

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
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 JASON A. FORGE IN
vs.	:	FURTHER SUPPORT OF PLAINTIFFS'
	:	MOTION TO EXCLUDE RELIANCE
PFIZER INC., et al.,	:	EVIDENCE AND ARGUMENT
	:	
Defendants.	:	
_____	X	

I, JASON A. FORGE, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California and am admitted *pro hac vice* before this Court. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP, Lead Counsel for plaintiffs in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Attached are true and correct copies of the following exhibits:

Exhibit 2: Email from Steve Farina to Henry Rosen re: Pfizer Witnesses, dated March 15, 2013;

Exhibit 3: Excerpts to the January 22, 2014 Deposition Transcript of Douglas Lankler;

Exhibit 4: Excerpts to the October 2, 2013 Deposition Transcript of Brien O'Connor;

Exhibit 5: Excerpts to the September 16, 2013 Deposition Transcript of Dennis Block;

Exhibit 6: Excerpts to the September 26, 2013 Deposition Transcript of Lawrence Fox;

Exhibit 7: Excerpts to the September 23, 2014 Deposition Transcript of Alan Levin;

Exhibit 8: Excerpts to the October 10, 2014 Deposition Transcript of Jeffrey Kindler; and

Exhibit 9: Excerpts to the October 16, 2014 Deposition Transcript of Allen Waxman.

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

s/ JASON A. FORGE

---

JASON A. FORGE

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/ JASON A. FORGE

JASON A. FORGE

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# EXHIBIT 2

-----Original Message-----

From: Farina, Steve [<mailto:SFarina@wc.com>]  
Sent: Friday, March 15, 2013 2:01 PM  
To: Henry Rosen  
Cc: MacDonald, Amanda; Farina, Steve; Willow Radcliffe  
Subject: Pfizer Witnesses

Henry:

I have not yet been able to speak with each of my clients, so I do not yet have a final witness list for you. I can tell you that, as of now, we would call the following witnesses at trial: (1) Larry Fox, (2) Loretta Cangialosi, (3) Doug Lankler, (4) Dennis Block, (5) Brien O'Connor, and (6) Larry Bradley. I do not expect that any of these would drop from the list, but it is possible that we could add one or two more. I should know sometime next week. Sorry for the delay.

Are you around next week to start trying to come up with a schedule?

Steven M. Farina

Williams & Connolly LLP

725 Twelfth Street, N.W., Washington, DC 20005

(P) 202-434-5526 | (M) 202-746-9299

[sfarina@wc.com](mailto:sfarina@wc.com) | [www.wc.com/sfarina](http://www.wc.com/sfarina) <<http://www.wc.com/sfarina>>

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# EXHIBIT 3

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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MARY K. JONES, Individually )  
and on Behalf of all others )  
similarly situated, )  
Plaintiff, )  
vs ) No. 10-cv-3864  
PFIZER, INC., HENRY A. ) (AKH)  
MCKINNELL, JEFFREY B. )  
KINDLER, FRANK D'AMELIO, )  
DAVID L. SHEDLARZ, ALAN G. )  
LEVIN, IAN C. READ, JOSEPH )  
FECZKO, KAREN KATEN, J. )  
PATRICK KELLY and ALLEN )  
WAXMAN, )  
Defendants. )  
----- )

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Videotaped Deposition of DOUGLAS LANKLER,  
taken at 1251 Avenue of the Americas, New  
York, New York, commencing at 9:09 a.m.,  
Wednesday, January 22, 2014, before Eileen  
Mulvenna, CSR, RMR, CRR, Notary Public.

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1 Q. Were they qualified to weigh -- 11:08:45  
2 were they the most qualified to weigh the 11:08:48  
3 strength of the evidence one way or the other? 11:08:50  
4 A. I thought that the outside 11:08:52  
5 lawyers and internal lawyers that we used and 11:08:53  
6 were involved were well qualified to be able 11:08:56  
7 to assess the legal aspects of the -- of the 11:08:59  
8 facts that were developed as a result of the 11:09:02  
9 internal investigation. 11:09:04  
10 Q. Were there any other lawyers 11:09:05  
11 in-house or outside that were involved that 11:09:06  
12 stand out to you as equally qualified or more 11:09:11  
13 qualified? 11:09:15  
14 A. As I sit here now, I can't 11:09:16  
15 remember. I know that we had different people 11:09:18  
16 involved during the course of it. I just 11:09:21  
17 can't remember the names of the different 11:09:23  
18 people that were involved. But obviously if 11:09:25  
19 we involved them, it was because we thought 11:09:29  
20 that they were appropriately qualified to 11:09:31  
21 assess. 11:09:33  
22 Q. I don't know how things work in 11:09:35  
23 the Southern District. I imagine it's similar 11:09:36  
24 to the offices where I worked as an AUSA. 11:09:38  
25 When a case is being proposed for indictment, 11:09:41

1 a significant case, is there some sort of 11:09:44  
2 assessment of the evidence before giving the 11:09:46  
3 green light to seek an indictment? 11:09:50  
4 A. Certainly. At least when I was 11:09:52  
5 at the US Attorney's Office, there was that 11:09:53  
6 step. 11:09:57  
7 Q. Did you all ever try to mimic 11:09:58  
8 that type of process? Was there ever any 11:10:00  
9 attempt to kind of sit down with the evidence 11:10:02  
10 and give an overall assessment, you've got a 11:10:05  
11 number of former prosecutors involved in the 11:10:09  
12 process, and kind of see, look -- try to put 11:10:11  
13 yourself in the shoes of the government and 11:10:14  
14 say, how am I looking at my possibility of 11:10:15  
15 obtaining conviction in this case? 11:10:19  
16 MR. PETROSINELLI: You can answer 11:10:20  
17 that yes, no, or I don't recall. 11:10:20  
18 THE WITNESS: I don't recall. 11:10:23  
19 BY MR. FORGE: 11:10:23  
20 Q. Do you recall anyone ever 11:10:52  
21 informing Mr. Kindler or offering to 11:10:55  
22 Mr. Kindler or any of the other defendants any 11:10:59  
23 assurance that there was no way the government 11:11:02  
24 could ever obtain a conviction in the Bextra 11:11:04  
25 case? 11:11:07

1 MR. PETROSINELLI: You're asking 11:11:08  
2 him directly for attorney-client 11:11:09  
3 communications as to which the privilege 11:11:11  
4 hasn't been waived? 11:11:13  
5 MR. FORGE: Just for the record, 11:11:16  
6 so you've instructed him not to answer. 11:11:16  
7 BY MR. FORGE: 11:11:18  
8 Q. And you're going to follow that 11:11:19  
9 instruction? 11:11:20  
10 A. I will follow that instruction. 11:11:20  
11 Q. How many outside law firms 11:11:33  
12 represented Pfizer in connection with the 11:11:34  
13 broader government investigation? So now 11:11:36  
14 we're going to expand it to include Geodon, 11:11:39  
15 Lyrica and Zyvox. 11:11:43  
16 A. I remember certainly Covington & 11:11:46  
17 Burling, Ropes & Gray, Davis Polk, DLA Piper, 11:11:47  
18 King & Spalding. I think that's it. Oh, and 11:11:55  
19 lawyers from Cadwalader assisted as well. 11:12:04  
20 Q. Which lawyers from Cadwalader? 11:12:07  
21 A. Michael Horowitz helped to advise 11:12:08  
22 us on the resolution. And obviously we were 11:12:11  
23 interacting with Dennis Block, primarily from 11:12:14  
24 the standpoint of disclosure requirements. 11:12:17  
25 And then Dennis also participated toward the 11:12:20

# EXHIBIT 4

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
C.A. 10-CV-3864 (AKH)

MARY K. JONES, individually and on )  
behalf of others similarly situated, )  
Plaintiffs, )  
vs. )  
PFIZER, INC., HARRY A. MCKINNELL,  
JEFFREY B. KINDLER, FRANK D'AMELIO, ALAN  
G. LEVIN, IAN C. READ, ALLEN WAXMAN,  
Defendants.

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF BRIEN O'CONNOR,  
before Jill Shepherd, Registered Professional  
Reporter, RPR, MA-CSR #148608, NH-CSR #128,  
CA-CSR #13275, CLR, and Notary Public,  
in and for the Commonwealth of Massachusetts,  
at the offices of Ropes & Gray, 800 Boylston  
Street, Boston, MA, on Wednesday, October 2,  
2013, commencing at 10:00 a.m.

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1 One, in particular, I can recall, who I 10:28:21  
2 think went a little bit later. 10:28:24  
3 Q. When were you next contacted by Pfizer in 10:28:26  
4 connection with Bextra? 10:28:28  
5 A. My best memory is it was around August 10:28:29  
6 of 2008, and I can't remember whether -- it 10:28:35  
7 might have been the end of July or something 10:28:37  
8 like that. 10:28:40  
9 Q. Who at Pfizer contacted you? 10:28:41  
10 A. If it was Pfizer first -- I think it was -- 10:28:44  
11 but it was Gary Giampetruzzi. 10:28:49  
12 Q. Did you know Mr. Giampetruzzi prior to him 10:28:53  
13 contacting you in that July, August? 10:28:56  
14 A. You know, I knew who he was. I had seen him 10:28:59  
15 speak on FCPA issues. I knew he was very 10:29:02  
16 experienced, active for Pfizer. I think I 10:29:06  
17 met him at a white collar crime conference. 10:29:08  
18 Before that, through Doug Lankler, who said, 10:29:12  
19 This is Gary. Brien, I want you to meet him 10:29:15  
20 or say hello or chat for a few minutes. So 10:29:17  
21 that was probably, you know, early in '08, 10:29:20  
22 maybe the February/March time frame when 10:29:23  
23 that conference happens, or 2007. But I 10:29:25  
24 think that was the only time I actually had 10:29:28  
25 spoken to Gary. 10:29:31



