

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARY K. JONES, Individually and on Behalf	:	Civil Action No. 1:10-cv-03864-AKH
of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff	:	
	:	PLAINTIFFS' OBJECTIONS TO EXHIBITS
vs.	:	SUBMITTED IN SUPPORT OF
	:	DEFENDANTS' MOTIONS FOR
PFIZER INC., et al.,	:	SUMMARY JUDGMENT
	:	
Defendants.	:	
_____	X	

## **I. INTRODUCTION**

Pursuant to Federal Rules of Civil Procedure 56(c)(2), plaintiffs submit their objections to certain evidence offered by defendants in support of their Motions for Summary Judgment. Plaintiffs respectfully request that the Court exclude as inadmissible all exhibits relied on by defendants to establish their advice of counsel and reliance on auditors defense. In addition, defendants have proffered a host of exhibits that have not been properly authenticated and/or are inadmissible hearsay. These documents should also be excluded.

## **II. ARGUMENT**

### **A. Legal Standards**

Fed. R. Civ. P. 56(c)(2) provides that “[a] party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.” The Advisory Committee Notes further counsels that “[t]he objection functions much as an objection at trial, adjusted for the pretrial setting. The burden is on the proponent to show that the material is admissible as presented or to explain the admissible form that is anticipated.”

When ruling on a motion for summary judgment, a court may only rely on admissible evidence. *Jackson v. Federal Express*, 766 F.3d 189, 194 (2d Cir. 2014); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 264 (2d Cir. 2009). Hearsay and other inadmissible evidence must be excluded from consideration in a motion for summary judgment. *Jackson*, 766 F.3d at 194; *GEPF, Inc. v. City Lights Int’l, Inc.*, No. 09 CIV. 4942 (PAC), 2010 U.S. Dist. LEXIS 135433, at \*3 (S.D.N.Y. Dec. 22, 2010). The party offering the evidence has the burden of proving by a preponderance of the evidence that it is admissible. *United States v. Camacho*, 353 F. Supp. 2d 524, 535-536 (S.D.N.Y. 2005).

**B. Documents Offered in Support of Defendants' Advice of Counsel and Reliance on Auditors Defense Are Inadmissible**

On November 14, 2014, plaintiffs filed their Motion for Partial Summary Judgment on Defendants' Reliance on Advice of Counsel and Good Faith Defenses. Dkt. No. 288. As set forth therein, defendants should be precluded from offering any testimony, documents or argument that refers to or is based on any input from counsel, including any statements or conduct of KPMG that was based on input from counsel. If plaintiffs' motion is granted, over one hundred documents proffered by defendants in support of their motions for summary judgment are inadmissible and should not be considered by the Court in deciding defendants' motions for summary judgment.

Plaintiffs have attached, as Exhibit 1, a list of each exhibit offered by defendants, which is inadmissible because it reflects or contains advice of counsel; statements by KPMG based on input from Pfizer's counsel; or demonstrates that inside and/or outside counsel was consulted with respect to Pfizer's legal proceedings disclosures and FAS 5 decisions. Pfizer's purported defenses should be precluded and the related documents and testimony are inadmissible under Federal Rules of Evidence ("FRE") 402 and 403, since they are irrelevant and unfairly prejudicial, confusing and misleading if the related defenses are excluded.<sup>1</sup>

**C. Newspaper Articles, Media Reports and Analyst Reports**

Defendants offer a host of newspaper and media articles and analyst reports in support of their motions for summary judgment. *See* Petrosinelli Decl. (Dkt. No. 279), Exs. A-3 through and including M-3; Q-3 through R-3, U-3 through and including V-3, X-3, and Z-3. Plaintiffs object to these exhibits. Newspaper articles, media reports and analyst reports are hearsay. FRE 801(c).

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<sup>1</sup> Many of these documents are also objectionable under FRE 802, 805 and 901, as noted in Exhibit 1. Documents created by KPMG, objected to on hearsay grounds as noted in Exhibit 1, are inadmissible for the reasons set forth in plaintiffs' objection to documents created by PricewaterhouseCoopers. *See* §II.D., *infra*.

Therefore, they are not admissible. FRE 802; *Instinet, Inc. v. Ariel (UK) Ltd.*, No. 08 Civ. 7141 (JFK), 2012 U.S. Dist. LEXIS 135089, at \*16-\*17 (S.D.N.Y. Sept. 20, 2012). In addition, to the extent that these articles and reports contain quotes from defendants or third parties, those statements are inadmissible even if they might independently fall within an exception to the hearsay rule. FRE 805; *Instinet, Inc.*, *supra* at \*16-\*17 (“In order to admit an out-of-court statement that is nested within another, Rule 805 requires that *both* statements be admissible.”) (quoting *United States v. Payne*, 437 F.3d 540, 547 (6th Cir. 2006)) (emphasis in original).

