

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARY K. JONES, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

PFIZER INC., et al.,

Defendants.

Civil Action No.: 1:10-cv-03864 (AKH)

Hon. Alvin K. Hellerstein

ECF Case

**DECLARATION OF AMANDA M. MACDONALD IN SUPPORT OF
REPLY IN SUPPORT OF DEFENDANTS' MOTION *IN LIMINE* NO. 1 TO EXCLUDE
PLAINTIFFS' DESIGNATED EXPERT JEROME AVORN**

I, Amanda MacDonald, declare as follows:

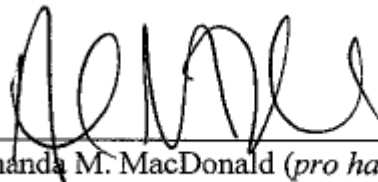
1. I am admitted *pro hac vice* to the Bar of this Court and am an attorney at the law firm of Williams & Connolly LLP, counsel for Pfizer, Inc. in the above-captioned action.

I submit this declaration in support of Defendants' Responses to Plaintiffs' Motions *in Limine*.

2. Attached as Exhibit DD-5 is a true and correct copy of excerpts from the transcript of the deposition of Jerome Avorn, dated August 7, 2014.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: December 31, 2014
Washington, DC



Amanda M. MacDonald (*pro hac vice*)

CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of December, 2014, the foregoing Declaration of Amanda MacDonald In Support of Reply In Support of Defendants' Motion *in Limine* No. 1 to Exclude Plaintiffs' Designated Expert Jerome Avorn and exhibits annexed thereto were filed with the Court through the CM/ECF system. I also certify that the foregoing were served via electronic mail FTP on the following counsel:

s/Lauren K. Collogan
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Exhibit DD-5

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

1 ** CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER **

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 NO. 10-cv-03864 (AKH)

5

6

7 _____
MARY K. JONES, Individually and on)

8 Behalf of All Others Similarly Situated,)

9 Plaintiff,)

10 vs.)

11 PFIZER INC., et al.,)

12 Defendants.)

13 _____)

14

15 VIDEOTAPED DEPOSITION of JEROME L.

16 AVORN, MD, called as a witness by and on behalf of

17 the Defendants, pursuant to the applicable

18 provisions of the Federal Rules of Civil Procedure,

19 before P. Jodi Ohnemus, RPR, RMR, CRR, CA-CSR

20 #13192, NH-LSR #91, MA-CSR #123193, and Notary

21 Public, within and for the Commonwealth of

22 Massachusetts, at the offices of DLA PIPER USA, 33

23 Arch Street, Boston, Massachusetts, on Thursday,

24 August 7, 2014, commencing at 9:10 a.m.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

<p style="text-align: right;">Page 74</p> <p>1 support of the ongoing clinical trials. 2 Isn't that what Doctor Cawkwell testified? 3 MR. ROSEN: Objection to form. 4 A. Well, "Support of key new indications for 5 2002 include --" I guess one can read "support" in 6 any number of ways. 7 Q. Right. And that would be one of them. 8 A. That would be one of them. 9 Q. And if the -- go back to my other 10 question. 11 If the last sentence says "The goal is to 12 create a unique and sustainable position --" strike 13 that. 14 I assume you cited this sentence because 15 it said "pain"; and pain, at least in its 16 generalized form, was not an approved indication 17 for BEXTRA; is that correct? 18 A. Well, again, I need to point out that this 19 comes right after the preceding sentence that talks 20 about supporting indications for "acute pain, 21 migraine, and chronic pain." 22 And if I could look at the binder in which 23 I could see the version of this exhibit that I 24 reviewed, just to make sure -- I do not recall</p>	<p style="text-align: right;">Page 76</p> <p>1 because of the fact that I was just quoting the 2 document and not Doctor Cawkwell's comments about 3 the document. 4 Q. Right. 5 A. So I'm reasonably sure this was the same 6 version I had seen. 7 Q. Okay. The so to go back to my question, 8 the sentence you quoted in your report, the reason 9 you quoted it was because the document had said -- 10 as sent to Doctor Cawkwell -- "The goal is to 11 create a unique and sustainable position in OA, RA, 12 and pain," and because pain was not an approved 13 indication, that's why you cited the document; 14 correct? 15 A. No. 16 Q. Okay. 17 A. An additional reason, given that I did not 18 cite every sentence in every document that I cited, 19 the sentence before it was also part of that -- 20 that argument; that the plan, as labeled "BEXTRA 21 Medical Operating Plan, 2002 to 2006," the sentence 22 before the one that we're discussing indicated the 23 -- I won't say "intent --" but the -- the corporate 24 vision to support new indications, including acute</p>
<p style="text-align: right;">Page 75</p> <p>1 whether Doctor Cawkwell's highlighted comments were 2 in that version or not. 3 Is that something I can do? 4 Q. I don't have what you reviewed. 5 A. Right. Right. But I think -- 6 Q. Do you want to take a break and you could 7 do it? 8 A. No. I can do it right now. 9 Q. We could take a break. 10 MR. ROSEN: Let's take a break. 11 THE WITNESS: Okay. 12 VIDEO OPERATOR: The time is now 10:20. 13 We are off the record. 14 (Recess was taken.) 15 VIDEO OPERATOR: The time is 10:34. We 16 are back on the record. 17 Q. Sir, you had indicated that you wanted to 18 take a look at a different copy of -- 19 A. Uh-huh. 20 Q. -- Exhibit 168 or something like that? 21 Have you had an opportunity to do what you 22 wanted to do? 23 A. Yes. I didn't do it because I -- I 24 realized that the reason for the ellipses was</p>	<p style="text-align: right;">Page 77</p> <p>1 pain, migraine, and chronic pain. 2 Q. But my question is, you cited the last 3 sentence in your report. 4 A. Right. 5 Q. Why did you cite that sentence? 6 A. Because it indicates that -- in the 7 version of this that was labeled "near final," it 8 indicated that the goal was to create a position in 9 OA, RA, and pain. 10 Q. Okay. And why -- why is that problematic? 11 A. Because pain -- pain, per se, was not an 12 indication for the drug. 13 Q. Right. And so when you look at Doctor 14 Cawkwell's comment -- 15 A. Right. 16 Q. -- which says "Do you want to cite 17 dysmenorrhea instead of pain --" 18 A. Right. 19 Q. My question to you was, if that comment 20 was made and so the sentence read, "The goal is to 21 create a unique and sustainable position in OA, RA, 22 and dysmenorrhea while achieving an optimal 23 co-positioning with Celebrex," that sentence would 24 be appropriate; correct?</p>

20 (Pages 74 - 77)

Regan Karstrand

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Southern District of New York

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Jeffrey B. Kindler
Alan G. Levin
Henry A. McKinnell
Pfizer, Inc.
Ian C. Read
Allen Waxman

Document Number: [428](#)

Docket Text:

DECLARATION of Amanda M. MacDonald in Support re: [341] MOTION in Limine No. 1 to Exclude Plaintiffs' Expert Designated Expert Jerome Avorn.. Document filed by Frank D'Amelio, Jeffrey B. Kindler, Alan G. Levin, Henry A. McKinnell, Pfizer, Inc., Ian C. Read, Allen Waxman. (Attachments: # (1) Exhibit DD-5)(Collogan, Lauren)

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