. And you'd agree that that was only
3 positive because it included patients from the
4 potentially unblinded cohort that had been subject to
5 the dispensing error?

6 MS. THORNE: Objection.

7 THE WITNESS: I mean, I believe it was
8 positive because it included all the patients
9 in the ITT population that was defined in the
10 protocol.

11 BY MR. WISNER:

12 Q. I'm sorry, wait. Didn't the protocol
13 say that any patient that was unblinded was
14 automatically excluded from any efficacy analysis?

15 MS. THORNE: Objection, misstates the
16 document, assumes facts not in evidence, lacks
17 foundation.

18 THE WITNESS: Yeah, I'd have to see the
19 document.

20 BY MR. WISNER:

21 Q. You want to take a look at the protocol?

22 A. Sure, if you'd like to.

23 Q. All right. Let's turn to Exhibit 15.

24 A. Okay.

1 Q. Page 6.

2 A. You said 15?

3 Q. Yes.

4 A. Okay.

5 Q. Page 6. Fourth paragraph, it's in
6 italics, but not bolded.

7 Do you see that?

8 A. Yes.

9 Q. It reads, "Any patient for whom the
10 blind has been broken will immediately be discontinued
11 from the study and no further efficacy evaluations will
12 be performed."

13 Do you see that?

14 A. Yes.

15 Q. Okay. All right. Let's go back to the
16 clinical trial we're at -- I'm sorry, the publications,
17 Exhibit 43. Sorry I keep making you jump between
18 documents.

19 A. I can do it.

20 Q. Starting to look like my desk.

21 Okay. Mr. Closter, we were talking
22 about the FDA's denial of a pediatric indication for
23 Celexa.

24 Do you recall that?

1 A. Yes.

2 Q. Nowhere in this publication does it
3 indicate that the FDA had denied Forest's application
4 for a pediatric indication?

5 A. I'm not sure why it would.

6 Q. That's not in there, right?

7 A. It's not in there.

8 Q. And it's not something then -- you don't
9 think that the fact that the FDA had rejected an
10 application for a pediatric indication is not relevant
11 in a clinical trial purporting to support the efficacy
12 of citalopram in children?

13 MS. THORNE: Objection.

14 THE WITNESS: They're describing the
15 results of the study.

16 BY MR. WISNER:

17 Q. Isn't it true when you publish a result,
18 you're supposed to discuss data that you know about?

19 MS. THORNE: Objection.

20 THE WITNESS: I mean, it's up to the
21 study authors to include what they like.

22 BY MR. WISNER:

23 Q. Let's go back to Exhibit 46. Don't put
24 away the study. We'll come back to it.

1 A. Okay.

2 Q. Again, on second page, the second to
3 last paragraph, that's not signatures it says
4 "furthermore."

5 Do you see that?

6 A. Yes.

7 Q. Furthermore, "Forest Laboratories failed
8 to disclose to the Journal that it was aware of data
9 from a study by Lundbeck that showed increased
10 suicidality in children and adolescents who were
11 treated with citalopram. Authors and sponsors are
12 expected to disclose the existence of all data that
13 affects the interpretation of their study. This note
14 will appear in Medline and other databases as a Comment
15 on the paper."

16 Did I read that well?

17 A. Yes.

18 Q. So, in fact, it was expected at the
19 journal for authors to disclose all known data that
20 could bear upon interpretation of the study results,
21 correct?

22 MS. THORNE: Objection.

23 THE WITNESS: Yeah, that's what the
24 journal is stating in their article.

1 BY MR. WISNER:

2 Q. And the fact that the FDA had rejected a
3 pediatric indication, that would constitute known data
4 that would affect a doctor's interpretation and reading
5 of this journal article, correct?

6 MS. THORNE: Objection.

7 THE WITNESS: Yeah, I wouldn't know
8 that. You'd have to ask clinicians what they
9 think.

10 BY MR. WISNER:

11 Q. Well, you'd agree, at the very least,
12 referencing or discussing Study 94404 would have been
13 appropriate to disclose in the manuscript, correct?

14 MS. THORNE: Objection.

15 THE WITNESS: The journal has their
16 opinion.

17 BY MR. WISNER:

18 Q. I'm asking about Forest's opinion.

19 MS. THORNE: Forest's opinion on what?

20 BY MR. WISNER:

21 Q. Whether it was appropriate to not
22 include 94404 in the manuscript for Study 18?

23 A. Again, it was not our study, granted it
24 was a compound that we sold in the United States, but,

1 ultimately, it's Lundbeck's decision, and you've got to
2 take their guidance into account as to what they wanted
3 to do with the study.

4 Q. Are you aware of Lundbeck telling Forest
5 not to mention the 94404 study in their publication of
6 Study 18?

7 MS. THORNE: Objection, assumes facts
8 not in evidence, lacks foundation.

9 THE WITNESS: I'm not suggesting they
10 did that. I'm saying they had their own plan
11 on their own study.

12 BY MR. WISNER:

13 Q. Okay. So you're not aware of any
14 communications that were sent to Forest telling Forest
15 not to include a reference 94404 in the manuscript for
16 Study 18 by Lundbeck?

17 A. No, I'm not aware of any information.

18 Q. Okay. Now, in the publication for Study
19 94404, it does reference Study 18, though, doesn't it?

20 A. I believe it does. I think, in part,
21 because I believe it was published after this was
22 published.

23 Q. And it was published after this was
24 published because Forest deliberately wanted to avoid

1 negative data being in the public domain about the
2 pediatric efficacy of Celexa, correct?

3 MS. THORNE: Objection, asked and
4 answered.

5 THE WITNESS: Yeah, I can't agree with
6 the statement.

7 BY MR. WISNER:

8 Q. All right.

9 A. We can put this paper away now?

10 Q. No, keep the paper out.

11 MS. THORNE: Brent, when you get to a
12 convenient stopping point, we'd like to take a
13 break.

14 MR. WISNER: Okay.

15 MS. THORNE: Preferably in the not
16 terribly distant future.

17 MR. WISNER: I'm almost done. I really
18 am almost done.

19 BY MR. WISNER:

20 Q. You are aware that there is a black box
21 warning for both citalopram and escitalopram related to
22 risks associated with pediatric suicidality?

23 MS. THORNE: Objection.

24 THE WITNESS: Yes, class labeling that's

1 applied to all antidepressants, including
2 Celexa and Lexapro.

3 BY MR. WISNER:

4 Q. But there is a black box warning on both
5 citalopram and escitalopram, correct?

6 MS. THORNE: Objection, asked and
7 answered.

8 THE WITNESS: And every other
9 antidepressant.

10 BY MR. WISNER:

11 Q. Sorry, that's a yes, right?

12 A. Yes.

13 Q. Okay. I hadn't heard a yes. I heard
14 and every other antidepressant, I hadn't heard a yes.

15 A. Well, the first time I answered yes. I
16 said on every antidepressant, including Celexa and
17 Lexapro, so if you want to ask me questions, twice feel
18 free, I'll answer the same way.

19 Q. Okay. So there is, in fact, a black box
20 -- I'm just kidding.

21 MR. WISNER: Take a break.

22 THE VIDEOGRAPHER: We are now off the
23 record. The time is 6:10.

24 (Brief recess.)

1 THE VIDEOGRAPHER: We are now back on
2 the record. The time is 6:33.

3 BY MR. WISNER:

4 Q. All right, Mr. Closter, earlier I asked
5 you and I'll just clarify it again, Forest did
6 publicize and promote the results from the positive
7 study, correct?

8 A. Yes.

9 Q. I'm handing you a document -- well,
10 before I do that, isn't it also true that through that
11 publicity and promotion, Forest saw a market increase
12 in the sales of Celexa for patients under the age of
13 20?

14 MS. THORNE: Objection, lacks
15 foundation, assumes facts not in evidence.

16 THE WITNESS: Yeah, I don't believe I
17 can confirm that.

18 (Document marked for identification as
19 ForestC Deposition Exhibit No. 47.)

20 BY MR. WISNER:

21 Q. Okay. Handing you a document that's
22 marked as Exhibit 47 to your deposition.

23 A. These are all connected, right, just the
24 staple is a little --

1 Q. I think you're missing one. There's a
2 Page 23.

3 A. Yeah, this looks like it's on the back.

4 Q. Sorry about that.

5 A. That's all right.

6 MS. THORNE: Since they're all in color,
7 would you like to swap one of the nondamaged
8 goods.

9 MR. WISNER: That's a good idea.

10 BY MR. WISNER:

11 Q. All right. You have now in front of you
12 Exhibit 47, correct?

13 A. Yes.

14 Q. All right. You recognize this document?

15 A. The e-mail on top or the document
16 attached to it?

17 Q. Fair enough. Do you recognize the
18 document attached to the e-mail beginning with Lexapro
19 FYI -- fiscal year 2004 dated December 3rd, 2002?

20 A. It looks like a strategy presentation.

21 Q. Did you specifically review this
22 document in preparation for your testimony today?

23 A. I did not see this one specifically, no.

24 Q. Okay.

1 MS. THORNE: Brent, just for the record,
2 is this excerpted at all.

3 MR. WISNER: Yes, it is. I had taken --
4 it's like a 200-page document, so I just took
5 excerpts, that's correct.

6 MS. THORNE: Okay. So, to be clear, the
7 page numbers are numbers that you applied to
8 the document for clarity in getting through the
9 deposition?

10 MR. WISNER: Yes, just like all the
11 other exhibits, that's correct.

12 MS. THORNE: Okay.

13 THE WITNESS: Just a question, are these
14 in any given order? Was it just -- meaning,
15 did these flow in order in the document you
16 took from?

17 BY MR. WISNER:

18 Q. Yes, that's correct. I did not take
19 them out of sequence.

20 A. They're continuous. Right, so they're
21 in sequence from whatever slide one to whenever it is.

22 Q. Precisely, but pages are missing between
23 slides.

24 A. They are, so it's not continuous?

1 Q. There's pages missing between slides,
2 but they're in the order of the slides. Does that make
3 sense?

4 A. All right. So if there's, what, 23
5 here, there's, I don't know -- you said it was a
6 200-page deck?

7 Q. It's a fairly large deck. I don't know
8 the exact number.

9 A. All right. So it's missing a lot of
10 whatever is in between these slides, potentially.

11 Q. That's correct.

12 A. All right.

13 Q. So on the front page here, there is --
14 it's from Nikhil Nayak.

15 Do you see that?

16 A. Yes, Nikhil Nayak.

17 Q. Do you know who that is?

18 A. Yes.

19 Q. Is that a he?

20 A. He.

21 Q. Who is he?

22 A. He was on the marketing team.

23 Q. Okay. Did you work with him?

24 A. I did.

1 Q. And, in fact, there's a bunch of
2 recipients here, including yourself, Steven Closter.

3 Do you see that?

4 A. Yes.

5 Q. All right. Do you recall receiving this
6 deck at any point?

7 A. I mean, obviously, I was copied on it,
8 so I would have seen it at some point, yes.

9 Q. Okay. And the e-mail is dated
10 December 20th, 2002.

11 Do you see that?

12 A. Yes.

13 Q. And if you turn -- this document was --
14 these types of presentations and slide decks, they're
15 sort of documents created in the regular course of
16 business at Forest, correct?