1 Q. How long had you known Doug Lankler? 10:29:31

2 A. Not long. And I think I met Doug through 10:29:35

3 Carl, I believe. But I hadn't known Doug 10:29:39

4 for long. I met him in connection with -- I 10:29:45

5 think with the representation of the 10:29:48

6 physicians, and/or Carl said to Doug, You 10:29:49

7 should get to know Brien, or something like 10:29:52

8 that. 10:29:54

9 Q. When Gary Giampetruzzi contacted you in that 10:29:54

10 July/August 2008 time frame, what was your 10:29:59

11 understanding of what he was looking for? 10:30:02

12 MR. PETROSINELLI: Well, the only 10:30:05

13 way you are going to have to an 10:30:06

14 understanding of that is what he told you, 10:30:08

15 and that's privileged; and I instruct you 10:30:08

16 not to answer that. 10:30:10

17 Q. Were you retained by Pfizer after 10:30:11

18 Gary Giampetruzzi contacted you? 10:30:16

19 A. Yes. 10:30:16

20 Q. Was that retention in connection with the 10:30:18

21 government investigations? 10:30:23

22 A. Yes. 10:30:24

23 Q. Were you aware of other outside counsel that 10:30:25

24 were also representing Pfizer in connection 10:30:30

25 with the government investigations? 10:30:31

1 A. Yes. 10:30:32

2 Q. Which other outside counsel? 10:30:33

3 A. Well -- yeah. Initially it was really 10:30:35

4 Covington, maybe Covington alone, but also I 10:30:43

5 know that Michael Horowitz at Cadwalader was 10:30:48

6 active for Pfizer. He knew me from when we 10:30:52

7 were AUSAs. He was in the Southern District 10:30:55

8 and was one of the people I think who 10:30:59

9 strongly recommended that they talk to me 10:31:00

10 about possibly getting involved, so then I 10:31:02

11 did talk with Michael early on. So he was 10:31:04

12 involved, but it was really Covington. 10:31:09

13 And then later, as other drugs became 10:31:11

14 part of it -- and it was in the next few 10:31:16

15 months that they really did become part of 10:31:19

16 the discussions as is reflected in the civil 10:31:23

17 agreement -- I, you know, started dealing 10:31:25

18 with Davis Polk, Jim Rouhandeh, Bob -- and 10:31:29

19 DLA, I dealt with DLA, too. 10:31:38

20 Q. Any other firms you recall? 10:31:40

21 A. Yes. King & Spaulding. Chris Wray and 10:31:43

22 Carl Wessel, I think, had transitioned from 10:31:47

23 Pfizer to King & Spaulding by that time, and 10:31:50

24 so I was talking with the two of them, too. 10:31:52

25 Q. Any others? 10:31:55

1 statements were about Pharmacia, and, you 10:54:18  
2 know, they were not meant to be, you know, 10:54:21  
3 personal representations, knowledge, about 10:54:26  
4 the facts. I think what it was, was the 10:54:28  
5 company was -- on behalf of the company, we 10:54:32  
6 were saying that the company admitted that 10:54:37  
7 what was in the information in that respect, 10:54:40  
8 some form of off-label promotion or 10:54:44  
9 misbranding occurred between 2002 and 2005. 10:54:47  
10 So -- yeah. Well, that's my answer. 10:54:53  
11 I will -- 10:55:00  
12 Q. When you say "the company," to what company 10:55:01  
13 are you referring? 10:55:03  
14 A. Well, it's -- Pharmacia is the pleading 10:55:04  
15 entity, so I was speaking on behalf of 10:55:08  
16 Pharmacia. 10:55:10  
17 Q. What Pharmacia entity? 10:55:11  
18 A. Well, Pharmacia and Upjohn Company, Inc. 10:55:14  
19 Q. So when you say to Judge Woodlock, We do 10:55:17  
20 agree that from February 2002 through 10:55:21  
21 April 2005, Pharmacia promoted Bextra for 10:55:26  
22 uses that were not within Bextra's approved 10:55:29  
23 label, including particularly acute pain and 10:55:32  
24 pre- and post-operative surgical pain and 10:55:36  
25 opioid sparing, in the context of surgery, 10:55:39



1           What, if anything, do you recall about           10:57:10  
2           that conversation?           10:57:10  
3        A.   I don't recall that meeting specifically.           10:57:17  
4           There were a whole lot of meetings.  I do           10:57:19  
5           generally recall that the entity issue, as           10:57:23  
6           we referred to it as, was part of discussion           10:57:25  
7           with the government.  I don't recall exactly           10:57:28  
8           when that started, but it's a common issue           10:57:30  
9           in all these corporate pleas, and I remember           10:57:32  
10          it was one of the issues that was on the           10:57:36  
11          table kind of from the beginning.           10:57:40  
12                    Because when I joined the effort, my           10:57:41  
13          understanding was that there had been a           10:57:45  
14          proposal that some entity, nonoperating --           10:57:47  
15          some entity in the Pfizer-Pharmacia family,           10:57:54  
16          you know, might plead as part of a           10:58:00  
17          resolution to the case.           10:58:02  
18                    So I don't remember this precise           10:58:04  
19          meeting, December 10th.  There were a lot of           10:58:07  
20          starting -- I can't remember when -- maybe           10:58:09  
21          November and December there was a fair           10:58:12  
22          number and January there was a fair number           10:58:15  
23          until we had some kind of handshake.  So I           10:58:18  
24          just don't remember this meeting.           10:58:20  
25        Q.   Do you have any reason to dispute that the           10:58:21

# EXHIBIT 5

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARY K. JONES, Individually )  
and on Behalf of all others )  
similarly situated, )  
Plaintiff, )  
vs ) No. 10-cv-3864  
PFIZER, INC., HENRY A. ) (AKH)  
MCKINNELL, JEFFREY B. )  
KINDLER, FRANK D'AMELIO, )  
DAVID L. SHEDLARZ, ALAN G. )  
LEVIN, IAN C. READ, JOSEPH )  
FECZKO, KAREN KATEN, J. )  
PATRICK KELLY and ALLEN )  
WAXMAN, )  
Defendants. )  
----- )

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Videotaped Deposition of DENNIS BLOCK,  
taken at 200 Park Avenue, New York,  
New York, commencing at 9:18 a.m.,  
Monday, September 16, 2013, before  
Eileen Mulvenna, CSR, RMR, CRR, Notary Public  
JOB No. 1728698  
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1 investigations? 10:22:27

2 A. Well, they would be present at these 10:22:28

3 meetings that were held at Pfizer. So it would 10:22:31

4 be O'Connor, Posner, the chap from Chicago. 10:22:33

5 What's his name? 10:22:42

6 MR. KAMINSKY: Dan Webb? 10:22:46

7 THE WITNESS: Dan Webb. 10:22:48

8 BY MR. FORGE: 10:22:49

9 Q. Chris Wray, W-R-A-Y? 10:22:53

10 A. Yes. And others. Michael Horowitz. 10:22:56

11 Q. Did you understand that Mr. Horowitz 10:23:02

12 represented Pfizer in connection with the 10:23:03

13 government investigations? 10:23:06

14 A. No. I understood that Cadwalader 10:23:06

15 Wickersham & Taft was one of the law firms that 10:23:09

16 consulted from time to time with Pfizer regarding 10:23:14

17 the criminal case, and probably Michael Horowitz 10:23:19

18 would be the embodiment of the team that 10:23:22

19 consulted. 10:23:25

20 Q. But you weren't part of that team? 10:23:26

21 A. I can't say that either. I went to 10:23:29

22 these meetings as well, so . . . 10:23:31

23 Q. Were you in those meetings as an 10:23:34

24 advisor, or were you in those meetings to receive 10:23:35

25 information? 10:23:38





1 MR. FARINA: Object to form. 10:26:17

2 THE WITNESS: No. 10:26:18

3 BY MR. FORGE: 10:26:19

4 Q. Had -- at any time during your 10:26:19

5 representation of Pfizer, did any of Pfizer's 10:26:22

6 outside counsel or any other Pfizer employee 10:26:24

7 inform you that certain members of Pfizer's sales 10:26:27

8 force submitted to the supervisors false requests 10:26:29

9 indicating that doctors had requested off-label 10:26:34

10 information for Bextra when, in fact, they had 10:26:36

11 not? 10:26:38

12 MR. FARINA: Object to form. 10:26:40

13 THE WITNESS: Should I answer? 10:26:42

14 MR. FARINA: Yes. 10:26:44

15 THE WITNESS: No. There was a time, 10:26:44

16 I believe it was very late, I can't tell 10:26:45

17 you when, when there was an indictment of a 10:26:48

18 female supervisor, I believe in Ohio, for 10:26:53

19 doing something that was characterized as 10:26:56

20 misbranding. And I knew about that when it 10:26:59

21 happened. I think I read it in the 10:27:02

22 newspaper, actually. 10:27:03

23 BY MR. FORGE: 10:27:04

24 Q. Through the class period, did any of 10:27:06

25 Pfizer's outside counsel or any Pfizer employee 10:27:08

1 Q. Either prior to that meeting or -- I 10:42:17  
2 shouldn't do either/or. 10:42:19  
3 Prior to that meeting, were you 10:42:21  
4 aware that the fine for off-label marketing would 10:42:23  
5 be determined largely based on Pfizer's gain from 10:42:28  
6 any off-label promotion of Bextra? 10:42:32  
7 MR. FARINA: Objection to form. 10:42:34  
8 THE WITNESS: I can't answer that 10:42:36  
9 with or without his objection. And I don't 10:42:38  
10 recall, in any event. 10:42:40  
11 BY MR. FORGE: 10:42:41  
12 Q. Same answer after that meeting? 10:42:43  
13 A. Yeah, same answer. 10:42:46  
14 Q. Did anyone at Pfizer, including its 10:42:50  
15 outside counsel, ever inform you of the amount of 10:42:54  
16 Pfizer's revenues -- annual revenues that come 10:42:56  
17 from sales of government-reimbursed 10:42:59  
18 pharmaceuticals? 10:43:02  
19 A. No. 10:43:03  
20 Q. Did you, in your work for Pfizer, 10:43:08  
21 ever use any experts to help you analyze the 10:43:11  
22 amount of gain Pfizer had from off-label 10:43:16  
23 promotion of Bextra? 10:43:20  
24 MR. FARINA: In terms of the 10:43:21  
25 disclosure advice? 10:43:22