If defendants intend to offer some or all of these articles and reports for a non-hearsay purpose, as the proponents of evidence, they must specify the grounds for admissibility. Otherwise, Exs. A-3 through M-3, Q-3 through R-3, U-3 through V-3, X-3 and Z-3 are inadmissible and should be excluded. FRE 802.

#### **D. Pfizer Documents and PricewaterhouseCoopers Documents**

Defendants also offer internal Pfizer e-mails, memoranda and other documents in support of their motion. These internal Pfizer documents were prepared by Pfizer, its officers or its employees and are offered for the truth of the matters asserted therein.<sup>2</sup> As such, these internal Pfizer documents are hearsay and are inadmissible. FRE 801(c); *United States v. Coplan*, 703 F.3d 46, 84 (2d Cir. 2012) (“When the defendant seeks to introduce his own prior statement for the truth of the matter asserted, it is hearsay, and it is not admissible.”) (quoting *United States v. Marin*, 669 F.2d 73, 84 (2d Cir. 1982)).

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<sup>2</sup> In addition to exhibits identified in List 1 that are objectionable on advice of counsel or reliance on auditors grounds, the remaining documents objected to on this basis are listed in Exhibit 2.

Although plaintiffs could readily offer these documents as admissions by a party-opponent under FRE 801(d)(2), defendants must rely on an exception to the hearsay rule.<sup>3</sup> Undoubtedly, defendants will seek refuge under the business record exception to the hearsay rule, FRE 803(6). However, defendants made no attempt to lay a business record foundation for any of their internal e-mails, memoranda or other documents. Rather, they have simply attached these Pfizer documents to declarations submitted by Mr. Petrosinelli and other members of the defense team. Defendants have completely failed to satisfy the requirements of FRE 803(6). *United States v. Strother*, 49 F.3d 869, 874 (2d Cir. 1995) (noting that although the Second Circuit has adopted a generous view of the business records exception, the proffered record must meet all of the requirements of the exception). The documents, if offered by defendants, are inadmissible.

In addition, the Pfizer documents are replete with hearsay within hearsay and are inadmissible under FRE 805 for this reason, as well, *Instinct, Inc.*, 2012 U.S. Dist. LEXIS 135089, at \*16-\*17. *See, e.g.*, Petrosinelli Decl., Ex. W-5 (Oct. 12, 2006 e-mail from Larry Fox to Douglas Lankler and others, stating: “Doug: Carl [Wessel], Dennis [Block] and I had a conference call this afternoon to discuss government investigations. Dennis concluded that the only development that has to be reported in the third quarter 10-Q is the [REDACTED AS NON-RESPONSIVE]. If you are OK with this conclusion . . . .”); Galin Decl. (Dkt. No. 266), Ex. C-W (January 21, 2007 e-mail from Fox to defendant Waxman and others stating: “Attached is a draft of the legal proceedings disclosure for the 2006 Financial Report. It reflects in-put from a number of colleagues in the Legal Division, and it has been approved by Sandra and Dennis [Block].”); Galin Decl., Ex. J-W (July 18,

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<sup>3</sup> If Plaintiffs’ Motion for Partial Summary Judgment is granted, plaintiffs may seek to offer certain Pfizer internal documents in a redacted form to delete references to counsel and/or outside auditors.

2007 e-mail from Carlton Wessel to Douglas Lankler, stating: “I spoke to Dennis [Block] and Larry [Fox] this morning. They are leaning against disclosing the subpoena at this time.”).

In addition to the internal Pfizer documents, defendant Waxman proffers three documents prepared by PricewaterhouseCoopers. *See* Galin Decl., Exs. T-W, U-W, and V-W. Again, the PwC documents are out of court statements offered to prove the truth of the matters asserted therein. FRE 801(c). As such, they are inadmissible. FRE 802. In addition, these documents have never been authenticated and Mr. Galin’s declaration fails to remedy that flaw. FRE 901.

**E. Defendants Have Failed to Authenticate Certain Exhibits**

In addition to their overwhelming hearsay problem, defendants have failed to authenticate a number of exhibits, as required by FRE 901. These exhibits contain handwritten notes or appear to be incomplete. *See* Exhibits 1 and 2. Again, these documents are inadmissible.

**III. CONCLUSION**

By reason of the foregoing, defendants’ exhibits, where objected to by plaintiffs, should be excluded.