17 MS. THORNE: Objection, calls for a
18 legal conclusion.

19 THE WITNESS: What do you mean by the
20 "regular course of business"? That's not a
21 term I'm familiar with.

22 BY MR. WISNER:

23 Q. You regularly would see or there was
24 created tactical presentations?

1 MS. THORNE: Objection.

2 THE WITNESS: Yeah, there would have
3 been, as in this document, a strategic options
4 type of presentation, which is what looks like
5 this is. There may be then a follow-on
6 tactical presentation, and then, ultimately,
7 there may be a written -- a written brand plan.

8 BY MR. WISNER:

9 Q. Okay. And the creation of those various
10 documents, that was regularly done at Forest, correct?

11 MS. THORNE: Objection. What do you
12 mean by "regularly"? To the extent that calls
13 for a legal conclusion, I object.

14 THE WITNESS: You're asking how often
15 these were done?

16 BY MR. WISNER:

17 Q. My question is they were regularly
18 created at Forest, correct?

19 MS. THORNE: Objection to the extent it
20 calls for a legal conclusion.

21 THE WITNESS: All right. We would
22 produce these once a year, essentially.

23 BY MR. WISNER:

24 Q. So it's regularly created once a year?

1 MS. THORNE: Objection, calls for a
2 legal conclusion.

3 THE WITNESS: If you want to use the
4 word "regularly," you can. You know, there
5 were some years that we didn't do this kind of
6 stuff, but in this time period, we did these
7 annually.

8 BY MR. WISNER:

9 Q. And these documents were produced in the
10 context of your business at Forest, correct?

11 MS. THORNE: Objection. When you say
12 "your," because you were asking him in his
13 personal capacity about the document a little
14 while ago, are you now asking him in his
15 capacity as a 30(b)(6)?

16 MR. WISNER: I'm asking him in both.

17 BY MR. WISNER:

18 Q. This document was created in the regular
19 course of Forest business, correct?

20 MS. THORNE: Objection, calls for a
21 legal conclusion.

22 THE WITNESS: Yes, whether it was
23 Lexapro or other brands, we would produce these
24 on an annual basis.

1 BY MR. WISNER:

2 Q. Thank you. It says here, "As a
3 reminder, the tactical presentation with Elaine and
4 Howard is scheduled for February 6, 2003."

5 Do you see that?

6 A. Yes.

7 Q. Is a tactical presentation different
8 than -- I'll read the next sentence. Therefore, please
9 review the Lexapro fiscal year 2004 strategies with
10 your appropriate agencies (see first attachment below
11 for final fiscal year 2004 strategic operations
12 presentation).

13 Do you see that?

14 A. Yes.

15 Q. So these strategic operations
16 presentations, are they different than tactical
17 presentations?

18 A. Yeah, there would be, you know, few to
19 no tactics in this planning document.

20 Q. So I'll ask my question, what is the
21 difference between a strategic operations presentation
22 versus a tactical presentation?

23 A. I mean, a strategic operations
24 presentation, you know, would be higher level, you

1 know, overall strategies, you know, how do we look at
2 the usage of our product. You know, you break down the
3 market in a variety of different ways, where is
4 utilization, what are some things that we're going to
5 want to focus on. They could be relevant to the next
6 planning year or well beyond that, perhaps lifecycle
7 strategies, formulations, new indications things like
8 that.

9 The tactical presentation tended to be
10 focused on the next year's activities, and, you know,
11 you would lay out tactics that you would execute, you
12 know, against the brand. You know, note that these
13 were done at one point in time, obviously, things
14 change during the year and, you know, what you even saw
15 in the tactical presentation doesn't mean that tactic
16 was actually executed. It was merely a planning
17 document to guide some of our activities.

18 Q. Okay. I think you turn to the page
19 numbered at the top right Number 9.

20 A. Okay.

21 Q. Are you there?

22 A. Yes.

23 Q. Okay. And it says -- a title says
24 "Market Segments."

1 Do you see that?

2 A. Yes.

3 Q. What is a market segment, based on your
4 experience at Forest?

5 A. It's just breaking down the market into,
6 you know, different types of categories based on what
7 you see here, disorders, right, because these drugs are
8 used for a variety of mood disorders, depression, all
9 sorts of anxiety disorders, PTSD, you name it.
10 Provider, you know, you know it's likely to be
11 specialist versus let's say primary care physician and
12 then patient age. Your drug is used across the age
13 population. So you can look at different segments that
14 the drug may be used in within using patient age as a
15 divider.

16 Q. And it reflects here AD market. Is that
17 referring to antidepressant market?

18 A. Yes.

19 Q. Okay. And was it your understanding in
20 approximately 2002 that the antidepressant market was
21 over \$2 billion?

22 A. It says 12 billion.

23 Q. I'm sorry, \$12 billion.

24 A. Yeah, that's likely what the value of

1 the market was at that point in time.

2 Q. And that's obviously not the sales by
3 Forest; that's the overall antidepressant market,
4 right?

5 A. It would be dollarizing all of the
6 antidepressant use, yes.

7 Q. All right. If you turn to the next
8 page.

9 A. Yeah.

10 Q. This is a section that's titled "SRI
11 Usage by Age."

12 Do you see that?

13 A. I do.

14 Q. And there is a section specifically
15 reflecting patients under 20.

16 Do you see that?

17 A. I do.

18 Q. And that represents 8% of the -- what
19 appears to be the antidepressant market.

20 Do you see that?

21 A. Yeah, SRI usage is 8% is in that age
22 group.

23 Q. Okay. And this is based, according to
24 the bottom part here, on an IMS National Disease &

1 Therapeutic Index.

2 Do you see that?

3 A. Yes.

4 Q. Are you familiar with IMS data?

5 A. I am.

6 Q. What is IMS data?

7 A. It's a third party that collects data at
8 typically the pharmacy level, wholesaler level, and
9 they sell that data to pharmaceutical companies.

10 Q. And Forest regularly -- if you have a
11 problem with that word, let me know -- but regularly
12 used IMS data in its operations, correct?

13 A. We did.

14 Q. Now, if you turn to Page 11, this is a
15 document that says percentage share under 20.

16 Do you see that?

17 A. Yes.

18 Q. And the various color lines here
19 represent the market share for those various drugs.

20 Do you see that?

21 A. Yes.

22 Q. And one of the lines is a green line,
23 and according to this key, that represents Celexa.

24 Do you see that?

1 A. Yes.

2 Q. It's green with a triangle?

3 A. Yes.

4 Q. Okay. And then right there showing in
5 the second quarter of 2002, third quarter of 2002,
6 there's an increase in market share for Celexa.

7 Do you see that?

8 A. Well, it's increase in the share of the
9 utilization in that age group.

10 Q. Yes. So there's an increase in market
11 share of Celexa use in patients under 20?

12 A. Just want to make sure this data is an
13 accurate reflection of market share. Percent share.
14 (Witness reviews document.) Thirty, 60, 75.

15 Okay.

16 Q. Is that right?

17 A. Yes.

18 Q. Okay. Now, in this presentation, this
19 upward increase in the second quarter 2002 moving into
20 the third quarter of 2002 is circled in a white circle.

21 Do you see that?

22 A. Yes.

23 Q. And there's a box that extends from it.

24 Do you see that?

1 A. Yes.

2 Q. And it says "Celexa began to Increase -
3 (Wagner data)."

4 Do you see that?

5 A. Yes.

6 Q. This is referring to the publication or,
7 sorry, the distribution of the data by Karen Wagner of
8 the pediatric data for Celexa Study 18, correct?

9 MS. THORNE: Objection.

10 THE WITNESS: I mean, I don't know
11 exactly what it's referring to. It's simply
12 saying Wagner data.

13 BY MR. WISNER:

14 Q. Well, it's talking about the percentage
15 share for patients under 20, right?

16 A. I don't know. I mean, when you look at
17 the line, I mean, there's been previous periods where
18 there was the same type of share increase in the
19 absence of any data, so, I mean, I'm not aware of any,
20 you know, intense market research analysis, aware of
21 seeing any or anything that directly related to the
22 Wagner data, however you want to characterize it,
23 whether it was the poster, I guess the publication was
24 after this, but I note it's on the slide, but I don't

1 know why it would have been included there, and I don't
2 know to the extent you can assert that that increase
3 was due to the data when you saw a previous increase of
4 a similar magnitude and there was no data at that time.

5 Q. Well, that's not entirely true,
6 Mr. Closter. I mean, when did Karen Wagner begin
7 presenting data regarding the pediatric trial MD-18?

8 MS. THORNE: Objection.

9 THE WITNESS: I guess the first time
10 would have been in the very end of 2001.

11 BY MR. WISNER:

12 Q. And what quarter would that put it in?

13 A. Well, it would put it at the very end of
14 Q4, but if you're alleging that that would have -- that
15 the increase you see in shares is well before that data
16 would have been presented at that meeting.

17 Q. So you do not know why or, sorry, you
18 cannot explain to me why this increase in market share
19 circled in white here states Celexa began to increase
20 Wagner data; is that right?

21 A. Yeah, I don't know who put it on there
22 and what analysis would ever have been done to show
23 that. Just like there's, you know, Paxil goes down
24 quite dramatically in prior quarters, and I don't know

1 what would have contributed to that either.

2 Q. This is in the context of a strategic
3 plan, right?

4 A. Yes.

5 Q. Is it a fair inference that whoever put
6 together this plan is suggesting that the introduction
7 and promotion of the Wagner data helped increase
8 Celexa's market share?

9 MS. THORNE: Objection calls for
10 speculation.

11 THE WITNESS: Yeah it's difficult to
12 speculate why someone would have put there it
13 and what the motivation was behind it.

14 BY MR. WISNER:

15 Q. Mr. Closter, you got this document,
16 didn't you?

17 MS. THORNE: Objection.

18 THE WITNESS: Right. I was sent this 14
19 years ago.

20 BY MR. WISNER:

21 Q. Sure. I understand. And you obviously
22 don't have any independent recollection of this
23 document, right?

24 A. No.

1 Q. But reading this circling of this
2 increased market share, and it reads "Celexa began to
3 Increase - (Wagner data)," that suggests that whoever
4 is presenting this strategy is suggesting that the
5 Wagner data caused an increase in Celexa market share,
6 correct?

7 MS. THORNE: Objection, asked and
8 answered, calls for speculation. This is also
9 outside the scope of the 30(b)(6) at this
10 point.

11 THE WITNESS: Yeah, again, I don't know
12 what the motivation was behind the person who
13 created this slide, put the comments on the
14 page and possibly presented it.

15 BY MR. WISNER:

16 Q. So you just look at the slide and you
17 have no idea why they're referencing the Wagner data or
18 Celexa began to increase in circles and increase in
19 market share for Celexa; is that right?

20 MS. THORNE: Objection, argumentative.
21 At this point this has been asked and answered
22 numerous times. You're just arguing with the
23 witness at this point. The witness has
24 answered the question.

1 THE WITNESS: My answer stands.

2 BY MR. WISNER:

3 Q. I'm sorry. I don't believe you've
4 answered my question.

5 Can you please answer my question,
6 Mr. Closter?

7 MS. THORNE: Objection, asked and
8 answered.

9 BY MR. WISNER:

10 Q. It's your testimony to this jury that
11 you don't understand what this slide says?

12 A. I'm telling you --

13 MS. THORNE: Objection, asked and
14 answered, argumentative.

15 At this point, Brent, you're really just
16 arguing with the witness.

17 THE WITNESS: Yeah, like I said several
18 times now, I don't know what the motivation was
19 behind the person who indicated this.

20 BY MR. WISNER:

21 Q. Mr. Closter, I didn't ask you about
22 motivation, I'm sorry. It's not an answered question.

23 My question to you is is it your
24 testimony to this jury that you don't understand what

1 this reference to the Wagner data is?