1 MR. FORGE: Anytime during the class 10:43:26  
2 period. 10:43:27  
3 MR. FARINA: Well, with respect to 10:43:27  
4 his work with the disclosures? 10:43:28  
5 MR. FORGE: With respect to 10:43:30  
6 anything. 10:43:31  
7 MR. FARINA: We've waived as to the 10:43:31  
8 disclosures. 10:43:34  
9 MR. FORGE: I'm just asking -- I 10:43:34  
10 don't think we're going to get -- I don't 10:43:35  
11 think there's going to be any substance to 10:43:37  
12 get into, so I'm just asking for a 10:43:38  
13 yes-or-no, whether he consulted any 10:43:40  
14 experts. I'm not going to ask him -- we 10:43:41  
15 can -- 10:43:43  
16 MR. FARINA: Okay. 10:43:44  
17 THE WITNESS: I apologize. I forgot 10:43:44  
18 the question. 10:43:45  
19 BY MR. FORGE: 10:43:46  
20 Q. No problem. 10:43:46  
21 Did you ever consult -- during the 10:43:47  
22 class period, did you ever consult any experts 10:43:48  
23 to -- regarding the amount of gain Pfizer had 10:43:52  
24 from the off-label promotion of Bextra? 10:43:56  
25 A. No. 10:43:58

1 Q. Were you aware as to whether or not 10:44:00  
2 Pfizer had consulted experts to come up with that 10:44:01  
3 figure? 10:44:05  
4 A. Pfizer didn't believe there was any 10:44:05  
5 off-label sales of any significance, but I know 10:44:07  
6 the criminal lawyers talked about the issue. I 10:44:11  
7 can't say what they said because I don't recall. 10:44:15  
8 Q. Do you recall -- was there any 10:44:18  
9 expert ever identified for you or expert entity? 10:44:21  
10 A. I wouldn't have paid attention to 10:44:23  
11 that. The answer is I don't know. 10:44:25  
12 Q. Fair to say you certainly weren't 10:44:27  
13 involved in that process of determining -- 10:44:28  
14 A. Absolutely -- 10:44:30  
15 Q. -- the amount of gain? 10:44:30  
16 A. -- yes. 10:44:31  
17 Q. Regarding the destruction or 10:45:01  
18 alteration of documents, Mr. Block, did anyone 10:45:03  
19 other than Mr. Posner tell you what had occurred? 10:45:05  
20 A. I don't recall. 10:45:10  
21 Q. So let's just focus on him. And if 10:45:11  
22 you think somebody else gave you other 10:45:14  
23 information, feel free to add -- 10:45:15  
24 A. At this point, I just don't recall 10:45:17  
25 it. Maybe I'm not even right it was Posner. I'm 10:45:18

1 pretty sure it was -- what was his first name -- 10:45:23  
2 Ethan. I'm pretty sure it was Ethan, but I could 10:45:24  
3 be wrong about that. 10:45:27  
4 Q. Did Mr. Posner or anybody else ever 10:45:28  
5 tell you the number of employees involved? 10:45:30  
6 A. I don't recall. 10:45:32  
7 Q. Did Mr. Posner or anyone else ever 10:45:33  
8 tell you the positions of the employees involved? 10:45:35  
9 A. I don't recall. 10:45:40  
10 Q. Were you told there was a manager 10:45:41  
11 involved? 10:45:43  
12 A. I just don't recall. 10:45:44  
13 Q. Mr. Block, I'm going to hand you 10:46:22  
14 what I marked as Exhibit 502. 10:46:38  
15 (Exhibit 502, Bates Nos. PFE DERIV 10:46:40  
16 00011862 through 63, 11/8/04 Letter to 10:46:40  
17 Bhambhani from Posner, marked for 10:46:40  
18 identification.) 10:46:40  
19 BY MR. FORGE: 10:46:40  
20 Q. The first question is simple: Have 10:46:54  
21 you ever seen this document before? 10:46:56  
22 A. Let me just read it, please -- 10:46:58  
23 Q. Take your time. 10:46:59  
24 A. -- help refresh my recollection. 10:47:00  
25 (Witness peruses the exhibit.) 10:47:04

1 black line on the bottom. 11:29:09

2 MR. FARINA: It's the fourth page. 11:29:10

3 BY MR. FORGE: 11:29:13

4 Q. It's Note 19 -- 11:29:14

5 A. Sure. 11:29:16

6 Q. -- "Legal Proceedings and 11:29:16

7 Contingencies." 11:29:17

8 A. Sure. 11:29:18

9 Q. If you turn to the page after 11:29:23

10 that -- 11:29:27

11 A. Wait a second, please. 11:29:27

12 Q. Sure. 11:29:28

13 A. What year is this? This is 2006. 11:29:29

14 Okay. You want me to go to the next page? 11:29:30

15 Q. The second paragraph continues on to 11:29:34

16 the next page. And if you look at the final 11:29:36

17 sentence of that second paragraph, the sentence 11:29:39

18 begins, "Although we believe." 11:29:43

19 (Witness peruses the exhibit.) 11:29:45

20 A. I'm sorry. It was the last 11:30:05

21 sentence, "We believe" -- 11:30:06

22 Q. Why don't we go back to the start of 11:30:07

23 it. And if I can just ask you, was it your 11:30:08

24 understanding, based on your discussions with the 11:30:11

25 folks at Pfizer, that these two paragraphs, the 11:30:14

1 paragraphs that follow the heading for Note 19 -- 11:30:19  
2 that these two paragraphs were meant to apply to 11:30:22  
3 all of the legal proceedings and contingencies 11:30:26  
4 listed below? 11:30:28  
5 A. Yes. 11:30:29  
6 Q. Regarding that final sentence of 11:30:31  
7 that second paragraph, "Although we believe we 11:30:33  
8 have substantial defenses in these matters, we 11:30:35  
9 could in the future incur judgments or enter into 11:30:37  
10 settlements of claims that could have a material 11:30:42  
11 adverse effect on our result of operations in any 11:30:44  
12 particular period." 11:30:46  
13 I want to break that down a little 11:30:48  
14 bit. 11:30:50  
15 The first part talking about "we 11:30:50  
16 have substantial defenses in these matters," did 11:30:51  
17 you personally and professionally make the 11:30:57  
18 assessment that there were substantial defenses 11:31:02  
19 regarding the government investigations? 11:31:05  
20 A. No. 11:31:08  
21 Q. You relied on others for that -- 11:31:09  
22 A. Yes. 11:31:11  
23 Q. -- conclusion? 11:31:12  
24 That's it. 11:31:26  
25 A. Sorry, what? 11:31:27



1 Q. That's it for that one. 11:31:28  
2 A. I'm sorry. 11:31:29  
3 Q. Mr. Block, did anyone at Pfizer or 11:31:35  
4 any Pfizer representative ever tell you during 11:31:38  
5 the class period or before the class period 11:31:41  
6 approximately how many witnesses were interviewed 11:31:46  
7 in connection with the internal investigation 11:31:49  
8 concerning Bextra off-label marketing? 11:31:54  
9 MR. FARINA: Do you mean by 11:31:57  
10 interviewed by the company? 11:31:59  
11 MR. FORGE: Interviewed by the 11:32:00  
12 company or the company representatives. 11:32:01  
13 THE WITNESS: The answer's no. 11:32:03  
14 BY MR. FORGE: 11:32:03  
15 Q. Did you ever see any memoranda of 11:32:04  
16 interviews? 11:32:08  
17 A. I don't recall. 11:32:09  
18 Q. Were you ever -- were any witnesses 11:32:10  
19 ever identified for you? 11:32:13  
20 MR. FARINA: Objection to form. 11:32:15  
21 THE WITNESS: I don't recall. 11:32:16  
22 BY MR. FORGE: 11:32:17  
23 Q. During the class period or before, 11:32:18  
24 were you ever told what occurred in any of the 11:32:21  
25 interviews? 11:32:24

1 typically would have happened is Doug would have 14:30:54  
2 sent me a draft of something he was writing to 14:30:57  
3 the file. I would have read it. I would have 14:31:00  
4 had questions about it. I would have called him 14:31:03  
5 up and asked him about the questions I would have 14:31:06  
6 had. And then I would have normally helped him 14:31:09  
7 by editing it to reflect what he said to me is 14:31:13  
8 the facts of whatever he was trying to put into 14:31:16  
9 writing. 14:31:19  
10 Q. Did Doug Lankler tell you that he 14:31:20  
11 had personally had a conversation with Sara 14:31:22  
12 Bloom? 14:31:25  
13 A. I don't recall at this stage. 14:31:27  
14 Q. Regarding the statement in the third 14:32:07  
15 paragraph, it's about you, specifically, 14:32:09  
16 "Mr. Block advised that additional disclosure of 14:32:16  
17 these matters" -- and there's a parenthetical -- 14:32:20  
18 "would not be required at this time given the 14:32:21  
19 company's existing disclosures on the Bextra 14:32:24  
20 matter and the current state of the matter." 14:32:25  
21 A. Okay. 14:32:33  
22 Q. On what did you rely -- first of 14:32:33  
23 all, is that accurate? 14:32:35  
24 A. I would assume so. 14:32:38  
25 Q. Unfortunately, I don't have that 14:32:41

1 luxury. 14:32:42

2 A. That's the best I can do. 14:32:44

3 Q. On what did you rely -- taking your 14:32:46

4 assumption, on what did you rely in determining 14:32:50

5 or advising that nothing additional was required? 14:32:54

6 A. I would have had a discussion with 14:32:59

7 Doug based on whatever it was he sent me. I 14:33:01

8 would have asked him questions about what was in 14:33:03

9 whatever piece of paper he sent me. I would try 14:33:07

10 to flush out what the facts were, understand 14:33:10

11 where they were and where they were going. And I 14:33:13

12 would try to help him articulate it the way he 14:33:15

13 believed it was -- it was happening. 14:33:19

14 Q. Without ever seeing the actual 14:33:24

15 evidence on which the government was relying, how 14:33:26

16 were you able to assess the likelihood of the 14:33:30

17 government or Pfizer prevailing in this matter? 14:33:34

18 MR. FARINA: Objection; form. 14:33:36

19 THE WITNESS: I -- I never attempted 14:33:38

20 to be a judge and jury and say it's a good 14:33:41

21 case or a bad case. I know as much about 14:33:45

22 misbranding as probably yourself. It's not 14:33:50

23 my area of interest or expertise. 14:33:55

24 BY MR. FORGE: 14:33:57

25 Q. I know a thing or two about it. 14:34:00

1           A.        I don't know as much as you.  It's           14:34:03  
2           not my area of expertise.  I would rely heavily       14:34:05  
3           on those who were expert, and Doug Lankler really       14:34:07  
4           is expert.  He's one of the most knowledgeable       14:34:11  
5           people I know in this area of law.  And I           14:34:14  
6           would -- he's pretty knowledgeable about the       14:34:19  
7           facts as well.  He is the person in charge of       14:34:21  
8           compliance -- or was the person in charge of       14:34:25  
9           compliance at Pfizer at this time.  And he would   14:34:27  
10          lay out the facts to me.  And from time to time,   14:34:30  
11          I would talk to others in the chain, whether it   14:34:33  
12          was Giampetruzzi -- help me --           14:34:36  
13           Q.        Wessel?                           14:34:39  
14          A.        -- Wessel.  I've got to write it       14:34:40  
15          down a hundred times after I leave here.       14:34:43  
16                    -- Wessel, people like O'Connor and   14:34:45  
17          Ethan Posner and Michael Horowitz and people like   14:34:48  
18          that, who had much greater understanding and   14:34:52  
19          expertise in the area, to understand the facts   14:34:55  
20          and what was happening in the case.           14:34:58  
21                    Remember, Fox and I were hearing on   14:35:04  
22          a pretty regular, quarterly basis from the inside   14:35:07  
23          lawyers, occasionally an outside counsel would be   14:35:11  
24          with them, who were handling the matter.  So we   14:35:13  
25          had some residue of understanding, you know, that   14:35:15