DATED: November 26, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 26, 2014.

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# EXHIBIT 1

**EXHIBIT 1****WAXMAN SUMMARY JUDGMENT EXHIBITS****(Exhibits Attached to Declaration of Ross B. Galin (Dkt. No. 266))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
A-W	2/17/06 E-mail from Larry Fox with attachments	Agenda and related documents forwarded to Dennis Block (“Block”); attached disclosure controls reference review by both in-house and outside counsel and KPMG; also inadmissible under FRE 802
B-W	10/17/06 E-mail from Larry Fox with attachment	Mr. Fox discusses input by Block regarding legal proceedings disclosure; also inadmissible under FRE 802 and 805
C-W	1/22/07 E-mail from Larry Fox and related chain	Mr. Fox discusses input by Block regarding legal proceedings disclosure; also inadmissible under FRE 802 and 805
D-W	Lankler sub-certifications	Lankler was part of Pfizer’s Government Investigations team
E-W	Foran sub-certifications	Ms. Foran was a Pfizer attorney
G-W	9/6/06 E-mail from Fox identifying persons who provide sub-certifications	Identifies Block, as well as in-house attorneys who provide sub-certifications; also inadmissible under FRE 802
H-W	Memos from Waxman requesting sub-certifications	Identifies Pfizer in-house attorneys who were asked to provide sub-certifications
I-W	Annual Corporate Compliance Review dated 9/20/06	Memorandum prepared by Douglas Lankler, Government Investigations Counsel; also inadmissible under FRE 802
J-W	7/18/07 Lankler/Wessel e-mail chain	E-mail discusses Block, Fox and Lankler positions on disclosure issue; also inadmissible under FRE 802 and 805
L-W	2/14/07 E-mail from Larry Fox and related chain	Reflects input from Block and Fox regarding disclosures; also inadmissible under FRE 802 and 805
W-W	Disclosure Committee Meeting Minutes	Minutes reflect review of legal proceedings disclosures by Fox, Lankler and Block

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
Y-W	10/16/07 E-mail from Wessel to Lankler and chain	References Block and KPMG (Chapman) review of Bextra investigation and estimable; also inadmissible under FRE 802 and 805
Z-W	9/6/07 and 10/26/07 e-mails with attached reserving and settlement procedures	Block copied on e-mail
A-2-W	10/22/07 Minutes of Financial Executive Litigation Meeting	Lankler present at FAS-5, reserve discussions
B-2-W	2/5/08 E-mail chain	References KPMG review of earnings release and KPMG, Chapman and Covington White Paper in handwritten notes; also inadmissible under FRE 802, 805, 901
C-2-W	Certification Memoranda	Certifications by Cangialosi, Donnelly and Kindler; reflects review by in-house counsel and Cangialosi (who relied on Government Investigations Counsel)
G-2-W	Certification Memo, 2006 10-K	Attempt to rely on in-house counsel, Block and KPMG
H-2-W	Certification Memo, Q1 2007 10-Q	Attempt to rely on in-house counsel, Block and KPMG
I-2-W	Certification Memo, Q2 2007 10-Q	Attempt to rely on in-house counsel, Block and KPMG
J-2-W	Certification Memo, Q3 2007 10-Q	Attempt to rely on in-house counsel, Block and KPMG
K-2-W	Certification Memo, 2007 10-K	Attempt to rely on in-house counsel, Block and KPMG
L-2-W	2/21/07 E-mail and attached report	Attempt to rely on in-house counsel, Block and KPMG; also inadmissible under FRE 802 and 805
M-2-W	1/11/06 E-mail chain	Attempt to rely on Lankler, Fox and Block for legal proceeding disclosures; also inadmissible under FRE 802 and 805

**KINDLER SUMMARY JUDGMENT EXHIBITS****(Exhibits Attached to Declaration of James P. Rouhandeh (Dkt. No. 276))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
B-K	Disclosure Controls and Procedures	Refers to review of disclosures and SEC filings by outside securities counsel and outside auditor
C-K	Legal Proceedings Disclosure Process	Refers to review of disclosures by Block
E-K	Preparation of 2007 Form 10-K	Refers to review of 10-K by Block, KPMG, in-house counsel; also inadmissible under FRE 802, 805 and 901
F-K	2/23/08 E-mail from Fox to Cangialosi re Disclosure Committee Meeting	Reflects review by in-house counsel of materials related to Disclosure Committee; also inadmissible under FRE 802
G-K	Lankler sub-certifications	Lankler was part of Pfizer's Government Investigations team
H-K	1/17/06 E-mail from Larry Fox to Lankler and related chain	Refers to review of disclosures by in-house counsel and Block; also inadmissible under FRE 802 and 805
I-K	Disclosure Controls and Procedures	Refers to review of disclosures and SEC filings by outside securities counsel and outside auditor
J-K	1/18/06 Minutes of Quarterly Reserve Review Meeting	Refers to Lankler and KPMG involvement in reserve meeting
K-K	Cangialosi sub-certifications	Ms. Cangialosi testified to her reliance on Government Investigations Counsel