2 MS. THORNE: Objection, misstates the
3 testimony, argumentative, calls for
4 speculation.

5 THE WITNESS: Yeah, I don't specifically
6 know.

7 BY MR. WISNER:

8 Q. Okay. Thank you.

9 Turn to the next page, Page 12. Page
10 12?

11 A. The only thing I'll say is that it would
12 have been helpful to see the entire document in its
13 entirety, because even this could be taken out of
14 context. I don't know what came before this. Were
15 there other age groups that were evaluated? So it
16 would have helped my interpretation had I seen those
17 things, just saying.

18 Q. Okay. So you would have preferred to
19 have seen the 200-page document?

20 A. Absolutely.

21 Q. Okay. Slide 12, do you see that?

22 A. Yes.

23 MS. THORNE: Objection for the record.

24 That's not necessarily slide 12. It is Page 12

1 of the document, as you numbered for this
2 deposition, but referring to it as slide 12 is
3 misleading.

4 BY MR. WISNER:

5 Q. Referring your attention to the document
6 that has the number 12 on it in the right-hand corner,
7 do you see that, Mr. Closter?

8 A. I do.

9 Q. Okay. This says here, "Close the data
10 gap for both Geriatrics and Pediatrics."

11 Do you see that?

12 A. Yes.

13 Q. And keep going down, it says "Improve
14 labeling."

15 Do you see that?

16 A. Yes.

17 Q. And the next one says, "Launch oral
18 liquid" (January 2003).

19 Do you see that?

20 A. Yes.

21 Q. Do you understand that Forest created
22 programs to promote the oral liquid suspension fluid --
23 strike that.

24 Do you understand that Forest created

1 programs to promote for pediatric use the
2 peppermint-flavored oral solution that was created for
3 Lexapro and Celexa?

4 MS. THORNE: Objection, assumes facts
5 not in evidence, lack of foundation. Assumes
6 facts not in evidence and lack of foundation.

7 THE WITNESS: I'm not aware of any
8 promotional programs to promote the oral liquid
9 to that population.

10 BY MR. WISNER:

11 Q. Isn't it true that Forest specifically
12 contracted with CME, Inc. to create those programs?

13 MS. THORNE: Objection, lack of
14 foundation, assumes facts not in evidence.

15 THE WITNESS: Yeah, as I've stated in
16 earlier testimony, I don't believe those are
17 promotional activities.

18 BY MR. WISNER:

19 Q. Okay. So you are aware that Forest
20 created CME programs in conjunction with CME, Inc. to
21 suggest the use of the oral liquid solution for use in
22 children?

23 MS. THORNE: Objection, misstates the
24 document, assumes facts not in evidence, lack

1 of foundation.

2 THE WITNESS: Yeah, I mean I need to see
3 the materials. I don't think it's fair to say
4 Forest created. We funded and worked as an
5 organization with the faculty and those
6 involved in presenting at those programs.
7 That's the extent of our involvement.

8 BY MR. WISNER:

9 Q. Okay. I was just asking if you knew
10 whether or not Forest created CME programs with CME,
11 Inc. designed to discuss the use of the oral solution
12 in pediatric populations?

13 MS. THORNE: Objection, lack of
14 foundation, assumes facts not in evidence.

15 THE WITNESS: Right, and, as I stated,
16 we were involved to the extent we funded those
17 programs, and our internal staff worked with
18 the faculty that ran those programs that
19 ultimately created the content for those
20 programs.

21 BY MR. WISNER:

22 Q. Fair enough. I guess I'm just trying to
23 make sure we're talking about the same thing here.
24 I'm saying are you aware one way or

1 another whether or not Forest specifically contracted
2 with CME, Inc. to develop CME programs to stress the
3 use of the oral solution for use in children, that's
4 whether or not you know that is my question?

5 MS. THORNE: Is your question did the
6 company work with CME, Inc. to design a CME
7 program specifically designed to discuss the
8 use of oral solution in pediatric populations?

9 MR. WISNER: Yes.

10 MS. THORNE: So you want to know did the
11 company engage with CME, Inc. to design a CME
12 program that was specifically intended to
13 discuss the use of the oral liquid; that's your
14 question?

15 MR. WISNER: In children, yes.

16 MS. THORNE: Okay, just to make sure the
17 record is clear because everybody seems to be
18 talking past each other, and I didn't
19 understand your question.

20 THE WITNESS: From what I am aware of,
21 that was not the sole focus of those programs.

22 BY MR. WISNER:

23 Q. So you're not aware -- okay.

24 If you turn to Page 14. This is

1 reflecting SRI detailing doctors, do you see that?

2 A. Detailing dollars.

3 Q. Detailing dollars, thank you. That's
4 what it says, right?

5 A. Yes.

6 Q. Thank you.

7 And it shows different amount of
8 expenditures being spent on detailing dollars in
9 thousands, correct?

10 A. Yes.

11 Q. And then there's a line for Celexa.
12 Do you see that?

13 A. Yes.

14 Q. And there's also a line at the very end
15 for Lexapro.

16 Do you see that?

17 A. For Celexa -- I see both, yes, Celexa
18 and Lexapro.

19 Q. Okay. Now, Lexapro doesn't begin until
20 July of 2002, right?

21 A. Right. Well, it's probably zero in 2000
22 in July, but by August there's some evidence.

23 Q. And that's because the drug has just
24 been approved, right?

1 A. Yes.

2 Q. And then as you see as the increase in
3 Lexapro dollars goes up for detailing, the dollars go
4 down for Celexa, correct?

5 A. That's right.

6 Q. And it was, in fact, a strategy within
7 Forest to recommit the money that was spent on
8 detailing for Celexa to Lexapro as it came on to
9 market, correct?

10 MS. THORNE: Objection.

11 THE WITNESS: Yeah, I mean, the thought
12 is you had two antidepressants. We believe
13 Lexapro was the better drug, so why would we
14 continue to promote the drug we didn't think
15 was as good.

16 BY MR. WISNER:

17 Q. So Forest did, in fact, shift detailing
18 budgets away from Celexa and to Lexapro, correct?

19 A. Correct.

20 Q. And Celexa was shortly going to come off
21 of exclusivity, correct?

22 MS. THORNE: Objection, assumes facts
23 not in evidence.

24 THE WITNESS: Yeah, I don't think

1 shortly. There was some time left on that
2 patent in years.

3 BY MR. WISNER:

4 Q. Do you know when the patent expired?

5 A. I can't say for sure, but I believe it
6 extended at least, I believe, two years beyond this.

7 Q. Okay.

8 A. Maybe even three.

9 Q. So turn to Page 15, does this slide say
10 "Maintaining SOV during expansion"? Do you know what
11 SOV refers to?

12 A. Share of voice.

13 Q. What is share of voice?

14 A. Just either the level of promotional
15 effort you have against a product relative to your, you
16 know, other branded competitors in the marketplace.

17 Q. And it lists out "Strategies," right?

18 A. Yes.

19 Q. Maintain current level of details,
20 right; that's the first bullet point?

21 A. Yes, yes.

22 Q. The next bullet point says "Augment with
23 non-personal promotion," right?

24 A. Right.

1 Q. And the first thing listed there is "Med
2 Ed (CME)," correct?

3 A. Yes.

4 Q. So this document is, in fact, reflecting
5 that it was Forest's strategy of non-personal promotion
6 to sponsor continuing medical education programs?

7 MS. THORNE: Objection, assumes facts
8 not in evidence, lack of foundation, misstates
9 the document.

10 THE WITNESS: Yeah, it says this on the
11 slide, but I can't speak to who created it and
12 why they would characterize it this way.

13 BY MR. WISNER:

14 Q. According to the e-mail on the front,
15 this is in fact the final fiscal year 2004 strategic
16 operations presentation, correct?

17 A. Yes.

18 Q. And in the final fiscal year 2004
19 strategic operations presentation it states as a
20 strategy for promotion augmenting CME programs, doesn't
21 it?

22 MS. THORNE: Objection, misstates the
23 documents, also assumes facts not in evidence,
24 also lacks foundation, also asked and answered.

1 THE WITNESS: Also, it's difficult to
2 look at this one slide when I have to believe
3 there were many other slides around strategies
4 and other areas of focus.

5 BY MR. WISNER:

6 Q. This slide has as a strategy for
7 nonpersonal promotion augmenting continuing medical
8 education programs, doesn't it, Mr. Closter?

9 MS. THORNE: Objection, misstates the
10 document. That just misquotes the document.

11 THE WITNESS: Yeah, again, I'd have to
12 see more of the document to have a better
13 conclusion.

14 BY MR. WISNER:

15 Q. It also lists "public relations,"
16 doesn't it?

17 A. That is also included on the slide.

18 Q. "Data dissemination," correct?

19 A. That's also on the slide.

20 Q. And on this slide, all of those things,
21 CME, public relations, data dissemination are all
22 listed as types of non-personal promotion, aren't they?

23 A. According to the slide, whoever crafted
24 the slide included it as such.

1 Q. And the slide happens to be one from the
2 final fiscal year 2004 strategic operations
3 presentation, correct?

4 MS. THORNE: Objection.

5 THE WITNESS: Yeah, it is one slide of
6 what you've said roughly 200 slides.

7 BY MR. WISNER:

8 Q. Do you consider sampling part of
9 Forest's promotional efforts?

10 A. Yes, I would.

11 Q. If you turn to Page 22, the page that
12 has the number 22 listed on the top right.

13 A. Yes.

14 Q. It has right here fiscal year
15 expenses/investments.

16 Do you see that?

17 A. Yes.

18 Q. And it lists a whole bunch of different
19 programs. It has "Samples."

20 You see that?

21 A. Yes.

22 Q. "Tokens"?

23 A. I see that.

24 Q. What's a token?

1 A. Usually a low value giveaway, a pen,
2 magnet, things like that.

3 Q. And those are designed to encourage
4 physicians to prescribe the product with the logo on
5 it, correct?

6 MS. THORNE: Objection, assumes facts
7 not in evidence, lacks foundation.

8 THE WITNESS: Yeah, the use of tokens is
9 really just awareness, get the name of the drug
10 out.

11 BY MR. WISNER:

12 Q. And by increasing awareness, you
13 hopefully will increase sales, right?

14 A. If you would like to make that link, you
15 can do that.

16 Q. I'm not making that link, Mr. Closter.
17 That's the link that Forest has made in deciding to
18 spend \$12 million on making tokens, correct?

19 MS. THORNE: Objection, lack of
20 foundation, misstates the document, assumes
21 facts not in evidence and at this point is also
22 outside the scope of the 30(b)(6). So if
23 Mr. Closter can answer based on his own
24 personal experience, he may do that.

1 THE WITNESS: We do them for brand
2 awareness.

3 BY MR. WISNER:

4 Q. And brand awareness, from my
5 understanding, still can increase sales, right?

6 A. So people think of our drug when if
7 there's -- you know, for an appropriate patient, sure.

8 Q. Okay. We also have under here targeted
9 program.

10 Do you see that?

11 A. I do.

12 Q. Do you know what that is referring to?

13 A. I don't.

14 Q. We have CME programs.

15 Do you see that?

16 A. Yes.

17 Q. And it looks as though they've budgeted
18 approximately \$12 million for those?

19 A. Right.

20 Q. Lunch and learn programs.

21 Do you see that?

22 A. Yes.

23 Q. And there's \$19.5 million set aside for
24 that?

1 A. Right.

2 Q. What is a lunch and learn program?

3 A. It's essentially for us to see target
4 customers. The expectation is that we provide a meal
5 for them to have a discussion on a product.