1 built up over -- this thing went on forever. It 14:35:18  
2 goes back to '04 or '3. And we were talking on a 14:35:23  
3 quarterly basis. And whether it was Carl Wessel 14:35:26  
4 or Doug -- 14:35:31  
5 Q. Now you lost Giampetruzzi. 14:35:36  
6 A. I could never lose Giampetruzzi. 14:35:38  
7 We were always hearing what happened 14:35:41  
8 between quarter to quarter from them. And they 14:35:44  
9 were at the meetings, pretty knowledgeable about 14:35:46  
10 what was going on. Where there was an open issue 14:35:50  
11 or they had a question, they would drag in one of 14:35:51  
12 the outside people who could fill in the gap. So 14:35:53  
13 we had a pretty good understanding from those 14:35:57  
14 chaps as to what was transpiring. 14:36:00  
15 MR. FORGE: This next document is 14:36:39  
16 Exhibit 518. 14:36:40  
17 (Exhibit 518, Bates Nos. PFE-JONES 14:36:42  
18 00043414 through 15, E-mail dated 10/17/08 14:36:42  
19 from Fox to Block with attachment, marked 14:36:42  
20 for identification.) 14:36:42  
21 (Witness peruses the exhibit.) 14:36:58  
22 BY MR. FORGE: 14:36:58  
23 Q. You can see, Mr. Block, in the first 14:37:09  
24 paragraph -- 14:37:11  
25 A. Let me just read it and then you can 14:37:13

# EXHIBIT 6

1  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- )  
 MARY K. JONES, Individually )  
 and on Behalf of all others )  
 similarly situated, )  
 )  
 Plaintiff, ) No. 10-cv-3864  
 ) (AKH)  
 )  
 vs )  
 )  
 PFIZER, INC., HENRY A. )  
 MCKINNELL, JEFFREY B. )  
 KINDLER, FRANK D'AMELIO, )  
 DAVID L. SHEDLARZ, ALAN G. )  
 LEVIN, IAN C. READ, JOSEPH )  
 FECZKO, KAREN KATEN, J. )  
 PATRICK KELLY and ALLEN )  
 WAXMAN, )  
 )  
 Defendants. )  
 ----- )

September 26, 2013, 9:15 a.m.

VIDEOTAPED DEPOSITION of LAWRENCE FOX,  
in the above-captioned matter, held at the  
offices of DLA Piper, 1251 Avenue of the  
Americas, New York, New York, before Eileen  
Mulvenna, CSR/RMR/CRR, Certified Shorthand  
Reporter, Registered Merit Reporter, Certified  
Realtime Reporter and Notary Public of the State  
of New York.

Job No. 1717279

Pages 1 - 235

1           A.           Yes.    That's the MDL, yes.

2           Q.           Mr. Fox, were you involved with the  
3           internal investigation -- any internal  
4           investigations involving Zyvox?

5                       MR. FARINA:   Involved in the actual  
6           investigations themselves?

7                       MR. FORGE:   Yes.

8           BY MR. FORGE:

9           Q.           Were you involved in the internal  
10          investigations?

11          A.           No.    I am a securities lawyer.   I'm  
12          not a litigator or a GI attorney.

13          Q.           Were you told whether or not any  
14          employees were interviewed as part of an internal  
15          investigation concerning Zyvox?

16          A.           I and our outside counsel at the  
17          time, Dennis Block, had quarterly conference call  
18          updates with our internal GI attorneys that  
19          briefed us on the status of our government  
20          investigations.   And, also, in between the  
21          scheduled quarterly ones, which were timed in  
22          connection with our periodic SEC reports, we also  
23          would get updates as appropriate.

24                       That is the sort of information that  
25          I would expect was and the type of information



1 that indeed was provided to Dennis and me; but I  
2 can't tell you I remember that specifically, no.

3 Q. So do you know -- as you sit here  
4 today, do you know whether or not you were  
5 informed as to whether any employees were  
6 interviewed as part of an internal investigation  
7 concerning Zyvox?

8 A. I do not recall.

9 Q. Do you recall if any employees who  
10 were interviewed were identified for you?

11 A. Well, if I don't recall the  
12 interview, I don't recall that they were  
13 identified. No, don't recall.

14 Q. Do you recall receiving any  
15 interview memoranda concerning employees  
16 interviewed as part of the internal  
17 investigation?

18 A. I -- I do not recall. But, again,  
19 I'm -- I'm a securities lawyer and do not get  
20 involved in the investigations themselves.

21 Q. So do you defer to others to conduct  
22 the investigations?

23 A. I don't defer to anybody. It's  
24 their jobs. Our -- our GI attorneys and outside  
25 counsel, of course, conduct the investigations or

1 handle civil litigation, whatever it happens to  
2 be. They -- they then -- our internal lawyers  
3 then inform me and our outside disclosure  
4 counsel, Dennis, appropriately so we can make  
5 informed disclosure judgments.

6 But I am not involved in litigation.  
7 If I were, I'd have no time to do my job as a  
8 securities lawyer.

9 Q. Were you told whether any e-mails  
10 were searched as part of an internal  
11 investigation concerning Zyvox?

12 A. I do not recall. But, obviously, I  
13 know, as a lawyer, that documents are sought in  
14 any -- virtually any investigation.

15 Q. Did you receive any sort of summary  
16 concerning e-mail searches involving internal  
17 investigations?

18 A. No, nor would I have expected to be.

19 MR. FARINA: Just -- there are  
20 moments when you are talking over each  
21 other.

22 So, Larry, if you can wait to make  
23 sure that Jason has finished the question,  
24 and he'll wait until he makes sure you  
25 finished your answer.

1 THE WITNESS: No, but I also  
2 understand that defining the class of sales  
3 as a discrete class that might have been  
4 the result of off-label promotion is a  
5 very, very difficult thing to do.

6 BY MR. FORGE:

7 Q. Did you have any understanding as to  
8 whether Pfizer engaged any experts to make that  
9 type of determination?

10 A. I do not recall, sitting here today;  
11 but, again, that is the sort of information that  
12 I would expect our GI attorneys to have informed  
13 Dennis and me about at the time.

14 Q. You don't recall ever receiving that  
15 kind of information?

16 A. I don't recall, sitting here today,  
17 no.

18 Q. Were you ever informed of the total  
19 gross sales Pfizer had of Bextra?

20 MR. FARINA: Total irrespective of  
21 how the drug was promoted?

22 MR. FORGE: Yes.

23 THE WITNESS: Sure. They were in  
24 our financial statements.

25

1 BY MR. FORGE:

2 Q. Were you ever informed of how many  
3 of those sales were attributed to off-label uses?

4 A. No.

5 Q. Were you ever informed of the  
6 process of attempting to calculate Pfizer's gain  
7 from the off-label promotion of Bextra?

8 MR. FARINA: Objection to the form.

9 THE WITNESS: I do not recall.

10 BY MR. FORGE:

11 Q. I take it then you were not involved  
12 in any way in that process of making that  
13 determination?

14 A. That is correct.

15 Q. Were you involved in any way in any  
16 analysis of potential fines that Pfizer would  
17 face from the off-label promotion of Bextra?

18 MR. FARINA: Objection to form.

19 THE WITNESS: No. No.

20 BY MR. FORGE:

21 Q. Were you informed of any analyses  
22 concerning potential fines that Pfizer would face  
23 as a result of the off-label promotion of Bextra?

24 A. Again, sitting here now, I do not  
25 recall; but that is the type of information I

1 expect I would have been informed about, and  
2 Dennis, by our GI attorneys.

3 Q. You have no idea whether, with  
4 respect to Bextra's off-label promotion, you  
5 were, in fact, so informed?

6 A. I have no specific recollection now,  
7 no.

8 Q. Do you recall ever being told that  
9 the amount of gain that Pfizer realized from the  
10 off-label promotion of Bextra was over  
11 \$660 million?

12 MR. FARINA: Objection to form.

13 THE WITNESS: Yeah, I do not recall,  
14 no.

15 BY MR. FORGE:

16 Q. Does -- that figure, over  
17 \$660 million in gains from the off-label  
18 promotion of Bextra, is that consistent or  
19 inconsistent with your understanding of the  
20 extent of Pfizer's off-label promotion of Bextra?

21 MR. FARINA: Objection to form.

22 THE WITNESS: I -- I don't  
23 understand the question. I don't want to  
24 respond to a question I don't understand  
25 to --

1           A.           Well, again, the potential dollar  
2           exposure of the company in this matter, any other  
3           matter, GI matter for that matter, is the very  
4           sort of information that I would expect our GI  
5           attorneys to inform Dennis and me of. And they  
6           indeed did, but I'm not going to tell you I  
7           remember any specific calculations.

8           Q.           Did you ever attempt to estimate  
9           what the potential fines were for Pfizer?

10          A.           No. I rely on our experts for that.

11          Q.           What experts?

12          A.           Our GI attorneys.

13          Q.           I'm sorry?

14          A.           I rely on our GI attorneys to  
15          provide that sort of information to me and to  
16          Dennis.