**LEVIN SUMMARY JUDGMENT EXHIBITS**

**(Exhibits Attached to Declaration of Alexander C. Drylewski (Dkt. No. 254))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
H-L	Excerpts from Pfizer Litigation Monthly Financial Controls Report for September 2007	Information from Government Investigations Counsel regarding investigations; also inadmissible under FRE 802



**McKINNELLS SUMMARY JUDGMENT EXHIBITS**

**(Exhibits Attached to Declaration of Scott D. Musoff (Dkt. No. 273))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
D-M	12/1/05 Audit Committee Pre-Read	Lankler refers to substantial defenses; the document must be redacted by removing the sentence that states: "In early November, we met with the government to discuss the substantial defenses that we believe the Company has with respect to the issues raised in the complaint."

**READ SUMMARY JUDGMENT EXHIBITS****(Exhibits Attached to Declaration of Michael B. Carlinsky (Dkt. No. 267))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
A-R	Preparation of 2006 10-K Process Summary	Refers to review by Block, KPMG
B-R	Preparation of 2007 10-K Process Summary	Refers to review by Block, KPMG
F-R	1/17/07 E-mail from Aldridge to Kindler with excerpts of attachments	Reflects in-house counsel review of Question and Answer documents for analyst meeting; also inadmissible under FRE 802
H-R	3/1/08 E-mail from Kindler to Mackay, D'Amelio re Analyst Day	Reflects in-house counsel review of Question and Answer documents for analyst meeting; also inadmissible under FRE 802

**D'AMELIO SUMMARY JUDGMENT EXHIBITS****(Exhibits Attached to Declaration of Richard M. Strassberg (Dkt. No. 277))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
E-D	9/24/08 Audit Committee Minutes	Refers to discussions with Lankler regarding Bextra, Zyvox and Geodon investigations and KPMG
R-D	Legal Proceedings Disclosure Process	Refers to review of legal proceedings disclosures by in-house counsel, Block and KPMG
S-D	10/21/08 E-mail from Harnett to D'Amelio and others re earnings release materials	Reflects in-house counsel review of materials for analyst meeting; also inadmissible under FRE 802
T-D	10/6/07 E-mail re Disclosure Committee	Refers to review and access to outside counsel and outside auditor
W-D	10/17/07 E-mail re Call Script	Refers to review by in-house counsel; also inadmissible under FRE 802
X-D	10/17/08 E-mail re Q3 Earnings Release	Refers to review by in-house counsel and Block; also inadmissible under FRE 802
Y-D	1/19/08 E-mail re Q4 Earnings Release	Refers to review by in-house counsel and Block; also inadmissible under FRE 802
Z-D	1/21/08 E-mail re Q4 Earnings Release	Refers to review by Fox; also inadmissible under FRE 802
AA-D	2/5/08 E-mail re Q4/07 Close and Earnings Release	Refers to KPMG and Covington & Burling White Paper; also inadmissible under FRE 802, 805 and 901
BB-D	2/23/08 Fox e-mail re Disclosure Committee Meeting	Refers to reviews by Block, Fox and in-house counsel; also inadmissible under FRE 802
EE-D	3/1/08 E-mail from Kindler to D'Amelio re Analyst Day	Reflects in-house counsel review of materials for analyst meeting; also inadmissible under FRE 802
FF-D	4/7/08 E-mail re Q1 Earnings Release	Review by Fox
II-D	7/17/08 E-mail and Q2 Earnings Release	Review by in-house counsel and Block; also inadmissible under FRE 802 and 901
JJ-D	7/23/08 E-mail chain re 10-Q Legal Proceedings Update	Refers to reviews by in-house counsel and Block; also inadmissible under FRE 802 and 805
KK-D	Controller's Agenda	Refers to review by KPMG; also inadmissible under FRE 802 and 901