6 Q. And is the purpose of these lunch and
7 learn programs to encourage the participants to raise
8 their brand awareness of the product?

9 A. No, it's to give us time to talk to
10 them.

11 Q. And to promote to them, correct?

12 A. Correct.

13 Q. "Teleconferences/Peer."

14 Do you see that?

15 A. I do.

16 Q. Do you know what that's referring to?

17 A. These were likely promotional programs
18 where we would have trained speakers that would engage
19 an audience of other clinicians who wanted to learn
20 about our products. So teleconferences would be a
21 phone conference. Peer was likely reference to a round
22 table discussion, perhaps over at a restaurant.

23 Q. Now, if you turn to the second page,
24 this is a continuation of the list.

1 A. Okay.

2 Q. It says speaker programs.

3 Do you see that?

4 A. Yes.

5 Q. Is that different than the peer?

6 A. The only difference there, it was the
7 same concept, is that speaker programs these were rep
8 initiated. They were able to select and approve
9 speaker and then arrange for that speaker to attend a
10 dinner meeting, could have been a lunch program, where
11 they would then invite interested clinicians to attend
12 those events.

13 Q. And it says here for speaker programs,
14 there's \$42 million; is that right?

15 A. That's right.

16 Q. Keep going down here it says
17 professional relations; do you know what that's
18 referring to? That's on Page 22.

19 A. I think I would understand, you know,
20 this was probably funds to support a variety of
21 advocacy groups. So these would be physician groups,
22 professional groups or patient advocacy groups, and we
23 would allot grant monies to organizations to support
24 what they did, which tends to be around disease

1 awareness, awareness of the condition, things likes
2 that.

3 Q. What is a "preceptorships"?

4 A. Preceptorships were really training
5 initiatives for representatives to work closely with a
6 practitioner, and they would spend perhaps a day
7 together, and the representative would learn, you know,
8 what is it like for a clinician to see patients, treat
9 patients.

10 Q. Okay. On the next page, Page 23, it has
11 "Journals" listed.

12 Do you see that?

13 A. Yes.

14 Q. Does that refer to journal advertising?

15 A. Yes, it does.

16 Q. Okay. And, finally, the last one says
17 "Managed Care."

18 Do you see that?

19 A. Yes.

20 Q. What is managed care referring to?

21 A. These would likely be funds that we
22 would use to support materials that we may partner with
23 a managed care plan, where maybe Lexapro was preferred
24 on formulary, and we would, you know, generate a sales

1 piece that included the brand's name, and we would, you
2 know, use those as sales materials.

3 Q. All right. Want to switch topics here,
4 you can put that document away.

5 Isn't it true that prior to the entry of
6 Forest's criminal plea in 2010, Forest did not make a
7 public representation in any capacity indicating that
8 Forest was engaged in the illegal off-label promotion
9 of Celexa or Lexapro for pediatric use?

10 MS. THORNE: Objection.

11 THE WITNESS: Sorry. Could you repeat
12 the question.

13 BY MR. WISNER:

14 Q. Sure. Isn't it true that prior to the
15 entry of Forest's criminal plea in 2010, Forest did not
16 make a public representation in any capacity indicating
17 that Forest was engaged in the illegal off-label
18 promotion of Celexa or Lexapro for pediatric use?

19 MS. THORNE: Objection. I'm going to
20 object to this as being outside of the scope.
21 I think this veers outside of the topics. If
22 you think I'm incorrect, we can --

23 MR. WISNER: Let's go off the record.

24 THE VIDEOGRAPHER: We are now off the

1 record. The time is 7:07.

2 (Discussion off the record.)

3 THE VIDEOGRAPHER: We are now back on

4 the record. The time is 7:08.

5 BY MR. WISNER:

6 Q. Mr. Closter, I'm going to ask the
7 question again, okay?

8 A. Yes.

9 Q. Isn't it true that prior to the entry of
10 Forest's criminal plea in 2010, Forest did not make a
11 public representation in any capacity indicating that
12 Forest was engaged in the illegal, off-label promotion
13 of Celexa or Lexapro for pediatric use?

14 MS. THORNE: Objection.

15 THE WITNESS: I don't believe we did.

16 BY MR. WISNER:

17 Q. In fact, isn't it true that prior to
18 2010, Forest made multiple affirmative representations
19 that it was not engaged in the illegal off-label
20 promotion of Celexa and Lexapro for use in pediatric
21 populations?

22 MS. THORNE: Objection, lack of
23 foundation, assumes facts not in evidence.

24 THE WITNESS: Yeah, I'd have to see some

1 of the declarations, the multiple declarations
2 that you're referring to.

3 MR. WISNER: Okay.

4 (Document marked for identification as
5 ForestC Deposition Exhibit No. 58.)

6 BY MR. WISNER:

7 Q. All right. I'm handing you a document
8 that's been marked as Exhibit 58 to your deposition.

9 Do you recognize this document, sir?

10 A. I have seen this document.

11 Q. What is this document?

12 A. I believe this is a -- I guess an oral
13 testimony as well as a written statement from Dr. Larry
14 Olanoff to the committee on energy and commerce in the
15 House of Representatives.

16 Q. I know this is a silly question, but by
17 Larry Olanoff, you're referring to Lawrence S. Olanoff?

18 A. Yes.

19 Q. Okay. If you turn to Page 5.

20 A. Okay.

21 Q. Go down five paragraphs, you see that,
22 starts with a paragraph saying, "I want to emphasize"?

23 A. Yes.

24 Q. All right. It reads, "I want to

1 emphasize that, because the FDA has not approved
2 pediatric labeling for our products, Forest has always
3 been scrupulous about not promoting the pediatric use
4 of our antidepressant drugs, Celexa and Lexapro. That
5 is the law, and we follow it."

6 Did I read that well?

7 A. You read that well.

8 Q. Okay. And this was testimony that was
9 proffered in September 2004, correct?

10 A. Yes.

11 Q. So, in fact, Mr. Olanoff is speaking to
12 Congress -- sorry -- is testifying to Congress that
13 Forest has not engaged in the off-label promotion of
14 pediatric use for Celexa and Lexapro, correct?

15 MS. THORNE: Objection, mischaracterize
16 -- misstates the document, mischaracterizes the
17 testimony of Mr. Olanoff, assumes facts not in
18 evidence, lack of foundation.

19 THE WITNESS: I mean, I would go with
20 what the document says. Forest has always been
21 scrupulous about not promoting the pediatric
22 use of our antidepressant drugs.

23 BY MR. WISNER:

24 Q. And specifically states Celexa and

1 Lexapro, correct?

2 A. Yes.

3 Q. So, in fact, Mr. Olanoff has now
4 represented in a public hearing or public proceeding --

5 A. Right.

6 Q. -- that Forest has always been
7 scrupulous about not promoting the pediatric use of our
8 antidepressant drug Celexa and Lexapro?

9 A. That's right.

10 Q. Now, to be clear, we know that that
11 statement by Mr. Olanoff is not correct, right?

12 MS. THORNE: Objection, lack of
13 foundation, assumes facts not in evidence.

14 THE WITNESS: I mean, I believe we know
15 now, but at that time he wouldn't have known.

16 BY MR. WISNER:

17 Q. Mr. Weinstein admitted that Forest
18 promoted the pediatric use of Celexa, correct?

19 MS. THORNE: Objection, misstates the
20 plea.

21 THE WITNESS: Yeah, but that was in
22 what, 2010?

23 BY MR. WISNER:

24 Q. Let me clarify the question.

1 A. Sure.

2 Q. Mr. Weinstein stated, admitted that
3 Forest promoted the pediatric use of Celexa between
4 1998 and December of 2002, correct?

5 A. Right.

6 Q. And a little about two years later,
7 Dr. Olanoff testifies before Congress that Forest has
8 always been scrupulous about not promoting the
9 pediatric use of our antidepressant drug Celexa and
10 Lexapro, correct?

11 A. Yes, that's what he believed to be true
12 at that time.

13 Q. Have you talked to him?

14 A. No. I'm reading what he said -- what it
15 says here.

16 Q. Okay. Is it possible that he could have
17 been lying?

18 A. You'd have to ask him.

19 Q. Okay. So you don't know what he
20 believed?

21 A. No.

22 Q. All right. But we know that this
23 testimony that he provided was not accurate, correct?

24 MS. THORNE: Objection, lack of

1 foundation.

2 BY MR. WISNER:

3 Q. Let me rephrase that. We know that this
4 testimony he provided was incorrect, as we know today,
5 correct?

6 MS. THORNE: Objection, lack of
7 foundation, assumes facts not in evidence, not
8 established on the record.

9 THE WITNESS: As we know today.

10 BY MR. WISNER:

11 Q. Okay. All right. Let's -- I'm handing
12 you a document that has been labeled as Exhibit 45 to
13 your deposition.

14 (Document marked for identification as
15 ForestC Deposition Exhibit No. 45.)

16 MR. WISNER: I think I might have handed
17 you two, if you could hand one to Ms. Thorne,
18 that would be great.

19 BY MR. WISNER:

20 Q. You recognize this document,
21 Mr. Closter?

22 A. I've seen this before.

23 Q. This is a press release that was issued
24 in June of 2004?

1 A. Right.

2 Q. And this was issued by Forest
3 Laboratories, correct?

4 A. Yes.

5 Q. And the title of the press release is
6 "Forest Discusses Disclosure of Citalopram Clinical
7 Trial Data in Children and Adolescents," correct?

8 A. Yes.

9 Q. And this press release was issued partly
10 in response to The New York Times article that came out
11 criticizing Forest for not disclosing the results of
12 94404 earlier?

13 MS. THORNE: Objection.

14 THE WITNESS: I believe that's true.

15 BY MR. WISNER:

16 Q. Okay. If we read here in the first
17 paragraph, the second sentence says, "Citalopram is not
18 approved for use in children or adolescents and has not
19 been promoted by Forest for use in these populations."

20 Do you see that?

21 A. Yes.

22 Q. So it would be fair to say that Forest
23 is making a representation in a publicly released press
24 release stating that it was not engaged in the

1 off-label promotion of Celexa for use in children or
2 adolescents?

3 MS. THORNE: Objection.

4 THE WITNESS: That's what it appears to
5 say.

6 BY MR. WISNER:

7 Q. So back to my first question that led to
8 these two documents being presented to you, would it be
9 fair to say, then, that prior to 2010, there were at
10 least two instances in which Forest or Forest employees
11 made public representations indicating that Forest was
12 not off-label promoting the pediatric use of Celexa?

13 MS. THORNE: Objection, misstates the
14 documents, assumes facts not in evidence, lack
15 of foundation.

16 THE WITNESS: Yeah, that was the belief
17 at that time.

18 BY MR. WISNER:

19 Q. I'm sorry. That wasn't my question
20 about what they believed. Maybe that was a poorly
21 worded question. Let me try it one more time.

22 Isn't it true that prior to 2010, there
23 had been public representations made by Forest and by
24 Dr. Olanoff stating that Forest was not engaged in the

1 off-label promotion of Celexa for pediatric use; is
2 that correct?

3 MS. THORNE: Objection, that misstates
4 Dr. Olanoff's testimony, assumes facts not in
5 evidence, lacks foundation.

6 BY MR. WISNER:

7 Q. Answer the question, please.

8 A. You've shown me two documents that
9 suggest that.

10 Q. Okay. And it would, in fact, have been
11 reasonable for either a physician or a consumer to rely
12 upon the representations made by Forest in its press
13 release in 2004, correct?