17          Q.           How would they provide that  
18          information to you, if they did?

19          A.           In the calls that I referred to  
20          before. Because, as I said, every quarter we'd  
21          have a scheduled call with them. And in the  
22          interim, as appropriate, we would have calls,  
23          Dennis and I, with our GI attorneys, and/or they  
24          would send us e-mails or call us individually or  
25          send us, at times, documents.

1 Q. During the class period, did you  
2 know that there were sections within the United  
3 States sentencing guidelines that set forth a  
4 formula for determining the amount of a fine for  
5 a corporate criminal plea?

6 MR. FARINA: Objection to form,  
7 foundation.

8 THE WITNESS: I do not recall.

9 BY MR. FORGE:

10 Q. Do you recall ever asking any of the  
11 experts, any of the GI lawyers or the outside  
12 counsel criminal lawyers, whether they had run  
13 any guidelines calculations for Bextra?

14 A. I certainly would have asked, if we  
15 weren't told, what our current thinking was in  
16 terms of dollar exposure. How that -- I would  
17 not have asked about the specific methodologies  
18 used to arrive at any such number.

19 Q. Did you have any basis to assess the  
20 reliability of the responses you would have  
21 received if you had asked, what is our exposure?

22 A. Second guessing the advice from GI  
23 attorneys on our potential exposure?

24 Q. Yes.

25 A. No.

1 Q. I apologize for the -- the  
2 repetition, but regarding Pfizer's legal  
3 proceedings disclosure regarding the government  
4 investigations, is it your impression that you  
5 were the only lawyer advising Pfizer?

6 MR. FARINA: Objection to form.

7 THE WITNESS: No.

8 BY MR. FORGE:

9 Q. Was it your impression that you and  
10 Dennis Block were the only lawyers advising  
11 Pfizer?

12 A. Well, Dennis Block -- I was the  
13 in-house securities lawyer, the primary in-house  
14 securities lawyer providing advice; and Dennis  
15 was our outside counsel providing securities law  
16 advice. We had a very -- we had then and have  
17 now a very, excuse me, rigorous process with  
18 respect to our quarterly legal proceedings  
19 disclosure. And that process includes, among  
20 others, the head of litigation and our general  
21 counsel and lots of other folks. So they are  
22 part of the process.

23 They are not securities lawyers,  
24 Dennis and I are; but head of litigation and our  
25 general counsel certainly were part of the



1 process and part of the group that would  
2 ultimately have to be satisfied with our  
3 disclosures before we issued our Ks or Qs.

4 Q. Did you understand during the class  
5 period that you and Dennis Block were the most  
6 knowledgeable lawyers involved in this process  
7 concerning the government investigations?

8 MR. FARINA: Objection to form.

9 Can you read back the question.

10 (Record read.)

11 THE WITNESS: We -- we were the  
12 lawyers -- we were the securities lawyers  
13 who were advising the company on disclosure  
14 obligations. We certainly were not the  
15 most knowledgeable about the underlying  
16 litigation. That's why we have litigators.

17 BY MR. FORGE:

18 Q. So was the advice you were rendering  
19 only as reliable as the information you were  
20 receiving from the experts and outside counsel?

21 MR. FARINA: Objection to form.

22 THE WITNESS: We assumed, and I  
23 think with good reason given the nature of  
24 the people that we were dealing with, the  
25 reliability of the information that we were

1           being given. But, yes, we were relying on  
2           our GI counsel to advise us about the  
3           status of the litigation, judgments, some  
4           possible outcomes and the like.

5       BY MR. FORGE:

6           Q.       So, for example, in terms of any --  
7           what you could characterize, to the extent you  
8           can characterize it, as being advice concerning  
9           the disclosure that "We believe we have  
10          substantial defenses in these matters," is that  
11          advice that you actually independently rendered,  
12          or is that advice that is simply saying these  
13          experts say we have substantial defenses,  
14          therefore, we have substantial defenses?

15                 MR. FARINA: That was a lot in that  
16                 question. Can you either restate it or  
17                 I'll have her read it back.

18                 MR. FORGE: Steve, why don't you  
19                 give him a chance to answer it first. Just  
20                 because you're confused doesn't mean the  
21                 witness is.

22                 MR. FARINA: Well, I may be a little  
23                 slower than the rest of you, but I --

24                 MR. FORGE: It's not appropriate,  
25                 though, to be interrupting each time

1           because -- I mean, reading it back puts us  
2           back in the same position we were in  
3           before.

4                   MR. FARINA: I think the witness is  
5           entitled to a clear question and entitled  
6           to make sure that he understands it. And  
7           that question was a little convoluted, at  
8           least in my view. So I ask that you either  
9           restate it or have it read back.

10                   MR. FORGE: Let me restate. And if  
11           you're confused in any way, let me know.

12 BY MR. FORGE:

13           Q.       But with respect to the disclosure  
14           that "We believe we have substantial defenses in  
15           these matters," is that the type of information  
16           that you, Larry Fox, independently researched and  
17           determined to be accurate?

18                   MR. FARINA: Objection; form.

19                   THE WITNESS: No.

20 BY MR. FORGE:

21           Q.       So in terms of the accuracy and  
22           completeness of that disclosure, was the extent  
23           of your role to collect that information from the  
24           people who were knowledgeable as to the defenses  
25           in that matter?

1           A.           My role and Dennis' role was to  
2           speak about the matter with our GI counsel, to  
3           have them brief us, to have the opportunity to  
4           ask questions, which indeed we did, and then to  
5           either say this or not say this, depending on  
6           what we heard. If I had to independently assess  
7           our defenses in all of our litigation, I couldn't  
8           spend five seconds doing the job that I do at  
9           Pfizer. I'm a securities lawyer, not a  
10          litigator.

11          Q.           So as you sit here today, do you  
12          have any personal knowledge or expertise to tell  
13          us whether or not there were, in fact,  
14          substantial defenses to those matters?

15                   MR. FARINA: Objection; form.

16          BY MR. FORGE:

17          Q.           And I'm referring to Exhibit 625.

18                   MR. FARINA: Objection; form. It's  
19          a compound question.

20                   THE WITNESS: This statement is  
21          based on -- and this statement applies to  
22          all of our litigation, not just to the  
23          matter we're talking about here.

24                   This statement is based on the  
25          information provided to me, to Dennis Block

1           during that era, by the respective in-house  
2           counsel, whether GI counsel or counsel in  
3           civil litigation, on the matter.

4                       We, Dennis and I, would, with  
5           regular periodic quarterly conference  
6           calls, separately with our GI lawyers and  
7           our civil litigation lawyers, have extended  
8           conversations, educate ourselves from -- by  
9           them about the status of the litigation,  
10          get their views on likely outcomes,  
11          potential risks and the like.

12                      But at the end of the day, yes, we  
13          had to rely on our experts to describe to  
14          us the strengths of our defenses.

15       BY MR. FORGE:

16                      Q.          So with respect to this type of  
17          disclosure, were you -- in your role, were you  
18          essentially saying, according to our GI lawyers  
19          and our experts, we have substantial defenses in  
20          these matters?

21                      MR. FARINA:   Objection; form.

22                      THE WITNESS:   Was I saying it to  
23          whom?

24       BY MR. FORGE:

25                      Q.          Internally.   To the client.

1           A.           I don't know in what context that  
2 would come up.

3           Q.           Who's your client?

4           A.           Pfizer, Inc.

5           Q.           Okay. So in rendering -- did you  
6 render any legal advice regarding the  
7 completeness of -- the completeness and accuracy  
8 of Pfizer's disclosures?

9                       MR. FARINA: The disclosures  
10 generally?

11                      MR. FORGE: Yes.

12                      THE WITNESS: The disclose -- I  
13 certainly believed, and it was an informed  
14 belief, that our disclosures were complete  
15 and accurate to the extent required by the  
16 securities laws.

17 BY MR. FORGE:

18           Q.           Did you render any legal advice  
19 along those lines?

20           A.           Sure.

21           Q.           Did you -- narrowing it down now,  
22 did you render any legal advice regarding the  
23 completeness and accuracy of this part of the  
24 Form 10-K, "We believe we have substantial  
25 defenses in these matters"?

1 MR. FARINA: Objection to form.

2 If you're going to talk about the  
3 completeness of the disclosure, I would ask  
4 you to read the entire disclosure rather  
5 than just excerpted words from the  
6 disclosure. That's part of a sentence.  
7 It's the first clause of a sentence.

8 BY MR. FORGE:

9 Q. The question stands, Mr. Fox. Did  
10 you render any legal advice -- let's stick with  
11 accuracy then.

12 Did you render any legal advice  
13 regarding the accuracy of the statement "We  
14 believe we have substantial defenses in these  
15 matters"?

16 A. I would not have said that I am --  
17 that this is my view. Nobody in the company  
18 would have ever thought to even ask me whether I  
19 have personal knowledge of the strength of our  
20 defenses in any litigation.

21 Q. Did you render any legal advice to  
22 Pfizer regarding whether or not the -- there was  
23 a reasonable probability of loss from the  
24 government investigations?

25 MR. FARINA: You're asking him about

1 the FAS-5 component for the purposes of  
2 reserves?

3 MR. FORGE: Sure.

4 THE WITNESS: I did not -- I was not  
5 involved at all in the process of  
6 determining whether reserves should be  
7 taken by Pfizer for this or any other  
8 matter.

9 BY MR. FORGE:

10 Q. Mr. Fox, I'm going to hand you  
11 what's previously been marked as Exhibits 504 and  
12 286.

13 (Plaintiffs' Exhibit 504, Previously  
14 marked.)

15 (Defendants' Exhibit 286, Previously  
16 marked.)

17 (Witness peruses the exhibits.)

18 BY MR. FORGE:

19 Q. As you can see, Mr. Fox, these are,  
20 respectively -- 504, response and objections to  
21 set of interrogatories; and, 286, a supplement to  
22 the response and objections.

23 Have you seen these documents  
24 before?

25 A. First let me clarify, in connection



1 A. I do.

2 Q. Does that refresh your recollection  
3 as to when you may have learned about this issue,  
4 the destruction of documents?