**PFIZER SUMMARY JUDGMENT EXHIBITS****(Exhibits Attached to Declaration of Joseph G. Petrosinelli (Dkt. No. 247))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
U-2	11/1/07 E-mail from Fox re Legal Proceedings Disclosure	Refers to review by in-house counsel and Block; also inadmissible under FRE 802
B-4	Certification Meeting Memo – 2005 Form 10-K	Refers to review by in-house counsel, Block and KPMG; also inadmissible under FRE 802 and 805
C-4	Covington & Burling Memorandum to DOJ	Covington & Burling work product; also inadmissible under FRE 802 and 805
D-4	2/16/07 letter from Covington & Burling to KPMG	Work product of Investigations Counsel and shows review by KPMG; also inadmissible under FRE 802
E-4	1/23-24/09 E-mail chain with KPMG and Cangialosi	Refers to review by KPMG and discussions with in-house counsel; also inadmissible under FRE 802 and 805
F-4	KPMG Memo and Agenda re 1/19/06 Meeting	Refers to KPMG and in-house counsel review of FAS-5 and legal proceedings; also inadmissible under FRE 802, 805 and 901
G-4	10/17/05 Memo re Quarterly Reserve Review Meeting	Refers to review by in-house counsel and KPMG; also inadmissible under FRE 802
H-4	2/21/07 KPMG Letter to Audit Committee	Refers to KPMG review; also inadmissible under FRE 802
I-4	KPMG 2006 Audit Results	KPMG review of reserves; also inadmissible under FRE 802
J-4	KPMG 2007 Audit Results	KPMG review of reserves; refers to Covington & Burling White Paper; also inadmissible under FRE 802
L-4	2/04 Pfizer Letter to KPMG	KPMG review of Government Investigations and in-house counsel; also inadmissible under FRE 802
M-4	2/23/06 KPMG Letter to Audit Committee	KPMG review of Government Investigations and in-house counsel; also inadmissible under FRE 802
N-4	1/25/06 Covington & Burling Letter to KPMG	Investigations Counsel letter to KPMG re investigations; also inadmissible under FRE 802 and 901
P-4	Pfizer Interim Completion Document	Review by KPMG of reserves and legal proceedings and reference to in-house counsel; also inadmissible under FRE 802

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
R-4	Interim Completion Document – Q2 2008	Refers to review by KPMG, Covington & Burling White Paper and in-house counsel; also inadmissible under FRE 802
S-4	1/17/05 Covington & Burling Letter to KPMG	Refers to review by Covington & Burling and KPMG; also inadmissible under FRE 802
T-4	2/4/09 Covington & Burling Letter to KPMG	Refers to review by Covington & Burling and KPMG; also inadmissible under FRE 802
U-4	2/28/08 KPMG Memo re Bextra: Consideration of SFAS No. 5	Refers to review by KPMG, Covington & Burling White Paper; also inadmissible under FRE 802
V-4	6/23/08 KPMG Memo re Minutes of Compliance Meeting	Refers to KPMG and their meeting with Lankler and other in-house counsel; also inadmissible under FRE 802 and 805
W-4	2/20/07 KPMG Memo re 2006 Compliance Overview	Refers to KPMG and their meeting with Lankler and other in-house counsel; also inadmissible under FRE 802 and 805
X-4	2/21/07 Audit Committee Minutes	Refers to KPMG audit opinion
Y-4	1/25/08 Covington & Burling Memo to KPMG	Refers to review by Covington & Burling and KPMG; also inadmissible under FRE 802
Z-4	2/4/09 KPMG Memo re Bextra Department of Justice Settlement	Refers to KPMG and discussions with Lankler and other in-house counsel and Covington White Paper; also inadmissible under FRE 802
B-5	11/28/07 Covington & Burling Letter to USAO/Sara Bloom	Investigations Counsel work product; also inadmissible under FRE 802 and 901
D-5	7/23/08 KPMG Memo re Q2 2008 Legal Review Summary	Refers to discussions between KPMG and in-house counsel; also inadmissible under FRE 802
E-5	10/30/08 KPMG Memo re Q3 2008 Legal Review Summary	Refers to discussions between KPMG and in-house counsel; also refers to Covington & Burling White Paper; also inadmissible under FRE 802
F-5	10/5/06 E-mail from Kremer to Lankler and others with attached Litigation Monthly Financial Controls Report (October 2006)	Government Investigations Counsel work product; also inadmissible under FRE 802
G-5	1/12/09 E-mail and draft memo from Block to be sent to KPMG	Refers to Block and KPMG review of reserves; also inadmissible under FRE 802, 805 and 901