14 MS. THORNE: Objection, calls for a
15 legal -- to the extent it calls for a legal
16 conclusion.

17 THE WITNESS: So you're asking if these
18 statements had impact on clinicians and
19 patients?

20 BY MR. WISNER:

21 Q. No, I asked if it would have been
22 reasonable to rely upon these statements made by Forest
23 in this press release dated June 24th, 2004?

24 MS. THORNE: Objection, calls for a

1 legal conclusion.

2 THE WITNESS: To the extent they read
3 these documents, sure, and they heard it.

4 BY MR. WISNER:

5 Q. In fact, a physician who read this press
6 release would have no indication whatsoever that Forest
7 was, in fact -- sorry, let me strike that.

8 A physician reading this press release
9 would not know or -- let me strike that.

10 A physician reading this press release
11 would not reasonably conclude that Forest was, in fact,
12 engaged in the off-label pediatric promotion for Celexa
13 or Lexapro, correct?

14 MS. THORNE: Objection, calls for
15 speculation. This is now outside the scope of
16 the 30(b)(6) notice. To the extent Mr. Closter
17 wants to answer the question in his personal
18 capacity, he may.

19 THE WITNESS: You're going to have to
20 just repeat the question, the same question you
21 asked. I'm sorry.

22 BY MR. WISNER:

23 Q. I understand. It's getting late. I'll
24 just rephrase it again and see if it becomes clear and

1 she'll make the same objections.

2 A. I'm just forgetting the question. It's
3 not a matter of not understanding.

4 Q. All right. Let me try it again.

5 Do you believe in your personal capacity
6 that it would have been reasonable for a physician to
7 see this press release and think that Forest was
8 engaged in the off-label pediatric promotion of Celexa
9 or Lexapro?

10 MS. THORNE: Objection calls for
11 speculation.

12 THE WITNESS: Right. I'd speculate they
13 wouldn't -- they wouldn't believe that we
14 were -- that there was a off-label promotion in
15 that population.

16 BY MR. WISNER:

17 Q. And you say that because the press
18 release says that Forest is not doing that, right?

19 MS. THORNE: Objection.

20 THE WITNESS: No, sure.

21 MR. WISNER: Can we go off the record
22 for a few minutes, so we can wrap this up.

23 MS. THORNE: Yep.

24 THE VIDEOGRAPHER: We are now off the

1 record. The time is 7:19.

2 (Brief recess.)

3 THE VIDEOGRAPHER: We are now back on

4 the record. The time is 7:22.

5 BY MR. WISNER:

6 Q. All right. I'm going to return back to
7 the peppermint formulation of Celexa and Lexapro.

8 Forest manufactured and marketed an oral
9 suspension formulation of Celexa and Lexapro, correct?

10 MS. THORNE: Objection, assumes facts
11 not in evidence, lacks foundation.

12 THE WITNESS: Correct.

13 MS. KIEHN: You missed describing one of
14 the oral formulations, leave out the intro and
15 ask the question.

16 BY MR. WISNER:

17 Q. These formulas were peppermint-flavored,
18 correct?

19 MS. THORNE: Objection.

20 THE WITNESS: I believe Celexa, I think,
21 was peppermint. I'd have to check the package.
22 I don't know the exact flavoring.

23 BY MR. WISNER:

24 Q. Okay. You know that Celexa was

1 peppermint flavored?

2 A. I believe that's true.

3 Q. Do you know if Lexapro was peppermint
4 flavored?

5 A. I don't know.

6 Q. This is not something that you looked
7 into prior to testifying today?

8 A. No, I just don't remember.

9 Q. Okay. Isn't it true that Forest used
10 the peppermint-flavored liquid formula to promote the
11 use of Celexa and Lexapro in children and adolescents?

12 MS. THORNE: Objection, lacks
13 foundation, assumes facts not in evidence.

14 THE WITNESS: It's not true.

15 MR. WISNER: Well, I'm going to hand you
16 a document that's labeled Exhibit 59.

17 (Document marked for identification as
18 ForestC Deposition Exhibit No. 59.)

19 MS. THORNE: Again, before we begin, for
20 the record, I'd like to clarify the number of
21 --

22 MR. WISNER: Please let me create the
23 record, it's fine. I'm going to do that.

24 BY MR. WISNER:

1 Q. Mr. Closter, I've handed you a document
2 that has at the front "Celexa Citalopram HBr."

3 Do you see that?

4 A. Yes.

5 Q. And it has -- it spans a series of
6 numbers from 1 through 200 -- sorry -- to 25 at the top
7 right.

8 Do you see?

9 A. Yes.

10 Q. You see at the bottom it ends on Page
11 211.

12 Do you see that?

13 A. Yes.

14 Q. So, again, the top right numbers here,
15 this is an excerpt of slides from this presentation.

16 You understand that?

17 A. Right. So there were at least 211,
18 maybe more. You've included, I don't know, however
19 many are here, 25 --

20 Q. Twenty-five, right?

21 A. Twenty-five, right.

22 MS. THORNE: I'm going to object, not
23 going to stop you from using it, but I'm going
24 to state an objection for the record that using

1 the excerpted document is misleading. It
2 really would be more appropriate to show the
3 entire document.

4 MR. WISNER: Let's go off the record.

5 THE VIDEOGRAPHER: We are now off the
6 record. The time is 7:25.

7 (Discussion off the record.)

8 THE VIDEOGRAPHER: We're now back on the
9 record. The time is 7:29.

10 MR. WISNER: Can you please state your
11 record again, Ms. Thorne. I want to make sure
12 that's fully documented.

13 MS. THORNE: I mean, is there a question
14 pending?

15 MR. WISNER: I actually hadn't asked a
16 question. I handed him a document, you issued
17 objection. I'd like you to place your
18 objection.

19 MS. THORNE: Right. For the record, on
20 the document which is now Exhibit -- I'm sorry,
21 what are we on?

22 MR. BAUM: Fifty-nine.

23 MS. THORNE: On Exhibit 59, for the
24 record, I'm going to object to the use of the

1 document because it includes excerpts and is
2 misleading on that basis because it does not
3 provide the full context of the full marketing
4 plan to the witness. However, I'm not going to
5 prevent the witness from answering questions.
6 He may proceed to answer any questions that you
7 pose, assuming they are not otherwise
8 objectionable.

9 MR. WISNER: I just want to point out
10 the irony that you are claiming that this
11 document is misleading because it doesn't
12 contain information.

13 BY MR. WISNER:

14 Q. All right. Let's continue with my
15 questioning.

16 Have you seen this document before,
17 Mr. Closter?

18 A. I believe I have.

19 Q. Okay. And you saw this document in
20 preparation for your testimony today?

21 A. Likely did.

22 Q. This is the fiscal year 2001 marketing
23 plan, and it says it's a tactical presentation,
24 correct?

1 A. That's what it says.

2 Q. Presented February 10th, 2000?

3 A. That's what the document says.

4 Q. Okay. Turn to the second page. It says
5 "Today's Agenda," and it has a bunch of different
6 bullet points.

7 You see that?

8 A. I do.

9 Q. Okay. If you turn to Page 21.

10 A. Sorry, so it's the top right corner I'm
11 looking at, right?

12 Q. That's right.

13 A. Okay. Twenty-one.

14 Q. This is a slide that has the word
15 "Tactics" and it says "Patient Segments."

16 Do you see that?

17 A. Yes.

18 Q. And then there's an arrow pointing
19 downward that says "Elderly Pediatric."

20 Do you see that?

21 A. Yes.

22 Q. And then it goes down and up and it
23 leads to language that says "Oral Liquid 10 mg Tablet."

24 Do you see that?

1 A. I do.

2 Q. Okay. We're going to come back to this
3 document in a minute. I want to move on to another
4 document.

5 (Document marked for identification as
6 ForestC Deposition Exhibit No. 60.)

7 BY MR. WISNER:

8 Q. Handing you a document which has been
9 labeled as Exhibit 60 to your deposition.

10 Have you seen this document before,
11 Mr. Closter?

12 A. I don't believe I've seen this.

13 Q. This is an e-mail exchange, do you see
14 that, from Rich Caracio?

15 Do you see that?

16 A. Rich Caracio.

17 Q. Rich Caracio. Do you know Rich?

18 A. Yes.

19 Q. How do you know Rich?

20 A. When he worked at CME and I think even
21 after he left there a number of years ago, but it's
22 been some time since I've seen them.

23 Q. And he worked at CME?

24 A. That's right, he did.

1 Q. This is to Peggy Palamar; is that right?

2 A. Yes.

3 Q. At Forest?

4 A. Yes.

5 Q. And Delta?

6 A. Schonhoft.

7 Q. Schonhoft.

8 A. Going to help you when it's --

9 Q. I appreciate that.

10 This is dated -- appears to be

11 December 3rd, 2001, right?

12 A. Right.

13 Q. Who is Peggy Palamar?

14 A. She was on the brand team.

15 Q. Okay. And Delta -- I can't say that

16 name.

17 A. Schonhoft, yes, she was also on the

18 brand team.

19 Q. Okay. So they were all -- these two

20 were in marketing; is that right?

21 A. Correct.

22 Q. All right. If you look at this e-mail,

23 you can see that it's from Rich.

24 Do you see that?

1 A. Yes, to Peggy.

2 Q. All right. And if you look at the
3 second to last paragraph, it says, "Finally, we are
4 proud to now be pursuing 2 new internal programs to
5 Forest. We are developing pediatric based programs for
6 Celexa in liquid formulation, as well as pursuing the
7 launch of escitalopram."

8 Do you see that?

9 A. I do.

10 Q. Do you -- are you aware of what the
11 pediatric-based programs for Celexa in liquid
12 formulation refers to?

13 MS. THORNE: Objection.

14 THE WITNESS: I don't.

15 BY MR. WISNER:

16 Q. Are you aware of whether or not
17 Mr. Caracio was charged with developing a
18 pediatric-based program for Celexa in liquid
19 formulation?

20 MS. THORNE: Objection, assumes facts
21 not in evidence, lacks foundation.

22 THE WITNESS: Yeah, I'm not aware.

23 (Document marked for identification as
24 ForestC Deposition Exhibit No. 61.)

1 BY MR. WISNER:

2 Q. I'm handing you a document which has
3 been marked as Exhibit 61 to your deposition.

4 This is a selection of call notes,
5 correct?

6 A. They look to be, yes.

7 Q. Okay. I'm going to ask you some general
8 questions about these various fields, so I can
9 understand what they refer to, all right?

10 A. Okay.

11 Q. Do you know what "Event_ID" is referring
12 to?

13 A. I don't. I can speculate that it's
14 perhaps the number of that specific call note.

15 Q. Okay. It says "Region."

16 Do you see that?

17 A. Yes.

18 Q. What's that referring to?

19 A. Probably the region that the
20 representative resides in.

21 Q. And then you have a territory number.

22 Do you see that?

23 A. Yes.

24 Q. And then a rep number.

1 Do you see that?

2 A. Yes.

3 Q. Is that a unique ID number for every
4 single sales rep?

5 A. I mean, I don't know. I would believe
6 so. I mean, if you've talked to anybody from the sales
7 administration group, they would probably be able to
8 give you more detail on it.