5 A. I cannot say exactly when I -- when  
6 I knew that information.

7 Q. Sitting here today, do you believe  
8 that you would have known that information in  
9 2005?

10 MR. FORGE: Objection as to form and  
11 foundation.

12 THE WITNESS: Yes. As I indicated  
13 before, this is certainly the type of  
14 information that I would have expected our  
15 GI attorneys to inform Dennis Block and me  
16 about on a timely basis. And I was  
17 informed about it, but I don't remember  
18 exactly when.

19 MR. FARINA: I have no further  
20 questions. Thank you.

21 EXAMINATION (CONT'D.)

22 BY MR. FORGE:

23 Q. Mr. Fox, are you familiar with the  
24 expression "garbage in/garbage out"?

25 A. I am.

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1 Q. What does it mean to you?

2 A. It means if you put something in  
3 that is garbage, that's what's going to come out  
4 the other end of it.

5 Q. Given your lack of experience in  
6 criminal cases, lack of experience concerning  
7 health care fraud, lack of experience concerning  
8 internal investigations, and your lack of  
9 involvement in the investigations related to the  
10 government investigations, did you have --  
11 personally have any way of verifying whether you  
12 were receiving all relevant information regarding  
13 the government investigations?

14 MR. FARINA: Objection to form,  
15 foundation.

16 THE WITNESS: I am -- as I've  
17 indicated many times, I am a securities  
18 lawyer. I am not a litigator. It is not  
19 my job, it is not the job of any securities  
20 lawyer in any company in the country to  
21 look at the evidence -- the underlying  
22 evidence, make analyses, interview  
23 witnesses, look at interviews of witnesses  
24 in connection with making a securities law  
25 judgment. If we did that, we could not do

1 our own jobs.

2 I am fully confident in the  
3 experience and the expertise of our  
4 in-house GI attorneys, Doug in particular,  
5 a former prosecutor. And I relied on them  
6 for that. And as I've indicated many  
7 times, we had scheduled and unscheduled  
8 calls with them, "we" meaning Dennis Block  
9 and I, to fully inform us of what we needed  
10 to know to make our securities law  
11 judgment. I'm not a litigator.

12 BY MR. FORGE:

13 Q. Given your lack of experience and  
14 your lack of involvement in the government  
15 investigations, did you have any way of verifying  
16 whether you received all relevant information  
17 concerning the government investigations?

18 A. I did not --

19 MR. FARINA: Objection to form and  
20 foundation.

21 Go ahead.

22 THE WITNESS: I did not verify or  
23 fail to verify, for that matter,  
24 information that was communicated to me by  
25 our in-house GI attorneys.

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1 BY MR. FORGE:

2 Q. That's not what I'm asking you.

3 I'm asking you, given your lack of  
4 experience and your lack of involvement in the  
5 government investigations, did you have any way  
6 of verifying whether you were receiving all of  
7 the relevant information concerning the  
8 government investigations?

9 MR. FARINA: Objection; form,  
10 foundation.

11 I'm not certain that that's a  
12 different question than what you've already  
13 asked.

14 THE WITNESS: Yeah, I just answered  
15 the question. I did not verify or seek to  
16 verify the information that our GI attorney  
17 was giving me.

18 BY MR. FORGE:

19 Q. I'm not asking you to verify the  
20 information they gave you.

21 I'm asking you, did you have any way  
22 of verifying that the information they gave you  
23 was all of the information that was relevant to  
24 the government investigations?

25 A. The answer to that question is no,

1 but I did have confidence in the experience and  
2 expertise and integrity of our GI attorneys who  
3 provided the information to Dennis and me.

4 Q. You referenced -- you spoke about  
5 the reference in the introductory paragraphs of  
6 the government investigation or the contingency  
7 section, which specifically referred to the  
8 possible criminal charges; is that right?

9 A. Yes.

10 Q. Did you set forth any information  
11 that would enable an investor to distinguish the  
12 likelihood of criminal charges in the Bextra case  
13 versus all of the others disclosed and  
14 undisclosed that fell beneath that paragraph?

15 MR. FARINA: Objection; form.

16 THE WITNESS: That disclosure was in  
17 the introductory paragraph to our  
18 general -- to our GI section and applied to  
19 all -- including in particular Bextra -- it  
20 applied to all of them.

21 BY MR. FORGE:

22 Q. And it did not distinguish between  
23 any of them; is that correct?

24 A. The possibility of criminal charges  
25 the possibility of substantial fines and/or civil

1 penalties applied to all of the investigations,  
2 yes.

3 Q. And the level of likelihood of  
4 possible criminal fines and criminal penalties  
5 was not distinguished between all of them;  
6 correct?

7 MR. FARINA: Objection; form.

8 THE WITNESS: Correct, correct.

9 BY MR. FORGE:

10 Q. At any time during the class period,  
11 did anyone ever tell you the percentage of the  
12 time that a pharmaceutical company receives a  
13 target letter and does not wind up having to pay  
14 a financial penalty to the government?

15 MR. FARINA: Objection; form.

16 THE WITNESS: I do not recall.

17 BY MR. FORGE:

18 Q. Did you ever ask anyone what  
19 percentage of the time a pharmaceutical company  
20 receives a target letter concerning off-label  
21 promotion and the matter does not end up with the  
22 company having to pay a fine or some sort of  
23 penalty?

24 A. I do not recall.

25 Q. You might have asked that question?

# EXHIBIT 7

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARY K. JONES, )  
Individually and on )  
Behalf of all Others ) No. 10-cv-3864  
Similarly Situated, ) (AKH)  
Plaintiff, )  
vs. )  
PFIZER, INC., HENRY A. )  
MCKINNELL, JEFFREY B. )  
KINDLER, FRANK D'AMELIO, )  
DAVID L. SHEDLARZ, )  
ALAN G. LEVIN, IAN C. )  
READ, JOSEPH FECZKO, )  
KAREN KATEN, J. PATRICK )  
KELLY and ALLEN WAXMAN, )  
Defendants. )  
----- )

Deposition of ALAN LEVIN, held at the  
offices of DLA Piper, 1251 Avenue of the  
Americas, New York, New York, before Laurie A.  
Collins, a Registered Professional Reporter  
and Notary Public of the State of New York,  
taken on September 23, 2014, at 2:06 p.m.

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1                   And then based on those collective  
2                   discussions, we conclude as to the accuracy and  
3                   validity of the disclosures. And I think we made  
4                   appropriate disclosure and accurate disclosure.

5                   Q.       And that's kind of what I was getting       04:47:28  
6                   at, but I just want to make sure. You're not  
7                   saying that the disclosures concerning the Bextra  
8                   investigation were reviewed by investigation  
9                   counsel, are you?

10                   MS. MacDONALD:   Objection to form.               04:47:47

11                   A.       I don't know whether they were or not.  
12                   That would have been part of the process that our  
13                   legal folks would have undertaken as part of their  
14                   responsibilities in connection with disclosure.

15                   Q.       But what I'm getting at, at least as to       04:48:01  
16                   your -- you have no independent knowledge as to  
17                   whether or not they were run -- the disclosures  
18                   were run by investigation counsel?

19                   MS. MacDONALD:   Objection to form.

20                   Have we defined investigation counsel, or               04:48:11  
21                   would you like to?

22                   Q.       Let's first answer the question, as you  
23                   have been using the phrase, and then we can --

24                   A.       Well, when I think of investigation  
25                   counsel, I think of Doug Lankler as well as our       04:48:22

1 outside counsel. And Doug would have had ample  
2 opportunity, as did other professionals within the  
3 legal division, to review our filings and to  
4 participate in those meetings.

5 Q. Are you aware of the identities of the 04:48:34  
6 lawyers on whom you're relying as part of your  
7 reliance on counsel defense in this case?

8 MS. MacDONALD: Objection to form.

9 Caution you not to reveal  
10 communications between you and counsel in this 04:48:47  
11 case.

12 THE WITNESS: I'm sorry?

13 MS. MacDONALD: You shouldn't reveal  
14 any communications that you have had with your  
15 counsel in connection with this matter. I 04:48:53  
16 don't think you can answer that question  
17 without doing so, but --

18 MR. FORGE: Oh, yeah, you can.

19 Q. I'm asking you point-blank: On what  
20 counsel do you -- are you claiming to have relied 04:49:02  
21 on your defense in this case?

22 MS. MacDONALD: Also note that -- I  
23 object. He has also testified to this  
24 substantially in his prior deposition.

25 A. Covington & Burling. 04:49:17

1 Q. Any others?

2 A. My recollection was that it was  
3 primarily Covington & Burling. I don't recall if  
4 there were any others.

5 MR. FORGE: Can I get a time check? 04:49:42

6 Amanda, I know you have it to the second.

7 MS. MacDONALD: I think you have like  
8 ten minutes.

9 MR. FORGE: Can we go off the record  
10 for a second? 04:49:52

11 THE VIDEOGRAPHER: We're going off the  
12 record. The time is 4:50 p.m.

13 (Pause.)

14 THE VIDEOGRAPHER: We are back on the  
15 record. The time is 4:58 p.m. 04:57:40

16 Q. Mr. Levin, while we were off the  
17 record, did you have the opportunity to review  
18 Exhibit 988?

19 A. Yes, I did.

20 Q. If I could, sir, please ask you to 04:57:55

21 direct your attention to Slide 7. If you look at  
22 that slide, you see that on the left-hand side  
23 there is an FDA filed list of indications,  
24 dosages, and data supporting, and on the right-  
25 hand side is FDA approved. 04:58:18

1 Is that information on that slide  
2 consistent with your understanding of what Pfizer  
3 had requested and what the FDA had approved  
4 regarding Bextra?

5 MS. MacDONALD: Objection to form, lack 04:58:30  
6 of foundation. And also I don't know what  
7 this document is. It's dated December 10th,  
8 2001. It's called EMC presentation. There's  
9 no cover e-mail.

10 So with that objection, you may answer 04:58:42  
11 the question.

12 A. I can't really say. At the time this  
13 was all going on, I was either in corporate  
14 finance or -- I think I was in corporate finance.  
15 So I wouldn't have been close enough to our R&D 04:58:57  
16 organization in terms of what was being filed and  
17 specific doses that would be involved.