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
H-5	12/31/05 Legal Proceedings Disclosure Process	Refers to review of legal proceeding by Block, KPMG and in-house counsel; also inadmissible under FRE 802
I-5	2/17/06 Fox e-mail to KPMG (Eric Riso)	Communication between in-house counsel and KPMG re legal proceedings disclosure; also inadmissible under FRE 802 and 805
J-5	7/17/07 E-mail from Wessel to Fox, Block, others with attached Lyrica subpoena	Plaintiffs object only to the cover e-mail (PFE-JONES 00033812) which reflects Block and in-house counsel receipt and involvement in investigation; no objection to remainder of document
K-5	2/21/07 E-mail from Waxman to Fox and Block re 10-K comment	Refers to discussions between in-house counsel, Block and KPMG re 10-K and Government Investigations; also inadmissible under FRE 802 and 805
L-5	2/19/07 E-mail from Levy to Waxman, Fox and Lankler	Refers to discussions with in-house Investigations Counsel re 10-K legal proceedings disclosure; also inadmissible under FRE 802 and 901
M-5	2/15/07 E-mail from Fox to Block re Legal Proceedings Disclosures	Refers to legal proceedings disclosures and review by Block and in-house counsel; also inadmissible under FRE 802
N-5	10/16/06 E-mail from Block to Fox re Third Quarter Form 10-Q	Legal proceedings disclosure and review by Block and in-house counsel; also inadmissible under FRE 802
O-5	2/15/06 E-mail from Fox to Kindler, Lankler, Waxman and Block	KPMG, Block, in-house counsel asked to comment on legal proceedings disclosures; also inadmissible under FRE 802 and 805
Q-5	1/15/08 Fox e-mail to Lankler re discussions with Block and others	Block and in-house Government Investigations Counsel review disclosures; also inadmissible under FRE 802 and 805
R-5	7/22/08 Fox e-mail chain with Block and others	Block and in-house Government Investigations Counsel review disclosures; also inadmissible under FRE 802 and 805
S-5	10/19/08 E-mail to Lankler, Block, others re Third Quarter Form 10-Q	Review by Block and in-house Government Investigations Counsel of legal proceedings disclosure; also inadmissible under FRE 802

EXHIBIT	DESCRIPTION	BASIS FOR OBJECTION
T-5	2/11/08 E-mail chain with Waxman, Block and Fox re Bextra	Review by Block and in-house Government Investigations Counsel of legal proceedings disclosure; also inadmissible under FRE 802 and 805
U-5	2/5/08 E-mail chain with Block and Wessel	Refers to discussions re Bextra investigation between Block and in-house Government Investigations Counsel; also inadmissible under FRE 802 and 901
V-5	7/21/08 Fox/Lankler e-mail chain re Eli Lilly Disclosure	Refers to review of disclosures by Block, Fox and in-house Government Investigations Counsel; also inadmissible under FRE 802
W-5	9/28/06-10/13/06 Fox/Lankler, <i>et al.</i> e-mail exchange re Legal Proceedings Disclosure	Refers to review of disclosures by Block, Fox and in-house Government Investigations Counsel; also inadmissible under FRE 802 and 805
X-5	10/16-18/07 Fox e-mail chain re Third Quarter Form 10-Q	Refers to review of legal proceedings disclosure by in-house counsel, Block and KPMG; also inadmissible under FRE 802 and 805
Y-5	4/7/08 Lankler e-mail to Block and others re Bextra DOJ	Refers to review of Bextra disclosures by Block and in-house Investigations Counsel; also inadmissible under FRE 802 and 805
Z-5	4/11/08 E-mail exchange between Lankler and Donnelly re disclosures	Refers to review of Bextra disclosures by Block and in-house Investigations Counsel; also inadmissible under FRE 802 and 805
A-6	2/26/07 E-mail from Larry Fox re Financial Report – Legal Proceedings Disclosure	Refers to review of legal proceedings disclosure by KPMG and in-house counsel; also inadmissible under FRE 802 and 805
B-6	10/1/07 Covington & Burling letter to USAO (Sara Bloom)	Letter from outside Government Investigations Counsel; also inadmissible under FRE 802
C-6	10/18/07 E-mail on behalf of Block to Wessel, Lankler, <i>et al.</i> , re disclosure	Refers to review of reserve analysis by Block and in-house Government Investigations Counsel; also inadmissible under FRE 802
D-6	9/11/08 King and Spalding letter to DOJ officials re Pfizer/Bextra investigation	Shows analysis by outside Government Investigations Counsel; also inadmissible under FRE 802