9 Q. Okay. Then it has doctor_first, M and
10 last.

11 Do you see that?

12 A. Yes.

13 Q. I assume that refers to the physician's
14 first middle initial and last name?

15 A. That's probably true.

16 Q. All right. And then it has a product
17 detail.

18 Do you see that?

19 A. Yes.

20 Q. It refers to what product is being
21 detailed at that time?

22 A. Right.

23 Q. And then you have the call date, there's
24 a date?

1 A. Right.

2 Q. So August 22nd, 2000 is the first one
3 listed here, right?

4 A. Yes.

5 Q. Okay. Look at the second call note.
6 Do you see that?

7 A. Yes.

8 Q. And this was in April 20th, 2000.
9 Do you see that?

10 A. That's when the call date was logged,
11 yes.

12 Q. Yes. And it says -- the note says,
13 "begged for any new starts and did mention that the
14 oral suspension was available for her younger
15 patients."

16 Do you see that?

17 A. Yes.

18 Q. Sales representatives promoting the use
19 of the oral suspension formula to physicians would
20 constitute off-label pediatric promotion, correct?

21 MS. THORNE: Objection, calls for
22 speculation. This is outside the scope of the
23 30(b)(6) notice, so to the extent that
24 Mr. Closter can speak to this in his individual

1 capacity, he may do so.

2 THE WITNESS: I think you said the
3 promotion of the oral suspension would qualify
4 as off-label use, that's not true.

5 BY MR. WISNER:

6 Q. No, I said the promotion of the oral
7 suspension for use in pediatric patients would
8 constitute off-label promotion, correct?

9 MS. THORNE: Objection, calls for
10 speculation, assumes facts not in evidence,
11 lack of foundation and is also outside the
12 scope.

13 MR. BAUM: It's not outside the scope.

14 MS. THORNE: I'll withdraw the part
15 about it being outside the scope.

16 MR. BAUM: He should be able to answer
17 this.

18 THE WITNESS: I would answer, yes, that
19 would qualify as off-label promotion.

20 BY MR. WISNER:

21 Q. Okay. Let's turn to Page 4, second call
22 note from the top. This is a call note dated
23 February 28th, 2002.

24 Do you see that?

1 A. February -- yes.

2 Q. It says invited to the globe trotter
3 program on March 12th, 2002.

4 Do you see that?

5 A. I do.

6 Q. Just offhand, do you know what the globe
7 trotter program is?

8 MS. THORNE: Objection. At this point
9 I'll object that this is outside the scope of
10 the 30(b)(6) notice. To the extent that
11 Mr. Closter can testify to this in his
12 individual capacity, he may do so, but he is
13 not testifying on behalf of the company, as to
14 the meaning of the substance of the text of
15 these call notes.

16 MR. WISNER: Respectfully, Ms. Thorne,
17 to the extent that the globe trotter program
18 constitutes a promotional program, that would
19 be within the scope, but I just don't know what
20 it is, so I'm asking if he happens to know what
21 a globe trotter program is.

22 MS. THORNE: Again, it's outside the
23 scope. I'll renew my objection, but he can
24 answer the question.

1 BY MR. WISNER:

2 Q. Do you know what it is?

3 A. No.

4 Q. Okay. Continues reading, brief mention
5 of Celexa and oral suspension for easier dosing with
6 kids and compliance.

7 Do you see that?

8 A. Yes.

9 Q. Recommending the use of Celexa in oral
10 suspension for dosing with kids, that would constitute
11 off-label promotion, correct?

12 MS. THORNE: Objection, assumes facts
13 not in evidence, lacks foundation, calls for
14 speculation.

15 THE WITNESS: Yeah, I mean, it doesn't
16 say recommending. It says brief mention, but,
17 you know, we don't really know what happened on
18 the call, and we really don't know what the
19 writing about whether these are things the
20 physician said, the rep said, when they were
21 said, how they were said, the rest of the
22 conversation.

23 BY MR. WISNER:

24 Q. My question for you, Mr. Closter, was

1 simply a sales representative recommending the use of
2 the oral suspension medication for Celexa for dosing
3 with kids would be off-label promotion, correct?

4 MS. THORNE: Objection, calls for
5 speculation, assumes facts not in evidence,
6 lacks foundation, improper hypothetical.

7 THE WITNESS: It would.

8 BY MR. WISNER:

9 Q. Look at Page 5 -- oh, sorry, I meant to
10 do this. For the last call note that we saw the rep
11 number was 20242.

12 Do you see that?

13 A. 20242, yes.

14 Q. And in the first call note that we
15 looked at which was the first one, that was rep number
16 2410, right?

17 A. Yes.

18 Q. So it appears to be different sales
19 reps?

20 A. It would appear that way.

21 Q. And, also, the region on the first one
22 says Region 12 and the region on the one we just looked
23 at said Region 35.

24 Do you see that?

1 A. Yes.

2 Q. All right. So it's a different region
3 as well?

4 A. It is.

5 Q. Okay. If you look at Page 5, the first
6 call note listed on Page 5, again -- well, it starts on
7 Page 4, actually, but moves on. There it has a rep
8 number of 21470.

9 Do you see that?

10 A. Yes.

11 Q. Again, that's a different rep number
12 than the ones we've seen already?

13 A. Yes.

14 Q. Okay. And it also has Region 64, again,
15 different region, right?

16 A. Yes.

17 Q. Okay. And it reads, doc was finishing
18 up for the day. We went on a car ride to pick up some
19 food, and we went over everything that was new with
20 Lexapro, including anxiety data, 5-milligram tablets,
21 syrup form for pediatric and elderly population, et
22 cetera.

23 Let me stop right there.

24 The syrup form, was that for pediatric

1 populations?

2 MS. THORNE: Objection, and just to
3 clarify the record, when you read where you
4 said Lexapro, the call note says LX. I'm not
5 disputing it. I'm just making sure the record
6 is clear.

7 MS. KIEHN: The questions about the
8 Lexapro oral liquid are outside the scope, so
9 he can answer in his personal capacity. We
10 agreed to talk about the Celexa oral liquid.

11 MR. WISNER: Are you kidding me?

12 MS. KIEHN: Umm-umm. If he knows, he
13 can answer. What's the question?

14 THE WITNESS: No, so the syrup was for
15 anybody who couldn't take a tablet. That's the
16 purpose of the syrup.

17 BY MR. WISNER:

18 Q. And it wasn't specifically indicated for
19 pediatric populations?

20 MS. THORNE: Renewing Ms. Kiehn's
21 objection.

22 THE WITNESS: Yeah, I think it's just --
23 it's alternate formulation. I mean, I don't --
24 I don't know if it's indicated for anything per

1 se. It is another form of Celexa that was
2 available, just like the tablets were.

3 BY MR. WISNER:

4 Q. We're actually talking about Lexapro
5 here, though, right, for this call note?

6 A. Sorry.

7 Q. I know, it's fine.

8 A. Same thing holds. Same thing holds.

9 Q. And Lexapro as of -- this is dated
10 January 1st, 2003.

11 You see that?

12 A. Right.

13 Q. As of January 1st, 2003 Lexapro was not
14 approved for any pediatric indications, correct?

15 A. No.

16 Q. Okay. Through the next one, this is a
17 call note dated March 11th, 2003.

18 Do you see that?

19 A. Yes.

20 Q. It also relates to Lexapro, right?

21 A. Yes.

22 Q. And it has a rep number of 21446, which
23 is a different rep number than the other ones, correct?

24 A. Yes.

1 Q. It also has a region of 42 now.

2 Do you see that?

3 A. Yes.

4 Q. And this looks like it appeared to have
5 occurred in Illinois?

6 A. Yes, Benton, Illinois.

7 Q. Okay. It says, "Dr. B said she has been
8 very impressed with lx." I'll stop right there. LX
9 refers to Lexapro, correct?

10 MS. THORNE: Objection. Interpreting
11 any of these call notes is outside the scope of
12 the 30(b)(6) notice, so Mr. Closter can testify
13 to the extent that he knows in his individual
14 capacity. He is not testifying on behalf of
15 the company to the extent that you're asking
16 him to interpret call notes. This or any other
17 call note that you decide to ask about after
18 this, I'll make a standing objection, so I
19 don't have to take up time with each one.

20 THE WITNESS: LX refers to Lexapro, I
21 believe.

22 BY MR. WISNER:

23 Q. Thank you.

24 She is very glad that it was on public

1 aid and -- I'll continue reading. She was very glad
2 that it was on public aid and she was completely out of
3 samples. She asked about pediatric indications. I
4 discussed the 18 year old age limit but all the success
5 psychs and other f.p.s, appears to say have but it's
6 misspelled, have in children.

7 Do you see that?

8 A. I see that.

9 Q. Do you know what an FP refers to?

10 MS. THORNE: I'm going to renew the same
11 standing objection and give the same
12 instruction to the witness.

13 THE WITNESS: Probably family
14 practitioner.

15 BY MR. WISNER:

16 Q. Okay. I informed her of the oral
17 solution. She was very impressed with that since no
18 other SSRI is in an oral form. I'll stop right there.

19 Having a sales rep tell a physician that
20 other family practitioners have had success using
21 Lexapro in children would qualify as a form of
22 off-label promotion, correct?

23 MS. THORNE: Objection, lacks
24 foundation, assumes facts not in evidence. To

1 the extent you are asking Mr. Closter to
2 interpret this call note or answer your
3 question in the context of interpreting this
4 call note, he is answering only in his
5 individual capacity and not on behalf of the
6 company because it's outside the scope.

7 THE WITNESS: I mean, with the
8 limitations of the call note, not knowing
9 exactly what the discussion was back and forth
10 between the clinician and the representative,
11 you know, had they made reference to, you know,
12 the use or the success one physician had had in
13 an off-label population I believe would qualify
14 as off-label promotion.

15 BY MR. WISNER:

16 Q. And if I turn your attention to the
17 second to last call note on the page, it's actually the
18 next one, this is dated March 21st, 2003.

19 Do you see that?

20 A. Yes.

21 Q. All right. Has the region of 34.

22 Do you see that?

23 A. Region of 34, yes.

24 Q. And then that's not any other region

1 we've seen so far?

2 A. I don't believe so.

3 Q. And this is in Gainesville, Florida,
4 right?

5 A. Yes.

6 Q. And it's about Lexapro, right?

7 A. Looks as though it was a Lexapro call,
8 yes.

9 Q. All right. Call note says coming
10 around, like liquid option for kids.

11 Do you see that?

12 A. Yes.

13 Q. Was the liquid option of Lexapro
14 specifically created for kids?

15 MS. THORNE: Objection. Again, that's
16 outside the scope of the 30(b)(6) notice, but
17 to the extent that Mr. Closter is aware, he can
18 answer in his individual capacity.

19 THE WITNESS: Yeah, I mean, the liquid
20 option was provided just for ease of use for
21 patients who preferred a liquid as opposed to
22 tablets, that's it.

23 BY MR. WISNER:

24 Q. Fair enough.

1 So it's not specifically indicated for
2 kids, right?

3 A. It wasn't developed specifically for
4 kids. That was your question.

5 Q. So why then did Forest pick a peppermint
6 flavor, if it wasn't meant for children?

7 MS. THORNE: Objection.

8 THE WITNESS: Because it wasn't meant
9 for children. I mean, I don't know why we
10 picked mint.

11 BY MR. WISNER:

12 Q. It tastes best, right?

13 MS. THORNE: Objection.

14 THE WITNESS: Yes, you want something
15 that people can tolerate, that's it.

16 BY MR. WISNER:

17 Q. And if, in fact, a sales representative
18 were to tell a physician in 2003 that the liquid option
19 was specifically for kids, that would be off-label
20 promotion?