18 Q. I apologize, I should have clarified.  
19 When you took over as CFO and started attending  
20 litigation meetings and started making disclosures 04:59:10  
21 regarding legal proceedings and contingencies,  
22 were you aware of the information in let's say the  
23 first bullet point on this document that Pfizer  
24 had requested the six indications there on the  
25 left-hand column but had received approval only 04:59:31

1 on which I was a member, it would have come up  
2 disclosure committee meetings in connection with  
3 our SEC filings, certification meetings in  
4 connection with our SEC filings, audit committee  
5 meetings in connection with our overall 05:20:02  
6 governance.

7 Q. And during those discussions that  
8 you've referenced, did you have the opportunity to  
9 ask questions of Mr. Lankler with regard to the  
10 Bextra investigation? 05:20:10

11 A. Yes, I did.

12 Q. And did you believe that he provided  
13 you answers to any questions that you did ask?

14 MR. FORGE: Object as to form and  
15 foundation. 05:20:20

16 A. Yes, I've always felt that my  
17 conversations with Doug were fulsome and complete.

18 Q. And counsel asked you if you  
19 specifically requested to review particular pieces  
20 of documentary evidence. Do you recall that? 05:20:35

21 A. Yes.

22 Q. Would you typically ask Mr. Lankler to  
23 review pieces of evidence in connection with the  
24 Bextra investigation?

25 A. No. You know, again, I think that 05:20:47

1 Pfizer had very robust practice of very extensive  
2 internal investigation that led to our self-  
3 reporting this issue. That investigation was done  
4 in connection with Covington & Burling, who are  
5 very capable counsel. And Doug himself was a very 05:21:06  
6 capable deputy compliance officer at that time.

7 So my belief is you let people do the  
8 work that they are trained and competent to do.  
9 As the CFO of the company, I have a lot of  
10 decisions to make and a lot of things to review, 05:21:22  
11 and I'm very happy to be reliant on people whose  
12 judgment I trust and I believe are competent in  
13 the course of executing their responsibilities.

14 Q. Switching gears, you've testified at  
15 length in this proceeding before. I want to read 05:21:37  
16 you a piece of testimony in your earlier  
17 deposition and then ask you some questions about  
18 it. So I will read slowly.

19 You were asked at page 299 of your  
20 deposition: How did you get comfortable that the 05:21:52  
21 disclosures complied with the securities laws?  
22 You replied: Again, I am not a lawyer, so this is  
23 an area where I am highly reliant on internal and  
24 external disclosure counsel in the investigation.  
25 So Larry Fox and Dennis Block did a fine job of 05:22:07

1 evaluating the quality of our disclosures against  
2 security laws.

3 Then you were asked: Did you rely on  
4 the advice you received from Mr. Block in  
5 executing your certification? And you said, Yes, 05:22:19  
6 I did. He was one of the sub certifiers, and he  
7 participated at certification meetings.

8 Do you stand by that testimony, sir?

9 A. Yes, I do.

10 Q. So with regard to Pfizer's securities 05:22:31  
11 disclosures which are at issue in this case, which  
12 counsel are you relying upon in connection with  
13 the reliance of counsel defense that Mr. Forge was  
14 asking you about?

15 A. So securities disclosures would be our 05:22:44  
16 disclosure counsel, and that would be Larry Fox  
17 internally and Dennis Block, who at that time was  
18 at Cadwalader on the external side.

19 Q. And you relied upon them as to the  
20 adequacy of Pfizer's disclosures; correct? 05:23:02

21 A. Correct.

22 MS. MacDONALD: No further questions  
23 from us.

24 Jason, now?

25 EXAMINATION CONTINUED BY 05:23:10

1 MR. FORGE:

2 Q. Mr. Levin, you just testified, at your  
3 counsel's urging, about Mr. Block and Mr. Fox.  
4 Did you understand Mr. Block to be a criminal  
5 defense lawyer? 05:23:23

6 MS. MacDONALD: Objection to form.

7 Q. Back when you were CFO?

8 A. No, my understanding is that he was a  
9 securities lawyer.

10 Q. Did you understand Mr. Block to have 05:23:33  
11 experience as a criminal defense lawyer?

12 A. Again, I understood Dennis to be a  
13 securities lawyer whom we relied on with respect  
14 to disclosure.

15 Q. Did you understand Mr. Block to have 05:23:50  
16 any experience in criminal law?

17 MS. MacDONALD: Objection to form,  
18 asked and answered. You're over your time.

19 MR. FORGE: No, it was not.

20 MS. MacDONALD: What? Not asked and 05:24:01  
21 answered?

22 MR. FORGE: Yeah.

23 MS. MacDONALD: It's late. You're over  
24 your time. We'll stay for another question or  
25 two, but then we're done. 05:24:10



1 MR. FORGE: No, we're not. You decided  
2 to ask questions, so I am too.

3 MS. MacDONALD: You're over your time.

4 Q. Did you understand Mr. Block to have  
5 any experience in criminal law? 05:24:12

6 A. I don't know that he does or doesn't.

7 Q. Did you understand Mr. Fox to have any  
8 experience in criminal law?

9 A. I don't believe he does.

10 Q. Did you understand Mr. Block to be 05:24:23  
11 qualified to opine as to whether or not Pfizer had  
12 substantial defenses to the government's Bextra  
13 investigation?

14 MS. MacDONALD: Objection to form.  
15 That misstates everything we've been talking 05:24:39  
16 about here today with regard to Mr. Block's  
17 opinion. Objection to form. You're out of  
18 time.

19 Answer the question and let's stop.

20 A. As I've said previously, I believe that 05:24:50  
21 our process is robust, and I believe that Dennis  
22 and Larry, in their capacities as disclosure  
23 counsel for us, would have consulted with Doug  
24 Lankler and Covington & Burling, who were  
25 investigation counsel for us, in understanding 05:25:06

1 substantial defenses.

2 That determination of substantial  
3 defenses would have been an opinion that  
4 investigation counsel provided. They would have  
5 incorporated that into disclosure as part of their 05:25:20  
6 role as disclosure counsel, and that disclosure  
7 would in turn have been vetted through our  
8 disclosure process in terms of disclosure  
9 certifications and disclosure committee meetings  
10 and certification committee meetings. 05:25:35

11 Q. That's kind of what I'm getting at, but  
12 I just want to be more precise. Hopefully if I'm  
13 more precise with my question, you can be more  
14 precise with your answer.

15 I'm asking whether you understood 05:25:45  
16 Mr. Block to be qualified on his own as a lawyer  
17 to -- whether he was qualified on his own as a  
18 lawyer to opine whether or not Pfizer had  
19 substantial defenses to the government's Bextra  
20 investigation. 05:26:03

21 MS. MacDONALD: Objection to form,  
22 asked and answered.

23 A. I don't have a view. I don't believe I  
24 am qualified to make that assessment. I can only  
25 tell you that in the way our process worked Dennis 05:26:11

1 as well as inside disclosure counsel were  
2 conferring with outside and inside investigation  
3 counsel and that it was outside and inside  
4 investigation counsel who were driving a view as  
5 to substantial defenses. 05:26:27

6 Q. So it sounds to me -- but I obviously  
7 have to hear it from you -- that you were relying  
8 on Mr. Block to rely on other lawyers?

9 MS. MacDONALD: Objection to form.

10 A. I was relying on both Dennis as well as 05:26:43  
11 Larry Fox to have the appropriate conversations  
12 with inside and outside investigation counsel so  
13 that they could in turn draft disclosures that  
14 could be vetted internally.

15 Q. Because without their consultation with 05:27:01  
16 other lawyers, Dennis Block and Larry Fox were not  
17 qualified to provide opinions as to whether or not  
18 Pfizer had substantial defenses to the Bextra  
19 investigation; correct?

20 MS. MacDONALD: Objection to form, 05:27:18  
21 misstates his testimony.

22 A. I am not in a position to evaluate  
23 their qualifications. I can only speak to the way  
24 in which our disclosure process worked while I was  
25 CFO of the company. And in that instance it was 05:27:28

1           consultation with investigation counsel that drove  
2           the views that were factored into the disclosures.

3                       MS. MacDONALD:   Okay.

4                       MR. FORGE:    Okay.   Thank you.

5                       THE VIDEOGRAPHER:  We're going off the   05:27:45  
6           record.   The time is 5:28 p.m.

7                       (Time noted:   5:28 p.m.)

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# EXHIBIT 8

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARY K. JONES, )  
Individually and on )  
Behalf of all Others )  
Similarly Situated, )  
 )  
Plaintiff, )

vs. )

No. 10-cv-3864  
(AKH)

PFIZER, INC., HENRY A. )  
MCKINNELL, JEFFREY B. )  
KINDLER, FRANK D'AMELIO, )  
DAVID L. SHEDLARZ, )  
ALAN G. LEVIN, IAN C. )  
READ, JOSEPH FECZKO, )  
KAREN KATEN, J. PATRICK )  
KELLY and ALLEN WAXMAN, )  
 )  
Defendants. )  
----- )

\* CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER \*

October 10, 2014  
1:08 p.m.

Deposition of JEFFREY KINDLER, held at  
the offices of DLA Piper, 1251 Avenue of the  
Americas, New York, New York, before Laurie A.  
Collins, a Registered Professional Reporter  
and Notary Public of the State of New York.

1 Q. Slide 21, Bates page 66683.

2 A. Got it.

3 Q. The first bullet item is conducted 29  
4 interviews of COX-2 team. Did you discuss any of  
5 those interviews with Dennis Block? 01:36:26

6 A. I can't specifically recall whether I  
7 personally discussed those interviews with Dennis  
8 Block.

9 Q. Did you discuss them with Larry Fox?

10 A. The same answer. 01:36:41

11 Q. Did you direct anyone else to provide a  
12 summary of the interviews to Mr. Block?

13 A. Well, if I may, Mr. Forge, let me put  
14 this in context. Mr. Lankler, who was at the time  
15 I believe the deputy compliance officer and was 01:36:56  
16 responsible for this investigation internally, was  
17 under very specific instructions by me to provide  
18 Mr. Fox and Mr. Block with all pertinent  
19 information to keep him -- to keep them well  
20 informed about the case so that they could make 01:37:14  
21 judgments about disclosures.

22 Exactly what Mr. Lankler and the  
23 outside lawyers shared with Mr. Block and Mr. Fox  
24 outside my presence, I can't say.