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
E-6	Pfizer Inc. Board of Directors Minutes (1/25/09)	Refers to in-house and outside counsel involvement in investigations; also inadmissible under FRE 802
F-6	1/12/07 Fox e-mail with attachment re Legal Proceedings Disclosure for 2006 Financial Report	Refers to review of legal proceedings disclosure by in-house counsel and Block; also inadmissible under FRE 802 and 901
G-6	1/12/06 Fox e-mail with attachment re Legal Proceedings Disclosure for 2005 Financial Report	Refers to review of legal proceedings disclosure by in-house counsel and Block; also inadmissible under FRE 802 and 901
H-6	2/20-21/07 E-mail exchange with Kim Dadlani, Larry Fox, John Chapman and others re 10-K comment	Refers to review of legal proceedings disclosures by in-house counsel and KPMG; also inadmissible under FRE 802
I-6	10/20/06 Fox e-mail to Chapman, Waxman and Capello re Form 10-Q Legal Proceedings Disclosure	Refers to review of legal proceedings disclosures by in-house counsel and KPMG; also inadmissible under FRE 802
J-6	9/28-10/12/06 E-mail exchange re Legal Proceedings Disclosure Third Quarter Form 10-Q among Fox, Lankler and others	Refers to review of legal proceedings disclosure by in-house counsel and Block; also inadmissible under FRE 802 and 805
L-6	10/17/07 E-mail chain with D'Amelio, Chapman (KPMG) and Wessel re Bextra Investigation	Refers to Bextra meeting with in-house counsel, KPMG and Block; also inadmissible under FRE 802
M-6	1/12-19/07 E-mail chain re Legal Proceedings Disclosure involving Block, Fox, Lankler and others	Refers to review of legal proceedings disclosure by Block and in-house counsel; also inadmissible under FRE 802 and 901 (incomplete)
N-6	10/17/07 E-mail from Paul Brockie to Kim Dadlani re Bextra DOJ	Refers to review of Q3 reserves by Block and in-house Investigations Counsel; also inadmissible under FRE 802
O-6	7/23/08 E-mail from Fox to Schulman, Block, Lankler and others re 10-Q Legal Proceedings Update	Refers to review of legal proceedings disclosure by block and in-house counsel; also inadmissible under FRE 802
P-6	2/12/08 E-mail chain involving Block, Fox, Lankler, Wessel and Waxman re COX-2 – Legal Proceedings Disclosure	Refers to review of legal proceedings disclosure and in-house counsel; also inadmissible under FRE 802 and 805
Q-6	2/20/08 E-mail from Fox to Block, Lankler, others re Legal Proceedings Disclosure Sweep Memo	Refers to review of legal proceedings disclosure by Block and in-house counsel; also inadmissible under FRE 802



<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
R-6	2/19-20/07 E-mail chain re 10-K Legal Proceedings involving Block, Lankler, Fox and others	Refers to review of legal proceedings disclosure by Block and in-house counsel; also inadmissible under FRE 802
S-6	10/17-18/07 E-mail chain involving Block, Wessel, Lankler and others re disclosures	Refers to review of reserves by Block and in-house Investigations Counsel, attachment includes reference to White Paper and outside Investigations Counsel; also inadmissible under FRE 802 and 805
T-6	2/12/08 Fox e-mail to Waxman and Block re COX-2 – Legal Proceedings Disclosure	Refers to review of legal proceedings disclosure by Block and in-house counsel; also inadmissible under FRE 802
V-6	Disclosure Committee Minutes from various meetings	Refers to certain meetings attended by Block and in-house counsel re disclosures; also inadmissible under FRE 802
W-6	12/17/07 Wessel e-mail to Block, Fox and others with attached subpoena	Plaintiffs object only to the cover e-mail (PFE-JONES 00041167) which reflects Block and in-house counsel receipt and involvement in investigation; no objection to remainder of document
D-7	1/9/09 Ropes & Gray Letter to USAO (Bloom) re the Government's Investigation of the Promotion of Bextra	Letter from outside Investigations Counsel re defenses
E-7	1/5/09 Ropes & Gray Letter to USAO (Sullivan) re the Government's Investigation of the Promotion of Bextra	Letter from outside Investigations Counsel re defenses
G-7	Overview of Lyrica Presentation dated 9/11/07 (Davis Polk)	Reflects involvement of outside counsel in investigations; also inadmissible under FRE 802 and 901
H-7	Overview of Zyvox Promotional Practices dated 10/24/08 (Ropes & Gray)	Reflects involvement of outside counsel in investigations; also inadmissible under FRE 802 and 901
I-7	Investigation of Certain Geodon Promotional Activities dated 11/14/08 (DLA Piper)	Reflects involvement of outside counsel in investigations; also inadmissible under FRE 802 and 901
J-7	Pfizer Executive Litigation Update Meeting Agenda dated 6/19/07	Refers to update re Governmental Investigations; also inadmissible under FRE 802