21 MS. THORNE: Objection, calls for
22 speculation, improper hypothetical, assumes
23 facts not in evidence, lacks foundation. To
24 the extent that you are asking Mr. Closter to

1 interpret this call note or answer in the
2 context of this call note, that is outside the
3 scope of the 30(b)(6) notice, and he will
4 answer only in his individual capacity.

5 THE WITNESS: I've already said several
6 times that the oral liquid was developed for
7 people that preferred an oral -- a liquid
8 formulation as opposed to tablets. If A
9 representative was to suggest that the drug was
10 approved for use in children, yes, it would be
11 considered off-label promotion at that time.

12 BY MR. WISNER:

13 Q. All right. Let's just do one more.

14 All right. Let's turn to Page 8, second
15 one from the top, one dated May 12th, 2003.

16 Do you see that?

17 A. May 12, 2003, yes.

18 Q. All right. This is in Nashville,
19 Tennessee, right?

20 A. Yes.

21 Q. Region 32, right?

22 A. Region 32.

23 Q. A completely different region than all
24 the others ones we've seen so -- that we've read so

1 far?

2 A. I believe so.

3 Q. It appears to be a different rep number
4 at 3895, right?

5 A. Yes.

6 Q. All right. The note reads, "talked
7 about how LX comes in oral liquid and how this might
8 make it easy for her to dose for children. Need to
9 schedule dinner with her."

10 Did I read that right?

11 A. Yes.

12 Q. Recommending to a physician that Lexapro
13 comes in an oral liquid and how that might be easy to
14 dose children would be a form of off-label promotion,
15 correct?

16 MS. THORNE: Objection, lack of
17 foundation, assumes facts not in evidence,
18 calls for speculation. To the extent that you
19 are asking Mr. Closter to testify with respect
20 to this particular call note or in connection
21 with it or in the context with it -- context of
22 it, it is outside the scope of the 30(b)(6)
23 notice, and he will answer in his individual
24 capacity only.

1 THE WITNESS: Again, if the
2 representative was suggesting that the drug was
3 approved for use in children, it would be
4 considered off-label.

5 BY MR. WISNER:

6 Q. In fact, if the representative were to
7 be recommending that they use the liquid formulation to
8 dose children, that also would be off-label promotion?

9 MS. THORNE: Objection. I'm renewing my
10 prior objections to the previous questions and
11 the same instruction to the witness.

12 THE WITNESS: Right. It depends on how
13 they said it. I can't suggest that this
14 actually happened or even know that it actually
15 happened or how it happened or the context of
16 how it was discussed.

17 BY MR. WISNER:

18 Q. Seeing that sales note, you would agree
19 with me that this exemplifies a sales representative
20 engaging in the off-label promotion of Lexapro for use
21 in children, correct?

22 MS. THORNE: Objection, lack of
23 foundation, assumes facts not in evidence.

24 THE WITNESS: Yeah, I can't interpret

1 this.

2 BY MR. WISNER:

3 Q. So it's your testimony to the jury that
4 that call note doesn't suggest that there's off-label
5 promotion occurring?

6 MS. THORNE: Objection, renewing the
7 same objections.

8 THE WITNESS: Again, without, you know,
9 mandatory use of call notes, how they are
10 formatted, how they're collected, the kind of
11 information that they conveyed in the call note
12 based on the actual call itself, there's not a
13 lot you can gather from any of these call
14 notes.

15 BY MR. WISNER:

16 Q. Now, earlier you testified that there
17 was only just a handful of sales representatives, to
18 your knowledge, that actually engaged in the off-label
19 promotion of pediatric use for Celexa; is that correct?

20 A. That's correct.

21 Q. I just showed you five separate call
22 notes in regions spanning across the United States at
23 different times for different products.

24 Isn't it true that these call notes

1 reveal a consistent pattern and deliberate effort by
2 Forest to promote the use of Celexa and Lexapro for use
3 in children?

4 MS. THORNE: Objection, misstates the
5 record, misstates the document, misstates the
6 testimony, misstates the prior questions, lack
7 of foundation, assumes facts not in evidence.

8 THE WITNESS: No, this doesn't show a
9 pattern.

10 BY MR. WISNER:

11 Q. Have you or anyone at Forest ever
12 engaged in a audit of the sales note database to
13 determine how many sales representatives were making
14 what appear to be inappropriate references to off-label
15 pediatric promotion?

16 MS. THORNE: Objection. It's outside
17 the scope of the 30(b)(6) notice. To the
18 extent that Mr. Closter is aware, he can answer
19 in his individual capacity.

20 THE WITNESS: Yeah, I haven't been
21 involved in an audit.

22 BY MR. WISNER:

23 Q. Do you know of one that has occurred?

24 MS. THORNE: Same objection, same

1 instruction to the witness.

2 THE WITNESS: I don't know, but you'd
3 have to ask someone in compliance on their
4 history on the topic.

5 MR. WISNER: All right. Let's take
6 another short break.

7 THE VIDEOGRAPHER: We're now off the
8 record. The time is 7:53.

9 (Brief recess.)

10 THE VIDEOGRAPHER: We are now back on
11 the record. The time is 8:05.

12 BY MR. WISNER:

13 Q. Mr. Closter, could you go back to
14 Exhibit 59.

15 A. Okay.

16 Q. If you could turn to the page that's on
17 the top right numbered 10?

18 A. Ten, yes.

19 Q. And just for reference, this is the
20 tactical presentation dated February 10th, 2000,
21 correct?

22 A. Right, of the slides you've provided.

23 Q. And this relates specifically to Celexa,
24 right?

1 A. Yes.

2 MS. THORNE: Reiterating the objection I
3 stated earlier with respect to the use of this
4 document.

5 BY MR. WISNER:

6 Q. It says "Communication Objectives," the
7 first bullet point says "Disseminate data that supports
8 Celexa's broader scientific profile."

9 Do you see that?

10 A. Yes.

11 Q. And then the next bullet point says,
12 "Leverage Washington Legal Foundation to disseminate
13 off-label data."

14 Do you see that?

15 A. Yes.

16 Q. And there's a bunch of bullet points,
17 one of the bullet points is pediatric?

18 A. Yes.

19 Q. What is Washington Legal Foundation?

20 MS. THORNE: Objection.

21 THE WITNESS: I believe it was a group
22 that provided a pathway for pharmaceutical
23 companies to disseminate information of an
24 off-label fashion. The Court ruling, I don't

1 remember exactly.

2 BY MR. WISNER:

3 Q. If you go down to "Other Objectives,"
4 it's the next page, Page 11.

5 A. Okay.

6 Q. It has "Other Objectives" listed on top.
7 Do you see that?

8 A. Yes.

9 Q. And it has a bullet point for "Patient
10 Populations."

11 Do you see that?

12 A. Yes.

13 Q. And below that it says achieve 11.6
14 new -- NRx share by end of quarter 4, Q4 in pediatrics
15 0319.

16 Do you see that?

17 A. Yes.

18 Q. I want to get some nomenclature
19 established here.

20 NRx, refers to new prescriptions, right?

21 A. New prescriptions.

22 Q. And by end of Q4 refers to the fourth
23 quarter?

24 A. End of Q -- right.

1 Q. Isn't it true that at this time period
2 in 2000, Forest had an objective to increase its market
3 share of new pediatric prescriptions specifically with
4 regards to Celexa?

5 MS. THORNE: Objection, lack of
6 foundation, assumes facts not in evidence,
7 misstates the document.

8 THE WITNESS: Again, it's an other
9 objective in a slide of over 200 slides in a
10 presentation. I'm not sure if it was final.

11 BY MR. WISNER:

12 Q. Putting aside the slide for a second, it
13 was, in fact, Forest's objective to increase its market
14 share of new prescriptions for Celexa in the pediatric
15 population, correct?

16 MS. THORNE: Objection, lack of
17 foundation, misstates the testimony, assumes
18 facts not in evidence, and this question is
19 outside the scope of the 30(b)(6) notice. So
20 to the extent that Mr. Closter can answer, he
21 can answer in his individual capacity.

22 THE WITNESS: Yeah, I think it's a
23 stretch to say it's Forest's objective. I
24 think it is what it is. It's indicated on a

1 slide in a tactical presentation.

2 BY MR. WISNER:

3 Q. I understand, but you speak -- putting
4 this document aside for one second, it was Forest's
5 objective to increase its market share for the
6 pediatric population of new prescriptions for Celexa in
7 2000, correct?

8 MS. THORNE: Objection, asked and
9 answered, renewing my prior objections to this
10 identical question.

11 THE WITNESS: Yeah, my answer stays the
12 same. It's noted on one slide within a much
13 larger deck, that's it.

14 BY MR. WISNER:

15 Q. I'm sorry, Mr. Closter, I'm not asking
16 about the slide.

17 I'm asking you if it was Forests's --

18 A. All we can look at is the slide. That
19 is where the evidence is, right, that's what I'm
20 looking at.

21 Q. I understand. I'm asking you, put the
22 slide down for a second.

23 A. Sure.

24 Q. Put it aside.

1 A. Yep.

2 Q. Wasn't it Forest's objective in 2000 to
3 increase its pediatric share of new prescriptions for
4 Celexa, yes or no?

5 MS. THORNE: Objection, asked and
6 answered like several times already and also
7 outside the scope. So, again, to the extent
8 that Mr. Closter is answering this question, he
9 is doing so in his individual capacity.

10 THE WITNESS: Yeah, I'm not aware.
11 There's not enough documentation for me to
12 believe that.

13 BY MR. WISNER:

14 Q. Well, Mr. Weinstein admitted that Forest
15 was promoting the use of Celexa for use in pediatric
16 population at his arraignment in 2010, correct?

17 MS. THORNE: Objection. That
18 drastically misstates the plea to the extent
19 that you are suggesting that Mr. Weinstein
20 admitted that it was the company's objective.

21 MR. WISNER: I'm sorry, misstates the
22 testimony is your objection. Can you please
23 just stop with the speaking objection. I only
24 have ten minutes left. You're wasting my time.

1 I'm trying to get us out of here. She has a
2 train to catch. Your objection is noted.

3 BY MR. WISNER:

4 Q. Mr. Closter, can you answer my question,
5 please.

6 A. You're saying did Herschel Weinstein, on
7 behalf of the company, admit that there was off-label
8 promotion of Celexa?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. Now, if you go back to the slide
12 presentation that we were just looking at, if you turn
13 to Page 12 on the top right.

14 A. Okay.

15 Q. It says "Direct Impact of Details on New
16 Prescriptions."

17 Do you see that?

18 A. Direct impact, yes.

19 Q. And it has what appears to be a chart.

20 Do you see that?

21 A. Yes.

22 Q. And it's plotting new prescriptions
23 against calls.

24 Do you see that?

1 A. Yes.

2 Q. And if you look to the right it says,
3 "Number of details are highly correlated with the
4 number of prescriptions."

5 A. Right.

6 Q. Isn't it true that in 2000 Forest was,
7 in fact, calling upon pediatricians and pediatric
8 psychiatrists?

9 MS. THORNE: Objection.

10 THE WITNESS: I mean, there were
11 physicians on the call panel that IMS had
12 designated as child psychiatrists and
13 pediatricians, yes.

14 BY MR. WISNER:

15 Q. And isn't it, in fact, true that there
16 is a direct correlation between the number of details
17 that a company does for a particular product and the
18 number of new prescriptions?