25 I do know that we had an extremely 01:37:25

1 robust disclosure process that concluded with a  
2 meeting at which I and the chief financial officer  
3 signed our securities filings.

4 And in that context Mr. Block and  
5 Mr. Fox as well as the outside auditors as well as 01:37:41  
6 Mr. Lankler were all present. And there would  
7 always be a robust discussion of the status of the  
8 investigation before we would conclude on what the  
9 nature of our disclosures should be.

10 Q. In the course of that process or in any 01:37:55  
11 other context, did Mr. Block ever advise you  
12 regarding the strengths or weaknesses of Pfizer's  
13 defenses to the government's investigation of  
14 Bextra?

15 MS. MacDONALD: Objection to form. 01:38:06

16 A. He may or may not have expressed an  
17 opinion about that, but I did not look to him for  
18 advice on that.

19 Q. Did you look to Larry Fox for advice on  
20 that? 01:38:15

21 A. No.

22 Q. You looked to other lawyers for advice  
23 on that; correct?

24 A. On the strength -- could you repeat the  
25 predicate? 01:38:20



1 Q. Sure, the strengths or weaknesses of  
2 the government's investigation regard Bextra.

3 MR. ROUHANDEH: Objection to form.

4 A. I did not look to either Mr. Block or  
5 Mr. Fox for advice on that subject. 01:38:29

6 Q. But you did look to other lawyers for  
7 advice on that subject; correct?

8 A. Yes.

9 Q. The other side of the same coin, the  
10 same questions: You looked to other lawyers for 01:38:36  
11 advice on the strengths or weaknesses on Pfizer's  
12 defenses to the investigation; correct?

13 A. That's correct.

14 Q. You also looked to other lawyers; you  
15 did not look to Larry Fox or Dennis Block for that 01:38:47  
16 advice; correct?

17 MS. MacDONALD: Objection, asked and  
18 answered.

19 MR. ROUHANDEH: Objection to form.

20 A. I think I answered that already. So if 01:38:53  
21 it's different, I want to make sure --

22 Q. You said "other lawyers," but I just  
23 want to make sure for the record --

24 A. I'm sorry, do you mind rephrasing just  
25 so I can be absolutely accurate. 01:39:05

1 Q. Sure. And I'll take Block and Fox one  
2 at a time.

3 You did not look to Dennis Block for  
4 advice regarding the strengths or weaknesses of  
5 Pfizer's defenses to the Bextra investigation? 01:39:12

6 A. That's correct.

7 Q. You did not look to Larry Fox for  
8 advice regarding the strengths or weaknesses to  
9 Pfizer's defenses to the government investigation?

10 A. That is also correct. 01:39:22

11 Q. You did not look to Dennis Block for  
12 advice as to whether or not Pfizer would be likely  
13 to win or lose a trial involving the government's  
14 investigation of Bextra; correct?

15 A. No, I did not. 01:39:36

16 Q. And you did not look to Larry Fox for  
17 that type of advice either, did you?

18 A. That's correct.

19 Q. You understood, did you not, sir, that  
20 the government's investigation was criminal in 01:39:47  
21 nature; correct?

22 A. Well, actually it depends on what point  
23 in time you're describing. At the time of this  
24 document, if I recall correctly -- I'm referring  
25 to Exhibit 870. And, you know, these matters 01:39:58

# EXHIBIT 9

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARY K. JONES, )  
Individually and on )  
Behalf of all Others )  
Similarly Situated, )  
Plaintiff, ) No. 10-cv-3864  
vs. ) (AKH)  
PFIZER, INC., HENRY A. )  
MCKINNELL, JEFFREY B. )  
KINDLER, FRANK D'AMELIO, )  
DAVID L. SHEDLARZ, )  
ALAN G. LEVIN, IAN C. )  
READ, JOSEPH FECZKO, )  
KAREN KATEN, J. PATRICK )  
KELLY and ALLEN WAXMAN, )  
Defendants. )  
----- )

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Deposition of ALLEN WAXMAN, held at the  
offices of DLA Piper, 1251 Avenue of the  
Americas, New York, New York, before Laurie A.  
Collins, a Registered Professional Reporter  
and Notary Public of the State of New York.  
October 16, 2014, at 10:12 a.m.

PAGES 1 - 80

1           A.     I don't recall that that determination  
2 was made. I don't recall that determination was  
3 made.

4           Q.     What did you understand Bextra had been  
5 approved for by the FDA? 11:26:00

6           A.     I'd have to get out the label. I'm not  
7 recalling specifically the indication for Bextra  
8 as I sit here today.

9           Q.     Do you recall, prior to the time you  
10 left Pfizer, was there ever a conclusion reached 11:26:27  
11 that Pfizer employees had indeed marketed Bextra  
12 off label?

13                   MR. GALIN: Objection.

14           A.     I am not recalling a conclusion that  
15 Pfizer employees had indeed marketed Bextra off 11:26:45  
16 label. I do recall there were concerns around  
17 that. I'm just not recalling really a conclusion  
18 to that effect.

19           Q.     We looked at some documents earlier  
20 today. Certainly there were Pfizer employees who 11:26:58  
21 had attempted to destroy documents with respect to  
22 Bextra and expressed their concern that they did  
23 so so that they wouldn't implicate themselves in  
24 off-label marketing; correct?

25                   MR. GALIN: Objection. 11:27:17

1 A. I recall you showing me those memos,  
2 yes.

3 Q. Didn't that in and of itself lead  
4 Pfizer to the conclusion that employees had  
5 marketed off label? 11:27:27

6 MR. GALIN: Objection.

7 A. So that -- there was an investigation  
8 that was done in connection with the learnings  
9 around the document destruction. I'm not  
10 recalling the specifics of that investigation. My 11:27:42  
11 surmise is that at the time I would have recalled  
12 that documents were reviewed, interviews took  
13 place, assessments done.

14 There were certainly concerns I recall  
15 raised about whether there had been off-label 11:28:02  
16 promotion. I don't recall there being a  
17 conclusion or finding or investigative finding  
18 that there was off-label promotion.

19 It may be that I was advised that. I'm  
20 not recalling it. 11:28:17

21 Q. So as you sit here today, you can't  
22 remember somebody at Covington saying to you,  
23 Well, these employees at least in Brooklyn  
24 definitely marketed off label and then they tried  
25 to destroy documents to cover it up? 11:28:30

1 MR. GALIN: Objection.

2 Q. You don't remember anyone telling you  
3 that?

4 MR. PETROSINELLI: Wait a minute. You  
5 can't ask him about his discussions with 11:28:38  
6 Covington. That is privileged, and we haven't  
7 waived it.

8 Q. I take it you will follow your  
9 counsel's advice?

10 A. I will follow that counsel's advice; I 11:28:46  
11 assume I will follow this counsel's advice. I  
12 will follow the advice.

13 Q. Fair enough.

14 During the time you were at Pfizer, do  
15 you ever recall the company reaching a conclusion 11:29:02  
16 as to whether there had been off-label marketing  
17 with respect to Lyrica?

18 MR. GALIN: Objection.

19 A. I'm recalling there was some concerns  
20 and inquiries about Lyrica. I'm not recalling the 11:29:28  
21 details of that, no.

22 Q. And when you "say there was some  
23 concerns and inquiries," what do you mean?

24 A. There was -- I think we had an internal  
25 investigation when I was at the company with 11:29:38

1 respect to Lyrica, and I'm just not recalling,  
2 again, any conclusions or instances or findings.  
3 I'm just -- I don't have a specific recollection  
4 of that now.

5 Q. And same question with respect to 11:29:49  
6 Geodon --

7 MR. GALIN: Objection.

8 Q. -- do you recall whether there was a  
9 conclusion reached during the time you were with  
10 the company that Pfizer had engaged in off-label 11:30:04  
11 promotion?

12 MR. GALIN: Objection.

13 MR. PETROSINELLI: How does this have  
14 to do with what we're here to do today? I have  
15 been sitting here listening to you ask a lot 11:30:12  
16 of questions that I think are way outside the  
17 scope of the judge's order, and I haven't said  
18 anything.

19 But Geodon, Lyrica, Zyvox, they have  
20 nothing to do with the Covington memos with 11:30:25  
21 respect to Bextra, unless you can tell me how  
22 that could be.

23 MR. DOWD: I think they do and so --

24 MR. PETROSINELLI: Why?

25 MR. DOWD: You want to go off the 11:30:34



## Regan Karstrand

---

**From:** NYSJ\_ECF\_Pool@nysd.uscourts.gov  
**Sent:** Tuesday, December 30, 2014 1:35 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 Forge, Jason on 12/30/2014 at 1:34 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:** [422](#)

#### Docket Text:

**DECLARATION of Jason A. Forge in Support re: [343] MOTION in Limine to Exclude Reliance Evidence and Argument.. Document filed by Mary K. Jones(Individually), Stichting Philips Pensioenfonds. (Attachments: # (1) Exhibit 2, # (2) Exhibit 3, # (3) Exhibit 4, # (4) Exhibit 5, # (5) Exhibit 6, # (6) Exhibit 7, # (7) Exhibit 8, # (8) Exhibit 9)(Forge, Jason)**

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**Document description:**Exhibit 2

**Original filename:**n/a

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**Document description:**Exhibit 3

**Original filename:**n/a

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**Document description:**Exhibit 4

**Original filename:**n/a

**Electronic document Stamp:**

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-3] [709c65a074ab74d57f011bd03987347fd0b18126d6280a74b9a7915506b7354c2b8abfed991435643a0f3eab6e0d422e08a1e4158b17f80820a10639d75c5fc9]]

**Document description:**Exhibit 5

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**Document description:**Exhibit 6

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-5] [b33f563e0da39ec7ae8f53f876c086d947924056014009110d4e1f9dd63716b2cbc95375e0efdb98f2c2e532d230e50a5a752e486f86f80d1c166fea66a84c6]]

**Document description:**Exhibit 7

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-6] [1a1f1730620f7ec02d7914fa731822cab1e73fdde2802aa21476564f3b4ceb81929126a19e4d53c0bdca1754a8132330d17231c8ce503b1d4ddf11dea3c0f898]]

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-7] [7b05a6af1e7ba54c33a8e6df9d3614a5d0bcb1bec93e275e8bb5cdb7fe3e5a8242c70f8c3ec616f8170779953b080b66c22642c25785fecaa7e918cd013bd8b]]

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