

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	:	
	:	DECLARATION OF TRIG R. SMITH IN
vs.	:	FURTHER SUPPORT OF PLAINTIFFS'
	:	MOTION <i>IN LIMINE</i> TO EXCLUDE
PFIZER INC., et al.,	:	DEFENDANTS' CUMULATIVE EXPERT
	:	TESTIMONY
Defendants.	:	
<hr/>		X

I, TRIG R. SMITH, declare as follow:

1. I am a partner in the law firm of Robbins Geller Rudman & Dowd LLP and counsel to plaintiffs. I am duly licensed to practice before all courts of the States of California and Colorado and admitted *pro hac vice* in this case. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Attached hereto is a true and correct copy of the following exhibit:

Exhibit 7: Excerpts to the October 10, 2014 Deposition Transcript of Sean Nicholson, Ph.D.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed December 30, 2014, at San Diego, California.

s/ TRIG R. SMITH

TRIG R. SMITH

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 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 December 30, 2014.

s/ TRIG R. SMITH

TRIG R. SMITH

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EXHIBIT 7

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----
4 MARY K. JONES, Individually and on
5 Behalf of All Others Simiarly Situated,

6 Plaintiffs,

7 vs.

8
9 PFIZER Inc., ET AL.,

10
11 Defendants.
12 -----

13
14 This is the Videotaped Deposition of
15 SEAN NICHOLSON, PhD
16 held on the 10th day of October, 2014,
17 held at the Statler Hotel, Cornell University,
18 Ithaca, New York, commencing at 9:08 a.m.,
19 concluding at 4:48 p.m.

20
21 REPORTED BY: ELIZABETH R. BRUCIE, RPR
22 Notary Public

23 VIDEOTAPED BY: CAITLYN A. JUREK
24
25

1 total amount of off-label marketing and I see
2 absolutely no evidence that that's true.

3 Q So you just dispute the proxy that she's
4 using?

5 MR. PETROSINELLI: Object to the
6 form.

7 A Well, fundamentally, if she's using data
8 from IMS that's using marketing expenditures and
9 doesn't tell her anything about the content of
10 that marketing, I don't see how she is going to
11 arrive at any kind of idea about how much
12 off-label marketing has occurred.

13 Q I guess are you aware of any
14 peer-reviewed journal articles that would dispute
15 Professor Rosenthal's creation of this proxy
16 based on detailing dollars to the specialties she
17 classified as being off label?

18 A I don't, as far as I'm aware there hasn't
19 been a published study which has looked at the
20 impact of alleged off-label sales on sales and
21 has used a method like this, I don't think there
22 has been a chance for somebody to either advocate
23 that it's -- there hasn't been a chance in the
24 peer-reviewed literature for somebody to advocate
25 that this is a reasonable approach nor a reason

1 for someone to say this is not a reasonable
2 approach.

3 Q And do you know if this methodology has
4 been accepted before in other litigations?

5 A I don't know for sure, no.

6 Q Do you have any experience in researching
7 diagnosis codes such as ICD-9 codes?

8 A For some of my research I do use those,
9 the ICD-9 codes, yes.

10 Q And you looked at the ICD-9 codes in this
11 case that Professor Rosenthal along with
12 assistance from Dr. Finkelstein characterized as
13 either on label or off label; is that correct?

14 A Yes, that's correct.

15 Q Okay. And with respect to the ICD-9
16 codes, did you observe that there was specific
17 ICD-9 codes that related to the indications that
18 would be considered on label for the drugs at
19 issue?

20 A Well, what I did in my report in large
21 part because Dr. Rosenthal did not mention in her
22 report that she received any clinical input, is I
23 was pointing out that if I were to take her
24 allegation of, or assertion that orthopedic
25 surgeons would typically treat acute pain

1 following surgery, I said well as a non
2 clinician, as an economist, if I were to look at
3 those ICD-9 codes, I wouldn't have a lot of
4 confidence to know if that's the only reason why
5 orthopedic surgeons were prescribing Bextra.

6 Q And did you consult with any experts in
7 diagnosis codes as to whether or not the codes
8 that Professor Rosenthal identified as on label
9 or off label were inappropriate?

10 MR. PETROSINELLI: Object to the
11 form.

12 A No, but that was essentially my point.
13 My point is if she's not getting clinical input,
14 if she has a PhD in economics like I do, then
15 presumably she's at the same disadvantage, she's
16 facing the same disadvantage that I am. I don't
17 know as a non clinician which of those ICD-9
18 codes would be for acute pain following surgery
19 and which ones would not be.

20 Q And you now understand that she did rely
21 on assistance with someone with a medical
22 background, does that change your report in any
23 way?

24 A Well, there is absolutely no reason to
25 change my report if she's revealing something

Regan Karstrand

From: NYSD_ECF_Pool@nysd.uscourts.gov
Sent: Tuesday, December 30, 2014 1:24 PM
To: CourtMail@nysd.uscourts.gov
Subject: Activity in Case 1:10-cv-03864-AKH Jones et al v. Pfizer, Inc. et al Declaration in Support of Motion

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U.S. District Court

Southern District of New York

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The following transaction was entered by Smith, Trig on 12/30/2014 at 1:23 PM EST and filed on 12/30/2014

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

Document Number: [418](#)

Docket Text:

DECLARATION of Trig R. Smith in Support re: [372] MOTION in Limine to Exclude Defendants' Cumulative Expert Testimony.. Document filed by Mary K. Jones(Individually), Stichting Philips Pensioenfonds. (Attachments: # (1) Exhibit 7)(Smith, Trig)

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