EXHIBIT	DESCRIPTION	BASIS FOR OBJECTION
K-7	Pfizer Memo re 12/12/05 Audit Committee Meeting	Lankler refers to substantial defenses; the document must be redacted by removing the sentence that states: "In early November, we met with the government to discuss the substantial defenses that we believe the Company has with respect to the issues raised in the complaint."
N-7	Cangialosi sub-certifications	Ms. Cangialosi testified to her reliance on Government Investigations Counsel
O-7	Block Memoranda to Pfizer Executives with sub-certifications	Review of SEC filings by Block

# EXHIBIT 2

**EXHIBIT 2****INTERNAL PFIZER DOCUMENTS**

First, many of the documents proffered by defendants that should be excluded along with their advice of counsel and reliance on auditors defenses are also inadmissible under FRE 802, 805 and 901. Exhibit 1 lists the objections to those documents on these grounds. The remaining documents which should be excluded under FRE 802, 805 or 901 are:

**(Declaration of Russ B. Galin (Dkt. No. 266) (Waxman))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
X-W	3/16/07 Memorandum from Ian Read to the Audit Committee	FRE 802

**(Declaration of Richard M. Strassberg (Dkt. No. 277) (D'Amelio))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
F-D	11/7/08 E-mail from Triano to Kindler and D'Amelio re Investor Views – M&A	FRE 802 and 805
V-D	10/17/07 E-mail from Davis to D'Amelio and others re Q3 07 earnings materials	FRE 802 and 901 (incomplete)
DD-D	3/1/08 E-mail from Campion to D'Amelio re Analyst Day with attachments	FRE 802 and 901
GG-D	9/9/08 E-mail chain with Passov to Pacchiano re dividend	FRE 802, 805 and 901
HH-D	Excerpt from Anticipated Investor Q&A – 1Q08 Conference Call	FRE 802 and 901

**(Declaration of Michael B. Carlinsky (Dkt. No. 267) (Read))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
G-R	1/15/07 E-mail with attachments from Beaty to Kindler and others re Documents for tomorrow's meeting	FRE 802

**(Declaration of Joseph G. Petrosinelli (Dkt. No. 247) (Pfizer))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
W-2	10/14/09 Pharmacia & Upjohn Company, Inc.'s Response to the United States' Sentencing Memorandum	FRE 802

**PRICEWATERHOUSECOOPERS DOCUMENTS****(Declaration of Ross B. Galin (Dkt. No. 266) (Waxman))**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BASIS FOR OBJECTION</b>
T-W	Independent Review Organization Report, PricewaterhouseCoopers dated 9/30/05	FRE 802 and 901
U-W	Independent Review Organization Report, PricewaterhouseCoopers dated 9/26/07	FRE 802 and 901
V-W	Independent Review Organization Report, PricewaterhouseCoopers dated 9/28/09	FRE 802 and 901

## Regan Karstrand

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**From:** NYSJ\_ECF\_Pool@nysd.uscourts.gov  
**Sent:** Wednesday, November 26, 2014 7:00 PM  
**To:** CourtMail@nysd.uscourts.gov  
**Subject:** Activity in Case 1:10-cv-03864-AKH Jones et al v. Pfizer, Inc. et al Response in Opposition to Motion

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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### U.S. District Court

### Southern District of New York

#### Notice of Electronic Filing

The following transaction was entered by Dowd, Michael on 11/26/2014 at 7:00 PM EST and filed on 11/26/2014

**Case Name:** Jones et al v. Pfizer, Inc. et al  
**Case Number:** [1:10-cv-03864-AKH](#)  
**Filer:** Stichting Philips Pensioenfonds  
**Document Number:** [295](#)

#### Docket Text:

**RESPONSE in Opposition to Motion re: [256] MOTION for Summary Judgment ., [244] MOTION for Summary Judgment ., [255] MOTION for Summary Judgment ., [260] MOTION for Summary Judgment ., [271] MOTION for Summary Judgment ., [268] MOTION for Summary Judgment ., [252] MOTION for Summary Judgment . *Plaintiffs' Objections to Exhibits Submitted in Support of Defendants' Motions for Summary Judgment.* Document filed by Stichting Philips Pensioenfonds. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2)(Dowd, Michael)**

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**Document description:**Exhibit 1

**Original filename:**n/a

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**Document description:**Exhibit 2

**Original filename:**n/a

**Electronic document Stamp:**

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