19 MS. THORNE: Objection.

20 THE WITNESS: I'm not familiar enough
21 with this analysis. I mean, there's one slide
22 on a page. I don't know if this is -- I assume
23 it's speaking generally to called on
24 physicians, that would include all the call

1 panel physicians, with a general correlation of
2 more calls results in more new prescriptions.

3 BY MR. WISNER:

4 Q. When Forest was creating a budget for
5 its sales force, did it segregate the budgets that it
6 had for calls on pediatric specialists versus calls on
7 adolescent -- sorry on adult specialists?

8 MS. THORNE: Objection.

9 THE WITNESS: So you're saying budgeted
10 sales calls, where did we devote those calls
11 to?

12 BY MR. WISNER:

13 Q. Sure.

14 A. So you're asking more about how we
15 created the call plan --

16 Q. Exactly.

17 A. -- and then how we prioritize those
18 physicians?

19 Q. Let me back up a little bit. I don't
20 want to go down that road of the deciles and all that
21 thing.

22 What I want to get -- what I want to
23 just establish is whether or not Forest created a
24 separate budget for the promotion to pediatric

1 specialists.

2 Did it have such a budget?

3 A. No.

4 Q. Okay. So to the extent that pediatric
5 specialists or pediatric psychiatrists were called on,
6 that was done as part of Forest's regular promotional
7 activity, correct?

8 MS. THORNE: Objection.

9 THE WITNESS: Yes, and we took the call
10 panel, you know, prioritized based on their
11 volume of SSRI prescribing to include all the
12 drugs in the market, and then we would devote
13 calls, sales calls to those physicians.

14 BY MR. WISNER:

15 Q. And at least in this time period in 2000
16 and 2003 time period, that was regardless of whether or
17 not that physician was a pediatric specialist or some
18 other type of physician?

19 MS. THORNE: Objection.

20 THE WITNESS: Yes, we treated all
21 physicians the same. IMS would designate what
22 the specialty was based probably on their AMA
23 designation, so that's how they were identified
24 in the system.

1 BY MR. WISNER:

2 Q. And, in fact, when Forest spent money on
3 its promotional activity, specifically through
4 detailing, it didn't distinguish between pediatric
5 specialists or regular physicians, did it?

6 MS. THORNE: Objection.

7 THE WITNESS: It didn't distinguish in
8 terms of sales effort, no.

9 BY MR. WISNER:

10 Q. So every dollar spent on promotion for
11 pediatricians, a same dollar was spent on promotion to
12 other physicians; is that fair to say?

13 MS. THORNE: Objection, calls for
14 speculation, misstates the prior testimony,
15 assumes facts not in evidence, lacks foundation
16 and is also outside the scope of the 30(b)(6)
17 notice. So to the extent that Mr. Closter is
18 going to answer the question, he can do so in
19 his individual capacity.

20 THE WITNESS: You know, you'd be better
21 off speaking to someone who's expert on the
22 subject, which would be those in sales
23 administration, but generally how it worked was
24 those physicians, regardless of specialty, that

1 generated the most prescriptions got the most
2 sales effort.

3 BY MR. WISNER:

4 Q. Now, I want to be clear, Forest never
5 maintained an off-label promotion budget, right?

6 A. There was no such thing as an off-label
7 promotion budget.

8 Q. So any off-label promotion that may or
9 may not have occurred would have occurred in the
10 context of Forest's regular promotional budget?

11 MS. THORNE: Objection.

12 THE WITNESS: You're going to have to
13 restate the question.

14 BY MR. WISNER:

15 Q. All right. We've established that and
16 Mr. Weinstein admitted and you have several times that
17 Forest engaged in the off-label promotion of Celexa,
18 right?

19 MS. THORNE: Objection.

20 THE WITNESS: Yes.

21 MS. THORNE: Misstates the prior
22 testimony.

23 BY MR. WISNER:

24 Q. Okay. The budget that was set aside

1 that paid for that form of off-label promotion was not
2 a different budget than the budget that Forest set
3 aside to pay for all of its promotion, correct?

4 MS. THORNE: Objection, lack of
5 foundation, vague, misstates the prior
6 testimony, assumes facts not in evidence.

7 THE WITNESS: There was no off-label
8 budget. There was one budget.

9 BY MR. WISNER:

10 Q. And, to be clear, you said I should talk
11 to someone in sales administration, right?

12 A. If you want to get very detailed
13 questions on this topic.

14 Q. Are you familiar with Mr. Stevic?

15 A. Stasic.

16 Q. Stasic?

17 A. Yes.

18 Q. Are you familiar with Mr. Stasic?

19 A. Yes.

20 Q. And would he be somebody who would have
21 a sort of greater understanding of how budgets were
22 assigned with regards to detailing?

23 MS. THORNE: Objection, misstates the
24 prior testimony. For the record, I really

1 don't think it is clear what Mr. Closter was
2 referring to when he said it would be better to
3 speak to sales admin but...

4 MR. WISNER: That's why I asked him the
5 question, Danielle.

6 BY MR. WISNER:

7 Q. So let me just ask the question again.

8 Would Mr. Stasic be somebody that would
9 have sort of a more detailed understanding of the sales
10 administration than yourself?

11 MS. THORNE: Objection.

12 THE WITNESS: Depends on your levels of
13 questions. If I haven't answered your
14 questions to your satisfaction or you wanted
15 more detail, someone who was expert in the
16 creation of call panels may be suitable to
17 speak with, if you haven't already done so.

18 BY MR. WISNER:

19 Q. Fair enough. I'm trying to ask,
20 Mr. Stasic is one of those people, right?

21 A. He was in sales administration at the
22 time, I believe.

23 THE VIDEOGRAPHER: Just so you know,
24 we're at seven hours.

1 MR. WISNER: Okay. Just going to finish
2 this document. I just want to see if I have
3 any questions. I probably don't. Just give me
4 one second.

5 Thank you, Mr. Closter. I appreciate
6 your patience and time in testifying today. I
7 turn the witness over.

8 MS. KIEHN: Go back and clarify a couple
9 points of testimony.

10 BY MS. THORNE:

11 Q. Mr. Closter, you were asked earlier
12 whether Dr. Olanoff could have been lying, and you
13 responded -- lying in his Congressional testimony, and
14 you responded that Mr. Wisner would have to ask
15 Dr. Olanoff.

16 I'd like to clarify and ask you for
17 Forest's position on whether Dr. Olanoff was lying in
18 his Congressional testimony?

19 A. You know, on behalf of the company, we
20 do not believe he was lying. You know, the statements
21 he made were true and accurate, to the extent of the
22 knowledge that he had at that time.

23 Q. I'd like to just further clarify the
24 company's position on Dr. Olanoff's testimony.

1 You indicated earlier that Dr. Olanoff's
2 testimony was accurate to the best of his knowledge at
3 the time but acknowledged that it may not or stated
4 that it may not be accurate today.

5 What is the company's position on
6 whether the specific language used in Dr. Olanoff's
7 testimony remains accurate?

8 A. You know, I think Dr. Olanoff referenced
9 being scrupulous about the prevention of off-label
10 promotion. You know, and he's referencing, you know,
11 the structures that were in place, the policies that
12 were in place preventing off-label promotion, making it
13 clear to the field sales team that off-label promotion
14 was not prohibited, and the policies that were in place
15 at the time were sound. The training was very good.
16 It was extensive, and it was repeated over time at
17 sales meetings and other opportunities, and the plan
18 and the program we had in place at the time we felt was
19 excellent, at least up to industry standard.

20 MS. THORNE: Okay. We have no further
21 questions.

22 BY MR. WISNER:

23 Q. One quick follow-up.

24 Have you ever spoken to Mr. Olanoff

1 about whether or not he was lying in his testimony
2 before Congress?

3 MS. KIEHN: He's here -- that's not a
4 relevant question. He's given you the
5 company's position. He has been prepared to
6 testify to the company's position. End of
7 story.

8 MR. WISNER: I appreciate your
9 objection. Can you please answer my question.

10 MS. KIEHN: He's not answering.

11 MS. THORNE: We're instructing the
12 witness not to answer.

13 MS. KIEHN: Plus, he already answered
14 the question, actually. You asked him that
15 earlier.

16 MR. WISNER: Mr. Closter, I will ask you
17 the question again. You can just object and we
18 can keep a clear record, because that was a
19 very long rambling objection.

20 BY MR. WISNER:

21 Q. Mr. Closter, did you ever talk to
22 Mr. Olanoff about whether or not he misrepresented the
23 facts in his testimony before Congress?

24 MS. KIEHN: Objection.

1 MS. THORNE: Going to object and
2 instruct the witness not to answer the
3 question.

4 MS. KIEHN: He already answered the
5 question earlier, I mean, asked and answered.
6 He said he hadn't talked to him.

7 MR. WISNER: I'm sorry. This is the tag
8 team situation I was talking about. What's the
9 objection, and are you instructing him not to
10 answer or not?

11 MS. KIEHN: He can answer the question
12 again, as he already answered it.

13 MR. WISNER: Okay. So let me ask the
14 question again, do your objection, and he'll
15 give me an answer, okay. Let's try this one
16 more time.

17 BY MR. WISNER:

18 Q. Mr. Closter, have you ever spoken to
19 Mr. Olanoff about whether or not he misrepresented the
20 facts in his testimony before Congress?

21 A. I don't believe he misrepresented his
22 comments before Congress, nor lied.

23 Q. I appreciate your answer. Listen to my
24 question. I wasn't asking about whether or not you

1 think did he lie or not lie.

2 My question is have you ever personally
3 spoken with Dr. Olanoff about whether or not he
4 misrepresented the facts that he gave to Congress?

5 A. I'm not going to answer the question.

6 Q. I'm sorry, what?

7 MS. KIEHN: I think he asked you that
8 earlier. I mean, how he prepared is
9 irrelevant, so I don't know why the question --
10 and you've already asked him and he's already
11 answered, so I don't know why you keep pressing
12 the point. I don't know why it's relevant.
13 He's here to testify about the company. He has
14 just given you the company's testimony.

15 BY MR. WISNER:

16 Q. Mr. Closter, I asked you a
17 straightforward question, and is it your position that
18 you refuse to answer my question?

19 A. I mean, am I speaking on behalf of
20 myself?

21 MS. KIEHN: He already asked you, and
22 you already answered, so I think just answer
23 again the way you did before.

24 MS. THORNE: If you want to speak on

1 behalf of yourself as to whether you've ever
2 spoken to Dr. Olanoff.

3 MS. KIEHN: Right, if that's the
4 confusion, right, yes, you personally.

5 THE WITNESS: I personally have not
6 spoken to him.

7 BY MR. WISNER:

8 Q. Fair enough. Let me ask the question
9 again so it's clear, and we can stop monkeying around
10 here.

11 Mr. Closter, have you ever personally
12 spoken with Dr. Olanoff about whether or not he
13 misrepresented the facts in his testimony before
14 Congress?

15 A. I have not spoken to him.

16 MR. WISNER: Thank you. No further
17 questions.

18 MS. KIEHN: You asked it already.

19 THE VIDEOGRAPHER: This concludes
20 today's deposition. The time is 8:22, and we
21 are now off the record.

22 (Witness excused.)

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C E R T I F I C A T I O N

I, MARGARET M. REIHL, a Registered Professional Reporter, Certified Realtime Reporter, Certified Shorthand Reporter, Certified LiveNote Reporter and Notary Public, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Margaret M. Reihl, RPR, CRR, CLR
CSR #XI01497 Notary Public

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